Vestavia Hills City Council Agenda October 12, 2015 5:00 PM

- 1. Call to Order
- 2. Roll Call
- 3. Invocation Brian Davis, Public Services Director
- 4. Pledge Of Allegiance
- 5. Announcements and Guest Recognition
- 6. City Manager's Report
- 7. Councilors' Reports
- 8. Financial Reports Melvin Turner III, Finance Director/City Treasurer
- 9. Approval of Minutes September 14, 2015 (Regular Meeting)

Old Business

- 10. Ordinance Number 2600 An Ordinance Establishing the Rocky Ridge Entertainment District (public hearing continued from 9/28/2015 meeting)
- 11. Resolution Number 4762 A Resolution Authorizing The City Manager To Execute And Deliver An Agreement For A Multi-Jurisdictional APPLE Project To Study And Further Develop Improvement Plans For A Section Of Acton Road Near The Former Altadena Valley Country Club
- 12. Ordinance Number 2602 Rezoning 513 Montgomery Highway; Lot 1, Resurvey Of Lots 4, 8, 9 10, 11 & 12, Fourth Addition To Beacon Hills; Rezone From Vestavia Hills R-2 (Medium Density Residential District) To B-2 (General Business District) With Future Limited Uses; City Of Vestavia Hills, Owner; Getra Sanders, CFA Development Manager, Representing
- 13. Ordinance Number 2603 Conditional Use Approval For A Home Occupation For Property Located At 3794 Poe Drive, S ½ Of Lot 4 And All Of Lot 3, Glass 3rd Add To New Merkle; Conditional Use Approval For A Home Occupation With One Fulltime And Two "Drop-In" Employees Who Do Not Reside On The Property; Jon Hinds, Owner
- 14. Ordinance Number 2604 Conditional Use Approval For A Home Occupation For Property Located At 4191 Vestview Drive, Liberty Park; Peggy Vanek-Titus, Owner
- 15. Ordinance Number 2605 Rezoning 3127 Blue Lake Drive And 4565 Pine Tree Circle; Lot 10-A, Acton's Resurvey Of Lot 8 Thru 10 And Lots 11 & 12, Topfield Subdivision;

- Rezone From Vestavia Hills R-1 (Low Density Residential District) To Vestavia Hills B-1-2 (Planned Business District); Beth A. Holsenback, Kenneth Andrews And Pine Tree Partners, LLC, Owners
- 16. Ordinance Number 2606 Rezoning 4209 Autumn Lane; Rezone From Vestavia Hills R-4 (Medium Density Residential District) To Vestavia Hills B-1 (Neighborhood Business District) With Uses Limited To Professional Office; Brent Martina And Tim Coker, Owners, John Whitson, Representing
- 17. Ordinance Number 2607 3117 And 3121 Blue Lake Drive; Lots 29 & 30, Topfield Subdivision; Rezone From Vestavia Hills R-1 (Low Density Residential District) To Vestavia Hills O-1 (Office District); Slate Barganier Holdings, LLC And VGD On Blue Lake, LLC, Owners

New Business

- 18. Resolution Number 4764 A Resolution Approving A Beer And Wine License For UAT Inc., D/B/A Cahaba Heights Texaco; Abid Ghani, Executive
- Resolution Number 4765 A Resolution Authorizing The Mayor And City Manager To Execute And Deliver An Agreement With Alabama Department Of Transportation For Project Number ACAA59495-ATRP(006) ATRIP 37-03-34

New Business (Requesting Unanimous Consent)

First Reading (No Action Taken At This Meeting)

- 20. Ordinance Number 2608 Rezoning & Conditional Use Approval 4248, 4244, 4240, 4232 Oakview Lane And 4325, 4321 And 4317 Dolly Ridge Road; Rezone From Vestavia Hills R-4, B-1 With Conditions, B-2 With Conditions, B-1.2, B-1.2 With Conditions And INST To Vestavia Hills B-1.2 With Conditional Use For 4-Story Building
- 21. Citizens Comments
- 22. Executive Session
- 23. Motion For Adjournment

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

SEPTEMBER 28, 2015

The City Council of Vestavia Hills met in regular session on this date at 5:00 PM. The Mayor called the meeting to order and the City Clerk called the roll with the following:

MEMBERS PRESENT: Mayor Alberto C. Zaragoza, Jr.

Steve Ammons, Mayor Pro-Tem

George Pierce John Henley Jim Sharp

OTHER OFFICIALS PRESENT: Patrick H. Boone, City Attorney

Wendy Appling, Deputy City Clerk Melvin Turner, Finance Director George Sawaya, Deputy Treasurer

Danny Rary, Police Chief Jim St. John, Fire Chief

Marvin Greene, Asst. Fire Chief Terry Ray, Asst. Fire Chief

Brian Davis, Public Services Director Christopher Brady, City Engineer

Kevin York, Police Dept. Scott Key, Fire Marshal Jason Hardin, Police Dept.

Lori Beth Kearley, Asst. Engineer

Invocation was given by Karen Odle, President/CEO, Vestavia Hills Chamber of Commerce, followed by the Pledge of Allegiance.

ANNOUNCEMENTS, GUEST RECOGNITION, CANDIDATES

- Mr. Ammons recognized Tommy Coggins, President of the Parks and Recreation Board.
- Mr. Ammons announced the upcoming vacancy on the Parks and Recreation Board. Applications can be obtained on October 12 in the Office of the City Clerk. It is a 5-year term and a voluntary Board. The Council will hold interviews in November.

- Mr. Pierce recognized Scott Perry, Chamber of Commerce Board of Directors.
- The Mayor announced the upcoming vacancy on the Library Board. Applications can be obtained on October 12 in the Office of the City Clerk. It is a 4-year term and a voluntary Board. The Council will hold interviews in November.

PROCLAMATION

Mr. Ammons stated that October is Firefighter Appreciation Month and the Mayor presented Chief St. John with the proclamation.

CITY MANAGER'S REPORT

1. None.

COUNCILORS' REPORTS

2. None.

FINANCIAL REPORTS

Mr. Turner presented the financial reports for month ending August 2015. He read and explained the balances.

APPROVAL OF MINUTES

The minutes of September 14, 2015 (Regular Meeting) were presented for approval.

MOTION

Motion to dispense with the reading of the minutes of September 14, 2015 (Regular Meeting) and approve them as presented was by Mr. Henley and second by Mr. Pierce. Roll call vote as follows:

Mr. Pierce – yes Mr. Ammons – yes Mr. Sharp – yes Mayor Zaragoza –abstain Motion carried.

OLD BUSINESS

ORDINANCE NUMBER 2598

Ordinance Number 2598 – Rezoning – Altadena Valley Country Club – Rezone from Jefferson County CC-1, A-1 and Shelby County E-1 to Vestavia Hills R-9, R-2, Inst, A and B-2; Nall Partnership, LLP, Owner,

Charles Beavers, Bradley Arant Boult Cummings LLP, Representing (public hearing)

MOTION Motion to approve Ordinance Number 2598 was by Mr. Henley and second was by Mr. Pierce.

Mr. Chris Eckroate, Gooodwyn, Mills and Cawood, Inc., explained that the property would be a mix of residential, commercial, recreational areas and a canoe launch. Various studies and reports limit the use of the fields. There will be bathrooms located on the property. Grading will be limited and the entrance will be on Lakeland Trail.

Discussion ensued as to the elevation changes of the property, how the fields would drain and remain dry, large pine trees and if the dam would be reopened.

Mr. Eckroate stated that the elevation would be around 14' to 6'; fields engineered to dry quickly and that they will attempt to save all large trees possible. There are no plans to open the dam area.

The Mayor explained that the City is looking at an "APPLE" grant to help with improvements along Acton Road and that it will be presented to the Council later in the meeting.

Mr. Brady explained that he is working with the County to see what improvements need to be made.

Mr. David Stovall, Engineering Design Group, explained that there will be 66 residential lots with a gated entrance. Three lots will be on Alta Vista Circle with a hammerhead turnaround. Utilities are available and they will work in conjunction with the City. The homes will be 3,500 to 4,500 square feet and range between \$500,000 to \$800,000, with lot sizes around 60' to 120' with flexibility in setbacks. It will be single family residential development with sidewalks.

Mr. Sharp stated that Planning and Zoning Commissionrecommended the approval of the request.

Mr. Henley asked if the petition have to go back before the Council if the plans changed.

Mr. Boone stated that it would.

The Mayor opened the floor for a public hearing.

The following individuals addressed the Council regarding this development:

- Ms. Betty Chivers, 2703 Altadena Lake Drive;
- Kathleen Bishop, 2129 Viking Circle;
- Jordon Huffstetler, 2600 Lakeland Trail;
- Wes Kline, 2704 Altadena Lake Drive;
- Linda Gauldin, 2700 Altadena Lake Drive;
- Jonathon Sanders, 2731 Lakeland Trail;
- Bobby Gusnard, 2352 Sumner Lane;

Issues discussed included the proposed entrance on the western side of the AVCC; the gates before the spillway to be locked to keep people out of the area after dark; no trespass sign; maintenance during construction; traffic; allowing annexation of the residential properties to the City; lack of police protection; inadequate parking; kids bringing alcohol to the property; people frequenting the canoe launch; the proposed 400 parking spaces at the recreation area; people using the existing streets for turnaround areas, police challenges, contingency plan should a park not develop, traffic lights on Acton Road.

The Mayor closed the floor and asked for the question.

Roll call vote as follows:

Mr. Pierce – yes
Mr. Ammons – yes
Mr. Sharp – yes
Mayor Zaragoza – yes
Motion carried.

ORDINANCE NUMBER 2599

Ordinance Number 2599 – Annexation – 90-Day Final – Altadena Valley Country Club; Nall Partnership, LLP (public hearing)

MOTION Motion to approve Ordinance Number 2599 was by Mr. Pierce and second was by Mr. Henley.

Mr. Pierce stated the request came to us in March and researched the request and wanted to bring it before the Council for consideration.

The Mayor opened the floor for a public hearing. There being no one to address the Council concerning this request, the Mayor closed the floor and asked for the question.

Roll call vote as follows:

Mr. Pierce – yes Mr. Ammons – yes Mr. Sharp – yes

ORDINANCE NUMBER 2596

- Ordinance Number 2596 Rezoning 2308, 2312, 2320 Rocky Ridge Road; Rezone from Jefferson County A-1 to Vestavia Hills R-9; Carl A. Shaefer, Jr., Owner; Taylor Burton, Taylor Burton Homes, Representing (public hearing)
- **MOTION** Motion to approve Ordinance Number 2596 was by Mr. Sharp and second was by Mr. Ammons.
- Mr. Blake Pittman, 2753 Paden Trail, explained that they are proposing a 45 lot subdivision. Proposed name of the subdivision is South Bend. The lot sizes are on average 70' wide by 150' deep. The minimum square footage of the homes will be 2800 square feet and the price range will be mid \$500,000 to upper \$600,000.
 - Mr. Ammons asked if apartments would be placed on the property.
- Mr. Pittman stated that there would not be apartments. They will build single family residential homes.
 - Mr. Pierce asked about the buffer and retention ponds.
- Mr. Pittman explained that they would like for them to be aesthetically pleasing. If they are not, it is hard to sell houses.
 - Mr. Sharp said that Planning and Zoning unanimously approved the request.
 - Mr. Brady stated that he found no significant issues from the traffic study.
 - The Mayor opened the floor for a public hearing.

The following individuals addressed the Council about the request:

- Becky Davis, 2449 Jannebo Road;
- Noel Whatley, 3401 Big Paul Circle;
- Mike Wills, 3332 Wisteria Drive;
- Tony Burton, 2340 Crossgate Trail;
- Ms. Bobbi Gusnard, 2352 Sumner Lane;

Issues included parking and elevation of entrance to subdivision; no commercial development on property; lighting from the subdivision to assist with security of the Wisteria Drive entrance and surrounding areas, traffic reports; school zoning for property; and turn lanes.

There being no one else to address the Council concerning this request, the Mayor closed the floor and asked for the question.

Roll call vote as follows:

Mr. Pierce – yes
Mr. Ammons – yes
Mr. Sharp – yes
Mayor Zaragoza – yes
Mr. Sharp – yes
Motion carried.

ORDINANCE NUMBER 2597

Ordinance Number 2597 – Annexation – 90-Day Final – 2308, 2312, 2320 Rocky Ridge Road; Carl A. Shaefer, Jr., Owner (public hearing)

MOTION Motion to approve Ordinance Number 2597 was by Mr. Pierce and second was by Mr. Henley.

Mr. Pierce stated that this was in the annexation study. The Annexation Committee researched this and deemed that everything would be adequate to annex the property. The Board is fully aware of annexations.

The Mayor opened the floor for a public hearing.

There being no one to address the Council concerning this request, the Mayor closed the floor and asked for the question.

Roll call vote as follows:

Mr. Pierce – yes
Mr. Ammons – yes
Mr. Sharp – yes
Mayor Zaragoza – yes
Mr. Sharp – yes
Motion carried.

ORDINANCE NUMBER 2600

Ordinance Number 2600 – An Ordinance Establishing the Rocky Ridge Road Entertainment District (public hearing)

MOTION Motion to approve Ordinance Number 2600 was by Mr. Ammons and second was by Mr. Henley.

The Mayor discussed the Entertainment District and relayed to the audience that this has been in discussions for a year and a half. A study was conducted and it was determined that the City could not have an entertainment district. The City initiated a process with Hoover and the Legislature voted in the last session to allow Vestavia Hills and Hoover to establish an entertainment district. Alabama law states that the City can

designate up to three districts and listed the requirements. This will allow for entertainment and economic growth. The original ordinance stated 9:00 a.m to 2:00 a.m. and in discussing this matter with others, it seems that this may be too long of a timeframe.

Mr. Ammons stated that it takes time to get approval for an ABC license and in this instance we are trying to make it more efficient.

Mr. Pierce stated that if the Entertainment District does not work then the Council can vote to remove it.

Chief Rary explained that from the Police standpoint, they do not have a problem with the ordinance as written. He studied Montgomery and Birmingham. The businesses the City would like to attract would not be a problem for the Police.

Mr. Henley stated that he would like to propose an amendment to change the time.

MOTION

Motion to amend Ordinance Number 2600 to change the time to Sunday – Thursday from noon to 9:00 p.m. and Friday – Saturday from noon to 11:00 p.m. and that if an event needs to have additional times, then they request a variance with the City Manager was by Mr. Henley and second was by Mr. Ammons.

Mr. Boone stated that there is no problem with amending the Ordinance, but he would like for it to be held over until the next meeting.

Roll call vote as follows:

Mr. Pierce – yes
Mr. Ammons – yes
Mr. Sharp – yes
Mayor Zaragoza – yes
Motion carried.

The Mayor stated that this will be held over until the next meeting.

The Mayor opened the floor for a public hearing.

Mr. Brian Malcolm, 2525 Aspen Cove Drive, stated that he is concerned with the Ordinance as written. He would like a more restricted procedure than 365 days a year. He has concerns of traffic and noise from special events. It creates a tailgating atmosphere. Consumption of beverages does not have a time limit. Someone could buy a beverage and linger in the District for hours after the timeframe for selling.

The Mayor explained that the timeframe is for the District, not for selling or consuming. The timeframe means that the district is limiting the times for selling and consuming alcohol.

Chief Rary stated that the District closes the timeframe for selling and consuming alcohol. Every other law stays in effect during the operating times of the District including the noise ordinance and public intoxication.

Mr. Scott Perry, 2325 Hunters Cove, stated that he is currently representing the Chamber of Commerce Board of Directors. The Board has discussed the issue and talked with business and property owners near the District and the response has been positive. The Board has voted on the issue and recommends the approval of the District. The Board believes that this will bring businesses to the community.

Ms. Carol Crab, 1613 Glen Cove, stated that her house backs up to Andy's Nursery. She believes that the sidewalk will have many people using it. She stated that her community has not known about the Entertainment District until this week and that no one has approached her subdivision about this. She is concerned about the noise. The neighborhood is already maintaining the fence and they would like input into this issue. Open containers near the High School are a concern.

Chief Rary stated that alcohol cannot be at the school. It will only be in the district.

Mr. Robin Morgan stated that the business will strengthen the existing restaurants. He has apartments nearby there and does not think that the District will have any noise. If the District does not work, it can be looked at and retracted.

The Mayor stated that this has been discussed for a while and has been in the newsletter and *The Voice* and was on the last agenda as a first read.

There being no one else to address the Council concerning this request, the Mayor closed the floor and asked for the question.

New Business

RESOLUTION NUMBER 4758

Resolution Number 4758 – A Resolution Accepting A Bid For Custodial Services For The City Center And The City Hall

MOTION Motion to approve Resolution Number 4758 was by Mr. Ammons and second was by Mr. Henley.

Mr. Brady stated that this is a bid for custodial services for the City Hall. He stated that we had four bids and this is the lowest bid.

Mr. Henley asked Mr. Boone if a 3-year agreement is applicable.

Mr. Boone that said it is.

Roll call vote as follows:

Mr. Pierce – yes Mr. Ammons – yes Mr. Sharp – yes

Mayor Zaragoza – yes Motion carried.

RESOLUTION NUMBER 4759

Resolution Number 4759 – A Resolution Authorizing The City Manager To Execute And Deliver An Agreement With The City Of Hoover, Alabama, For Participation In A Firefighter Recruit School To Be Conducted By The City Of Hoover's Fire Department

MOTION Motion to approve Resolution Number 4759 was by Mr. Ammons and second was by Mr. Pierce.

Chief St. John explained that this will allow continued enrollment in Hoover's class for \$100. Hoover requested the contract and he is presenting it to the Council. Mr. Boone has reviewed and approved it.

Roll call vote as follows:

Mr. Pierce – yes Mr. Ammons – yes Mr. Sharp – yes

Mayor Zaragoza – yes Motion carried.

RESOLUTION NUMBER 4761

Resolution Number 4761 – A Resolution Authorizing The City Manager To Execute And Deliver An Easement Agreement Dedicating An Easement On The Southern Line Of Lot 2, Resurvey Of Lots 4, 8, 9, 10, 11 & 12, Fourth Addition To Beacon Hills; City Of Vestavia Hills, Owner

MOTION Motion to approve Resolution Number 4761 was by Mr. Pierce and second was by Mr. Henley.

Mr. Brady stated that this is for the current sale of the Municipal Center property. This provides the ingress/egress easement for this property and the Fire Station #1 property.

Roll call vote as follows:

Mr. Pierce – yes Mr. Ammons – yes Mr. Sharp – yes Mayor Zaragoza – yes

Motion carried.

NEW BUSINESS (REQUESTING UNANIMOUS CONSENT)

The Mayor opened the floor for unanimous consent for the immediate consideration and action on Resolution Numbers 4760 and 4763.

MOTION Motion for unanimous consent for the immediate consideration and action on Resolution Numbers 4760 and 4763 was by Mr. Sharp and second was

by Mr. Henley. Roll call vote as follows:

Mr. Pierce – yes Mr. Ammons – yes Mr. Sharp – yes

Mayor Zaragoza – yes Motion carried.

RESOLUTION NUMBER 4760

Resolution Number 4760 – A Resolution Authorizing The City Manager To Execute And Deliver An Agreement With Goodwyn Mills And Cawood For Planning Services For The B.E. Care Entrance To The Altadena Valley Country Club

MOTION Motion to approve Resolution Number 4760 was by Mr. Henley and second was by Mr. Sharp.

Mr. Brady stated that this is for the planning services to look at access on the western side of Altadena Valley Country Club.

The Mayor explained that this will come out of the economic development budget for the City Manager.

Roll call vote as follows:

Mr. Pierce – yes Mr. Ammons – yes Mr. Sharp – yes

Mayor Zaragoza – yes Motion carried.

RESOLUTION NUMBER 4763

Resolution Number 4763 - A Resolution Authorizing The City Manager To Execute And Deliver An Agreement For Professional Services For Programming And Schematic Layout Of A Proposed New Public Works Facility **MOTION** Motion to approve Resolution Number 4763 was by Mr. Pierce and second was by Mr. Ammons.

The Mayor said that this was discussed at the work session. This will be for professional services for the new Public Works facility.

Mr. Boone stated that he has reviewed the agreement and is fine with the document.

The Mayor stated that this will come out of the capital budget.

Roll call vote as follows:

Mr. Pierce – yes
Mr. Ammons – yes
Mr. Sharp – yes
Mayor Zaragoza – yes
Motion carried.

FIRST READING (NO ACTION TO BE TAKEN AT THIS MEETING)

The Mayor stated that the following Resolutions and/or Ordinances will be presented at a public hearing at the Council's next regularly scheduled meeting on October 12, 2015 at 5 PM.

- Resolution Number 4762 A Resolution Authorizing The City Manager To Execute And Deliver An Agreement For A Multi-Jurisdictional APPLE Project To Study And Further Develop Improvement Plans For A Section Of Acton Road Near The Former Altadena Valley Country Club
- Ordinance Number 2602 Rezoning 513 Montgomery Highway; Lot 1, Resurvey Of Lots 4, 8, 9 10, 11 & 12, Fourth Addition To Beacon Hills; Rezone From Vestavia Hills R-2 (Medium Density Residential District) To B-2 (General Business District) With Future Limited Uses; City Of Vestavia Hills, Owner; Getra Sanders, CFA Development Manager, Representing
- Ordinance Number 2603 Conditional Use Approval For A Home Occupation For Property Located At 3794 Poe Drive, S ½ Of Lot 4 And All Of Lot 3, Glass 3rd Add To New Merkle; Conditional Use Approval For A Home Occupation With One Fulltime And Two "Drop-In" Employees Who Do Not Reside On The Property; Jon Hinds, Owner
- Ordinance Number 2604 Conditional Use Approval For A Home Occupation For Property Located At 4191 Vestview Drive, Liberty Park; Peggy Vanek-Titus, Owner
- Ordinance Number 2605 Rezoning 3127 Blue Lake Drive And 4565 Pine Tree Circle; Lot 10-A, Acton's Resurvey Of Lot 8 Thru 10 And Lots 11 & 12, Topfield Subdivision; Rezone From Vestavia Hills R-1 (Low Density Residential District) To Vestavia Hills B-1-2 (Planned Business District); Beth A. Holsenback, Kenneth Andrews And Pine Tree Partners, LLC, Owners

- Ordinance Number 2606 Rezoning 4209 Autumn Lane; Rezone From Vestavia Hills R-4 (Medium Density Residential District) To Vestavia Hills B-1 (Neighborhood Business District) With Uses Limited To Professional Office; Brent Martina And Tim Coker, Owners; John Whitson, Representing
- Ordinance Number 2607 3117 & 3121 Blue Lake Drive; Lots 29 & 30, Topfield Subdivision; Rezone From Vestavia Hills R-1 (Low Density Residential District) To Vestavia Hills O-1 (Office District); Slate Barganier Holdings, LLC And VGD On Blue Lake, LLC, Owners

CITIZENS COMMENTS

None.

MOTION Motion to adjourn was by Mr. Pierce and second was by Mr. Henley. Meeting adjourned at 7:53 PM.

Alberto C. Zaragoza, Jr. Mayor

ATTESTED BY:

Rebecca Leavings City Clerk

ORDINANCE NUMBER 2600

ORDINANCE ESTABLISHING THE ROCKY RIDGE ENTERTAINMENT DISTRICT

WITNESSETH THESE RECITALS:

WHEREAS, Act 2012-438 as amended by Act 2013-382 now appearing as Section 28-3A-17.1, *Code of Alabama*, 1975, authorized certain municipalities in the State of Alabama to establish entertainment districts within its corporate limits; and

WHEREAS, the Legislature of the State of Alabama enacted Act No. 2015-267, which became law on May 27, 2015, to authorize the City of Vestavia Hills, Alabama to establish no more than three (3) entertainment districts within the corporate City limits; and

WHEREAS, pursuant to the terms and provisions and conditions of Act No. 2015-267, the City Council wishes to establish an entertainment district for the purpose of regulating the sale and consumption of alcoholic beverages as provided herein below.

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, as follows:

SECTION 1. Under the authority granted in Section 1 of Act No. 2015-267 of the Alabama Legislature, there shall be hereby established the Rocky Ridge Entertainment District with the areas and boundaries as set forth and designated in Exhibit A.

SECTION 2. Any licensee who receives an entertainment district designation for an on-premise retail license from the Alabama Alcoholic Beverage Control Board shall comply with all laws, rules, and regulations which govern its license type, except that the patrons, guests or members of that licensee may exit that licensed premises with open containers of alcoholic beverages and consume alcoholic beverages anywhere within the confines of the entertainment district but may not enter another licensed premises with open containers or closed containers of alcoholic beverages acquired elsewhere.

SECTION 3. No licensee who receives an entertainment district designation shall allow alcoholic beverages to be removed from the licensed premises in bottles or glass containers.

SECTION 4. Except for special events as permitted by the Alabama Alcoholic Beverage Control Board and in compliance with all laws, rules, and regulations, no alcoholic beverages

purchased outside of the district shall be allowed in open containers in the Entertainment District.

SECTION 5. Alcoholic beverages may be sold at licensed premises and consumed within the entertainment district designation boundaries during the following days and hours:

Sunday through Thursday from Noon to 9:00 PM

Friday and Saturday from Noon to 11:00 PM

SECTION 6. This Ordinance shall become effective upon passage, approval and publication or as otherwise.

DONE, ORDERED, ADOPTED and APPROVED this the 28th day of September, 2015.

ATTESTED BY:	Alberto C. Zaragoza, Jr. Mayor

CERTIFICATION:

Rebecca Leavings

City Clerk

I, Rebecca H. Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance Number 2600 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 28th day of September, 2015, as same appears in the official records of said City.

Posted at Vestavia Hills Munic	ipal Center,	Vestavia	Hills	Library	in	the	Forest,	and
Vestavia Hills Recreational Center this the	e day	of of		, 20	15.			

Rebecca Leavings City Clerk

ROCKY RIDGE ENTERTAINMENT DISTRICT BOUNDARY DESCRIPTION

Commence at the NE Corner of Lot 9 of Countrywood Trace Garden Homes as recorded Map Book167 Page 14 in the Probate of Jefferson County, Alabama. Located in NW ¼ of Section 32 Township-18 South- Range 2 West.

Thence run westerly along the northerly line of lots 9-8-7-6 and 5, to the Northwesterly corner of Lot 5 of the said Countrywood Trace Garden Homes.

Thence turn and run southerly along the westerly line of lots 5-4-3-2 and 1 of the said Countrywood Trace Garden Homes to the south west corner of Lot 1 of the said Countrywood Trace Garden Homes. Said point being on the northerly right of way line of Ridgedale Drive.

Thence turn and run westerly along the said northerly right of way line of Ridgedale Drive for a distance of 125 feet to a point on the said northerly right of way line, thence turn and run southerly across Ridgedale Drive to a point on the southerly right of way line of Ridgedale Drive. Said point being the northeast corner of Lot 2B of a Resurvey of Lot 2 Rocky Ridge Estates as recorded in Map Book 159 Page 65 in the Probate Office of Jefferson County.

Thence run southerly along the easterly line of the said Lot 2B to the Southeast corner of the said Lot 2B, thence turn and run westerly along the south line of Lot 2 B and Lot 2A to the Southwesterly corner of Lot 2A of the said resurvey of Lot 2 Rocky Ridge Estates. Said Corner being on the easterly right of way line of Rocky Ridge Road.

Thence run in a northwesterly direction across Rocky Ridge Road to a point on the Westerly right of way line of Rocky Ridge Road. Said point being the southeast corner of a parcel of property as recorded in Deed Book 201416 Page 23608. Thence run westerly along the south line of said parcel to the southwest corner of said parcel. Said southwest corner of said parcel also being the Northeast corner of Lot 21 of The Glen of Vestavia as recorded in Map Book 211 Page 56 in the probate office of Jefferson County, Alabama.

Thence run westerly along the north line of lots 21-20-19-18-17 and 16 to the northwest corner of Lot 16 of said The Glen of Vestavia. Thence turn and run northerly along the easterly line of lots 14-13 and 12 to the Northeast corner of Lot 12 of said The Glen of Vestavia.

Thence turn and run westerly along the north line of lots 12-11-10 and 9 to the Northwest corner of the said Lot 9 of said The Glen of Vestavia. Thence continue along the last described course for a distance of 112.55 feet to a point. Thence turn and run Northeasterly a distance of 330 feet more or less to a point located on the northerly right of way line of Morgan Drive. Said point being the Southeasterly corner of a parcel of property as recorded in Deed Book 9808 Page 0905 in the Probate Office of Jefferson County, Alabama.

Thence run northerly along the easterly line of the said parcel as recorded in said Deed Book 9808 page 0905 for a distance of 896.91 feet more or less to a corner point on the said easterly line of said parcel. Thence turn and run easterly along the projected northerly property line of a parcel of property as recorded in Deed Book 200207 Page 8191 in the probate office of Jefferson County, Alabama a distance of 88.66 feet more or less to the northwesterly corner of said parcel as recorded in Deed Book 200207 Page 8191. Thence continue along the said northerly line of said parcel 180.30 feet more or less to a point. Said point being the southwest corner of a parcel as recorded in Book 4445 Page 930.

Thence run northerly along the westerly line of said parcel recorded in Book 4445 page 930 for a distance of 121.40 feet more or less to the northwest corner of said parcel. Thence turn and run easterly along the northerly line of said parcel a distance of 238.1 feet more or less to the northeast corner of said parcel. Said corner being on the westerly right of way line of Rocky Ridge Road. Thence turn and run southerly along the westerly right of way of Rocky Ridge Road a distance of 139 feet more or less to the southeast corner of said parcel. Said southeast corner of said parcel being the northeast corner of a parcel of property as recorded in deed book 200207 Page 8191 in the Probate Office of Jefferson County, Alabama.

Thence continue in a southerly direction along the westerly right of way line of said Rocky Ridge Road 121.12 feet to the southeasterly corner of said parcel as recorded in deed book 200207 Page 8191. Said southeasterly corner of said parcel also being the northeasterly corner of a parcel of property as deeded in Deed Book 200206 Page7465 in the Probate Office of Jefferson County, Alabama.

Thence continue in a southerly direction along the said westerly right of way of said Rocky Ridge Road for a distance of 120.94 feet to the southeast corner of said parcel as recorded in Deed Book 200206 Page7465. Said southeast corner also being the northeast corner of a parcel as recorded in Deed Book 200407 page 7258 in the Probate Office of Jefferson County, Alabama.

Thence continue in a southerly direction along the said westerly right of way of Rocky Ridge Road for a distance of 131.55 feet to the southeast corner of said parcel recorded in Deed Book 200407 page 7258.

Thence turn and run southeasterly across Rocky Ridge Road to a point on the easterly right of way line of said Rocky Ridge Road. Said point being the northwest corner of Lot 2 Oak Park Plaza as recorded in Map Book 153 page 23. Thence continue along the northerly line of said Lot 2 to the northeast corner of said Lot 2. Said northeast corner also being the northwest corner of Lot 1-A Resurvey of Oak Park Plaza as recorded in Map Book 191 Page 19 in the Probate Office of Jefferson County, Alabama. Thence continue along the northerly line of said Lot 1-A to the northeast corner of said Lot 1-A. thence turn and run southerly along the easterly line of said lot 1-A to the southeast corner of said Lot 1-A.

Thence continue along the last described course a distance of 66.0 feet more or less to the point of beginning.



Rocky Ridge Entertainment District

PATRICK H. BOONE

ATTORNEY AND COUNSELOR AT LAW
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH
BIRMINGHAM, ALABAMA 35203-3720

TELEPHONE (205) 324-2018 FACSIMILE (205) 324-2295

September 1, 2015

By Electronic Mail and Regular Mail

City Clerk Rebecca Leavings Vestavia Hills Municipal Center 513 Montgomery Highway Vestavia Hills, Alabama 35216

In Re: Proposed Ordinance to Establish An Entertainment District

Dear Mrs. Leavings:

On August 17, 2015, you sent to me via electronic mail a proposed ordinance regarding the establishment of an entertainment district with a request that I review the same and provide you with any suggested revisions. The purpose of this letter is to comply with your request.

In order to advise you as requested, I reviewed the following:

- 1. Act Number 2012-438 as amended by Act 2013-382 now appearing as Title 28-3A-17.1 and Title 28-3A-20.1, *Code of Alabama*, 1975.
 - 2. Act Number 2015-267.
 - 3. City of Dothan Ordinance.
 - 4. One opinion of the State of Alabama Attorney General.
- 5. I consulted with the Alabama League of Municipalities, but it does not have any information regarding this subject and simply referred me to the City of Montgomery.

I do not have any recommendations for modifications of the body of the ordinance. However, I do recommend that the preamble be amended so as amended to read in words and figures as follows:

"WITNESSETH THESE RECITALS:

WHEREAS, Act 2012-438 as amended by Act 2013-382 now appearing as Section 28-3A-17.1, *Code of Alabama, 1975*, authorized certain municipalities in the State of Alabama to establish entertainment districts within its corporate limits; and

WHEREAS, the Legislature of the State of Alabama enacted Act No. 2015-267, which became law on May 27, 2015, to authorize the City of Vestavia Hills, Alabama to establish no more than three entertainment districts within the corporate City limits; and

WHEREAS, pursuant to the terms, provisions and conditions of Act No. 2015-267, the City Council wishes to establish an entertainment district for the purpose of regulating the sale and consumption of alcoholic beverages as provided herein below."

Please call me if you have any questions regarding any matters set forth in this legal opinion.

Sincerely,

Patrick H. Boone Vestavia Hills City Attorney

PHB:gp

cc: City Manager Jeff Downes (by e-mail/regular mail)

RESOLUTION NUMBER 4762

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A MULTIJURIDICTIONAL AGREEMENT WITH JEFFERSON COUNTY AND THE REGIONAL PLANNING COMMISSION OF GREATER BIRMINGHAM FOR AN "APPLE" PROJECT TO STUDY AND FURTHER DEVELOP IMPROVEMENT PLANS FOR A SECTION OF ACTON ROAD NEAR THE FORMER ALTADENA VALLEY COUNTRY CLUB

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

- 1. The City Manager is hereby authorized to execute and deliver an agreement with Jefferson County ("the County") and the Regional Planning Commission of Greater Birmingham ("RPCGB") for an Advanced Planning Program and Logical Engineering ("APPLE") project; and
- 2. A copy of said agreement is marked as "Exhibit A" attached to and incorporated into this Resolution Number 4762 with anticipated costs of RPCGB for \$48,000 or 80%; Jefferson County as primary sponsor up to \$12,000 (20%) and the City would reimburse Jefferson County up to \$6,000 (10%) as a co-sponsor of the project; and
- 3. Said project would be funded from the Capital Improvement Fund; and
- 4. This Resolution Number 4762 is effective immediately upon adoption and approval. **ADOPTED and APPROVED** this the 12th day of October, 2015.

Alberto C. Zaragoza, Jr. Mayor

ATTESTED BY:

Rebecca Leavings City Clerk JEFFERSON COUNTY)
STATE OF ALABAMA)

AGREEMENT

TO

SHARE RESPONSIBILITIES

Acton Road

From International Park Drive to Camp Horner Road

RECITAL:

Jefferson County, Alabama (County), and the City of Vestavia Hills, Alabama (Vestavia), desire to make certain improvements to **Acton Road from International Park Drive to Camp Horner Road (Project).** The Project traverses through the two jurisdictions, County and Vestavia. Both parties desire to cost share the Corridor Study. The County and Vestavia Hills will divide responsibility as follows: County responsibility being 50% of the costs and Vestavia Hills responsibility being 50% of the costs. Jefferson County and Vestavia desire to establish their agreement herewith.

WHEREAS, the County has entered into a separate Agreement with the Regional Planning Commission of Greater Birmingham (RPCGB) to receive funding under the Advanced Planning Program and Logical Engineering (APPLE) program for the Project. The total amount of funding awarded to County for the APPLE program is \$60,000.00 with the County's share being \$12,000.00.

WHEREAS, the County agrees to work in good faith with RPCGB to complete the Project in a timely and professional manner, and

WHEREAS, the RPCGB agrees to secure third party contractor(s) for the corridor study, and

IN CONSIDERATION OF THE PREMISES stated herein Jefferson County and the City of Vestavia Hills mutually agree as follows:

- 1) County, Vestavia and RPCGB will jointly select a consultant and prepare the scope of work.
- 2) County will invoice Vestavia Hills for \$6,000.00 for their share of the Project.
- 3) County will pay directly to RPCGB the amount of \$12,000.00 for the Project.
- 4) County shall notify Vestavia and receive written concurrence for any cost overruns that are deemed necessary.
- 5) The parties expressly agree that the County does not assume any risk or future liability, or any future responsibility for any portion of Acton Road located within the municipality of Vestavia Hills.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representative as reflected below.

	JEFFERSON COUNTY, ALABAMA					
Date	BY: James A. (Jimmie) Stephens, President Jefferson County Commission					
	CITY OF VESTAVIA HILLS, ALABAMA					
Date	BY:Alberto C. Zaragoza, Mayor					
Date	BY: Jeff Downes, City Manager					

ORDINANCE NUMBER 2602

AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF PROPERTY FROM VESTAVIA HILLS R-2 TO VESTAVIA HILLS B-2 WITH FUTURE LIMITED USES.

BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Vestavia Hills R-2 (medium density residential district) to Vestavia Hills B-2 (general business district):

513 Montgomery Highway
Lot 1, Resurvey of Lots 4, 8, 9, 10, 11 & 12 Fourth Addition to Beacon Hills
Map Book 241/Page 82
City of Vestavia Hills, Owner

BE IT FURTHER RESOLVED that said rezoning is conditioned upon the following: (1) Gas stations and automotive repair/service facilities are prohibited; (2) the proposed sign located on the back of the building is removed; and (3) all permits between ALDOT and the developer are reviewed by the City Engineer.

APPROVED and ADOPTED this the 12th day of October, 2015.

Alberto C. Zaragoza, Jr. Mayor

ATTESTED BY:

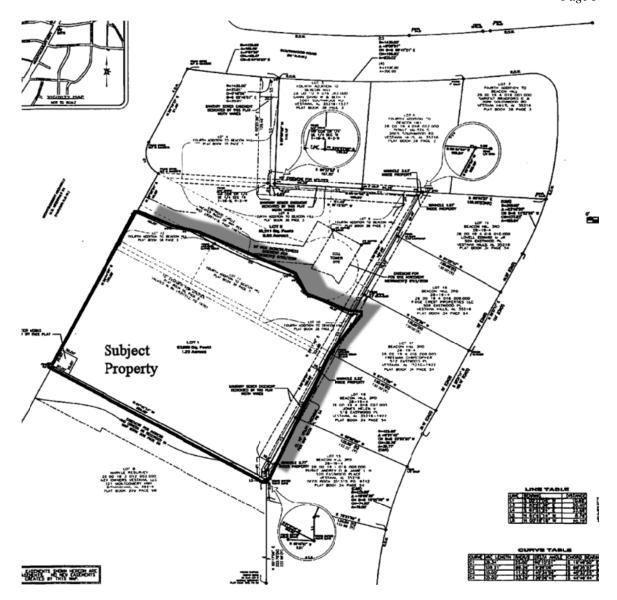
Rebecca Leavings City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2602 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 12th day of October, 2015 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, New Merkle House and Vestavia Hills Recreational Center this the _____ day of _____, 2015.

Rebecca Leavings City Clerk



CITY OF VESTAVIA HILLS

SYNOPSIS AND STAFF RECOMMENDATION CONCERNING APPLICATION BEFORE THE PLANNING AND ZONING COMMISSION

Date: **APRIL 9, 2015**

- <u>CASE</u>: P-1214-59
- **REQUESTED ACTION:** Rezoning Vestavia Hills R-2 to Vestavia Hills B-2 with future uses.
- ADDRESS/LOCATION: 513 Montgomery Hwy.
- **APPLICANT/OWNER:** City of Vestavia Hills
- **REPRESNTING AGENT:** Getra Sanders
- **GENERAL DISCUSSION:** Applicant is seeking to put a Chick-fil-A on current City Hall site. Building would be 4,927 square feet and have 15 parking spaces. Plan has been updated to shift the entrance on easement as well as parking on easement and overall easement improvements. Plan seems to meet all zoning requirements. Buffering, landscaping, rear walls and fences will remain the same. Attached is a letter from Steve Monk, Esq. reaffirming Chick-fil-a's right for use of the easement.
- <u>VESTAVIA HILLS COMPREHENSIVE PLAN</u>: The request is consistent with the plan but is consistent for Village Center.

• STAFF REVIEW AND RECOMMENDATION:

1. City Planner Review: I have looked at all of the relevant zoning / subdivision requirements related to this proposal, including application, notification, setbacks, area of lot development, etc. Notification has been sent to property owners pursuant to Alabama law. I have reviewed this request and find it does meet the minimum requirements of the proposed zoning.

City Planner Recommendation: No recommendation

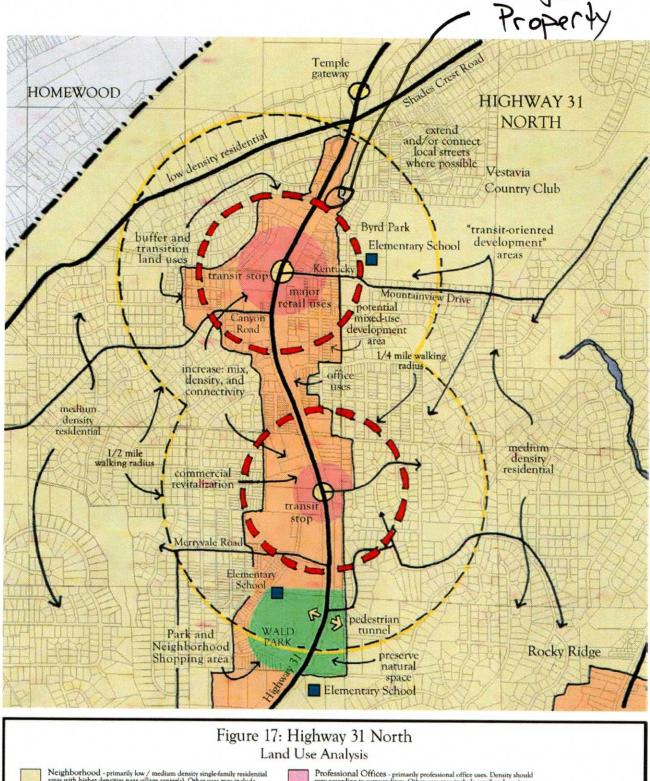
- 2. **City Engineer Review:** Reviewing plans. Will have comment at meeting.
- 3. **City Fire Marshal Review:** I have reviewed the application and I have no issues with this request.
- 4. **Building Safety Review:** I have reviewed the application and I have no issues with this request.

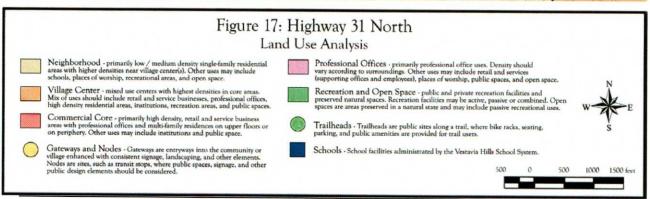
MOTION Mr. Wolfe made a motion to recommend approval of Rezoning of 513 Montgomery Hwy. from Vestavia Hills R-2 to Vestavia Hills B-2 With Future Limited Uses For The Purpose of a Drive-Through Restaurantnwith the following conditions:

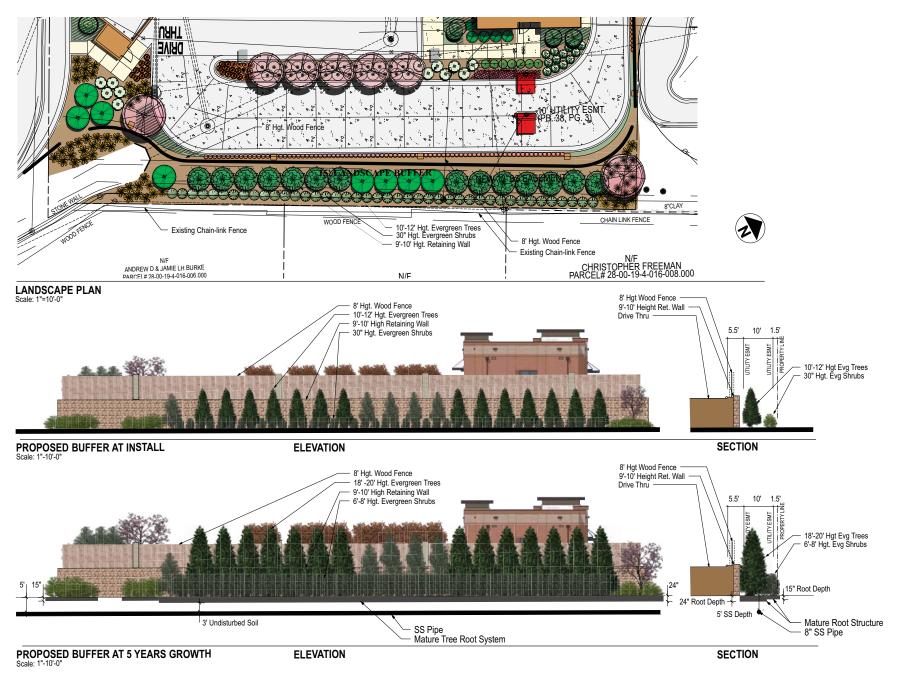
- 1. The sign on the rear of the building is removed;
- 2. Staff reviews all permits between developer and ALDOT.

Second was by Mr. Visintainer. Motion was carried on a roll call; vote as follows:

Mr. Brooks – yesMr. Wolfe – yesMr. House – yesMr. Burrell – yesMr. Visintainer – yesMr. Goodwin – yesMr. Larson – yesMotion carried.









Revisions: Mark Date By

7.21.15 ADN Root Systems 9.11.15 ADN Elevation Update

Mark Date By

Mark Date By

Seal



landscape architecture
51 old canton street
alpharetta, ga 30009
ph: 770-442-8171
fx: 770-442-1123

Vestavia Hills

513 Montgomer Hwy Vestavia Hills, AL

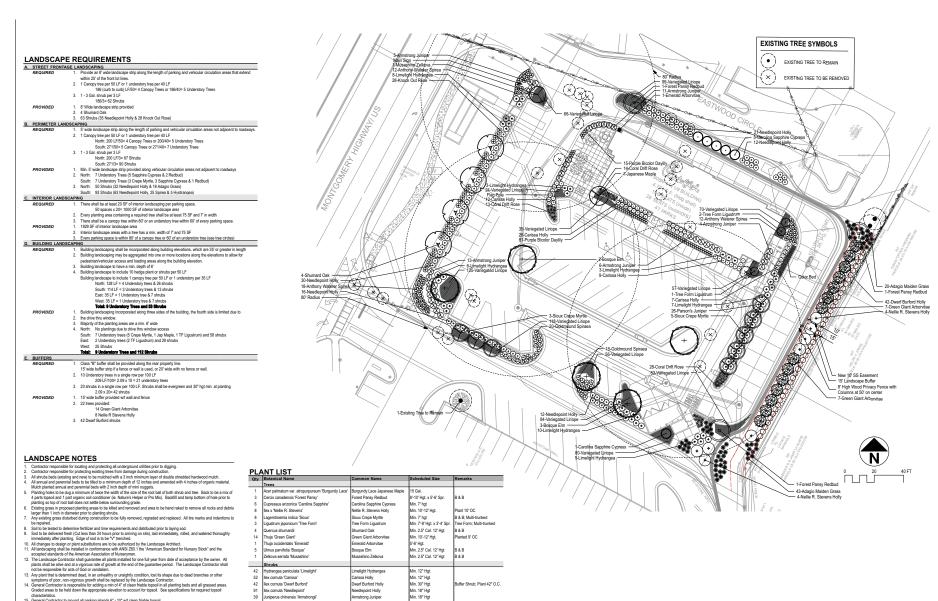
SHEET TITLE

Buffer Study

VERSION: ISSUE DATE:

Job No. : 2014020 : 3339 Store 5.21.15 Date Drawn By : ADN Checked By: SLM

R-1.0



llex comuta 'Needlepoint

26 Juniperus davurica 'Parsonii'

Groundcovers

911 Liriope muscari "Variegata" 55 Rosa 'Coral Drift'

70 Color Bed

Miscanthus sinensis 'Adagio' Rosa x 'Knock Out'

Sniraea janonica 'Goldmound'

Hemerocallis 'Purple Bicolor Davlily

Juniperus chinensis 'Armstrongli

characteristics.

16. General Contractor to mound all parking islands 6" - 10" wit clean feable topsoil.

18. Prior to beginning work, the Landscape Contractor shall inspect the subgrades, general site conditions, verify elevations, until to locations, registeris, propose topsoil owned by General Contractor and observe the site conditions under which the conditions have been corrected and are acceptable to the Landscape Contractor.

7. Stake all everyment and decidations been as shown in the delath has shed.

18. Remove all stakes and guiding from all trees after one year from planting.

19. Water throughly lincol in field 2 from and oply much immediately.

Site to be 100% irrigated in all planting beds and grass area by an automatic underground irrigation System. See Irrigatio

Plan L-2.0 for design.

21. All tree protection devices to be installed prior to the start of land disturbance, and maintained until final landscaping.

All tree protection areas to be protected from sedimentation.
 All tree protection fencing to be inspected daily, and repaired or replaced as needed.
 No parking, storage or other construction activities are to occur within tree protection areas.

Needlepoint Holly

Parson's Juniper

krmstrong Juniper

Adagio Maiden Grass Knock Out Rose

Goldmound Spiraea

Purple Bicolor Davlily

Variegated Liriope Coral Drift Rose

Annual Color Red

nony Waterer Spire

Min. 18" Hat

Min. 18" Hgt

Min. 12" Hat.

Min. 12" Hgt. Min. 18" Hgt

Min 18" Hat

SF; Prep & Plant

ent 15" O.C.

Plant 2' O.C.



Revisions:

Mark Date By 8.24.15 SLM New Bldg Footpris

Mark Date By

Mark Date By

Sea1

manlev

landdesign landscape architecture 51 old canton street alpharetta, ga 30009

ph: 770-442-8171 fx: 770-442-1123 TORE

Vestavia Hills

513 Montgomer Hwy Vestavia Hills, AL

SHEET TITLE

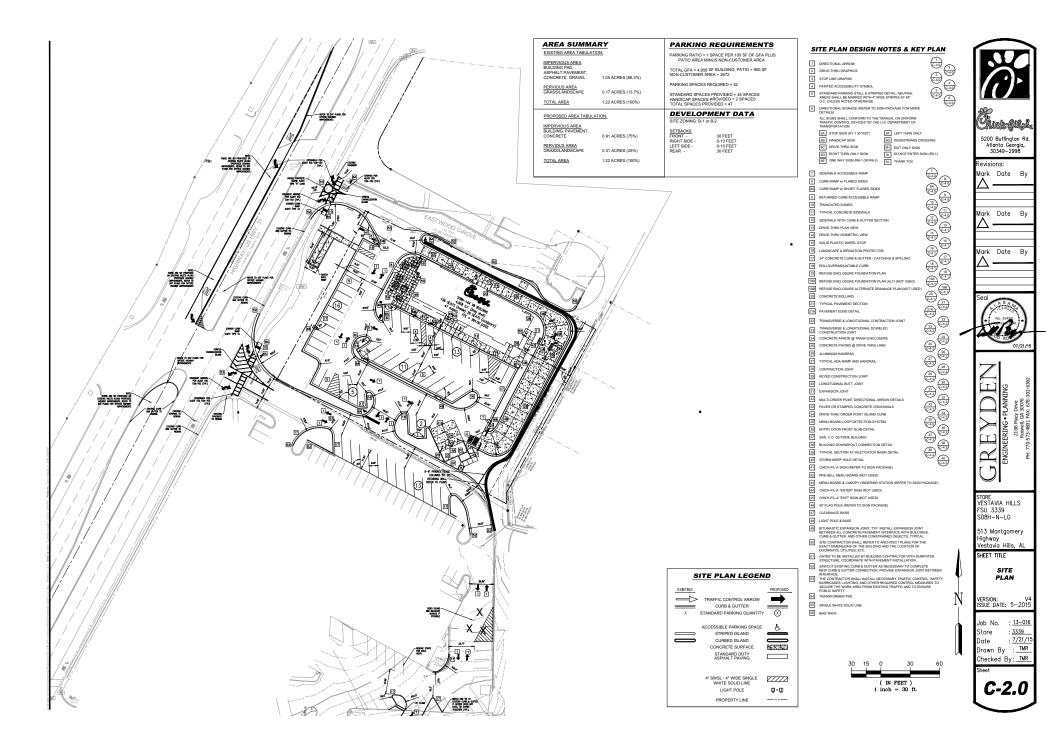
Landscape Plan

VERSION: ISSUE DATE:

Job No. : 2014020 : 3339 Store Date : 7.30.15 Drawn By : ADN Checked By: SLM

Sheet

L-1.0





Anitra S. Fludd Direct: (404) 305-4153 Fax: (404) 684-8620 anitra.fludd@accesscfa.com

September 22, 2015

VIA OVERNIGHT COURIER

Walter F. Scott, III Galloway, Scott, Moss & Hancock, LLC 2200 Woodcrest Place Suite 310 Birmingham, AL 35209

> Re: Driveway Work and Easements, Covenants and Restrictions Agreement by and between New Owners, Vestavia, LLC and Chick-fil-A, Inc. -Vestavia Hills FSU- Vestavia Hills, AL (#03339)

Dear Mr. Scott:

Enclosed please find one (1) execution counterpart of the above mentioned Driveway Work Agreement which has been signed by Chick-fil-A, Inc. along with the Consent and Subordination Agreement. Please have the appropriate representatives execute the agreements and send the fully executed agreements to Wendy Leacock-Shaw at the address below:

> Wendy Leacock-Shaw Senior Legal Coordinator Chick-fil-A, Inc. 5200 Buffington Road Atlanta, Georgia 30349

Thank you for your assistance with this matter. Please let me know if you have any questions.

Legal Coordinator

Enclosures

cc:

Michael H. Wall (via e-mail)

Dan L. Ludlam (via e-mail)

Wendy Leacock-Shaw (via e-mail)

Prepared by and when recorded return to:

Michael H. Wall, Esq. Troutman Sanders LLP 600 Peachtree Street, NE Suite 5200 Atlanta, Georgia 30308

AGREEMENT REGARDING DRIVEWAY WORK AND EASEMENTS, COVENANTS AND RESTRICTIONS

This Agreement Regarding Driveway Work and Easements, Covenants and Restrictions (this "Agreement") is entered into as of this 29 day of _______, 2015 by and between NEW OWNERS, VESTAVIA, LLC, an Alabama limited liability company ("NOV"), and CHICK-FIL-A, INC., a Georgia corporation ("CFA").

BACKGROUND STATEMENT:

NOV is the owner of the land in Jefferson County, Alabama described on Exhibit "A" (the "NOV Tract"). CFA is anticipated to be the owner of the land in Jefferson County, Alabama described on Exhibit "B" (the "CFA Tract"; the NOV Tract and the CFA Tract are sometimes referred to individually as a "Tract" and collectively as the "Tracts"), which is land CFA is purchasing from the City of Vestavia Hills (the "City"). The CFA Tract is adjacent to the north side of the NOV Tract.

In an effort to improve traffic flow for that traffic going to and from the CFA Tract, some of which will cross the NOV Tract, CFA agrees herein to perform work to certain driveways on the NOV Tract, and NOV agrees to grant CFA easements over the NOV Tract to do that work, to allow CFA's traffic to cross the NOV Tract and for CFA's customers to park in certain spaces on the NOV Tract, all consistent with the terms and provisions set forth below. The site plan attached as <a href="Exhibit" C" (the "Site Plan") depicts the Tracts with the Driveway Work (as defined below) completed.

In consideration of Ten and No/100 Dollars (\$10.00), the premises, the mutual benefits to be derived by the provisions of this Agreement, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are acknowledged by the parties to this Agreement, NOV and CFA covenant and agree as follows:

- 1. <u>Benefitted Parties/Binding Effect</u>. Except as otherwise expressly provided below, the easements, rights, obligations restrictions and covenants established in this Agreement will run with the NOV Tract and the CFA Tract and will benefit and burden each Tract, NOV, CFA and their respective successors, assigns, tenants, agents, employees, contractors and invitees.
- 2. <u>Termination of Prior Easements, If Any.</u> Effective as the date of the Acquisition (as defined in Section 15 below), CFA, as the owner of the CFA Tract, relinquishes, quitclaims, grants and conveys to NOV, as the owner of the NOV Tract, any easement, right, title or interest held by it for ingress or egress across the NOV Tract, except for the easements and rights that are expressly granted under this Agreement.
- 3. <u>Driveway Work.</u> CFA will perform certain work (the "<u>Driveway Work</u>") to the driveway oriented in an east-west direction (the "<u>EW Driveway</u>" and depicted as such on the Site Plan) and the driveway oriented in a north-south direction (the "<u>NS Driveway</u>" and depicted as such on the attached Site Plan; the EW Driveway and the NS Driveway are collectively the "<u>Driveways</u>"), which Driveways are located on the NOV Tract and labeled on the Site Plan. The Site Plan and the other plans described on Exhibit "D" are collectively the "<u>Work Plans</u>". NOV hereby approves the Work Plans.

The Driveway Work will generally consist of:

- Improving the existing entrance onto Montgomery Highway 31 from the EW Driveway to allow for dedicated right in/left out/right out access as depicted on the Work Plans. This portion of the Driveway Work includes repaving, installing signage, and striping as required to satisfy ALDOT requirements. All work related to the improvement of the existing entrance on the NOV Tract shall be designed and performed in accordance with the latest edition of the ALDOT standard specifications for highway construction and the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD) and to commercial grade standards for high traffic locations. All striping for the entrance shall be consistent with those standards for state of Alabama roadways.
- Raising the existing grade of the EW Driveway to create a visually appealing transition between the Tracts as depicted on the Work Plans. This portion of the Driveway Work includes bringing clean fill onto the Tracts, compacting that fill and laying base and asphalt as quantified by CFA's general contractor.
- Creating thirteen (13) new parking spaces along the southern boundary of the EW Driveway (the "New Spaces", as depicted on the Work Plans). This portion of the Driveway Work includes the installation of curbs and gutters to create islands at each end of the New Spaces as depicted on the Work Plans.
- Raising storm inlets and the sanitary cleanout to the new proposed grade elevation of the EW Driveway, if needed, and replacing any utilities disturbed by the work outlined herein.
- Matching the type and size of the existing retaining wall along the northeastern boundary of the NS Driveway and tying the retaining wall that will run along the eastern boundary of the CFA Tract to the existing wall, and installing a barrier, fencing, guardrail and/or handrail as required for safety on any new portion of the retaining wall.
- Removing the island in the NS Driveway to allow a wider path of travel for vehicles, per the requirements of the City. Such work includes re-grading a portion of the NS Driveway and

installing any necessary retaining walls, all as depicted on the Work Plans.

- Replacing asphalt, curbs and gutters within the NS Driveway as depicted on the Work Plans.
- Painting the Driveways and installing signage as required to direct traffic, all in accordance with the Work Plans.

Such work is intended to be turnkey work such that NOV does not have to hire a contractor or expend funds to complete such work or make the described changes work as an integrated whole with the rest of the NOV Tract. The Driveway Work includes all permits, permit fees, surveys, engineering, testing and inspections.

4. <u>Material Changes to Work Plans</u>. Any material change by CFA to the Work Plans will require NOV's written approval, which approval will not be unreasonably withheld, conditioned or delayed. NOV will respond with any comments to the changes within ten (10) business days after receipt. If NOV fails to respond to CFA's request within the 10-business day period, the changes will be deemed to be approved by NOV. To be valid, the notice must include in capital letters: "FAILURE TO RESPOND WITHIN TEN (10) BUSINESS DAYS IS DEEMED NOV'S APPROVAL." If NOV provides CFA with a written list of itemized, detailed comments within the 10-business day period, the parties will work together, in good faith and in an expeditious manner, to arrive at a mutually agreeable set of modified Work Plans.

5. Temporary Inspection and Construction Easement.

(a) NOV grants and conveys to CFA a non-exclusive, temporary inspection and construction easement over, through and across that portion of the NOV Tract as is required for conducting tests and inspections in anticipation of the Driveway Work and for the actual performance of the Driveway Work. The temporary inspection and construction easement will terminate on the earlier of: (A) the date that the Driveway Work is completed; and (B) eighteen (18) months after the later of: (i) the Acquisition; or (ii) the date that the City vacates the building on the CFA Tract. CFA agrees to commence (and thereafter diligently pursue) repairing any damage caused by such inspection or testing, within two (2) business days of notice from NOV of any such damage. The preceding sentence will survive the termination of this Agreement.

No portion of the NOV Tract may be used by CFA's contractors as a staging area. However, NOV acknowledges and agrees that, while the Driveway Work is ongoing, CFA's contractors will have the right to store equipment on the NOV Tract overnight in the specific areas where the Driveway Work is then being performed, subject to meeting the requirements of Section 11 below.

CFA shall submit to NOV all final geotechnical reports for placement of engineered fill onto the NOV Tract within five (5) business days after the later of: (i) the date that the final reports were issued, and (ii) the expiration of the Inspection Period (as defined in Section 5(b) below). Prior to opening for business on the CFA Tract, CFA will provide NOV with a copy of CFA's certificate of occupancy for the building on the CFA Tract.

(b) Notwithstanding anything to the contrary in this Agreement, if the results of CFA's tests and inspections of the NOV Tract are not satisfactory to CFA in its sole and absolute discretion, CFA will have the right to terminate this Agreement on written notice to NOV given at any time and for any reason within the thirty (30)-day period after the date that this Agreement is fully executed (the 30-day period is

the "Inspection Period"). On termination, CFA will pay the sum of \$100.00 to NOV, and all rights and obligations of the parties under this Agreement will be of no further force or effect, except for obligations that are expressly stated to survive the termination of this Agreement. NOV acknowledges and agrees that the sum of \$100.00 is good, adequate and sufficient consideration for the rights granted to CFA under this Section 5.

6. <u>Completion and Inspection of the Driveway Work</u>. CFA will provide thirty (30) days' advance written notice to NOV prior to beginning the Driveway Work. CFA will perform the Driveway Work in accordance with the Work Plans and the standards in Section 11 below. Upon completion of the Driveway Work, CFA will submit to NOV lien waivers from its general contractor and all subcontractors and suppliers in the form required by Alabama law. While construction work on the NOV Tract is ongoing, NOV will have the right to: (i) inspect the Driveway Work, and (ii) notify CFA of the failure of the Driveway Work to comply with the Work Plans; provided, however, that NOV will deliver such notice immediately upon learning of the non-compliance. CFA will cause any non-compliant aspect of the Driveway Work to be promptly corrected.

Approximately eleven (11) months after the completion of the Driveway Work, CFA and its general contractor will conduct a joint inspection of the Driveway Work (the "Walk-Through"). NOV will have the right to accompany CFA and its general contractor on the Walk-Through. CFA will provide NOV with at least fourteen (14) days' advance written notice of the Walk-Through date and time. During the Walk-Through, the parties will inspect the work performed to ensure that it complies with the Work Plans.

Within ten (10) days after the Walk-Through, NOV will have a final opportunity to provide CFA with notice of the failure of the Driveway Work to comply with particular aspects of the Work Plans. If NOV provides CFA with such a deficiency notice and those deficiencies are covered by the warranty of CFA's general contractor, CFA will cause the deficiencies to be corrected. Such corrective work will commence within twenty (20) days after receipt of NOV's notice, and the work thereafter will be diligently pursued to completion. If CFA fails to cause the correction of deficiencies noted by NOV that are covered under the warranty of CFA's general contractor, NOV may, upon written notice to CFA, take the necessary corrective action. In such event, CFA will be responsible for reimbursing NOV, within ten (10) days of submission of an invoice, for the reasonable, out-of-pocket costs incurred to correct the deficiencies. NOV's right to correct such deficiencies in the Driveway Work will include access to those portions of the CFA Tract necessary to complete the work on the deficiencies.

NOV agrees that CFA will be released from any liability, loss or damage with respect to the Driveway Work upon: (i) NOV's failure to object to any aspect of the work within ten (10) days after the Walk-Through (regardless of whether NOV attends the Walk-Through); and (ii) the correction of any deficiencies to the Driveway Work that are identified by NOV in accordance with the previous paragraph.

Access and Parking Easement.

(a) Effective as of the date that CFA completes the Driveway Work in accordance with the Work Plans, NOV grants and conveys to CFA, for the benefit of and as an appurtenance to the CFA Tract, a non-exclusive, perpetual easement (subject to the Easement Reduction [as defined below]) over and across the Driveways for the purposes of pedestrian and vehicular access (the "Driveway Easement"). The Driveway Easement does not include use for construction vehicles performing work on the CFA Tract (except that construction vehicles may utilize the NW Driveway during the performance of any work permitted to be conducted under this Agreement). Trucks hauling trash from the CFA Tract

may utilize the portion of the EW Driveway designated on <u>Exhibit "E"</u> as the "<u>31 Entrance Stretch"</u> for both ingress and egress. Trucks making deliveries to the business on the CFA Tract may not use the Driveways to make such deliveries. In no event may trucks utilizing the EW Driveway block access by emergency vehicles to the NOV Tract.

- (b) Effective as of the date that CFA completes the Driveway Work, NOV grants and conveys to CFA, for the benefit of and as an appurtenance to the CFA Tract, a non-exclusive, perpetual easement (subject to the Easement Reduction[as defined below]) over and across the New Spaces for the purposes of customer vehicular parking (the "Parking Easement"). The Parking Easement does not include use for employees that work on the CFA Tract.
- (c) Except as expressly permitted under Section 7(a) above, CFA shall use all commercially reasonable efforts to prevent the Driveways and New Spaces from being used by or blocked by delivery trucks, trash trucks, or commercial vehicles of those providing goods or services to the CFA Tract. Commercially reasonable efforts shall include but not be limited to providing directions for such trucks to enter and exit from the north side of the CFA Tract, and directions to the drivers of any such vehicles using or blocking such areas to immediately move their vehicle.
- (d) CFA shall use all commercially reasonable measures to insure that employees working on the CFA Tract do not park on the NOV Tract or in the Parking Easement area including the New Spaces.
- 8. <u>Covenants and Restrictions Related to Curb Cuts, Driveways, New Spaces and Signage;</u> Reduction of Easement Area.
- Each party covenants and agrees that it will maintain those curb cuts on its respective Tract providing access to the Driveways, which curb cuts are shown on the Site Plan, in good condition and in a state that provides a smooth and level transition between the Tracts. CFA agrees that it will not, without obtaining the advance approval of NOV, relocate the curb cut on the CFA Tract providing access to the EW Driveway to a location that is closer to the eastern boundary line of Montgomery Highway 31 than is shown on the Site Plan. Additionally, unless the Easement Reduction (as defined in Section 8[b] below) occurs, CFA will maintain in good condition and state of repair the directional signage on the CFA Tract that direct traffic to the Highway 31 southbound lanes (the "31 Directional Signage"), and will not remove, reconfigure, modify, alter or obstruct the 31 Directional Signage without obtaining the advance approval of NOV. NOV covenants and agrees that it will maintain the New Spaces, the Driveways and any directional or traffic signage related to same in good condition and state of repair after CFA completes the Driveway Work (except for repairs made pursuant to the third paragraph of Section 6 above, which CFA will cause its general contractor to perform). However, if the Easement Reduction occurs, NOV's maintenance and repair obligations under the previous sentence will be limited to the 31 Entrance Stretch. Additionally, NOV covenants and agrees that it will not reconfigure, modify, alter or obstruct the Driveways or the New Spaces after CFA completes the Driveway Work. However, if the Easement Reduction Occurs, the prohibitions under the previous sentence only will be applicable to the 31 Entrance Stretch.
- (b) Notwithstanding anything to the contrary in this Agreement, if, after a Chick-fil-A restaurant opens for business on the CFA Tract, the CFA Tract ceases to be used as a Chick-fil-A restaurant or for the operation of a Cathy Family Concept (as defined below) for a period in excess of twenty-four (24) consecutive months (except that the time during which operations cease due to a remodeling [including a "scrape and rebuild"], condemnation, casualty or an event of force majeure will not count towards the 24-month period), the easements granted under Section 7 above will terminate

except with respect to the access easement benefiting the CFA Tract over the 31 Entrance Stretch (the "Easement Reduction"). Thus, even if the Easement Reduction occurs, the 31 Entrance Stretch will continue in full force and effect in perpetuity and run with the land, benefiting the CFA Tract and burdening the NOV Tract. Upon the request of NOV, CFA will execute and deliver to NOV an amendment to this Agreement, in recordable form, that confirms the effective date of the Easement Reduction. As used in this Section 8(b), a "Cathy Family Concept" is a use by a member of the Cathy Family or by a business that one or more members of the Cathy Family directly or indirectly control. The terms "members of the Cathy Family" and "control" are defined in Section 16 below.

Cost Sharing. For so long as this Agreement is in place, CFA will maintain, repair and replace, at CFA's sole expense, the driveways on the CFA Tract and, unless the Easement Reduction occurs, the 31 Directional Signage. NOV will maintain, repair and replace the New Spaces, the Driveways and any directional or traffic signage related to same (the "Reimbursable Upkeep Work"). If the Easement Reduction occurs, NOV only will be obligated to maintain, repair and replace the 31 Entrance Stretch, and the Reimbursable Upkeep Work will be confined to same. CFA will reimburse NOV for sixty percent (60%) of the reasonable, out-of-pocket costs incurred by NOV for the Reimbursable Upkeep Work (the "Contribution") as such Reimbursable Upkeep Work is performed in the normal course of business. CFA will deliver the Contribution to NOV within thirty (30) days after receipt of an itemized statement of the costs of the Reimbursable Upkeep Work, along with back-up invoices marked paid and lien waivers in the form required under Alabama law from any contractors, subcontractors and suppliers involved with the Reimbursable Upkeep Work. CFA only will be obligated deliver the Contribution to NOV for a Reimbursable Upkeep Work project with a total cost in excess of \$5,000.00 if NOV provides CFA with at least thirty (30) days' advance written notice of NOV's intention to perform such work accompanied by a bid estimate for the work from a reputable, licensed contractor. CFA will not be responsible for any costs incurred by NOV with respect to repairing and replacing the New Spaces or the Driveways: (i) to the extent reimbursed by NOV's casualty insurance policy (and in the event of a covered loss, NOV will file a claim with its insurance company and thereafter make commercially reasonable efforts to recover proceeds for the loss), or (ii) to the extent the need for the repair or replacement results from the negligence or willful misconduct of NOV's agents, contractors or employees. CFA will be fully responsible for any costs incurred by NOV with respect to repairing and replacing the New Spaces or the Driveways to the extent the need for the repair or replacement results from the negligence or willful misconduct of CFA's agents, contractors or employees. Except as provided in this Section 9, neither party will have any obligation to contribute toward common area maintenance or any other expenses related to the other's Tract.

10. Insurance and Indemnification.

(a) During any period that a party is prosecuting any construction or replacement activities required or permitted under this Agreement, the party will cause its contractor to maintain reasonable commercial general liability insurance with respect to construction activities with a combined single limit of liability of not less than One Million Dollars (\$1,000,000.00) for bodily injury to or personal injury or death of any person and for property damage arising out of any one occurrence, and the other party and its mortgagee, if any, will be an additional insured under such policy. Additionally, during the term of this Agreement, CFA will maintain commercial general liability insurance with respect to its activities with a combined single limit of liability of not less than Two Million Dollars (\$2,000,000.00) for bodily injury to or personal injury or death of any person and for property damage arising out of any one occurrence, and NOV and its mortgagee, if any, will be an additional insured under such policy. All insurance will be procured from a company licensed in the State of Alabama. Upon request, the party required to carry insurance will provide a certificate via standard ACORD form to the other.

- (b) CFA agrees to indemnify, defend and hold NOV, its affiliates, directors, officers and employees harmless from and against any and all claims, demands, loss, cost, damage, liability, liens or expense (including reasonable attorneys' fees actually incurred and court costs) incurred by NOV in connection with CFA's exercise of its easement rights this Agreement, except to the extent caused by the negligence or willful act of NOV, its employees, tenants, contractors or agents.
- 11. Manner of Performing Work. Whenever a party performs any inspections, testing, construction, maintenance, or replacements required or permitted under this Agreement, the work will be done expeditiously. Once begun, the work will be diligently pursued to completion. The work will be carried out in a manner so as to cause the least amount of disruption to any business operations being conducted on the surrounding land (including, without limitation, the day to day operations of the tenants of NOV leasing space in the NOV Tract) as is reasonably practicable. Additionally, with respect to inspections, testing or construction performed by CFA on the portion of the Driveways designated on Exhibit "F" as the "Critical Stretches", CFA will conduct such activities and work after business hours if reasonably necessary to minimize interference with business operations on the NOV Tract. Access for emergency vehicles to the NOV Tract shall be maintained at all times.

All work will be performed in a good and workmanlike manner and in accordance with: (i) permits and approvals obtained in connection with the work, and (ii) applicable laws, codes, ordinances, rules and regulations. The party responsible for performing the work will promptly pay its contractors and agrees to keep the other party's Tract free of, and hold the other harmless from and against, any and all losses, costs or damages due to any liens or claims to liens resulting from or otherwise associated with the work. The party causing (or otherwise permitting) a lien to filed against the other party's Tract will have the lien removed within thirty (30) days after receipt of written notice of the filing of the lien. If the lien is not removed within the 30-day period, then the party against whose Tract the lien has been filed may, in addition to any other potentially available remedy under this Agreement, have the right and option to remove or discharge the lien and upon demand will be entitled to all reasonable costs incurred in connection therewith.

- 12. Remedies for Violation. Upon the failure of either party to comply with the terms of this Agreement within thirty (30) days following written notice by the non-breaching party (unless, with respect to any such breach the nature of which cannot reasonably be cured within the 30-day period, the breaching party commences the cure within such 30-day period and diligently prosecutes the cure to completion), the breaching party will be in default of this Agreement. Each party will be entitled to injunctive relief and any other appropriate relief as may be available at law or in equity for any such default that is not cured within the periods provided in the previous sentence.
- 13. Notices. Notices given pursuant to this Agreement will be effective only if in writing and delivered (i) in person, (ii) by courier, (iii) by reputable overnight courier guaranteeing next business day delivery, or (iv) by United States certified mail, return receipt requested. All notices will be directed to the other party at its address provided below or such other address as either party may designate by notice given in accordance with this Section 13. Notices will be effective (i) in the case of personal delivery or courier delivery, on the date of delivery, (ii) if by overnight courier, one (1) business day after deposit with all delivery charges prepaid, or (iii) in the case of certified mail, the earlier of the date receipt is acknowledged on the return receipt for such notice or five (5) business days after the date of posting by the United States Post Office. The notice addresses for NOV and CFA are as follows:

If to NOV:

New Owners, Vestavia, LLC

C/O Harbert Realty Services, Inc.

Attention: Norman B. Tynes, Executive Vice President

2 North 20th Street, Suite 1700 Birmingham, AL 35203

With a copy to:

Walter F. Scott, III, Esq.

Galloway, Scott, Moss & Hancock, LLC

2200 Woodcrest Place

Suite 310

Birmingham, AL 35209

If to CFA:

Chick-fil-A, Inc.

5200 Buffington Road Atlanta, Georgia 30349

ATTN: Property Management – Real Estate Legal

With a copy to:

Chick-fil-A, Inc. 5200 Buffington Road Atlanta, Georgia 30349

ATTN: Real Estate Legal Department

- Representations and Warranties. To induce CFA to enter into this Agreement, NOV 14. represents and warrants to CFA that: (i) all actions required to authorize the execution and performance of this Agreement by NOV have been taken, (ii) this Agreement constitutes a valid and binding agreement, enforceable against NOV, and (iii) the execution and performance of this Agreement and the grant of the interests, the assumption of the obligations and the imposition of the restrictions contained in this Agreement will not constitute a violation of any other agreement to which NOV is a party. Likewise, to induce NOV to enter into this Agreement, CFA represents and warrants to NOV that: (i) all actions required to authorize the execution and performance of this Agreement by CFA have been taken, (ii) this Agreement constitutes a valid and binding agreement, enforceable against CFA, and (iii) the execution and performance of this Agreement and the grant of the interests, the assumption of the obligations and the imposition of the restrictions contained in this Agreement will not constitute a violation of any other agreement to which CFA is a party. The representations in this Section 14 will be deemed to have been reaffirmed as of the date that this Agreement is filed in the Records pursuant to Section 15 below.
- Recording and Condition. This Agreement will be binding on NOV and CFA as of the date that this Agreement is fully executed, but except as expressly otherwise set forth herein, the effectiveness of the terms and provisions of this Agreement, including the grant of easements (except for the easement granted to CFA over the NOV Tract for conducting tests and inspections in anticipation of the Driveway Work, which will take effect immediately upon the full execution of this Agreement), are conditioned on CFA acquiring fee title to the CFA Tract (the "Acquisition"). This condition will be automatically satisfied upon the recording of a deed in the real property records of Jefferson County, Alabama (the "Records") vesting title to the CFA Tract in CFA. After recording of the deed transferring the CFA Tract to CFA, CFA is authorized to record this Agreement in the Records, and will supply NOV an image of the recorded document within forty-eight (48) hours of such recording. If the Acquisition does not occur on or before June 30, 2016, this Agreement automatically will expire and be of no further force or effect, and CFA will promptly return all original, executed counterparts of this Agreement to NOV.

Right of First Offer.

- (a) If CFA intends to offer the CFA Tract for sale, or if CFA receives an offer to purchase the CFA Tract on terms acceptable to CFA, CFA will first offer NOV the right to purchase the CFA Tract by sending to NOV a written notice of the price of the offer to sell or purchase (the "Offering Amount"). NOV will have fifteen (15) days after receipt of the notice to exercise its right to purchase by providing written notice to CFA. If NOV exercises the right to purchase, the closing will occur within ninety (90) days after the date of NOV's notice. If NOV does not elect to accept the offer or fails to provide notice within the fifteen (15) day period, CFA may offer to sell, and sell, the CFA Tract to any third party. However, if CFA does not complete a sale to a third party for not less than ninety percent (90%) of the Offering Amount within one (1) year after NOV notifies (or is deemed to have notified) CFA of NOV's election not to accept the offer, and if CFA determines again that CFA desires to offer the CFA Tract for sale, CFA must again comply with the terms of this Section 16 and NOV will again have the right of first offer in this Section 16.
- This Section 16 will not apply in the event of a sale, transfer or assignment of CFA's interest in the CFA Tract in connection with the foreclosure of any deed to secure debt, mortgage or other similar security instrument, whether by judicial or non-judicial sale, or any deed or assignment in lieu of foreclosure, covering CFA's fee interest. Further, this Section 16 will not apply to any transfer by descent or devise following the death of any party comprising CFA or to transactions by and among CFA or any member of the Cathy Family, including without limitation, trusts, corporations or other entities having a majority interest owned by or inuring to the benefit of CFA or any member of the Cathy Family; provided, however, that the provisions of this Section 16 will be binding upon such purchaser and such purchaser's heirs, successors and assigns except as set forth in this subsection (b). The lineal descendants of S. Truett Cathy and Jeanette McNeil Cathy, and the spouses of such lineal descendants constitute members of the Cathy Family. Further, this Section 16 will expire and be of no further force or effect forty (40) years after the date of this Agreement. Nothing in this Section 16 will preclude or impair CFA's ability to mortgage (including, without limitation, obtaining financing by a "sale and leaseback" transaction), pledge or grant any other form of security interest in the CFA Tract, and such mortgage, pledge or grant of any other form of security interest will not trigger NOV's right of first offer under this Section 16.
- (c) The rights granted under this Section 16 are personal to NOV and its affiliates (as defined in the next sentence) and will automatically expire at such time as neither NOV nor its affiliate own the entirety of the NOV Tract. For the purposes of the previous sentence, an "affiliate" of NOV means any corporation or other entity which, directly or indirectly, is controlled by or is under control with NOV. Under this Agreement, "control" means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation or other entity, whether through the ownership of voting securities (or other ownership interests) or by contract or otherwise, or to elect a majority of the directors of a corporation or to independently select the managing partner of a partnership, or to independently select the managing member of a limited liability company.
- 17. <u>Miscellaneous</u>. This Agreement will be governed in accordance with the laws of the State of Alabama. The paragraph headings in this Agreement are for convenience only, will in no way define or limit the scope or content of this Agreement, and will not be considered in any construction or interpretation of this Agreement or any part of this Agreement. Nothing in this Agreement will be construed to make the parties to this Agreement partners or joint venturers. This Agreement may be amended or modified only in writing, executed and acknowledged by all parties to this Agreement or their respective successors or assigns, which amendments, if any, shall be promptly recorded in the Records. Except as expressly provided in this Agreement: (i) the designations and improvements shown

on the Site Plan are for identification purposes only, and (ii) each party will have the right to modify, alter, expand, replace the improvements on its respective Tract from time to time in its sole discretion. Wherever a party's consent or approval is required under this Agreement and may not be unreasonably withheld, conditioned or delayed, it will be deemed unreasonable for that party to withhold, condition or delay its consent or approval on an unrelated matter or upon the payment of money or other, unrelated concession. The Site Plan is a depiction of the Tracts with the Driveway Work completed. No oral statement or prior written matter between the parties with respect to the matters covered in this Agreement shall have any force or effect. Either party will, without charge, within thirty (30) days after written request of the other, deliver an estoppel certificate regarding the following: (i) whether this Agreement is in full effect, (ii) the status of any alleged defaults or events that could result in a default if not cured within the time period provided under this Agreement, and (iii) such other factual matters pertaining to this Agreement as may be requested by the party who has asked for the estoppel certificate. If either party is delayed, hindered or prevented from the performance of any act required under this Agreement by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, terrorist acts, public health concerns not in the control of the party responsible for performing the act in question that materially interfere with the performance such obligations under this Agreement, insurrection, war or any reason beyond their control, then performance of the act will be excused for the period of the delay and the period for the performance of any such act will be extended for a period equivalent to the period of such delay. Lack of funds will not be a basis for avoidance or delay of any obligation under this Agreement.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

NOV and CFA have executed this Agreement under seal as of the day, month and year on the first page of this Agreement.

NOV:

NEW OWNERS, VESTAVIA, LLC, an Alabama limited liability company

By: Markle, LLC,

an Alabama limited liability company, its Sole and only Managing Member

By: May (SEAL)

Name: Mark S. Elwood Title: Managing Member

STATE OF ALABAMA					
COUNTY OF JEFFERSON)				

expires:

I, the undersigned Notary Public for the aforesaid jurisdiction, do hereby certify that Mark S. Elwood, the Managing Member of Markle, LLC, the Managing Member of New Owners, Vestavia, LLC, personally appeared before me this day, and being by me duly sworn, says that he executed the foregoing and annexed instrument for and on behalf of said limited liability company.

Witness my hand and official seal, this 29th day of September, 2015.

Notary Public

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

	CHICK-FIL-A, INC., a Georgia corporation By: Name: William J. Dumphy, Jr. Title: Vice President, Field Talent By: Name: Roger E. Blythe Title: Vof Francial Planning & Development
	(CORPORATE SEAL)
William J Dunony and Rover E. Bluthe	il-A, Inc., personally appeared before me this day,
Witness my hand and official seal, this 22"da	ay of september, 2015.
(Official Seal)	Notary Public Public
My commission expires: 2/10/2017	Y J & ROLL WILLIAM STATE OF THE

CFA:

EXHIBIT "A"

Legal Description of the NOV Tract

Lots B and C, according to the Markle Resurvey, as recorded in Map Book 206, Page 98, in the Probate Office of Jefferson County, Alabama.

EXHIBIT "B"

Legal Description of the CFA Tract

Lot 1, according to the Resurvey of Lots 4, 8, 9, 10, 11 & 12, Fourth Addition to Beacon Hill, as recorded in Map Book 241, Page 82, in the Probate Office of Jefferson County Alabama.

EXHIBIT "C"

Site Plan

[See attached page]

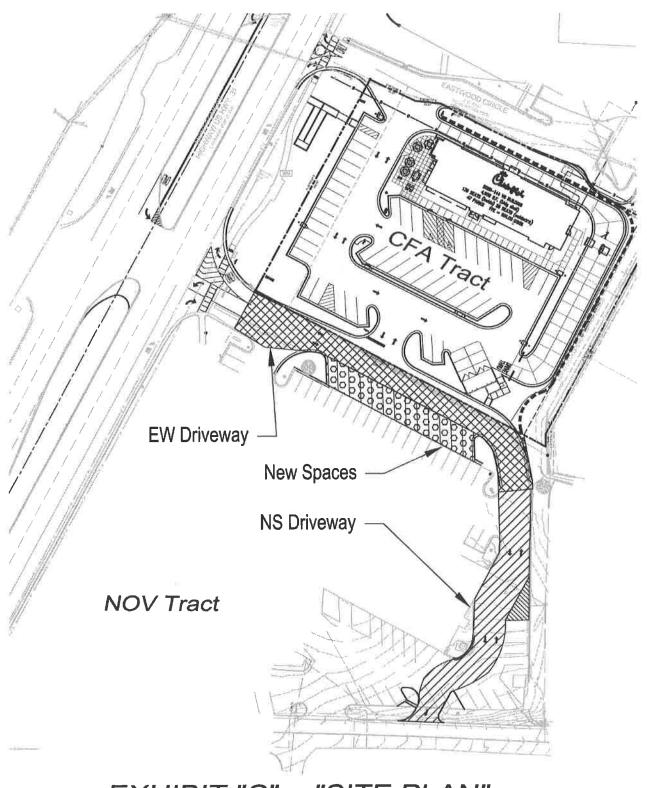


EXHIBIT "C" - "SITE PLAN"

EXHIBIT "D"

List of Work Plans

- 1. Site Plan, Job No. 13-016, Sheet C-2.0, prepared by Todd M. Rogers, Greyden Engineering & Planning dated July 21, 2015.
- 2. Grading and Drainage Plan, Job No. 13-016, Sheet, C-3.0, prepared by Todd M. Rogers, Greyden Engineering & Planning dated July 21, 2015.

EXHIBIT "E"

Depiction of 31 Entrance Stretch

[See attached page]

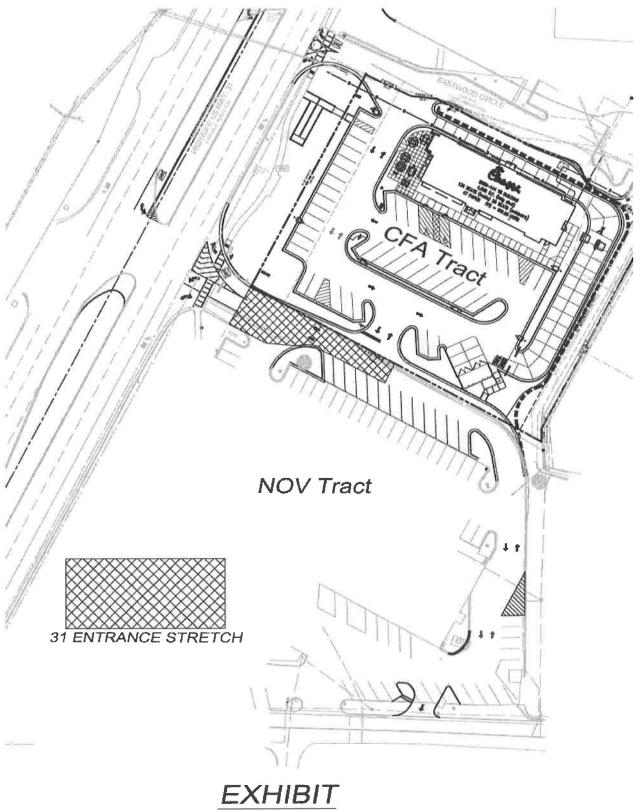
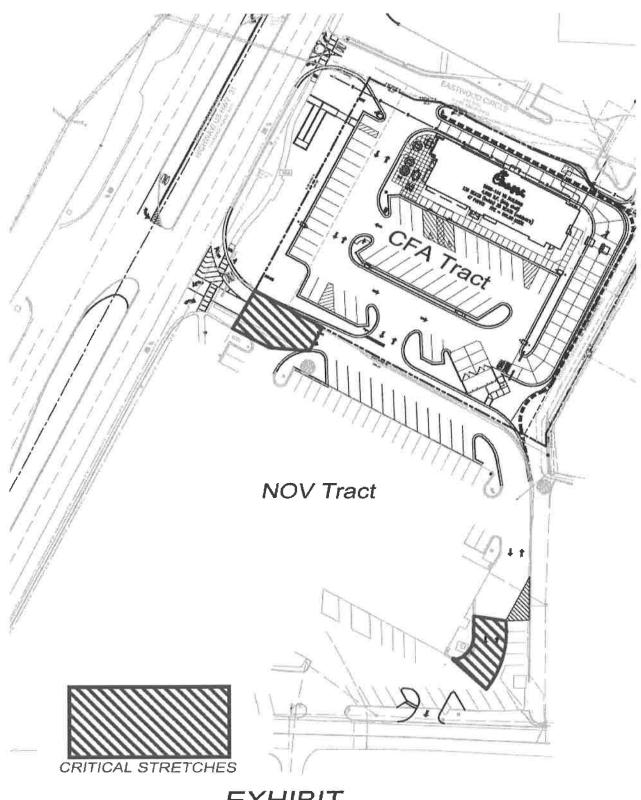


EXHIBIT "F"

Depiction of Critical Stretches

[See attached page]



EXHIBIT

CONSENT AND SUBORDINATION AGREEMENT

THIS CONSENT AND SUBORDINATION AGREEMENT is entered into by SERVISFIRST BANK, an Alabama banking corporation ("Lender"), as the holder of: (i) Accommodation Mortgage dated August 25, 2010, from New Owners, Vestavia, LLC, an Alabama limited liability company ("Mortgagor") to Lender, in the original principal amount of \$3,000,000.00, filed for record August 26, 2010, recorded in Book LR201007, Page 8335, in the Probate Office of Jefferson County, Alabama; (ii) Accommodation Assignment of Rents and Leases dated August 25, 2010, from Mortgagor to Lender, filed for record August 26, 2010, recorded in Book LR201007, Page 8353, in the aforesaid records; (iii) UCC Financing Statement showing Mortgagor as Debtor and Lender as Secured Party, recorded in Book LR201007, Page 8358, in the aforesaid records, as extended by UCC Financing Statement -Continuation, recorded in Book LR201512, Page 13543, in the aforesaid records; and (iv) Accommodation Mortgage dated January 9, 2015, from Mortgagor to Lender, in the original principal amount of \$1,000,000.00, filed for record January 22, 2015, recorded in Book LR201510, Page 14132, in the aforesaid records (collectively, the "Security Documents"), which Security Documents encumber the property described as the NOV Tract in the Agreement Regarding Driveway Work and Easements, Covenants and Restrictions (the "Agreement"), to which this Consent and Subordination Agreement is attached. Lender consents to the execution and delivery of the Agreement and agrees that the Security Documents and the interests created in its favor pursuant to the Security Documents are and will be subordinate to the rights, easements, terms and provisions created under the Agreement.

Lender has executed this Consent and Subordination Agreement by its duly authorized representative as of the 29 day of September, 2015.

> SERVISFIRST BANK, an Alabama banking corporation

Name:

STATE OF ALABAMA **COUNTY OF JEFFERSON**

I, the undersigned Notary Public for the aforesaid jurisdiction, do hereby certify that Clark Zhane, ser, the Vice Presult of Servis First Bank, personally appeared before me this day, and being by me duly sworn, says that she/he executed the foregoing and annexed instrument for and on behalf of said corporation.

Witness my hand and official seal, this 29^t day of

2015.

(Official Seal)

My commission expires: 8/9/19

ORDINANCE NUMBER 2603

AN ORDINANCE GRANTING CONDITIONAL USE APPROVAL FOR A HOME OCCUPATION AT 3794 POE DRIVE

WHEREAS, on December 13, 2010, the City Council of the City of Vestavia Hills, Alabama, adopted and approved Ordinance Number 2331, also known as the City of Vestavia Hills Zoning Code; and

WHEREAS, Jon Hinds is the owner of the property located at 3794 Poe Drive zoned Vestavia Hills R-4 (residential district) more particularly described as S ½ of Lot 4 and all of Lot 3, Block 3, Glass 3rd Add to New Merkle; and

WHEREAS, Jon Hinds is also the owner of On-Guard Security, which has operated at said location as a home office; however, Mr. Hinds has presented an application for Conditional Use Approval for the purpose of a home occupation with one (1) full time employee and two (2) "drop in" employees who do not reside on the property pursuant to Section 7.1 of the Vestavia Hills Zoning Code entitled "Home Occupation:" and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

- 1. Conditional Use approval is hereby granted for a home occupation with one (1) full time employee and two (2) "drop in" employees who do not reside on the property pursuant to Section 7.1 of the Vestavia Hills Zoning Code entitled "Home Occupation"; and
- 2. Business hours will be M-F, 8 AM to 5 PM; and
- 3. Home must remain residential in appearance and functionality; and
- 4. Owner must remain a resident of the home; and
- 5. No signage for the business will be permitted; and
- 6. Said Conditional Use shall expire if the business continues to grow and an additional employee is hired; and
- 7. No customers will visit the home at any time; and
- 8. City Engineer will review and approve any requested additional improvements to the lot and/or improved parking on said lot; and

- 9. Said conditional use shall continue in perpetuity pursuant to the Zoning Code until such time as use ceases to exist on said property for a period of one year; or
- 10. This Ordinance Number 2603 shall become effective immediately upon adoption, approval and publishing/posting pursuant to Alabama law; and

DONE, ORDERED, ADOPTED and APPROVED this the 12th day of October, 2015.

Alberto C. Zaragoza, Jr. Mayor

ATTESTED BY:

Rebecca Leavings City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2603 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 12th day of October, 2015 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Library in the Forest, Vestavia Hills New Merkle House and Vestavia Hills Recreational Center this the _____ day of _______, 2015.

CITY OF VESTAVIA HILLS

APPLICATION

PLANNING AND ZONING COMMISSION

I. INSTRUCTIONS AND INFORMATION:

- (1) The Vestavia Hills Planning and Zoning Commission meets regularly on the second Thursday of each month at 6:00 PM in Council Chambers at the Municipal Center.
- (2) All materials and information relating to a zoning/rezoning request or conditional use approval before the Planning and Zoning Commission must be submitted to the Office of the City Clerk no later than 25 working days prior to the scheduled meeting at which it shall be considered. All information relating to Preliminary Map approvals must be submitted to the Office of the City Clerk no later than 20 days prior to the scheduled meeting at which is shall be considered. All information relating to Final Map approvals must be submitted to the Office of the City Clerk no later than 15 days prior to the scheduled meeting at which it is to be considered.
- (3) This application must be filled out in its entirety complete with zip codes.
- (4) All applicable fees shall accompany this application prior to its being considered complete. Fees include an application fee of \$100.00 along with applicable postage per property owner to be notified for Commission meeting. Fees may also include notification fees for City Council meeting and publication fees which will be billed to applicant at a later date. **No permits will be issued until all fees have been paid.
- (5) Appropriate plats and maps with proper legal description shall accompany this application. Please refer to attached checklist.

API	PLICANT IN	NFORMAT	ΓΙΟΝ: (own	ier of propert	<u>y)</u>		_
NAI	ME:	Jon	Hinds				215
ADI	DRESS:	3791	1 Poe	Oc.			YAM
71101		111		1 352	23		2
							U
MA	ILING ADD	RESS (if di	ifferent from	above)			<u>ω</u>
PHO	ONE NUMBI	ER: Home	222-	7233	Office	298-81.	31
NA	ME OF REPI	RESENTIN	IG ATTORN	EY OR OTHE	ER AGENT:		

III.	ACTION REQ	UESTED

Request that the above described property be approved conditional use approval pursuant to Section of the Vestavia Hills Zoning Code.
Current Zoning of Property:
Requested Conditional use For the intended purpose of: Home Occupation
(Example: From "VH R-1" to "VH O-1" for office building) **if additional information is needed, please attached full description of request**
IV. PROPERTY DESCRIPTION: (address, legal, etc.)
Parrel ID#28-15-1-012-006,000
Property size: feet X feet. Acres:
V. INFORMATION ATTACHED:
Attached Checklist complete with all required information.
Application fees submitted.
VI. I do hereby declare the above statements are true and that I, the owner, and/or my duly appointed representative will be at the scheduled hearing.
Jon DA Owner Signature/Date Representing Agent (if any)/date
Given under my hand and seal this 15 day of May, 2015.
Kay Russon
My Commission Expires My Commission Expires November 18, 2016
day of, 20

Conrad Garrison

From:

Jon Hinds <ihinds@onguard-inc.com>

Sent:

Tuesday, May 19, 2015 9:34 AM

To:

Conrad Garrison

Subject:

FW: Condition use 3794 Poe Dr.

Mr. Garrison,

Conditional use for home office application:

Concerning a description of business activity at my home residence 3794 Poe Dr. in Cahaba Heights.

I own an Alarm installation & servicing company. I started this company in 2000, we do not receive customers, I go out to their houses to evaluate and quote jobs.

I have 5 employees, myself, my wife and one assistant work in the office, they answer phones, schedule appointments, process paperwork and take care of billing for over one thousand customers. I understand that if I higher another person to work in the office that I will have to move my employees to another location.

I have three technicians, one drives his own van and calls in all his service work rarely coming by the office. One drives a company van but takes it home. He comes in every morning to pick up paper work. The third drives his car to the office and takes out a company SUV.

We make little to no traffic outside of 3 people coming to work in the morning at 8. Our hours are 8am to 5pm Monday through Friday.

More because of having a large family then employees we have a lot of parking. We can easy park two cars in the front and 4 in the back. At night we have 4 cars all in the back and one in the front. During the day if I am home we have 3 cars, two in the back and one in the front.

The house defiantly looks residential and we are not wanting to advertize or make the house look like it has a business in it. Across the street is zoned for mixed use and commercial. On our south side of the property we are adjacent to a dental office. I believe the current buffering around my property should be sufficient but may be reviewed by the board. We made substantial improvements to our house since I bought it fresh out of the Air Force in 1991.

At this point in my business it would bring upon my family a substantial financial hardship if we had to pay rent.

Conrad, if there is any more information you need please let me know.

Sincerely,

Jon Hinds Security Specialist

Ph: 205-298-8131 Cell: 205-222-7233



www.onguardsecurity.net

This message may contain confidential and/or proprietary information, and is intended for the person/entity to which it was originally addressed. Any use by others is strictly prohibited

CITY OF VESTAVIA HILLS

SYNOPSIS AND STAFF RECOMMENDATION CONCERNING APPLICATION BEFORE THE PLANNING AND ZONING COMMISSION

Date: **JUNE 11, 2015**

• CASE: P-0515-22

• **REQUESTED ACTION:** Conditional Use Approval For a Home Occupation With One Employee

• ADDRESS/LOCATION: 3794 Poe Dr.

• APPLICANT/OWNER: Jon Hinds. 3794 Poe Dr. Vestavia Hills, AL 35223

• **GENERAL DISCUSSION:** The applicant has been operating an alarm installation company since 2000 at his home address. The company employs 5 people. Two of the 5 (including his wife) work in the home, doing scheduling, billing, etc. Three technicians visit the house every morning to pick up paperwork, however, only 1 company SUV is parked overnight at the residence. The applicant contends they have adequate parking and the home remains residential in nature since he still lives there. The applicant also agrees that if he were to add an additional employee he would move the business out of the house. No customers or clients visit the house and there is not signage.

The parcel is zoned Vestavia Hills R-4. The parcel to the south is zoned commercial in Mountain Brook and the parcel across the street is zoned Vestavia Hills B-2. Staff has received no complaints about the business since its inception. See attached for a more detailed description and site plan from applicant.

• CAHABA HEIGHTS COMMUNITY PLAN: This Future Land Use Plan in the Community Plan calls for this parcel to be medium density residential, however, since this is only a Conditional Use request the underlying land use will remain the same.

• STAFF REVIEW AND RECOMMENDATION:

1. City Planner Review: I have looked at all of the relevant zoning / subdivision requirements related to this proposal, including application, notification, setbacks, area of lot development, etc. Notification has been sent to property owners pursuant to Alabama law. I have reviewed this request and find it does meet the minimum requirements of the proposed zoning.

City Planner Recommendation: I recommend that if the Commission recommends approval the following conditions are requested:

a) Business hours will be M-F, 8 AM-5 PM;

- b) Home must remain residential in appearance and functionality;
- c) Owner must remain a resident in the house;
- d) No signage for the business will be permitted;
- e) Any additional employees will require the business to be moved to a different location;
- f) Approval is only valid for applicant and business;
- g) No customers will visit the home;
- h) City engineer to review and approve any additional improvements lot and/or parking.
- 2. City Engineer Review: I will review site plan and parking improvements.
- 3. City Fire Marshal Review: I have reviewed the application and I have no issues with this request
- 4. **Building Safety Review:** I have reviewed the application and I have no issues with this request.

MOTION Mr. Burrell made a motion to recommend approval of Conditional Use application for a Home Occupation with One Employee for the Property at 3794 Poe Dr. with the following conditions:

- a) Business hours will be M-F, 8 AM-5 PM;
- b) Home must remain residential in appearance and functionality;
- c) Owner must remain a resident in the house;
- d) No signage for the business will be permitted;
- e) Any additional employees will require the business to be moved to a different location;
- f) Approval is only valid for applicant and business;
- g) No customers will visit the home;
- h) City engineer to review and approve any additional improvements lot and/or parking.

Second was by Mr. Gilchrist. Motion was carried on a roll call; vote as follows:

Mr. Goodwin – no

Mr. Burrell – no

Mr. Gilchrist – yes

Mr. Sharp - yes

Mr. Wolfe - yes

Mr. House - no

Mr. Larson – yes

Motion failed.

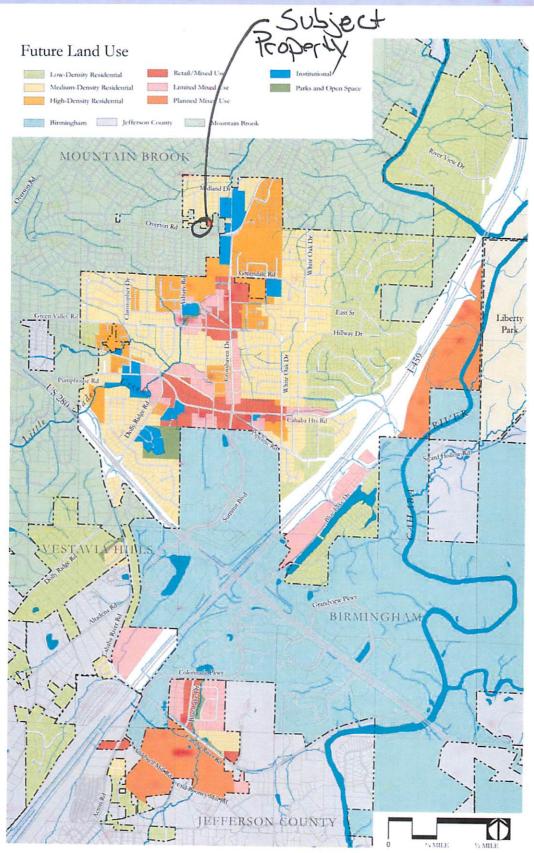
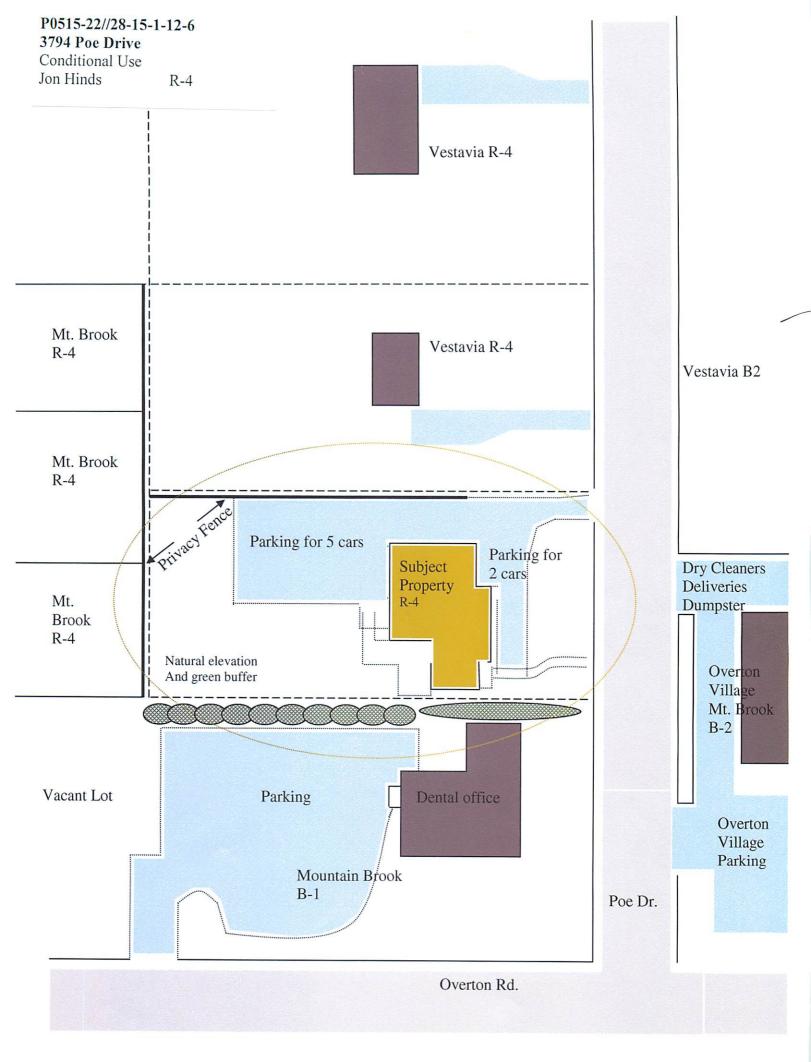


Figure 4: Future Land Use Map



ORDINANCE NUMBER 2604

AN ORDINANCE GRANTING CONDITIONAL USE APPROVAL FOR A HOME OCCUPATION

WHEREAS, on December 13, 2010, the City Council of the City of Vestavia Hills, Alabama, adopted and approved Ordinance Number 2331, also known as the City of Vestavia Hills Zoning Code; and

WHEREAS, on February 19, 2001 the City Council of the City of Vestavia Hills adopted and approved Ordinance Number 1864 to rezone 3,350 +/- acres from multiple Jefferson County and Vestavia Hills zoning classifications to Vestavia Hills P.U.D.; and

WHEREAS, Section 709.5.A.1.b of Ordinance Number 1838 classifies a "home occupation" permitted only as a "Conditional Use" and

WHEREAS, Peggy Vanek-Titus is the owner of the property located at 4191 Vestview Drive, currently zoned Vestavia Hills PUD PR-1 (planned unit development planned residential district) more particularly described as Lot 65, Vestview Village (MB 181 MP 97); and

WHEREAS, Peggy Vanek-Titus has submitted application for conditional use approval for a home occupation to be operated in her residence located at 4191 Vestview Drive, Vestavia Hills, Alabama located in the Liberty Park P.U.D.; and

WHEREAS, Peggy Vanek-Titus has indicated in her application for conditional use approval that she will operate an office for her pet sitting business out of her home pursuant to the specifications of a home occupation; and

WHEREAS, a copy of said application dated July 24, 2015 is attached and hereby incorporated into this Ordinance Number 2604.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

- 1. Conditional Use Approval is hereby approved for Peggy Vanek-Titus for a home occupation as described in the above-referenced application for her residence located at 4191 Vestview Drive, Vestavia Hills, Alabama located in Liberty Park P.U.D. subject to the provisions outlined in Article 9 of the Vestavia Hills Zoning Code outlined as follows:
 - a. "Home occupation is defined as any use customarily conducted entirely within a dwelling and carried on solely by the inhabitant thereof, and which use is clearly incidental, accessory, subordinate and secondary to the use of the dwelling for dwelling purposes, and does not change the character of the dwelling itself or any part of parcel of property in the neighborhood surrounding said dwelling; and
 - b. Home occupations shall be conducted only in the main dwelling building on the lot. No more than twenty-five percent (25%) of the said dwelling may be used for a home occupation; and
 - c. There shall be no public display of goods and absolutely no commodities sold on the premises; and
 - d. No sign may be attached to the dwelling or any part of the real estate advertising any home occupation; and
 - e. No home occupation or profession shall be permitted if such occupation creates noise, odors, vibrations or traffic which interferes with the residential qualities of the neighborhood insofar as health, safety, morals, convenience and general welfare are concerned; and

- f. In order to be a permitted home occupation or profession, the use must be one which is habitually, customarily and commonly established as a reasonable incidental, accessory, subordinate and secondary use; and
- g. Operation of any and all other business of any nature in residential zones is expressly prohibited; and
- h. The activity carried on as home occupation shall be limited to the hours between 7:00 AM and 10:00 PM; and
- No home occupation shall be permitted that requires the operation or keeping on premises of a commercial vehicle and no additional traffic shall be generated by said conditional use; and
- j. No persons other than members of the family residing on the premises shall be employed by the home occupation; and
- Conditional Use Approval is further conditioned upon and subject to all applicable private and restrictive covenants attached to the property located at said property located in the Liberty Park P.U.D.
- 3. A City of Vestavia Hills Business License shall be issued upon application and payment by Peggy Vanek-Titus working subject to the rules and regulations outlined in the Vestavia Hills Business License Code and shall be renewed each year that the home occupation is operated from the location at said property located in the Liberty Park P.U.D.
- 4. At any time should Peggy Vanek-Titus vacate the premises located at 4191 Vestview Drive, Vestavia Hills, Alabama, discontinue or relocate this

business, this conditional use approval shall be nullified and said Ordinance Number 2604 shall be automatically repealed.

5. This Ordinance Number 2604 shall become effective immediately upon adoption, approval and publishing/posting pursuant to Alabama law; and

DONE, ORDERED, ADOPTED and APPROVED this the 12th day of October, 2015.

Alberto C. Zaragoza, Jr. Mayor

ATTESTED BY:

Rebecca Leavings City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2604 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 12th day of October, 2015 as same appears in the official records of said City.

Posted	at V	estavia	Hills	Μι	unici	pal Ce	nter,	, Ves	stavia	Library	in	the	For	est,
Vestavia Hills	New	Merkl	e Hou	ise	and	Vestav	ia l	Hills	Recre	eational	Cen	ter	this	the
day of			, 2	2015	5.									

ORDINANCE NUMBER 2605

AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF PROPERTY FROM VESTAVIA HILLS R-1 TO VESTAVIA HILLS B-1.2.

BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Vestavia Hills R-1 (low density residential district) to Vestavia Hills B-1.2 (planned business district):

3127 Blue Lake Drive and 4565 Pine Tree Circle Lot 10-A, Acton's Resurvey ofLot 8 thru 10 and Lots 11 & 12, Topfield Subdivision Beth A. Holsenback, Kenneth Andrews and Pine Tree Partners, LLC, Owners

APPROVED and ADOPTED this the 12th day of October, 2015.

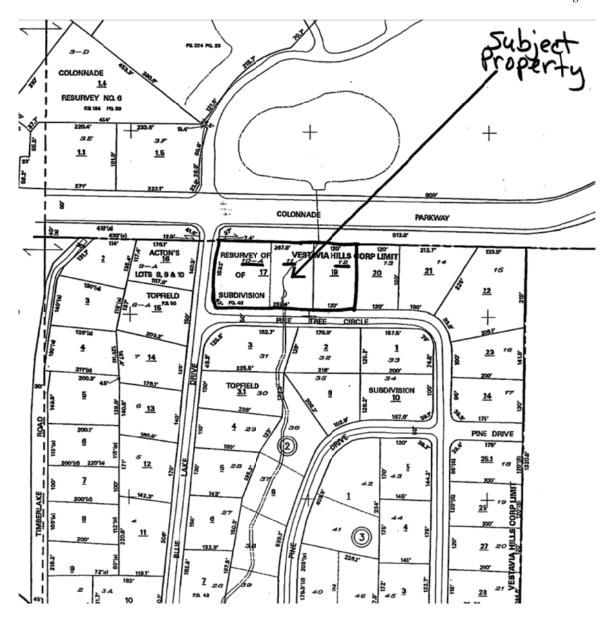
Alberto C. Zaragoza, Jr. Mayor

ATTESTED BY:

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2605 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 12th day of October, 2015 as same appears in the official records of said City.

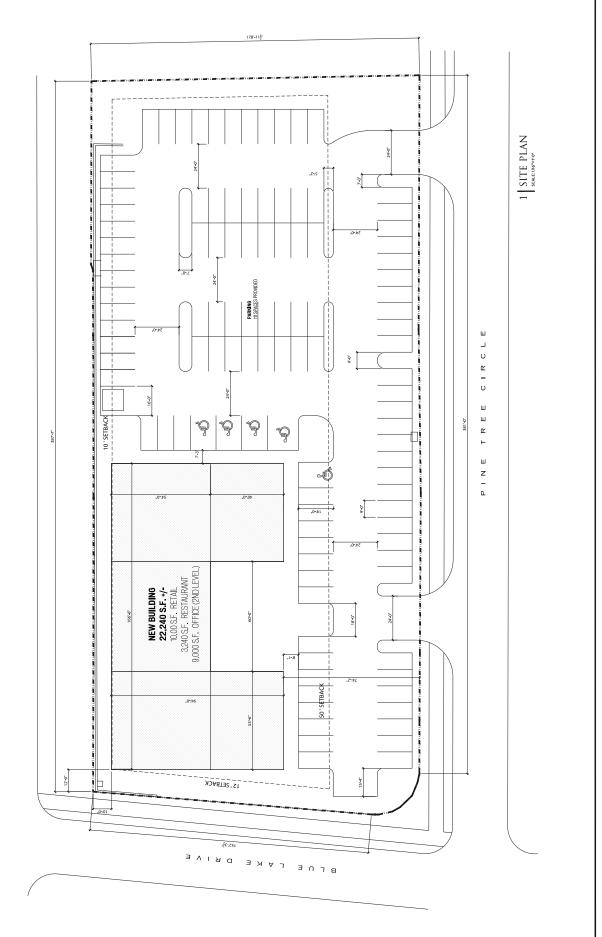
Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, New Merkle House and Vestavia Hills Recreational Center this the _____ day of _____, 2015.

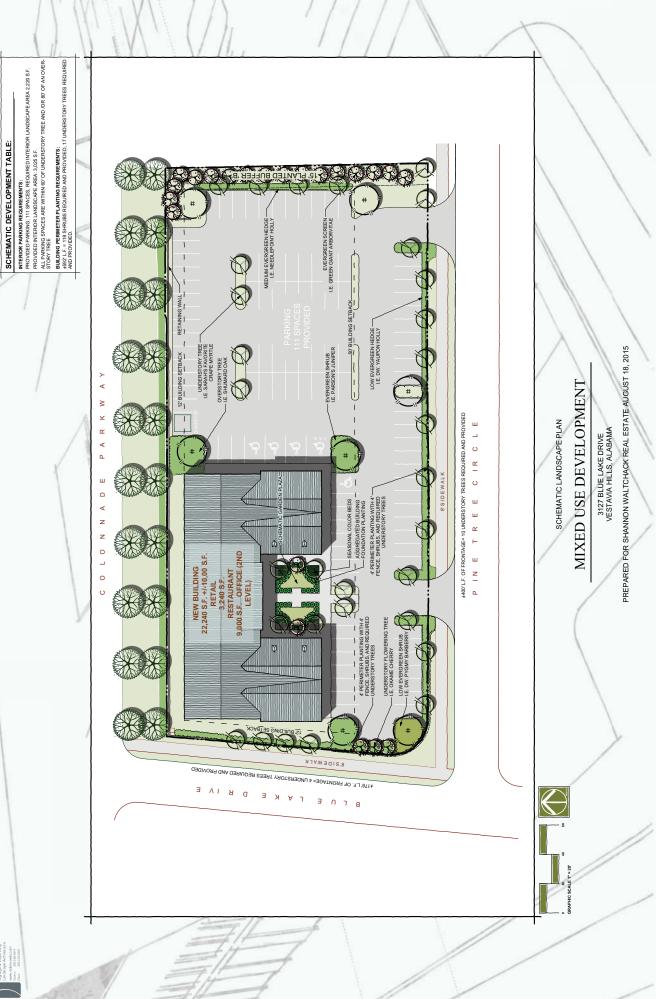




BLUE LAKE DRIVE

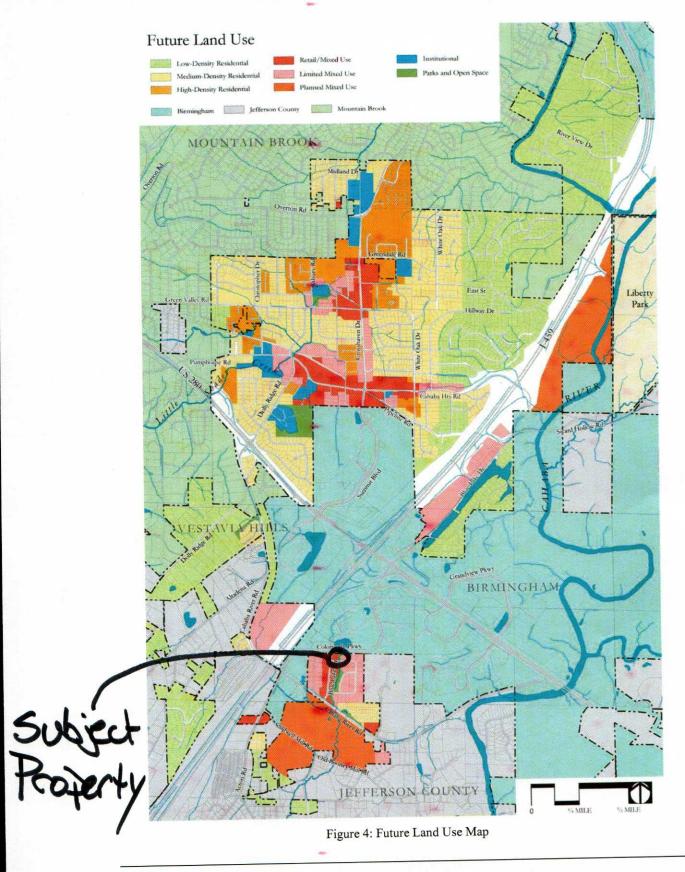






BLUE LAKE DRIVE CONCEPT SKETCH

GRISTOPHER ARBITECTURE EINTERIORS



CITY OF VESTAVIA HILLS

SYNOPSIS AND STAFF RECOMMENDATION CONCERNING APPLICATION BEFORE THE PLANNING AND ZONING COMMISSION

Date: **SEPTEMBER 10, 2015**

• <u>CASE</u>: P-0715-36

• **REQUESTED ACTION:** Rezoning Vestavia Hills R-1 Vestavia Hills B-1.2

• ADDRESS/LOCATION: 3127 Blue Lake Dr., 4565 Pine Tree Cir.

• **APPLICANT/OWNER:** Pine Tree Partners

• **REPRESNTING AGENT:** Len Shannon

- **GENERAL DISCUSSION:** Property is on Blue Lake Dr. and on the corner of Colonnade Parkway and Pine Tree Cir. Applicant is seeking rezoning to build a retail/restaurant/office building. The building would be 22,240 sq. ft. and 2 stories. The building would have 12' setback along Blue Lake Dr., 12' along Colonnade Pkwy., 50' along Pine Tree Cir., and 15' on the east side of the property. A proposed site plan and landscaping plan is enclosed. A creek runs through the east portion of the property is proposed to be piped.
- <u>CAHABA HEIGHTS COMMUNITY PLAN</u>: The request is consistent with the Cahaba Heights Community Plan for retail/mixed use. Additionally, the property directly to the south at 3125 Blue Lake Dr. is already zoned O-1

• STAFF REVIEW AND RECOMMENDATION:

1. City Planner Review: I have looked at all of the relevant zoning / subdivision requirements related to this proposal, including application, notification, setbacks, area of lot development, etc. Notification has been sent to property owners pursuant to Alabama law. I have reviewed this request and find it does meet the minimum requirements of the proposed zoning.

City Planner Recommendation: No recommendation

- 2. **City Engineer Review:** Approval needed on creek and drainage.
- 3. **City Fire Marshal Review:** I have reviewed the application and I have no issues with this request.
 - 4. **Building Safety Review:** I have reviewed the application and I have no issues with this request.

• MOTION Mr. Visintainer made a motion to recommend approval of 3127 Blue Lake Dr., 4565 Pine Tree Cir. from Rezoning Vestavia Hills R-1 Vestavia Hills B-1.2. Second was by Mr. Goodwin. Motion was carried on a roll call; vote as follows:

Mr. Goodwin – yes
Mr. Gilchrist – yes
Mr. Wolfe – yes
Mr. Visintainer – yes
Mr. Larson – yes
Mr. Burrell – yes
Mr. Sharp – yes
Mr. House – yes
Mr. Brooks – yes
Mr. Larson – yes

ORDINANCE NUMBER 2606

AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF PROPERTY FROM VESTAVIA HILLS R-4 TO VESTAVIA HILLS B-1

BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Vestavia Hills R-4 (medium density residential district) to Vestavia Hills B-1 (neighborhood business district):

4209 Autumn Lane Brent Martina and Tim Coker

More particularly described as:

Legal Description, Parcel 1:A parcel of land situated in the Southwest one-quarter of the Northeast one-quarter of Section 22, Township 18 South, Range2 West, Jefferson County, Alabama being more particularly described as follows: Commence at the Southeast corner of said quarterquarter Section and run in a Westerly direction along the South line thereof for a distance of 375.04 feet to a found 2" pipe; thence continue along the last described course for a distance of 115.91 feet to a found 1" pipe at the end of an asphalt drive know as Autumn Lane; thence leaving said South line turn an interior angle to the left of 90 degrees 26 minutes 50 seconds and run in a Northerly direction along the centerline of said Autumn Lane for a distance of 318.26 feet to the POINT OF BEGINNING of the parcel herein described, said point being the Southwest corner of that property described in deed book 1184, page 374 recorded in the Office of the Judge of Probate, Jefferson County, Alabama; thence continue along the last described course for a distance of 166.27 feet to a set nail in the centerline of said Autumn Lane, said point being on the Southern-most right of way Cahaba Heights Road (right of way varies), and being the Northwest corner of the property described in said deed book 1184, page 374; thence turn an interior angle to the left of 82 degrees 32 minutes 00 seconds and run in an Easterly direction along said right of way for a distance of 102.88 feet to a set 5/8 inch capped rebar stamped CA-560LS marking the Northeast corner of the property

described in said deed book 1184, page 374; thence leaving said right of way turn an interior angle to the left of 99 degrees 00 minutes 18seconds and run in a Southerly direction for a distance of 8.66 feet to a found 2 inch pipe; thence continue along the last described course for a distance of 145.25 feet to a found capped rebar stamped (JAM) marking the Southeast corner of the property described in said deed book 1184, page 374; thence turn an interior angle to the left of 87 degrees 56 minutes 47seconds and run in a Westerly direction for a distance of 106.14 feet to the POINT OF BEGINNING. Said parcel contains 16,643 square feet or 0.38 acres more or less.

BE IT FURTHER ORDAINED that said rezoning is conditioned upon the use of the property being limited to office use only.

APPROVED and ADOPTED this the 12th day of October, 2015.

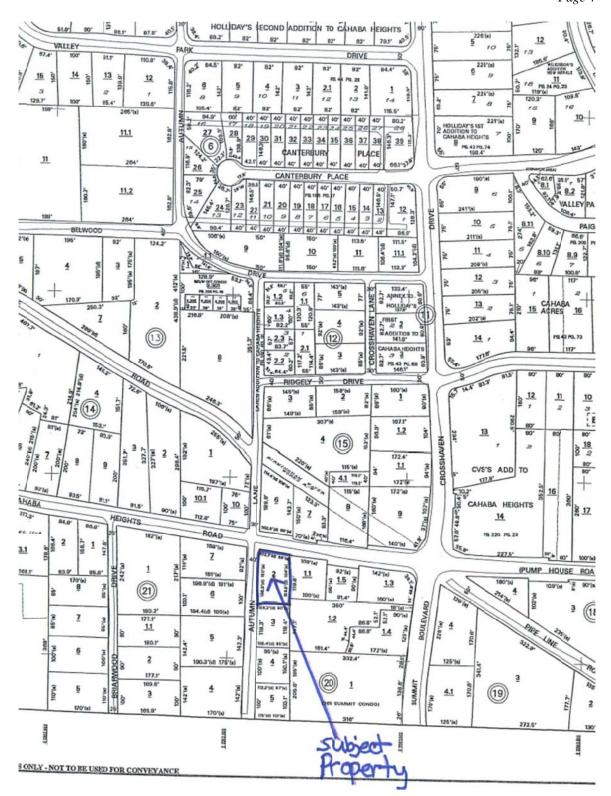
Alberto C. Zaragoza, Jr. Mayor

ATTESTED BY:

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2606 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 12th day of October, 2015 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, New Merkle House and Vestavia Hills Recreational Center this the _____ day of ______, 2015.



CITY OF VESTAVIA HILLS

SYNOPSIS AND STAFF RECOMMENDATION CONCERNING APPLICATION BEFORE THE PLANNING AND ZONING COMMISSION

Date: **September 10, 2015**

• <u>CASE</u>: P-0915-50

- **REQUESTED ACTION:** Request of Rezoning of property from Vestavia Hills R-4 (single-family residential) to VH B-1 (neighborhood business) for office use
- ADDRESS/LOCATION: 4209 Autumn Ln
- APPLICANT/OWNER: Timothy J. Coker & Brent Martina
- **REPRESENTING AGENT:** John Whitson
- **GENERAL DISCUSSION:** Property is located on the corner of Autumn Ln. and Cahaba Heights Rd. Request is to rezone to B-1 for office use. Applicant intends to convert and update home on site to meet building code and ADA requirements. A proposed site plan is included depicting ingress/egress, parking, and landscaping. The building, parking, and landscaping meet the minimum requirements fo a B-1 zone. Lots to the east are zoned B-3 and the lot to the south is zoned R-4.
- <u>CAHABA HEIGHTS COMMUNITY PLAN</u>: This property is located in Figure 19 of the Comprehensive Master Plan in an area designated as Retail/Mixed Use.

• STAFF REVIEW AND RECOMMENDATION:

1. City Planner Review: I have looked at all of the relevant zoning / subdivision requirements related to this proposal, including application, notification, setbacks, area of lot development, etc. Notification has been sent to property owners pursuant to Alabama law. I have reviewed this request and find it does meet the minimum requirements of the proposed zoning. Several new properties have built to the same setbacks citing various "hardships". This property has no unnecessary hardship and was referred instead to seek zoning change rather than variance for building.

City Planner Recommendation: No Recommendation.

2. City Engineer Review: I have reviewed the application and request that the applicant provide grading and drainage plans to City Engineer for review and approval prior to permitting for construction.

- 3. **City Fire Marshal Review:** I have reviewed the application and found no problems as proposed.
- 4. **Building Safety Review:** I have reviewed the application and found no problems with development as proposed.

MOTION Mr. Visintainer made a motion to recommend rezoning approval of 4209 Autumn Ln from Vestavia Hills R-4 to VH B-1 with the following condition:

1. Rezoning limited to office use only.

Second was by Mr. Burrell. Motion was carried on a roll call; vote as follows:

Mr. Goodwin – yes
Mr. Gilchrist – yes
Mr. Wolfe – yes
Mr. Visintainer – yes
Mr. Larson – yes
Mr. Burrell – yes
Mr. Sharp – yes
Mr. House – yes
Mr. Brooks – yes
Mr. Larson – yes
Motion carried.

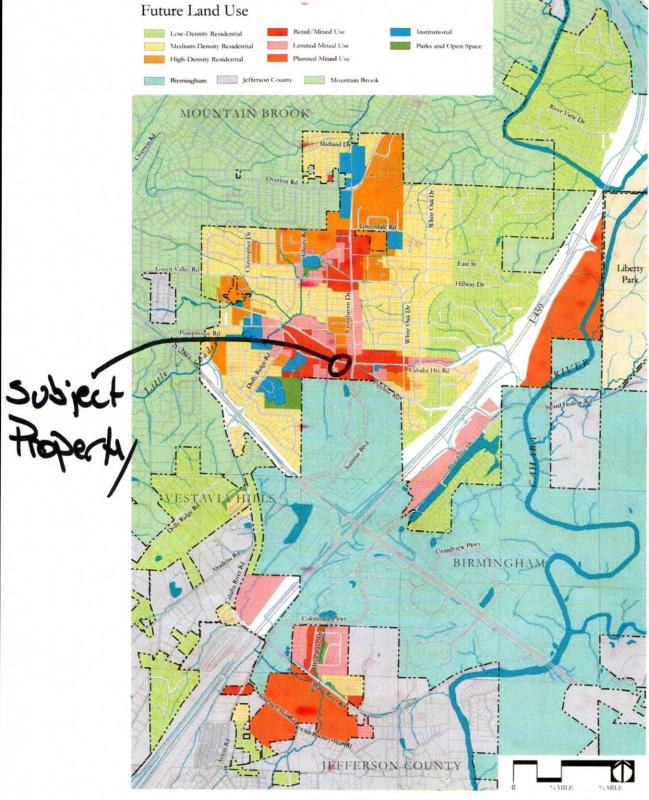
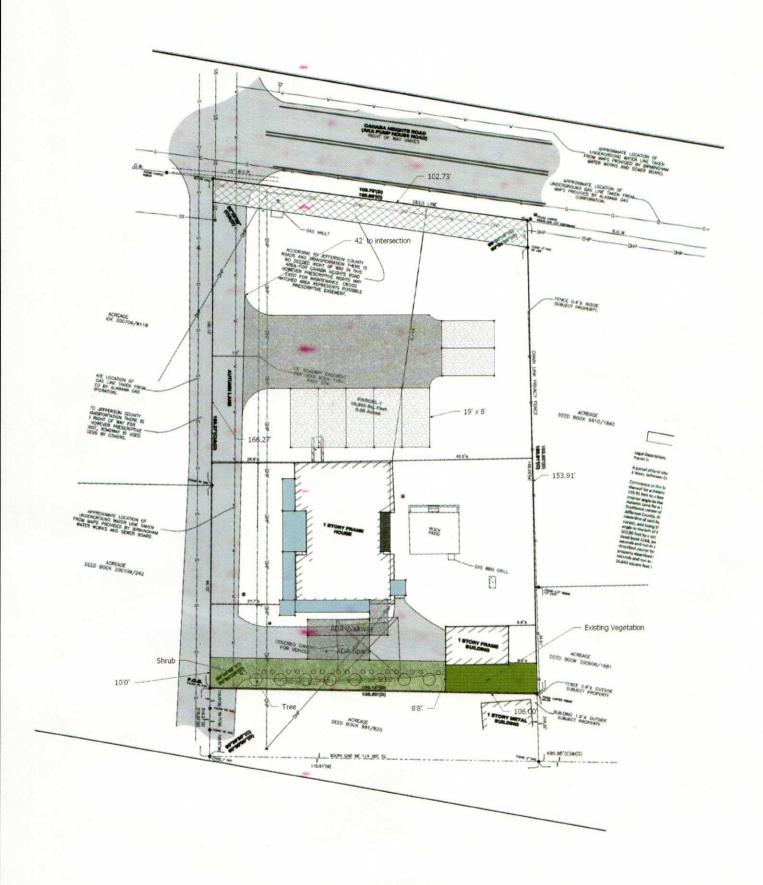
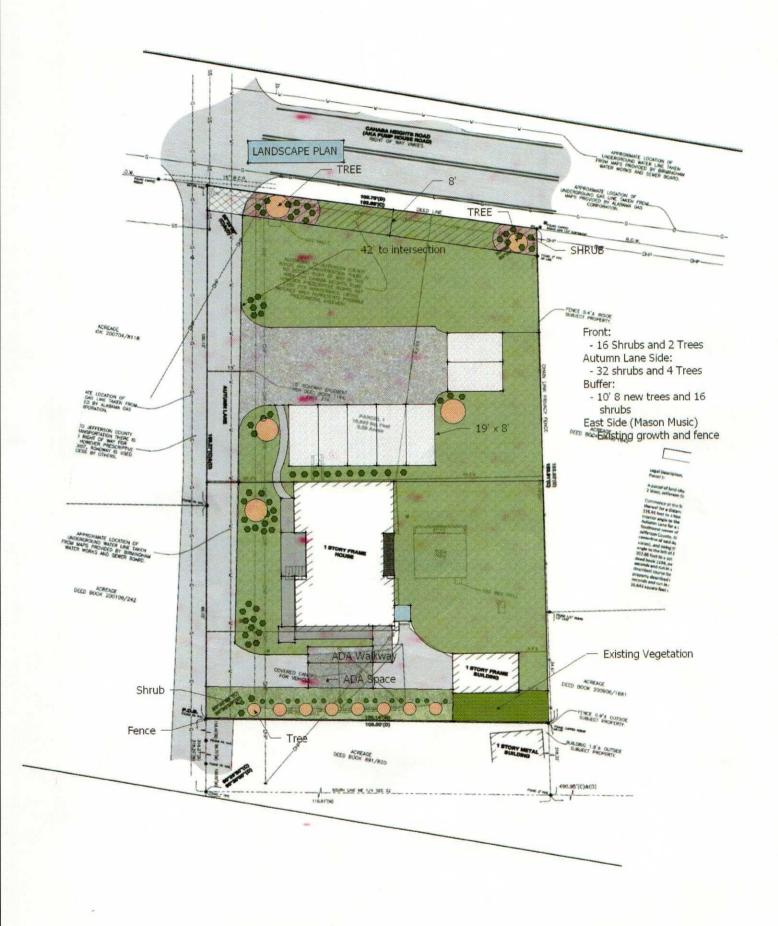


Figure 4: Future Land Use Map





ORDINANCE NUMBER 2607

AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF PROPERTY FROM VESTAVIA HILLS R-1 TO VESTAVIA HILLS O-1

BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Vestavia Hills R-1 (low density residential district) to Vestavia Hills O-1 (office district):

3117 and 3121 Blue Lake Drive Lots 29 and 30, Topfield Subdivision Slate Barganier Holdings, LLC and VGD on Blue Lake, LLC, Owners

BE IT FURTHER ORDAINED that said rezoning is conditioned upon the design of the office building to remain consistent with similar office designs within the Blue Lake area.

APPROVED and ADOPTED this the 12th day of October, 2015.

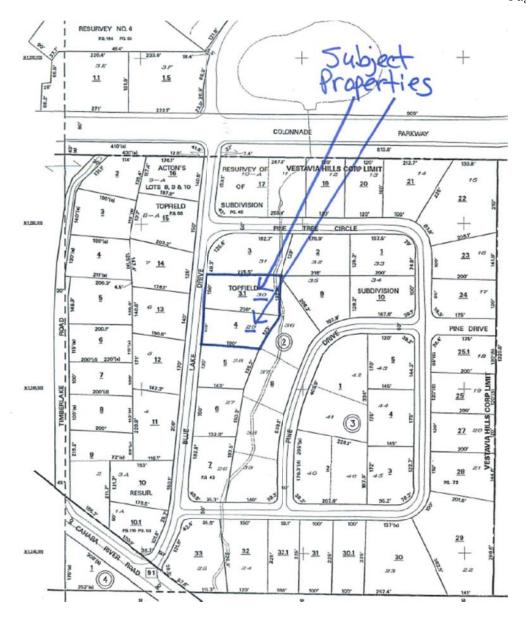
Alberto C. Zaragoza, Jr. Mayor

ATTESTED BY:

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby
certify that the above and foregoing copy of 1 (one) Ordinance # 2607 is a true and
correct copy of such Ordinance that was duly adopted by the City Council of the City of
Vestavia Hills on the 12 th day of October, 2015 as same appears in the official records of
said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, New Merkle House and Vestavia Hills Recreational Center this the _____ day of _____, 2015.



CITY OF VESTAVIA HILLS

SYNOPSIS AND STAFF RECOMMENDATION CONCERNING APPLICATION BEFORE THE PLANNING AND ZONING COMMISSION

Date: **SEPTEMBER 10, 2015**

- <u>CASE</u>: P-0915-51
- **REQUESTED ACTION:** Rezoning Vestavia Hills R-1 Vestavia Hills O-1
- ADDRESS/LOCATION: 3117 & 3121 Blue Lake Dr.
- <u>APPLICANT/OWNER</u>: Slate Barganier Holdings, LLC & VGD on Blue Lake, LLC
- **REPRESNTING AGENT:** Brian Harris
- **GENERAL DISCUSSION:** Property is on Blue Lake Dr., and one lot away from Pine Tree Circle. Applicant is seeking rezoning to build two office buildings with a shared driveway. Each building would be two stories in height and be a minimum of 5,600 sq. ft. The building setbacks and buffering meet the minimum for an O-1 zoning. A preliminary landscape plan is attached.
- <u>CAHABA HEIGHTS COMMUNITY PLAN</u>: The request is consistent with the Cahaba Heights Community Plan for retail/mixed use. Additionally, the property directly to the north at 3125 Blue Lake Dr. is already zoned O-1

• <u>STAFF REVIEW AND RECOMMENDATION</u>:

1. City Planner Review: I have looked at all of the relevant zoning / subdivision requirements related to this proposal, including application, notification, setbacks, area of lot development, etc. Notification has been sent to property owners pursuant to Alabama law. I have reviewed this request and find it does meet the minimum requirements of the proposed zoning.

City Planner Recommendation: No recommendation

- 2. **City Engineer Review:** Approval based on drainage and adherence to sidewalk masterplan.
- 3. **City Fire Marshal Review:** I have reviewed the application and I have no issues with this request.
 - 4. **Building Safety Review:** I have reviewed the application and I have no issues with this request.

MOTION Mr. Burrellmade a motion to recommend rezoning approval of 3117 & 3121 Blue Lake Dr. from Vestavia Hills R-1 to VH O-1 with the following condition:

1. Building design to be consistent with similar office designs in the Blue Lake area.

Second was by Mr. Gilchrist. Motion was carried on a roll call; vote as follows:

Mr. Goodwin – yes	Mr. Burrell – yes
Mr. Gilchrist – yes	Mr. Sharp – yes
Mr. Wolfe – yes	Mr. House – yes
Mr. Visintainer – yes	Mr. Brooks – yes
Mr. Larson – yes	Motion carried.

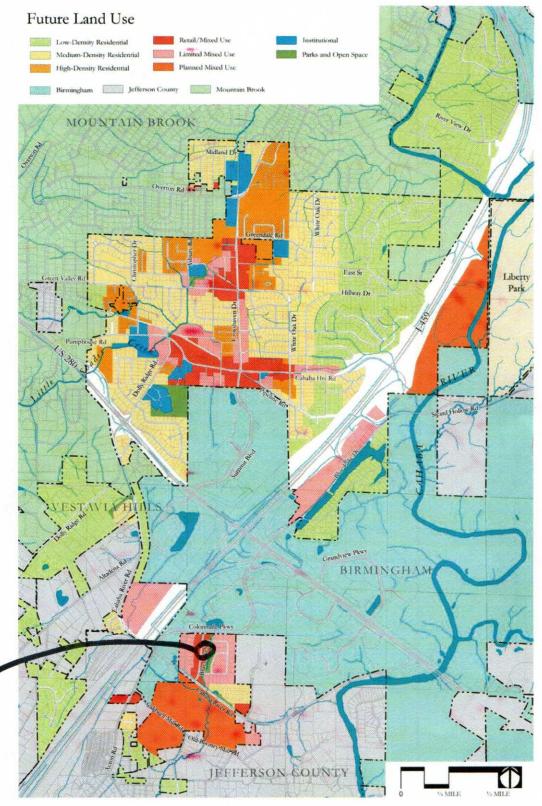
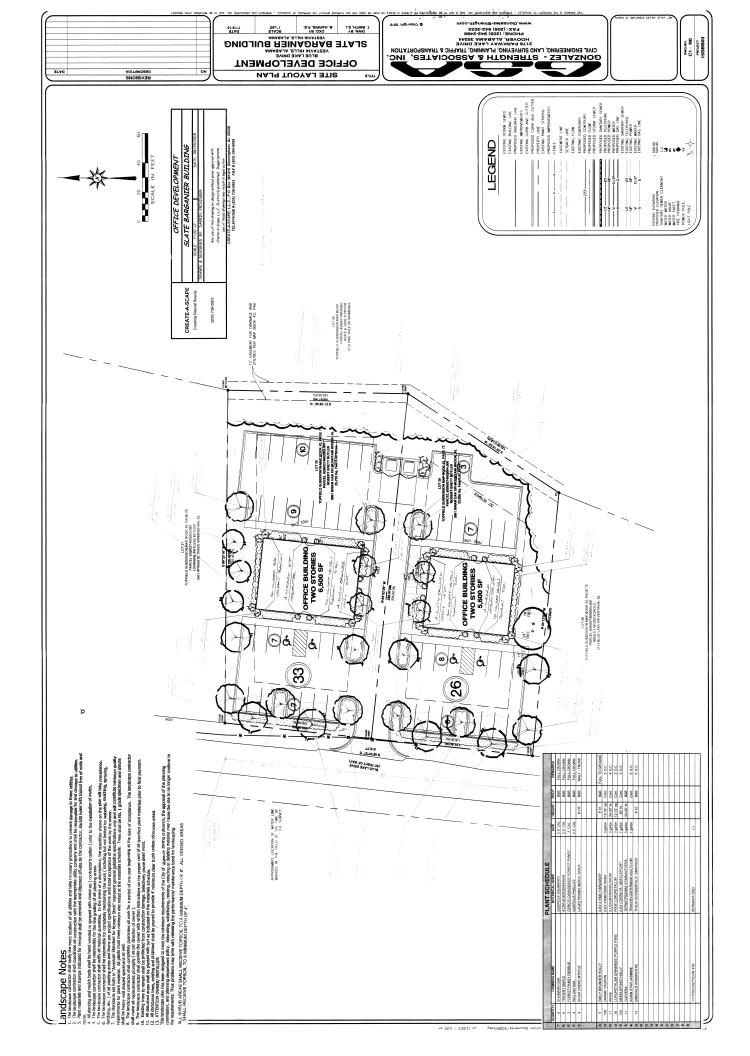
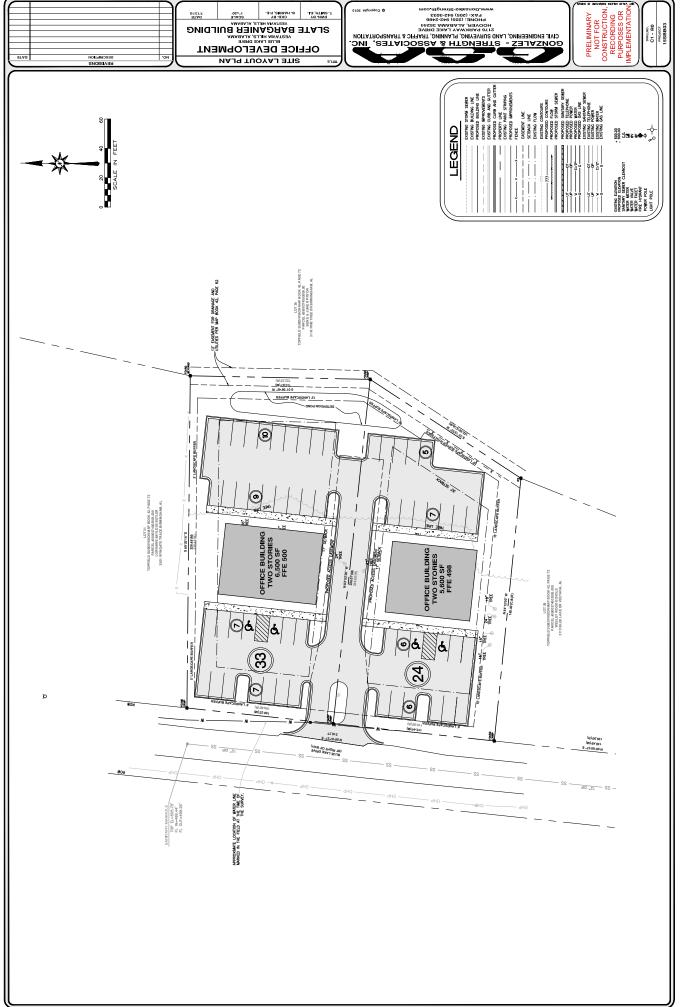


Figure 4: Future Land Use Map





RESOLUTION NUMBER 4764

A RESOLUTION APPROVING ALCOHOL LICENSE FOR UAT INC., D/B/A CAHABA HEIGHTS TEXACO; ABID GHANI, EXECUTIVE

WHEREAS, the City Council of the City of Vestavia Hills, Alabama, approves the alcohol license for UAT Inc., d/b/a Cahaba Heights Texaco, located at 3101 Cahaba Heights Road, Vestavia Hills, Alabama, for the sale of 050 - Retail Beer (Off Premises Only) and 070 - Retail Table Wine (Off Premises Only); Abid Ghani, executives.

APPROVED and ADOPTED this the 12th day of October, 2015.

Alberto C. Zaragoza, Jr. Mayor

ATTESTED BY:

INTEROFFICE MEMORANDUM

DATE: September 15, 2014

TO: Dan Rary, Acting Police Chief

FROM: Rebecca Leavings, City Clerk

RE: Alcohol License Request – 050 - Retail Beer (Off Premises Only) and 00 - Retail Table Wine (Off Premises Only)

Please find attached information submitted by Abid Ghani who request an alcohol license to sell 050 - Retail Beer (Off Premises Only) and 00 - Retail Table Wine (Off Premises Only) at the UAT Inc., d/b/a Cahaba Heights Texaco, 3101 Cahaba Heights Road, Vestavia Hills, Alabama.

I am scheduling this case to be heard by the City Council on 12th day of October, 2015 at 5:00 PM (Monday). Please advise me of your recommendation for this license. If you have any questions, please contact me.

Reply

I have reviewed the available background information on the above referenced applicant and submit the following to the City Council:

Application cleared by P.D. This indicates that there are NO convictions for
 drug trafficking, convictions regarding arrest involving danger to children,
weapon charges, violent felony crimes against persons, felony sexual offenses
or habitual alcohol related arrests
Needs further review. This indicates that the Police Chief has found records of
some convictions of alcohol related arrests
Does not recommend . This indicates that the Police Chief has found records of
convictions for drug trafficking, convictions regarding arrest involving danger
to children, weapon charges, violent felony crimes against persons, felony
sexual offenses or habitual alcohol related arrests

Reviewed:



STATE OF ALABAMA ALCOHOLIC BEVERAGE CONTROL BOARD

ALCOHOL LICENSE APPLICATION

Confirmation Number: 20151006101356703

Type License: 050 - RETAIL BEER (OFF PREMISES ONLY)

State:

County:

Exhibit A - Resolution 4764

Type License: 070 - RETAIL TABLE WINE (OFF PREMISES ONLY) State:

County:

Trade Name: CAHABA HEIGHTS TEXACO

Filing Fee:

Applicant: UAT INC

Transfer Fee: \$100.00

Location Address: 3101 CAHABA HEIGHTS RD

VESTAVIA HILLS, AL 35243

Mailing Address: 3101 CAHABA HEIGHTS RD

VESTAVIA HILLS, AL 35243

County: JEFFERSON Tobacco sales: YES

Tobacco Vending Machines: 0

Type Ownership: CORPORATION

Book, Page, or Document info: LR200705 11879

Date Incorporated: 03/27/2007 State incorporated: AL

County Incorporated: JEFFERSON

Date of Authority: 03/27/2007

Alabama State Sales Tax ID: R000120869

Name:

Title:

Date and Place of Birth: Residence Address:

ABID GHANI 7404716 - AL	DIRECTOR	4/24/1967 PAKISTAN	3233 TRACE CIRCLE TRUSSVILLE, AL 35173

Has applicant complied with financial responsibility ABC RR 20-X-5-.14? YES

Does ABC have any actions pending against the current licensee? NO

Has anyone, including manager or applicant, had a Federal/State permit or license suspended or revoked? NO Has a liquor, wine, malt or brewed license for these premises ever been denied, suspended, or revoked? NO Are the applicant(s) named above, the only person(s), in any manner interested in the business sought to be licensed? YES

Are any of the applicants, whether individual, member of a partnership or association, or officers and directors of a corporation itself, in any manner monetarily interested, either directly or indirectly, in the profits of any other class of business regulated under authority of this act? NO

Does applicant own or control, directly or indirectly, hold lien against any real or personal property which is rented, leased or used in the conduct of business by the holder of any vinous, malt or brewed beverage, or distilled liquors permit or license issued under authority of this act? NO

Is applicant receiving, either directly or indirectly, any loan, credit, money, or the equivalent thereof from or through a subsidiary or affiliate or other licensee, or from any firm, association or corporation operating under or regulated by the authority of this act? NO

Contact Person: ABID GHANI Business Phone: 205-262-2005

Fax:

Cell Phone: 205-401-6403

Home Phone: 205-223-6062

E-mail: ABIDGHANI2004@AOL.COM

PREVIOUS LICENSE INFORMATION: Trade Name: CAHABA HEIGHTS TEXACO Applicant: SONU ENTERPRISES INC

Previous License Number(s)

License 1: 010277037 License 2: 010277037



STATE OF ALABAMA ALCOHOLIC BEVERAGE CONTROL BOARD





ALCOHOL LICENSE APPLICATION

Confirmation Number: 20151006101356703

If applicant is leasing the property, is a copy of the lease agreement attached? YES Name of Property owner/lessor and phone number: RJ MOORE JR LLC 205-853-1533 What is lessors primary business? GASOLINE Is lessor involved in any way with the alcoholic beverage business? NO Is there any further interest, or connection with, the licensee's business by the lessor? NO

Does the premise have a fully equipped kitchen? NO Is the business used to habitually and principally provide food to the public? NO Does the establishment have restroom facilities? YES Is the premise equipped with services and facilities for on premises consumption of alcoholic beverages? NO

Will the business be operated primarily as a package store? NO

Building Dimensions Square Footage: 1500

Display Square Footage:

Building seating capacity: 0

Does Licensed premises include a patio area? NO

License Structure: ONE STORY

License covers: ENTIRE STRUCTURE

Location is within: CITY LIMITS Police protection: CITY

Has any person(s) with any interest, including manager, whether as sole applicant, officer, member, or partner been charged (whether convicted or not) of any law violation(s)?

Name:	Violation & Date:	Arresting Agency:	Disposition:
*			

RESOLUTION NUMBER 4765

A RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND APPROVED AN AGREEMENT FOR PROJECT NUMBER ACAA59495-ATRP(006) ATRIP 37-03-34

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. That the City enters into an agreement with the State of Alabama acting by and through the Alabama Department of Transportation for:

The resurfacing on CR-113 Rocky Ridge Road) from Lorna Road to CR-97 (Shades Crest Road). Length 4.11 miles

Project Number ACAA59495-ATRP(006) ATRIP 37-03-34; and

- 2. A copy of said agreement is marked as "Exhibit A" attached to and incorporated into this Resolution Number 4765 as though written fully therein;
- 3. That the agreement be executed in the name of the City by its Mayor and City Manager, for and on its behalf; and
- 4. That the agreement be attested by the City Clerk and the seal of the City affixed thereto; and
- 5. This Resolution Number 4765 shall become effective immediately upon adoption and approval; and

Be it further resolved that upon the completion of the execution of the agreement by all parties, that a copy of such agreement be kept on file by the City Clerk and the seal of the City affixed.

ADOPTED and APPROVED this the 12th day of October, 2015.

Albert C. Zaragoza,	Jr.
Mayor	

ATTESTED BY:

CERTIFICATION:

I, the undersigned qualified and Acting Clerk of the City of Vestavia Hills, Alabama, do
hereby certify that the above and foregoing is a true copy of a Resolution passed and adopted by
the City Council of the City named therein, at a regular meeting of such Council held on the 12th
day of October, 2015 and that such Resolution is on tfile in the City Clerk's office.

IN WITNESS	WHEREOF,	I have hereunto set my	hand and a	affixed the	official sea	al of
the City on the	day of	, 2015.				



Robert Bentley Governor

ALABAMA DEPARTMENT OF TRANSPORTATION

Bureau of Innovative Programs
1409 Coliseum Boulevard
Administrative Building, Room 110
Montgomery, Alabama 36110
Telephone: 334-353-6234 / Fax: 334-353-6550
www.dot.state.al.us



John R. Cooper Transportation Director

August 14, 2015

The Honorable Butch Zaragoza, Jr. Mayor, City of Vestavia Hills 513 Montgomery Highway Vestavia Hills, Alabama 35216

RE: ACAA59495-ATRP(006)

ATRIP 37-03-34 Jefferson County City of Vestavia Hills

Dear Mayor Zaragoza:

Attached is the **original** Agreement between the Alabama Department of Transportation and the City of Vestavia Hills covering the listed project's financing costs for construction.

Please complete and return this **original** Agreement as soon as possible with all **signatures** and **seals** to minimize delay of further approval and distribution. Upon approval of all parties, a properly executed copy of this Agreement will be sent to you for your information and file.

PLEASE DO NOT EXECUTE THE FAXED COPY OF THE AGREEMENT!

Sincerely,

Edward N. Austin, P.E. Innovative Programs Engineer

ENA:mk

Attachment(s)

cc: DeJarvis Leonard, P.E. (East Central Region Engineer)

Robert Camp, P.E. (Area Operations Engineer)

Clay McBrien, P.E. (Ms. Melva Bradford)

File

AGREEMENT FOR

ALABAMA TRANSPORTATION REHABILITATION AND IMPROVEMENT PROGRAM (ATRIP) PROJECT

BETWEEN THE STATE OF ALABAMA AND

THE CITY OF VESTAVIA HILLS, ALABAMA

This agreement is made and entered into by and between the State of Alabama, (acting by and through the Alabama Department of Transportation), hereinafter referred to as the STATE; and the City of Vestavia Hills (FEIN 63-6002218), hereinafter referred to as the CITY; in cooperation with the United States Department of Transportation, the Federal Highway Administration, hereinafter referred to as the FHWA:

WITNESSETH

WHEREAS, the STATE and the CITY desire to cooperate in the resurfacing on CR-113 (Rocky Ridge Road) from Lorna Road to CR-97 (Shades Crest Road). Length – 4.11 miles Project# ACAA59495-ATRP(006); ATRIP# 37-03-34

NOW THEREFORE, the parties hereto, for, and in consideration of the premises stated herein do hereby mutually promise, stipulate, and agree as follows:

- (1) The CITY will acquire any additional right-of-way, if needed, for the PROJECT at no cost to the STATE or this PROJECT.
- (2) The CITY or its representative, if applicable to the PROJECT, agree to adjust and/or relocate all utilities on the PROJECT without cost to the STATE or this PROJECT.
- (3) The CITY or its representative, will provide the required surveys, complete the plans and perform all other preliminary engineering duties for the PROJECT at no cost to the STATE or this PROJECT. The CITY will be responsible for submitting all required environmental documents to the STATE and obtaining approval prior to right-of-way acquisition or submittal of final plan assembly to the STATE. The plans will be subject to the approval of the STATE and the PROJECT will be constructed in accordance with the plans approved by the STATE and the terms of this agreement.
- (4) If necessary, the CITY will file an Alabama Department of Environmental Management (ADEM) National Pollutant Discharge Elimination System (NPDES) Notice of Registration (NOR) (Code Chapter 335-6-12) for the PROJECT. The CITY and the contractor will be responsible for compliance with the permit and the STATE will have no obligation regarding the permit. The CITY will furnish the STATE (Region) a copy of the permit prior to any work being performed by the contractor.

- (5) The CITY will furnish all construction engineering for the PROJECT with CITY forces or with a consultant selected and approved by the STATE as part of the PROJECT cost. The cost of construction engineering and inspection shall be included as part of the construction cost for the PROJECT and will be paid from funds provided herein.
- (6) The STATE will furnish the necessary inspection and testing of materials with STATE forces when needed as part of the PROJECT cost. The cost of inspection and testing of materials shall be included as part of the construction cost for the PROJECT and will be paid from funds provided herein.
- (7) The CITY will comply with the Alabama Department of Transportation Standard Specifications for Highway Construction (latest edition) on the PROJECT and will ensure that alignment and grades on this PROJECT meet the standards of the Alabama Department of Transportation and that the PROJECT will be constructed in accordance with the approved plans.
- (8) The PROJECT will be administered by the STATE and all cost will be financed, when eligible for Federal participation, on the basis of eighty (80) percent Federal ATRIP funds and twenty (20) percent CITY funds, unless otherwise noted below. Any Federal aid non-participating costs shall be borne by the CITY at one hundred (100) percent.
- (9) Funding for this agreement is subject to the availability of Federal ATRIP funds at the time of authorization. The STATE will not be liable for Federal ATRIP funds in any amount. It is understood that the amounts stated below are estimates only. Any shortfall in funding or overrun in construction costs shall be borne by the CITY from Federal ATRIP funds, if available, and from CITY funds. In the event of an under-run in construction costs, the amount of Federal ATRIP funds will be the amount stated below, or eighty (80) percent of eligible costs, whichever is less.
- (10) The estimated cost of construction of this PROJECT will be provided from the funds outlined as follows:

Federal ATRIP Funds	\$ 1,382,848.00
CITY Funds	\$ 345,712.00
Total (Including E & I)	\$ 1,728,560.00

- (11) The STATE will be responsible for advertisement and receipt of bids, and the award of the contract. Following the receipt of bids and prior to the award of the contract, the STATE will invoice the CITY for its prorata share of the estimated cost (if applicable) as reflected by the bid of the successful bidder plus E & I, and the CITY will pay this amount to the STATE no later than 30 days after the date bids are opened. Payment must be received prior to award of the contract.
- (12) A final audit will be made of all PROJECT records after completion of the PROJECT and a copy will be furnished to the Alabama Department of Examiners of Public Accounts, in accordance with Act. 1994, No. 94-414. A final financial settlement will be made between the parties as reflected by the final audit and this agreement.

- (13) The CITY will submit reimbursement invoices for the work performed under the terms of this agreement to the STATE within six (6) months after the completion and acceptance of the PROJECT. Any invoices submitted after this six (6) month period will not be eligible for payment.
- (14) Upon completion and acceptance of the work by the STATE, the CITY will assume full responsibility for maintenance of that part of the improvements which are not a part of the Alabama Highway Maintenance System. Upon completion and acceptance of the work by the STATE, the CITY will maintain the PROJECT in satisfactory condition in accordance with the requirements of the Alabama Department of Transportation.
- Subject to the limitations on damages applicable to municipal corporations under Alabama (15)Code§ 11-47-190 (1975), the CITY shall defend, indemnify, and hold harmless the State of Alabama, the Alabama Department of Transportation, its officers, officials, agents, servants, and employees, in their official capacities, from and against (1) claims, damages, losses, and expenses, including but not limited to attorneys' fees arising out of, connected with, resulting from or related to the work performed by the CITY, or its officers, employees, contracts, agents or assigns, (2) the provision of any services or expenditure of funds required, authorized, or undertaken by the CITY pursuant to the terms of this agreement, or (3) any damage, loss, expense, bodily injury, or death, or injury or destruction of tangible property (other than the work itself), including loss of use therefrom, and including but not limited to attorneys' fees, caused by the negligent, careless or unskillful acts of the CITY, its agents, servants, representatives or employees, or the misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the CITY, its agents, servants, representatives or employees, or anyone whose acts the CITY may be liable.
- (16) By entering into this agreement, the CITY is not an agent of the STATE, its officers, employees, agents, or assigns. The CITY is an independent entity from the STATE and nothing in this agreement creates an agency relationship between the parties.
- (17) Each party will provide, without cost to the other, information available from its records that will facilitate the performance of the work.
- (18) Nothing will be construed under the terms of this agreement by the STATE or the CITY that will cause any conflict with Section 23-1-63, Code of Alabama (7/24th law).
- (19) The CITY will be obligated for the payment of damages occasioned to private property, public utilities or the general public, caused by the legal liability (in accordance with Alabama and/or Federal law) of the CITY, its agents, servants, employees or facilities.
- (20) Exhibits M and N are attached and hereby made a part of this agreement.
- (21) This agreement is made and expressly executed in the names of the parties hereto by their respective officers, officials or other persons who are authorized to execute it, and it is deemed by the parties to be an agreement or contract under seal.

- (22) The terms of this agreement may be modified by supplemental agreement duly executed by the parties hereto.
- (23) This agreement may be terminated by either party upon the delivery of a thirty (30) day notice termination.

IN WITNESS WHEREOF, the parties hereto cause this agreement to be executed by those officers, officials, and persons thereunto duly authorized, and the agreement is deemed to be dated and to be effective on the date stated hereinafter as the date of the approval of the Governor of Alabama.

SEAL	
ATTEST:	CITY OF VESTAVIA HILLS, ALABAMA
	BY:
City Clerk (Signature)	Mayor (Signature) City of Vestavia Hills
Print Name of Clerk	Print Name of Mayor
RECOMMENDED FOR APPROVAL:	STATE OF ALABAMA ACTING BY AND THROUGH THE ALABAMA DEPARTMENT OF TRANSPORTATION
Innovative Programs Engineer Edward N. Austin, P.E.	Chief Engineer Ronald L. Baldwin, P.E.
THIS AGREEMENT HAS BEEN LEGAL	LLY REVIEWED AND APPROVED AS TO F
AND CONTENT:	
	Transportation Director John R. Cooper
AND CONTENT: Chief Counsel	John R. Cooper

ROBERT BENTLEY

7/18/90 Exhibit M

CERTIFICATION

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

(1)No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2)If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

EXHIBIT N

FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this agreement shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this agreement, be enacted, then the conflicting provision in the agreement shall be deemed null and void.

TERMINATION DUE TO INSUFFICIENT FUNDS

If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.

In the event of proration of the fund from which payment under this agreement is to be made, agreement will be subject to termination.

ADR CLAUSE

For any and all disputes arising under the terms of this contract, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation by and through the Attorney General Office of Administrative Hearings or where appropriate, private mediators.

AMENDED ALABAMA IMMIGRATION LAW:

By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

RESOLUTION NUMBER		
BE IT RESOLVED , by the City Council of the City of Vestavia Hills, Alabama as follows:		
1.	That the City enters into an agreement w through the Alabama Department of Trans	
	The resurfacing on CR-113 (Rocky Ridg Crest Road). Length – 4.11 miles Project# ACAA59495-ATRP(006); ATR	e Road) from Lorna Road to CR-97 (Shades IP# 37-03-34
2.	That the agreement be executed in the na behalf.	me of the City, by its Mayor, for and on its
3.	That the agreement be attested by the City Clerk and the seal of the City affixed thereto.	
BE IT FURTHER RESOLVED , that upon the completion of the execution of the agreement by all parties, that a copy of such agreement be kept on file by the City Clerk.		
Passed, adopted and approved this day of, 20		
ATTESTED:		
City C	Clerk	yor, City of Vestavia Hills
I, the undersigned qualified and acting clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the day of, 20, and that such resolution is on file in the City Clerk's office. IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on the day of, 20		
	Cit	ry Clerk
	CI	y CICIK

ORDINANCE NUMBER 2608

AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF PROPERTY FROM VESTAVIA HILLS R-1 TO VESTAVIA HILLS O-1

BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Vestavia Hills R-4 (medium density residential district), B-1 with conditions (Neighborhood Business District), B-2 with conditions (General Business District), B-1.2 (Neighborhood Mixed Use District), B-1.2 with conditions (Neighborhood Mixed Use District), INST (Institutional District) to Vestavia Hills B-1.2 with the Conditional Use for a 4-story building (Neighborhood Mixed Use District):

4248 Oakview Lane, 4244 Oakview Lane,
4240 Oakview Lane, 4232 Oakview Lane,
4325 Dolly Ridge Road, 4321 Dolly Ridge Road,
4317 Dolly Ridge Road, Vestavia Hills, Alabama
Johnnie Rogers, John Boone,
Maude K. Powell, BEC, Inc. (David Bruno),
Billano Investments, Inc., (Dr. Retna Billano),
Cahaba Heights Development, LLC (Thornton Hydinger)
and JFKE, LLC (John Whitson), Owner(s)

More particularly described as follows:

Commence at the Northeast Corner of the Northeast Quarter of the Southwest Quarter of Section 22, Township 18 S, Range 2 W (not recovered); thence run N 89°14'17" W along the north line of said Quarter for a distance of 338.68 feet to a nail found on the southeast corner of Lot 24A of a Resurvey of Lots 24, 25, 26, and 27 New Merkle Heights J.D. Acton Survey, as recorded in the Office of the Judge of Probate for Jefferson County in Plat Book 235 Page 58, said point being the POINT OF BEGINNING of the following described parcel:

Thence run N 89°14'17" W along the south line of Lot 24A of a Resurvey of Lots 24, 25, 26, and 27 New Merkle Heights J.D. Acton Survey and along the north line of said Quarter for a

distance of 387.5 feet to a point; thence leaving the North line of said Quarter run N 00°45'43" E for a distance of 95.57 feet to a point; thence run S 88°42'33" E for a distance of 39.08 feet to a point; thence run N 00°00'08" W for a distance of 155.50 feet; thence run N 39°39'22" E for a distance of 69.98 feet to a point on the south line of Lot 5 Cahaba Oaks Garden Homes Subdivision as recorded in the Office of the Judge of Probate for Jefferson County in Plat Book 198 Page 26; thence run S 77°30'27" E along the south line of Lots 5, 8, and 9 of said Cahaba Oaks Garden Homes Subdivision for a distance of 153.75 feet to a point in the center of an alley vacated by INST #9812/3420; thence run N 31°06'43" E along the center of said vacated alley for a distance of 85.18 feet to a point; thence run S 89°12'09" E along the north line of Lot 29 of New Merkle Heights J.D. Acton Survey, as recorded in the Office of the Judge of Probate for Jefferson County in Plat Book 19 Page 92 for a distance of 213.16 feet to a point on the northeast corner of Lot 29 of said New Merkle Heights J.D. Acton Survey said point also being on the Westerly Right-of-Way of Oakview Lane; thence run S 09°49'39" W along the Westerly Right-of-Way of Oakview Lane for a distance of 291.45 feet to a point; thence run N 89°28'33" W Westerly Right-of-Way of Oakview Lane for a distance of 12.01 feet to a point on the Easterly line of Lot 24A of a Resurvey of Lots 24, 25, 26, and 27 New Merkle Heights J.D. Acton Survey; thence run S 24°13'51" W along the Westerly Right-of-Way of Oakview Lane for a distance of 31.47 feet to a point on the Easterly line of Lot 24A of a Resurvey of Lots 24, 25, 26, and 27 New Merkle Heights J.D. Acton Survey; thence run S 45°06'45" W along the Westerly Right-of-Way of Oakview Lane for a distance of 42.72 feet to the POINT OF BEGINNING; said parcel containing 135,504 square feet (3.11 acres) more or less

APPROVED and ADOPTED this the 26th day of October, 2015.

Alberto C. Zaragoza, Jr. Mayor

ATTESTED BY:

Rebecca Leavings City Clerk

Subject Properties

4248 Oakview Lane, 4244 Oakview Lane, 4240 Oakview Lane, 4232 Oakview Lane 4325 Dolly ridge Road, 4321 Dolly Ridge Road, 4317 Dolly Ridge Road



CITY OF VESTAVIA HILLS

SYNOPSIS AND STAFF RECOMMENDATION CONCERNING APPLICATION BEFORE THE PLANNING AND ZONING COMMISSION

Date: **SEPTEMBER 10, 2015**

- <u>CASE</u>: P-0915-52
- **REQUESTED ACTION:** Rezoning from Vestavia Hills B-1.2, Vestavia Hills Inst-1, Vestavia Hills B-1, Vestavia Hills B-2, and Vestavia Hills R-4 to Vestavia Hills B-1.2 with a Conditional Use for a Four Story Building
- ADDRESS/LOCATION: Oakview Ln and Dolly Ridge Rd.
- <u>APPLICANT/OWNER</u>: BEC, Inc., John Boone, LLC, Maude K. Powell, and Johnnie Rodgers
- **REPRESNTING AGENT:** Steven Hydinger
- **GENERAL DISCUSSION:** Property directly adjacent to Cahaba Heights Elementary. Applicants are seeking rezoning to continue the dense development pastern established in the Cahaba Heights Village amendment and the approval of Billano Dermatology. The applicants have submitted an updated master plan for the entire project. The plan includes a multi-family/retail mixed-use development consisting of 81 units and 15,000 square feet of retail.

The multifamily will be split between two buildings with a pool/common area in the middle. The large multi-family building will front the newly created road will face the new street and Oakview Ln. The second multi-family building will have frontage along Oakview Ln. An additional 13,000 square feet of retail proposed, fronting Dolly Ridge Rd.

Retail will be split between two separate buildings as well. The larger 10,000 sq. ft. 2 story building will front Dolly Ridge Rd. The second retail building will share a wall with the multi-family building along the new road and will have residential above.

A regulating plan showing the various building distances to the property lines are attached.

Parking is shared throughout the development with parking all on one level. Street parking will also be utilized on the new street. A preliminary landscape plan is also attached.

A Conditional Use permit is also requested to allow the mixed use building to be four stories. The Zoning Ordinance caps building height at 3 stories, with any additional

height to go through the CU process. The applicants contend that the slope of the land mitigates any potential unsightliness from an additional story.

If zoning is approved, applicant will replat the site. ROW on the corner of Oakview Ln. and the new street will also need to be vacated.

• <u>CAHABA HEIGHTS COMMUNITY PLAN</u>: The request is consistent with the Cahaba Heights Community Plan for mixed use and pedestrian oriented development.

• <u>STAFF REVIEW AND RECOMMENDATION</u>:

1. City Planner Review: I have looked at all of the relevant zoning / subdivision requirements related to this proposal, including application, notification, setbacks, area of lot development, etc. Notification has been sent to property owners pursuant to Alabama law. I have reviewed this request and find it does meet the minimum requirements of the proposed zoning.

City Planner Recommendation: No recommendation

- 2. City Engineer Review: Will review traffic and access.
- 3. **City Fire Marshal Review:** I have reviewed the application and I have no issues with this request.
 - 4. **Building Safety Review:** I have reviewed the application and I have no issues with this request.

MOTION Mr. Visintainer made a motion to recommend approval of Rezoning at Vestavia Hills B-1.2, Vestavia Hills Inst-1, Vestavia Hills B-1, Vestavia Hills B-2, and Vestavia Hills R-4 to Vestavia Hills B-1.2 with a Conditional Use for a Four Story Building. Second was by Mr. Wolfe. Motion was carried on a roll call; vote as follows:

Mr. Goodwin – yes
Mr. Gilchrist – yes
Mr. Wolfe – yes
Mr. Visintainer – yes
Mr. Larson – no
Mr. Burrell – no
Mr. Sharp – yes
Mr. House – yes
Mr. Brooks – yes
Mr. Larson – no
Motion carried.

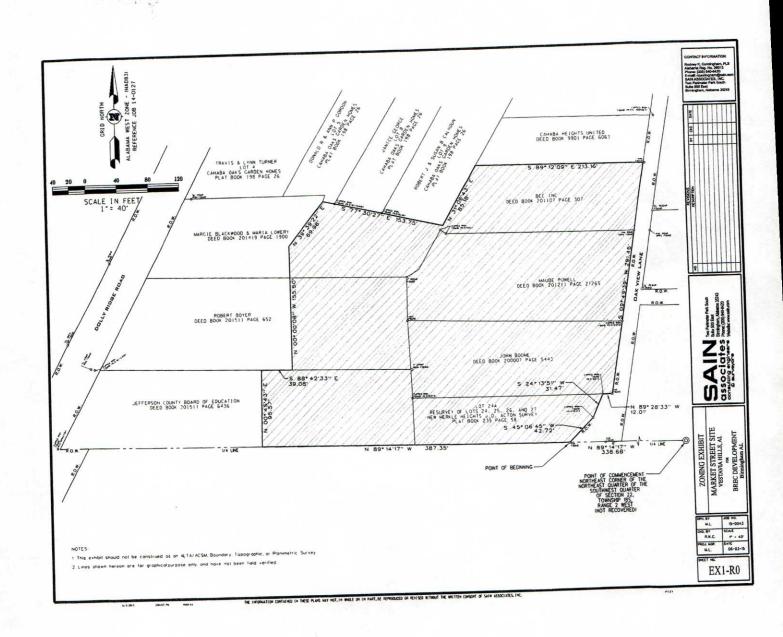
P0915-52//28-22-2-10-17

Oakview Ln & Dolly Ridge Rd.

Rezone to VH B 1.2 Multiple Owners

VH R-

4,B2, B1 & Inst. 1



P0915-52//28-22-2-10-17 Oakview Ln & Dolly Ridge Rd.

Rezone to VH B 1.2 Multiple Owners 4,B2, B1 & Inst. 1

VH R-

COMMENCE at the Northeast Corner of the Northeast Quarter of the Southwest Quarter of Section 22, Township 18 S, Range 2 W (not recovered); thence run N 89° 14' 17" W along the North line of said Quarter for a distance of 338.68 feet to a nail found on the Southeast Corner of Lot 24A of a Resurvey of Lots 24, 25, 26, and 27 New Merkle Heights J.D. Acton Survey, as recorded in the Office of the Judge of Probate for Jefferson County in Plat Book 235 Page 58, said point being the POINT OF BEGINNING of the following described parcel;

thence run N 89° 14' 17" W along the South Line of Lot 24A of a Resurvey of Lots 24, 25, 26, and 27 New Merkle Heights J.D. Acton Survey and along the North line of said Quarter for a distance of 387.35 feet to a point; thence leaving the North line of said Quarter run N 00° 45' 43" E for a distance of 95.57 feet to a point; thence run S 88° 42' 33" E for a distance of 39.08 feet to a point; thence run N 00° 00' 08" W for a distance of 155.50 feet; thence run N 39° 39' 22" E for a distance of 69.98 feet to a point on the south line of Lot 5 Cahaba Oaks Garden Homes Subdivision as recorded in the Office of the Judge of Probate for Jefferson County in Plat Book 198 Page 26; thence run S 77° 30' 27" E along the South line of Lots 5, 8, and 9 of said Cahaba Oaks Garden Homes Subdivision for a distance of 153.75 feet to a point in the center of an alley vacated by INST# 9812/3420; thence run N 31° 06' 43" E along the center of said vacated alley for a distance of 85.18 feet to a point; thence run S 89° 12' 09" E along the North line of Lot 29 of New Merkle Heights J.D. Acton Survey, as recorded in the Office of the Judge of Probate for Jefferson County in Plat Book 19 Page 92 for a distance of 213.16 feet to a point on the Northeast corner of Lot 29 of said New Merkle Heights J.D. Acton Survey said point also being on the Westerly Right-of-Way of Oak View Lane; thence run S 09° 49' 39" W along the Westerly Right-of-Way of Oak View Lane for a distance of 291.45 feet to a point; thence run N 89° 28' 33" W Westerly Right-of-Way of Oak View Lane for a distance of 12.01 feet to a point on the Easterly line of Lot 24A of a Resurvey of Lots 24, 25, 26, and 27 New Merkle Heights J.D. Acton Survey; thence run S 24° 13' 51" W along the Westerly Rightof-Way of Oak View Lane for a distance of 31.47 feet to a point on the Easterly line of Lot 24A of a Resurvey of Lots 24, 25, 26, and 27 New Merkle Heights J.D. Acton Survey; thence run S 45° 06' 45" W along the Westerly Right-of-Way of Oak View Lane for a distance of 42.72 feet to the POINT OF **BEGINNING:**

said parcel containing 135,504 (3.11 acres) more or less



WILLIAMS BLACKSTOCK ARCHITECTS

