

V-2010-003

**CITY OF SUWANEE
VARIANCE ANALYSIS**

CASE NUMBER: V-2010-003
REQUESTS: ELIMINATE ROAD FRONTAGE
REQUIREMENTS
APPLICABLE SECTION: SECTION 506.C.3
LOCATION: 300 PEACHTREE INDUSTRIAL BLVD
DISTRICT/LAND LOT: 7-252-049
ZONING: C-2 (GENERAL COMMERCIAL DISTRICT)
DEVELOPMENT: A 5.911 ACRE COMMERCIAL LOT

APPLICANT/OWNER: PEACHTREE / SUWANEE PROPERTIES, LTD
11030 JONES BRIDGE RD., SUITE 300
JOHNS CREEK, GA 30022

CONTACT: COLE VAN HOUTEN
PHONE: 770-569-2099

RECOMMENDATION: DENIAL

ANALYSIS:

The applicant seeks a variance from Section 501.C.3 of the City of Suwanee Zoning Ordinance to allow for the subdivision of a lot into two lots, including one lot with no road frontage. The existing 10.918 acre lot has frontage and access off Peachtree Industrial Boulevard. The new parcel would be accessed through an access easement off of Peachtree Industrial Boulevard. The existing parcel currently includes a commercial building, an off-street parking area, and a stormwater detention facility.

The applicant wishes to create an approximately 5.9 acre lot at the rear of the site that will include the existing stormwater facility. The subject property is approximately 10.918 acres and is zoned C-2A (Special Commercial District) and C-2 (General Commercial District). The proposed parcel is zoned C-2. The C-2 district development regulations require a minimum of 40 feet of road frontage. As such, the proposed lot without frontage will need a variance.

The subject property is located along the Peachtree Industrial Boulevard commercial corridor. To the west of the proposed parcel are undeveloped commercial parcels zoned C-2 and C-3. To the east is an undeveloped parcel owned by the City of Suwanee zoned R-100. To the south is a large grocery store (C-2) and an undeveloped parcel (M-1). To the north is a Georgia Power transformer station (C-2).

In 1998, the existing lot (Lot 4) fronting on Peachtree Industrial Boulevard was part of a commercial development of 3 lots with 4 proposed future lots (DP-98-017). In 2000, the subject property (Lot 4) was developed as a retail shopping center (DP-2000-021). In 2001, the final

plat was recorded showing 4 lots, with the subject property being a part of Lot 4 (10.918 acres). The applicant states that the rear portion of the lot (Future Lot 7) was created in 1997 without any road frontage but has access via access easements through Lot 2 (existing liquor store).

The applicant states that the literal enforcement of the road frontage regulations creates a hardship on the owner and the proposed lot cannot be created to meet the requirements of the Development Regulations without the variance. The applicant wishes to develop the rear of Lot 4 as a separate lot (5.911 acres) with no road frontage. The applicant also states that there is adequate access to and from the proposed lot via perpetual easements. The applicant also contends that without the variance, the subject property cannot be developed.

The Development Regulations provide a mechanism that would have allowed the property to be subdivided into 7 lots provided access was extended via a public road into the subject property off of Peachtree Industrial Boulevard. The developer chose not to make use of the available mechanism when the lots were developed, created, and then sold. Therefore, the hardship is self-inflicted. The Development Regulations still provide a mechanism for providing adequate frontage which would require a road be built to City standards. The applicant has not explored other options to meet the zoning requirements. Though some variances for existing lots might be required, building a public road within the existing access easement would eliminate the need for zero road frontage.

The City of Suwanee's Zoning Ordinance grants the Zoning Board of Appeals the authority to grant variances. According to Section 2006 of the Ordinance, the Board is authorized to grant variances when literal enforcement of the Ordinance will result in unnecessary hardship to a property owner. The zoning ordinance also states that variances may be granted when, "relief, if granted, would not cause substantial detriment to the public good nor impair the purposes or intent of the Zoning Ordinance."

In conclusion, the subject property does not appear to have a situation that rises to the level of hardship as defined by the Zoning Ordinance. Currently, the property has been subdivided into four lots as shown on the approved 2001 Final Plat. The applicant states that by approving the variance, the property can be subdivided into more lots. The property was developed in 1998 and the owner did not provide infrastructure for future development. Therefore, the hardship is self-inflicted. There is a mechanism in place that would allow for the subdivision of the property into more lots, provided a road is built. As such, no variance is needed. The applicant simply needs to extend a public road through the property, through a process allowed by the Development Regulations. Therefore, staff recommends **DENIAL** of V-2010-003.

Planning Department
Recommended Conditions
V-2010-003

The Planning Department recommends denial of the request; however, should the board choose to approve the request, the following conditions:

Approval of a variance from Zoning Ordinance to eliminate the minimum road frontage subject to the following conditions:

1. A maximum of one lot may be created with no road frontage.
2. Any lot without frontage shall be connected to a public right-of-way via a 40 foot wide access easement, subject to the approval of the Planning and Inspections Department.
3. A Final Plat shall be submitted and approved by the Planning and Inspections Department and recorded at Gwinnett County prior to the issuance of any future building permits.

Standards for Consideration

Pursuant to Section 2009A of the City of Suwanee Zoning Ordinance, the City finds the following standards are relevant in considering all applications for a Variance.

- A. Will approval of the variance unreasonably increase the congestion in public streets?**

Approval of this variance would not increase the congestion in public streets.

- B. Will approval increase the danger of fire or endanger public safety?**

Approval of this variance could result in inferior access to the commercially-zoned subject property.

- C. Will approval unreasonably diminish or impair established property values within the surrounding area?**

Approval of the variance would not unreasonably diminish or impair property values within the surrounding area.

- D. Will approval in any other aspect impair the public health, safety, comfort, morals or welfare of the inhabitants of the City?**

Approval of this variance should not in any other aspect impair the public health, safety, comfort, morals, or welfare of the inhabitants.

**APPLICATION FOR VARIANCE FROM THE
CITY OF SUWANEE ZONING BOARD OF APPEALS**

Please complete this application and submit with all necessary attachments as stated on the Variance Information Form (please type or print)

APPLICANT INFORMATION

OWNER INFORMATION

Name: Peachtree/Suwanee Properties, Ltd. Name [Same]
Address: Suite 300, 11030 Jones Bridge Rd. Address [Same]
City: Johns Creek City: [Same]
State: Georgia 30022 State [Same]
Phone: 770-569-2099 Phone: [Same]
E-mail address: _____

CONTACT PERSON: Cole Van Houten PHONE: 770-569-2099

ADDRESS OF PROPERTY Peachtree Industrial Boulevard

LAND DISTRICT 252 LAND LOT 7th PARCEL _____ LOT _____

SUBDIVISION OR PROJECT NAME (IF APPLICABLE) N/A

ZONING C-2

VARIANCE REQUESTED Reduction of front footage requirement under Zoning Ordinance Section 506.C.3. from 40 feet to 0 feet.

NEED FOR VARIANCE See attached Statement

***A VARIANCE FROM A CONDITION OF ZONING CANNOT BE ACCEPTED.
SECTION 2007, APPLICANT AND/OR A REPRESENTATIVE.**

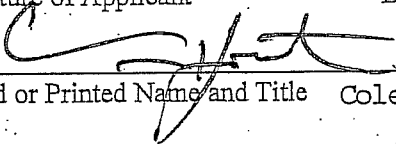
*****The property owner, applicant and /or a representative thereof shall be present at all meetings of the Zoning Board of Appeals, Planning Commission and/or Mayor and Council at which official action is requested on any variance or application for amendment. The failure of the property owner, applicant and/or a representative to attend such meetings shall result in the denial of said variance or application for amendment.**

APPLICANT CERTIFICATION

The undersigned below is authorized to make this application and is aware that an application or re-application for the same type of variance affecting the same land or any portion thereof shall not be acted upon within twelve (12) months from the date of last action by the Board of Appeals, unless waived by the Board of Appeals. An application or reapplication shall not be acted upon in less than (6) months from the date of the last action by the Board of Appeals.

Peachtree/Suwanee Properties, Ltd.

Signature of Applicant _____
Date March 18, 2010

By:  _____
Typed or Printed Name and Title Cole Van Houten, General Partner

Signature of Notary Public _____
Date _____

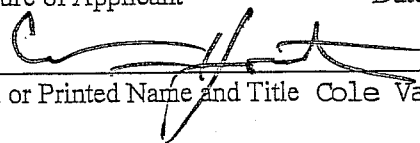
Notary Seal

PROPERTY OWNER CERTIFICATION

The undersigned below, or as attached, is the record owner of the property considered in this application and is aware that an application or reapplication for the same type of Variance affecting the same land or any portion thereof shall not be acted upon within twelve (12) months from the date of last action by the Board of Appeals unless waived by the Board of Appeals. An application or reapplication shall not be acted upon in less than six (6) months from the date of the last action by the Board of Appeals.

Peachtree/Suwanee Properties, Ltd.

Signature of Applicant _____
Date March 18, 2010

By:  _____
Typed or Printed Name and Title Cole Van Houten, General Partner

Signature of Notary Public _____
Date _____

Notary Seal

<u>DEPARTMENT OF PLANNING AND DEVELOPMENT USE ONLY</u>		
Case Number _____	Variance _____	Administrative _____
Date Rec'd _____	Rec'd By _____	Hearing Date _____
Amount Rec'd _____	Receipt _____	

ACTION TAKEN _____

SIGNATURE _____ DATE: _____

Statement of Need for Variance

The subject property is comprised of approximately 5.9 acres located approximately 500 feet off of Peachtree Industrial Boulevard ("PIB"), and extending an additional 500 feet back, in a topographically low area, well below the elevation of PIB. The subject property is located in a C-2 Zoning District.

Owner/Applicant seeks a variance from the City of Suwanee Zoning Ordinance Section 506.C.3, which sets forth a minimum road frontage requirement of 40 feet in a C-2 Zoning District, as well as Section 601, which requires compliance with zoning category requirements. The Owner/Applicant is requesting that such frontage requirement be reduced to zero.

In 1997 Owner/Applicant conveyed two rows of commercial lots in front of the subject property without any actual knowledge of any road frontage requirement (if any such requirement was, in fact, then in existence) – one row of four lots fronting on PIB and a second row of two lots with no frontage on PIB – and Owner/Applicant retained a seventh lot behind the six lots conveyed. Owner/Applicant also retained and currently has one or more access easements to PIB. The first-row four lots have been developed as a restaurant, a liquor store, a gas station, and a restaurant.

While it is possible that there was no code frontage requirement in 1997, and while it is possible that the Owner/Applicant did not receive correct professional advice when it sold off the front parcels, and while it is certain that any statute of limitations has run on any professional liability action, it is now clear that the only remedy for the frontage issue is the granting of the requested variance. Without the variance, the subject property cannot ever be developed and will have little or no value at all. With such diminished value and negligible prospect for development, the subject property will never be able to produce the tax revenues it should for the City.

Furthermore, it is likely that the City, in reviewing the development for the four lots fronting on PIB, as well as drainage plans for all seven lots, became, or should have become, aware of the lack of frontage by one or more lots on the second row, as well as the last row, the seventh lot, the property here in question. The City may have had the opportunity to bring this situation to light prior to the development of such lots, but it did not.

Furthermore, there is no rational, public need for the front footage requirement in this case. First, the subject property has access via one or more access easements recorded at Deed Book 10107, Page 273, and Deed Book 14013, Page 175, Gwinnett County, Georgia records.

Second, as noted above, a literal enforcement of the applicable Code Section will, in this case, result in unnecessary hardship. The granting of the requested variance, however, will ensure that the spirit of the Zoning Ordinance will be observed, public safety and welfare

secured, and substantial justice done. There are extraordinary and exceptional conditions pertaining to the property in question here because of its size, shape or topography.

The granting of the requested variance eliminating the front footage requirement will not, in any way, harm the Owner/Applicant or any future purchaser from Owner/Applicant: there is adequate access to and from the subject property via recorded, perpetual easements. And it will not in any way harm any other citizen of the City of Suwanee or anyone else, nor any intent or purpose of the Zoning Ordinance. The granting of the requested variance here will not unreasonably increase any congestion in public streets, or increase the danger of fire, or endanger the public safety, or unreasonably impair established property values within surrounding area, or, in any other respect, impair the public health, safety, comfort, morals, or welfare of the inhabitants of the City of Suwanee. The granting of the requested variance will in no way be contrary to the public interest.

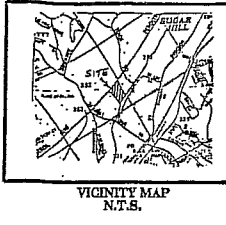
The four developed lots fronting on PIB each have over 150 feet of frontage, so that any appearance aesthetic for which any frontage requirement is intended would be satisfied. Given the size and the topography of the property as it was configured in 1997 (See the plat included with the Application.), it would be customary and usual for an owner in the process of developing lots and the City reviewing any such proposed development to have suggested or required that a seven-lot development have an internal easement-created driveway system with one access point onto PIB. It is likely that the City and/or the Georgia Department of Transportation would have required that there be only one curb cut onto PIB. Furthermore, a private drive would involve no public maintenance costs.

There would have been only three ways for such pre-1997-configured parcel containing a total of 14 acres to be developed: (1) as one single lot, which would not have been economically viable given the significant dropoff from PIB down to Brushy Creek: any leveling of such lot to bring it up to the level of PIB would require a cost-prohibited amount of fill; (2) as 4-5 1000-foot long lots, which again would not be economically viable for similar reasons; and (3), as stated above, as a multi-lot development with a private internal driveway system.

Alternatives (1) and (2), which would not have required any frontage variance are not viable; alternative (3) is the only viable one but it requires a variance. Hence, the requested variance is the only way to solve Owner/Applicant's hardship.

Relief as requested here would not cause substantial detriment to the public good, nor impair the purposes or intent of the Zoning Ordinance. Accordingly, Owner/Applicant respectfully requests that the variance be granted.

BLOCK "A" 4 LOTS
 4 LOTS
 TOTAL - 14.001 ACRES

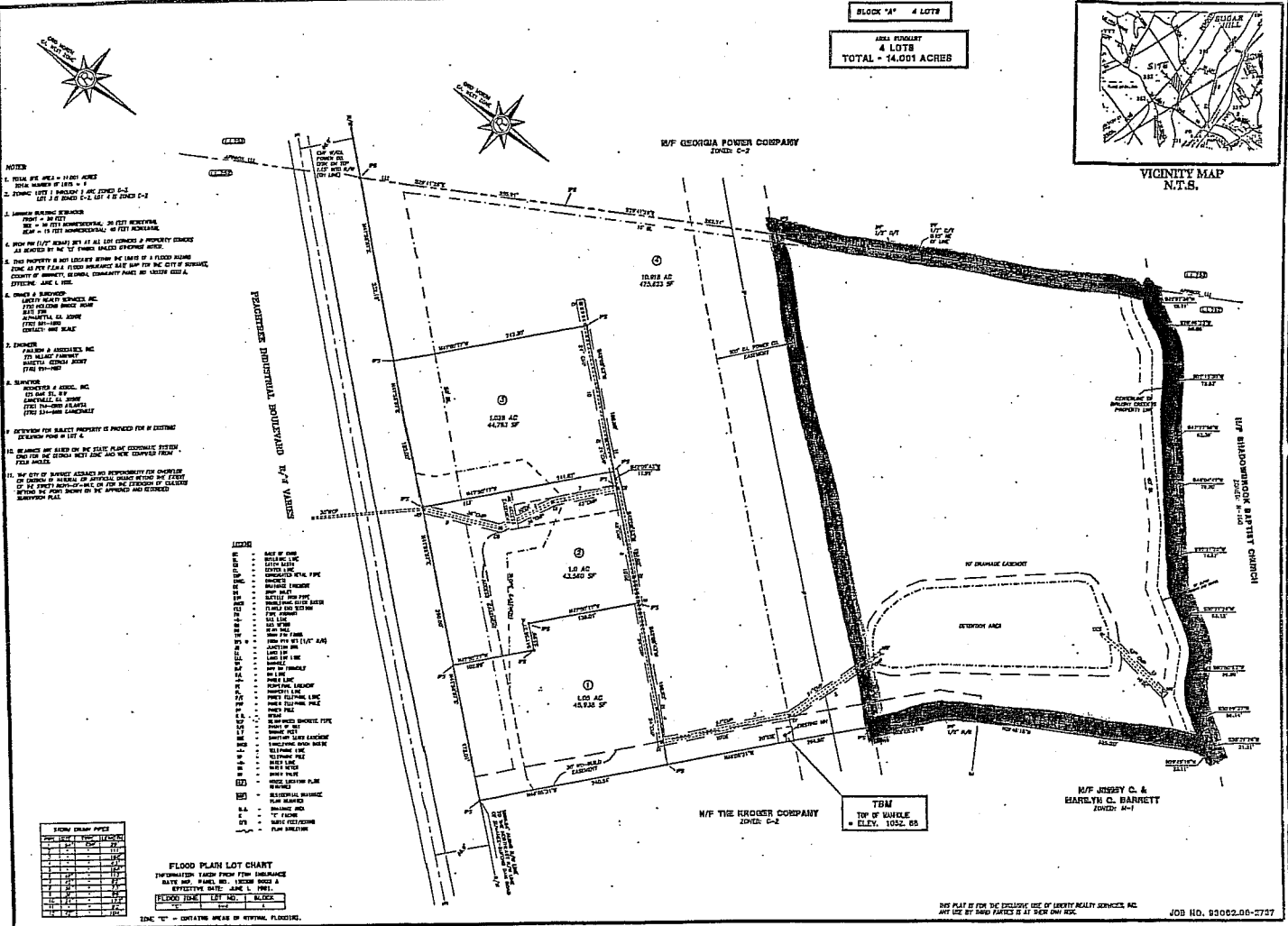


rochester
 Rochester & Associates, Inc.
 Surveyors, Engineers, Planners
 1000 Peachtree Street, N.E.
 Atlanta, Georgia 30309

PRELIMINARY SURVEYOR'S PLAN FOR
PEACHTREE SUWAYNE CROSSING
 1000 PEACHTREE STREET, N.E.
 ATLANTA, GEORGIA 30309



DATE: 11/27/77
 SHEET NO. 1 OF 1
 JOB NO. 83082.06-2737



- NOTES**
1. TOTAL SITE AREA = 14.001 ACRES
 TOTAL NUMBER OF LOTS = 4
 2. ZONING DISTRICT: SUBURBAN 1 (S.U. 1) ZONING DISTRICT
 CITY OF ATLANTA ZONING CODE, CHAPTER 21-2, ARTICLE 11-2
 3. LOTS ARE BEING SUBDIVIDED FROM A 10.818 AC LOT
 S.U. 1 - 10.818 AC (SUBURBAN 1, 10.818 AC)
 S.U. 2 - 1.033 AC (SUBURBAN 1, 1.033 AC)
 S.U. 3 - 1.0 AC (SUBURBAN 1, 1.0 AC)
 S.U. 4 - 1.150 AC (SUBURBAN 1, 1.150 AC)
 4. THIS PROPERTY IS PART OF A FLOOD HAZARD ZONE AS SHOWN BY THE CITY OF ATLANTA FLOOD HAZARD ZONE MAP FOR THE CITY OF ATLANTA, COUNTY OF DEKALB, GEORGIA, DATED JANUARY 1978, EFFECTIVE JANUARY 1, 1978.
 5. OWNER'S SURVEYOR: EARL V. BARRETT, SURVEYOR, NO. 12345, STATE OF GEORGIA, EXPIRES 11/27/87.
 6. OWNER'S SURVEYOR: EARL V. BARRETT, SURVEYOR, NO. 12345, STATE OF GEORGIA, EXPIRES 11/27/87.
 7. OWNER'S SURVEYOR: EARL V. BARRETT, SURVEYOR, NO. 12345, STATE OF GEORGIA, EXPIRES 11/27/87.
 8. OWNER'S SURVEYOR: EARL V. BARRETT, SURVEYOR, NO. 12345, STATE OF GEORGIA, EXPIRES 11/27/87.
 9. OWNER'S SURVEYOR: EARL V. BARRETT, SURVEYOR, NO. 12345, STATE OF GEORGIA, EXPIRES 11/27/87.
 10. OWNER'S SURVEYOR: EARL V. BARRETT, SURVEYOR, NO. 12345, STATE OF GEORGIA, EXPIRES 11/27/87.
 11. THE CITY OF ATLANTA ASSUMES NO RESPONSIBILITY FOR THE ACCURACY OF THE FLOOD HAZARD ZONE MAP OR FOR THE EXTENSION OF CHANGES TO THE FLOOD HAZARD ZONE MAP BY THE CITY OF ATLANTA.

SYMBOL	DESCRIPTION
1	1" = 100'
2	2" = 200'
3	3" = 300'
4	4" = 400'
5	5" = 500'
6	6" = 600'
7	7" = 700'
8	8" = 800'
9	9" = 900'
10	10" = 1000'
11	11" = 1100'
12	12" = 1200'
13	13" = 1300'
14	14" = 1400'
15	15" = 1500'
16	16" = 1600'
17	17" = 1700'
18	18" = 1800'
19	19" = 1900'
20	20" = 2000'
21	21" = 2100'
22	22" = 2200'
23	23" = 2300'
24	24" = 2400'
25	25" = 2500'
26	26" = 2600'
27	27" = 2700'
28	28" = 2800'
29	29" = 2900'
30	30" = 3000'
31	31" = 3100'
32	32" = 3200'
33	33" = 3300'
34	34" = 3400'
35	35" = 3500'
36	36" = 3600'
37	37" = 3700'
38	38" = 3800'
39	39" = 3900'
40	40" = 4000'
41	41" = 4100'
42	42" = 4200'
43	43" = 4300'
44	44" = 4400'
45	45" = 4500'
46	46" = 4600'
47	47" = 4700'
48	48" = 4800'
49	49" = 4900'
50	50" = 5000'
51	51" = 5100'
52	52" = 5200'
53	53" = 5300'
54	54" = 5400'
55	55" = 5500'
56	56" = 5600'
57	57" = 5700'
58	58" = 5800'
59	59" = 5900'
60	60" = 6000'
61	61" = 6100'
62	62" = 6200'
63	63" = 6300'
64	64" = 6400'
65	65" = 6500'
66	66" = 6600'
67	67" = 6700'
68	68" = 6800'
69	69" = 6900'
70	70" = 7000'
71	71" = 7100'
72	72" = 7200'
73	73" = 7300'
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75	75" = 7500'
76	76" = 7600'
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78	78" = 7800'
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80	80" = 8000'
81	81" = 8100'
82	82" = 8200'
83	83" = 8300'
84	84" = 8400'
85	85" = 8500'
86	86" = 8600'
87	87" = 8700'
88	88" = 8800'
89	89" = 8900'
90	90" = 9000'
91	91" = 9100'
92	92" = 9200'
93	93" = 9300'
94	94" = 9400'
95	95" = 9500'
96	96" = 9600'
97	97" = 9700'
98	98" = 9800'
99	99" = 9900'
100	100" = 10000'

FLOOD PLAIN LOT CHART
 INFORMATION FROM FIRM INSURANCE
 DATE AND PANEL NO. 12345 6789 &
 EFFECTIVE DATE: JAN. 1, 1978

LOT NO.	LOT AREA (AC)	FLOOD ZONE
1	10.818	1
2	1.033	2
3	1.0	3
4	1.150	4

2001




City of Suwanee

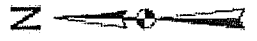


V-2010-003

Location Map

Legend

-  v-2010-003
-  Parcels
-  Streets



City of Suwanee

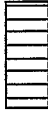


CROSSINGS OF EAST AND FUTURE



V-2010-003

Location Map

Legend

-  V-2010-003
-  Parcels
-  Streets

