



STAFF REVIEW AND RECOMMENDATION

Variance Case #: V2020-16

Legistar #: 20200322

Board of Zoning Appeals Hearing:

Monday, June 29th, 2020 – 6:00 p.m.

**Property Owner: 1053MSP LLC/Rutvik Emil Dmello
1 Glenlake Parkway NE
Suite 700
Atlanta, GA 30328**

**Agent: Parks Huff, Esq.
Sams, Larkin, & Huff, LLP
376 Powder Springs Street
Suite 100
Marietta, GA 30064**

Address: 1053 Sandy Plains Road

Land Lot: 0780 District: 16th Parcel: 0120

Council Ward: 6B Existing Zoning: CRC (Community Retail Commercial)

Special Exception / Special Use / Variance(s) Requested:

1. Variance to reduce the buffer from 40 ft. to 10 ft. along the northern portion of the property line [*§716.08 (I)*]
2. Variance to increase allowable height of a fence from 8 ft to 12 ft for a property zoned CRC [*§710.04 (D.4)*]

Statement of Fact

As per section 720.03 of the Comprehensive Development Code of Marietta, the Board of Zoning Appeals may alter or modify the application of any such provision in the Development Code because of unnecessary hardship if doing so shall be in accordance with the general purpose and intent of these regulations, or amendments thereto, and only in the event the board determines that by such alteration or modification unnecessary hardship may be avoided and the public health, safety, morals and general welfare is properly secured and protected. In granting any variance the board of zoning appeals shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of these regulations and may designate conditions to be performed or met by the user or property owner, out of regard for the public health, safety, comfort, convenience, and general welfare of the community, including safeguards for, with respect to light, air, areas of occupancy, density of population and conformity to any master plan guiding the future development of the city. The development costs of the applicant as they pertain to the strict compliance with a regulation may not be the primary reason for granting a variance.

Criteria:

1. Exceptional or extraordinary circumstances or conditions *are/are not* applicable to the development of the site that do not apply generally to sites in the same zoning district.
2. Granting the application *is/is not* necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship.
3. Granting the application *will/will not* be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.

PICTURES



Rear portion of 1053 Sandy Plains Rd abutting residential properties



Subject property along Sandy Plains Rd

Recommended Action:

Approval with stipulations. The property owner, 1053MSP LLC, is requesting a variance for the property at 1053 Sandy Plains Road in order to reduce the undisturbed buffer adjacent to residential homes. The property is approximately 0.93 acres in area and is located near the corner of Sandy Plains and Addison Road. Adjacent properties immediately to the east and west are also zoned CRC and include a car wash and a fast food restaurant. To the north, the adjacent properties are located in unincorporated Cobb County and are zoned R-20 (Single-Family Residential – 20,000 sq.ft. lot size); the property directly south of the subject property, across Sandy Plains Road, is zoned PID (Planned Industrial Development).

The property is a wooded lot that has never been developed. The applicant would like to develop a two-story commercial building with first floor retail businesses and second story offices. The Zoning Ordinance requires properties zoned CRC to maintain a 40-foot wide undisturbed buffer that is intended to screen views and diffuse sound along any property line abutting a residential district. Building setbacks are to be applied in addition to - not overlapping - the buffer.

As shown on the updated proposed site plan, the owner is requesting to reduce the buffer to 10 feet with an opaque privacy fence in order to provide 43 parking spaces for the 11,900 square foot building. Parking requirements for retail space is one space per 250 sq.ft., while offices require one space per 350 sq.ft. The applicant has provided all parking towards the rear of the property, away from public view, which allows the front setback to be reduced up to 50% [*§716.07 (F)*].

Two (2) residential properties, 1048 and 1050 Plainview Drive in Cobb County, would be directly impacted by the buffer reduction. The application claims the buffer reduction is necessary because the property is small and narrow. However, the site is nearly an acre in size and the buffer encroachment could be minimized or eliminated by reducing the building area. The applicant has stated that they would replace the existing chain-link fence with an opaque fence along the rear of the property.

The fast food restaurant immediately to the west (1043 Sandy Plains Road) was granted a reduction to the 50 ft. buffer as part of a rezoning case in 1990. Per Z-9021, the buffer was reduced to 10 feet wide on the north and east side of the property with the installation of a 6' tall wood fence. The car wash immediately to the east, 1813 Addison Road, was granted a reduction in the required buffer from 40 feet to 20 feet with an 8-foot tall wood fence (Z2004-29).

This case was tabled from the May 18, 2020 BZA meeting in order for the applicant to speak with the neighboring property owners and attempt to address any concerns. The applicant and attorney have reached out to city staff to state they are willing to provide the following:

- A 10 – 12-foot opaque privacy fence on the subject property along the shared boundary line of the two adjoining neighbors to the rear – the fence will run the entire length of the subject property so that it leaves no gaps for access to the residential properties.
- A 10-foot planted buffer with trees planted as depicted on the most recent site plan.
- The dumpster will be installed with rubber padding to ensure that the pickup and emptying of the dumpster does not create unnecessary noise.

To maintain consistency with what has been granted for surrounding properties, *staff recommends approval of the requested variance with the following stipulations:*

- 1. The buffer may be reduced to no less than ten (10) feet but may be disturbed and replanted.*
- 2. The existing chain link fence be replaced with a wooden privacy fence at least 10 feet in height, but no more than 12 feet in height, with the finished side facing the exterior.*
- 3. The buffer shall contain two (2) staggered rows of evergreen trees, with 10 ft. spacing, and at a minimum height of 5 ft. at installation.*
- 4. The dumpster will be installed with rubber padding to ensure that the pickup and emptying of the dumpster does not create unnecessary noise.*

Although unrelated to variance request, the following site requirements should be noted:

- Two-way driveways must be at least 20' wide, exclusive of curb and gutter. One-way driveways must be at least 14' wide, exclusive of curb and gutter.
- A planter island is required in between every twelve (12) parking spaces and be a minimum 125 sq.ft. in area and contain at least one non-pine species tree (minimum two-inch caliper and ten feet in height). One additional planter island will be required in the row of sixteen (16) continuous parking spaces towards the northern portion of the property.
- CRC is limited to 80% impervious surface coverage.
- Accessory structures must be at least 10' from any property line.
- Metal siding may not be used on any side of a building facing a roadway.



Department of Development Services
205 Lawrence Street
Marietta, GA 30060
Phone: 770-794-5440

APPLICATION FOR VARIANCE OR APPEAL

(Owner/Applicant/or Representative must be present at all public hearings)

(NOTE: CORRESPONDENCE IS HANDLED VIA EMAIL UNLESS OTHERWISE REQUESTED)

For Office Use Only:

Application #: V2020-16 Registrar #: 20200322 BZA Hearing Dt: 5-18-20
City Council Hearing Dt (if applicable) #: - PZ #: _____

This is a variance/appeal application for:



Board of Zoning Appeals



City Council

Owner's Name 1053MSP LLC / Rutvik Emil Dmello

EMAIL Address: emil@riverbrokers.com

Mailing Address 1 Glenlake Pkwy NE #700 Atlanta, GA Zip Code: 30328 Phone Number (770) 415-9940

COMPLETE ONLY IF APPLICANT IS NOT OWNER:

Applicant: ^{REP:} Parks Huff, Esq. - Sams, Larkin, & Huff, LLP

EMAIL Address: phuff@samslarkin Huff.com

Mailing Address _____ Zip Code: _____ Phone Number _____

Address of subject property: 1053 Sandy Plains Rd, Marietta, GA 30066 Date of Acquisition: January 27, 2020

Land Lot (s) 779/780 District 16 Parcel 16078000120 Acreage 0.911 Zoned CRC Ward 6B FLU: NAC
0780 00120 1926

List the variance(s) or appeal requested (please attach any additional information):

Reduction of 40 feet buffer with adjoining residential lot in the back.

Required Information

1. Application fee (\$250)
2. Completed notarized application. **The original application must be submitted with ALL original signature(s) – Copies of the application or signature(s) will NOT be accepted.**
3. Copy of the deed that reflects the current owner(s) of the property.
4. Letter describing the reason for the variance request, stating why strict adherence to the code would result in a particular hardship (as distinguished from a mere inconvenience or desire to make more money).
5. **Site plan – drawn to scale.** Site plans must illustrate property lines and all relevant existing information and conditions in addition to proposed additions or modifications within the referenced property lines of the tract(s).
Copies Required: One (1) - (8 1/2" x 11") -or- (11" x 17") drawn to scale.
Optional Additional Plat size: (24"x 36"). If providing (24"x 36") then 5 copies REQUIRED.
6. Copy of current tax bill showing payment or documentation certified by the City of Marietta Tax Office.

Note: The Department of Development Services reserves the right to obtain additional information that reasonably may be required in order that an informed decision may be made.

OVER

CAMPAIGN CONTRIBUTIONS

The Owner and Applicant herein certify that he/she has has not made campaign contributions or gifts aggregating \$250.00 or more to the Mayor, any member of Council or any member of the Board of Zoning Appeals within the two (2) years preceding the filing of this application.

Emil Dmello
Signature of Owner

Emil Dmello
Signature of Applicant

Rutvik Emil Dmello, Member of 1053MSP LLC
Print Name

Rutvik Emil Dmello, Member of 1053MSP LLC
Print Name

FINANCIAL INTEREST

The Applicant herein certifies that he/she has has not a financial interest in the property which is ten percent (10%) or more.

Rutvik Emil Dmello, Member of 1053MSP LLC
Print Name

Emil Dmello
Signature of Applicant

APPLICANT CERTIFICATION

- The Applicant certifies that all information in this application, and all information furnished in support of this application, is true and complete to the best of the Applicant's knowledge and belief. Should any portion not be true, then the application may be rejected.
- Penalty for false or fraudulent statement: Whoever, in any matter, knowingly and willingly falsifies or makes any false, fictitious or fraudulent statement of representatives concerning this application shall be denied the request stated in this application.

Emil Dmello
Signature of Applicant

April 6, 2020
Date

Rutvik Emil Dmello, Member of 1053MSP LLC
Please Print

OWNER CERTIFICATION

- The Owner certifies that all information in this application, and all information furnished in support of this application, is true and complete to the best of the Owners's knowledge and belief. Should any portion not be true, then the application may be rejected.
- Penalty for false or fraudulent statement: Whoever, in any matter, knowingly and willingly falsifies or makes any false, fictitious or fraudulent statement of representatives concerning this application shall be denied the request stated in this application.
- The Owner hereby gives permission to enter on the property for inspection during the time application is pending.

Emil Dmello
Signature of Owner

Rutvik Emil Dmello, Member of 1053MSP LLC
Please Print

1 Glenlake Pkwy NE #700, Atlanta, GA 30328
Address

April 6, 2020
Date

Signed, sealed and delivered in the presence of:

Kavita R. Purohit
NOTARY PUBLIC
Fulton County, Georgia
My Commission Expires 1/22/2021

KAVITA PUROHIT [Signature]

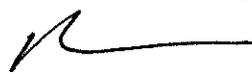
My Commission Expires: 1/22/21

Note: Owner, Applicant or Representative must be present at meeting in order for case to be heard.

CAMPAIGN CONTRIBUTIONS

The Owner and Applicant herein certify that he/she has has not made campaign contributions or gifts aggregating \$250.00 or more to the Mayor, any member of Council or any member of the Board of Zoning Appeals within the two (2) years preceding the filing of this application.

Signature of Owner



Signature of Applicant

Print Name

Parks F. Huff, Attorney for Applicant

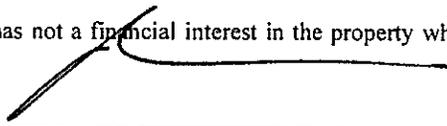
Print Name

FINANCIAL INTEREST

The Applicant herein certifies that he/she has has not a financial interest in the property which is ten percent (10%) or more.

Parks F. Huff, Attorney for Applicant

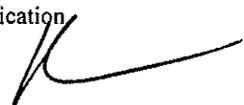
Print Name



Signature of Applicant

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Signature of Applicant

4/6/2020

Date

Parks F. Huff, Attorney for Applicant

Please Print

OWNER CERTIFICATION

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- The Owner hereby gives permission to enter on the property for inspection during the time application is pending.

Signature of Owner

Please Print

Address

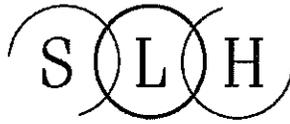
Date

Signed, sealed and delivered in the presence of:

My Commission Expires: _____

Note: Owner, Applicant or Representative must be present at meeting in order for case to be heard.

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GARVIS L. SAMS, JR.
JOEL L. LARKIN
PARKS F. HUFF

SAMS, LARKIN & HUFF
A LIMITED LIABILITY PARTNERSHIP
SUITE 100
376 POWDER SPRINGS STREET
MARIETTA, GEORGIA 30064-3448

770-422-7016
TELEPHONE
770-426-6583
FACSIMILE

April 6, 2020

LETTER OF INTENT

VIA EMAIL: slittle@mariettaga.gov

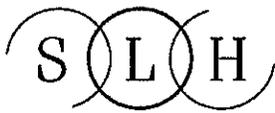
Ms. Shelby Little, AICP
City of Marietta
Department of Development Services
205 Lawrence Street
Marietta, GA 30060

Re: Variance Application of 1053MSP LLC regarding a .911± Acre Tract located in Land Lots 779 and 780, 16th District, known as 1053 Sandy Plains Road, City of Marietta, Cobb County, Georgia.

Dear Shelby:

This firm has been engaged by and represents 1053MSP LLC concerning the above-captioned Variance Application. The property is zoned CRC and is in a Neighborhood Activity Center. The property fronts on Sandy Plains road and there are a series of other commercial businesses on this section of Sandy Plains Road. To the rear of the property are residential properties. The applicant proposes a commercial building that will have retail businesses and offices. The uses will be quieter than adjacent uses such as car washes, fast food restaurants, landscaping businesses and convenience stores. The applicant proposes to reduce the 40-foot buffer adjacent to residential property to a 5-foot replanted buffer with a wooden privacy fence. The buffer reduction is necessary because the property is relatively small and narrow. The proposed buffer is consistent with the other buffers in the area.

For all the reasons stated herein above and with all of the information and documentation which is before you, we respectfully request that the Variance Application be approved. Of course, during the pendency of the Application, I will be providing you and your staff with any necessary additional information, documentation and stipulations in order to facilitate the approval of this Application. In the interim, please do not hesitate to contact me should you have any questions whatsoever regarding these matters.



April 6, 2020
Page 2

Sincerely,

SAMS, LARKIN & HUFF, LLP

A handwritten signature in black ink, appearing to be 'Parks F. Huff'.

Parks F. Huff

phuff@samslarkinhuff.com

AJR/jcc

TO: Marietta Daily Journal

FROM: City of Marietta

RUN DATE: June 12, 2020

**CITY OF MARIETTA
PUBLIC NOTICE OF VARIANCES**

The City of Marietta hereby gives notice that a public hearing will be held to give consideration to the following requests. The Board of Zoning Appeals will consider the following requests on **Monday, June 29th, 2020 at 6:00 P.M.**, City Hall. Anyone wishing to attend may do so and be heard relative thereto.

V2020-16 [VARIANCE] 1053MSP LLC is requesting a variance for property zoned CRC (Community Retail Commercial), located in Land Lot 07800, District 16, Parcel 0120, 2nd Section, Marietta, Cobb County, Georgia, and being known as 1053 Sandy Plains Road. Variance to reduce the undisturbed buffer from 40' to 10' along the northern property line. Variance to increase the allowable height of a fence from 8' to 12.' Ward 6B.

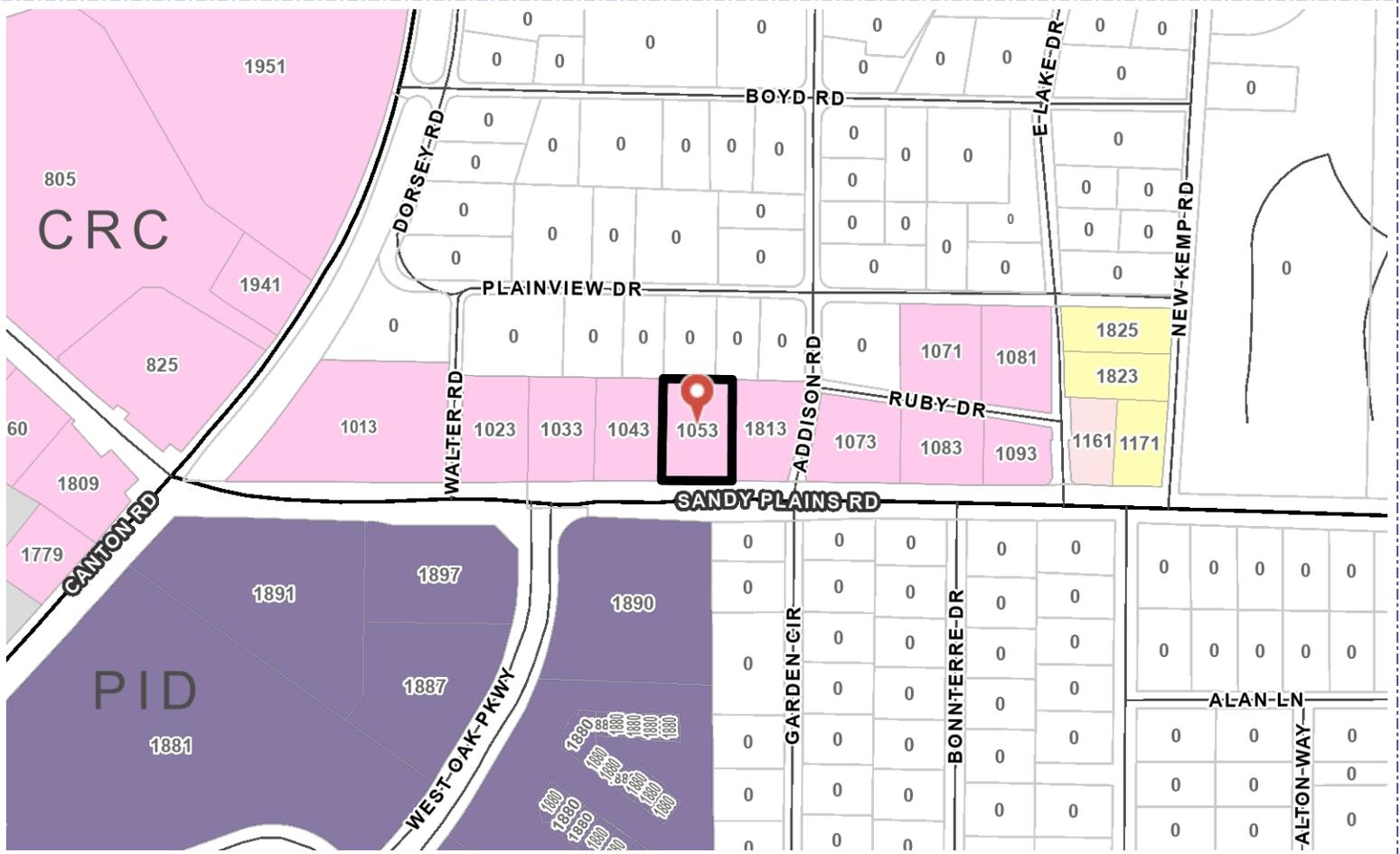
A description and plat of the property sought for the variances are on file in the Planning and Zoning Office, City Hall, and are available for inspection between 8:00 A.M. and 5:00 P.M., Monday through Friday. Anyone wishing to attend may do so and be heard relative thereto. You may also review the property file at www.marietta.gov and enter the case # in the search box.

For additional information including questions about virtual participation, please call the Planning and Zoning Office (770) 794-5669.

Accessibility to Meetings: If you believe you may need the City/BLW to provide special accommodations in order to attend/or participate in any of the above meetings, please call ADA Coordinator, at 770-794-5558 no later than 48 hours before the date of the above meeting.

City of Marietta
205 Lawrence Street
Marietta, Georgia 30060

Variance



Address	Parcel Number	Acreage	Ward	Zoning	FLU
1053 SANDY PLAINS RD	16078000120	0.926	6B	CRC	NAC

Property Owner:	1053MSP LLC/Rutvik Emil Dmello	Zoning Symbols
Applicant:		
BZA Hearing Date:	06/29/2020	
Acquisition Date:		
Case Number:	V2020-16	
City of Marietta Planning & Zoning		

June 7, 2020

Mr. Bobby Van Buren
Marietta Board of Zoning Appeals
Send via email

Re: Zoning Appeal Hearing about V2020-6 on June 29th at 6 PM

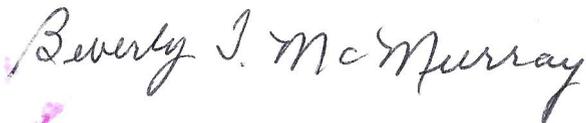
Dear Mr. Van Buren,

I work with Carol Brown of Canton Road Neighbors and represent that group and area residents within the City of Marietta near Canton Road because I am a resident of the City of Marietta living in Briarwood Subdivision. Briarwood is located just several blocks away from Canton Road on Sandy Plains. I have decades of experience with a number of homeowner's groups in three different counties and take a keen interest in what is approved, especially when it affects existing residential areas.

Today I am contacting you and, by virtue of "copy" on the email, the entire Board of Zoning Appeals as well as our city Council person, Michelle Cooper-Kelly.

After a review of the Variance Request and the Staff Review and Recommendation, I wanted to let you know that we are happy with the recommendations made by staff and support those, especially requiring the 20 foot buffer. The latest precedent in that block is the 2004 variance on the car wash next door to this property. The required 40 foot buffer was allowed to be reduced to 20 feet. I think that precedent should be used as a guide in making a decision about this property to keep the 20 feet in the stipulations.

Thank you in advance for taking our support of Staff into consideration.



Beverly T McMurray

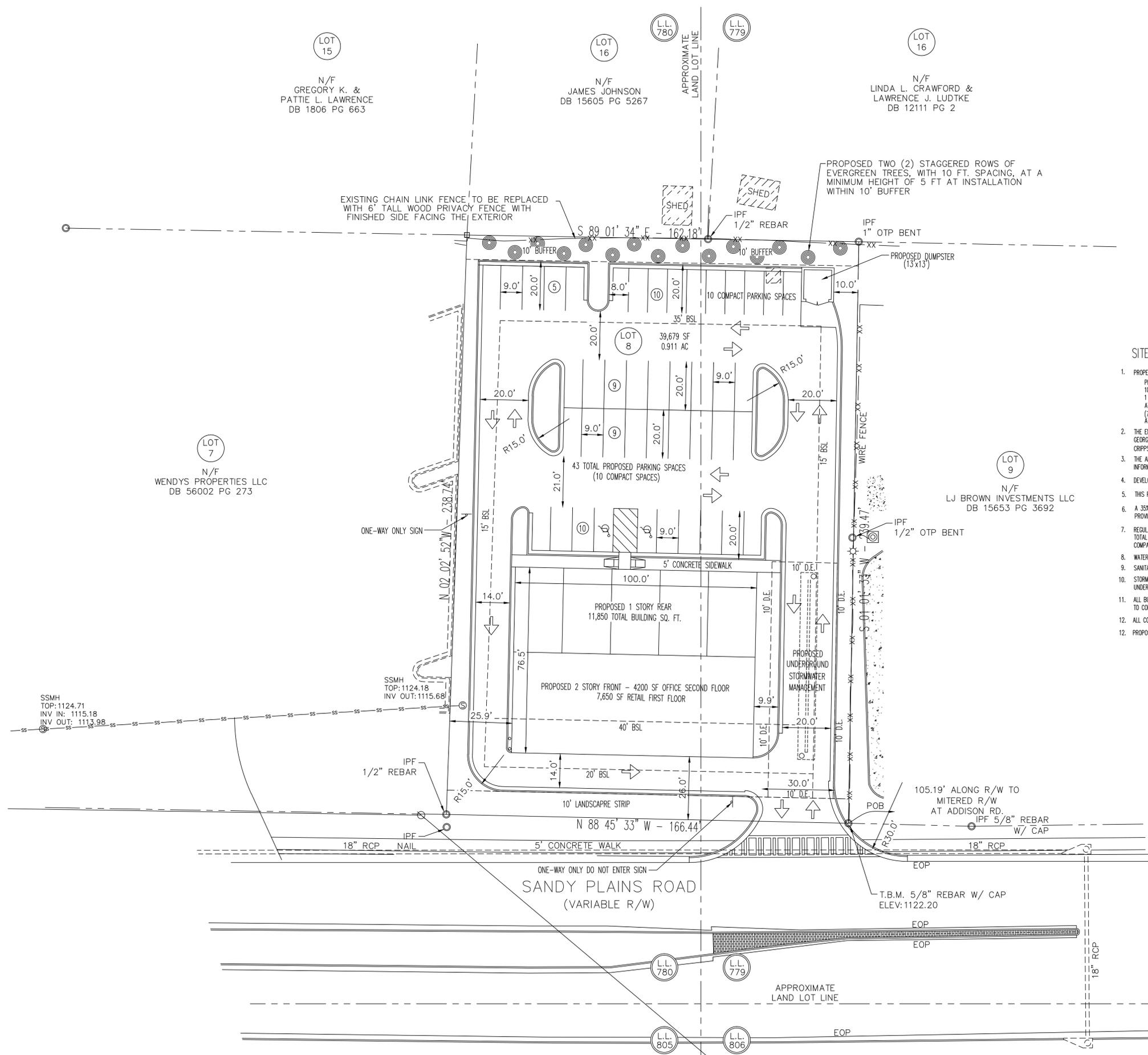
Former board member of Canton Road Neighbors
Former board member of NE Cobb Homeowners Group
Immediate past president of the Briarwood Homeowners Association

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Potential Design subject to City's preference.



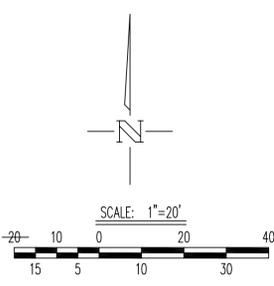
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SITE PLAN NOTES

- PROPERTY OWNER / DEVELOPER:
PROPERTY OWNER/DEVELOPER:
1053 MSP, LLC
1 GLENLAKE PARKWAY, SUITE 650
ATLANTA, GEORGIA 30328-7249
(770) 415-9940
ATTN: MR. RUTVIK EMIL DMELLO
- THE ENGINEER SHALL BE UNDERSTOOD TO MEAN LANDWORKS ASSOCIATES, INC., P.O. BOX 88834, ATLANTA, GEORGIA 30356, WHO IS THE AUTHORIZED REPRESENTATIVE OF THE OWNER. CONTACT PERSON: WILLIAM CRIPPS (770) 513-7100
- THE AREA OF THE SITE IS .911 ACRES. DISTURBED AREA IS .77 ACRES. BOUNDARY AND TOPOGRAPHIC INFORMATION IS BASED SURVEY PERFORMED BY BOUNDARY ZONE, INC. DATED DECEMBER 13, 2019
- DEVELOPMENT TYPE: RETAIL CENTER ZONING = CRC (COMMUNITY RETAIL COMMERCIAL)
- THIS PROPOSED LAYOUT WILL REQUIRE A VARIANCE TO REDUCE THE REAR PROPERTY BUFFER TO 10'.
- A 35% REDUCTION TO THE FRONT BUILDING SETBACK HAS BEEN TAKEN WITH ALL PROPOSED PARKING BEING PROVIDED IN THE BACK OF THE PROPOSED BUILDING.
- REGULAR PARKING SPACES = 41 HANDICAP PARKING SPACES = 2 TOTAL PARKING SPACES = 43 TOTAL PARKING PROVIDED = 43 SPACES. 25% OF THE TOTAL SPACES PROVIDED, WILL INCLUDE 10 COMPACT SPACES.
- WATER SOURCE FOR THIS PROJECT WILL BE PROVIDED BY MARIETTA WATER
- SANITARY SEWER SOURCE FOR THIS PROJECT WILL BE PROVIDED BY MARIETTA WATER
- STORMWATER MANAGEMENT FOR THIS PROPOSED DEVELOPMENT WILL BE PROVIDED FOR BY INSTALLING AN UNDERGROUND STORMWATER MANAGEMENT SYSTEM TO BE LOCATED ON THE PROPERTY.
- ALL BUFFERS AND TREE SAVE AREAS ARE TO BE CLEARLY IDENTIFIED BY FLAGGING AND/OR FENCING PRIOR TO COMMENCEMENT OF ANY LAND DISTURBANCE.
- ALL CONSTRUCTION MUST CONFORM TO CITY OF MARIETTA DEVELOPMENT STANDARDS AND REGULATIONS.
- PROPOSED IMPERVIOUS SURFACE COVERAGE OF THE SITE = 80%

VARIANCE SITE PLAN
APRIL 30, 2020



24 HOUR CONTACT: MR. RUTVIK EMIL DMELLO
(770) 415-9940

GSWCC LEVEL II
CERT. No. 001389

Landworks Associates, Inc.
P.O. BOX 88834
ATLANTA, GEORGIA 30356
(770) 513-7100 environments2013@yahoo.com

PROJECT DESCRIPTION
SNADY PLAINS RETAIL/OFFICE CENTER
LAND LOTS 779 & 780, 16TH LAND DISTRICT, 2ND SECTION,
CITY OF MARIETTA, COBB COUNTY, GEORGIA

SHEET TITLE
VARIANCE
SITE PLAN

DATE: 04-30-20
JOB: 557-200305
DRW: WJC
CHK: JGA

SHEET NUMBER
C-1