



Case # SLUP-11

Public Hearing Dates:

PC: 9-3-19

BOC: 9-17-19

Cobb County Community Development Agency  
Zoning Division

1150 Powder Springs St. Marietta, Georgia 30064

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**SITE BACKGROUND**

Applicant: Milestone Hotel Management

Phone: 678-361-4455

Email: [bhira10@gmail.com](mailto:bhira10@gmail.com)

Representative Contact: Garvis L. Sams, Jr.

Phone: 770-422-7016

Email: [gsams@slhb-law.com](mailto:gsams@slhb-law.com)

Titleholder: Habersham Wildwood, LLC

Property location and address: North side of  
Windy Hill Road, east of Powers Ferry Road

Access to Property: Windy Hill Road

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**QUICK FACTS**

Commission District: 2-Ott

Current Zoning: OMR (Office Mid-Rise)

Current use of property: Parking Lot

Proposed use: Suite Hotel

Future Land Use Designation: RAC (Regional Activity  
Center)

Site Acreage: 1.912 ac

District: 17

Land Lot: 941

Parcel #: 17094100070

Taxes Paid: Yes

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**FINAL ZONING STAFF RECOMMENDATION:**  
(Zoning staff member: Terry Martin, MPA)

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

1. Letter of agreeable conditions from Mr. Garvis L. Sams, Jr. received by the Zoning Division on July 9, 2019 including the revised site plan contained therein;
2. District Commissioner to approve final building elevations including colors and materials;
3. District Commissioner to approve final landscape plan;
4. Applicant to meet all requirements specific to the operation of a suite hotel as outlined in 134-220 (11) a. not otherwise waived including, but not limited to, weekly cleaning, smoke detectors, and automatic power off timers for each stove/cook top unit or other type burner;
5. Fire Department comments and recommendations;
6. Stormwater Management Division comments and recommendations;
7. Water and Sewer Division comments and recommendations; and
8. Department of Transportation comments and recommendations.

**SLUP-11  
(2019)**

**L** LEGAL  
**P** PLANNING  
**B** BUILDING  
**C** COMMUNITY DEVELOPMENT

APPROX. LAND LOT LINE  
APPROX. LAND LOT LINE

**RECEIVED  
JUL 9 2019**

**REVISED**

MRE POWERS FERRY LLC  
D.B. 14573 / P. 5907

N/W  
PBI LLC

DRIVER  
HARRISMAN  
WELSH/DC, LLC

**PROJECT DATA**

1. JOBNO. S 1411 (OFFICE USE ONLY)
2. OWNER: HARRISMAN WELSH/DC, LLC  
CONTRACT NO. 6-27-2019-0001  
ISSUED DATE: JAN 2020, 0000 DOWNTOWN
3. ARCHITECT: HARRISMAN WELSH/DC, LLC / ARCHITECT PROVIDED IS 1511L
4. ALLOWED BUILDING HEIGHT IS 5 STORIES WITH BULKHEAD (27' MAXIMUM)
5. REQUIRED PARKING IS 10 SPACES / 10 OR 100 TOTAL SPACES  
PARKING PROVIDED IS 25 SPACES
6. MINIMUM 50% FLOOR FINISHED SHALL BE 4 FT. OR GREATER
7. FLOOD ZONE IS 1-WHICHING (BASED ON 100 YEAR FLOOD LEVEL)
8. PROPOSED HOTEL INCLUDES 55 TOTAL CLOSETING / 16172 SF
9. REQUIRED OR EXISTING MANHOLE WHICH NEEDS A WORK OF THE CITY IS INDICATED BY THE LINE ON THE EASTERN SIDE OF THE PROPERTY.

PROJECT # 23006  
DATE: 07/11/2019  
DRAWN BY: J. ROSS  
CHECKED BY: J. ROSS

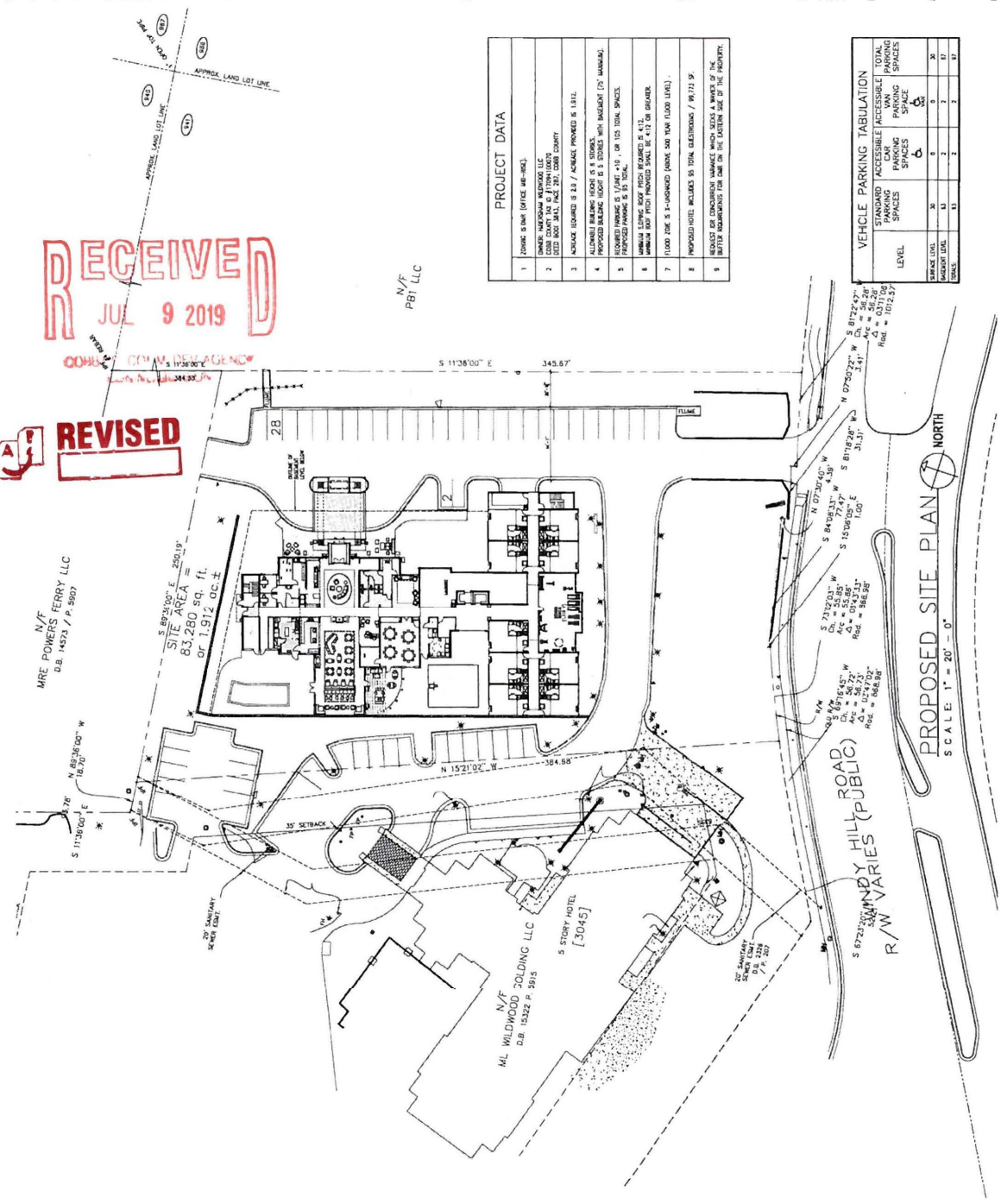
SCALE: AS SHOWN

PROPOSED SITE PLAN

**A593**

**VEHICLE PARKING TABULATION**

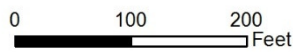
LEVEL	STANDARD PARKING SPACES	ACCESSIBLE PARKING SPACES	TOTAL PARKING SPACES
GRADE LEVEL	25	6	31
1ST FLOOR LEVEL	13	3	16
2ND FLOOR LEVEL	2	2	4
3RD FLOOR LEVEL	2	2	4





# SLUP-11 2019-Aerial Map



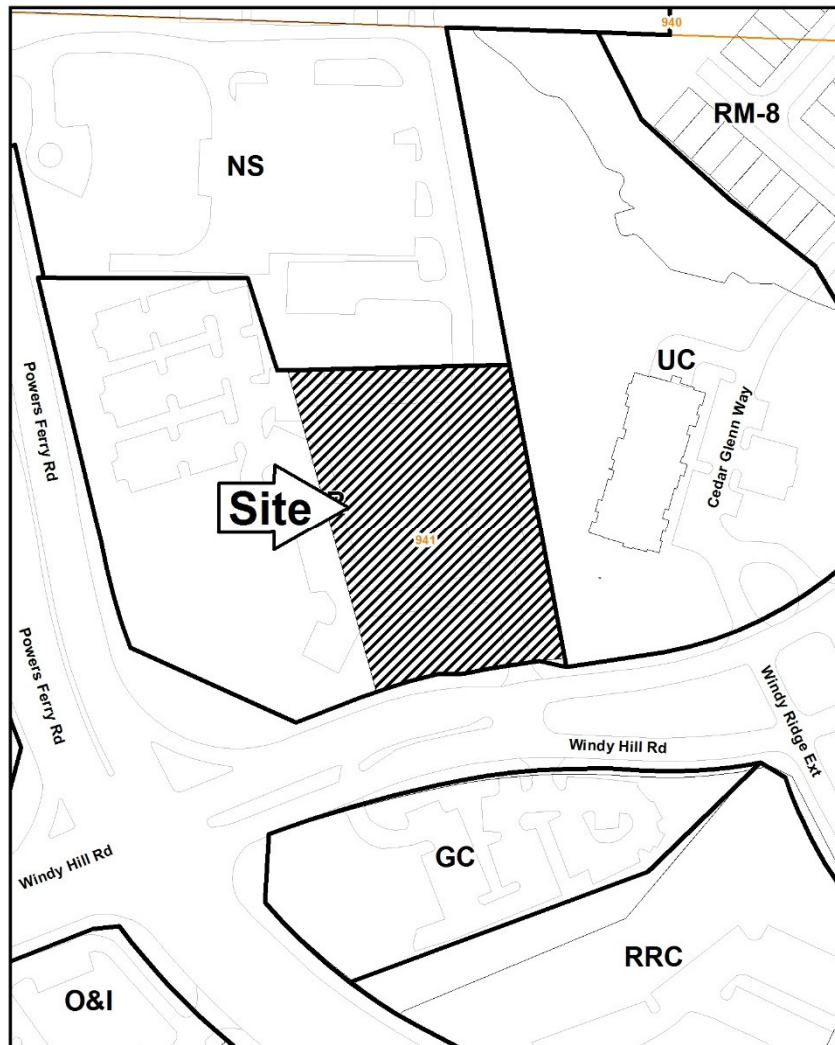
This map is provided for display and planning purposes only. It is not meant to be a legal description.



-  Zoning Boundary
-  City Boundary

North  
**Zoning:** NS (Neighborhood Shopping)  
**Future Land Use:** RAC (Regional Activity Center)

**SLUP-11 2019-GIS**



WEST  
**Zoning:** OMR  
(Office Mid-Rise)  
**Future Land Use:** RAC  
(Regional Activity Center)

EAST  
**Zoning:** UC  
(Urban Condominium Residential)  
**Future Land Use:** RAC  
(Regional Activity Center)

SOUTH  
**Zoning:** GC (General Commercial)  
**Future Land Use:** RAC (Regional Activity Center)

## **DEPARTMENT COMMENTS- Zoning Division**

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

The OMR district is established to provide locations for uses such as offices, financial institutions and accessory retail sales and service uses (four to eight stories) which are on properties delineated within a regional activity center as defined and shown on the Cobb County Comprehensive Plan: A Policy Guide, adopted November 27, 1990.

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

The OMR district is established to provide locations for uses such as offices, financial institutions and accessory retail sales and service uses (four to eight stories) which are on properties delineated within a regional activity center as defined and shown on the Cobb County Comprehensive Plan: A Policy Guide, adopted November 27, 1990.

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

The applicant is seeking a Special Land Use Permit (SLUP) for the purpose of a suite hotel. Currently developed only as accessory parking for the adjacent hotel to the immediate west, the proposal is to construct a five-story suite hotel approximately 99,773 square feet in size containing 95 total guest suites and structured (basement) parking. Much of the existing surface parking will be preserved in the existing configuration. Each suite will contain a kitchenette which includes a stove top, microwave, full size refrigerator, and dishwasher. The building will have stucco and brick exterior.

### **Non-residential criteria**

Proposed # of buildings: 1  
Proposed # of stories: 5  
Total sq. footage of development: 99,773 sq. ft.  
Floor area ratio: 1.2  
Square footage per acre: 52,182 sq. ft.  
Required parking spaces: 105  
Proposed parking spaces: 95  
Acres in floodplain or wetlands: 0  
Impervious surface shown: 61.7%

## **DEPARTMENT COMMENTS- Zoning Division (continued)**

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

Yes, the application will require the following variances:

1. Reduce the number of required parking spaces from 105 to 95 spaces;
2. Reduce the required acreage for a suite hotel from two (2) acres to 1.912 acres;
3. Reduce the buffer requirements for the OMR district adjacent to a residentially zoned property on the eastern side from 35 feet to zero feet; and
4. To allow a flat roof for a suite hotel.

## **DEPARTMENT COMMENTS- Fire Department**

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IFC 510- EMERGENCY RESPONDER RADIO COVERAGE. New buildings over 12,000 SF are required to provide radio coverage for emergency responders per the International Fire Code. Testing is required by a third party and when deemed necessary amplification systems are required before the building will be issued a certificate of occupancy. This message is to serve as an early notification to owners and developers for budgeting purposes.

FIRE ENGINE ACCESS: The fire department must be able to access the long side of the building.

ACCESS: Fire apparatus access roads shall extend to within 150 feet of all portions of the facility or any portion of the exterior wall of the first floor (State Modifications IFC 503.1 2012 Edition).

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

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

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

## **DEPARTMENT COMMENTS- Fire Department (continued)**

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Aerial apparatus access shall be required for all structures over 30 feet in height measured from the lowest level of fire department access to the ceiling height of the highest occupied floor level. Aerial fire apparatus access roads shall be a minimum width of 24 feet maximum of 40 feet from the structure and be positioned parallel to one entire side of the building. No overhead utility and power lines shall be located within the aerial fire apparatus access. (Cobb County Development Standards 401.08.02.1)

Access easements may be required from the property line through the adjacent property to the point of egress onto the ROW.

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

LODGING: Where 4 or more (>3) unrelated residents share a dwelling a new certificate of occupancy is required to include implementation of both a fire alarm and fire sprinkler system.

Modifications may be required to incorporate the Cobb County Fire Marshal's Office comments.

## **DEPARTMENT COMMENTS- Site Plan Review (County Arborist)**

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No comments.

## **DEPARTMENT COMMENTS- Cemetery Preservation**

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No comment.

## **DEPARTMENT COMMENTS- School System**

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No comments.

## **DEPARTMENT COMMENTS- Stormwater Management**

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1. Flood hazard: No
2. Flood hazard zone: Zone X
3. Drainage Basin: Powers Branch
4. Wetlands: No
5. Streambank buffer zone: No
6. Stormwater discharges must be controlled not to exceed the existing capacity of the downstream storm drainage system.
7. Project engineer must evaluate the impact of increased volume of runoff generated by the proposed project on existing downstream drainage system(s).
8. Special site conditions and/or additional comments:

This site discharges to the existing stormwater management facility for the adjacent Marriott Courtyard Hotel development. If development of this portion of the site was not accounted for in the original approved hydrology study, separate stormwater management will be required or the existing facility must be expanded/ revised to accommodate the additional site runoff.



**DEPARTMENT COMMENTS- Planning Division**

**Cobb 2040 Comprehensive Plan:** The parcel is within the Regional Activity Center with an Office subcategory (RAC/off) future land use category. The purpose of the RAC category is to provide for areas that can support high-intensity development which serves a regional market. Typical land uses in these areas include high-rise office buildings, regional malls and residential development of varying densities. Office developments are considered the most appropriate development in the off Sub-Area. However, mixed-use developments that include retail as well as mid- or high-rise residential developments including those in excess of four (4) stories per structure. are also appropriate in this category. Because of the unique, urban characteristics of RACs, building height and density should be reviewed on a case-by-case basis.

**Comprehensive Plan Designation:**  Consistent  Inconsistent

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

Is the proposal within one-half mile of a city boundary?  Yes  No

Was the city notified?  Yes  No  N/A

**Specific Area Policy Guidelines:**  Yes  No

**Masterplan/ Corridor Study** - Powers Ferry Master Plan  Yes  No

**Design guidelines area?**  Yes  No

Does the proposal plan comply with the design requirements?  Yes  No  N/A

**Is the property within an Opportunity Zone?**  Yes  No

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

**Is the property within an Enterprise Zone?**  Yes  No

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

**Is the property eligible for the Façade Improvement Program?**  Yes  No

*(The Façade Improvement Program is an incentive for owners and tenants to enhance the appearance of buildings. The CDBG*

**DEPARTMENT COMMENTS- Planning Division** (continued)

*program provides the funding. Properties must be either on the current inventory of redevelopment sites or in a corridor study area, and be in a census tract with at least 51% low and moderate income. The program serves to improve the economic viability of these areas.)*

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

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

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

**Special District**

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

 Yes     No

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

 Yes     No

Is this property within the Six Flags Special Service District?

 Yes     No
**Dobbins Air Reserve Base Zones**

Is the property within the Dobbins Airfield Safety Zone?

 Yes     No

Is the property within the Clear Zone (CZ)?

 Yes     No

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

 Yes     No

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

 Yes     No

Is the property within the Noise Zone?

 Yes     No

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

 Yes     No
**Historic Preservation**

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

## **DEPARTMENT COMMENTS- Water and Sewer**

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Water and sewer available. Wastewater treatment capacity (R.L Sutton) available.

## **DEPARTMENT COMMENTS- Transportation**

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### **Recommendations**

1. Recommend applicant be required to meet all Cobb County Development Standards and Ordinances related to project improvements.
2. Recommend applicant submit site details to Cobb DOT for coordination with Cobb County Airport Manager to determine potential need for a FAA study.
3. Recommend developer work with Cobb DOT to determine the level of traffic study needed.

## STAFF ANALYSIS

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There are fifteen criteria that must be considered for a Special Land Use Permit. The criteria are below in bold, with the staff analysis written not bold:

**(1) Whether or not there will be a significant adverse effect on the neighborhood or area in which the proposed use will be located.**

The proposed suite hotel will be an improvement to the existing underutilized property and the surrounding area.

**(2) Whether or not the use is otherwise compatible with the neighborhood.**

Located within an established commercial area within the Cumberland-Galleria Regional Activity Center (RAC), the use is compatible with the area.

**(3) Whether or not the use proposed will result in a nuisance as defined under state law.**

The proposed use will not result in a nuisance as defined under state law.

**(4) Whether or not quiet enjoyment of surrounding property will be adversely affected.**

Being within an established commercial area, the use will not adversely affect the quiet enjoyment of surrounding property.

**(5) Whether or not property values of surrounding property will be adversely affected.**

Property values of surrounding property will not be adversely affected.

**(6) Whether or not adequate provisions are made for parking and traffic considerations.**

The applicant is requesting a reduction by ten (10) of the minimum number of required parking spaces from 105 to 95.

**(7) Whether or not the site or intensity of the use is appropriate.**

The use is appropriate for the site, located near Interstates 75 and 285 as well as attractions such as Suntrust Park and the Battery, the request will enhance hotel offerings in the area.

**(8) Whether or not special or unique conditions overcome the board of commissioners' general presumption that residential neighborhoods should not allow noncompatible business uses.**

The property is within an established commercial area.

**(9) Whether or not adequate provisions are made regarding hours of operation.**

The hours of operation will be as are appropriate for a hotel and market conditions.

STAFF ANALYSIS (continued)

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**(10) Whether or not adequate controls and limits are placed on commercial and business deliveries.**

The property's deliveries will not adversely impact adjacent uses.

**(11) Whether or not adequate landscape plans are incorporated to ensure appropriate transition.**

While the applicant has not yet submitted a landscape plan, they have offered to establish a Landscape Oversight Committee consisting of themselves, the Powers Ferry Corridor Alliance and a Community Development Agency designee. Any landscaping concerns including the requested waiver along the eastern property line can be addressed through this committee during the Plan Review process.

**(12) Whether or not the public health, safety, welfare or moral concerns of the surrounding neighborhood will be adversely affected.**

The public health, safety, welfare, or moral concerns of the surrounding area will not be adversely affected by the applicant's proposal.

**(13) Whether the application complies with any applicable specific requirements set forth in this chapter for special land use permits for particular types of uses.**

The applicant is requesting a variance of the minimum two (2) acre lot size requirement to 1.912 acres as well as the minimum number of parking spaces from a requirement of 105 to 95 and the pitched roof requirement to allow for a flat roof as depicted in the submitted renderings.

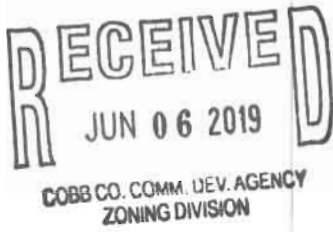
**(14) Whether the applicant has provided sufficient information to allow a full consideration of all relevant factors.**

The applicant has provided sufficient information to allow a full consideration of all relevant factors.

**(15) In all applications for a special land use permit the burden shall be on the applicant both to produce sufficient information to allow the county fully to consider all relevant factors and to demonstrate that the proposal complies with all applicable requirements and is otherwise consistent with the policies reflected in the factors enumerated in this chapter for consideration by the county.**

The property is property zoned and will result in an enhancement to the existing site as well as area.

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



**STATEMENT OF INTENT**

**OF**

**MILESTONE HOTEL MANAGEMENT**

**Special Land Use Permit Application  
for a 1.912 Acre Tract of Land located in  
Land Lot 941, 17<sup>th</sup> District, 2<sup>nd</sup> Section,  
Cobb County, Georgia**

**Submitted for the Applicant by:**

**Garvis L. Sams, Jr.  
Sams, Larkin, Huff & Balli, LLP  
Suite 100  
376 Powder Springs Street  
Marietta, GA 30064  
(770) 422-7016  
[gsams@slhb-law.com](mailto:gsams@slhb-law.com)**

## I. INTRODUCTION

This Application seeks a Special Land Use Permit (“SLUP”) to allow the construction and development of a nationally branded Hotel. The property at issue is situated on the north side of Windy Hill Road, east of Powers Ferry Road and is presently zoned in the Office Mid Rise (“OMR”) zoning classification. The County’s Future Land Use Map (“FLUM”) reflects the subject property is located within the Cumberland/Galleria Regional Activity Center (“RAC”). This area along the Windy Hill Road and Powers Ferry Road Corridors is adjacent to various retail, commercial, office, hotel and higher-density residential uses complementary to this proposed hotel use.

## II. CRITERIA TO BE APPLIED TO SPECIAL LAND USE PERMITS

**A. Whether or not there will be a significant adverse effect on the neighborhood or area in which the proposed use will be located.**

The subject property is bordered by properties zoned and used for office/commercial, hotel and higher-density residential purposes. The area within which the proposed development will be located is appropriate to accommodate the proposed use. Traffic generated thereby will produce little AM/PM peak hour traffic problems. Therefore, the proposal will have no adverse impact upon neighborhoods or adjacent properties. As shown by the Traffic Generation Memorandum which is being submitted concurrently herewith.

**B. Whether or not the use is otherwise compatible with the neighborhood.**

The developments adjacent to the subject property are zoned commercially, for offices, hotels, restaurants, retail and/or higher-density residential uses found within and on the periphery of and within the existing RAC under the FLUM. Given these facts and the

reality that this area already consists of a mix of uses, an extraordinary amount of “mass market” is available and compatible with the Applicant’s target demographics which include: the traveling public; corporate executives who are relocating or in town for long-term projects or training; families who are visiting Cobb County attractions areas such as the Braves’ SunTrust Park & The Battery, Six Flags, White Water and/or other activities; and, those individuals who simply are making transitions between homes and/or business logistics and circumstances.

**C. Whether or not the use proposed will result in a nuisance as defined under state law.**

The proposed use will not result in a nuisance, either public or private, as that term is used and defined under Georgia law.

**D. Whether or not the quiet enjoyment of surrounding property will be adversely affected.**

The adjacent contiguous properties primarily consist of office/commercial, retail, restaurants, hotels and higher-density residential developments which generate more traffic and are far more intense particularly in AM/PM peak hours than the Hotel use proposed by the Applicant.

**E. Whether or not property values of surrounding property will be adversely affected.**

The surrounding properties consist primarily as described above. The values of surrounding properties will not be adversely affected by the proposed use and may enjoy added value and consumer convenience.



**F. Whether or not adequate provisions are made for parking and traffic considerations.**

The RAC designated area within which the subject property is located is specifically designed for larger more intense type uses which will not generate an inordinate amount of traffic and significantly less traffic than all other uses in general and specifically less in AM/PM peak hours. The Applicant will provide ample on-site surface and structured parking and will participate in Ride-Share accommodations; take advantage of designated shuttle-bus services; and, employ proactive transportation strategies.

**G. Whether or not the site or intensity of the use is appropriate.**

The proposed Hotel is complementary to existing and proposed uses at this strategically positioned point at the confluence of Windy Hill Road and Powers Ferry Road.

**H. Whether or not special or unique conditions overcome the Board of Commissioners' general presumption that residential neighborhoods not allow non-compatible businesses.**

The proposed use for the overall development is compatible with surrounding and adjacent properties. The proposed Hotel will have little, if any, effect upon the office, commercial and higher-density residential use of properties in view of the fact the proposed use will be both aesthetically and architecturally complementary and will include high-end landscaping and upgraded infrastructure.

**I. Whether or not adequate provisions are made regarding hours of operation.**

The hours of operation of the Hotel will operate 24/7 consistent with other Hotel uses with state-of-the-art security protocols.

**J. Whether or not adequate controls and limits are placed on commercial and business deliveries.**

Deliveries to the subject property will be commensurate in number and type to existing deliveries to other Hotels located within RACs or as located in other parts of Cobb County which hotels are operating.

**K. Whether or not adequate landscape plans are incorporated to ensure an appropriate transition.**

The Applicant will submit a landscape plan during the Plan Review Process subject to review and approval by the County's Arborist and the Community Development Department, with final review and approval by the District Commissioner.

**L. Whether or not the public health, safety, welfare or moral concerns of the surrounding neighborhood will be adversely affected.**

The surrounding "neighborhood" consists primarily of restaurants, office/commercial, retail, hotels and higher-density residential uses, which are compatible to and provide extraordinary "mass market" for the proposed Hotel due to the large number of corporate offices and corporate headquarters within this sub-area of Cobb County.

**M. Whether the Application complies with any applicable specific requirements set forth in this chapter for a Special Land Use Permit for particular types of uses.**

This Application meets all of the requirements for a Special Land Use Permit and all required information has been supplied within the SLUP Application.

**N. Whether the Applicant has provided sufficient information to allow a full consideration of all relevant factors.**

The Applicant has addressed all issues raised by law and/or Ordinance. The Applicant also remains available to respond to additional questions or issues raised by the County's professional staff, Members of the Planning Commission and/or Members of the Board of Commissioners.

**III. PRESERVATION OF CONSTITUTIONAL RIGHTS**

The Zoning Ordinance of Cobb County, Georgia lacks adequate standards for the Board of County Commissioners to exercise its power to issue Special Land Use Permits. In essence, the standards are not sufficient to contain the discretion of the Board of Commissioners and to provide the Courts with a reasonable basis for judicial review. Because the stated standards (individually and collectively) are too vague and uncertain to provide reasonable guidance to the Board of Commissioners, the Zoning Ordinance violates the Fifth and Fourteenth Amendments of the Constitution of the United States in matters of zoning. The Zoning Resolution also violates Article I, Section III, Paragraph 1; and Article 1, Paragraphs 1 and 2 of the Constitution of the State of Georgia, 1983.

The Board of Commissioners is granted the power to zone pursuant to Article IX, Section II, Paragraph 4 of the Constitution of the State of Georgia, 1983. It is a power which must be fairly exercised. Based on this element of fairness, the Zoning Ordinance of Cobb County, Georgia violates Article IX, Section II, Paragraph 4 of the Constitution of the State of Georgia, 1983.

The Zoning Ordinances presently in effect is contrary to the best interests of the health and welfare of the citizens of Cobb County, Georgia, and constitutes an arbitrary and capricious act. As a result, the Zoning Ordinance is in violation of Article I, Section III, Paragraph 1 of the Constitution of the State of Georgia; and Article I, Section II, Paragraph 3 of the Constitution of the State of Georgia, 1983. Furthermore, the Zoning Ordinance violates the due process clause and equal protection clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

In addition, the Zoning Ordinance is unconstitutional in that it renders the subject property unusable and destroys its marketability. Therefore, the Zoning Ordinance constitutes a taking of the Applicant's property without just and adequate compensation and without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution and in violation of Article I, Section I, Paragraph 1 and Article I, Section III, Paragraph 1(a) of the Constitution of Georgia.

The failure to approve the requested Special Land Use Permit for the subject property would constitute the taking of property without due process and without the payment of adequate compensation in violation of Article I, Section I, Paragraph 1 of the Constitution of the State of Georgia, 1983; and the Fifth and Fourteenth Amendments of the Constitution of the United States.

Failure to grant the Application for the Special Land Use Permit would be contrary to the best interests of the health and welfare of the citizens of Cobb County, Georgia, and would further constitute an arbitrary and capricious act. As such, failure to grant the application would constitute a violation of Article I, Section I, Paragraph 1 of the Constitution of the State of

Georgia, 1983; and Article I, Section III, Paragraph 1 of the Constitution of the State of Georgia; and Article I, Section II, Paragraph 3 of the Constitution of the State of Georgia, 1983, together with the due process clause and equal protection clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

Any limitation on the time for presentation of the issues before the Board of Commissioners who have the power to zone and rezone is a violation of the guarantees of free speech under Article I, Section I, Paragraph 5 of the Constitution of the State of Georgia, 1983 and the First Amendment of the Constitution of the United States of America. Further, said limitations are in violation of the right to petition and assemble, in violation of Article I, Section I, Paragraph IX of the Constitution of the State of Georgia, 1983 and the First Amendment of the Constitution of the United States of America as well as the due process clauses of the Constitution of Georgia, 1983 and the Constitution of the United States of America.

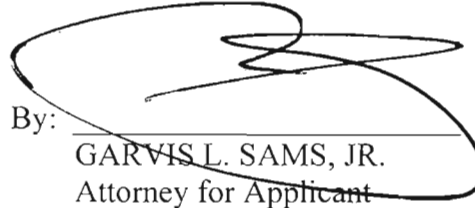
The Zoning Ordinance of Cobb County, Georgia is unlawful, null and void in that its adoption and map adoption/maintenance did not comply with the requirements of its predecessor ordinance and/or the Zoning Procedures Law, O.C.G.A. § 36-66-1, et seq.

#### **IV. CONCLUSION**

Based upon the foregoing reasons, the Applicant respectfully requests that the Special Land Use Permit at issue be approved with the Applicant soliciting any comments from staff or other officials of Cobb County so that such recommendations or input may be incorporated as conditions of approval of the Application.

Respectfully submitted, this the 6<sup>th</sup> day of June, 2019.

SAMS, LARKIN, HUFF & BALLI, LLP



By: \_\_\_\_\_

GARVIS L. SAMS, JR.  
Attorney for Applicant  
Georgia Bar No. 623950

376 Powder Springs Street, Suite 100  
Marietta, GA 30064  
(770) 422-7016

**SAMS, LARKIN, HUFF & BALLI**

A LIMITED LIABILITY PARTNERSHIP

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PARKS F. HUFF  
JAMES A. BALLI

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FACSIMILE

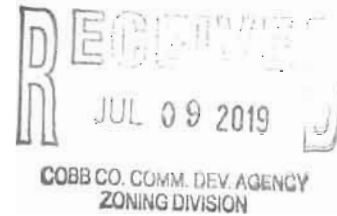
ADAM J. ROZEN

SLHB-LAW.COM

July 9, 2019

**VIA HAND DELIVERY & EMAIL:**

Mr. John P. Pederson, AICP, Manager  
Cobb County Zoning Division  
Community Development Agency  
1150 Powder Springs Road, Suite 400  
Marietta, GA 30064



Re: Application of Milestone Hotel Management for a Special Land Use Permit  
(No. SLUP-11)

Dear John:

You will recall that this firm represents Milestone Hotel Management (“Milestone”) concerning the above-captioned Special Land Use Permit (“SLUP”) Application. The Application is scheduled to be heard and considered by the Cobb County Planning Commission on September 3, 2019. Thereafter, the Application will be heard and considered by the Cobb County Board of Commissioners on September 17, 2019.

This SLUP Application was submitted to Cobb County on June 6, 2019. Since that time and as a consequence of the dialogue which we have established with members of Cobb County’s Professional Staff, area business owners, property owners and representatives from Cobb County’s Community Development Staff, this letter will serve as Milestone’s letter of agreeable stipulations/conditions.

In furtherance of the foregoing, Milestone proposes to construct a five-story, nationally-branded hotel approximately 99,773 sq. ft. in size (including the structured parking, canopy and outdoor recreational areas). The proposed hotel will accommodate approximately 95 total guest rooms/keys with associated structured parking within this commercially oriented sub-area of the County. Adjacent properties include an existing hotel and retail, office and commercial properties.

SAMS, LARKIN, HUFF & BALLI

A LIMITED LIABILITY PARTNERSHIP

**VIA HAND DELIVERY & EMAIL:**

Mr. John P. Pederson, AICP, Manager  
Cobb County Zoning Division  
July 9, 2019  
Page 2

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Considered within the context of market conditions and in light of the extremely positive “halo-affect” precipitated by the development of the Braves SunTrust Park and The Battery (as well as other recent development on both the Powers Ferry Road and Windy Hill Road Corridors, respectively.), dramatic changes have taken place regarding developmental activity and conditions within this area of the County. Additionally, existing and planned transportation and other traffic related infrastructure within this area (as well as accessibility, maneuverability, transportation logistics and access to major transit corridors) has vastly improved. Milestone’s proposal is in conformity with the policy and intent of the County’s Future Land Use Map and Comprehensive Land Use Plan and is located wholly within the Cumberland-Galleria Regional Activity Center (“RAC”).

This SLUP Application was filed for the purposes of the construction of a hotel which will accentuate Milestone’s ability to target demographics of the traveling and corporate public and which will add to the revitalization of adjacent properties and continue quality redevelopment at this vital intersection at the confluence of two (2) arterials.<sup>1</sup>

The following stipulations shall become conditions and a part of the grant of the requested SLUP Application and binding upon the Subject Property thereafter, to wit:

1. The stipulations and conditions set forth herein shall replace and supersede in full any and all prior stipulations and conditions in whatsoever form which are currently in place concerning the property which constitutes the subject matter of the above-captioned Application for Rezoning.<sup>2</sup>
2. Milestone seeks to demolish any infrastructure improvements currently on the Subject Property in order to allow for the construction and development of a nationally branded “Homewood Suites Hotel By Hilton” in substantial conformity to the revised site plan which is being submitted concurrently herewith.

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<sup>1</sup> Presently, Milestone has control over this geographic sub-area granted by Hilton.

<sup>2</sup> The Subject Property was rezoned to Office Mid-Rise (“OMR”) by the Cobb County Board of Commissioners on February 22, 2001 (No. Z-20 [2001]). Concurrently therewith, a Special Land Use Permit was granted concerning the existing hotel which is situated at the pin corner of the intersection (No. SLUP-5 [2001]).



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Cobb County Zoning Division  
July 9, 2019  
Page 3

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3. The Subject Property consists of an approximate 1.912 acre tract of land which will be developed as a five-story hotel with structured parking and some surface parking as mentioned above and with ancillary and permitted uses including, but not necessarily limited to, the following: swimming pool; basketball/all-sports court; and, outside dining/grilling areas including gas-fueled grill stands.
4. The Applicant or one of its subsidiaries will be the Owner of the Subject Property and the Master Developer and will be involved in all aspects of the development including, but not necessarily limited to, the management and day-to-day operations of the hotel, as Milestone had done with other hotels which it operates and manages within the State of Georgia and the Metropolitan Atlanta area.
5. Milestone agrees to construct all of the necessary driveways and infrastructure improvements as more particularly shown and reflected on the revised site plan. Additionally, Milestone agrees to comply in all respects with the County's specifications concerning site interior infrastructure more fully described hereafter.
6. The architectural style and composition of the hotel shall be in conformity to the specific architectural renderings/elevations which are being submitted concurrently herewith.
7. Entrance signage shall be ground-based, monument-style signage with finish, materials and colors being in substantial conformity to the architectural style and composition as mentioned above.
8. The Subject Property shall be developed solely and exclusively for hotel purposes as described herein with Milestone requesting the granting of the following concurrent variances:
  - a. Waiving the number required parking spaces from 105 to 95 spaces which includes standard parking spaces and ADA accessible parking spaces, most of which will be situated within structured parking under the Hotel and the balance by way of surface parking.

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Cobb County Zoning Division  
July 9, 2019  
Page 4

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- b. Waiving the required acreage for a Suites Hotel from two (2) acres to 1.912 acres.
  - c. Waiving buffer requirements for the OMR district on the eastern side of the Subject Property.
9. Compliance with recommendations from the Cobb County Department of Transportation (“DOT”), specifically including the following:
- a. The submission of a Trip Generation Memo (submitted concurrently with the Application for Rezoning).
  - b. Subsequent to recommendations from DOT at the Applicant’s meeting, A&R Engineering is in the process of completing a full Traffic Impact Study (“TIS”) which shall be submitted under separate cover directly to Cobb DOT and will include electronic synchro files.
  - c. Replacing any sidewalk, curb and gutter which may be disturbed during the Plan Review and Development Phases regarding the construction of the hotel on the site.
  - d. If the Subject Property’s proximity to the runways located within Dobbins/Lockheed mandates such, Milestone will submit a FAA Airspace Study.
  - e. The preparation of and/or adherence to planned and/or existing Reciprocal Easement Agreements (“REAs”) regarding interior pedestrian and vehicular maneuverability to and from adjoining properties.<sup>3</sup>
10. Compliance with the recommendations from the Stormwater Management Division with respect to detention, hydrology and downstream considerations.<sup>4</sup>

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<sup>3</sup> Upon request, existing REAs will be submitted under separate cover to the Stormwater Management Division, the Cobb County Water System and the Fire Marshal’s Office.

<sup>4</sup> The Subject Property is NOT within the Metropolitan River Protection Act (“MRPA”) Corridor and thus not subject to permeability and soil vulnerability requirements as established by the Atlanta Regional Commission (“ARC”).

Concurrently herewith but under separate cover, Milestone is submitting a Hydrology Study entitled the “Preliminary Hydrology Study of Tract F-17 (Wildwood Office Park), prepared for Milestone Hotel Management by Engineering & Inspection Systems, Inc., dated May 23, 2019.

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Cobb County Zoning Division  
July 9, 2019  
Page 5

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11. Compliance with recommendations from the Cobb County Water System regarding water and sewer availability and capacity, respectively. Presently, sewer capacity is available at the nearest treatment plant (Sutton). Likewise, water is available, plentiful and located at the Subject Property.
12. Compliance with Fire Marshal's regulations regarding life safety and fire prevention including the following:
  - a. Upon request, Milestone will submit REAs insuring interior maneuverability and accessibility for fire and public safety apparatus.
  - b. Compliance with International Fire Code ("IFC" 510).
  - c. The interior of the hotel as well as the structured parking component shall be sprinkled. Additionally, the construction of the structured parking shall require stand pipes in order to aide in fire suppression and prevention.
13. Lighting for the parking area shall be environmentally sensitive and shall be fitted with non-glare lenses and cutoff shields to prevent illumination from extending beyond the perimeter of the Subject Property. Security lighting shall be wall packs, hooded, environmentally sensitive and also fitted with non-glare lenses and cutoff shields.
14. Any dumpsters utilized by the Hotel shall be screened and situated in order to shield the dumpster from public vantage points, including streets and sidewalks; will have gates made of steel; and, will otherwise comply in all respects with Cobb County Regulations regarding dumpsters and/or at-grade trash compaction areas.
15. Milestone shall be responsible for setting up a Landscape Oversight Committee ("LOC") comprised of a representative of Milestone; the Powers Ferry Corridor Alliance ("PFCA"); a designee from the Community Development Agency; and, the District Commissioner who shall be the final arbiter concerning any issues which can not otherwise be resolved by the LOC.
16. All setbacks, landscaping and buffer areas may be penetrated for the purposes of access, utilities and stormwater management including, but not necessarily limited to, detention or water quality and any and all slopes or engineered features. Also, any such encroachments shall be allowed for Fire Marshal's Office-driven protocols or mandates.

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**VIA HAND DELIVERY & EMAIL:**

Mr. John P. Pederson, AICP, Manager  
Cobb County Zoning Division  
July 9, 2019  
Page 6

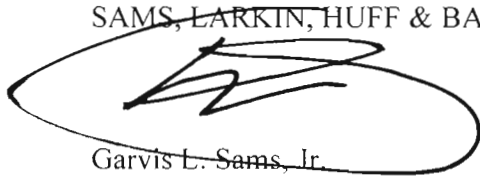
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17. The District Commissioner shall have the authority to approve certain minor modifications as the Development Proposal proceeds to the Plan Review Process and thereafter, including this stipulation letter; the architecture referred to herein; the revised site plan; and, engineering components except for those that:
- a. Reduce the size of an approved buffer adjacent to property which is zoned in a more restrictive zoning district.
  - b. Relocate a structure closer to the property line of an adjacent property which is zoned in a more restrictive zoning district.
  - c. Increase the height of a building which is adjacent to property which is zoned in a more restrictive zoning district.
  - d. Are violative of the Cobb County Zoning Ordinance.
  - e. Change access locations to different roadways.
  - f. Are in direct conflict with or in direct contradiction to Cobb County Regulations.

Please do not hesitate to contact me should you or the Staff have any questions or need any additional information or documentation prior to the formulation of the Final Zoning Analysis and Staff Recommendations. With kind regards, I am

Very truly yours,

SAMS, LARKIN, HUFF & BALLI, LLP



Garvis L. Sams, Jr.  
[gsams@slhb-law.com](mailto:gsams@slhb-law.com)

GLS, Jr./klk  
Enclosures

# SAMS, LARKIN, HUFF & BALLI

A LIMITED LIABILITY PARTNERSHIP

## VIA HAND DELIVERY & EMAIL:

Mr. John P. Pederson, AICP, Manager  
Cobb County Zoning Division  
July 9, 2019  
Page 7

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cc: Members, Cobb County Board of Commissioners (via email w/attachments)  
Mr. Robert L. Hosack, AICP, County Manager (via email w/attachments)  
Members, Cobb County Planning Commission (via email w/attachments)  
BOC Commission Assistants (via email w/attachments)  
Ms. Jessica Guinn, AICP, Director (via email w/attachments)  
Mr. Michael Hughes, AICP, Economic Development (via email w/attachments)  
Mr. Jason S. Gaines, AICP Planning Manager (via email w/attachments)  
Mr. Jason Campbell, Planner III (via email w/attachments)  
Mr. Terry Martin, Planner III (via email w/attachments)  
Mr. Donald Wells, Planner I (via email w/attachments)  
Ms. Tannessa Bates, Planner I (via email w/attachments)  
Ms. Pamela Mabry, County Clerk (via email w/attachments)  
Ms. Robin Stone, Deputy County Clerk (via email w/attachments)  
Ms. Leila Washington, Deputy County Clerk (via email w/attachments)  
Captain Robert Bennett, Fire Marshal's Office (via email w/attachments)  
Mr. David Breaden, P.E. (via email w/attachments)  
Ms. Amy Diaz, P.E. (via email w/ attachments)  
Mr. Michael Francis, P.E. (via email w/attachments)  
Mr. Tim Davidson, Water System (via email w/attachments)  
Ms. Patti Rice, President, Powers Ferry Corridor Alliance (via email)  
Ms. Sherri George, Powers Ferry Corridor Alliance (via email w/attachments)  
Mr. Bipin Hira, Milestone Hotel Management (via email w/attachments)  
Mr. Buck Lindsay, RLA, LPBC & Associates (via email w/attachments)  
Mr. Abdul Amer, P.E., A&R Engineering (via email w/attachments)  
Ms. Abby Retting, P.E., A&R Engineering (via email w/attachments)

**SLUP-11 (2019)  
Stipulation Letter  
with Attachments**

**L** LEGEND  
**P** PLANS  
**B** BOUNDARIES  
**C** COORDINATES

DATE: 07/09/2019  
DRAWN BY: [Signature]  
CHECKED BY: [Signature]  
SCALE: AS SHOWN



**OWNER**  
HARBORVIEW  
WILDMOOD, LLC

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 07/09/2019 BY [Signature]

**HOMERWOOD  
SUITES**  
HOTEL

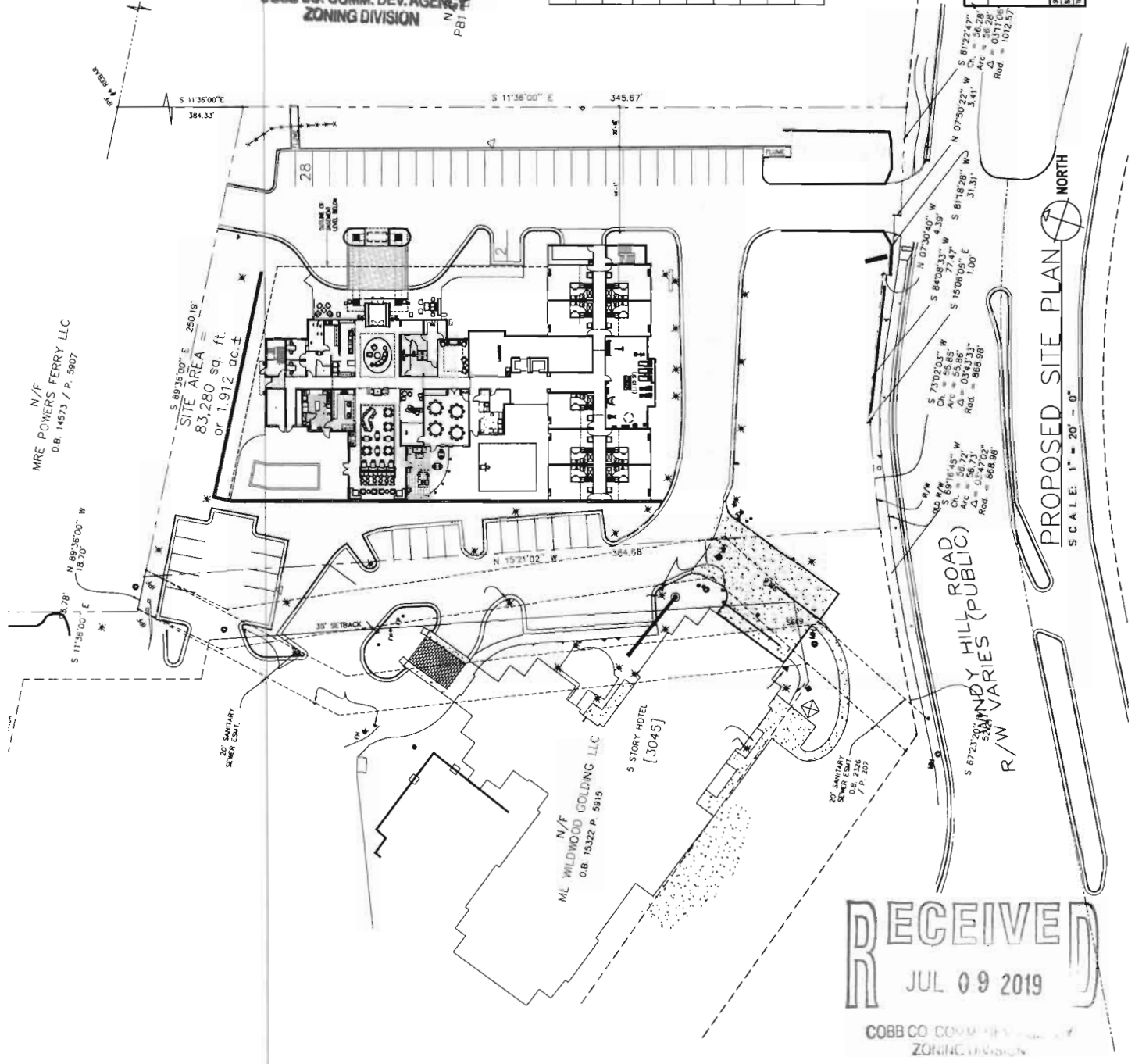
**DATE PLOTTED:** 7/9/2019  
**SCALE:** AS SHOWN

**PROJECT #:** 19006  
**DATE:** 7/9/2019

PROJECT DATA	
1	ZONING: S OAK (OFFICE-IND-USE)
2	OWNER: HARBORVIEW WILDMOOD LLC PROJECT: HOMERWOOD SUITES HOTEL SITE: 2801 W. JAIL, PACE 387, COBB COUNTY
3	ADVICE REQUIRED: 210 / ADVISORY PROVIDED: 5.1972
4	ALLOWABLE BUILDING HEIGHT: 8 STORES PROPOSED BUILDING HEIGHT: 5.5 STORES WITH BASEMENT (75' MAXIMUM)
5	REQUIRED PARKING: 11/AVE, 410, OR 105 TOTAL SPACES PROPOSED PARKING: 95 TOTAL
6	MINIMUM SLOPING ROOF PITCH REQUIRED: 4:12 MINIMUM ROOF PITCH PROVIDED: SHALL BE 4:12 OR GREATER
7	FLOOD ZONE: 5 X-HAZARDOUS (APPROX. 500 YEAR FLOOD ELEV.)
8	PROPOSED HOTEL INCLUDES: 95 TOTAL GUESTROOMS / 90,773 SF.
9	REQUEST FOR CONCURRENCE VARIANCE WHICH SEES A WAIVER OF THE 10' BUFFER REQUIREMENTS FOR OAK ON THE EASTERN SIDE OF THE PROPERTY.

VEHICLE PARKING TABULATION			
LEVEL	STANDARD PARKING SPACES	ACCESSIBLE PARKING SPACES	TOTAL PARKING SPACES
GROUND LEVEL	85	0	85
BASEMENT LEVEL	43	3	46
TOTALS	128	3	131

**RECEIVED**  
JUL 09 2019  
CO. COMM. DEV. AGENCY  
ZONING DIVISION



N/F  
MRE POWERS FERRY LLC  
O.B. 14573 / P. 5807

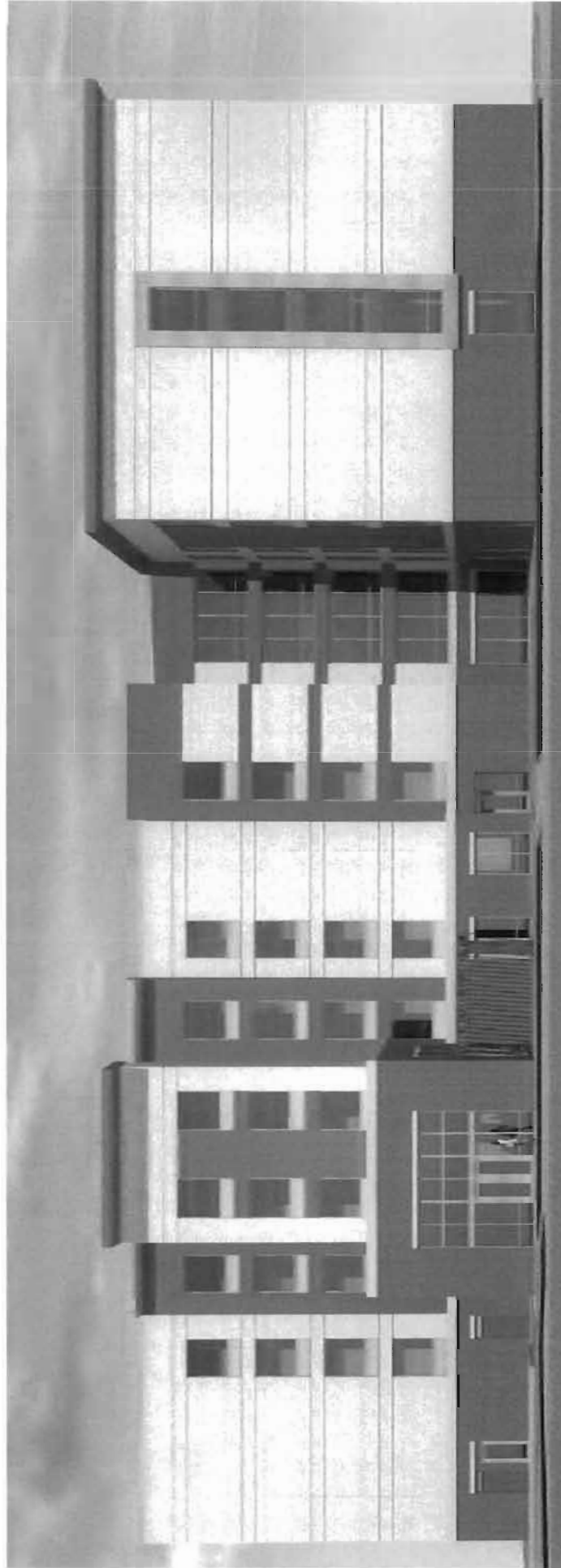
N/F  
ML WILDMOOD GOLDING LLC  
O.B. 15322 P. 5915

R/W Varies (PUBLIC)  
SANDY HILL ROAD  
S/W VARIES

**RECEIVED**  
JUL 09 2019  
COBB CO COMM DEV AGENCY  
ZONING DIVISION

**PROPOSED SITE PLAN**  
SCALE: 1" = 20' - 0"  
NORTH

**RECEIVED**  
JUL 09 2019  
COBB CO. COMM. DEV. AGENCY  
ZONING DIVISION



**EAST VIEW**



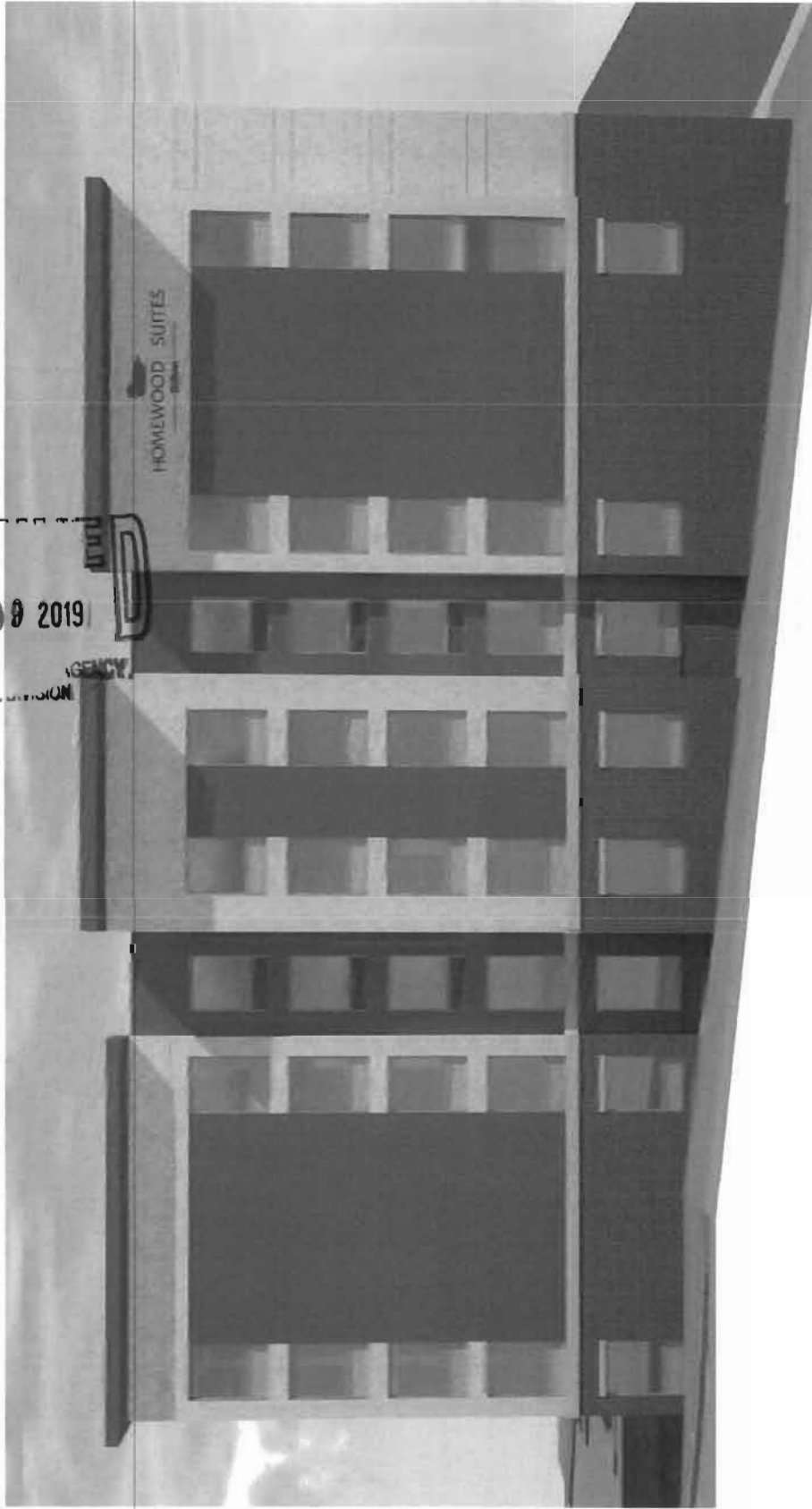
**PROPOSED HOMEWOOD SUITES BY HILTON**  
ROSWELL, GEORGIA

06 JULY 2019 219006



SLUP-11 (2019)  
Stipulation Letter  
with Attachments

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JUL 09 2019  
AGENCY



NORTH VIEW



**PROPOSED HOMEWOOD SUITES BY HILTON**  
ROSWELL, GEORGIA

06 JULY 2019 219006



SLUP-11 (2019)  
Stipulation Letter  
with Attachments



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JUL 09 2019  
COBB COUNTY  
DEVELOPMENT AGENCY  
PLANNING DIVISION

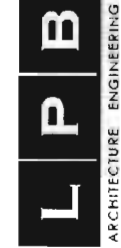


NORTHWEST VIEW



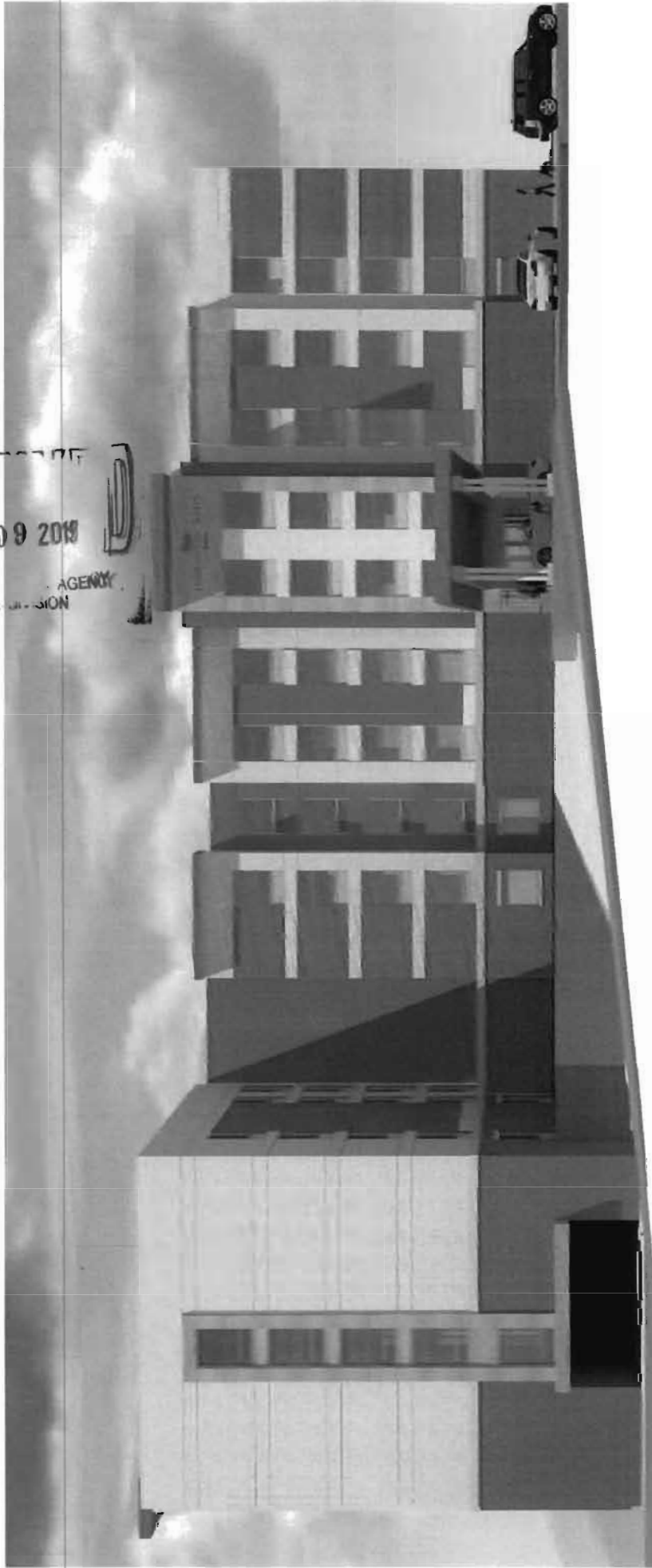
PROPOSED HOMEWOOD SUITES BY HILTON  
ROSWELL, GEORGIA

06 JULY 2019 219006



SLUP-11 (2019)  
Stipulation Letter  
with Attachments

RECORDED  
JUL 09 2019  
COBB COUNTY  
PLANNING AGENCY



WEST VIEW



**PROPOSED HOMEWOOD SUITES BY HILTON**  
ROSWELL, GEORGIA

06 JULY 2019 219006



SLUP-11 (2019)  
Stipulation Letter  
with Attachments

COBB CO. COMMUNITY AGENCY  
ZONING DIVISION  
JUL 09 2019



SOUTHEAST VIEW



**PROPOSED HOMEWOOD SUITES BY HILTON**  
ROSWELL, GEORGIA

06 JULY 2019 219006



SLUP-11 (2019)  
Stipulation Letter  
with Attachments



**A&R Engineering Inc.**

2160 Kingston Court, Suite O  
Marietta, GA 30067  
Tel: (770) 690-9255 Fax: (770) 690-9210  
www.areng.com

RECEIVED  
JUN 06 2019

COBB CO. COMM. DEV. AGENCY  
ZONING DIVISION



**Memorandum**

To: Bipin Hira  
From: Abdul Amer, PE, PTOE  
Date: May 24, 2019  
Subject: Trip Generation Memorandum for Hotel Development on Windy Hill Road and Powers Ferry Road – Cobb County, Georgia

The purpose of this memorandum is to quantify the amount of traffic that will be generated by the proposed hotel development located on Windy Hill Road east of Powers Ferry Road in Cobb County, Georgia. The proposed development will consist of a 95-room hotel and will make use of the existing Hilton Garden Inn full-access driveway on Windy Hill Road as well as have inter-parcel connection to the right-in/right-out driveway on Powers Ferry Road north of Windy Hill Road. The location of the proposed development is shown in the figure below.



**METHODOLOGY**

Trip generation estimates for the development were based on the rates and equations published in the 10<sup>th</sup> edition of the Institute of Transportation Engineers (ITE) Trip Generation report. This reference contains traffic volume count data collected at similar facilities nationwide. The trip generation was based on the following ITE Land Uses: 310 – Hotel. The calculated trip generation for the development is shown below in Table 1.

Trip Generation Memo – Hotel on Windy Hill Road and Powers Ferry Road  
 Page 2 of 2

TABLE 1 – TRIP GENERATION								
Land Use	Size	AM Peak Hour			PM Peak Hour			24-Hour
		Enter	Exit	Total	Enter	Exit	Total	Two-way
<b>Hotel</b>	95 rooms	25	17	42	23	22	45	646

As a point of reference, average daily traffic volumes on Powers Ferry Road and Windy Hill Road were obtained from Cobb County DOT. The counts on Windy Hill Road revealed a 2011 ADT of 10,100 vehicles per day east of Powers Ferry Road, and 2009 ADT of 33,400 vehicles per day west of Spectrum Circle. The counts on Powers Ferry Road revealed a 2011 ADT of 32,000 vehicles per day south of Windy Hill Road and 33,400 vehicles per day north of Wildwood Parkway.

**Planning Commission Decision**

NO. OPPOSED: \_\_\_\_\_ APPROVED \_\_\_\_\_ DENIED \_\_\_\_\_ DELETED TO \_\_\_\_\_

NO. IN SUPPORT \_\_\_\_\_ MOTION BY: \_\_\_\_\_ SECONDED: \_\_\_\_\_ VOTE: \_\_\_\_\_

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**Names of those Opposed:**

**Comments:**

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
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_____	_____
_____	_____
_____	_____
_____	_____

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Stipulation letter from \_\_\_\_\_ dated \_\_\_\_\_  
Stipulation letter from \_\_\_\_\_ dated \_\_\_\_\_  
Stipulation letter from \_\_\_\_\_ dated \_\_\_\_\_

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**Board of Commissioners Decision**

NO. OPPOSED: \_\_\_\_\_ APPROVED \_\_\_\_\_ DENIED \_\_\_\_\_ DELETED TO \_\_\_\_\_

NO. IN SUPPORT \_\_\_\_\_ MOTION BY: \_\_\_\_\_ SECONDED: \_\_\_\_\_ VOTE: \_\_\_\_\_

---

**Names of those Opposed:**

**Comments:**

_____	_____
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Stipulation letter from \_\_\_\_\_ dated \_\_\_\_\_  
Stipulation letter from \_\_\_\_\_ dated \_\_\_\_\_  
Stipulation letter from \_\_\_\_\_ dated \_\_\_\_\_