

# SAMS, LARKIN, HUFF & BALLI

A LIMITED LIABILITY PARTNERSHIP

GARVIS L. SAMS, JR.

770•422•7016

JOEL L. LARKIN

TELEPHONE

PARKS F. HUFF

770•426•6583

JAMES A. BALLI

FACSIMILE

SUITE 100  
376 POWDER SPRINGS STREET  
MARIETTA, GEORGIA 30064-3448

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ADAM J. ROZEN

WWW.SLHB-LAW.COM

June 10, 2016

## VIA HAND DELIVERY

Mr. Ken Suddreth, Director  
Community Development Department  
City of Smyrna  
3180 Atlanta Road  
Smyrna, GA 30080

Re: Application of WenMarr Management Company, LLC for Zoning concerning a 0.56 Acre Tract; Land Lot 880 of the 17<sup>th</sup> District, 2<sup>nd</sup> Section, City of Smyrna, Cobb County, Georgia.

Dear Ken:

This firm has been engaged by and represents WenMarr Management Company, LLC (“WenMarr”) concerning the above-captioned Rezoning Application.

By meeting today's deadline, it is my understanding that the Application will be heard by the Planning & Zoning Board on July 11, 2016 and by the Mayor and City Council on August 15, 2016. With respect to the foregoing, enclosed please find the original and five (5) copies of the above-captioned Rezoning Application and supplemental documentation as follows:

1. The deed reflecting the current Titleholder.
2. A legal description of the subject property.
3. A copy of the paid tax receipt indicating that taxes are paid on the subject property with respect to Cobb County.
4. A full-sized copy, an 11" x 17" sized copy and an 8½" x 11" copy of the Site Plan.
5. A full-sized copy, an 11" x 17" sized copy and an 8½" x 11" copy of the Survey.
5. A Water/Sewer Availability letter from Mr. Scott Stokes has been requested and will be provided at a later date.

SAMS, LARKIN, HUFF & BALLI

A LIMITED LIABILITY PARTNERSHIP

**VIA HAND DELIVERY**

Mr. Kenneth Suddreth, Director  
Community Development Department  
June 10, 2016  
Page 2

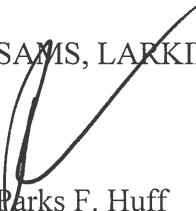
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- 7. A copy of proposed building elevation.
- 8. A Constitutional Challenge.
- 10. Two checks for \$450.00 each made payable to the City of Smyrna representing the \$900.00 Application fee.
- 11. A disc containing a pdf copy of this submittal and the legal description in Word format.

I will be contacting you and your staff to discuss potential stipulations/conditions of the Rezoning Request and to address any concerns which you or the staff may have regarding the Application. In the interim, should you have any questions or need any additional documentation or information, please do not hesitate to contact me.

Sincerely,

SAMS, LARKIN, HUFF & BALLI, LLP



Parks F. Huff  
[phuff@slhb-law.com](mailto:phuff@slhb-law.com)

PFH/klk  
Enclosures

cc: Mr. Michael L. Jones, P.E., City Administrator (via email w/attachments)  
Scott A. Cochran, Esq. (via email w/attachments)  
Mr. Eric Randall, P.E., City Engineer (via email w/attachments)  
Mr. Scott Stokes, Public Works Director (via email w/attachments)  
Ms. Terri Graham, City Clerk (via email w/attachments)  
Mr. Russell Martin, AICP, Senior City Planner (via email w/attachments)

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

*Type or Print Clearly*

(To be completed by City)

**Ward:** \_\_\_\_\_

**Application No:** \_\_\_\_\_

**Hearing Date:** \_\_\_\_\_

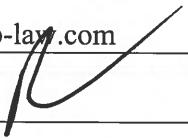
**APPLICANT:** WenMarr Management Company, LLC

Name: Parks F. Huff, Esq. (Sams, Larkin, Huff & Balli, LLP)  
(Representative's name, printed)

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

Business Phone: 770-422-7016 Cell Phone: \_\_\_\_\_ Fax Number: 770-426-6583

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

Signature of Representative: 

### **TITLEHOLDER**

Name: Wendy's Properties, LLC  
(Titleholder's name, printed)

Address: \_\_\_\_\_

Business Phone: \_\_\_\_\_ Cell Phone: \_\_\_\_\_ Home Phone: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

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

(To be completed by City)

Received: \_\_\_\_\_

Heard by P&Z Board: \_\_\_\_\_

P&Z Recommendation: \_\_\_\_\_

Advertised: \_\_\_\_\_

Posted: \_\_\_\_\_

**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:** \_\_\_\_\_

Name: Matt Van Paepeghem, WenMarr Management Company, LLC  
(Representative's name, printed)

Address: 1100 Oakley Industrial Boulevard Fairburn, Georgia 30213

Business Phone: 770-306-6063 Cell Phone: 404-414-9072 Fax Number: 770-306-6064

E-Mail Address: matt@wenmarr.com

Signature of Representative: \_\_\_\_\_

### **TITLEHOLDER**

Name: Wendy's International, Inc. Properties, LLC  
(Titleholder's name, printed)

Address: 1145 Sanctuary Parkway, Suite 225 Alpharetta, Ga 30009

Business Phone: 770-764-3380 Cell Phone: \_\_\_\_\_ Home Phone: 614-764-6737

E-mail Address: angie.michaels@wendys.com

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

(To be completed by City)

Received: \_\_\_\_\_

Heard by P&Z Board: \_\_\_\_\_

P&Z Recommendation: \_\_\_\_\_

Advertised: \_\_\_\_\_

Posted: \_\_\_\_\_

Approved/Denied: \_\_\_\_\_

ATTACHMENT TO REZONING APPLICATION

Application No.: \_\_\_\_\_

Planning & Zoning Board Hearing Date: \_\_\_\_\_

Mayor and Council Hearing Date: \_\_\_\_\_

Applicant: WENMARR MANAGEMENT CO., L.L.C.

Titleholder: WENDY'S PROPERTIES, LLC

Tax ID #: 17088000110

PROPERTY OWNER'S CERTIFICATION

The undersigned(s) below, or as attached, is the owner of the property considered in this application.

  
Signature of Owner \_\_\_\_\_ Date \_\_\_\_\_

Address: One Dave Thomas Blvd.  
Dublin, OH 43017

Telephone No.: (614) 7104-3100

  
Date \_\_\_\_\_



Katie N. McDowell  
Notary Public, State of Ohio  
My Commission Expires 04-18-2020

**CERTIFICATE REGARDING CORPORATE AUTHORITY TO PURSUE REZONING**

1.  
My name is Kris A. Kaffenbarger I am the secretary, assistant secretary or other officer to whom the operating agreement has delegated the responsibility for authenticating records of the company *Wendy's Properties, LLC*, a Georgia Company (the "Titleholder"). I am of legal age and suffer from no disabilities which would affect my competence to give this Certificate which is being given on my own personal knowledge for use with respect to the Applicant's Rezoning Application regarding certain real property owned by the Titleholder Company located in the City of Smyrna, Cobb County, Georgia.

2.

In accordance with the Requirements for Completing a City of Smyrna Rezoning Application, I hereby attest on behalf of the Titleholder Company that I have reviewed the Rezoning Application and related documents which are being filed simultaneously therewith on behalf of the Applicant and Titleholder (collectively, the "Rezoning Application") to which this Certificate is attached and hereby certify:

- (a) That corporate seal or facsimile affixed to the Rezoning Application is in fact the seal of the Titleholder Company or a true facsimile thereof; and
- (b) That the officer or other representative of the Titleholder Company who executed the Rezoning Application does in fact occupy the official position indicated, that the position that the signer occupies has the authority to execute the Rezoning Application on behalf of the Titleholder Company, and that the signature of said officer or other representative is genuine; and
- (c) That the execution of the Rezoning Application and the filing of the Rezoning Application on behalf of the Titleholder Company by the officer or other representative of the Applicant Company has been duly authorized by the Titleholder Company.

WENDY'S PROPERTIES, LLC

By:  (CORPORATE SEAL)  
Its: Kris A. Kaffenbarger  
VP - System Optimization

**ZONING REQUEST**

From GC to GC  
Present Zoning Proposed Zoning

**LAND USE**

From NAC to NAC  
Present Land Use Proposed Land Use

For the Purpose of Redevelopment of Wendy's Restaurant

Size of Tract 0.56 Acre

Location On the south side of Spring Road, east of Cumberland Blvd. (2808 Spring Road)  
(Street address is required. If not applicable, please provide nearest intersection, etc.)

Land Lot (s) 880 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:

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(To be completed by City)

Recommendation of Planning Commission:

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Council's Decision:

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### **CONTIGUOUS ZONING**

North: GC (City of Smyrna)

East: GC (Cobb County)

South: GC (Cobb County)

West: NS (City of Smyrna)

### **CONTIGUOUS LAND USE**

North: Mixed Use (City of Smyrna)

East: RAC (Cobb County)

South: RAC (Cobb County)

West: NAC (City of Smyrna)

## **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:

A letter will be submitted under separate cover when it is received.

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### **TRANSPORTATION**

Access to Property? Spring Road and access easement

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Improvements proposed by developer? Redevelopment of Wendy's Restaurant  
(rendering attached)

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Comments:

This is a redevelopment of an existing Wendy's restaurant so water and sewer availability should not be an issue.

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## **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?

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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:

*None made*

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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:

*None made*

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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:

*None made*

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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?

*None*

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

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### **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?

*None*

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

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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?

*None*

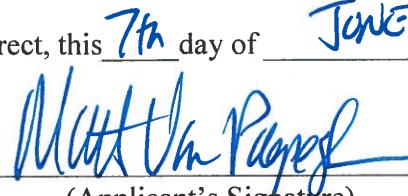
If so, describe the relationship and the nature and extent of such interest:

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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 7th day of June,  
20 16.

  
(Applicant's Signature)

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(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 REPORT<sup>1</sup>**

## **BY ATTORNEY FOR APPLICANT<sup>2</sup>**

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:

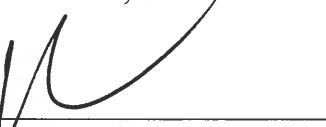
The name of the member(s) of the Smyrna City Council or Planning Commission to whom the campaign contribution or gift was made: Melleny Pritchett; Max Bacon; Doug Stoner; Ron Fennel

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: Melleny Pritchett - \$2,500.00 (7/23/15); Max Bacon - \$2,500.00 (7/23/15); Doug Stoner - \$1,000.00 (07/24/15), \$1,500.00 (10/16/2015); and, Ron Fennel - \$2,500.00 (08/27/2015).

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 10 day of December, 2016.

SAMS, LARKIN, HUFF & BALLI, LLP

By: 

PARKS F. HUFF  
Attorney for Applicant

<sup>1</sup>If 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.

<sup>2</sup>Applicant 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

6-10-2016

DATE

By: 

Parks F. Huff  
Attorney for Applicant

## 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 applicant requests to rezone the property from GC to GC with certain variances as depicted on the site plan to redevelop an existing Wendy's Restaurant into the newest prototype. The use is already existing and the zoning is to allow certain variances for an existing lot.

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

The existing use will continue but with a new building so it is compatible with adjacent and nearby uses.

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

The property cannot be redeveloped without the requested variances that are part of the proposed rezoning request so the building will continue to age and the building will not function as a new structure can.

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### **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 rebuilt Wendy's restaurant will not increase traffic to a degree that it would burden existing streets or other infrastructure.

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

The existing and proposed use is in conformity with the policy and intent of the Land Use Plan.

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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 existing building is at the end of its lifespan and it cannot be rebuilt without the requested variances that are part of the rezoning request.

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## **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 new prototype Wendy's building will be a vast improvement over the existing building and will conform to the existing nearby commercial developments on Spring Road.

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

The use is already existing on the property and it does not and will not create a nuisance and it is not incompatible with the other uses in the area.

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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 Wendy's restaurant will be a positive development in the area and hopefully other existing businesses in the area will invest in redeveloping or remodeling older buildings.

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REBECCA KEATON  
CLERK OF SUPERIOR COURT Cobb Cty. GA.

Please return to:

RECORD & RETURN TO  
CT LIEN SOLUTIONS  
P.O. BOX 29071  
Glendale, CA 91209-9071  
  
51226984-GA67-Cobb

25417  
*mail*

SITE 90

Please Cross-Reference:  
Deed Book 14601, Page 6472  
Cobb County, Georgia records

### GENERAL WARRANTY DEED

STATE OF OHIO )  
 )  
COUNTY OF FRANKLIN )

THIS INDENTURE, made this 1st day of June, 2015, between WENDY'S INTERNATIONAL, LLC, an Ohio limited liability company (f/k/a Wendy's International, Inc., an Ohio corporation) (the "Grantor"), and WENDY'S PROPERTIES, LLC, a Delaware limited liability company (the "Grantee").

#### WITNESSETH:

THAT THE GRANTOR, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, and convey unto the Grantee, its successors, legal representatives and assigns all that tract or parcel of land more particularly described on Exhibit A attached hereto and by this reference made a part hereof (the "Property").

TO HAVE AND TO HOLD the Property, together with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, and benefit of the Grantee, its successors, legal representatives and assigns forever in fee simple.

AND THE GRANTOR shall warrant and forever defend the right and title to the Property hereby conveyed by the Grantor, unto Grantee, its successors, legal representatives and assigns, against the lawful claims of all persons whomsoever.

This Deed has been prepared at the Grantor's request without the benefit of a title search or examination. No title opinion, title insurance, or title assurances have been requested or given in connection with the preparation of this Deed.

IN WITNESS WHEREOF, Grantor has signed, sealed, and delivered this deed under seal as of the date first above written.

Signed, sealed and delivered in the GRANTOR:  
presence of:

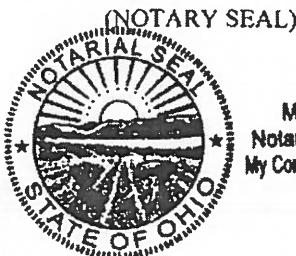
Katie N. McDowell  
Unofficial Witness

Katie N. McDowell  
Notary Public

WENDY'S INTERNATIONAL, LLC, an Ohio  
limited liability company (f/k/a Wendy's  
International, Inc., an Ohio corporation)

By: Gavin P. Waugh [SEAL]  
Name: Gavin P. Waugh  
Title: Vice President and Treasurer

My commission expires:



Melinda S. Raymond  
Notary Public, State of Ohio  
My Commission Expires 11-25-2018

Exhibit A  
Legal Description

ALL THAT TRACT of land lying and being in Land Lot 880, 17th District, 2nd Section, Cobb County, Georgia, being more specifically described as follows;

BEGINNING at a point on the east right of way line of New Spring Road, said point being 244.06 feet south of the southeast corner formed by the intersection of the southwest right of way line of U.S. Hwy 41 and the southeast right of way line of New Spring Road; thence running in a southeasterly direction along the south side of a private drive owned by Steak and Ale Realty Corporation a distance of 131.5 feet to a point; thence running in a southwesterly direction, forming an interior angle of 90 degrees, a distance of 185 feet to a point; thence running in a northwesterly direction, forming an interior angle of 90 degrees, a distance of 131.5 feet to a point on the southeast right of way line of New Spring Road; thence running in a northeasterly direction along said Spring Road a distance of 185 feet to the point of beginning.

Wendy's International, Inc.  
2808 Spring Road

All that tract or parcel of land lying and being in Land Lot 880 of the 17<sup>th</sup> District, 2<sup>nd</sup> Section, Cobb County, Georgia and being more particularly described as follows:

Beginning at an iron pin found on the southeasterly Right of Way of Spring Road having a 150 foot Right of Way, said iron pin being 244.06 feet southwesterly from the intersection of the southeasterly Right of Way line of Spring Road and the southwesterly Right of Way line of Cobb Parkway (U.S. Highway 41) having a 150 foot Right of Way; thence leaving the southeasterly Right of Way of Spring Road along the southwesterly side of an access drive South 38 Degrees 13 Minutes 15 Seconds East, 131.50 feet to an iron pin found; thence South 51 Degrees 46 Minutes 45 Seconds West, 185.00 feet to an iron pin set; thence North 38 Degrees 13 Minutes 15 Seconds West, 131.50 feet to an iron pin set on the southeasterly Right of Way of Spring Road; thence along the southeasterly Right of Way of Spring Road North 51 Degrees 46 Minutes 45 Seconds East, 185.00 feet to The Point of Beginning containing 0.56 Acres.



Printed: 4/28/2016 10:23:10 AM

## Cobb County Online Tax Receipt

Thank you for your payment!

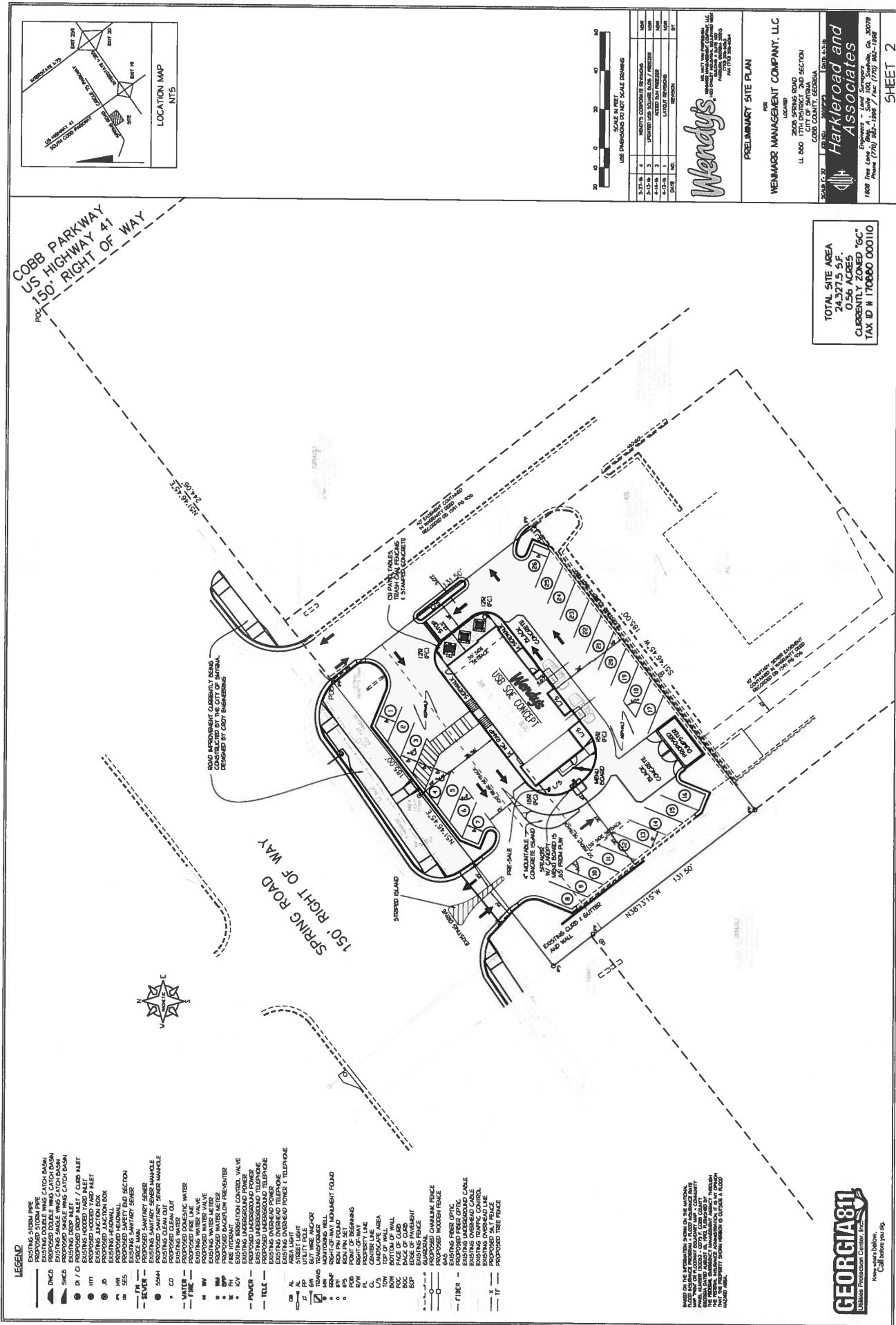
CARLA JACKSON TAX COMMISSIONER  
CHELLY McDUFFIE CHIEF DEPUTY  
Phone: 770-528-8600  
Fax: 770-528-8679

Payer:  
WENDY' S PROPERTIES LLC

WENDYS INTERNATIONAL INC  
C/O TAX DEPT WENDYS ARBYS GROUP  
INC

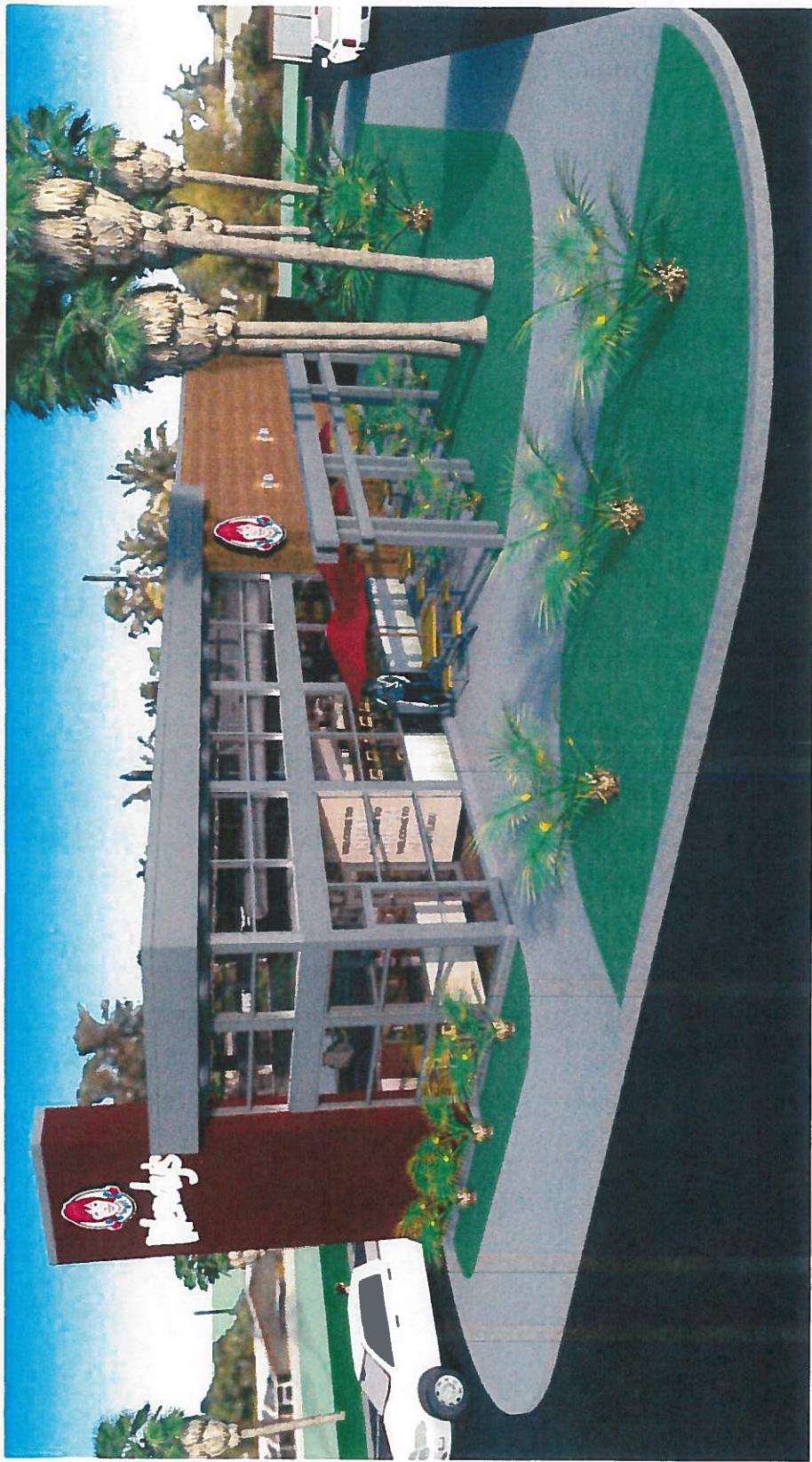
**Payment Date: 10/13/2015**

Tax Year	Parcel ID	Due Date	Appeal Amount	Taxes Due	
2015	17088000110	10/15/2015	Pay: N/A or	13424.54	
Interest	Penalty	Fees	Total Due	Amount Paid	Balance
\$0.00	\$0.00	\$0.00	\$13,424.54	\$13,424.54	\$0.00

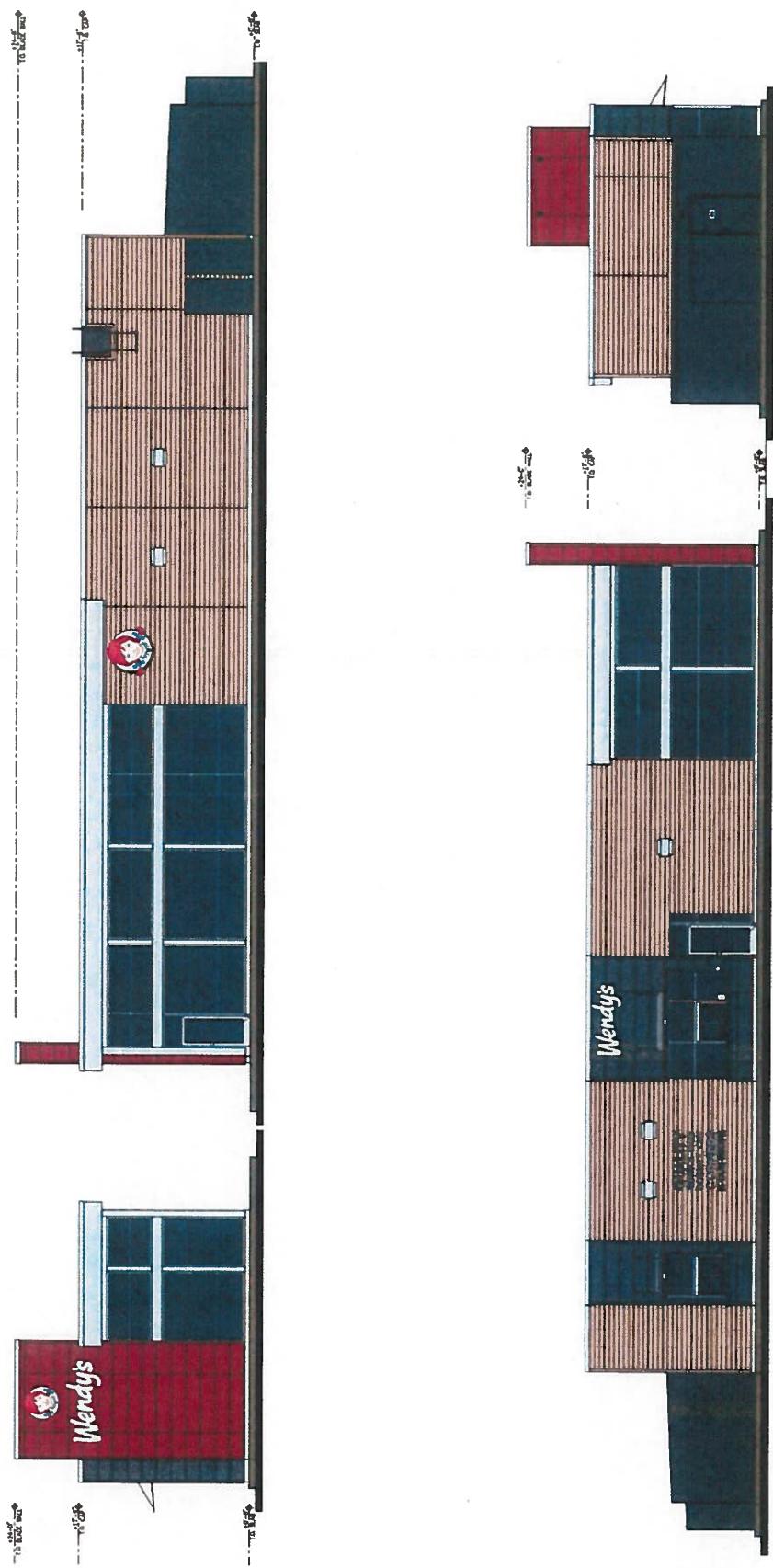




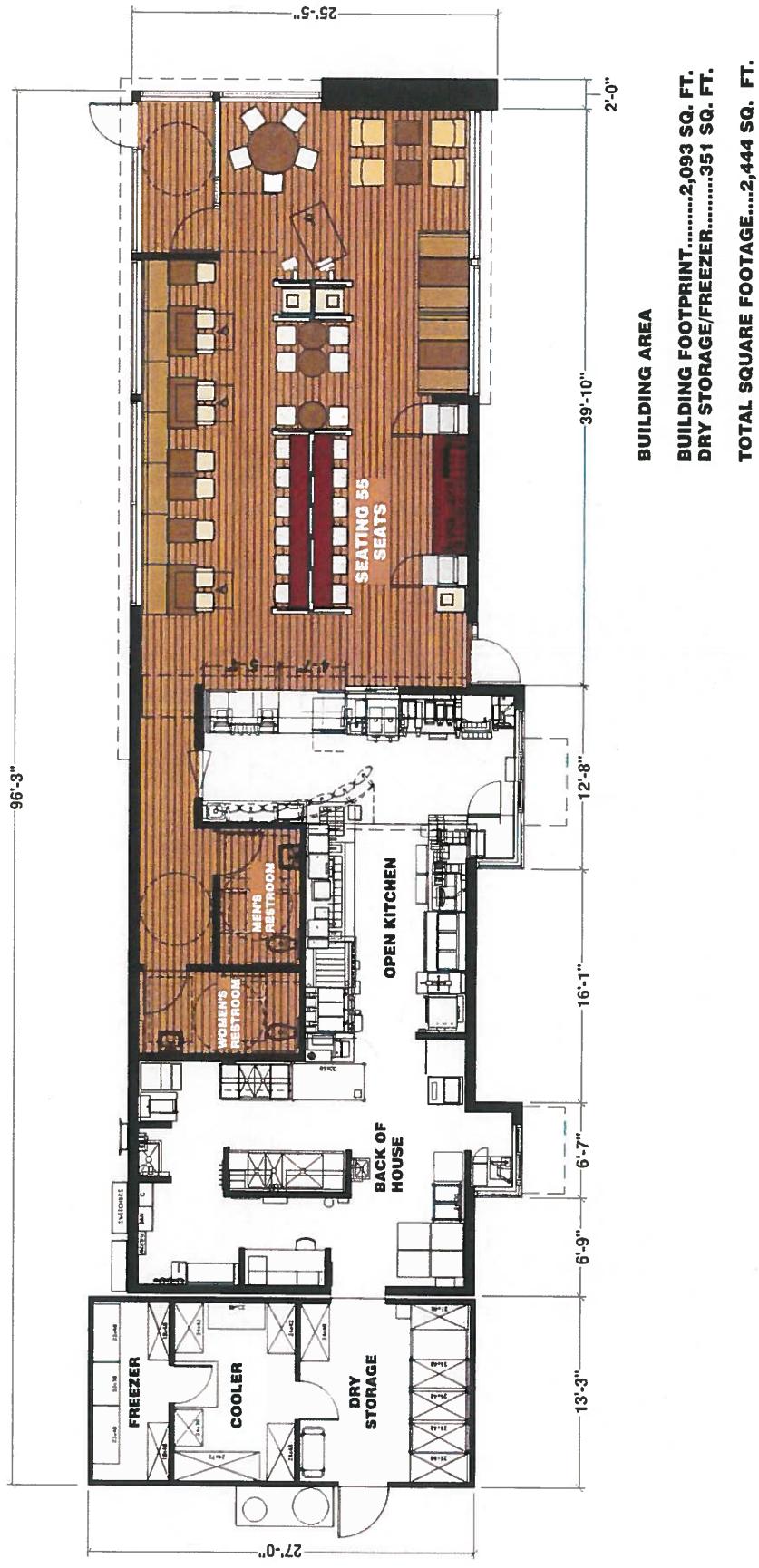
## Redevelopment Elevation



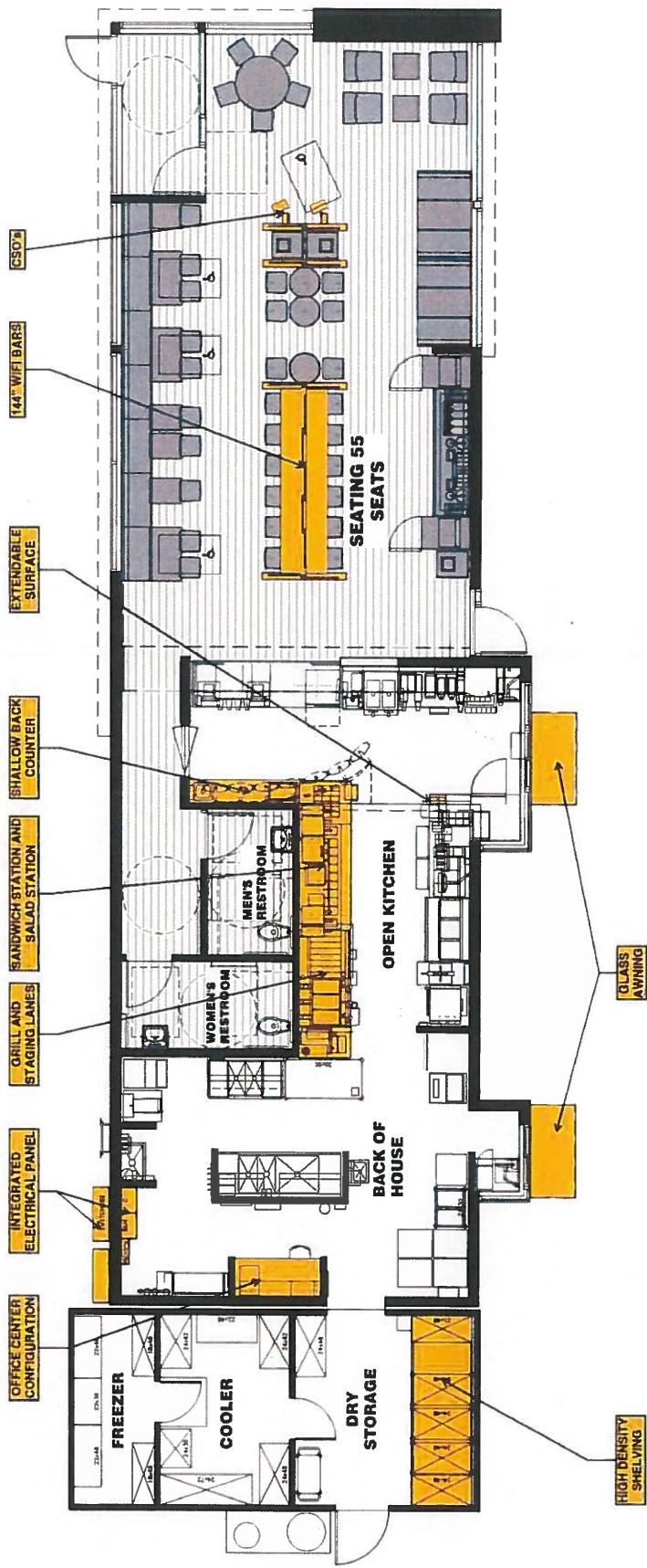
## Redevelopment Elevation



## Redevelopment Elevation



# Redevelopment Elevation



TO THE MAYOR AND CITY COUNCIL  
CITY OF SMYRNA, GEORGIA

**CONSTITUTIONAL CHALLENGE**

COME NOW, WENMARR MANAGEMENT COMPANY, 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 GC zoning category, as established by the governing authority of the City of Smyrna, Georgia to the zoning category of GC – Conditional for the redevelopment of an existing Wendy's restaurant.

3.

The current GC zoning classification of the property and all intervening classifications between same and GC – Conditional 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.

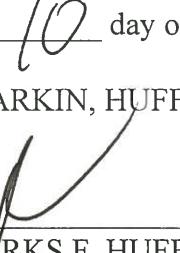
The zoning classification of GC and all intervening classifications between same and GC – Conditional as they presently exist violate the Applicant's rights to the unfettered use of the property in that the existing zoning classification does not bear a substantial relation to the public health, safety, 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 10 day of July, 2016.

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By: 

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