

**APPLICATION FOR REZONING
TO THE CITY OF SMYRNA**

Type or Print Clearly

(To be completed by City)

Ward: 2

Application No: Z18-006

Hearing Date: _____

APPLICANT: The Woodbery Group, LLC

Name: Garvis L. Sams, Jr., Attorney for Applicant
(Representative's name, printed)

Address: 376 Powder Springs Street, Suite 100, Marietta, GA 30064

Business Phone: 770-422-7016 Cell Phone: 404-975-7772 Fax Number: 770-426-6583

E-Mail Address: gsams@slhb-law.com

Signature of Representative: 

TITLEHOLDER

Name: Network Leasing LLC (See Attached)
(Titleholder's name, printed)

Address: _____

Business Phone: _____ Cell Phone: _____ Home Phone: _____

E-mail Address: _____

Signature of Titleholder: _____

(Attach additional signatures, if needed)

(To be completed by City)

Received: 3/9/18

Heard by P&Z Board: 4/9/18

P&Z Recommendation: _____

Advertised: ~~5/2/18~~

Posted: 3/29/18

Approved/Denied: _____

**APPLICATION FOR REZONING
TO THE CITY OF SMYRNA**

Type or Print Clearly

(To be completed by City)

Ward: _____

Application No: _____

Hearing Date: _____

APPLICANT: The Woodbery Group LLC

Name: David Woodbery
(Representative's name, printed)

Address: 950 Lowery Blvd. NW, Suite 18, Atlanta, GA 30318

Business Phone: N/A Cell Phone: 404-849-4832 Fax Number: 404-872-7779

E-Mail Address: David@wwcompany.com

Signature of Representative: _____

TITLEHOLDER

Name: William A. Dial on behalf of Network Leasing LLC
(Titleholder's name, printed)

Address: 910 S. Powers Court, Atlanta, GA 30327

Business Phone: N/A Cell Phone: 404-597-6660 Home Phone: N/A

E-mail Address: wadial@yahoo.com

Signature of Titleholder: _____
(Attach additional signatures, if needed)

(To be completed by City)

Received: _____

Heard by P&Z Board: _____

P&Z Recommendation: _____

Advertised: _____

Posted: _____

Approved/Denied: _____

ZONING REQUEST

From O&I to RM-12
Present Zoning Proposed Zoning

LAND USE

From Medium High Density Residential to High Density Residential
Present Land Use Proposed Land Use

For the Purpose of Townhome Community

Size of Tract 2.02

Location On the east side of Elmwood Drive, south of Spring Road (2885 Elmwood Drive)
(Street address is required. If not applicable, please provide nearest intersection, etc.)

Land Lot (s) 666 District 17th

We have investigated the site as to the existence of archaeological and/or architectural landmarks. I hereby certify that there are no X there are such assets. If any, they are as follows:

(To be completed by City)

Recommendation of Planning Commission:

Council's Decision:

CONTIGUOUS ZONING

North: General Commercial

East: RM-12

South: RM-12

West: RTD (Residential Townhomes) and General Commercial

CONTIGUOUS LAND USE

North: Community Activity Center

East: High Density Residential

South: High Density Residential

West: Medium Density Residential & Community Activity Center

INFRASTRUCTURE

WATER AND SEWER

A letter from Scott Stokes, Director of Public Works Department is required stating that water is available and the supply is adequate for this project.

A letter from Scott Stokes, Director of Public Works Department is required stating that sewer is available and the capacity is adequate for this project.

- If it is Cobb County Water, Cobb County must then furnish these letters.

Comments:

See Attached Letter

TRANSPORTATION

Access to Property? Elmwood Drive

Improvements proposed by developer? A high-end Townhome Community with price points ranging from \$380,000 and greater.

Comments:

The subject property is located within a sub-area of the City of Smyrna which is directly adjacent to high density residential developments and commercial uses. Additionally, the property is within a section of the Spring Road Corridor LCI Study (2017) classified as an "Area of Development Opportunity".

ZONING DISCLOSURE REPORT

Has the applicant* made, within two years immediately preceding the filing of this application for rezoning, campaign contributions aggregating \$250 or more or made gifts having in the aggregate a value of \$250 or more to the Mayor or any member of the City Council or Planning and Zoning Board who will consider this application?

No

If so, the applicant* and the attorney representing the applicant* must file a disclosure report with the Mayor and City Council of the City of Smyrna, within 10 days after this application is filed.

Please supply the following information, which will be considered as the required disclosure:

The name of the Mayor or member of the City Council or Planning and Zoning Board to whom the campaign contribution or gift was made:

The dollar amount of each campaign contribution made by the applicant* to the Mayor or any member of the City Council or Planning and Zoning Board during the two years immediately preceding the filing of this application, and the date of each such contribution:

An enumeration and description of each gift having a value of \$250 or more by the applicant* to the Mayor and any member of the City Council or Planning and Zoning Board during the two years immediately preceding the filing of this application:

Does the Mayor or any member of the City Council or Planning and Zoning Board have a property interest (direct or indirect ownership including any percentage of ownership less than total) in the subject property?

No

If so, describe the natural and extent of such interest: _____

ZONING DISCLOSURE REPORT (CONTINUED)

Does the Mayor or any member of the City Council or Planning and Zoning Board have a financial interest (direct ownership interests of the total assets or capital stock where such ownership interest is 10% or more) of a corporation, partnership, limited partnership, firm, enterprise, franchise, association, or trust, which has a property interest (direct or indirect ownership, including any percentage of ownership less than total) upon the subject property?

No

If so, describe the nature and extent of such interest:

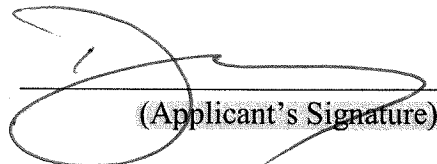
Does the Mayor or any member of the City Council or Planning and Zoning Board have a spouse, mother, father, brother, sister, son, or daughter who has any interest as described above?

No

If so, describe the relationship and the nature and extent of such interest:

If the answer to any of the above is "Yes", then the Mayor or the member of the City Council or Planning and Zoning Board must immediately disclose the nature and extent of such interest, in writing, to the Mayor and City Council of the City of Smyrna. A copy should be filed with this application**. Such disclosures shall be public record and available for public inspection any time during normal working hours.

We certify that the foregoing information is true and correct, this 1 day of March, 2018.



(Applicant's Signature)

(Attorney's Signature, if applicable)

Notes

* Applicant is defined as any individual or business entity (corporation, partnership, limited partnership, firm enterprise, franchise, association or trust) applying for rezoning action.

** Copy to be filed with the City of Smyrna Zoning Department and City Clerk along with a copy of the zoning application including a copy of the legal description of the property.

CAMPAIGN DISCLOSURE REPORT¹
BY ATTORNEY FOR APPLICANT²

Has the Applicant made, within two (2) years immediately preceding the filing of this Application for rezoning, campaign contributions aggregating two hundred fifty dollars (\$250.00) or more or made gifts having in the aggregate a value of two hundred fifty dollars (\$250.00) or more to a member or members of the Smyrna City Council or Planning Commission who will consider the Application?

Yes

If so, the Applicant and the attorney representing the Application must file a disclosure report with the Smyrna City Council within ten (10) days after this Application is first filed.

Please supply the following information which will be considered as the required disclosure:

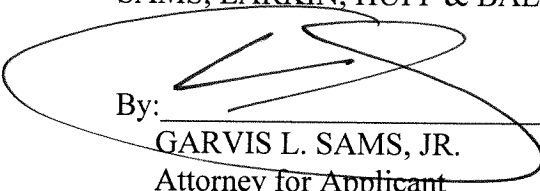
The name of the member(s) of the Smyrna City Council or Planning Commission to whom the campaign contribution or gift was made: Derek A. Norton

The dollar amount of each campaign contribution made by the Applicant to the member(s) of the Smyrna City Council or Planning Commission during the two (2) years immediately preceding the filing of this Application and the date of each such contribution: On 2/21/18, a check in the sum of \$2,000.00 to the Committee to Elect Derek Norton, Mayor.

An enumeration and description of each gift having a value of two hundred fifty dollars (\$250.00) or more made by the Applicant to the member(s) of the Smyrna City Council or Planning Commission during the two (2) years immediately preceding the filing of this Application: N/A

I certify that the foregoing information is true and correct, this the 6 day of March, 2018.

SAMS, LARKIN, HUFF & BALLI, LLP

By: 
GARVIS L. SAMS, JR.
Attorney for Applicant

¹If the answer to any of the above is "Yes", then the member of the Smyrna City Council or Planning Commission must immediately disclose the nature and extent of such interest, in writing to the Smyrna City Council. A copy should be filed with this Application. Such disclosures shall be a public record and available for public inspection at any time during normal working hours.

²Applicant means any person who applies for a rezoning action and any attorney, or other person representing or acting on behalf of a person who applies for a rezoning action.


DISCLOSURE

IF THE ANSWER TO ANY OF THE FOLLOWING QUESTIONS IS "YES", YOU MAY BE REQUIRED UNDER O.C.G.A. §36-67A-3 TO PROVIDE FURTHER INFORMATION:

- A) ARE YOU, OR ANYONE ELSE WITH A PROPERTY INTEREST IN THE SUBJECT PROPERTY, A MEMBER OF THE CITY OF SMYRNA PLANNING COMMISSION OR CITY OF SMYRNA MAYOR AND COUNCIL? **NO**
- B) DOES AN OFFICIAL OF SUCH PUBLIC BODIES HAVE ANY FINANCIAL INTEREST IN ANY BUSINESS ENTITY WHICH HAS A PROPERTY INTEREST IN THE SUBJECT PROPERTY? **NO**
- C) DOES A MEMBER OF THE FAMILY OF SUCH OFFICIALS HAVE AN INTEREST IN THE SUBJECT PROPERTY AS DESCRIBED IN (A) AND (B)? **NO**
- D) WITHIN TWO (2) YEARS IMMEDIATELY PRECEDING THIS APPLICATION, HAVE YOU MADE CAMPAIGN CONTRIBUTION(S) OR GIVEN GIFTS TO SUCH PUBLIC OFFICIALS AGGREGATING \$250.00 OR MORE? **YES**

SAMS, LARKIN, HUFF & BALLI, LLP

By: _____


Garvis L. Sams, Jr.
Attorney for Applicant

3-6-18

DATE

REZONING ANALYSIS

Section 1508 of the Smyrna Zoning Code details nine zoning review factors which must be evaluated by the Planning and Zoning Board and the Mayor and Council when considering a rezoning request. Please provide responses to the following using additional pages as necessary. **This section must be filled out by the applicant prior to submittal of the rezoning request.**

1. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property.

The proposed rezoning consists of the development of a 23 unit townhome subdivision on property currently zoned O&I. The adjoining properties to the north are zoned General Commercial. The adjoining properties to the south and east are zoned RM-12. To the west, nearby properties are zoned RTD and General Commercial. The proposed use will provide an appropriate transition from the commercial fronting onto Spring Road and the multi-family uses otherwise surrounding the site, and therefore, is suitable in view of the use and development of adjacent and nearby properties.

2. Whether the zoning proposal or the use proposed will adversely affect the existing use or usability of adjacent or nearby property.

The high price points and new home construction in the area will benefit both new and existing homeowners and businesses within this sub-area of the City.

3. Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned.

The subject parcel has no reasonable economic use as currently zoned. The existing office complex was built in 1973 and has been vacant for a considerable duration of time.

REZONING ANALYSIS (CONTINUED)

4. Whether the zoning proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools.

The proposed new owner-occupied homes will not cause an excessive or burdensome use of existing streets, utilities or the schools. Additionally, single-family townhomes with short commute patterns makes this particular residential product more appealing to many non-traditional households.

5. Whether the zoning proposal is in conformity with the policy and intent of the land use plan.

Although zoned O&I, the City's Future Development Map indicates a land use category of Medium High Density Residential. This proposed land use change is to High Density Residential which is in keeping with the City's Spring Road Corridor LCI Master Plan as it is located within an "Area of Development Opportunity".

6. Whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the zoning proposal.

The architectural size and standards of the proposed neighborhood will lead to more redevelopment in this area and will be compatible with the surrounding and evolving uses.

REZONING ANALYSIS (CONTINUED)

7. Whether the development of the property under the zoning proposal will conform to, be a detriment to or enhance the architectural standards, open space requirements and aesthetics of the general neighborhood, considering the current, historical and planned uses in the area.

The proposed development will employ a variety of architectural features and materials which will enhance the existing nearby neighborhoods' aesthetics. The tree protection plan indicates the required number of specimen tree recompense.

8. Under any proposed zoning classification, whether the use proposed may create a nuisance or is incompatible with existing uses in the area.

The proposed use will not create a nuisance to the existing uses in the area due to the fact that the surrounding area is also comprised of townhomes, multi-family units and commercial uses.

9. Whether due to the size of the proposed use, in either land area or building height, the proposed use would affect the adjoining property, general neighborhood and other uses in the area positively or negatively.

The new homes and the demographics addressed in relation to new homeowners will be positive addition to the community.



Munis Self Service

Real Estate

View Bill

As of	1/12/2018
Bill Year	2017
Bill	11778
Owner	NETWORK LEASING LLC
Parcel ID	17066600350

View payments/adjustments

Installment	Pay By	Amount	Payments/Credits	Balance	Interest	Due
1	11/15/2017	\$2,925.27	\$2,925.27	\$0.00	\$0.00	\$0.00
TOTAL		\$2,925.27	\$2,925.27	\$0.00	\$0.00	\$0.00

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Printed: 12/14/2017

Cobb County Online Tax Receipt

Thank you for your payment!

CARLA JACKSON TAX COMMISSIONER
CHELLY MCDUFFIE CHIEF DEPUTY
Phone: 770-528-8600
Fax: 770-528-8679

Payer:
PATTILYNN DIAL

NETWORK LEASING LLC

Payment Date: 10/11/2017

Tax Year	Parcel ID	Due Date	Appeal Amount	Taxes Due
2017	17066600350	10/15/2017	Pay: N/A or	\$0.00

Interest	Penalty	Fees	Total Due	Amount Paid	Balance
\$0.00	\$0.00	\$0.00	\$0.00	\$8,391.86	\$0.00



Scan this code with your mobile phone to view this bill!!

Prepared by:

William A Dial, Jr.
910 S Powers Ct, Atlanta, GA 30327

BK: 1 229 PG: 2955-2957
Filed and Recorded Apr-02-2015 08:25:11AM
DOCN: D2015-022399
Real Estate Transfer Tax \$0.00
0332015006289

Quitclaim Deed
STATE OF GEORGIA
COUNTY OF Cobb



REBECCA KEATON
CLERK OF SUPERIOR COURT Cobb Cty. GA.

THIS INDENTURE, made the April 1, 2015, between William A Dial Jr, married, of 910 S Powers Ct, Atlanta, GA 30327, (the "Grantor"), and Network Leasing, LLC, a Georgia corporation, 2889 Elmwood Dr, Smyrna, whose mailing address is 910 S Powers Ct, Atlanta, GA 30327, (the "Grantee"). (The words "Grantor" and "Grantee" include their respective heirs, successors, and assigns where the context requires or permits).

WITNESSETH that: The Grantor, for and in consideration of the sum of \$10 and other valuable consideration in hand paid at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, by these presents does hereby remise, convey and forever QUITCLAIM unto the said Grantee, the below described tract or parcel of land more fully and completely described as follows:

See Attached Exhibits A and B

Previously referenced as follows: Book/Volume 14891, Page 4916 of the Recorder of COBB County. AND
Previously referenced as follows: Book/Volume 13326, Page 3970 of the Recorder of COBB County.

TO HAVE AND TO HOLD the said described premises to the Grantee, so that neither Grantor nor any person or persons claiming under Grantor shall at any time, by any means or ways, have, claim or demand any right or title to said premises or appurtenances, or any rights thereof. IN WITNESS WHEREOF, the Grantor has signed and sealed this deed, the day and year above written.

Signed, Sealed and Delivered
In the Presence of:

Sign: Nancy P Gault
Name: Nancy P Gault

William A Dial Jr
William A Dial Jr

Spousal Rights

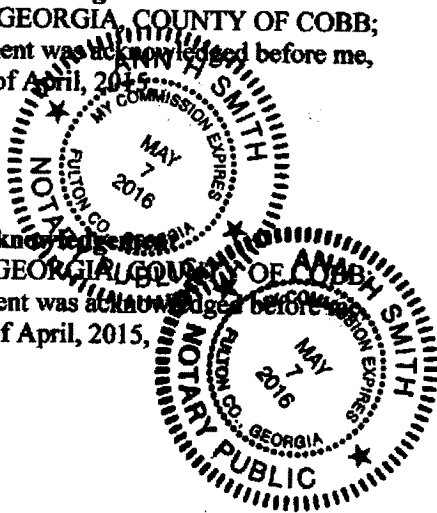
I, Pattilynn O Dial of 910 S Powers Ct, Atlanta, GA 30327, spouse of William A Dial Jr, in consideration of the above sum and other good and valuable consideration received, do hereby waive and release to the Grantee all rights of dower, courtesy, homestead, community property, and all other right, title and interest, if any, in and to the above property.

Spouse's Signature: Pattilynn O Dial

Spousal Acknowledgement

STATE OF GEORGIA, COUNTY OF COBB;
This instrument was acknowledged before me,
this 1st day of April, 2015.

Seal:



Brian N. Smith
Notary Public for the State of Georgia

Grantor Acknowledgement

STATE OF GEORGIA, COUNTY OF COBB;
This instrument was acknowledged before me,
this 1st day of April, 2015.

Seal:

Brian N. Smith
Notary Public for the State of Georgia

Exhibit "A"

All that tract or parcel of land lying and being in Land Lot 666 of the 17th District, 17th Section of Cobb County, Georgia and being more particularly described as follows:

BEGINNING at an iron pin on the east side of Elmwood Drive which iron pin is 212.15 feet south, as measured along the east side of Elmwood Drive from the new right of way marker of Spring Road (as widened) which highway marker is located on the east side of Elmwood Drive (and which iron pin is also 250 feet south, as measured along the east side of Elmwood Drive from the intersection of the east side of Elmwood Drive and the south side of Spring Road prior to its widening); thence running south 00 degrees 58 minutes 52 seconds west along the east side of Elmwood Drive a distance of 220.0 feet to an iron pin; thence running south 89 degrees 10 minutes 31 seconds east a distance of 225.0 feet to an iron pin; thence running north 00 degrees 58 minutes 52 seconds east a distance of 70 feet to an iron pin; thence running north 89 degrees 04 minutes 24 seconds east a distance of 75.0 feet to an iron pin; thence running north 00 degrees 58 minutes 52 seconds east a distance of 150 feet to an iron pin; thence running south 89 degrees 08 minutes 59 seconds west a distance of 300.58 feet to an iron pin on the east side of Elmwood Drive at the point of beginning; said property being more particularly shown on plat of survey for William A. Dial, Jr. by Georgia Land Surveying Co, Inc. dated November 1, 1985 and being the same property acquired by Grantors by deed dated May 24, 1979 recorded in Deed Book 2018, Page 460, Cobb County, Georgia Records.

Also

All that tract or parcel of land lying and being in Land Lot 666 of the 17th District, 2nd Section of Cobb County, Georgia and being more particularly described as follows:

BEGINNING at an iron pin on the east side of Elmwood Drive which iron pin is 432.15 feet south, as measured along the east side of Elmwood Drive from the new right of way marker of Spring Road (as widened) which highway marker is located on the east side of Elmwood Drive (and which iron pin is also 470 feet south, as measured along the east side of Elmwood Drive from the intersection of the east side of Elmwood Drive and the south side of Spring Road prior to its widening); thence running south 00 degrees 58 minutes 52 seconds west along the east side of Elmwood Drive a distance of 55.0 feet to an iron pin; thence running south 89 degrees 10 minutes 31 seconds east a distance of 225.58 feet to an iron pin; thence running north 00 degrees 58 minutes 52 seconds east a distance of 55.0 feet to an iron pin; thence running north 89 degrees 10 minutes 31 seconds west a distance of 225.0 feet to an iron pin on the east side of Elmwood Drive at the point of beginning; said property being more particularly shown on plat of survey for William A. Dial, Jr. by Georgia Land Surveying Co., Inc., dated November 1, 1985 and being the same property acquired by Grantor by warranty deed dated April 11, 1980 recorded in Deed Book 2172, Page 322, Cobb County, Georgia Records.

BK: 15229 PG: 2956

exhibit B

EXHIBIT "A"

All that tract or parcel of land lying and being in Land Lot 666 of the 17th District, 2nd Section of Cobb County, Georgia and being more particularly described as follows:

Beginning at a 3/8" rebar found on the east right-of-way of Elmwood Drive (40 foot right-of-way) said rebar being located a distance of 200.99 feet south from the intersection formed by the east right-of-way of Elmwood Drive with the south right-of-way of Spring Road, as measured along the east right-of-way of Elmwood Drive; thence running north 89 degrees 04 minutes 24 seconds east a distance of 300.42 feet to a 1" open top pipe found; thence running south 00 degrees 46 minutes 52 seconds west a distance of 50.40 feet to a 3/8" rebar placed; thence running south 89 degrees 08 minutes 59 seconds west a distance of 300.58 feet to a 3/8" rebar placed on the east right-of-way of Elmwood Drive; thence running north 00 degrees 58 minutes 52 seconds east, along the east right-of-way of Elmwood Drive a distance of 50.00 feet to a 3/8" rebar found at the point of beginning; said tract containing 0.346 acres according to a plat of survey by Josh L. Lewis, III, RLS, dated January 16, 2001, and being the same property acquired by Mrs. Jewell D. Cox and Susan Beth Cox by Warranty Deed dated January 13, 1972, recorded in Deed Book 1282 Page 268, Cobb County, Georgia records.

Clerk of Superior Court Cobb Cty. Ga.
REBECCA KEATON

J.C. Stephens

Deed Book 13325 Pg 3976

Property Line Description for 2885 Elmwood Drive

All that tract or parcel of land lying and being in Land Lot 666 of the 17th District, of the 17th Section, City of Smyrna, Cobb County, Georgia, and being more particularly described as follows:

Beginning at a point at the intersection of the southerly right-of-way of Spring Road and easterly right-of-way of Elmwood Drive (40' right-of-way),

Thence running southerly 212.15 feet along easterly right-of-way of Elmwood Drive to a #3 rebar, said point being the POINT OF BEGINNING;

Thence leaving said right-of-way running North 89 degrees 37 minutes 36 seconds East 299.82 feet to a 1" open top pipe;

Thence running South 00 degrees 43 minutes 27 seconds West 50.47 feet to a #3 rebar;

Thence running South 01 degrees 47 minutes 09 seconds West 149.16 feet to a #4 rebar;

Thence running South 89 degrees 38 minutes 59 seconds West 75.00 feet to an "X" cut in top of curb;

Thence running South 01 degrees 32 minutes 37 seconds West 125.25 feet to a #4 rebar;

Thence running South 89 degrees 49 minutes 13 seconds West 225.58 feet to a #4 rebar on the easterly right-of-way of Elmwood Drive (40' right-of-way);

Thence running along said right-of-way North 01 degrees 41 minutes 16 seconds East 274.27 feet to a #3 rebar;

Thence running along said right-of-way North 01 degrees 33 minutes 09 seconds East 49.83 feet to a #3 rebar, said point being the POINT OF BEGINNING;

Said tract or parcel contains 2.02 Acres (87,982 Square Feet), more or less.



CITY OF SMYRNA

2800 King Street / P.O. Box 1226, Smyrna, Georgia 30081
(770) 434-6600 / www.smyrnacity.com

City of Smyrna

Water and Sewer Availability

The City of Smyrna has determined that water and sanitary sewer are available to the proposed development. Both water and sanitary sewer are located within the right of way of Elmwood Drive. All water taps, meters and sewer taps shall be located within the right of way of Elmwood Drive.

Due to the anticipated amount of road cuts in Elmwood, the developer will be required to repave the property frontage of Elmwood Drive. All water taps and sewer taps are the responsibility of the developer. Elevations are the responsibility of the developer.

This information is based upon a rezoning plan titled 2885 Elmwood Drive by DGM Land Planning Consultants dated February 25, 2018.

Sincerely,

Scott Stokes
Director Public Works

MEMORANDUM

CITY COUNCIL	WARD 1 DEREK NORRIS	WARD 2 ANDREA BUCSTEIN	WARD 3 TERRANCE HAVICZ	WARD 4 CHARLES A. WILCOX	WARD 5 SUSAN WILKINSON	WARD 6 DOUG STONER	WARD 7 RON HENNE
	CITY ADMINISTRATOR MICHAEL JONES, PE.		CITY CLERK DERRIGRAHAM	CITY ATTORNEY SCOTT A COCHRAN			MUNICIPAL COURT JUDGE L. ALON CURTIS JR.

TO THE MAYOR AND CITY COUNCIL

CITY OF SMYRNA, GEORGIA

CONSTITUTIONAL CHALLENGE

COMES NOW, THE WOODBERY GROUP, LLC, hereinafter referred to as the "Applicant" for Rezoning and asserts the following, to wit:

1.

By application to which this exhibit relates, the Applicant has applied for a rezoning of certain real property lying and being in the City of Smyrna, Cobb County, Georgia, a more particular description and delineation of the subject property, hereinafter referred to as the "Property", being set forth in said Application.

2.

The Application for Zoning of the property seeks a rezoning from the existing category of O&I, as established by the governing authority of the City of Smyrna, Georgia to the zoning category of RM-12 for a Townhome Community.

3.

The current O&I zoning classification of the property and all intervening classifications between same and RM-12 are unconstitutional in that they deprive the Applicant under and pursuant to Article 1, Section I, Paragraphs I and II of the Georgia Constitution of 1983 and the Equal Protection and Due Process clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States. This deprivation of property without due process violates constitutional prohibitions against the taking of private property without just compensation.

4.

The zoning classification of O&I and all intervening classifications between same and RM-12 as they presently exist violate the Applicant's rights to the unfettered use of the property in that the existing zoning classification does not bear a substantial relation to the public health, safety, morality or general welfare and is, therefore, confiscatory and void. Further, said classification is unconstitutional in that it is arbitrary and unreasonable, resulting in relatively little gain or benefit to the public, while inflicting serious injury and loss upon the Applicant.

5.

The City of Smyrna Zoning Ordinance is further unconstitutional in that the procedures contained therein pertaining to the public hearing held in connection with zoning applications also violates the aforementioned constitutional provisions in that said procedures contain the lack of procedural and evidentiary safeguards, do not restrict evidence received to the issues at hand, and are in many instances controlled by political considerations rather than the facts and considerations required by law.

Respectfully submitted, this the 7 day of March, 2018.

SAMS, LARKIN, HUFF & BALLI, LLP

By: 

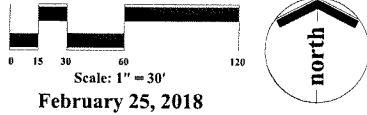
GARVIS L. SAMS, JR.
Attorney for Applicant
Ga. Bar No. 623950

2885 Elmwood Drive

City of Smyrna, Georgia Land Lot 666, 17th District, 17th Section

property owner:

The Woodbery Group, LLC
 950 Lowery Boulevard
 Suite #18
 Atlanta, Georgia 30318
 404-233-1411



DGM
 LAND PLANNING
 CONSULTANTS



975 Cobb Place
 Blvd, Suite 212
 KENNESAW
 GA 30144
 770 514-9066
 FAX 514-9491



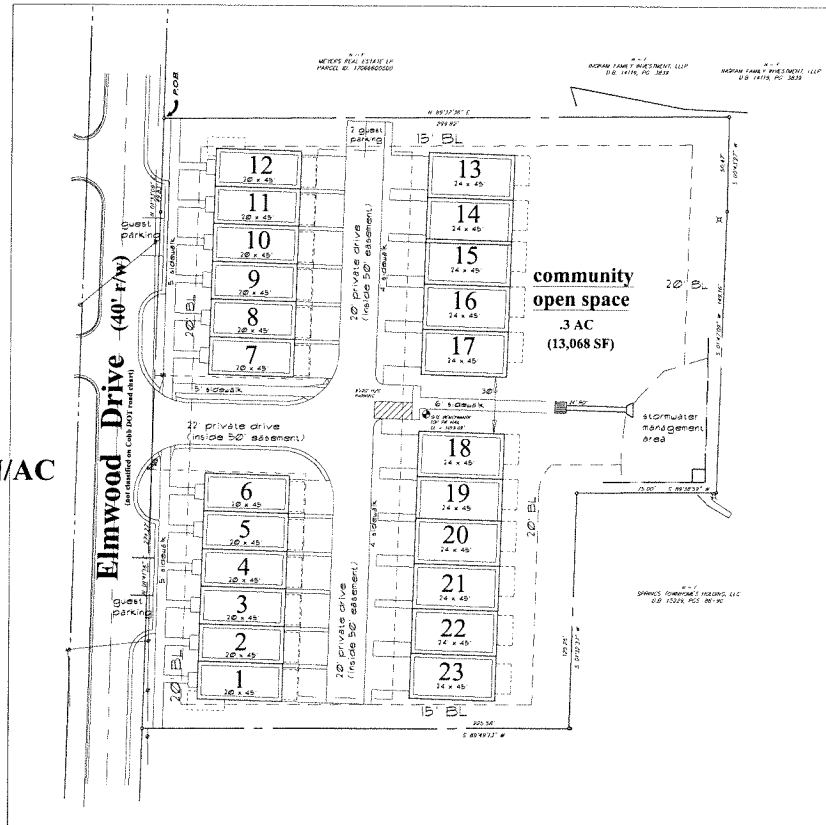
Site Data

Total Site Area: 2.02 AC
Present Zoning: O&I
Proposed Zoning: RM-12
Density: 11.39 UN/AC
Total Units Shown: 23

12 - 20' wide units w/2 car garages
 11 - 24' wide units w/2 car garages

Proposed Building Setbacks:

front: 20'
side: 15'
rear: 20'



General Notes:

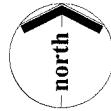
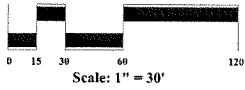
- Boundary and topographic survey by Gaskins Surveying and Engineering, dated December 20, 2017.
- According to Flood Insurance Rate Map (FIRM) 13067C0138G, effective on 12/16/2008 no portion of this site contains floodplain.
- No cemeteries are known to exist on site.
- No wetlands are known to exist on site.
- No state waters are known to exist on site.
- No archeological or architectural landmarks are known to exist on site.
- No utility easements are known to exist on site.
- Stormwater and water quality structures are conceptual and will be designed further based on proposed hydrologic study.

2885 Elmwood Drive

City of Smyrna, Georgia Land Lot 666, 17th District, 17th Section

property owner:

The Woodbery Group, LLC
950 Lowery Boulevard
Suite #18
Atlanta, Georgia 30318
404-233-1411



February 25, 2018



975 Cobb Place
Bldg. Suite 212
KENNESAW
GA 30144
770 514-9006
Fax 514-9491



Site Area Calculation:
Net Site Area = 2.02 AC

Tree Density Calculation:
2.02 AC x 100%/AC = 202 Total Inches Required
EDF + RDF = SDF
EDF = 171" (0" of non-specimens + 171" of specimens preserved)
RDF = 32" (6 x 4" cal. street trees = 24" + 8" of replacement trees elsewhere on site)
171" + 32" = 203" SDF (the 1" surplus which will count against recompense)
therefore density is satisfied

Specimen Tree Recompense Calculation:
141" of specimen trees have been removed. (see Tree Survey/Protection Plan)
Therefore, the 100" maximum recompense applies.
100" of recompense has been provided elsewhere on site.
99" (see tree list), plus 1" left over from density credit

Street Tree Requirement:
6 street trees are required per the street tree requirement (see Tree Replacement Plan). A total of 6 x 4" caliper trees have been provided. Street trees have been placed at every viable and appropriate location possible. Since overhead power line are present along Elmwood Drive, understory trees have been selected. The 6 (24") are being counted to satisfy density requirements.

City of Smyrna Required Notes:

1. All existing trees, specimen and non-specimen, counted for EDF credits must be fully preserved during individual lot permitting.
2. All trees must be planted at least 10' from any utility line.
3. Tree save fence for entire site must be installed, inspected and approved prior to installation of erosion control measures. No least disturbance or demolition is allowed before tree save fencing has been inspected and approved by Community Development Director.
4. The CRZ of Specimen trees receiving a JK credit shall be protected with a chain link tree save fencing spaced 4' on center with metal support posts and Tree Save signage. Installation of tree save fence will involve no trenching, 4" of organic mulch over the CRZ and an above ground irrigation system.
5. The Community Development Director must inspect the site before installation of erosion control measures. Land disturbance without site inspection and approval by the Community Development Director will result in a "Stop Work Order" and fine.
6. If tree survey inaccuracies are found on-site, a stop work order will be issued until revised plans are approved and processed based on accurate information.
7. The Community Development Director must inspect and approve the site before the issuance of a Certificate of Occupancy.
8. Trees agreed upon to be saved is the responsibility of the owner.
9. A 3-4" layer of mulch will be required for the CRZ of Specimen Trees. Mulch must be applied prior to start of construction. Keep mulch at least 5" from the trunk of the tree.
10. A minimum 3-4" layer of mulch will be required for all existing, non specimen, landscape trees, including street trees and parking lot trees. Mulch must be applied prior to start of construction. Mulch shall not be placed directly against tree trunk.
11. All newly planted trees shall have visible root flares at finished grade. No staking shall be allowed on planted trees. The upper 2/3 of the wire baskets, all burlap, and strapping shall be cut and removed prior to backfill.
12. Trees less than the caliper inch shown will not be accepted. I.e.: 4 inch caliper tree must be 4 inches or larger.
13. Plant height measurement is taken at the top of the main body of the plant and not at the tip of the topmost growth.
14. All newly planted trees shall be equivalent in quality to a Florida #1 grade or better. All trees of lower quality shall be rejected by the Community Development Director.
15. Watering bags or a drip irrigation system will be provided for all trees prior to issuance of the certificate of occupancy. During first year bags will be refilled weekly by owner and refilled during drought for a minimum of 2 years after installation.
16. All tree guys and stakes shall be removed from tree one year after planting or before.

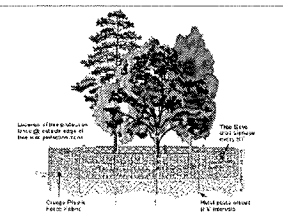
NO TRENCHING ALLOWED IN TREE SAVE AREAS INCLUDING IRRIGATION.

CONTACT THE COMMUNITY DEVELOPMENT DEPARTMENT (770) 319-5387 TO ARRANGE A PRECONSTRUCTION CONFERENCE PRIOR TO ANY LAND DISTURBANCE. NO PERMIT SHALL BE ISSUED UNTIL PLANS ARE APPROVED AND AN ON-SITE INSPECTION WITH CITY REPRESENTATIVE OCCURS.

ALL TREE PROTECTION MEASURES SHALL BE INSTALLED PRIOR TO GRADING OR THE REMOVAL OF IMPERVIOUS SURFACES OR STRUCTURES.

BUFFERS SHALL BE REPLANTED SUBJECT TO COMMUNITY DEVELOPMENT DEPARTMENT APPROVAL.

Tree Protection for Non-Specimen Trees



*specimen tree protection requires orange polyethylene fence be replaced with chain link fence.

MODIFIED ARBORIST REPORT FOR:
Elmwood Drive, City of Smyrna, Georgia
Prepared for: The Woodbery Group
Visual Inspection only

Prepared by: T.J. Schell, LLC Landscape Architects And Certified Arborists
2985 Gordy Parkway, Suite 422, Marietta, GA 30066
teresa@tjshell.com Cell 770-361-2319
Teresa H. Eldredge, R.L.A. ISA Certified Arborist, ISA SO-5442A
December 15, 2017

City of Smyrna:

- 10' dbh Small Tree-Dogwood, Redbud, and Sourwood.
 - 24" dbh Overstory-Genus oak and beech.
 - 30" dbh Overstory-Ash, Blackgum, cedar, fir, hickory, maple, pecan, persimmon, spruce.
 - 36" dbh Overstory-Genus pine, sweetgum, and poplar.
- A specimen tree must also meet the following minimum standards:
a. A life expectancy of greater than 15 years;
b. A structurally sound trunk, not hollow and having no extensive decay, and less than ten percent radial trunk dieback;
c. No more than two major and several minor dead limbs (hardwoods only);
d. No major insect or pathological problem;
e. Relatively uniform crown distribution or correctable crown distribution with no more than 70 percent of all branches on one side of tree;
1. Water Oak - 38" DBH - (Tag #1) 1 large dead branch, Good Condition
 2. Dogwood - 10.4" (multi formula) DBH - (Tag #2) Fair to Good Condition
 3. Dogwood - 10.8" (multi formula) DBH - (Tag #3) Fair to Good Condition
 4. Dogwood - 10.8" (multi formula) DBH - (Tag #4) Obvious decay at split with structural deficiency, Poor to Fair - Request Not Specimen
 5. Water Oak - 30" DBH - (Tag #6) 15% Lean, Fair - Good Condition
 6. Water Oak - 27" DBH - (Tag #7) Fair - Good Condition
 7. Elm - 37" DBH - (Tag #61) One large dead branch can be pruned with canopy, Fair - Good Condition
 8. Elm - 48" DBH - (Tag #62) Sapsucker Damage and several small dead branches, Fair Condition for age and location

Removed Specimen Tree Inches				
Tree Number	Tree Species	Tree Size DBH (in inches)	CRZ (in feet)	Radius (in feet)
#1	water oak	35	52.5	
#2	dogwood	10	15	
#3	dogwood	11	16.5	
#61	elm	37	55.5	
#62	elm	48	72	
Total Inches:			141	

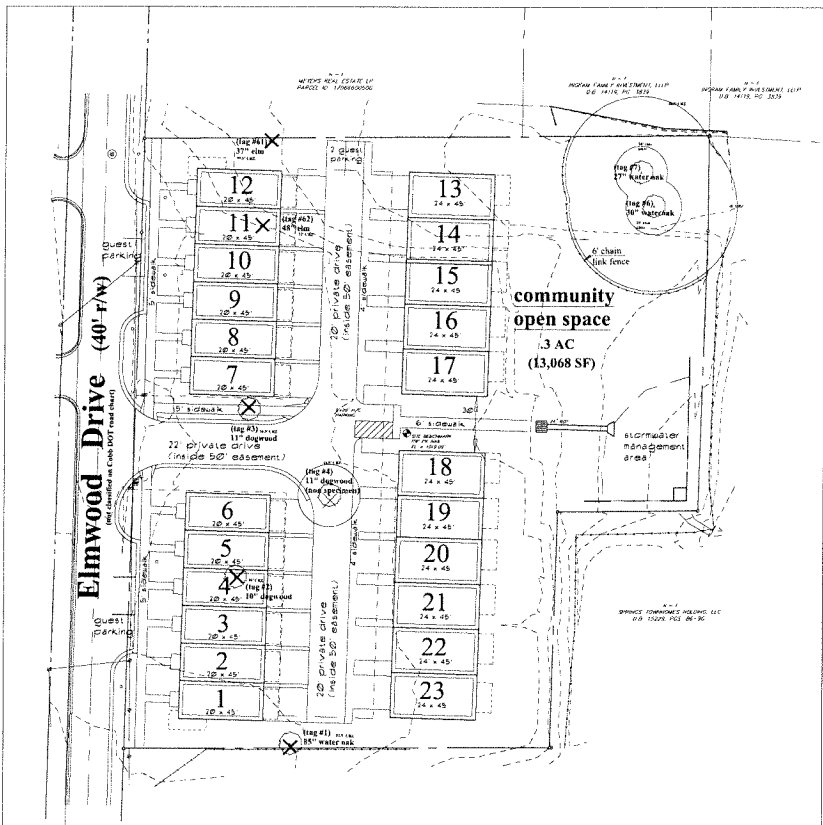
Preserved Specimen Tree Inches				
Tree Number	Tree Species	Tree Size DBH (in inches)	CRZ (in feet)	Radius (in feet)
#6	water oak	30	45	
#7	water oak	27	40.5	
Total Inches:			57	

57" of specimen x 3 credit = 171"

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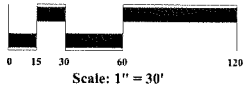


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February 25, 2018



975 Cobb Place
Bldg. 207212
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Tree Calculations

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- The CRZ of Specimen trees receiving a 3X credit shall be protected with 6" chain link tree save fencing spaced 6' on center with metal support posts and Tree Save signage. Installation of tree save fence will involve no trenching, 6" of organic mulch over the CRZ and an above ground irrigation system.
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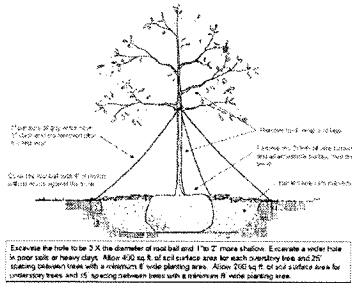
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Tree List

PLANT TYPE	LABEL	QUAN.	COMMON NAME	BOTANICAL NAME	SIZE	HGT.	DENSITY	RECOMP.	TOTAL INCHES	MIN. SPACE	% OF TOTAL	
Replacement Trees												
(replacement tree)	GB	4	Ginkgo	Ginkgo biloba	6" Cal.	10'-12'		24	24	25' o.c.	16.0%	
(replacement tree)	AS	2	Sugar Maple	Acer saccharum	4" Cal.	10'-12'	8	8	25' o.c.	8.0%		
(street tree)	CF	6	Dogwood	Cornus florida	4" Cal.	10'-12'	24	24	25' o.c.	24.0%		
(replacement tree)	PS	4	Chinese Pistache	Pistacia chinensis	6" Cal.	10'-12'		24	24	25' o.c.	16.0%	
(replacement tree)	UP	4	Lacebark Elm	Ulmus parvifolia	6" Cal.	10'-12'		24	24	25' o.c.	16.0%	
(replacement tree)	ZS	4	Zelkova	Zelkova serotina	6" Cal.	10'-12'		24	24	25' o.c.	16.0%	
(replacement tree)	QPH	1	Willow Oak	Quercus phellos 'Hightower'	4" Cal.	10'-12'		3	3	25' o.c.	4.0%	
TOTALS		25					32	99	131		100.0%	

Tree Planting Detail

Figure 11: Tree Planting Detail



General Notes:

- Boundary and topographic survey by Gaskins Surveying and Engineering, dated December 20, 2011.
- According to Flood Insurance Rate Map (FIRM) 130670C0383, effective on 12/16/2008 no portion of this site contains floodplain.
- No cemeteries are known to exist on site.
- No wetlands are known to exist on site.
- No state waters are known to exist on site.
- No archeological or architectural landmarks are known to exist on site.
- No utility easements are known to exist on site.
- Stormwater and water quality structures are conceptual and will be designed further based on proposed hydrologic study.

