



**City of Flowery Branch
City Council Meeting
Thursday, February 6, 2025, 6:00 PM
City of Flowery Branch City Hall
5410 Pine Street, Flowery Branch, GA 30542**



CALL WORK SESSION TO ORDER:

PLEDGE OF ALLEGIANCE:

ADOPTION OF AGENDA:

AWARDS & RECOGNITIONS:

PUBLIC HEARING:

- Consider Approval of Ordinance 730 for a Public Hearing and First Reading of a Conditional Use Permit at 5205 Railroad Avenue for the Operation of a Micro-Brewery.
[Ordinance 730 CUP for 5205 Railroad Avenue.pdf](#)
[CUP Report 5205 Railroad Avenue Micro Brewery and Restaurant.pdf](#)
- Consider Approval of a Certificate of Appropriateness for the Alteration of a Historic Building at 5205 Railroad Avenue.
[CUP Report 5205 Railroad Avenue Micro Brewery and Restaurant.pdf](#)

NEW BUSINESS -WORK SESSION:

- Consider a Task Order Agreement with ESG Engineering, Inc. for Professional Design and Management Services for Phase I of the Pedestrian Trail.
[Executive Summary - ARC Grant - TAO with ESG for Professional Services.pdf](#)
[TOA - Flowery Branch Spur Trail 2025-01-07.pdf](#)
[2024-06-28 - Arc Grant Proposal - Phase 1 Final.pdf](#)

DEPARTMENT REPORTS:

- a. City Manager Report
- b. City Clerk Report
- c. Department of Fun Report
- d. Finance Department Report
- e. Human Resources Report
- f. Planning Department Report
- g. Police Department Report
- h. Public Works & Utilities Report
- i. Attorney Report
- j. Council Report

ADJOURNMENT WORK SESSION:

VOTING SESSION AGENDA

CALL VOTING SESSION TO ORDER:

PUBLIC COMMENTS:

Please limit to two minutes

CONSENT AGENDA:

- Consider January 16, 2025 City Council Meeting Minutes
[Unofficial January 16, 2025 City Council Meeting Minutes.pdf](#)
- Consider December 2024 & January 2025 Per Diem for Council Member Mezzanotte
[December 2024 Council Member Mezzanotte Per Diem.pdf](#)
[January 2025 Council Member Mezzanotte Per Diem.pdf](#)
- Consider Second Amendment to Nic St. Clair Lease Agreement at 5509 Main Street, Flowery Branch, Georgia
[Second Amendment to Nic St. Claire Lease Agreement at 5509 Main Street.pdf](#)
- Consider Terminating the Agreement for 5527 Main Street with Baby Bell Candy Apples, LLC.
[ES - Termination of Baby Bell Lease.pdf](#)
[9.21.2023 Baby Bell Candy Apples, LLC Lease Agreement.pdf](#)
[6.20.2024 First Amendment Baby Bell Candy Apples, LLC.pdf](#)
[Baby Bell Candy Apples, LLC #20240917.pdf](#)
[Baby Bell Candy Apples, LLC #20241017.pdf](#)
[Baby Bell Candy Apples LLC #20241119.pdf](#)

UNFINISHED BUSINESS - VOTING SESSION:

- Consider the Second Reading of Ordinance 725 for Annexation at 4272 Thurmon Tanner Parkway for the Operation of a Pickleball Recreation Facility.
[Ordinance 725 Annexation 4272 Thurmon Tanner Parkway 2-6-2025.pdf](#)
[Annexation request 12-5-2024.pdf](#)
- Consider the Second Reading of Ordinance 726 for a Rezoning and Conditional Use Permit at 4272 Thurmon Tanner Parkway for the Operation of a Pickleball Recreation Facility.
[Ordinance 726 Rezone and CUP for 4272 Thurmon Tanner Parkway 2-6-2025.pdf](#)
[Annexation and Rezoning Report 4272 Thermon Tanner Parkway final for February 6.pdf](#)
[Rezoning Application M-1 for 4272 Thurmond Tanner Parkway-2.pdf](#)
[CUP App.pdf](#)
- Consider the Second Reading of Ordinance 729 for a Variance Request at 5201 Mulberry Street.
[Ordinance 729 2-6-2025.pdf](#)
[Variance Report 5201 Mulberry Street.pdf](#)
[Variance Application 10.28.24.pdf](#)
[5201 Mulberry Street HLP.pdf](#)
[GRIFFIN-II-ELEV-B-1958-01.pdf](#)

NEW BUSINESS - VOTING SESSION:

- Consider Approval of Ordinance 730 for a Public Hearing and First Reading of a Conditional Use Permit at 5205 Railroad Avenue for the Operation of a Micro-Brewery.
[Ordinance 730 CUP for 5205 Railroad Avenue.pdf](#)
[CUP Report 5205 Railroad Avenue Micro Brewery and Restaurant.pdf](#)
- Consider Approval of a Certificate of Appropriateness for the Alteration of a Historic Building at 5205 Railroad Avenue.
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EXECUTIVE SESSION:

ADJOURNMENT:

If you have a disability or impairment and need special assistance please contact the City Clerk prior to the meeting at 770-967-6371 - Meeting agenda is subject to change



FLOWERY BRANCH CITY COUNCIL



EXECUTIVE SUMMARY

SUBJECT: Consider Approval of Ordinance 730 for a Public Hearing and First Reading of a Conditional Use Permit at 5205 Railroad Avenue for the Operation of a Micro-Brewery.

COUNCIL MEETING DATE: February 6, 2025

HISTORY:

The Public Hearing was published on January 8th, 2025; First Reading and Public Hearing is scheduled for February 6th, 2025 and anticipated final vote on March 6th, 2025.

FACTS AND ISSUES:

A micro-brewery requires a Conditional Use Permit to operate in CBD zoning

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

I make a motion for the approval of Ordinance 730 with staff recommended conditions.

SAMPLE MOTION:

COLLABORATING DEPARTMENT:

DEPARTMENT: Planning

Prepared by: Shelia Cooper

ATTACHMENTS

- [Ordinance 730 CUP for 5205 Railroad Avenue.pdf](#)
- [CUP Report 5205 Railroad Avenue Micro Brewery and Restaurant.pdf](#)

Public Hearing Published 01/08/2025
Public Hearing 02/06/2025

First Reading 02/06/2025
Second Reading 03/20/2025

ORDINANCE NO. 730

AN ORDINANCE APPROVING A CONDITIONAL USE PERMIT (CUP) TO OPERATE A MICRO-BREWERY ON A PARCEL OF REAL PROPERTY OWNED BY KEVIN HOBGOOD, IDENTIFIED AS 5205 RAILROAD AVE., TAX PARCEL 08112 016001, TOTALING 0.30+/- ACRES AND AS SHOWN ON ATTACHED EXHIBIT “A”, AND AS CONDITIONED ON ATTACHED EXHIBIT “B”; PROVIDING FOR SEVERABILITY, REPEALING CONFLICTING ORDINANCES, PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER LAWFUL PURPOSES.

WHEREAS, Kevin Hobgood owns a parcel of land totaling 0.30+/- acres identified as Parcel Tax Identification No. 08112 016001, as shown and described on Exhibit “A”; and

WHEREAS, the subject property is zoned Central Business District and located in the Downtown Overlay District thus requiring a conditional use permit in order to be used as a micro-brewery; and

WHEREAS, Kevin Hobgood, has submitted to the City Council of Flowery Branch, Georgia, a written and signed application requesting a conditional use permit (CUP) for the operation of a micro-brewery; and

WHEREAS, the City Council held a public hearing at the meeting of February 6, 2025 duly noticed as prescribed by law and published in the Gainesville Times, regarding said application, as shall be set forth in the minutes of said meeting.

NOW THEREFORE, THE COUNCIL OF THE CITY OF FLOWERY BRANCH HEREBY ORDAINS AS FOLLOWS:

SECTION 1. FINDINGS.

The City Council finds that the proposed conditional use permit request is consistent with the adopted standards for governing the exercise of the zoning power consistent with O.C.G.A. § 36-66-5 and requirements of the Zoning Ordinance as identified below.

1. The proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property.
2. The proposal is not expected to adversely affect the existing use or usability of adjacent or nearby property.
3. The property could be used in accordance with the existing regulations and has a reasonable economic use as without the issuance of a conditional use permit however, an alternative use is appropriately considered.

4. The development if approved and constructed is not expected to result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.
5. The proposal is generally in conformity with the policy and intent of the comprehensive plan including the character area map and future land use plan map.
6. The proposal is considered appropriate in view of existing use(s) and zoning of the subject property and nearby properties.
7. No determination has been made by staff with regard to the value differential between a development with or without a conditional use permit.
8. A proposed development will not be a deterrent to the value or improvement of development of adjacent property in accordance with existing regulations.
9. There are no known adverse effects that would result from the issuance of a conditional use permit on the character of a zoning district.
10. Development as proposed is not expected to impact on the environment, including but not limited to, drainage, soil erosion and sedimentation, flooding, air quality and water quality. Compliance with city subdivision and land development regulations will be required, which include but are not limited to soil erosion and sedimentation, stormwater, and flood damage prevention.

SECTION 2. APPROVAL OF CUP AND LEGAL DESCRIPTIONS.

A conditional use permit to operate a micro-brewery is hereby granted for the subject parcel, as shown and described on Exhibit “A”, subject to the conditions set forth in Exhibit “B”. Said Exhibits are incorporated by reference as if fully set forth herein.

SECTION 3. AMENDMENT OF THE ZONING MAP.

This Ordinance is enacted as an amendment to the Zoning Map of Flowery Branch, Georgia. Accordingly, the Zoning Administrator is hereby authorized to update the Official Map consistent with Article 3 of the Zoning Ordinance.

SECTION 4. SEVERABILITY.

Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of this Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

SECTION 5. EFFECTIVE DATE.

The effective date of this Ordinance shall be March 6, 2025.

SECTION 6. REPEALER.

All ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

Approved this 6th day of March, 2025.

Edward R. Asbridge, Mayor

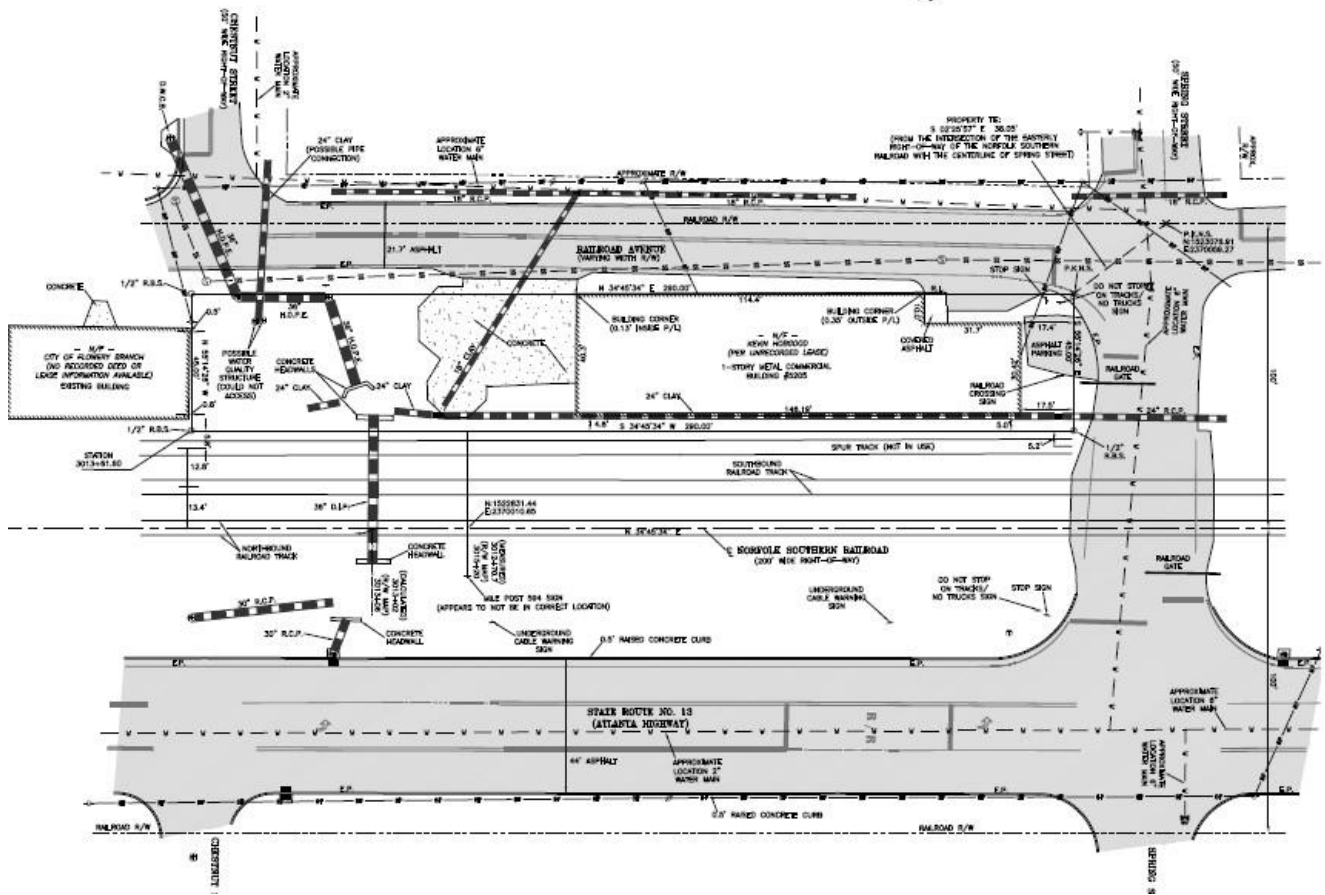
ATTEST:

Shelia R. Cooper, City Clerk

APPROVED AS TO FORM

Ted C. Baggett, City Attorney

Exhibit A



Legal Description

All that tract or parcel of land lying and being in Land Lot 112, 8th Land District, City of Flowery Branch, Hall County, Georgia as shown on a plat prepared by Patton Land Surveying, LLC, for Kevin Hobgood, dated December 17th, 2024 and being more particularly described as follows:

Commencing at a PK Set at the intersection of the Easterly right-of-way line of the Norfolk Southern Railroad & the centerline of Spring Street (50' wide right-of-way), located at Georgia State Plane Coordinate Northing 1523076.91, Easting 2370059.27, Georgia West Zone, North American Datum of 1983/2007 adjustment, THENCE South 02 degrees 25 minutes 57 seconds East for a distance of 38.05 feet to a PK Nail set, and said point being the TRUE POINT OF BEGINNING.

Thence South 55 degrees 14 minutes 26 seconds East for a distance of 45.00 feet to a 1/2" rebar pin set;
Thence South 34 degrees 45 minutes 34 seconds West for a distance of 290.00 feet to a 1/2" rebar pin set;
Thence North 55 degrees 14 minutes 26 seconds West for a distance of 45.00 feet to a 1/2" rebar pin set;
Thence North 34 degrees 45 minutes 34 seconds East for a distance of 290.00 feet to a PK Nail set and said point being the POINT OF BEGINNING.

Said property contains 0.30 acres more or less.

Exhibit B

Conditions of Conditional Use Permit

1. The Conditional Use Permit is issued to the entity obtaining the business license and should the occupant vacate the building, the Conditional Use Permit expires.
2. Adequate parking spaces shall be provided to support the proposed micro-brewery and restaurant per the requirements of Table 21.3. The applicant shall provide a parking plan with a combination of proposed parking, street parking along Spring Street, and shared parking with any privately owned entity. The Planning and Community Development Director shall be provided a copy of the shared parking agreement should the applicant arrange approval of shared parking.
3. All parking spaces proposed must be compliant with Article 21.
4. The approval of the Conditional Use Permit does not provide approval of variances to Federal, State, or Local codes and regulations.
5. The applicant must ensure that proper fire lanes, emergency access routes, and safety measures are in place in accordance with local fire codes and regulations.
6. The building plans shall be substantially similar to the area use breakdown provided by the applicant: The building is +/- 8,700 square feet. 2,000 square feet of brewery, 1,000 square feet of bathroom, 4,900 square feet of restaurant, and 800 square feet of mechanical.



Memorandum

To: City of Flowery Branch, City Manager, and City Council

From: Chris McCrary, Planning and Community Development Director

Date: February 6th, 2025

Subject: Conditional Use Permit – Certificate of Appropriateness

Applicant: Kevin Hobgood
7233 Sherwood Mill Drive
Flowery Branch, GA 30542
404-925-2400

Existing Zoning: CBD – Central Business District

Location:

- 5205 Railroad Avenue; tax parcel identification number **08112 016001**

Conditional Use Permit (CUP) Request:

The applicant is seeking the approval of a Conditional Use Permit for the operation of a micro-brewery within the existing building located at 5205 Railroad Avenue. The building is ~8,700 square feet and the applicant intends to occupy the building with 2,000 square feet of brewery, 1,000 square feet of bathroom, 4,900 square feet of restaurant, and 800 square feet of mechanical.



Code Section:

Table 9.1 – Permitted and Conditional Uses in Nonresidential Zoning Districts

Properties located within the boundaries of the downtown overlay district with the underlying zoning of CBD are hereby permitted to operate micro-breweries subject to the granting of a conditional use permit under the terms and conditions of Article 34 and compliance with all applicable state and local alcoholic beverage licensing requirements. Table 9.1 are hereby provided to reflect this potential use:

Use	O-P	INST	NS	HB	CBD	M-1	M-2
Micro-brewery	X	X	X	X ₁	C	X	X
Micro-distillery	X	X	X	X ₁	C	X	X

Table 21.3 – Minimum and Maximum Number of Off-Street Parking Spaces Required

Use	Minimum Parking Required	Maximum Parking Permitted
Restaurant, bar, or tavern	One per 125 square feet	One per 75 square feet
Manufacturing, processing...	One per 1,300 square feet	One per 1,000 square feet

The total area to be used for the micro-brewery and restaurant is 8,700 square feet. The breakdown will be 2,000 square feet of the brewery, 1,000 square feet of bathroom, 4,900 square feet of restaurant, and 800 square feet of mechanical.

Restaurant bar or tavern: $5,900 / 125 = 47$ parking spaces minimum and $5,900 / 75 = 79$ parking spaces maximum.

Brewery (Manufacturing): $2,000 / 1,300 = 2$ parking spaces minimum and $2,000 / 1,000 = 2$ parking spaces maximum.

A total of 49 parking spaces minimum and 81 parking spaces maximum.

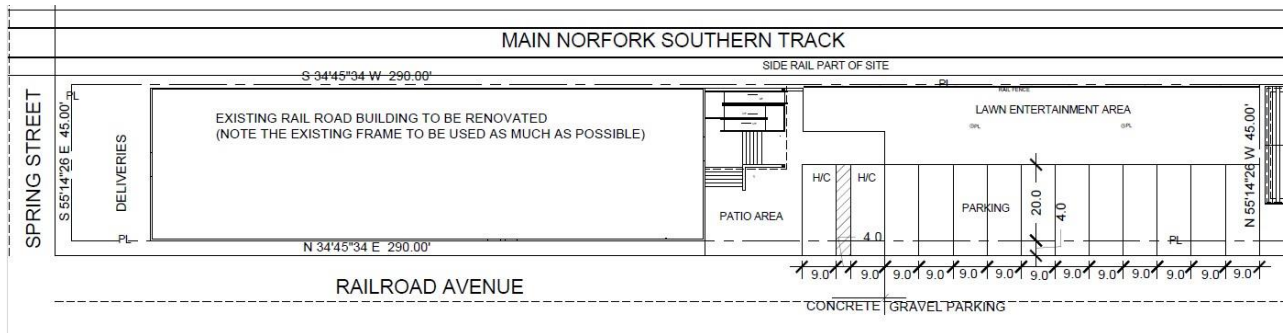


Sec. 21.5. - Parking Requirements in the CBD Zoning District.

It is the intent of this Section to give the Zoning Administrator maximum flexibility in administering the off-street parking requirements of this Article within the CBD zoning district, to promote redevelopment while ensuring that parking problems do not occur. Notwithstanding other provisions of this Article, off-street parking requirements of this Article may be administratively varied by the Zoning Administrator after considering the specific uses involved and the availability of on street and other (nearby) off-street parking.

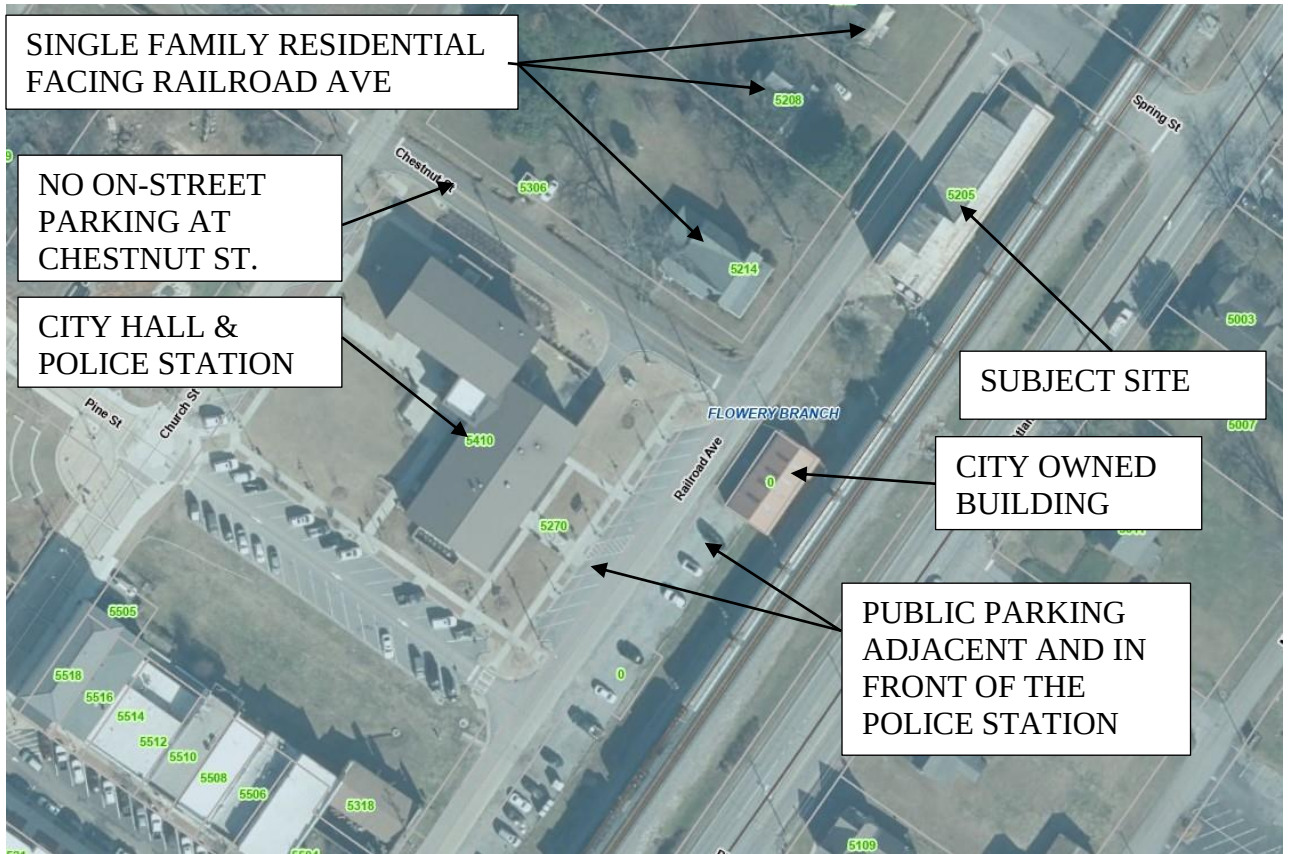
Zoning Administrator Response:

One of the heaviest uses for parking requirements is a restaurant. With +/- 5,900 square feet of restaurant area the required parking is significant. For the restaurant area alone, the required parking is 47 parking spaces. The applicant shows 13 parking spaces on the site plan.



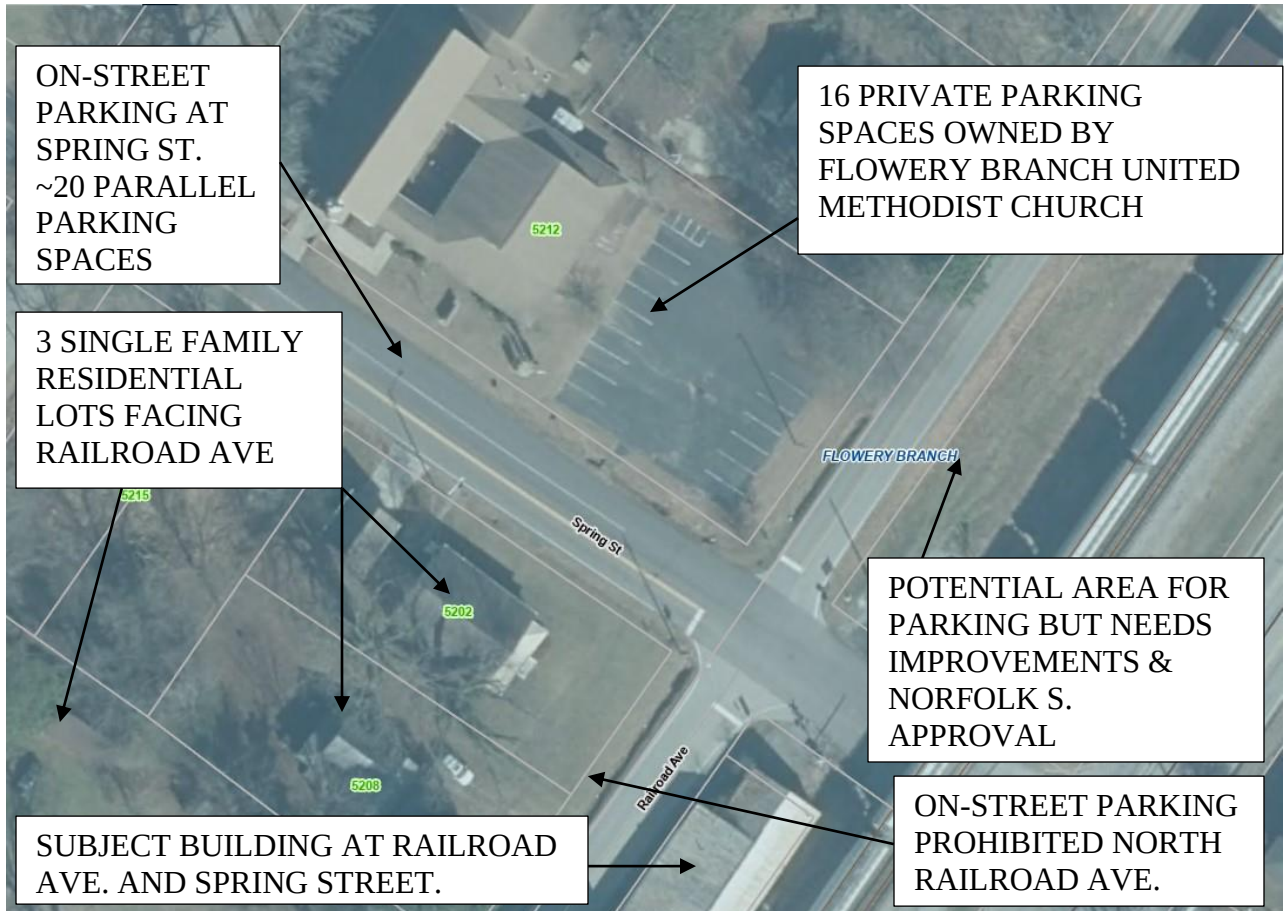


The image below focuses on public parking south of the subject building.





The image below focuses on public parking north of the subject building.



The parking area near the Police Headquarters supports the police fleet and is typically at full capacity. The proposed restaurant and brewery are expected to operate concurrently with other entertainment destinations in the downtown core, intensifying the demand for parking. During special events, parking availability for businesses in the area is already limited, and the addition of the restaurant would further increase this demand.

Existing and Potential Parking Options

1. **Core Downtown Parking:** The applicant shouldn't expect the availability of parking to support the restaurant exclusively along Railroad Avenue, Spring Street, and Main Street due to the current demands for the existing businesses.
2. **Spring Street On-Street Parking:** Approximately 20 parallel parking spaces are available on Spring Street, located north of the site.



3. **Norfolk Southern Property:** Additional parking may be possible on Norfolk Southern property north of the intersection of Railroad Avenue and Spring Street. However, this option would require the applicant to secure approval from Norfolk Southern and comply with the City's Development Regulations for parking lot improvements.
4. **Flowery Branch United Methodist Church:** There are an estimated 16 parking spaces at the church that could potentially be used. The applicant would need to establish a shared parking agreement with the church, record the agreement, and submit it to the City. However, there is no guarantee that the church will agree to this arrangement.

Parking Requirements and Recommendations

Given the existing parking constraints in the area, it is reasonable to require the applicant to address the parking deficiency through a combination of available options to meet the required parking capacity. The applicant must present a comprehensive parking solution.

If a sufficient solution is not provided, the Zoning Administrator concludes that parking issues will arise with the introduction of a restaurant at this location.

Sec. 21.11. - Stormwater Requirements for Large Parking Lots.

All off-street parking lots with ten or more spaces shall be required to have an oil/water separator device designed and constructed and shown in the stormwater management plan. Such device shall be approved by the City Engineer and shall be the responsibility of the property owner for maintenance and operation. The applicant is required to provide proper stormwater management at the issuance of a Land Disturbance Permit following the Conditional Use Permit approval.

Improvements for Pedestrians at offsite parking.

To ensure pedestrian safety, the City will evaluate the pathways from the offsite parking areas to the proposed business. If adequate infrastructure is not already in place, the applicant should be prepared to install marked crosswalks, appropriate signage at intersections, and sidewalk connections leading to the business.



Certificate of Appropriateness

Per the Historic District Ordinance, the subject building at 5205 Railroad Avenue (Parcel 08112 016001) is designated as historic building #62. A certificate of appropriateness shall be obtained prior to any material change in appearance of the designated historic property or any structure, site, or work of art located within a designated historic district; except as otherwise may be exempted by the City of Flowery Branch Historic Preservation Ordinance, Ordinance No. 375, as may be amended from time to time.

The applicant provided an existing condition report for the subject building by Tom Wright a Georgia registered Architect. The report provides an accurate representation of the building's current condition and highlights critical areas to address during the redevelopment process.

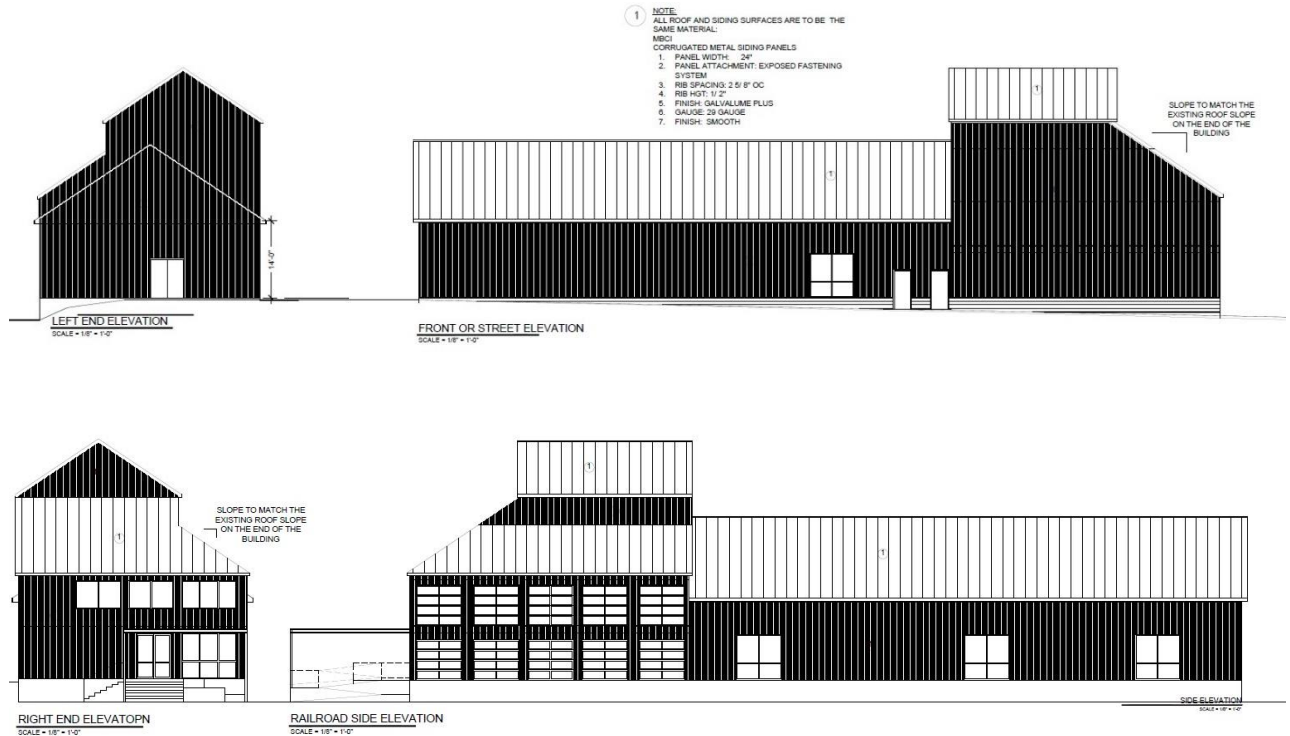
Summary of Recommended Actions

1. **Roof:** Full replacement or extensive repairs to address leaks and structural issues.
2. **Exterior Walls:** Repair and seal damaged wood elements; apply protective coatings to block walls.
3. **Foundation:** No action required at this time.
4. **Windows and Doors:** Replace or repair for improved functionality and aesthetics.
5. **Interior Repairs:** Address moisture infiltration, repair finishes, and consider new flooring installation.
6. **Utilities:** Conduct detailed inspections and upgrade as necessary to meet future operational demands.

The applicant will be required to file an application for a Building Permit and all required building codes will be reviewed for compliance.



The applicant provided black and white elevations with some description of the material.



1

NOTE:

ALL ROOF AND SIDING SURFACES ARE TO BE THE SAME MATERIAL:

MBCI

CORRUGATED METAL SIDING PANELS

1. PANEL WIDTH: 24"
2. PANEL ATTACHMENT: EXPOSED FASTENING SYSTEM
3. RIB SPACING: 2 5/8" OC
4. RIB HGT: 1/2"
5. FINISH: GALVALUME PLUS
6. GAUGE: 29 GAUGE
7. FINISH: SMOOTH



The applicant provided the following color renderings of the subject building:



Facing Atlanta Highway and the Railroad Tracks.



Facing Railroad Avenue.

Subject: Review of Code Section 10.7 Application

The application of Code Section 10.7 should be reviewed with consideration that the building in question is an existing structure, previously used as a cabinet shop. This building has long been part of the character of the area between Railroad Avenue and the Norfolk Southern Railway, where most structures feature metal facades.

While the current condition of the building has deteriorated, requiring upgrades to the foundation and framing to be occupiable, its metal construction aligns with the historical character of the area. Typically, a metal building would be non-compliant; however, the code section allows for architectural designs to reflect the surrounding area's character. In this case, retaining a metal exterior would honor the building's history and maintain the corridor's aesthetic.

That said, there are other ways to achieve compliance with Code Section 10.7. For example:

- The façade parallel to Railroad Avenue is a continuous wall plane. To break up its length, the architect could incorporate windows and doors. While it may be challenging to add



- fenestrations due to the existing foundation, elements similar to those on the railroad-facing façade could be introduced.
- Landscaping shrubs could also be added to the grassed area between the building and the road to enhance visual appeal.

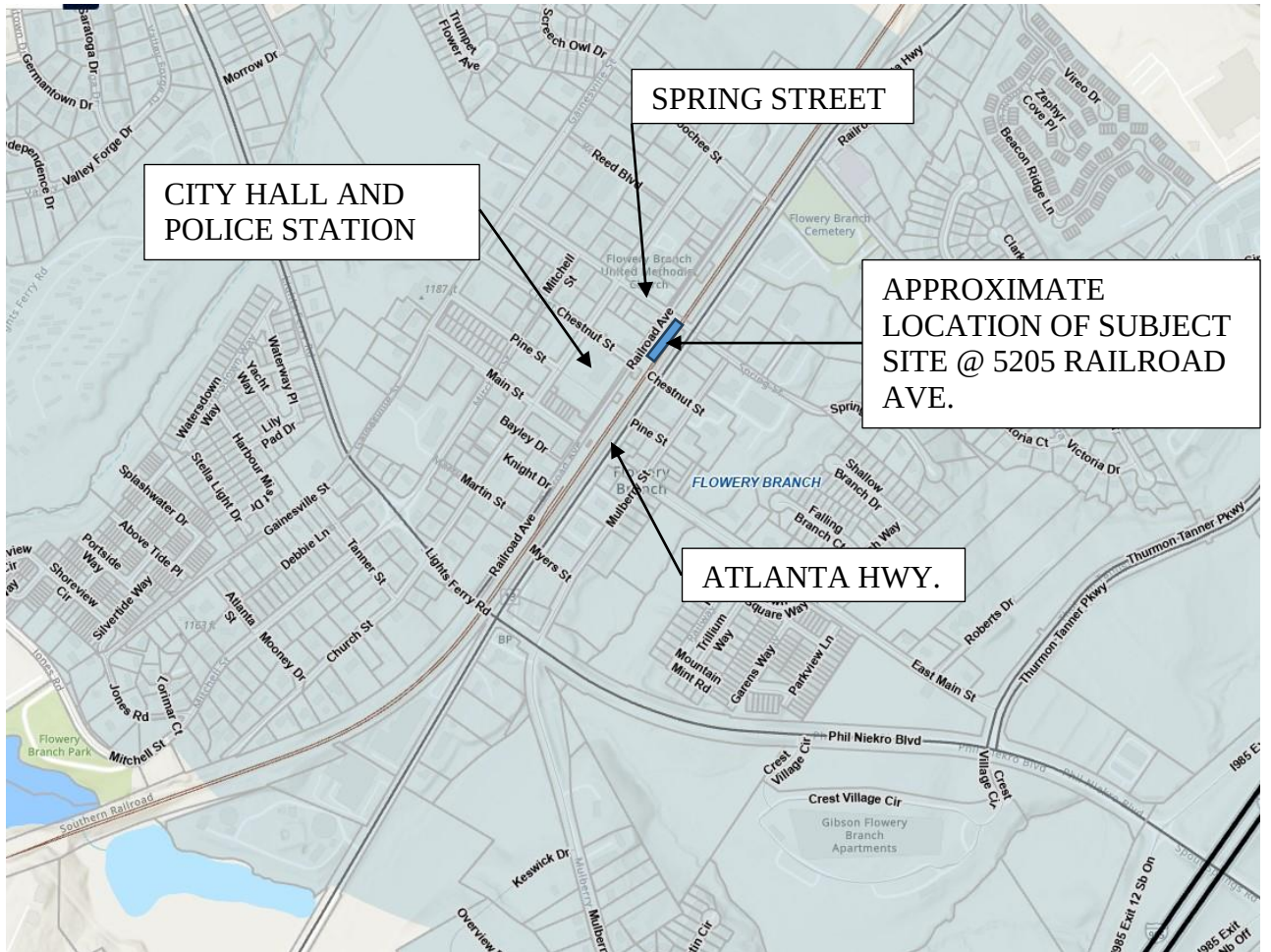
These design decisions would bring the structure closer to compliance while preserving its historic character.

Per the illustrations, the color of the Galvalume Plus metal siding appears to be a tan color with the roof material a darker grey. The architectural design prohibits highly reflective, shiny, or mirror-like materials.



Location Map:

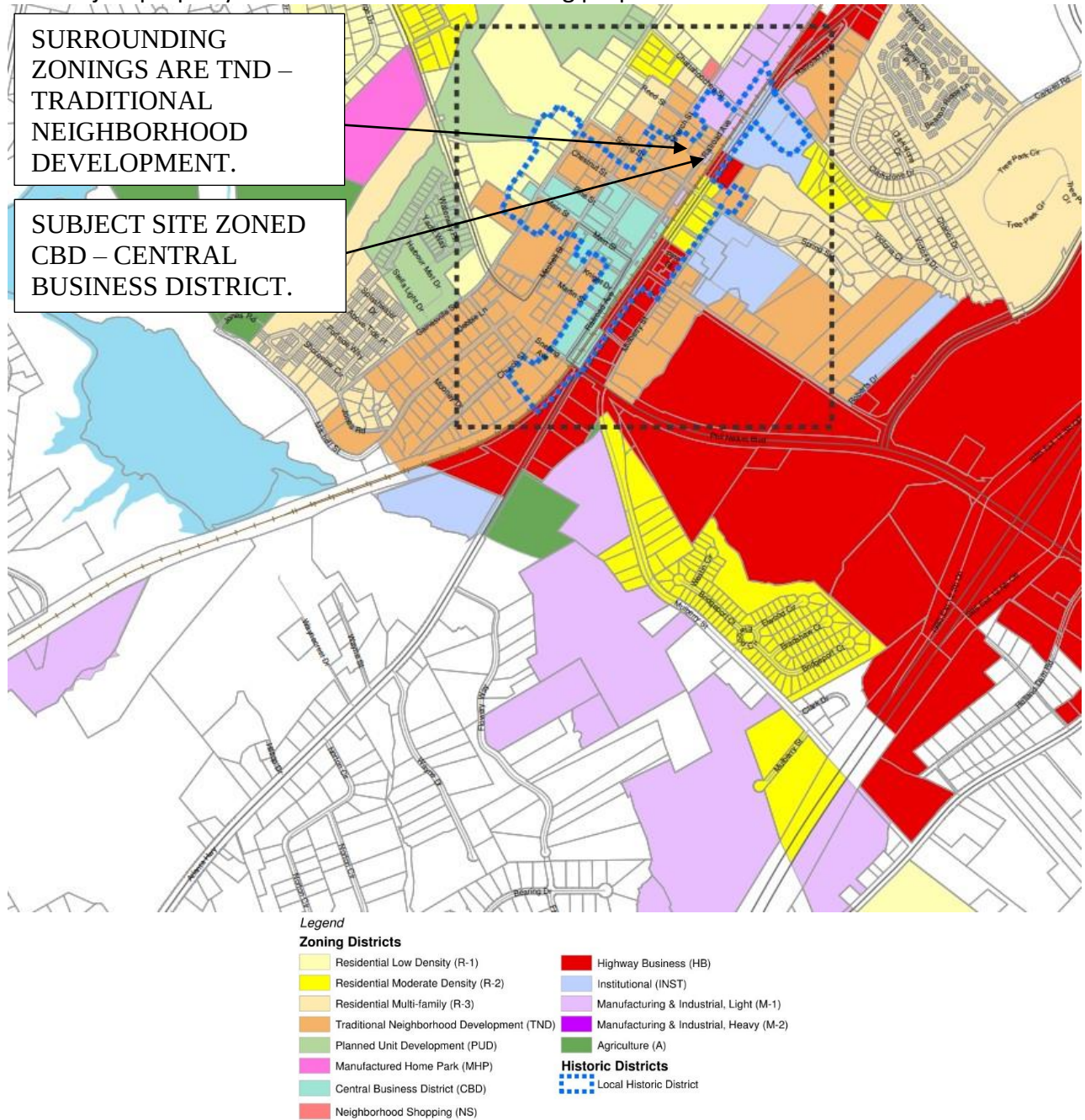
The subject site is located at 5205 Railroad Avenue near the intersection of Spring Street.





Zoning Map:

The subject property is zoned CBD. The surrounding properties are zoned TND.





Applications to amend the official zoning map and applications for conditional uses shall provide a written analysis comparing the proposed action with the criteria in this Section. A zoning map amendment or conditional use application may be justified only if it bears a reasonable relationship to the public health, safety, morality, or general welfare, and after consideration of the analysis requirements which may in individual cases be considered criteria relevant to the Zoning Administrator in making recommendations and by the City Council in the decision-making process.

- a) *Whether the proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property.*
Directly adjacent to the subject site are existing single-family residential uses. Most commercial uses nearby are further west on Railroad Avenue near Main Street.
- b) *Whether the proposal will adversely affect the existing use or usability of adjacent or nearby property.*
A higher intensity use, such as a restaurant, pub, or tavern could adversely impact the adjacent single-family residential uses that have only been adjacent to an unoccupied building.
- c) *Whether the property to be affected by the proposal can be used in accordance with the existing regulations and has reasonable economic use as currently zoned.*
The building is not occupied. Allowing the CUP would help the building be more economically viable.
- d) *Whether the 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 use will not result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools. Parking within the right-of-way of Railroad Avenue should be prohibited to not impact traffic patterns along the roadway.
- e) *Whether the proposal is in conformity with the policy and intent of the comprehensive plan including but not limited to the character area map and future land use plan map.*
The proposed micro-brewery would be in conformity with the policy and intent of the comprehensive plan.



- f) *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 proposal.*
There are no other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the proposal.
- g) *Existing use(s) and zoning of the subject property and nearby properties.*
Zoning adjacent to the subject building is zoned TND for single-family residential. The railroad is to the rear and no other uses are located on the sides.
- h) *Existing value of the property under the existing zoning district classification, the extent to which the property value of the subject property is diminished by the existing zoning district, and the value of the property under the proposed zoning district; if such information is provided by the applicant or can be discerned. This consideration may include the length of time the property has been vacant or unused as currently zoned and efforts taken by the property owner(s) to use the property or sell the property under the existing zoning district classification.*
The applicant did not provide data indicating the change to property value. The applicant did not provide the length of time that the building area has been vacant.
- i) *Whether a proposed zoning map amendment or conditional use approval will be a deterrent to the value or improvement of development of adjacent property in accordance with existing regulations.*
The proposed use should have no impact on the value or improvement of development of adjacent property.
- j) *The possible creation of an isolated zoning district unrelated to adjacent and nearby districts.*
The subject site is already zoned CBD.
- k) *Possible effects of the change in zoning district map, or change in use, on the character of a zoning district.*
The applicant provided limited architectural details. The existing building is constructed with corrugated metal siding. There is not enough detail to understand how the construction will change the character of the area.
- l) *The possible impact on the environment, including but not limited to, drainage, soil erosion and sedimentation, flooding, air quality and water quality.*



The applicant is subject to the requirements of an LDP including erosion control during land disturbance.

- m) *The relation that the proposed map amendment or conditional use bears to the purpose of the overall zoning scheme and the purposes of this Zoning Ordinance.*

The proposed CUP will have no impact on the purpose of the overall zoning scheme and the purposes of this Zoning Ordinance.

Staff Recommendation for Conditional Use Permit (CUP) & Certificate of Appropriateness

Recommendation:

Staff recommends **approval** of a **Certificate of Appropriateness** with the following conditions:

1. The building materials shall be similar to the information provided in note 1 on the building elevations.
2. The applicant shall add more wall openings adjacent to Railroad Avenue to break up the wall plane. It should be similar to the elevation facing Atlanta Highway. Final design to be approved by the Planning and Community Development Director.
3. The building finish shall be Galvalume Plus similar in color to the existing building maintaining the character of the building. The finish shall not be reflective or mirror-like finish. The applicant shall provide a sample of the material with colors for approval by the Planning and Community Development Director.
4. The applicant shall provide architectural details of the windows and doors including material and color. Final design to be approved by the Planning and Community Development Director.
5. The applicant shall provide details of the stepped decking and handicap ramps at the entrance for review of material and colors. Final design to be approved by the Planning and Community Development Director.

Staff recommends **approval** of the proposed **Conditional Use Permit (CUP)** for the operation of a micro-brewery located within the existing building at 5205 Railroad Avenue with the following conditions:

Conditions of Approval:

1. The Conditional Use Permit is issued to the entity obtaining the business license and should the occupant vacate the building, the Conditional Use Permit expires.
2. Adequate parking spaces shall be provided to support the proposed micro-brewery and restaurant per the requirements of Table 21.3. The applicant shall provide a parking plan



- with a combination of proposed parking, street parking along Spring Street, and shared parking with any privately owned entity. The Planning and Community Development Director shall be provided a copy of the shared parking agreement should the applicant arrange approval of shared parking.
3. All parking spaces proposed must be compliant with Article 21.
 4. The approval of the Conditional Use Permit does not provide approval of variances to Federal, State, or Local codes and regulations.
 5. The applicant must ensure that proper fire lanes, emergency access routes, and safety measures are in place in accordance with local fire codes and regulations.
 6. The building plans shall be substantially similar to the area use breakdown provided by the applicant: The building is +/- 8,700 square feet. 2,000 square feet of brewery, 1,000 square feet of bathroom, 4,900 square feet of restaurant, and 800 square feet of mechanical.



FLOWERY BRANCH CITY COUNCIL



EXECUTIVE SUMMARY

SUBJECT: Consider Approval of a Certificate of Appropriateness for the Alteration of a Historic Building at 5205 Railroad Avenue.

COUNCIL MEETING DATE: February 6, 2025

HISTORY:

FACTS AND ISSUES:

The applicant is proposing to renovate the existing building located at 5205 Railroad Avenue. The building is listed as #62 in the historic registry

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

I make a motion to issue a Certificate of Appropriateness with staff recommended conditions.

SAMPLE MOTION:

I make a motion to approve the Certificate of Appropriateness with the staff recommended conditions.

COLLABORATING DEPARTMENT:

DEPARTMENT: Planning

Prepared by: Shelia Cooper

ATTACHMENTS

- [CUP Report 5205 Railroad Avenue Micro Brewery and Restaurant.pdf](#)



Memorandum

To: City of Flowery Branch, City Manager, and City Council

From: Chris McCrary, Planning and Community Development Director

Date: February 6th, 2025

Subject: Conditional Use Permit – Certificate of Appropriateness

Applicant: Kevin Hobgood
7233 Sherwood Mill Drive
Flowery Branch, GA 30542
404-925-2400

Existing Zoning: CBD – Central Business District

Location:

- 5205 Railroad Avenue; tax parcel identification number **08112 016001**

Conditional Use Permit (CUP) Request:

The applicant is seeking the approval of a Conditional Use Permit for the operation of a micro-brewery within the existing building located at 5205 Railroad Avenue. The building is ~8,700 square feet and the applicant intends to occupy the building with 2,000 square feet of brewery, 1,000 square feet of bathroom, 4,900 square feet of restaurant, and 800 square feet of mechanical.



Code Section:

Table 9.1 – Permitted and Conditional Uses in Nonresidential Zoning Districts

Properties located within the boundaries of the downtown overlay district with the underlying zoning of CBD are hereby permitted to operate micro-breweries subject to the granting of a conditional use permit under the terms and conditions of Article 34 and compliance with all applicable state and local alcoholic beverage licensing requirements. Table 9.1 are hereby provided to reflect this potential use:

Use	O-P	INST	NS	HB	CBD	M-1	M-2
Micro-brewery	X	X	X	X ₁	C	X	X
Micro-distillery	X	X	X	X ₁	C	X	X

Table 21.3 – Minimum and Maximum Number of Off-Street Parking Spaces Required

Use	Minimum Parking Required	Maximum Parking Permitted
Restaurant, bar, or tavern	One per 125 square feet	One per 75 square feet
Manufacturing, processing...	One per 1,300 square feet	One per 1,000 square feet

The total area to be used for the micro-brewery and restaurant is 8,700 square feet. The breakdown will be 2,000 square feet of the brewery, 1,000 square feet of bathroom, 4,900 square feet of restaurant, and 800 square feet of mechanical.

Restaurant bar or tavern: $5,900 / 125 = 47$ parking spaces minimum and $5,900 / 75 = 79$ parking spaces maximum.

Brewery (Manufacturing): $2,000 / 1,300 = 2$ parking spaces minimum and $2,000 / 1,000 = 2$ parking spaces maximum.

A total of 49 parking spaces minimum and 81 parking spaces maximum.

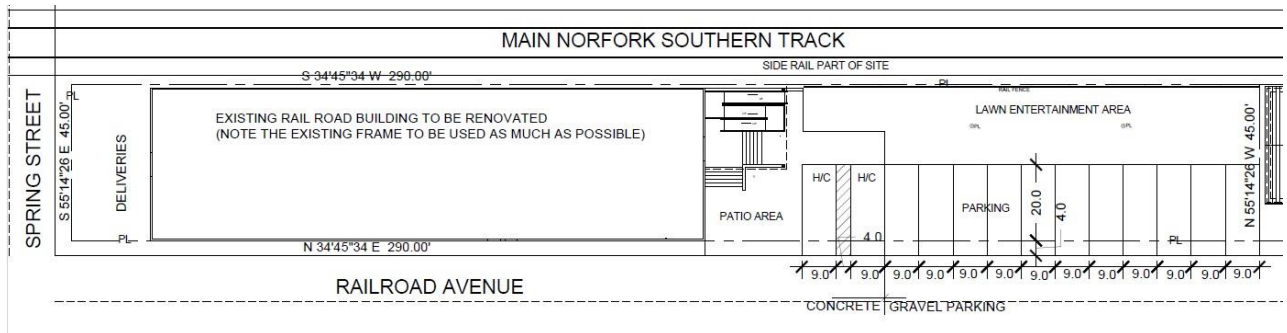


Sec. 21.5. - Parking Requirements in the CBD Zoning District.

It is the intent of this Section to give the Zoning Administrator maximum flexibility in administering the off-street parking requirements of this Article within the CBD zoning district, to promote redevelopment while ensuring that parking problems do not occur. Notwithstanding other provisions of this Article, off-street parking requirements of this Article may be administratively varied by the Zoning Administrator after considering the specific uses involved and the availability of on street and other (nearby) off-street parking.

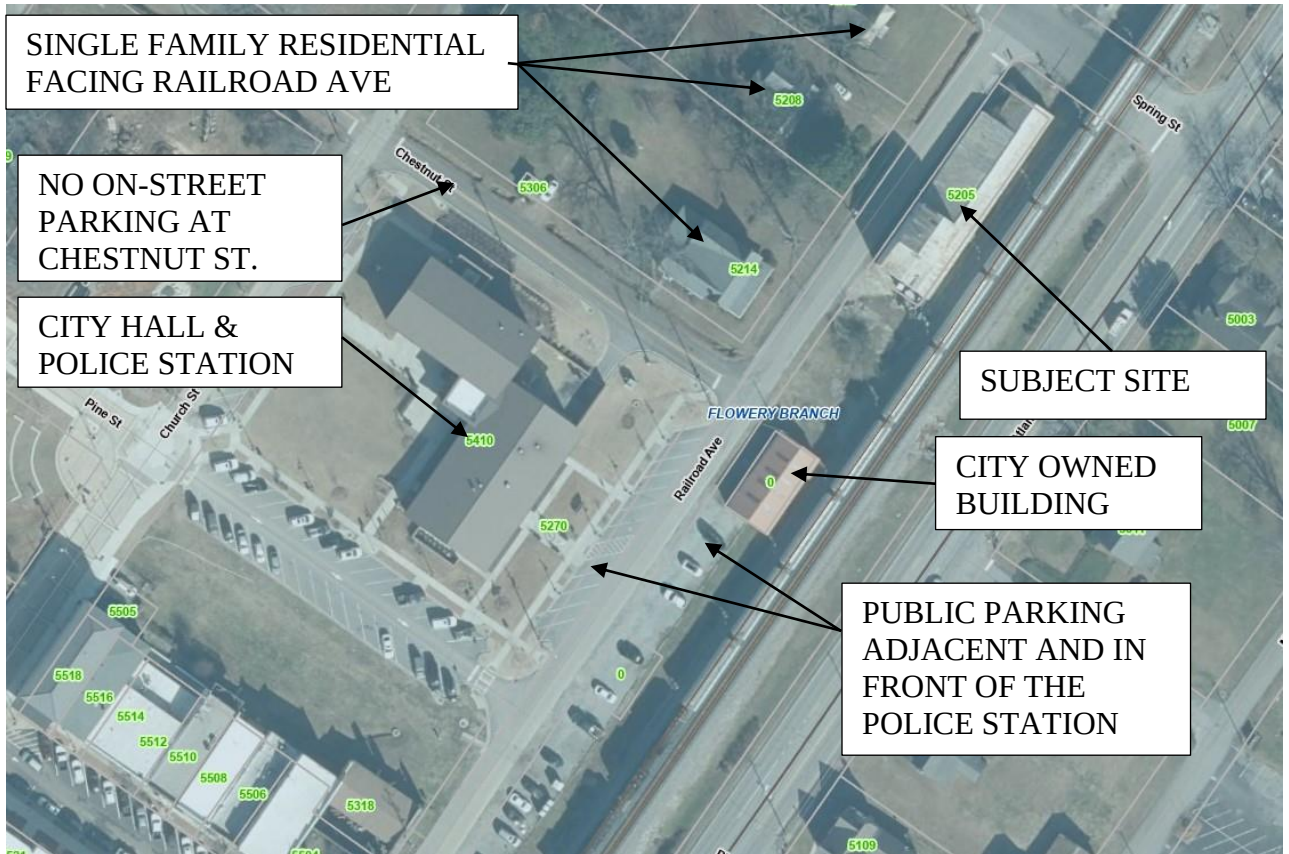
Zoning Administrator Response:

One of the heaviest uses for parking requirements is a restaurant. With +/- 5,900 square feet of restaurant area the required parking is significant. For the restaurant area alone, the required parking is 47 parking spaces. The applicant shows 13 parking spaces on the site plan.



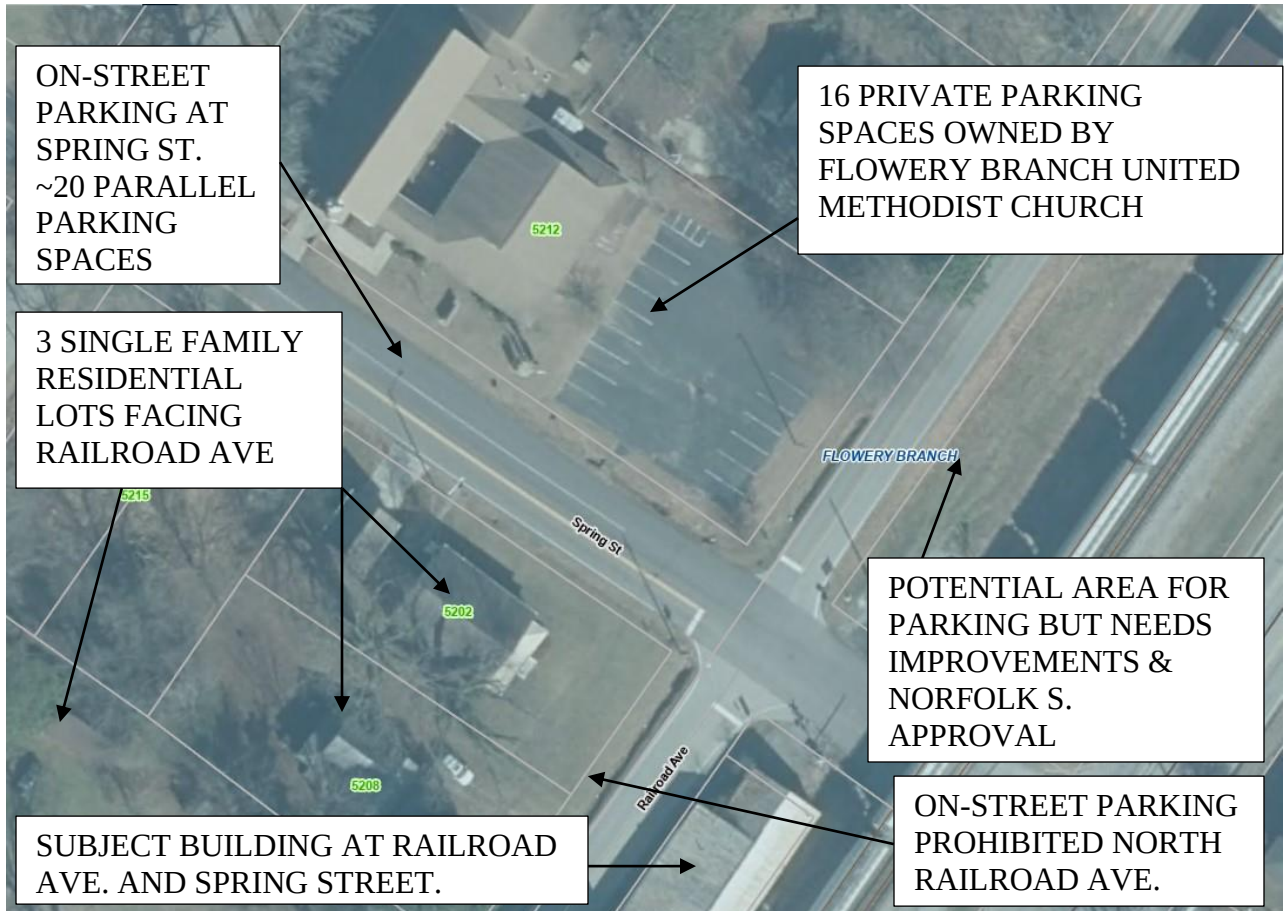


The image below focuses on public parking south of the subject building.





The image below focuses on public parking north of the subject building.



The parking area near the Police Headquarters supports the police fleet and is typically at full capacity. The proposed restaurant and brewery are expected to operate concurrently with other entertainment destinations in the downtown core, intensifying the demand for parking. During special events, parking availability for businesses in the area is already limited, and the addition of the restaurant would further increase this demand.

Existing and Potential Parking Options

1. **Core Downtown Parking:** The applicant shouldn't expect the availability of parking to support the restaurant exclusively along Railroad Avenue, Spring Street, and Main Street due to the current demands for the existing businesses.
2. **Spring Street On-Street Parking:** Approximately 20 parallel parking spaces are available on Spring Street, located north of the site.



3. **Norfolk Southern Property:** Additional parking may be possible on Norfolk Southern property north of the intersection of Railroad Avenue and Spring Street. However, this option would require the applicant to secure approval from Norfolk Southern and comply with the City's Development Regulations for parking lot improvements.
4. **Flowery Branch United Methodist Church:** There are an estimated 16 parking spaces at the church that could potentially be used. The applicant would need to establish a shared parking agreement with the church, record the agreement, and submit it to the City. However, there is no guarantee that the church will agree to this arrangement.

Parking Requirements and Recommendations

Given the existing parking constraints in the area, it is reasonable to require the applicant to address the parking deficiency through a combination of available options to meet the required parking capacity. The applicant must present a comprehensive parking solution.

If a sufficient solution is not provided, the Zoning Administrator concludes that parking issues will arise with the introduction of a restaurant at this location.

Sec. 21.11. - Stormwater Requirements for Large Parking Lots.

All off-street parking lots with ten or more spaces shall be required to have an oil/water separator device designed and constructed and shown in the stormwater management plan. Such device shall be approved by the City Engineer and shall be the responsibility of the property owner for maintenance and operation. The applicant is required to provide proper stormwater management at the issuance of a Land Disturbance Permit following the Conditional Use Permit approval.

Improvements for Pedestrians at offsite parking.

To ensure pedestrian safety, the City will evaluate the pathways from the offsite parking areas to the proposed business. If adequate infrastructure is not already in place, the applicant should be prepared to install marked crosswalks, appropriate signage at intersections, and sidewalk connections leading to the business.



Certificate of Appropriateness

Per the Historic District Ordinance, the subject building at 5205 Railroad Avenue (Parcel 08112 016001) is designated as historic building #62. A certificate of appropriateness shall be obtained prior to any material change in appearance of the designated historic property or any structure, site, or work of art located within a designated historic district; except as otherwise may be exempted by the City of Flowery Branch Historic Preservation Ordinance, Ordinance No. 375, as may be amended from time to time.

The applicant provided an existing condition report for the subject building by Tom Wright a Georgia registered Architect. The report provides an accurate representation of the building's current condition and highlights critical areas to address during the redevelopment process.

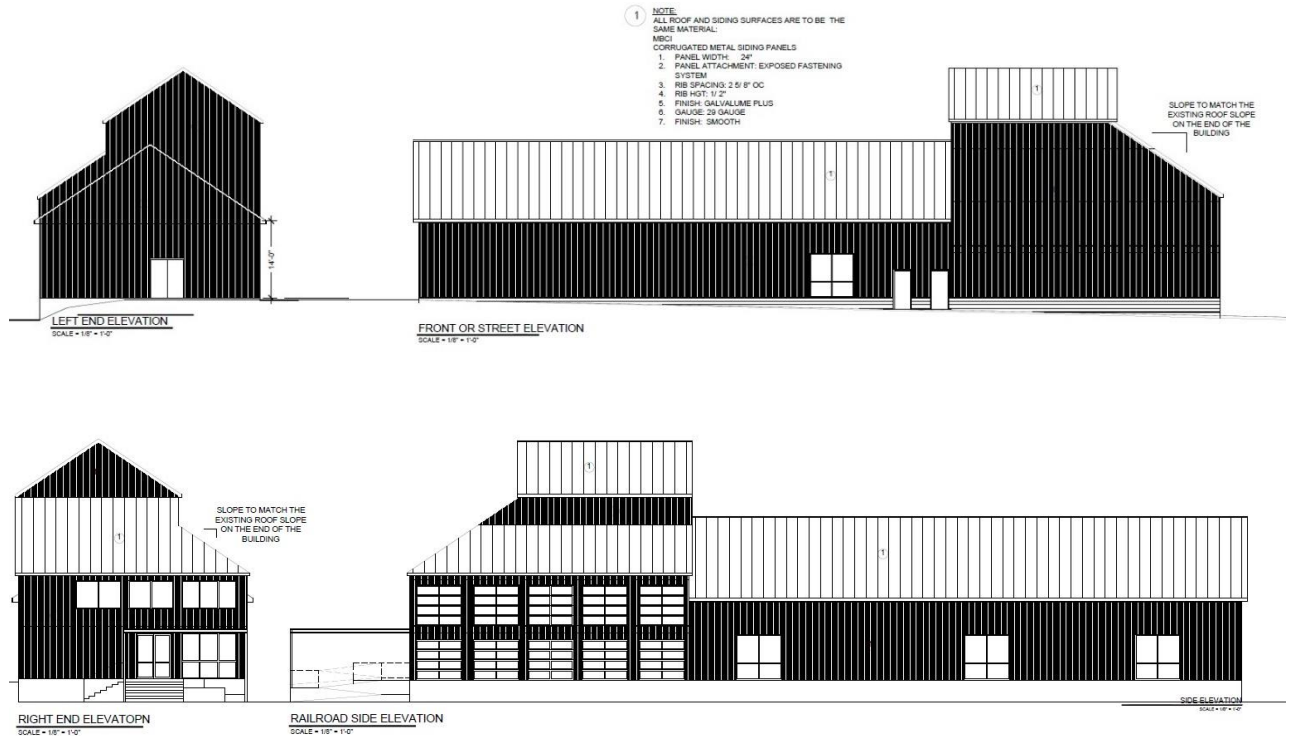
Summary of Recommended Actions

1. **Roof:** Full replacement or extensive repairs to address leaks and structural issues.
2. **Exterior Walls:** Repair and seal damaged wood elements; apply protective coatings to block walls.
3. **Foundation:** No action required at this time.
4. **Windows and Doors:** Replace or repair for improved functionality and aesthetics.
5. **Interior Repairs:** Address moisture infiltration, repair finishes, and consider new flooring installation.
6. **Utilities:** Conduct detailed inspections and upgrade as necessary to meet future operational demands.

The applicant will be required to file an application for a Building Permit and all required building codes will be reviewed for compliance.



The applicant provided black and white elevations with some description of the material.



1

NOTE:

ALL ROOF AND SIDING SURFACES ARE TO BE THE SAME MATERIAL:

MBCI

CORRUGATED METAL SIDING PANELS

1. PANEL WIDTH: 24"
2. PANEL ATTACHMENT: EXPOSED FASTENING SYSTEM
3. RIB SPACING: 2 5/8" OC
4. RIB HGT: 1/2"
5. FINISH: GALVALUME PLUS
6. GAUGE: 29 GAUGE
7. FINISH: SMOOTH



The applicant provided the following color renderings of the subject building:



Facing Atlanta Highway and the Railroad Tracks.



Facing Railroad Avenue.

Subject: Review of Code Section 10.7 Application

The application of Code Section 10.7 should be reviewed with consideration that the building in question is an existing structure, previously used as a cabinet shop. This building has long been part of the character of the area between Railroad Avenue and the Norfolk Southern Railway, where most structures feature metal facades.

While the current condition of the building has deteriorated, requiring upgrades to the foundation and framing to be occupiable, its metal construction aligns with the historical character of the area. Typically, a metal building would be non-compliant; however, the code section allows for architectural designs to reflect the surrounding area's character. In this case, retaining a metal exterior would honor the building's history and maintain the corridor's aesthetic.

That said, there are other ways to achieve compliance with Code Section 10.7. For example:

- The façade parallel to Railroad Avenue is a continuous wall plane. To break up its length, the architect could incorporate windows and doors. While it may be challenging to add



- fenestrations due to the existing foundation, elements similar to those on the railroad-facing façade could be introduced.
- Landscaping shrubs could also be added to the grassed area between the building and the road to enhance visual appeal.

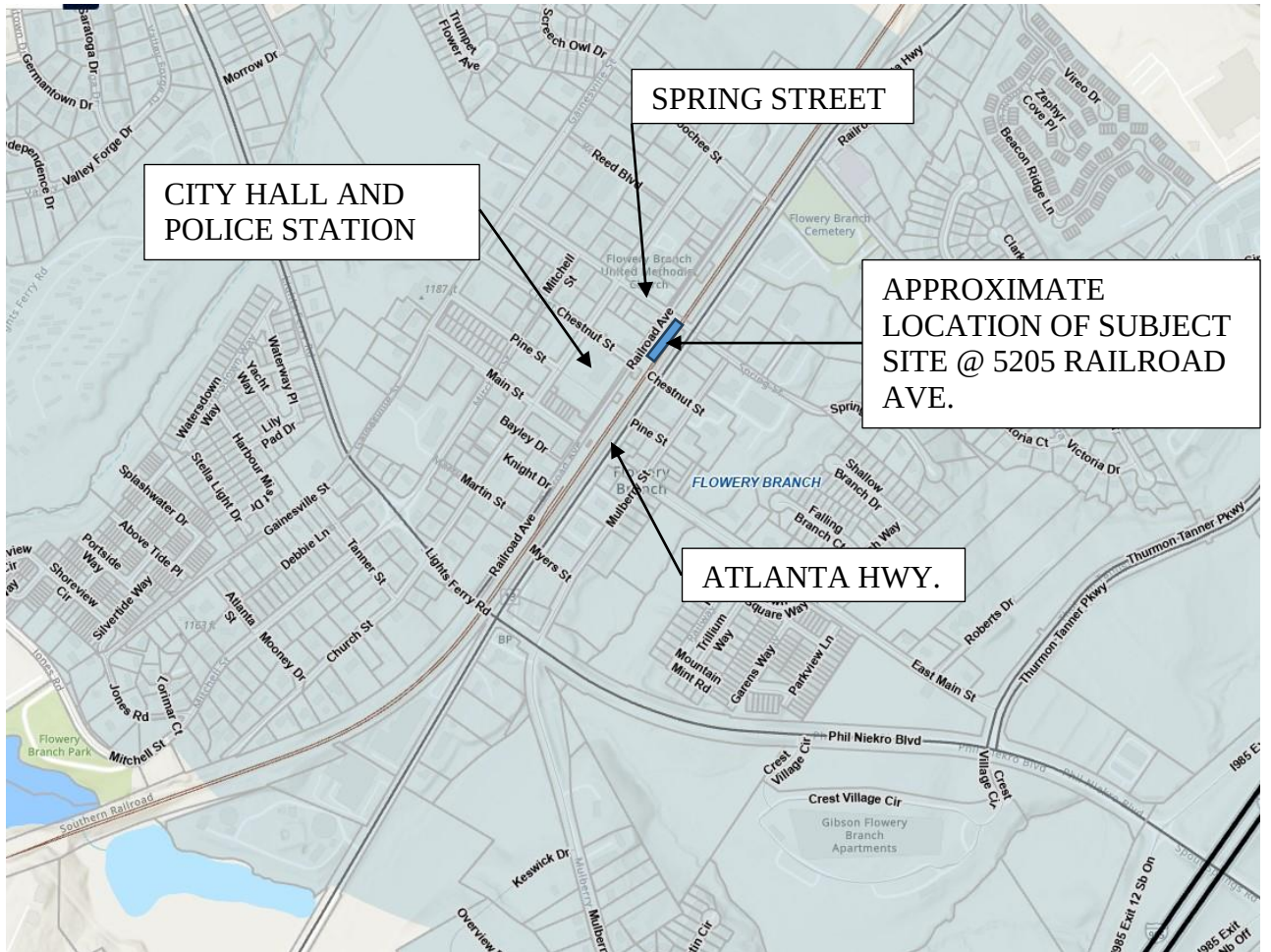
These design decisions would bring the structure closer to compliance while preserving its historic character.

Per the illustrations, the color of the Galvalume Plus metal siding appears to be a tan color with the roof material a darker grey. The architectural design prohibits highly reflective, shiny, or mirror-like materials.



Location Map:

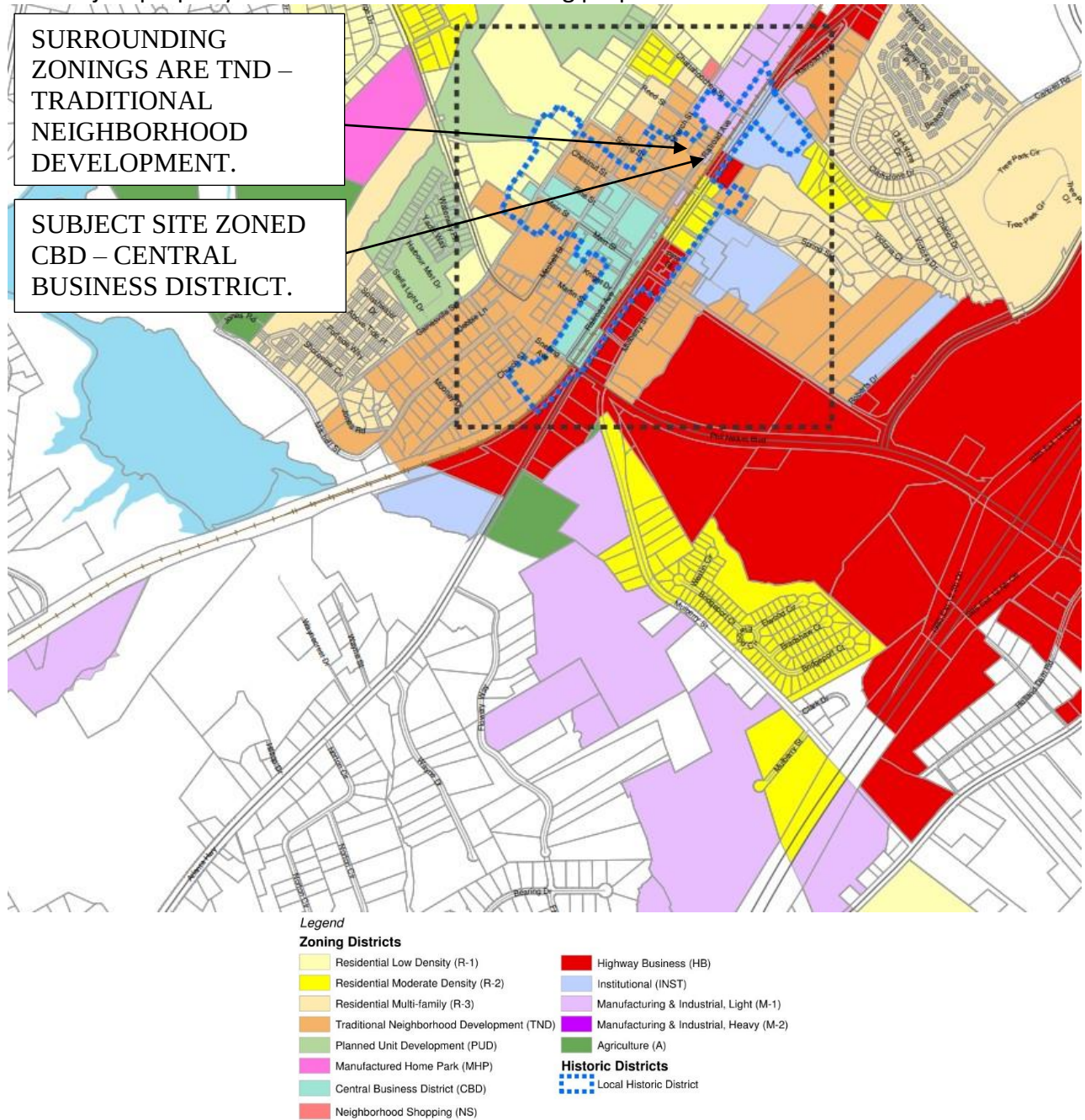
The subject site is located at 5205 Railroad Avenue near the intersection of Spring Street.





Zoning Map:

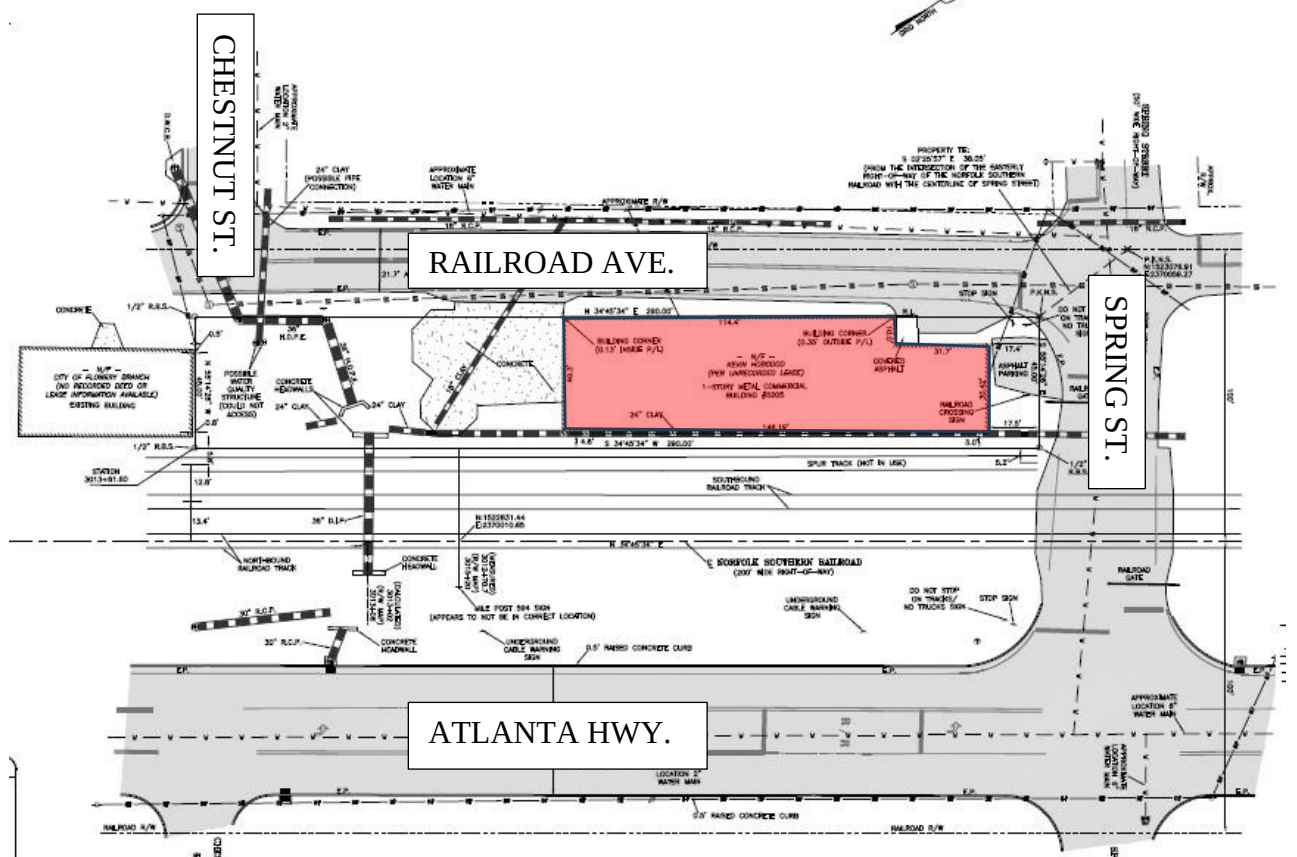
The subject property is zoned CBD. The surrounding properties are zoned TND.





Survey:

The survey provided with the CUP application shows the building relative to the property line but not the parking locations. A more current survey may be required prior to the issuance of permits.





Applications to amend the official zoning map and applications for conditional uses shall provide a written analysis comparing the proposed action with the criteria in this Section. A zoning map amendment or conditional use application may be justified only if it bears a reasonable relationship to the public health, safety, morality, or general welfare, and after consideration of the analysis requirements which may in individual cases be considered criteria relevant to the Zoning Administrator in making recommendations and by the City Council in the decision-making process.

- a) *Whether the proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property.*
Directly adjacent to the subject site are existing single-family residential uses. Most commercial uses nearby are further west on Railroad Avenue near Main Street.
- b) *Whether the proposal will adversely affect the existing use or usability of adjacent or nearby property.*
A higher intensity use, such as a restaurant, pub, or tavern could adversely impact the adjacent single-family residential uses that have only been adjacent to an unoccupied building.
- c) *Whether the property to be affected by the proposal can be used in accordance with the existing regulations and has reasonable economic use as currently zoned.*
The building is not occupied. Allowing the CUP would help the building be more economically viable.
- d) *Whether the 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 use will not result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools. Parking within the right-of-way of Railroad Avenue should be prohibited to not impact traffic patterns along the roadway.
- e) *Whether the proposal is in conformity with the policy and intent of the comprehensive plan including but not limited to the character area map and future land use plan map.*
The proposed micro-brewery would be in conformity with the policy and intent of the comprehensive plan.



- f) *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 proposal.*
There are no other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the proposal.
- g) *Existing use(s) and zoning of the subject property and nearby properties.*
Zoning adjacent to the subject building is zoned TND for single-family residential. The railroad is to the rear and no other uses are located on the sides.
- h) *Existing value of the property under the existing zoning district classification, the extent to which the property value of the subject property is diminished by the existing zoning district, and the value of the property under the proposed zoning district; if such information is provided by the applicant or can be discerned. This consideration may include the length of time the property has been vacant or unused as currently zoned and efforts taken by the property owner(s) to use the property or sell the property under the existing zoning district classification.*
The applicant did not provide data indicating the change to property value. The applicant did not provide the length of time that the building area has been vacant.
- i) *Whether a proposed zoning map amendment or conditional use approval will be a deterrent to the value or improvement of development of adjacent property in accordance with existing regulations.*
The proposed use should have no impact on the value or improvement of development of adjacent property.
- j) *The possible creation of an isolated zoning district unrelated to adjacent and nearby districts.*
The subject site is already zoned CBD.
- k) *Possible effects of the change in zoning district map, or change in use, on the character of a zoning district.*
The applicant provided limited architectural details. The existing building is constructed with corrugated metal siding. There is not enough detail to understand how the construction will change the character of the area.
- l) *The possible impact on the environment, including but not limited to, drainage, soil erosion and sedimentation, flooding, air quality and water quality.*



The applicant is subject to the requirements of an LDP including erosion control during land disturbance.

- m) *The relation that the proposed map amendment or conditional use bears to the purpose of the overall zoning scheme and the purposes of this Zoning Ordinance.*

The proposed CUP will have no impact on the purpose of the overall zoning scheme and the purposes of this Zoning Ordinance.

Staff Recommendation for Conditional Use Permit (CUP) & Certificate of Appropriateness

Recommendation:

Staff recommends **approval** of a **Certificate of Appropriateness** with the following conditions:

1. The building materials shall be similar to the information provided in note 1 on the building elevations.
2. The applicant shall add more wall openings adjacent to Railroad Avenue to break up the wall plane. It should be similar to the elevation facing Atlanta Highway. Final design to be approved by the Planning and Community Development Director.
3. The building finish shall be Galvalume Plus similar in color to the existing building maintaining the character of the building. The finish shall not be reflective or mirror-like finish. The applicant shall provide a sample of the material with colors for approval by the Planning and Community Development Director.
4. The applicant shall provide architectural details of the windows and doors including material and color. Final design to be approved by the Planning and Community Development Director.
5. The applicant shall provide details of the stepped decking and handicap ramps at the entrance for review of material and colors. Final design to be approved by the Planning and Community Development Director.

Staff recommends **approval** of the proposed **Conditional Use Permit (CUP)** for the operation of a micro-brewery located within the existing building at 5205 Railroad Avenue with the following conditions:

Conditions of Approval:

1. The Conditional Use Permit is issued to the entity obtaining the business license and should the occupant vacate the building, the Conditional Use Permit expires.
2. Adequate parking spaces shall be provided to support the proposed micro-brewery and restaurant per the requirements of Table 21.3. The applicant shall provide a parking plan



- with a combination of proposed parking, street parking along Spring Street, and shared parking with any privately owned entity. The Planning and Community Development Director shall be provided a copy of the shared parking agreement should the applicant arrange approval of shared parking.
3. All parking spaces proposed must be compliant with Article 21.
 4. The approval of the Conditional Use Permit does not provide approval of variances to Federal, State, or Local codes and regulations.
 5. The applicant must ensure that proper fire lanes, emergency access routes, and safety measures are in place in accordance with local fire codes and regulations.
 6. The building plans shall be substantially similar to the area use breakdown provided by the applicant: The building is +/- 8,700 square feet. 2,000 square feet of brewery, 1,000 square feet of bathroom, 4,900 square feet of restaurant, and 800 square feet of mechanical.



FLOWERY BRANCH CITY COUNCIL



EXECUTIVE SUMMARY

SUBJECT: Consider a Task Order Agreement with ESG Engineering, Inc. for Professional Design and Management Services for Phase I of the Pedestrian Trail.

COUNCIL MEETING DATE: February 6, 2025

HISTORY:

The “Highlands to Islands” trail is a multi-use trail that reaches from Gainesville to Lake Lanier Islands. A planned section of this multi-jurisdictional trail falls in Flowery Branch. In an effort to promote healthy living and pedestrian connectivity, the city seeks to begin planning and constructing a trail portion located in Flowery Branch. The trail construction is divided into two phases. The first phase of the project would provide a walking path and amenities conducive to a trail (benches, trash cans, landscaping, etc.) from lakeside Flowery Branch Bay Park, along Mitchell Street to Spring Street and terminating at Mulberry Avenue south of the Atlanta Highway. ESG Engineering, Inc. was awarded the contract to provide professional services. The scope of work includes research and analysis, site development plans, consulting services, and construction phase services for the project.

FACTS AND ISSUES:

After being awarded a \$1,000,000 grant from the Appalachian Regional Commission (ARC) in September 2024, the environmental assessment required by National Environmental Policy Act (NEPA) began on January 9, 2025. This process could take up to 90 days. Also occurring during this period will be survey work and geotechnical analysis. After environmental assessment, geotechnical analysis, and surveying are completed, the engineers can initiate the design phase, which will take up to 120 days. After a six-week construction bid phase, construction can begin on approximately October 1, 2025, leaving a year to complete Phase 1 of the trail project by September 30, 2026. The TAO outlines three tasks: (1) Preliminary Engineering, HUD Env. Site Assessment, and Funding Assistance, (2) Design Engineering and (3) Construction Administration.

OPTIONS:

To approve, or not approve, the Task Order Agreement (TOA) with ESG Engineering, Inc. to provide professional services for the Flowery Branch pedestrian/bike trail project.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

Yes

AMOUNT AND SOURCE OF FUNDS:

\$190,000 - Capital funds

RECOMMENDATION:

To approve the attached Task Order Agreement with ESG Engineering, Inc. for an amount not to exceed \$190,000 without written authorization from the City.

SAMPLE MOTION:

I make a motion to approve the attached Construction Management contract with ESG Engineering, Inc. for an amount not to exceed \$190,000 without written authorization from the City.

COLLABORATING DEPARTMENT:

DEPARTMENT: Finance

Prepared by: Shelia Cooper

ATTACHMENTS

- [Executive Summary - ARC Grant - TAO with ESG for Professional Services.pdf](#)
- [TOA - Flowery Branch Spur Trail 2025-01-07.pdf](#)
- [2024-06-28 - Arc Grant Proposal - Phase 1 Final.pdf](#)

FLOWERY BRANCH CITY COUNCIL
EXECUTIVE SUMMARY

SUBJECT: Consideration of a Task Order Agreement with ESG Engineering, Inc.

DATE: February 6, 2025

BUDGET INFORMATION:
ANNUAL-
CAPITAL-

☒ **RECOMMENDATION**
☐ **POLICY DISCUSSION**
☐ **STATUS REPORT**
☐ **OTHER**

COUNCIL ACTION REQUESTED ON: N/A

PURPOSE:

Authorizing a Task Order Agreement (TAO) with ESG Engineering, Inc. for professional design and management services for Phase I of the pedestrian trail/path.

HISTORY:

The “Highlands to Islands” trail is a multi-use trail that reaches from Gainesville to Lake Lanier Islands. A planned section of this multi-jurisdictional trail falls in Flowery Branch. In an effort to promote healthy living and pedestrian connectivity, the city seeks to begin planning and constructing a trail portion located in Flowery Branch. The trail construction is divided into two phases. The first phase of the project would provide a walking path and amenities conducive to a trail (benches, trash cans, landscaping, etc.) from lakeside Flowery Branch Bay Park, along Mitchell Street to Spring Street and terminating at Mulberry Avenue south of the Atlanta Highway. ESG Engineering, Inc. was awarded the contract to provide professional services. The scope of work includes research and analysis, site development plans, consulting services, and construction phase services for the project.

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RECOMMENDED SAMPLE MOTION:

I make a motion to approve the attached Construction Management contract with ESG Engineering, Inc. for an amount not to exceed \$190,000 without written authorization from the City.

DEPARTMENT: Finance

Prepared by: Elias Gobble

STANDARD AGREEMENT FOR PROFESSIONAL SERVICES

ESG ENGINEERING'S OFFICE ADDRESS:	6400 Peake Road, Macon, GA 31210
PROJECT NO.:	F0002.019
PROJECT NAME:	Flowery Branch Spur Trail
CLIENT:	City of Flowery Branch, Georgia
CLIENT'S ADDRESS:	5410 Pine Street, Flowery Branch, GA 30542

CLIENT requests and authorizes ESG Engineering, LLC (hereinafter "ESGE" or "ENGINEER") to perform the following Services:

Scope of Services

ESG Engineering (ESG) is pleased to submit this Task Order Agreement for the Flowery Branch Spur Trail. ESG will provide professional design and management services for Phase I of the pedestrian trail/path connecting Flowery Branch Bay Park to downtown Flowery Branch (intersection of Railroad Avenue at Spring Street). The scope of work includes research and analysis, site development plans, consulting services, and construction phase services for the project. Please see Exhibit 1 at the end of this document denoting the project area.

The work includes the following tasks:

Task 1- Preliminary Engineering, HUD Env. Site Assessment, and Funding Assistance

- Provide Geotechnical Services: Prepare a subsurface investigation report (where needed) that includes but is not limited to surface conditions, subsurface conditions, pavement design, site preparation, and stormwater management recommendations.
- Provide Environmental Services: Prepare an environmental assessment for the project in accordance with HUD's environmental regulations (24 CFR Part 58).
- Provide Planning Services: Review the Preliminary Engineering Report (PER) and Prepare a Conceptual Plan.
- Provide Funding Assistance to support grant funding this project received.
- Provide any boundary surveying work and property/easement acquisition assistance.

Task 2- Design Engineering

- Prepare working construction plans based upon the conceptual plan approval by client.
- Acquire Survey Data: Utility & Topographical Data for use in designing project.
- Prepare construction drawings required for Authority Having Jurisdiction (AHJ) submittal to include Existing Conditions and Demolition Plan, Site Plans, Utility Plans, Grading and Drainage Plans, Profiles, Hydrology Plan, Landscape Plan, Erosion Control and Sedimentation Plans, and Construction Details.
- Prepare a hydrology report including design calculations required for AHJ submittal.
- Assist with the preparation of applications and documents required to obtain approvals from the AHJ for engineering services. This includes meetings, negotiations, and attendance at any hearing(s)/public meeting(s).
- Manage correspondence with utility providers to coordinate any necessary utility relocations.
- Address comments received from AHJ and resubmittal of construction documents.
- Provide general consulting correspondence with client, AHJ, and other professional team members.

Task 3- Construction Administration

- Coordinate and attend construction-based meetings with client, contractor, and utility providers.
 - Prepare a conformed set of construction drawings and issue to client and contractor.
 - Perform NPDES 7 Day Inspection and Engineer of Record Certification.
 - Respond to contractor Request For Information (RFI) and shop drawings reviews.
 - Perform construction inspections for the project (budgeted at one inspection per 2 week period). ***Any additional construction inspection would be additional to this proposal.***
 - Provide consulting correspondence and coordination with client and construction team.
-

Compensation

The parties acknowledge and agree that the City will compensate ESG Engineering as set forth below for the tasks described and for the Scope of Services performed by ESG Engineering pursuant to the terms provided below and the terms and conditions of the Agreement.

The preliminary cost of construction (including contingency) is estimated at \$1,930,000. The total cumulative pricing for Tasks 1-4 will not be exceeded without written authorization from the City.

Description	Compensation
Task 1: Preliminary Engineering and Funding Assistance*	To include Terrecon services on HUD 58 Env Review (Sub-Proposal Attached**) and Hourly work not to Exceed \$25,000
Task 2: Design Engineering*	5.6% - \$108,080
Task 3: Construction Administration*	2.4% - \$46,320
Task 4: Construction Observation	Hourly upon request

*Fees that remain unused for one task may be allocated to fulfill another task, provided that the cumulative total of all fees remains within the established total for all tasks.

** See Exhibit 2 attached

Schedule

Work will begin when the signed Agreement is returned. Work thereafter will continue with progress updated in stakeholder meetings. Amendments will be executed to this Agreement in accordance with the City's requests.

Other Terms

Not Applicable

Services covered by this AGREEMENT will be performed in accordance with the Provisions and any attachments or schedules. This AGREEMENT supersedes all prior agreements and understandings and may only be changed by written amendment executed by both parties.

CLIENT:

Signature _____
Name (printed) _____
Title _____
Date _____

ESG Engineering, LLC

Signature  _____
Name (printed) Arthur (Trey) Gavin
Title SVP and GM
Date January 27, 2024

PROVISIONS

1. Authorization to Proceed

Execution of this AGREEMENT by CLIENT will be authorization for ENGINEER to proceed with the Services, unless otherwise provided for in this AGREEMENT.

2. Payment of Invoices

ENGINEER will submit monthly invoices for services rendered and CLIENT will make payments to ENGINEER within thirty (30) days of CLIENT's receipt of ENGINEER's invoice.

ENGINEER will retain receipts for reimbursable expenses in general accordance with Internal Revenue Service rules pertaining to the support of expenditures for income tax purposes. Receipts will be available for inspection by CLIENT's auditors upon request.

If CLIENT disputes any items in ENGINEER's invoice for any reason, including the lack of supporting documentation, CLIENT may temporarily delete the disputed item and pay the remaining amount of the invoice. CLIENT will promptly notify ENGINEER of the dispute and request clarification and/or correction. After any dispute has been settled, ENGINEER will include the disputed item on a subsequent, regularly scheduled invoice, or on a special invoice for the disputed item only.

CLIENT recognizes that late payment of invoices results in extra expenses for ENGINEER. ENGINEER retains the right to assess CLIENT interest at the rate of one percent (1%) per month, but not to exceed the maximum rate allowed by law, on invoices which are not paid within thirty (30) days from the date CLIENT receives ENGINEER's invoice. In the event undisputed portions of ENGINEER's invoices are not paid when due, ENGINEER also reserves the right, after seven (7) days prior written notice, to suspend the performance of its services under this Agreement until all past due amounts have been paid in full.

3. Cost Opinions

Any opinions of probable project cost or probable construction cost provided by ENGINEER are made on the basis of information available to ENGINEER and on the basis of ENGINEER's experience and qualifications and represents its judgment as an experienced and qualified professional engineer. However, since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, ENGINEER does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost ENGINEER prepares or that CLIENT's actual project costs, financial aspects, economic feasibility, or schedules will not vary from ENGINEER's opinions, analyses, projections or estimates. If CLIENT wishes greater assurance as to any element of the Project cost, feasibility, or schedule, CLIENT will employ an independent cost estimator, contractor or other appropriate advisor.

4. Standard of Care

The standard of care for all professional engineering, consulting and related services performed or furnished by ENGINEER and its employees under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under the same or similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

5. Construction Procedures

ENGINEER's observation or monitoring portions of the work performed under construction contracts shall not relieve the contractor from its responsibility for performing work in accordance with applicable contract documents. ENGINEER shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the work and shall not manage, supervise, control or have charge of construction. ENGINEER shall not be responsible for the acts or omissions of the contractor or other parties on the project. ENGINEER shall be entitled to review all construction contract documents and to require that no provisions extend the duties or liabilities of ENGINEER beyond those set forth in this Agreement. CLIENT agrees to include ENGINEER as an indemnified party in

CLIENT's construction contracts for the work, which shall protect ENGINEER to the same degree as CLIENT. Further, CLIENT agrees that ENGINEER shall be listed as an additional insured under the construction contractor's liability insurance policies.

6. Services and Information

CLIENT will provide all criteria and information pertaining to CLIENT's requirements for the project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations. CLIENT will also provide copies of any CLIENT-furnished Standard Details, Standard Specifications, or Standard Bidding Documents which are to be incorporated into the project.

CLIENT will furnish the services of soils/geotechnical engineers or other consultants that include reports and appropriate professional recommendations when such services are deemed necessary by ENGINEER. The CLIENT agrees to bear full responsibility for the technical accuracy and content of CLIENT-furnished documents and services.

In performing professional engineering and related services hereunder, it is understood by CLIENT that ENGINEER is not engaged in rendering any type of legal, insurance or accounting services, opinions or advice. Further, it is the CLIENT's sole responsibility to obtain the advice of an attorney, insurance counselor or accountant to protect the CLIENT's legal and financial interests. To that end, the CLIENT agrees that CLIENT or the CLIENT's representative will examine all studies, reports, sketches, drawings, specifications, proposals and other documents, opinions or advice prepared or provided by ENGINEER, and will obtain the advice of an attorney, insurance counselor or other consultant as the CLIENT deems necessary to protect the CLIENT's interests before CLIENT takes action or forebears to take action based upon or relying upon the services provided by ENGINEER.

7. Re-use of Documents

All documents, including all reports, drawings, specifications, computer software or other items prepared or furnished by ENGINEER pursuant to this Agreement, are instruments of service with respect to the project. ENGINEER retains ownership of all such documents. CLIENT may retain copies of the documents for its information and reference in connection with the project; however, none of the documents are intended or represented to be suitable for reuse by CLIENT or others on extensions of the project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at CLIENT's sole risk and without liability or legal exposure to ENGINEER, and CLIENT will defend, indemnify and hold harmless ENGINEER from all claims, damages, losses and expenses, including attorney's fees, arising or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by CLIENT and ENGINEER.

8. Termination

This AGREEMENT may be terminated for convenience on 30 days written notice or if either party fails substantially to perform through no fault of the other and does not commence correction of such nonperformance within 5 days of written notice and diligently complete the correction thereafter. On termination, ENGINEER will be paid for all authorized work performed up to the termination date plus termination expenses, such as, but not limited to, reassignment of personnel, subcontract termination costs, and related closeout costs.

9. Changes

The parties agree that no change or modification to this Agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of this Agreement. The execution of the change shall be authorized and signed in the same manner as this Agreement. Adjustments in the period of services and in compensation shall be in accordance with applicable paragraphs and sections of this Agreement. Any proposed fees by ENGINEER are estimates to perform the services required to complete the project as ENGINEER understands it to be defined. For those projects involving conceptual or process development services, activities often are not fully definable in the initial planning. In any event, as the project

progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. ENGINEER will inform CLIENT of such situations so that changes in scope and adjustments to the time of performance and compensation can be made as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost of or time required for performance of the services, an equitable adjustment shall be made, and the Agreement modified accordingly.

10. Insurance

ENGINEER agrees to procure and maintain, at its expense, Workers' Compensation insurance as required by statute; Employer's Liability of \$250,000; Automobile Liability insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles; Commercial General Liability insurance of \$1,000,000 combined single limit for personal injury and property damage; and Professional Liability insurance of \$1,000,000 per claim for protection against claims arising out of the performance of services under this Agreement caused by negligent acts, errors, or omissions for which ENGINEER is legally liable. CLIENT shall be made an additional insured on Commercial General and Automobile Liability insurance policies and certificates of insurance will be furnished to the CLIENT.

11. Limitation of Liability

ENGINEER's liability for CLIENT's damages will, in the aggregate, not exceed the lesser of \$100,000 or its fee, for any and all injuries, damages, claims, losses or expenses (including attorney and expert fees) arising out of the ENGINEER's services or this AGREEMENT regardless of cause(s) or the theory of liability, including negligence, indemnity or other recovery, shall include ENGINEER's officers, affiliated corporations, employees, and subcontractors.. This Provision takes precedence over any conflicting Provision of this AGREEMENT, or any document incorporated into it or referenced by it.

Both parties agree to indemnify the other party for third party personal injury and property damage claims to the extent caused by the indemnifying party's negligent acts, errors or omissions. However, neither Party to this Agreement shall be liable to the other Party for any special, incidental, indirect, or consequential damages (including but not limited to loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or services; cost of capital; and/or fines or penalties), loss of profits or revenue arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, errors or omissions, strict liability or breach of contract.

12. Severability and Survival

If any of the provisions contained in this AGREEMENT are held illegal, invalid or unenforceable, the other provisions shall remain in full effect. Limitations of liability shall survive termination of this AGREEMENT for any cause.

13. No Third-Party Beneficiaries

CLIENT and ENGINEER, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the covenants of this Agreement. Neither CLIENT nor ENGINEER will assign, sublet, or transfer any interest in this Agreement or claims arising therefrom without the written consent of the other. No third-party beneficiaries are intended under this Agreement.

14. Hazardous Materials

CLIENT represents to ENGINEER that, to the best of its knowledge, no hazardous materials are present at the project site. However, in the event hazardous materials are known to be present, CLIENT represents that to the best of its knowledge it has disclosed to ENGINEER the existence of all such hazardous materials, including but not limited to asbestos, PFAS, PCB's, petroleum, hazardous waste, or radioactive material located at or near the project site, including type, quantity and location of such hazardous materials. It is acknowledged by both parties that ENGINEER's scope of services does not include services related in any way to hazardous materials.

In the event ENGINEER or any other party encounters undisclosed hazardous materials, ENGINEER shall have the obligation to notify CLIENT and, to the extent required by law or regulation, the appropriate governmental officials, and ENGINEER may, at its option and without liability for delay, consequential or any other damages to CLIENT, suspend performance of services on that portion of the project affected by hazardous materials until CLIENT: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the hazardous materials; and (ii) warrants that the project site is in full compliance with all applicable laws and regulations.

CLIENT acknowledges that ENGINEER is performing professional services for CLIENT and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous materials, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the project site in connection with ENGINEER's services under this Agreement. If ENGINEER's services hereunder cannot be performed because of the existence of hazardous materials, ENGINEER shall be entitled to terminate this Agreement for cause on 30 days written notice. To the fullest extent permitted by law, CLIENT shall indemnify and hold harmless ENGINEER, its officers, directors, partners, employees, and subconsultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from hazardous materials, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate CLIENT to indemnify any individual or entity from and against the consequences of that individual's or entity's sole negligence or willful misconduct.

15. Utility Locations

If underground sampling/testing is to be performed, a local utility locating service shall be contacted to make arrangements for all utilities to determine the location of underground utilities. In addition, CLIENT shall notify ENGINEER of the presence and location of any underground utilities located on the CLIENT's property which are not the responsibility of private/public utilities. ENGINEER shall take reasonable precautions to avoid damaging underground utilities that are properly marked. The CLIENT agrees to waive any claim against ENGINEER and will indemnify and hold ENGINEER harmless from any claim of liability, injury or loss caused by or allegedly caused by ENGINEER's damaging of underground utilities that are not properly marked or are not called to ENGINEER's attention prior to beginning the underground sampling/testing.

16. Assignments

Neither party shall have the power to or will assign any of the duties or rights or any claim arising out of or related to this AGREEMENT, whether arising in tort, contract or otherwise, without the written consent of the other party, except that ENGINEER may assign this AGREEMENT to a parent, affiliate or subsidiary company or to a surviving entity in the event of a merger or acquisition. Any unauthorized assignment is void and unenforceable.

17. Integration

This AGREEMENT incorporates all previous communications and negotiations and constitutes the entire agreement of the parties. If CLIENT issues a Purchase Order in conjunction with performance of the Services, general or standard terms and conditions on the Purchase Order do not apply to this AGREEMENT.

18. Force Majeure

ENGINEER shall not be responsible for delays caused by factors beyond ENGINEER's reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, government ordered industry shutdowns, power or server outages,

acts of nature, widespread infectious disease outbreaks (including, but not limited to epidemics and pandemics), failure of any governmental or other regulatory authority to act in a timely manner, failure of the CLIENT to furnish timely information or approve or disapprove of ENGINEER's services or work product, or delays caused by faulty performance by the CLIENT's or by contractors of any level or any other events or circumstances not within the reasonable control of the party affected, whether similar or dissimilar to any of the foregoing. When such delays beyond ENGINEER's reasonable control occur, the CLIENT agrees that ENGINEER shall not be responsible for damages, nor shall ENGINEER be deemed in default of this Agreement, and the parties will negotiate an equitable adjustment to ENGINEER's schedule and/or compensation if impacted by the force majeure event or condition.

19. Litigation Support

In the event ENGINEER is required to respond to a subpoena, government inquiry or other legal process related to the services in connection with a legal or dispute resolution proceeding to which ENGINEER is not a party, CLIENT shall reimburse ENGINEER for reasonable costs in responding and compensate ENGINEER at its then standard rates for reasonable time incurred in gathering information and documents and attending depositions, hearings, and trial.

20. Operational Technology Systems

CLIENT agrees that the effectiveness of operational technology systems ("OT Systems") and features designed, recommended or assessed by ENGINEER are dependent upon CLIENT's continued operation and maintenance of the OT Systems in accordance with all standards, best practices, laws, and regulations that govern the operation and maintenance of the OT Systems. CLIENT shall be solely responsible for operating and maintaining the OT System in accordance with applicable industry standards (i.e. ISA, NIST, etc.) and best practices, which generally include but are not limited to, cyber security policies and procedures, documentation and training requirements, continuous monitoring of assets for tampering and intrusion, periodic evaluation for asset vulnerabilities, implementation and update of appropriate technical, physical, and operational standards, and offline testing of all software/firmware patches/updates prior to placing updates into production. Additionally, CLIENT recognizes and agrees that OT Systems are subject to internal and external breach, compromise, and similar incidents. Security features designed, recommended or assessed by ENGINEER are intended to reduce the likelihood that OT Systems will be compromised by such incidents. However, ENGINEER does not guarantee that CLIENT's OT Systems are impenetrable, and CLIENT agrees to waive any claims against ENGINEER resulting from any such incidents that relate to or affect CLIENT's OT Systems.

21. Access to Facilities and Property

CLIENT will make its facilities accessible to ENGINEER as required for the performance of its services and will provide labor and safety equipment as required by ENGINEER for such access. CLIENT will perform, at no cost to ENGINEER, such tests of equipment, machinery, pipelines, and other components of CLIENT's facilities as may be required in connection with ENGINEER's services.

22. Dispute Resolution

The parties will use their best efforts to resolve amicably any dispute, including use of alternative dispute resolution options. The parties shall initially attempt to resolve the dispute by direct negotiation at the project level, should a resolution not be agreed to then an attempt to resolve the dispute shall be made by Senior Executives within the first thirty (30) days of project dispute. If the parties cannot resolve the dispute by direct negotiation within sixty (60) days from the commencement of direct negotiation, the parties may choose an alternative dispute resolution process or either party may decide to litigate.

23. Changes

CLIENT may make or approve changes within the general Scope of Services in this AGREEMENT. If such changes affect ENGINEER's cost of or time required for performance of the services, an equitable adjustment will be made through an amendment to this AGREEMENT.

24. Controlling Law and Agreement

This Agreement is to be governed by the law of the state where ENGINEER's services are performed.

These Terms and Conditions shall take precedence over and any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice to proceed or like document.

25. Execution

This Agreement, including the exhibits and schedules made part hereof, constitute the entire Agreement between ENGINEER and CLIENT, supersedes and controls over all prior written or oral understandings. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by the parties.

EXHIBIT 1





514 Hillcrest Industrial Blvd.
Macon, GA 31204
P (478) 757-1606
F (478) 757-1608
Terracon.com

December 20, 2024

ESG Engineering, Inc.
6400 Peake Road
Macon, Georgia 31210

Attn: Mr. Trey Crisp
P: 478-335-4612
E: trey.crisp@inframark.com

RE: Proposal for a HUD Part 58 Environmental Review Record – Categorically Excluded
Subject To (ERR-CEST)
Flowery Branch Spur Trail Phase I and II
Flowery Branch, Hall County, Georgia
Terracon Proposal No. PHN247532

Dear Mr. Crisp:

Terracon Consultants, Inc. (Terracon) appreciates the opportunity to submit this proposal to the City of Flowery Branch (client) to conduct a U.S. Department of Housing and Urban Development (HUD) Part 58 Environmental Record Review (ERR) of the above-referenced site.

A. PROJECT INFORMATION

We understand the proposed project, Flowery Branch Spur Trail consist of two phases. Phase I would provide a walking path and amenities conducive to a trail from Lake Lanier along Mitchell Street to Spring Street and terminating at Mulberry Avenue south of the Atlanta Highway. Phase II would extend the trail from Mulberry Street to Spout Springs Road by way of East Main Street and Thurman Tanner Parkway. A pedestrian bridge would be an additional component of this phase to cross the creek along East Main Street. The proposed path of both phases is approximately 1.9 miles within the city limits of Flowery Branch, Georgia.

Terracon understands that the project requires an Environmental Review Record – Categorically Excluded Subject To (ERR-CEST) in accordance with the Department of Housing and Urban Development (HUD) National Environmental Policy Act (NEPA) guidance and regulations. Terracon understands that funding for this project will be provided through an Appalachian Regional Commission's (ARC) Area Development Grant. Therefore, a HUD

Proposal for HUD ERR -CEST

Flowery Branch Spur Trail Phase I and II ■ Flowery Branch, Georgia

December 20, 2024 ■ Terracon Proposal No. PHN247532



ERR-CEST will be prepared under 24 CFR Part 58 and submitted to the Georgia Department of Community Affairs to be submitted to HUD.



B. SCOPE OF SERVICES

HUD Environmental Assessment

Terracon proposes to provide professional environmental consulting and related services required to perform an Environmental Assessment for the subject property in accordance with HUD's environmental regulations (24 CFR Part 58).

Specific compliance factors for this level of assessment will include:

Statutes, Executive Orders, and Regulations per 24 CFR §50.4

- Airport Runway Clear Zones and Clear Zones Disclosures
- Coastal Barrier Resources
- Flood Disaster Protection

Statutes, Executive Orders, and Regulations per 24 CFR § 50.4

- Clean Air

Explore with us

Proposal for HUD ERR -CEST

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- Coastal Zone Management
- Contamination and Toxic Substances (based on information from ESA)
- Endangered Species Act/Fish and Wildlife
- Explosive and Flammable
- Farmland Protection
- Floodplain Management
- Historic Preservation
- Noise Abatement and Control
- Sole Source Aquifers/ Safe Drinking Water/Water Quality
- Wetland Protection
- Wild and Scenic Rivers
- Environmental Justice

Each of these factors will be assessed based on HUD guidance documents and current standard practice. A determination of impact for each factor will be provided with appropriate documentation and justification; this may include data collected during a site visit, information obtained from published documentation or consultation with the governing agency.

Agency consultation is also required to allow Federal, State, and Local offices and agencies an opportunity to consult and comment on the project and its potential to impact their projects or the resources under their purview. In the event these agencies require additional investigations, surveys, or assessments, Terracon will contact the client and prepare a Change Order with the applicable scope of work, schedule, and fee estimate.

Coordination and consultation with the applicable Native American Indian tribes as identified on HUD's Tribal Directory Assessment Tool will also be required by the Responsible Entity (RE). Terracon will prepare letters to use for coordination between the RE and the tribes and will need to be included in the Part 58 application.

Report

The report will be completed and include an explanation of the services performed, findings, appropriate documentation, conclusions and recommendations as warranted. The report will utilize the most recent version of HUD's Environmental Assessment checklist.

Delivered documentation will be prepared for the exclusive use and reliance of the client and HUD. Reliance by any other party is prohibited without the written authorization of the client and Terracon.

Proposal for HUD ERR -CEST

Flowery Branch Spur Trail Phase I and II ■ Flowery Branch, Georgia

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**Schedule**

Services will be initiated upon receipt of the written notice to proceed. Regulatory agencies, such as SHPO, have 30 days to respond to our requests, and may take longer for final designation if additional information/ surveys are required. It is anticipated that a draft report will be submitted within 45 business days after receipt of your written notice to proceed. A final report will be issued upon receipt of all correspondence.

Scope and Report Limitations

The findings and conclusions presented in the final report will be based on the site's current utilization and the information collected as discussed in this proposal. Please note that we do not warrant database or third-party information (such as from interviewees) or regulatory agency information used in the compilation of reports.

C. COMPENSATION

The Scope of Services outlined in this proposal will be performed on a lump sum basis as follows:

Compensation estimated on a lump sum fee basis	Service	Fee	Approved	
			Yes	No
	HUD ERR-CEST Checklist Report and Support Documentation	\$6,500		
	Desktop Cultural Resource Assessment	\$2,500		

If, as a result of these services, additional work is required outside the scope of this proposal, you will be contacted, and upon request, proposed costs for additional work will be provided. Client authorization will be obtained prior to commencement of any additional work outside the scope of this proposal. The fee is valid for 90 days from the date of this proposal.

D. AUTHORIZATION

If this proposal meets with your approval, work may be initiated by returning an original copy of the attached Agreement for Services to our Macon, Georgia office. Project initiation may be expedited by sending a copy of the signed Agreement for Services via e-mail or facsimile.

We appreciate the opportunity to provide this proposal and look forward to working with you on this project. If you have any questions or comments regarding this proposal or require

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Proposal for HUD ERR -CEST

Flowery Branch Spur Trail Phase I and II ■ Flowery Branch, Georgia

December 20, 2024 ■ Terracon Proposal No. PHN247532



additional services, please contact Ms. Mary Brooks at 478-951-6680 or via electronic mail at mary.brooks@terracon.com.

Sincerely,
Terracon Consultants, Inc.

Colleen Sullivan Clark

Colleen Clark
Staff Scientist

Mary Brooks

Mary Brooks
Environmental Planning Manager

Attachments: Agreement for Services

AGREEMENT FOR SERVICES

This **AGREEMENT** is between ESG Engineering, Inc. ("Client") and Terracon Consultants, Inc. ("Consultant") for Services to be provided by Consultant for Client on the Flowery Branch Spur Trail Phase I and II HUD ERR-CEST project ("Project"), as described in Consultant's Proposal dated 12/20/2024 ("Proposal"), including but not limited to the Project Information section, unless the Project is otherwise described in Exhibit A to this Agreement (which section or Exhibit is incorporated into this Agreement).

1. **Scope of Services.** The scope of Consultant's services is described in the Proposal, including but not limited to the Scope of Services section ("Services"), unless Services are otherwise described in Exhibit B to this Agreement (which section or exhibit is incorporated into this Agreement). Portions of the Services may be subcontracted. Consultant's Services do not include the investigation or detection of, nor do recommendations in Consultant's reports address the presence or prevention of biological pollutants (e.g., mold, fungi, bacteria, viruses, or their byproducts) or occupant safety issues, such as vulnerability to natural disasters, terrorism, or violence. If Services include purchase of software, Client will execute a separate software license agreement. Consultant's findings, opinions, and recommendations are based solely upon data and information obtained by and furnished to Consultant at the time of the Services.
2. **Acceptance/ Termination.** Client agrees that execution of this Agreement is a material element of the consideration Consultant requires to execute the Services, and if Services are initiated by Consultant prior to execution of this Agreement as an accommodation for Client at Client's request, both parties shall consider that commencement of Services constitutes formal acceptance of all terms and conditions of this Agreement. Additional terms and conditions may be added or changed only by written amendment to this Agreement signed by both parties. In the event Client uses a purchase order or other form to administer this Agreement, the use of such form shall be for convenience purposes only and any additional or conflicting terms it contains are stricken. This Agreement shall not be assigned by either party without prior written consent of the other party. Either party may terminate this Agreement or the Services upon written notice to the other. In such case, Consultant shall be paid costs incurred and fees earned to the date of termination plus reasonable costs of closing the Project.
3. **Change Orders.** Client may request changes to the scope of Services by altering or adding to the Services to be performed. If Client so requests, Consultant will return to Client a statement (or supplemental proposal) of the change setting forth an adjustment to the Services and fees for the requested changes. Following Client's review, Client shall provide written acceptance. If Client does not follow these procedures, but instead directs, authorizes, or permits Consultant to perform changed or additional work, the Services are changed accordingly and Consultant will be paid for this work according to the fees stated or its current fee schedule. If project conditions change materially from those observed at the site or described to Consultant at the time of proposal, Consultant is entitled to a change order equitably adjusting its Services and fee.
4. **Compensation and Terms of Payment.** Client shall pay compensation for the Services performed at the fees stated in the Proposal, including but not limited to the Compensation section, unless fees are otherwise stated in Exhibit C to this Agreement (which section or Exhibit is incorporated into this Agreement). If not stated in either, fees will be according to Consultant's current fee schedule. Fee schedules are valid for the calendar year in which they are issued. Fees do not include sales tax. Client will pay applicable sales tax as required by law. Consultant may invoice Client at least monthly and payment is due upon receipt of invoice. Client shall notify Consultant in writing, at the address below, within 15 days of the date of the invoice if Client objects to any portion of the charges on the invoice, and shall promptly pay the undisputed portion. Client shall pay a finance fee of 1.5% per month, but not exceeding the maximum rate allowed by law, for all unpaid amounts 30 days or older. Client agrees to pay all collection-related costs that Consultant incurs, including attorney fees. Consultant may suspend Services for lack of timely payment. It is the responsibility of Client to determine whether federal, state, or local prevailing wage requirements apply and to notify Consultant if prevailing wages apply. If it is later determined that prevailing wages apply, and Consultant was not previously notified by Client, Client agrees to pay the prevailing wage from that point forward, as well as a retroactive payment adjustment to bring previously paid amounts in line with prevailing wages. Client also agrees to defend, indemnify, and hold harmless Consultant from any alleged violations made by any governmental agency regulating prevailing wage activity for failing to pay prevailing wages, including the payment of any fines or penalties.
5. **Third Party Reliance.** This Agreement and the Services provided are for Consultant and Client's sole benefit and exclusive use with no third party beneficiaries intended. Reliance upon the Services and any work product is limited to Client, and is not intended for third parties other than those who have executed Consultant's reliance agreement, subject to the prior approval of Consultant and Client.
6. **LIMITATION OF LIABILITY.** CLIENT AND CONSULTANT HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING CONSULTANT'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE ASSOCIATED RISKS. TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF CONSULTANT (AND ITS RELATED CORPORATIONS AND EMPLOYEES) TO CLIENT AND THIRD PARTIES GRANTED RELIANCE IS LIMITED TO THE GREATER OF \$50,000 OR CONSULTANT'S FEE, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF CONSULTANT'S SERVICES OR THIS AGREEMENT. PRIOR TO ACCEPTANCE OF THIS AGREEMENT AND UPON WRITTEN REQUEST FROM CLIENT, CONSULTANT MAY NEGOTIATE A HIGHER LIMITATION FOR ADDITIONAL CONSIDERATION IN THE FORM OF A SURCHARGE TO BE ADDED TO THE AMOUNT STATED IN THE COMPENSATION SECTION OF THE PROPOSAL. THIS LIMITATION SHALL APPLY REGARDLESS OF AVAILABLE PROFESSIONAL LIABILITY INSURANCE COVERAGE, CAUSE(S), OR THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, OR OTHER RECOVERY. THIS LIMITATION SHALL NOT APPLY TO THE EXTENT THE DAMAGE IS PAID UNDER CONSULTANT'S COMMERCIAL GENERAL LIABILITY POLICY.
7. **Indemnity/Statute of Limitations.** Consultant and Client shall indemnify and hold harmless the other and their respective employees from and against legal liability for claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are legally determined to be caused by their negligent acts, errors, or omissions. In the event such claims, losses, damages, or expenses are legally determined to be caused by the joint or concurrent negligence of Consultant and Client, they shall be borne by each party in proportion to its own negligence under comparative fault principles. Neither party shall have a duty to defend the other party, and no duty to defend is hereby created by this indemnity provision and such duty is explicitly waived under this Agreement. Causes of action arising out of Consultant's Services or this Agreement regardless of cause(s) or the theory of liability, including negligence, indemnity or other recovery shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of Consultant's substantial completion of Services on the project.
8. **Warranty.** Consultant will perform the Services in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the same locale. **EXCEPT FOR THE STANDARD OF CARE PREVIOUSLY STATED, CONSULTANT MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO CONSULTANT'S SERVICES AND CONSULTANT DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
9. **Insurance.** Consultant represents that it now carries, and will continue to carry: (i) workers' compensation insurance in accordance with the laws of the states having jurisdiction over Consultant's employees who are engaged in the Services, and employer's liability insurance (\$1,000,000); (ii) commercial general liability insurance (\$2,000,000 occ / \$4,000,000 agg); (iii) automobile liability insurance (\$2,000,000 B.I. and P.D. combined single limit); (iv) umbrella liability (\$5,000,000 occ / agg); and (v) professional liability insurance (\$1,000,000 claim / agg). Certificates of insurance will be provided upon request. Client and Consultant shall waive subrogation against the other party on all general liability and property coverage.



Reference Number: PHN247532

- 10. CONSEQUENTIAL DAMAGES.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOSS OF PROFITS OR REVENUE; LOSS OF USE OR OPPORTUNITY; LOSS OF GOOD WILL; COST OF SUBSTITUTE FACILITIES, GOODS, OR SERVICES; COST OF CAPITAL; OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES.
- 11. Dispute Resolution.** Client shall not be entitled to assert a Claim against Consultant based on any theory of professional negligence unless and until Client has obtained the written opinion from a registered, independent, and reputable engineer, architect, or geologist that Consultant has violated the standard of care applicable to Consultant's performance of the Services. Client shall provide this opinion to Consultant and the parties shall endeavor to resolve the dispute within 30 days, after which Client may pursue its remedies at law. This Agreement shall be governed by and construed according to Kansas law.
- 12. Subsurface Explorations.** Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. Client understands Consultant's layout of boring and test locations is approximate and that Consultant may deviate a reasonable distance from those locations. Consultant will take reasonable precautions to reduce damage to the site when performing Services; however, Client accepts that invasive services such as drilling or sampling may damage or alter the site. Site restoration is not provided unless specifically included in the Services.
- 13. Testing and Observations.** Client understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. Consultant will provide test results and opinions based on tests and field observations only for the work tested. Client understands that testing and observation are not continuous or exhaustive, and are conducted to reduce - not eliminate - project risk. Client shall cause all tests and inspections of the site, materials, and Services performed by Consultant to be timely and properly scheduled in order for the Services to be performed in accordance with the plans, specifications, contract documents, and Consultant's recommendations. No claims for loss or damage or injury shall be brought against Consultant by Client or any third party unless all tests and inspections have been so performed and Consultant's recommendations have been followed. Unless otherwise stated in the Proposal, Client assumes sole responsibility for determining whether the quantity and the nature of Services ordered by Client is adequate and sufficient for Client's intended purpose. Client is responsible (even if delegated to contractor) for requesting services, and notifying and scheduling Consultant so Consultant can perform these Services. Consultant is not responsible for damages caused by Services not performed due to a failure to request or schedule Consultant's Services. Consultant shall not be responsible for the quality and completeness of Client's contractor's work or their adherence to the project documents, and Consultant's performance of testing and observation services shall not relieve Client's contractor in any way from its responsibility for defects discovered in its work, or create a warranty or guarantee. Consultant will not supervise or direct the work performed by Client's contractor or its subcontractors and is not responsible for their means and methods. The extension of unit prices with quantities to establish a total estimated cost does not guarantee a maximum cost to complete the Services. The quantities, when given, are estimates based on contract documents and schedules made available at the time of the Proposal. Since schedule, performance, production, and charges are directed and/or controlled by others, any quantity extensions must be considered as estimated and not a guarantee of maximum cost.
- 14. Sample Disposition, Affected Materials, and Indemnity.** Samples are consumed in testing or disposed of upon completion of the testing procedures (unless stated otherwise in the Services). Client shall furnish or cause to be furnished to Consultant all documents and information known or available to Client that relate to the identity, location, quantity, nature, or characteristic of any hazardous waste, toxic, radioactive, or contaminated materials ("Affected Materials") at or near the site, and shall immediately transmit new, updated, or revised information as it becomes available. Client agrees that Consultant is not responsible for the disposition of Affected Materials unless specifically provided in the Services, and that Client is responsible for directing such disposition. In no event shall Consultant be required to sign a hazardous waste manifest or take title to any Affected Materials. Client shall have the obligation to make all spill or release notifications to appropriate governmental agencies. The Client agrees that Consultant neither created nor contributed to the creation or existence of any Affected Materials conditions at the site and Consultant shall not be responsible for any claims, losses, or damages allegedly arising out of Consultant's performance of Services hereunder, or for any claims against Consultant as a generator, disposer, or arranger of Affected Materials under federal, state, or local law or ordinance.
- 15. Ownership of Documents.** Work product, such as reports, logs, data, notes, or calculations, prepared by Consultant shall remain Consultant's property. Proprietary concepts, systems, and ideas developed during performance of the Services shall remain the sole property of Consultant. Files shall be maintained in general accordance with Consultant's document retention policies and practices.
- 16. Utilities.** Unless otherwise stated in the Proposal, Client shall provide the location and/or arrange for the marking of private utilities and subterranean structures. Consultant shall take reasonable precautions to avoid damage or injury to subterranean structures or utilities. Consultant shall not be responsible for damage to subterranean structures or utilities that are not called to Consultant's attention, are not correctly marked, including by a utility locate service, or are incorrectly shown on the plans furnished to Consultant.
- 17. Site Access and Safety.** Client shall secure all necessary site related approvals, permits, licenses, and consents necessary to commence and complete the Services and will execute any necessary site access agreement. Consultant will be responsible for supervision and site safety measures for its own employees, but shall not be responsible for the supervision or health and safety precautions for any third parties, including Client's contractors, subcontractors, or other parties present at the site. In addition, Consultant retains the right to stop work without penalty at any time Consultant believes it is in the best interests of Consultant's employees or subcontractors to do so in order to reduce the risk of exposure to unsafe site conditions. Client agrees it will respond quickly to all requests for information made by Consultant related to Consultant's pre-task planning and risk assessment processes.

Consultant: **Terracon Consultants, Inc.**

By: Mary Brooks Date: **12/20/2024**

Name/Title: **Mary A. Brooks / Environmental Planning
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Client: **ESG Engineering, Inc**

By: _____ Date: _____

Name/Title: **Trey Crisp /**

Address: **6400 Peake Road
Macon, GA 31210**

Phone: _____ Fax: _____

Email: **trey.crisp@inframark.com**

Preliminary Engineering Report



Flowery Branch



Appalachian
Regional
Commission

**ARC Area Development Grant
Flowery Branch Spur Trail**

*for the City of Flowery Branch
Hall County, Georgia*

Prepared by
ESG Engineering Inc.
June 2024



June 28, 2024



ESG ENGINEERING

478-474-5025
6400 Peake Road, Macon, Georgia 31216

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SECTION 1 – EXECUTIVE SUMMARY

The Flowery Branch Spur Trail is a construction project that aligns with the Appalachian Regional Commission's (ARC) goals and objectives to connect and lengthen the Highlands to Islands trail system; furthermore, preserving and investing in the region's local heritage and natural assets. The trail system promotes an additional avenue facilitating development by strengthening existing businesses, providing opportunities for new businesses, and improving the quality of life for Flowery Branch residents.

The Flowery Branch Spur Trail is a multi-phase project that would consist of earthwork, infrastructure, landscaping, and right-of-way enhancement to connect Lake Lanier to the Flowery Branch downtown community, as well as the northern terminus of the South Springs West Sidepath. Currently, there is no dedicated route for pedestrians seeking to travel between downtown Flowery Branch and the Bay Park. The existing streets provide the framework of the route, but a footpath/trail is needed to allow pedestrians to access downtown safely.

The funding request is for the first phase of a two-phase project. The first phase of the project would provide a walking path and amenities conducive to a trail (benches, trash cans, landscaping, etc.) from Lake Lanier along Mitchell Street to Spring Street and terminating at Mulberry Avenue south of the Atlanta Highway. The second phase would extend the trail from Mulberry Street to Spout Springs Road by way of East Main Street and Thurman Tanner Parkway. A pedestrian bridge would be an additional component of this phase to cross the creek along East Main Street.

To achieve the goals and objectives mentioned above for the first phase, the City of Flowery Branch is requesting ARC grant funds to make this project feasible.

After a preliminary study of the Project Area, ESG Engineering has determined that the project is viable along the proposed route and is as such, our recommendation to complete the proposed improvements which include: pedestrian safety, enhanced community connectivity, and promote economic growth for the City of Flowery Branch.

SECTION 2 – INTRODUCTION

2.1 PURPOSE AND SCOPE

It is the intent of this study to provide an overview of the existing infrastructure and environmental factors in the Project Area and to provide recommendations for practical and economical solutions to complete the desired project within the study area.

This report contains comments and discussions regarding the existing deficiencies and possible solutions, maps depicting the Project Area with proposed improvements, and an Engineer's Opinion of Probable Construction Cost. Maps, charts, and figures are presented throughout the report for ease and convenience while reviewing. Permitting, inter-agency coordination, and possible funding requirements are discussed. A preliminary implementation schedule of the time required to complete the design and construction of the project is included. Various alternatives along with environmental impacts, if any, are discussed.

2.2 AUTHORIZATION

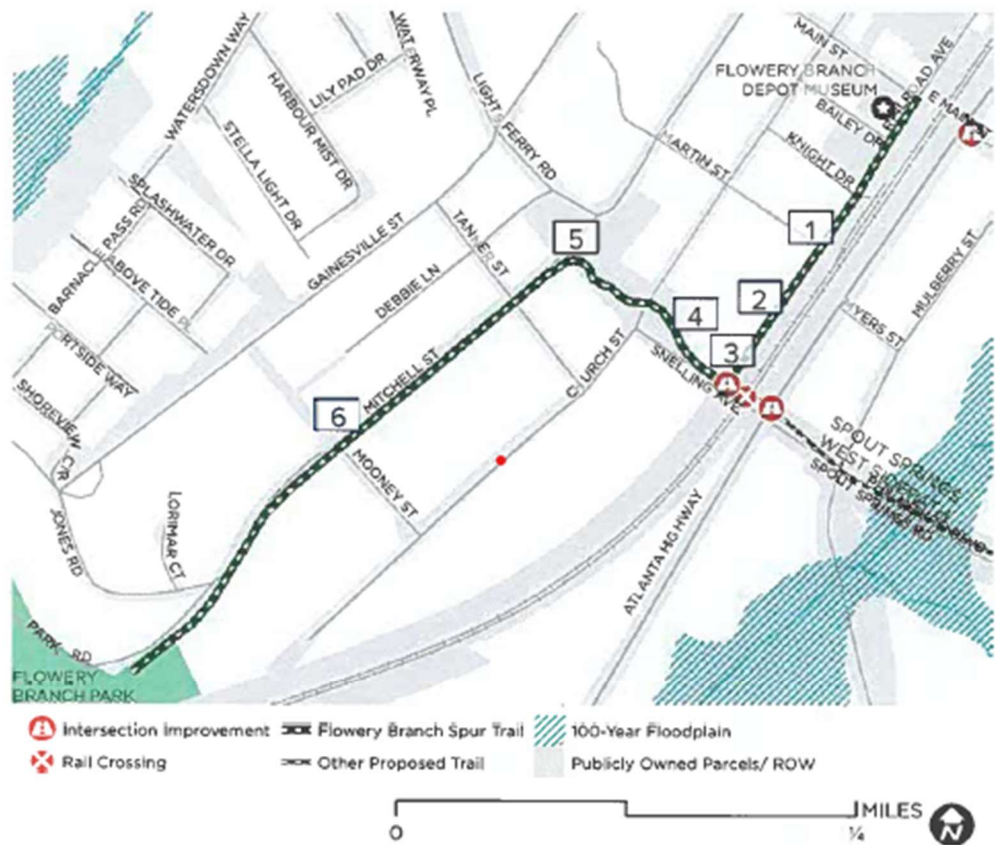
The Mayor and City Council of Flowery Branch have selected ESG Engineering Inc. to analyze, prepare, and design the necessary technical support for the City's ARC Area Development Grant Application.

2.3 PREVIOUS STUDIES

The Gainesville-Hall Metropolitan Planning Organization compiled data and performed preliminary design recommendations for the trail system routes. Please see the information below pertaining to the route study titled Exhibit 2.3 – A, B, & C.

Exhibit 2.3 – A

South Hall Trail Study | 72



Flowery Branch Spur Trail

- 1 Widen sidewalk on north side of Railroad Ave. to 12-feet
- 2 Install streetscape amenities such as lighting, seating, and rest stops for bicycles
- 3 Include wayfinding signage to direct trail users to downtown shops and restaurants
- 4 Widen sidewalk on east side of Snelling Ave. to 12-feet
- 5 Provide directional signage at roundabout to direct trail users to recreation area
- 6 Install 10-foot trail on north side of Mitchell St with curb and gutter

PROPERTY TYPE	LENGTH (FT)	% OF PHASE	AFFECTED PARCELS
Utility Easement	0	0%	N/A
ROW	3,295	95%	N/A
Public Parcels	0	0%	0
Private Land	187	5%	1

Approximate length: 0.66 miles
Estimated Cost: \$2.84M

Exhibit 2.3 – B

71 | Gainesville-Hall Metropolitan Planning Organization

Flowery Branch Spur Trail



Connecting to Flowery Branch downtown will provide trail users an appealing destination since there are shops, restaurants, and access to Lake Lanier. The segment continues from Phil Niekro Blvd. and will require a crossing modification at the railroad to accommodate the trail. The sidepath extends north on Snelling Ave. and then west on Mitchell St. to provide access to Flowery Branch Park and Lake Lanier. A northerly spur is also recommended along Railroad Ave to connect users to the shops, museum, and other services downtown.

Highlands to Islands Trail Network Flowery Branch Trails - Cost Estimate



Note: Cost estimates are based on a calculation of \$1,000,000 per mile. Cost estimates are subject to vary based on the needs of each individual trail segment.

SECTION 3 – BACKGROUND

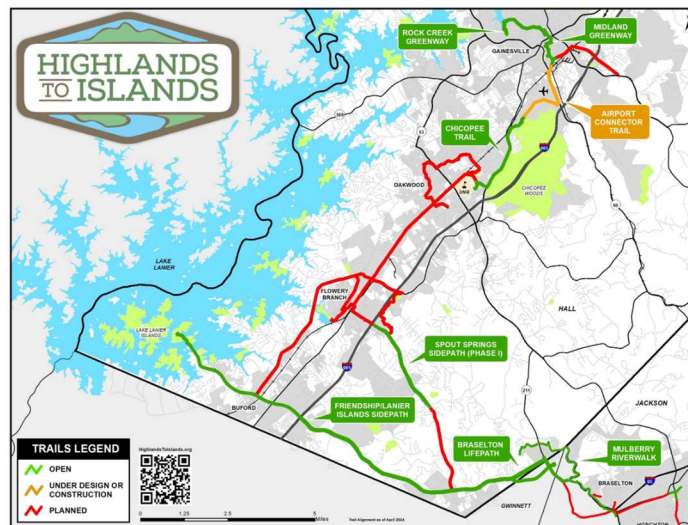
3.1 TARGET AREA AND DESCRIPTION

The City of Flowery Branch is located in Hall County, Georgia. Hall County is bordered by Lumpkin, White, and Habersham to the north, Banks and Jackson to the east, Dawson and Forsyth to the west, and Gwinnett and Barrow to the south. Flowery Branch is located approximately 10 miles due southwest of Gainesville, the county seat. It is approximately 45 miles northwest of Athens and 40 miles northeast of Atlanta. Flowery Branch was established in 1874 and has a population of approximately 9,391 people (U.S. Census Bureau 2020).

The proposed trail will navigate through downtown Flowery Branch. It will connect Flowery Branch Bay Park to the downtown area and the Highlands to Islands Trail system. The trail will extend from Flowery Branch Bay Park to the current terminus of the Highlands to Islands Trail. The path will follow portions of Mitchell Street, Spring Street, Mulberry Street, E Main Street, Thurmond Tanner Parkway, and Phil Niekro Boulevard. It will also cross an active Norfolk Southern Railroad.

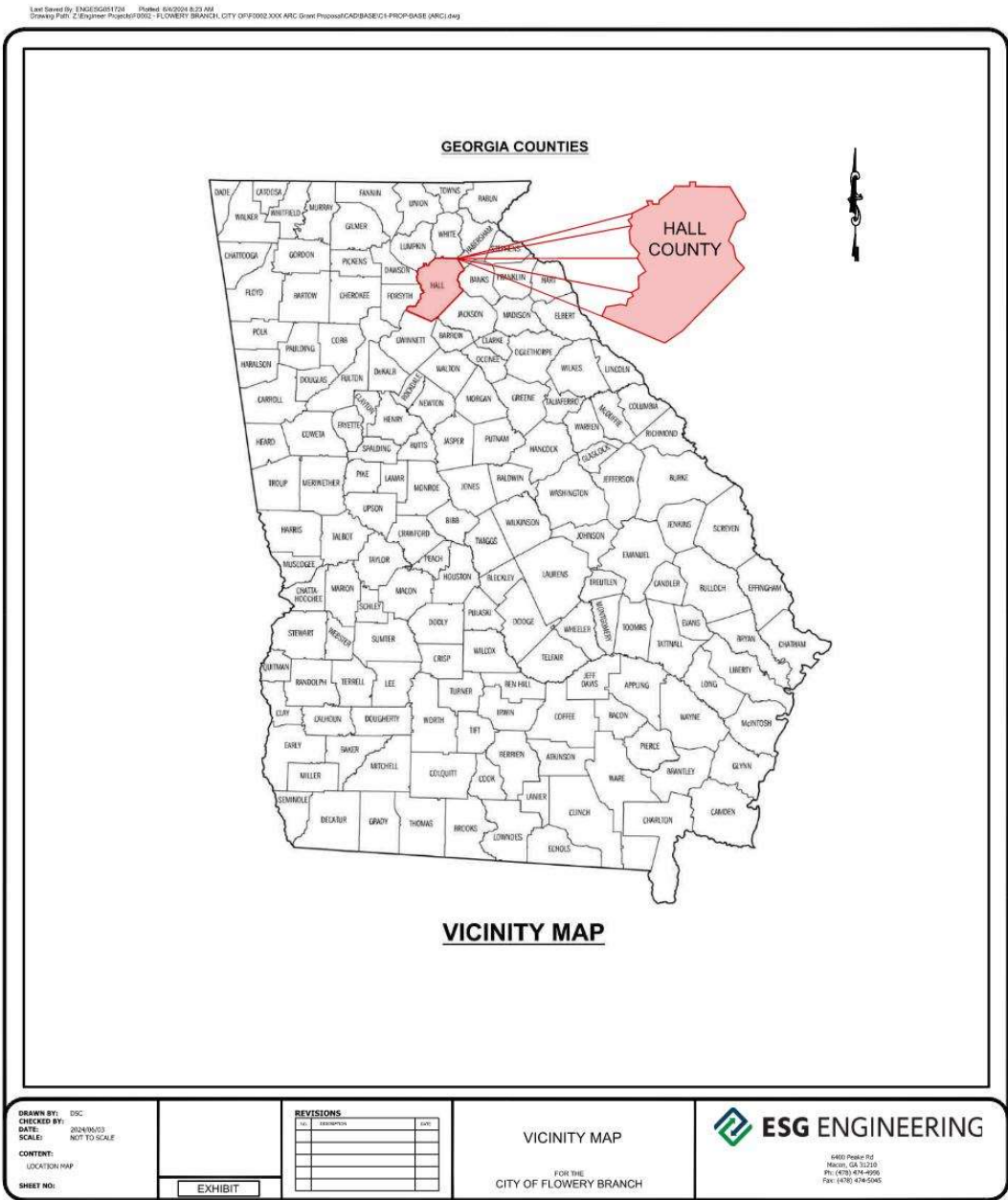
This project is requesting funds for the first phase of construction for a two phased project. The overall trail route has been included for context.

Highlands To Islands Trail System



3.2 PLANS AND PHOTOS OF TARGET AREA

Vicinity Map



Proposed Route & Adjacent Land Use

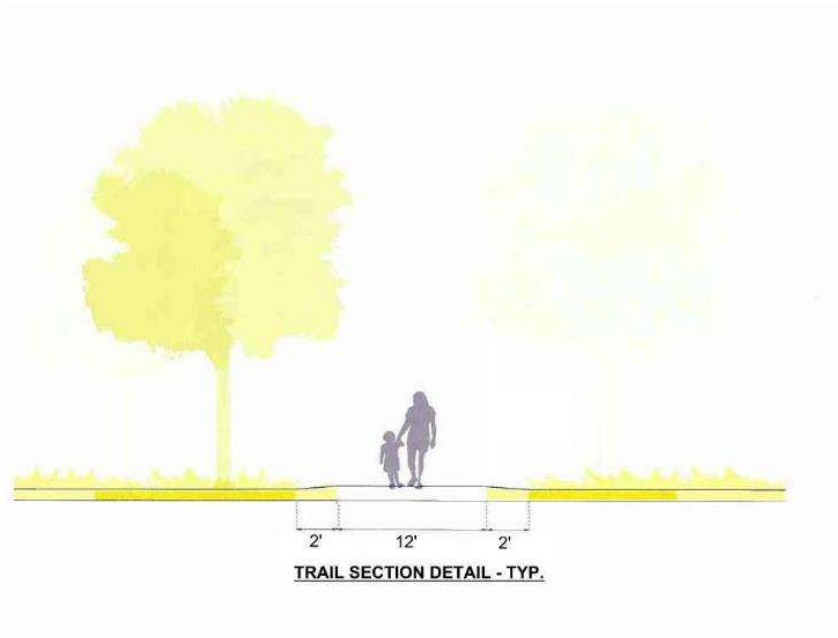


Typical Sections for Construction of Proposed Sidewalk Expansion

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CROSSWALK DETAIL - TYP.



TRAIL SECTION DETAIL - TYP.

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CHECKED BY:
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CONTENT:
SECTION DETAILS
SHEET NO:

EXHIBIT

REVISIONS		
NO.	DESCRIPTION	DATE

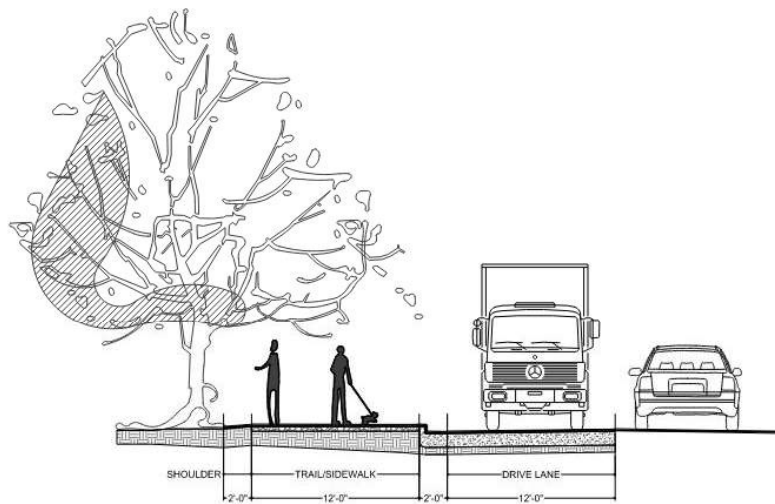
TYPICAL SECTION
DETAILS
FOR THE
CITY OF FLOWERY BRANCH

ESG ENGINEERING

6600 Poole Rd
Houston, TX 77055
Ph: (479) 474-9595
Fax: (479) 474-5045

Typical Sections for Construction of Proposed Sidewalk Expansion

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SECTION DETAILS
SHEET NO:

EXHIBIT

REVISIONS		
NO.	DESCRIPTION	DATE

TYPICAL SECTION DETAILS

FOR THE
CITY OF FLOWERY BRANCH



6400 Peachtree Rd.
Nacory, GA 30219
Ph: (478) 474-4996
Fax: (478) 474-5945

Existing Conditions Photos















3.3 POPULATION DENSITY

- 2020 Decennial Census Total Population – 9,391
- ACS 5-Year Estimates 2022 Total Population – 9,700
- Flowery Branch’s 2021 Update Comprehensive Plan Update estimates that the city’s total population will reach 16,115 by 2035.

3.4 EXISTING CONDITIONS NARRATIVE AND STATEMENT OF NEEDS

The City of Flowery Branch has ±1.9 miles of existing road that varies in width for the proposed trail.

The first phase of this project is .98 miles in length and will include:

1. Beginning at the boat dock ramp on Lake Lanier (starting point) along Mitchell Street to Mooney Street with no trail (± 1600’). Approximately 1600’ of trail is needed to safely delineate a pedestrian circulation route. Two crosswalks will be needed to cross at the Jones Road/Mitchell Street intersection and Mooney Street/Mitchell Street intersection. Signage delineating the start/finish of the trail will help pedestrians follow the trail route.
2. Along the northside of Mitchell Street from Mooney to Tanner Street there is an existing path (± 665’ x 12’) that will be utilized in this project.
3. ± 110’ of undeveloped lawn spans from Mooney Street to the driveway of 5812 Mitchell Street. A crosswalk will be required to cross Tanner Street and then approximately 110’ of trail will be required to separate pedestrian and vehicular traffic.
4. ± 1075’ of path and crosswalks through the round-a-bout area will be utilized terminating at Main Street.
5. Crossing south over Mitchell Street will incorporate the City’s new crosswalk over Main Street and a short section of path paralleling Mitchell Street (± 25’). A crosswalk is required to route pedestrian foot traffic south across Mitchell Street.
6. Three existing trees in the right-of-way (one red maple and two water oaks) will need to be removed to extend the trail ± 50’ to existing path just east of this grouping of trees.
7. ± 130’ of existing path along Mitchell Street to Pine Street will be utilized.
8. A significant grade change at Pine Street and Mitchell Street exists where the sidewalk terminates. Two retaining walls are needed to accommodate the grade transition. The walls will be approximately 75’ – 100’ in length to maintain a 4% slope.

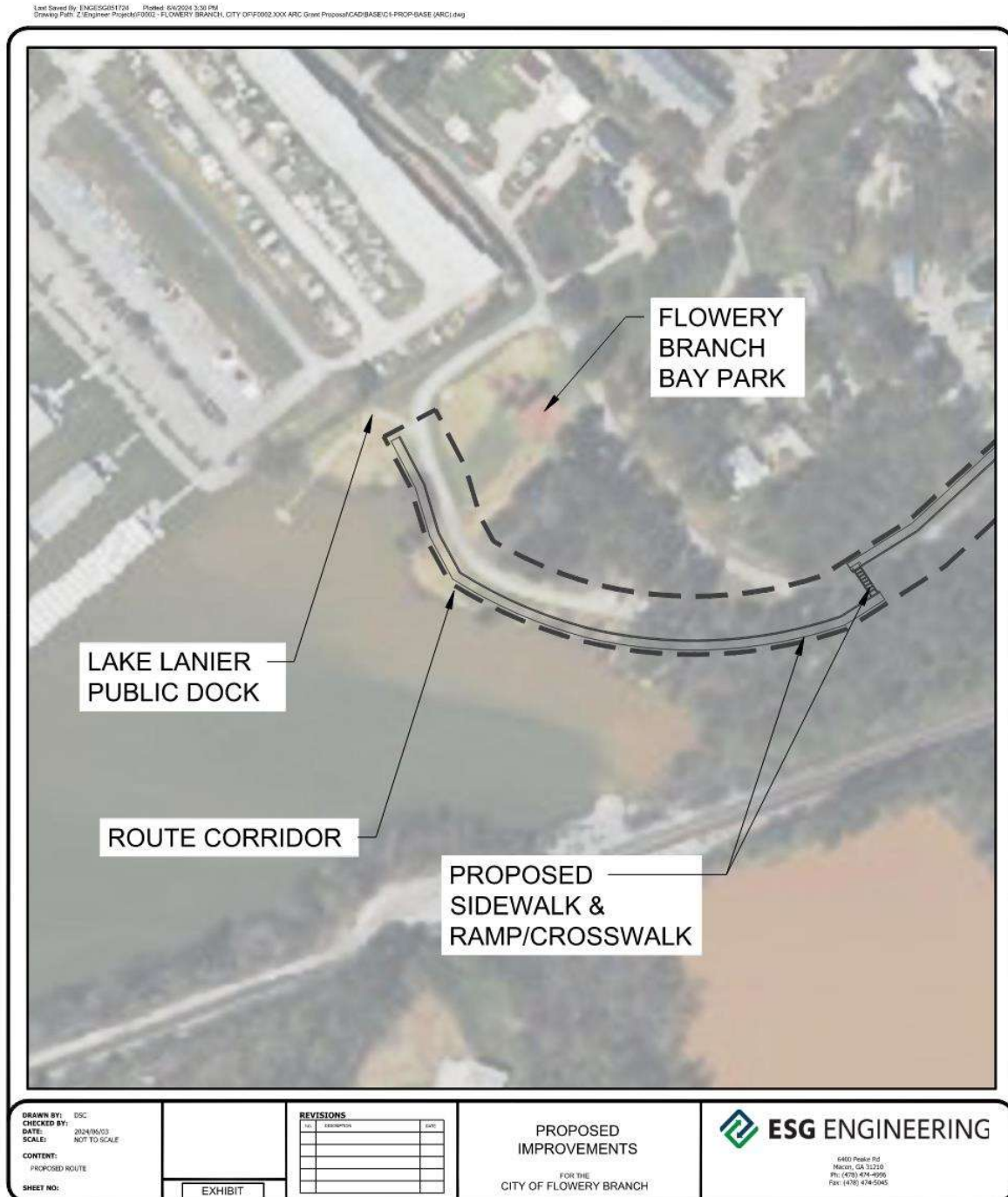
9. The remaining portion of Mitchell Street ($\pm 525'$) does not have a path, but sits along city property terminating at Spring Street. 525' of trail is required to separate pedestrian and vehicular traffic.
10. $\pm 250'$ of unpaved right-of-way runs south along Spring Street adjacent to city property. 250' of trail is required to safely accommodate pedestrian traffic.
11. Crossing Spring Street at the intersection of Spring St. and Church Street allows for existing paved right-of-way in front of the Flowery Branch United Methodist Church to be repurposed for the trail ($\pm 300'$) terminating at Railroad Avenue. A crosswalk is required at the intersection of Spring Street and Church Street with trail to safely accommodate pedestrian traffic.
12. At Railroad Avenue, Norfolk Southern right-of-way and Atlanta Highway meet and extend $\pm 175'$ to the south side of Spring Street. A crosswalk will be required at the intersections of Railroad Avenue and Spring Street, as well as, Atlanta Highway and Spring Street. Pavement Markings/Striping are required to delineate the pedestrian path over the railroad tracks and will require Norfolk Southern approval through plans and permitting. The proposed crosswalk at the intersection of Spring Street and Atlanta Highway will be a flashing light, pedestrian crossing permitted by the Georgia Department of Transportation.
13. Spring Street has $\pm 190'$ of lawn flanking both sides of the road and terminating at Mulberry Street. Approximately 190' of trail will be required to safely accommodate pedestrian traffic.

3.5 – PROPOSED IMPROVEMENTS

ESG Engineering recommends the improvements in the Project Area as summarized below for this funding request:

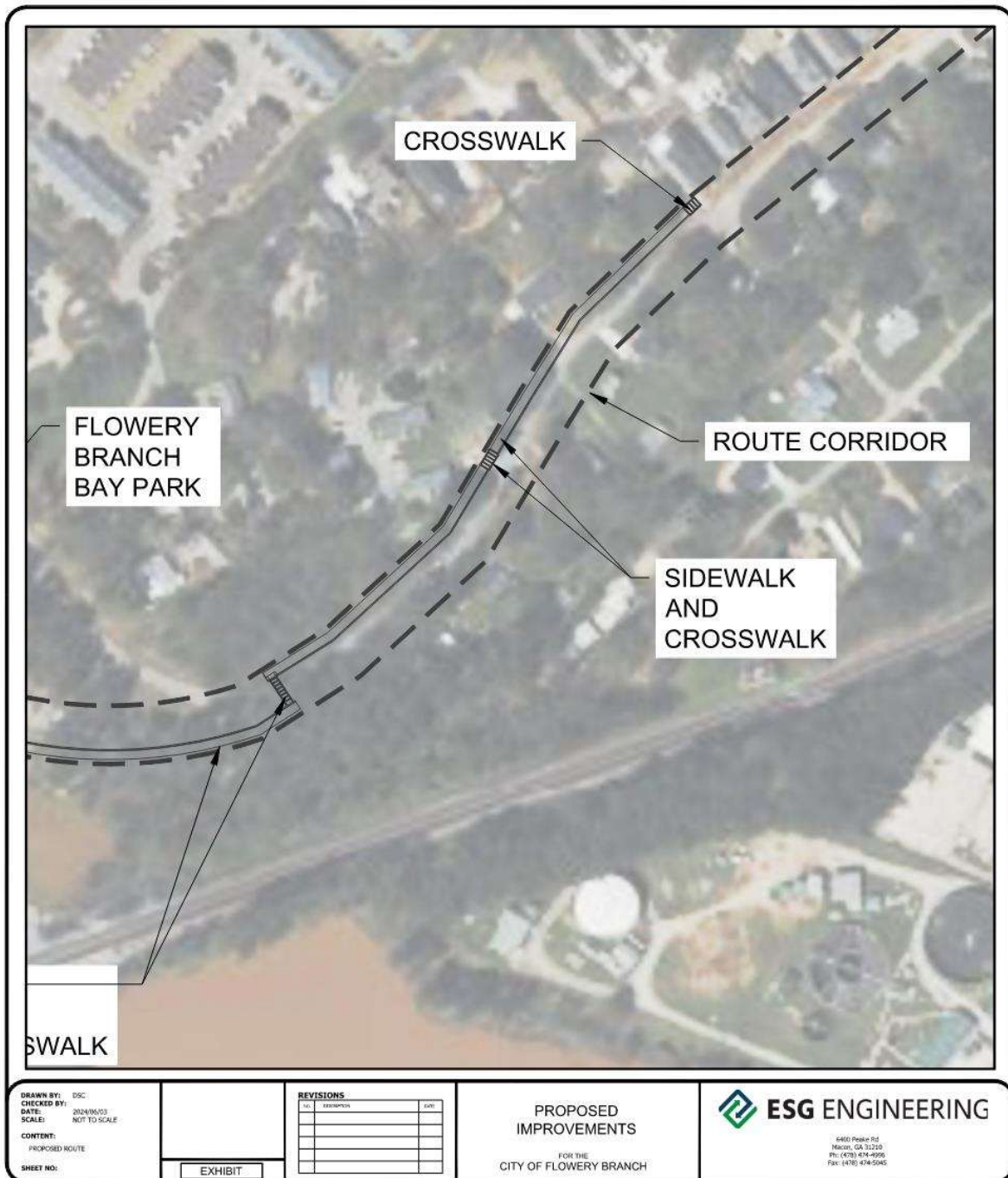
1. Grade approximately 5,175 LNFT of right-of-way to make preparations for the installation of the trail.
2. Install approximately 5,175 LNFT of trail found in the exhibits below.
3. Install 11 crosswalks totaling ± 480 LNFT along the proposed route and found in the exhibits below.
4. Install one (1) signal crosswalk at the intersection of Atlanta Highway and Spring Street.
5. Utilize the landscaping budget to cleanup and provide finished look along the back of sidewalk.

Phase I Exhibits: Proposed Improvements



Phase I Exhibits Continued

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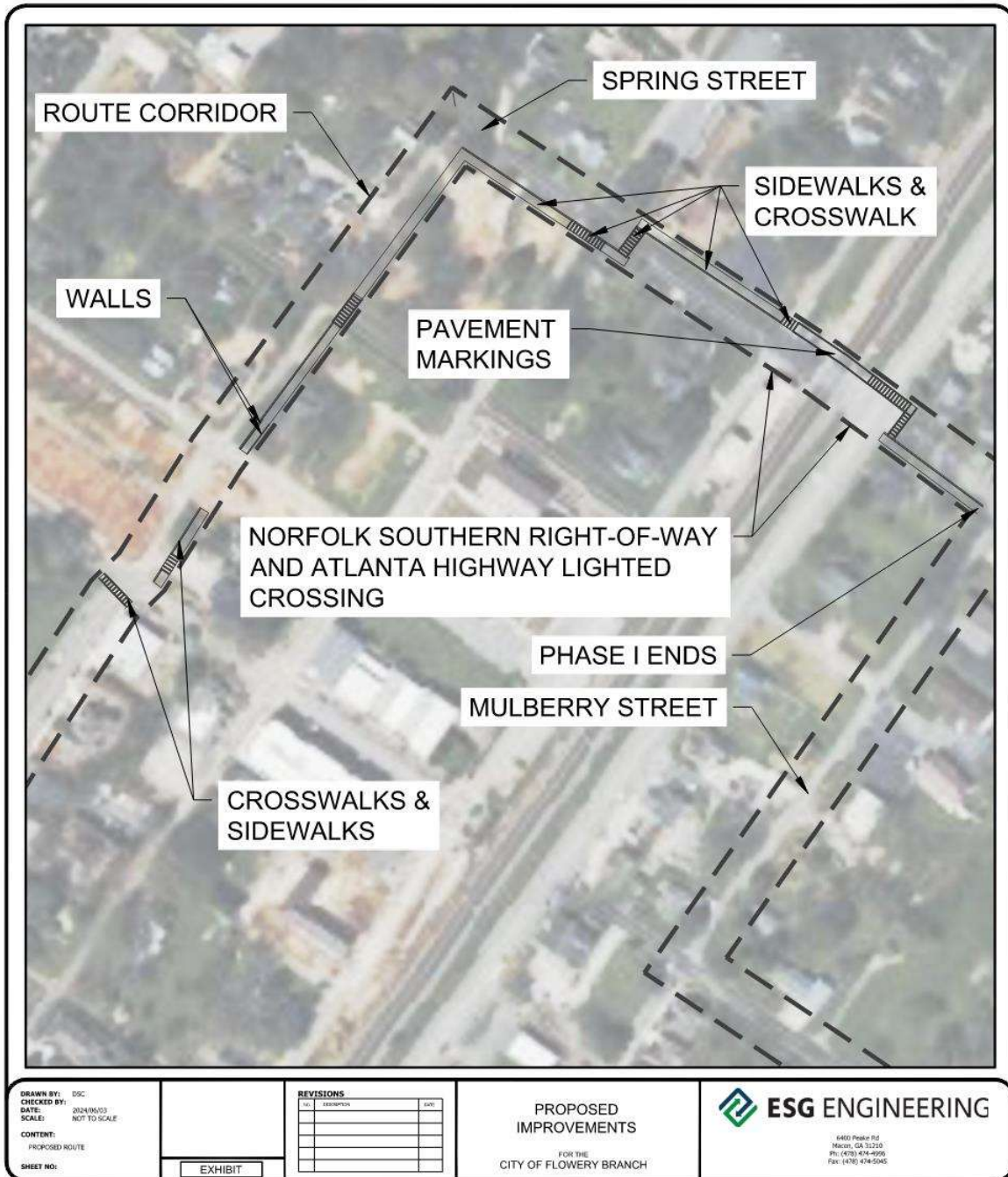


Phase I Exhibits Continued



Phase I Exhibits Continued

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SECTION 4 – EVALUATION OF ALTERNATIVES

The proposed route is ideal for the City of Flowery Branch to connect Lake Lanier and the Bay Park to downtown Flowery Branch, as well as, provide a safe crossing for pedestrians at a less frequented crossing of the railroad tracks and Atlanta Highway. The proposed route utilizes an existing path and crosswalks to minimize cost and construction throughout the City. The route is approximately ±1.90 miles in length as proposed. However, alternatives to the proposed route allow for continued smart growth in the community; if the need arises.

4.1 - ALTERNATIVE OPTIONS

Approximately ±225 linear feet of path can be alleviated from the project by routing the trail south along W. Pine Street and utilizing existing downtown Flowery Branch sidewalks and crosswalks. Advantages to this adjustment reduce the need for the path mentioned above, as well as, two retaining walls where there is a significant grade change.

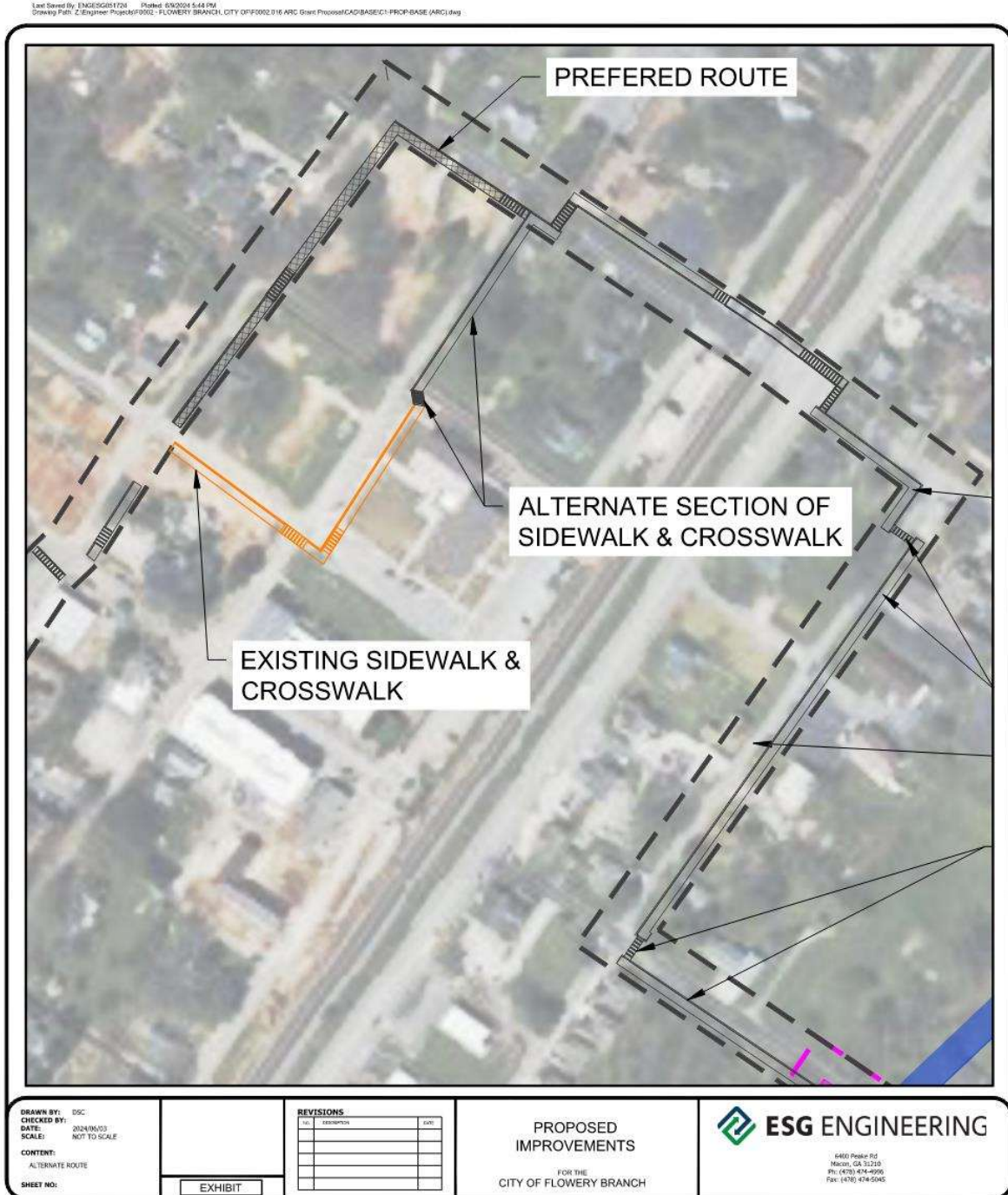
A shorter section of trail and a crosswalk are still required. This section of trail is ±261' in length. It would terminate into Spring Street at Church Street. See Exhibit 4.1A below.

Another design alternative is to stripe the Norfolk Southern crossing instead of installing sidewalk through it. This will be easier to permit reducing project delays. It will also cost significantly less by minimizing Norfolk Southern's need to adjust train schedules and provide track attendants throughout construction of this zone.

Another alternative is to provide a 12' wide path along this route instead of a 5' wide path. A 12' wide path would require significantly more funding for this project. Right-of-way acquisition, easement acquisition, overhead utility relocations, and more than doubling the physical footprint of construction greatly increases the City's financial obligations. Furthermore, additional phases would be required shortening the available path distance of each phase due to the cost increase. The project is currently planned for a two phase approach.

The last alternative is to not move forward with the project if the grant is not approved. This would not benefit Flowery Branch or the downtown community. Furthermore, the momentum the community is currently experiencing would potentially be set back.

Exhibit 4.1A



SECTION 5 – DETAILED PROJECT BUDGET

5.1 - Projected Costs

Provided in Table 5.1A is the engineer's Opinion of Probable Costs for the proposed improvements. The projected costs include not only the construction costs, but also a percentage for engineering fees and administrative costs. Unit prices used in establishing the probable construction costs are from actual bid tabulations of construction projects recently bid and managed by our firm including other recent infrastructure improvements. These unit prices reflect materials, labor, and equipment necessary to perform the specific task to which it refers.

It should be noted that since the Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over the contractor's methods of determining prices, or over competitive bidding or market conditions, this Opinion of Probable Construction Costs provided herein are made on the basis of our experience and qualifications and represent our best judgement as an experienced and qualified engineer familiar with the construction industry. However, the Engineer cannot and does not guarantee that proposals, bids, or actual construction cost will vary from opinions of probable construction cost prepared herein.

5.1A- Estimated Construction Cost

Opinion of Probable Cost					
Flowery Branch Spur Trail					
City of Flowery Branch, Georgia					
Item #	Quantity	Unit	Description	Unit Cost	Extended Cost
1	1	LS	Demolition	\$ 100,000.00	\$ 100,000.00
2	1	LS	Grading & Drainage	\$ 150,000.00	\$ 150,000.00
3	5175	LNFT	Curb/Gutter	\$ 75.00	\$ 388,125.00
4	25875	SQFT	Sidewalk Trail System	\$ 25.00	\$ 646,875.00
5	1	LS	Crosswalk/Striping	\$ 27,460.00	\$ 27,460.00
6	1	LS	Signal Crosswalk	\$ 125,000.00	\$ 125,000.00
7	100	LNFT	Retaining Walls	\$ 120.00	\$ 12,000.00
9	1	LS	Utility Relocation	\$ 150,000.00	\$ 150,000.00
10	1	LS	Landscaping	\$ 62,500.00	\$ 62,500.00
11	1	LS	Signage	\$ 35,000.00	\$ 35,000.00
Subtotal					\$ 1,696,960.00
10% Contingency					\$ 169,696.00
Design Fees					\$ 135,756.80
Construction Admin.					\$ 35,000.00
Onsite Cnstrct Mngmnt					\$ 62,500.00
Grant Administration					\$ 22,500.00
Subtotal					\$ 425,452.80
Total Estimated Cost					\$ 2,122,412.80

5.2 – Project Schedule

Provided herein is the proposed project schedule. This schedule is based on other projects of a similar like and kind as a preliminary probable schedule.

Award:	January 2025
Environmental Review:	May 2025
Notice To Proceed:	June 2025
Due Diligence:	July 2025 – August 2025
Engineering Design & Permitting:	September 2025 – November 2025
EPD Review & Approval:	December 2025 – January 2026
Contract Bidding:	February 2026
Contract Award:	March 2026
Construction:	August 2026 – December 2026
Project Closeout:	January 2027

SECTION 6 – ENVIRONMENTAL ASSESSMENT

6.1 Zoning Compliance

The proposed project conforms to all existing Flowery Branch zoning ordinances. No zoning changes will be required for the implementation of this project.

6.2 Soil Suitability and Slopes

The proposed project will not be constructed on steep slopes. The majority of the slopes range from 2% - 15% and categorized as lightly sloped to moderately sloped. This information can be found below in Figure 6.2 and based on USDA data collected in shapefile (GA606) Barrow, Jackson, and Hall Counties.

Geotechnical analysis will be required for the bridge abutments at the Mulberry Creek crossing. Soil cores are expected for bridge abutment design with a minimum of two (2) cores. Rock is common in the area and any soils deemed unsuitable for bridge construction will be removed from the site and and suitable fill will be brought in as a replacement.

6.3 Erosion and Sedimentation Control

The project does not exceed one (1) acre in total, but is required to have an erosion and sedimentation control plan at the Mulberry Creek crossing along East Main Street. Erosion and sediment control measures will be maintained at all times during construction and until disturbed areas are stabilized with permanent vegetation. The project will also have erosion and sediment control measures in place adjacent to the segment of sidewalk located at Lake Lanier.

Soil types in the project area are satisfactory for the proposed improvements. All grading and excavation will be scheduled to minimize the exposure of bare soils. The disturbed areas will be grassed immediately to prevent erosion in areas of concentrated water flows. Sediment barriers, such as hay bales, silt fence, and rock check dams, will be installed in areas of concentrated water flows. The plan, constructed of approved materials, will be designed and installed per *the Manual for Erosion and Sediment Control in Georgia, 2016 Edition* (or later).

The project will require an erosion control permit, which will be approved by the Environmental Protection Division prior to construction.

6.4 Hazards and Nuisances

The proposed project poses no known long-term hazards or nuisances to the project area. There may be some temporary inconveniences during construction (i.e. travel delays or temporary road closures to through traffic), but these will be kept to a minimum and used only on an as needed basis.

6.5 Energy Consumption

The proposed project does not alter the City of Flowery Branch's energy demand and reduces the need for vehicular traffic in the community.

6.6 Noise Disturbance

The proposed project during construction will cause temporary loud noises associated with construction (heavy equipment/machinery). However, after construction is completed noise levels should return to pre-construction levels or better since traffic can be reduced.

6.7 Air Quality

The proposed project is not expected to impact air quality in the community.

6.8 Solid Waste

The proposed project will require the removal of debris, trees, branches, brush, stumps, etc. resulting from the grading and earthwork. This shall remain the sole responsibility of the contractor and shall be disposed of by removal from the site. All costs in connection with disposal of waste materials shall be at the contractor's expense. The disposal of all materials removed will be in accordance with the rules and regulations of the State of Georgia.

6.9 Stormwater & Water Resources

This project is not expected to adversely affect or impact the stormwater system and basin(s) in the community.

6.10 Transportation System

The transportation system will be temporarily affected by the construction of the different segments of sidewalk, curb, gutter, and crosswalks. Traffic control measures will be implemented which may cause minor delays and/or temporary rerouting. The streets will be returned to normal directional flow as soon as it is deemed safe for travelers.

The Atlanta Highway and Spring Street intersection will require a traffic plan and permit to make alterations to this right-of-way by the Georgia Department of Transportation. This submittal and approval will be the only area for possible delays during construction. This will be minimized by construction of this segment taking place during off-peak demand/usage.

6.11 Surface Water

This project falls within state water boundary requirements in two different areas. At the beginning of the project Lake Lanier is within 200' of an $\pm 835'$ segment of proposed walk. This project also intersects Mulberry Creek for approximately 170 linear feet. Buffer variance permits are expected in order for work to take place in these areas of the project.

6.12 Flood Plains

According to Panels 130323 0291, 130333 0291, and 130466 0291, Figure 6.11 this project has flood plain associated with it at Lake Lanier and the Mulberry Creek crossing. If required, early notices will be published in accordance with Executive order 11988, May 24, 1977, 24 CFR Part 55. Copies will also be provided to the US Army Corps of Engineers, US Fish and Wildlife Service, and the National Marine Fisheries Service. Should wetlands be determined during design, a US Army Corps of Engineers Nationwide Permit will be submitted for review and approval prior to construction.

6.13 Wetlands

This project borders Lake Lanier. The area of construction is outside the limits of the denoted wetland demonstrated in Figure 6.12.

6.14 Impaired Stream and Waterbody

This project falls within one (1) mile of an impaired stream (Mulberry Creek) and an impaired waterbody (Lake Lanier) demonstrated in Figure 6.13. Four (4) additional erosion and sediment control measures will be required in the project areas adjacent to Lake Lanier and Mulberry Creek.

1. Sediment storage will be increased from 67 cubic yards/acre to 134 cubic yards/acre.
2. Use flocculants, coagulants, and/or mulch to stabilize disturbed areas longer than 14 days.
3. Conduct inspections during the intermediate and final erosion and sediment control phases.
4. Erect a large sign (8 x 4) with the required fields described:

- a. Construction site
- b. Permittee
- c. Contact Person(s)
- d. Telephone Number(s)
- e. Website link for plans and permit

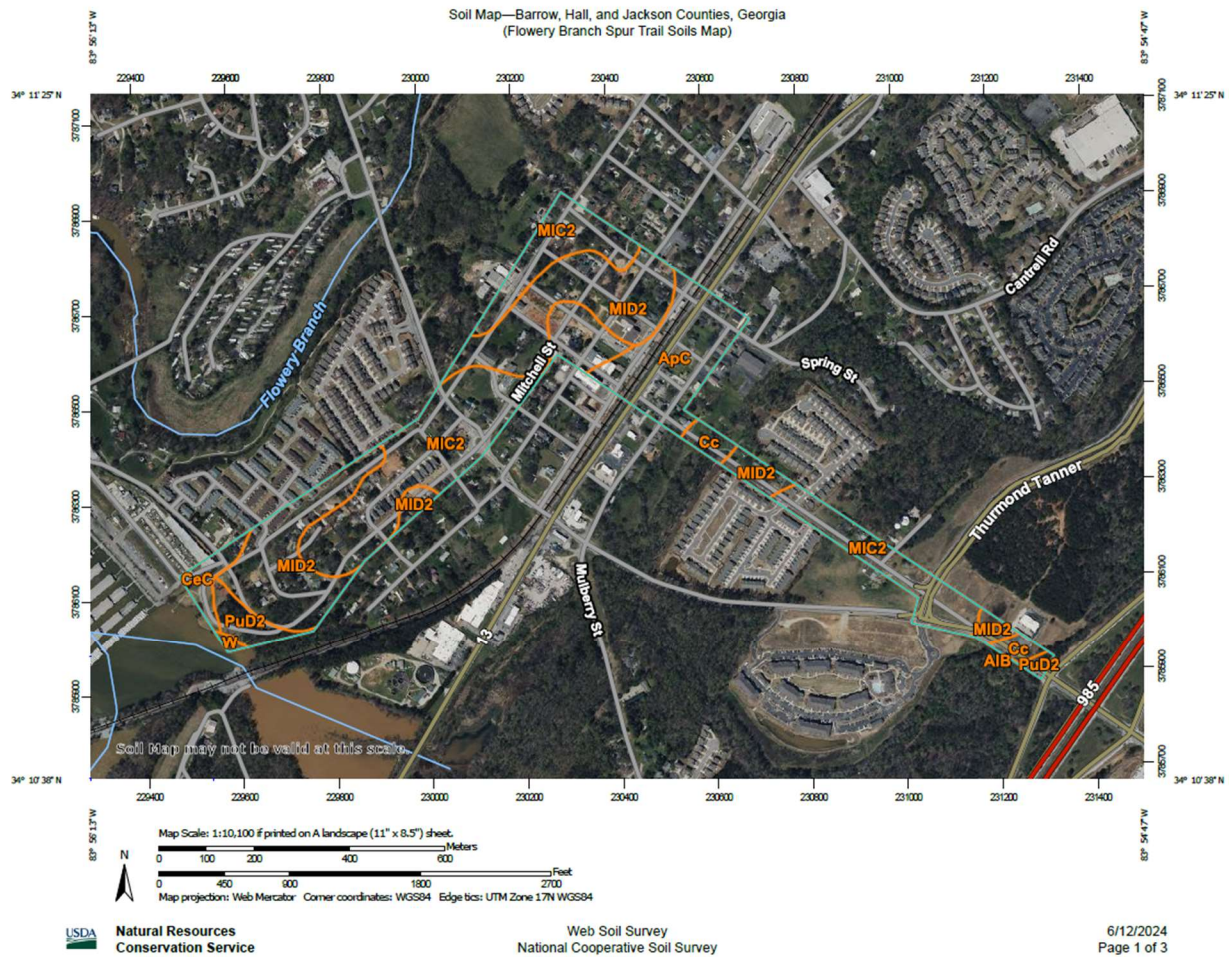
6.15 Vegetation and Wildlife

There will be no adverse effects to vegetation and wildlife within, adjacent to, or near the proposed project areas. No vegetation outside of the project areas will be disturbed. All disturbed areas will be grassed and mulched immediately to prevent erosion. Appendix 1 shows the Natural Resources of concern listed by the US Fish and Wildlife Service.

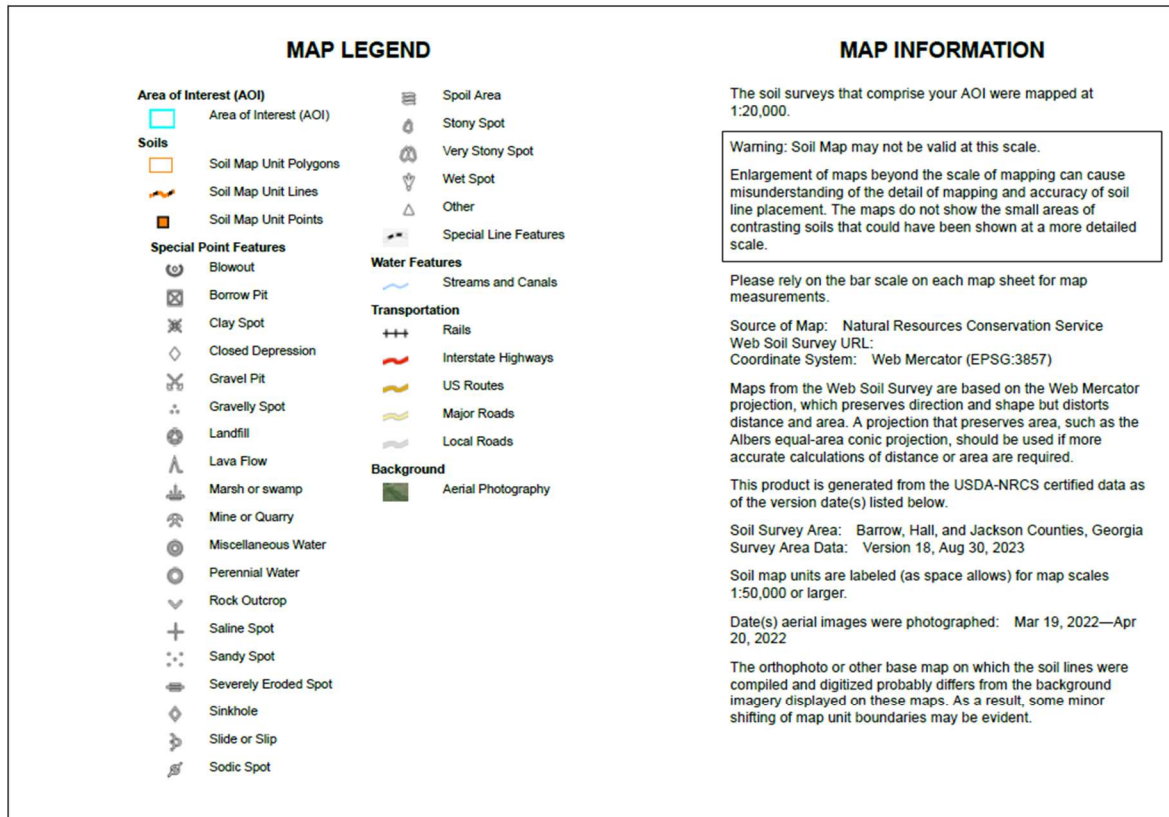
6.16 Historical Places

After querying the National Register of Historic Places for Flowery Branch, this project will not encounter any historical places.

Figure 6.2



Soil Map—Barrow, Hall, and Jackson Counties, Georgia
(Flowery Branch Spur Trail Soils Map)

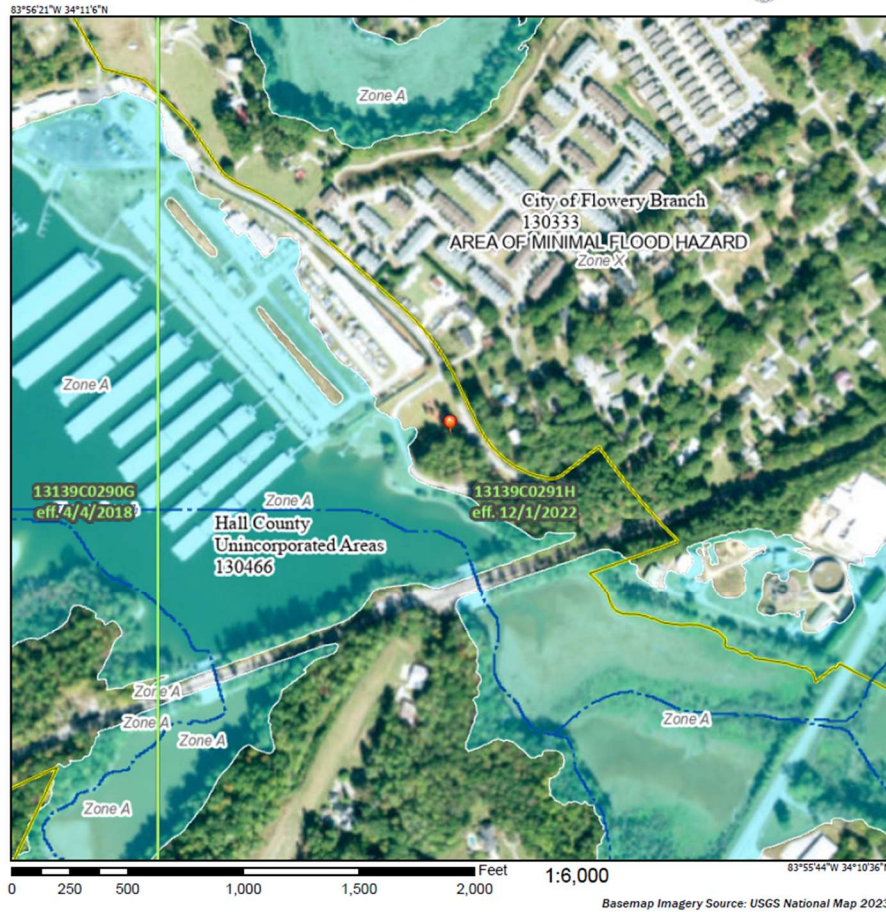


Map Unit Legend

Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
AIB	Altavista sandy loam, 2 to 6 percent slopes	0.0	0.0%
ApC	Appling sandy loam, 6 to 10 percent slopes	12.3	13.8%
Cc	Cartecay and Chewacla soils	2.4	2.7%
CeC	Cecil sandy loam, 6 to 10 percent slopes	2.3	2.6%
MIC2	Madison sandy clay loam, 6 to 10 percent slopes, moderately eroded	37.8	42.3%
MID2	Madison sandy clay loam, 10 to 15 percent slopes, moderately eroded	31.0	34.7%
PuD2	Paolet soils, 10 to 15 percent slopes, eroded	3.2	3.5%
W	Water	0.3	0.4%
Totals for Area of Interest		89.4	100.0%

Figure 6.11

National Flood Hazard Layer FIRMette



Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

SPECIAL FLOOD HAZARD AREAS	- Without Base Flood Elevation (BFE) Zone A, V, A99 - With BFE or Depth Zone AE, AO, AH, VE, AR - Regulatory Floodway
OTHER AREAS OF FLOOD HAZARD	0.2% Annual chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X - Future Conditions 1% Annual chance Flood Hazard Zone X - Area with Reduced Flood Risk due to Levee. See Notes, Zone X - Area with Flood Risk due to Levee Zone D
OTHER AREAS	- NO SCREEN Area of Minimal Flood Hazard Zone X - Effective LOMRs - Area of Undetermined Flood Hazard Zone D
GENERAL STRUCTURES	- channel, culvert, or Storm Sewer - Levee, Dike, or Floodwall
OTHER FEATURES	- Cross Sections with 1% Annual chance Water Surface Elevation - coastal Transect - Base Flood Elevation Line (BFE) - Limit of Study - Jurisdiction Boundary - coastal Transect Baseline - Profile Baseline - Hydrographic Feature
MAP PANELS	- Digital Data Available - No Digital Data Available - Unmapped

The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards.

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 6/12/2024 at 9:44 AM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.

National Flood Hazard Layer FIRMette



Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

SPECIAL FLOOD HAZARD AREAS	Without Base Flood Elevation (BFE) Zone A, V, X, SS
	With BFE or Depth Zone AE, AO, AH, VE, AR
	Regulatory Floodway
OTHER AREAS OF FLOOD HAZARD	0.2% Annual chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X
	Future conditions 1% Annual chance Flood Hazard Zone X
	Area with Reduced Flood Risk due to Levee. See Notes. Zone X
	Area with Flood Risk due to Levee Zone D
OTHER AREAS	NO SCREEN Area of Minimal Flood Hazard Zone X
	Effective LOMRS
	Area of Undetermined Flood Hazard Zone D
GENERAL STRUCTURES	channel, culvert, or Storm Sewer
	Levee, Dike, or Floodwall
OTHER FEATURES	Cross Sections with 1% Annual chance Water Surface Elevation
	Coastal Transect
	Base Flood Elevation Line (BFE)
	Limit of Study
	Jurisdiction Boundary
	Coastal Transect Baseline
	Profile Baseline
	Hydrographic Feature
MAP PANELS	Digital Data Available
	No Digital Data Available
	Unmapped

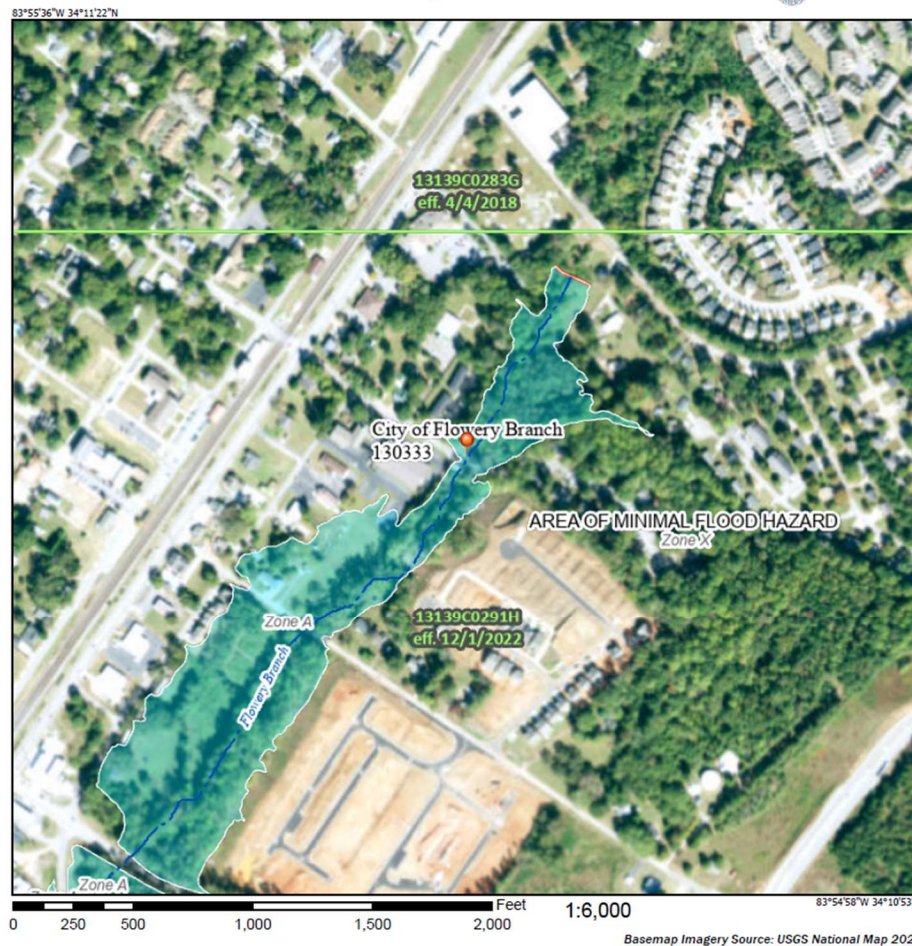
The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards.

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 6/12/2024 at 9:43 AM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.

National Flood Hazard Layer FIRMMette



Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

SPECIAL FLOOD HAZARD AREAS	Without Base Flood Elevation (BFE) Zone A, V, AE, AH, VE, AR
	With BFE or Depth Zone AE, AO, AH, VE, AR
	Regulatory Floodway
OTHER AREAS OF FLOOD HAZARD	0.2% Annual chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X
	Future Conditions 1% Annual chance Flood Hazard Zone X
	Area with Reduced Flood Risk due to Levee. See Notes, Zone X
	Area with Flood Risk due to Levee Zone D
OTHER AREAS	NO SCREEN Area of Minimal Flood Hazard Zone X
	Effective LOMRS
GENERAL STRUCTURES	Area of Undetermined Flood Hazard Zone D
	channel, culvert, or Storm Sewer
	Levee, Dike, or Floodwall
OTHER FEATURES	20.2 17.8 14.8 11.8 8.8 5.8 2.8 0.8 cross Sections with 1% Annual chance Water Surface Elevation coastal Transsect Base Flood Elevation Line (BFE) Limit of Study Jurisdiction Boundary coastal Transsect Baseline Profile Baseline Hydrographic Feature
MAP PANELS	Digital Data Available No Digital Data Available Unmapped

The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards.

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 6/12/2024 at 9:45 AM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.

Figure 6.12

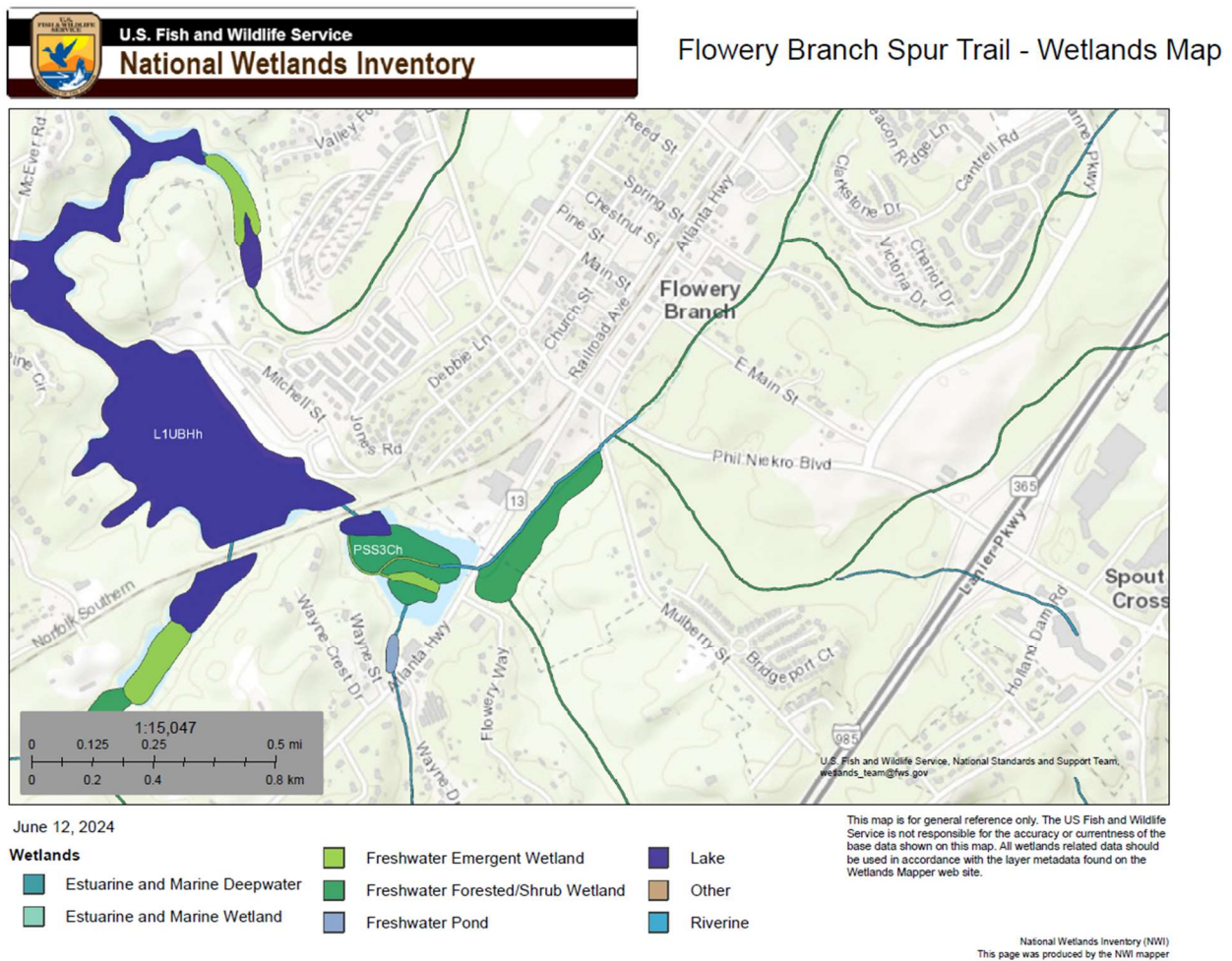
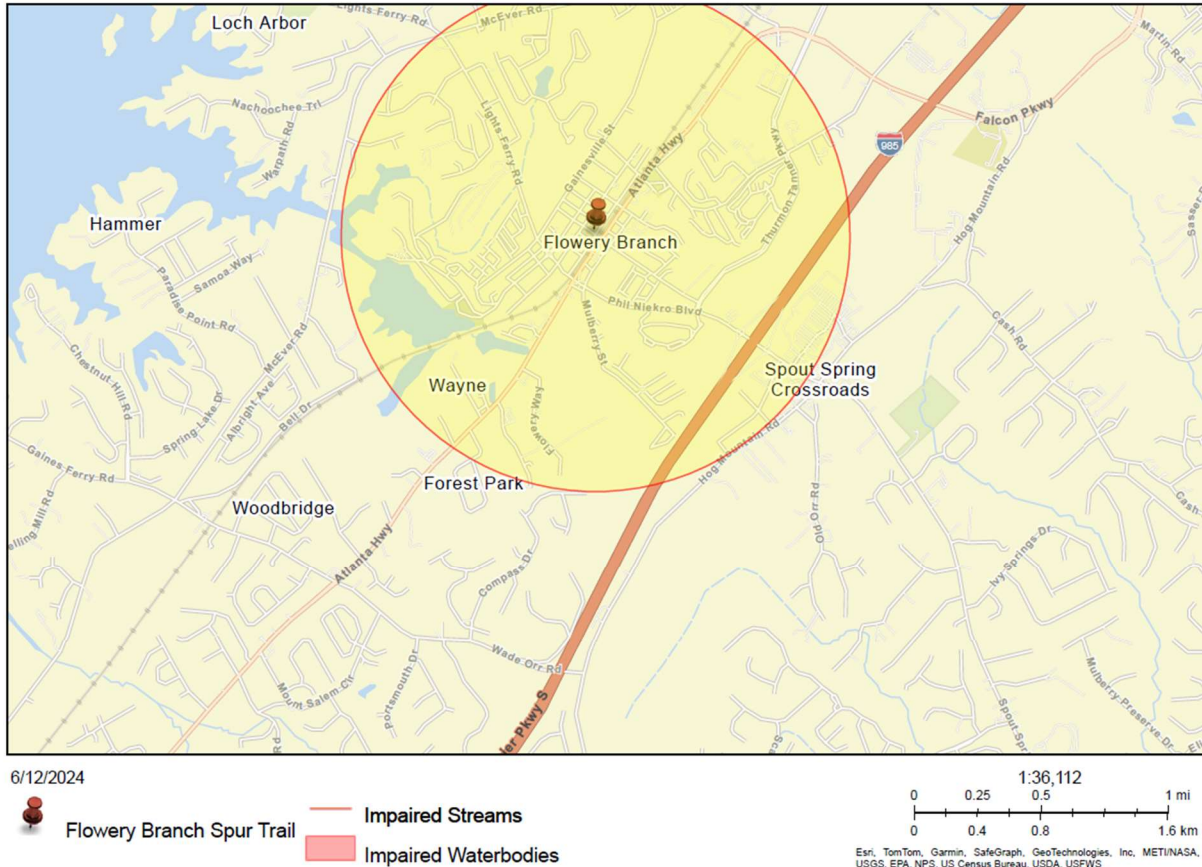


Figure 6.13

Impaired Stream and Waterbody



SECTION 7 – Project Planning

- Land Acquisition – Land acquisition is not required for the proposed project.
- Permitting & Approvals:
 - This project accesses Norfolk Southern Right-of-Way and plans/permitting are expected. An encroachment permits will be assigned to this project.
 - This project accesses the Georgia Department of Transportation Right-of-Way and plans/permitting are expected. An encroachment permit will be assigned to the project.
- Required Permits:
 - Notice of Intent (NOI)

- Utility relocation is probable for this project and the engineer will call the Utility Protection Center (UPC) during project design to give utility owners the opportunity to mark their infrastructure. Furthermore, by using records and utility locates, the engineer plans to avoid as many utilities as possible. All contractors are required to submit for utility locates with the UPC and allow for three (3) days for findings before any earthwork takes place. If utility conflicts arise during construction, the engineer will determine an alternate path to minimize utility relocations.
- The proposed improvements will not add significant operational and maintenance responsibilities to the City of Flowery Branch. The added requirements will include signage upkeep and light landscaping duties throughout the year.
- Project Delays – The engineer foresees possible delays concerning the Norfolk Southern Right-of-Way and Georgia Department of Transportation Right-of-Way for permitting and construction purposes. The engineer will expeditiously work early in the design portion of this project in these areas to minimize possible delays.
- Engineering Services Rendered:
 - Topographic and Survey Data
 - Design Plans
 - Erosion Control and Sedimentation Control Plans
 - GDOT specific plans for the portion of the project that enters their right-of-way
 - Norfolk Southern specific plans for the portion of the project that enters their right-of-way
 - Bid Advertisement and Assistance
 - Construction Administration
 - Shop Drawing and Pay Application Review/Approval
 - Obtain As-Builts from Contractor(s)

SECTION 8 – CONCLUSION AND RECOMMENDATION

Based on preliminary due diligence and conceptual development, this project will improve pedestrian safety for the community and provide better connectivity between Lake Lanier and downtown Flowery Branch. The improved connectivity for the City, as well as, the long term goal of adjoining the West South Springs Sidepath meets the Appalachian Regional Commission's (ARC) initiative for the Highlands to Islands Trail System.

To achieve the goals and objectives, the City of Flowery Branch is requesting grant funds from ARC to make the first phase of this project economically feasible. It is our recommendation that the proposed improvements be completed to continue advancing the City of Flower Branch's infrastructure to enrich and better serve its citizens while providing the same opportunities for its visitors.



APPENDIX 1

Natural Resources of Concern

IPaC resource list

This report is an automatically generated list of species and other resources such as critical habitat (collectively referred to as *trust resources*) under the U.S. Fish and Wildlife Service's (USFWS) jurisdiction that are known or expected to be on or near the project area referenced below. The list may also include trust resources that occur outside of the project area, but that could potentially be directly or indirectly affected by activities in the project area. However, determining the likelihood and extent of effects a project may have on trust resources typically requires gathering additional site-specific (e.g., vegetation/species surveys) and project-specific (e.g., magnitude and timing of proposed activities) information.

Below is a summary of the project information you provided and contact information for the USFWS office(s) with jurisdiction in the defined project area. Please read the introduction to each section that follows (Endangered Species, Migratory Birds, USFWS Facilities, and NWI Wetlands) for additional information applicable to the trust resources addressed in that section.

Location

Hall County, Georgia



Local office

Georgia Ecological Services Field Office

(706) 460-7161

(706) 613-6059

355 East Hancock Avenue

Endangered species

This resource list is for informational purposes only and does not constitute an analysis of project level impacts.

The primary information used to generate this list is the known or expected range of each species. Additional areas of influence (AOI) for species are also considered. An AOI includes areas outside of the species range if the species could be indirectly affected by activities in that area (e.g., placing a dam upstream of a fish population even if that fish does not occur at the dam site, may indirectly impact the species by reducing or eliminating water flow downstream). Because species can move, and site conditions can change, the species on this list are not guaranteed to be found on or near the project area. To fully determine any potential effects to species, additional site-specific and project-specific information is often required.

Section 7 of the Endangered Species Act **requires** Federal agencies to "request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action" for any project that is conducted, permitted, funded, or licensed by any Federal agency. A letter from the local office and a species list which fulfills this requirement can **only** be obtained by requesting an official species list from either the Regulatory Review section in IPaC (see directions below) or from the local field office directly.

For project evaluations that require USFWS concurrence/review, please return to the IPaC website and request an official species list by doing the following:

1. Draw the project location and click CONTINUE.
2. Click DEFINE PROJECT.
3. Log in (if directed to do so).
4. Provide a name and description for your project.
5. Click REQUEST SPECIES LIST.

Listed species¹ and their critical habitats are managed by the [Ecological Services Program](#) of the U.S. Fish and Wildlife Service (USFWS) and the fisheries division of the National Oceanic and Atmospheric Administration (NOAA Fisheries²).

Species and critical habitats under the sole responsibility of NOAA Fisheries are **not** shown on this list. Please contact [NOAA Fisheries](#) for [species under their jurisdiction](#).

-
1. Species listed under the [Endangered Species Act](#) are threatened or endangered; IPaC also shows species that are candidates, or proposed, for listing. See the [listing status page](#) for more information. IPaC only shows species that are regulated by USFWS (see FAQ).

2. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

The following species are potentially affected by activities in this location:

Mammals

NAME	STATUS
Tricolored Bat <i>Perimyotis subflavus</i> Wherever found No critical habitat has been designated for this species. https://ecos.fws.gov/ecp/species/10515	Proposed Endangered

Birds

NAME	STATUS
Whooping Crane <i>Grus americana</i> No critical habitat has been designated for this species. https://ecos.fws.gov/ecp/species/758	EXP

Insects

NAME	STATUS
Monarch Butterfly <i>Danaus plexippus</i> Wherever found No critical habitat has been designated for this species. https://ecos.fws.gov/ecp/species/9743	Candidate

Critical habitats

Potential effects to critical habitat(s) in this location must be analyzed along with the endangered species themselves.

There are no critical habitats at this location.

You are still required to determine if your project(s) may have effects on all above listed species.

Bald & Golden Eagles

Bald and golden eagles are protected under the Bald and Golden Eagle Protection Act¹ and the Migratory Bird Treaty Act².

Any person or organization who plans or conducts activities that may result in impacts to bald or golden eagles, or their habitats³, should follow appropriate regulations and consider implementing appropriate conservation measures, as described in the links below.

Specifically, please review the ["Supplemental Information on Migratory Birds and Eagles"](#).

Additional information can be found using the following links:

- Eagle Management <https://www.fws.gov/program/eagle-management>
- Measures for avoiding and minimizing impacts to birds <https://www.fws.gov/library/collections/avoiding-and-minimizing-incidental-take-migratory-birds>
- Nationwide conservation measures for birds <https://www.fws.gov/sites/default/files/documents/nationwide-standard-conservation-measures.pdf>
- Supplemental Information for Migratory Birds and Eagles in IPaC <https://www.fws.gov/media/supplemental-information-migratory-birds-and-bald-and-golden-eagles-may-occur-project-action>

There are likely bald eagles present in your project area. For additional information on bald eagles, refer to [Bald Eagle Nesting and Sensitivity to Human Activity](#).

For guidance on when to schedule activities or implement avoidance and minimization measures to reduce impacts to migratory birds on your list, see the PROBABILITY OF PRESENCE SUMMARY below to see when these birds are most likely to be present and breeding in your project area.

NAME	BREEDING SEASON
Bald Eagle <i>Haliaeetus leucocephalus</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities. https://ecos.fws.gov/ecp/species/1626	Breeds Sep 1 to Jul 31

Probability of Presence Summary

The graphs below provide our best understanding of when birds of concern are most likely to be present in your project area. This information can be used to tailor and schedule your project activities to avoid or minimize impacts to birds. Please make sure you read

["Supplemental Information on Migratory Birds and Eagles"](#), specifically the FAQ section titled "Proper Interpretation and Use of Your Migratory Bird Report" before using or attempting to interpret this report.

Probability of Presence (■)

Each green bar represents the bird's relative probability of presence in the 10km grid cell(s) your project overlaps during a particular week of the year. (A year is represented as 12 4-week months.) A taller bar indicates a higher probability of species presence. The survey effort (see below) can be used to establish a level of confidence in the presence score. One can have higher confidence in the presence score if the corresponding survey effort is also high.

How is the probability of presence score calculated? The calculation is done in three steps:

1. The probability of presence for each week is calculated as the number of survey events in the week where the species was detected divided by the total number of survey events for that week. For example, if in week 12 there were 20 survey events and the Spotted Towhee was found in 5 of them, the probability of presence of the Spotted Towhee in week 12 is 0.25.
2. To properly present the pattern of presence across the year, the relative probability of presence is calculated. This is the probability of presence divided by the maximum probability of presence across all weeks. For example, imagine the probability of presence in week 20 for the Spotted Towhee is 0.05, and that the probability of presence at week 12 (0.25) is the maximum of any week of the year. The relative probability of presence on week 12 is $0.25/0.25 = 1$; at week 20 it is $0.05/0.25 = 0.2$.
3. The relative probability of presence calculated in the previous step undergoes a statistical conversion so that all possible values fall between 0 and 10, inclusive. This is the probability of presence score.

To see a bar's probability of presence score, simply hover your mouse cursor over the bar.

Breeding Season (■)

Yellow bars denote a very liberal estimate of the time-frame inside which the bird breeds across its entire range. If there are no yellow bars shown for a bird, it does not breed in your project area.

Survey Effort (||)

Vertical black lines superimposed on probability of presence bars indicate the number of surveys performed for that species in the 10km grid cell(s) your project area overlaps. The number of surveys is expressed as a range, for example, 33 to 64 surveys.

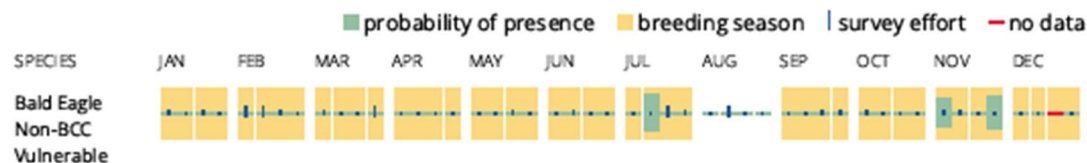
To see a bar's survey effort range, simply hover your mouse cursor over the bar.

No Data (—)

A week is marked as having no data if there were no survey events for that week.

Survey Timeframe

Surveys from only the last 10 years are used in order to ensure delivery of currently relevant information. The exception to this is areas off the Atlantic coast, where bird returns are based on all years of available data, since data in these areas is currently much more sparse.



What does IPaC use to generate the potential presence of bald and golden eagles in my specified location?

The potential for eagle presence is derived from data provided by the [Avian Knowledge Network \(AKN\)](#). The AKN data is based on a growing collection of [survey, banding, and citizen science datasets](#) and is queried and filtered to return a list of those birds reported as occurring in the 10km grid cell(s) which your project intersects, and that have been identified as warranting special attention because they are a BCC species in that area, an eagle ([Eagle Act](#) requirements may apply). To see a list of all birds potentially present in your project area, please visit the [Rapid Avian Information Locator \(RAIL\) Tool](#).

What does IPaC use to generate the probability of presence graphs of bald and golden eagles in my specified location?

The Migratory Bird Resource List is comprised of USFWS [Birds of Conservation Concern \(BCC\)](#) and other species that may warrant special attention in your project location.

The migratory bird list generated for your project is derived from data provided by the [Avian Knowledge Network \(AKN\)](#). The AKN data is based on a growing collection of [survey, banding, and citizen science datasets](#) and is queried and filtered to return a list of those birds reported as occurring in the 10km grid cell(s) which your project intersects, and that have been identified as warranting special attention because they are a BCC species in that area, an eagle ([Eagle Act](#) requirements may apply), or a species that has a particular vulnerability to offshore activities or development.

Again, the Migratory Bird Resource list includes only a subset of birds that may occur in your project area. It is not representative of all birds that may occur in your project area. To get a list of all birds potentially present in your project area, please visit the [Rapid Avian Information Locator \(RAIL\) Tool](#).

What if I have eagles on my list?

If your project has the potential to disturb or kill eagles, you may need to obtain a permit to avoid violating the [Eagle Act](#) should such impacts occur. Please contact your local Fish and Wildlife Service Field Office if you have questions.

Migratory birds

Certain birds are protected under the Migratory Bird Treaty Act¹ and the Bald and Golden Eagle Protection Act².

Any person or organization who plans or conducts activities that may result in impacts to migratory birds, eagles, and their habitats³ should follow appropriate regulations and consider implementing appropriate conservation measures, as described in the links below. Specifically, please review the "[Supplemental Information on Migratory Birds and Eagles](#)".

1. The [Migratory Birds Treaty Act](#) of 1918.
2. The [Bald and Golden Eagle Protection Act](#) of 1940.

Additional information can be found using the following links:

- Eagle Management <https://www.fws.gov/program/eagle-management>
- Measures for avoiding and minimizing impacts to birds <https://www.fws.gov/library/collections/avoiding-and-minimizing-incidental-take-migratory-birds>
- Nationwide conservation measures for birds <https://www.fws.gov/sites/default/files/documents/nationwide-standard-conservation-measures.pdf>
- Supplemental Information for Migratory Birds and Eagles in IPaC <https://www.fws.gov/media/supplemental-information-migratory-birds-and-bald-and-golden-eagles-may-occur-project-action>

The birds listed below are birds of particular concern either because they occur on the [USFWS Birds of Conservation Concern](#) (BCC) list or warrant special attention in your project location. To learn more about the levels of concern for birds on your list and how this list is generated, see the FAQ [below](#). This is not a list of every bird you may find in this location, nor a guarantee that every bird on this list will be found in your project area. To see exact locations of where birders and the general public have sighted birds in and around your project area, visit the [E-bird data mapping tool](#) (Tip: enter your location, desired date range and a species on your list). For projects that occur off the Atlantic Coast, additional maps and models detailing the relative occurrence and abundance of bird species on your list are available. Links to additional information about Atlantic Coast birds, and other important information about your migratory bird list, including how to properly interpret and use your migratory bird report, can be found [below](#).

For guidance on when to schedule activities or implement avoidance and minimization measures to reduce impacts to migratory birds on your list, see the PROBABILITY OF PRESENCE SUMMARY below to see when these birds are most likely to be present and breeding in your project area.

NAME

BREEDING SEASON

Bald Eagle <i>Haliaeetus leucocephalus</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities. https://ecos.fws.gov/ecp/species/1626	Breeds Sep 1 to Jul 31
Chimney Swift <i>Chaetura pelagica</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds Mar 15 to Aug 25
Grasshopper Sparrow <i>Ammodramus savannarum</i> <i>perpallidus</i> This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA https://ecos.fws.gov/ecp/species/8329	Breeds Jun 1 to Aug 20
Kentucky Warbler <i>Geothlypis formosa</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds Apr 20 to Aug 20
Prairie Warbler <i>Setophaga discolor</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds May 1 to Jul 31
Red-headed Woodpecker <i>Melanerpes erythrocephalus</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds May 10 to Sep 10
Wood Thrush <i>Hylocichla mustelina</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds May 10 to Aug 31

Probability of Presence Summary

The graphs below provide our best understanding of when birds of concern are most likely to be present in your project area. This information can be used to tailor and schedule your project activities to avoid or minimize impacts to birds. Please make sure you read ["Supplemental Information on Migratory Birds and Eagles"](#), specifically the FAQ section titled "Proper Interpretation and Use of Your Migratory Bird Report" before using or attempting to interpret this report.

Probability of Presence (■)

Each green bar represents the bird's relative probability of presence in the 10km grid cell(s) your project overlaps during a particular week of the year. (A year is represented as 12 4-week months.) A taller bar indicates a higher probability of species presence. The survey effort (see below) can be used to establish a level of confidence in the presence score. One can have higher confidence in the presence score if the corresponding survey effort is also high.

How is the probability of presence score calculated? The calculation is done in three steps:

1. The probability of presence for each week is calculated as the number of survey events in the week where the species was detected divided by the total number of survey events for that week. For example, if in week 12 there were 20 survey events and the Spotted Towhee was found in 5 of them, the probability of presence of the Spotted Towhee in week 12 is 0.25.
2. To properly present the pattern of presence across the year, the relative probability of presence is calculated. This is the probability of presence divided by the maximum probability of presence across all weeks. For example, imagine the probability of presence in week 20 for the Spotted Towhee is 0.05, and that the probability of presence at week 12 (0.25) is the maximum of any week of the year. The relative probability of presence on week 12 is $0.25/0.25 = 1$; at week 20 it is $0.05/0.25 = 0.2$.
3. The relative probability of presence calculated in the previous step undergoes a statistical conversion so that all possible values fall between 0 and 10, inclusive. This is the probability of presence score.

To see a bar's probability of presence score, simply hover your mouse cursor over the bar.

Breeding Season (🟡)

Yellow bars denote a very liberal estimate of the time-frame inside which the bird breeds across its entire range. If there are no yellow bars shown for a bird, it does not breed in your project area.

Survey Effort (|)

Vertical black lines superimposed on probability of presence bars indicate the number of surveys performed for that species in the 10km grid cell(s) your project area overlaps. The number of surveys is expressed as a range, for example, 33 to 64 surveys.

To see a bar's survey effort range, simply hover your mouse cursor over the bar.

No Data (—)

A week is marked as having no data if there were no survey events for that week.

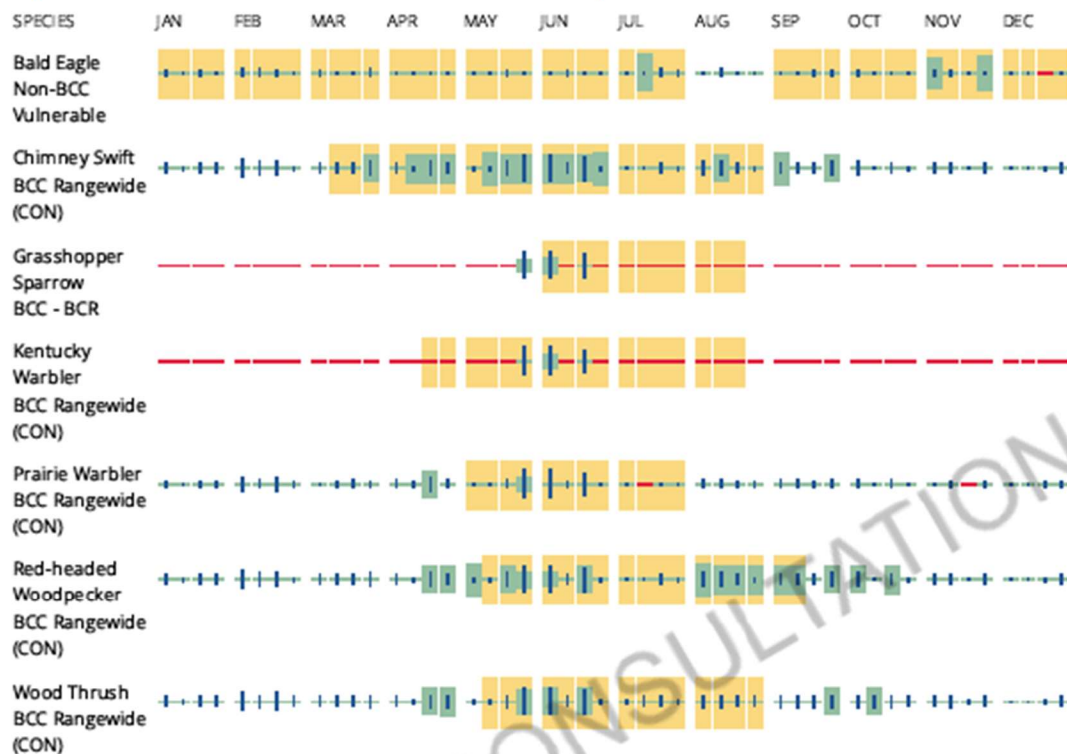
Survey Timeframe

Surveys from only the last 10 years are used in order to ensure delivery of currently relevant information. The exception to this is areas off the Atlantic coast, where bird returns are based on all years of available data, since data in these areas is currently much more sparse.

■ probability of presence ■ breeding season | survey effort — no data

6/12/24, 10:53 AM

IPaC: Explore Location resources



Tell me more about conservation measures I can implement to avoid or minimize impacts to migratory birds.

[Nationwide Conservation Measures](#) describes measures that can help avoid and minimize impacts to all birds at any location year round. Implementation of these measures is particularly important when birds are most likely to occur in the project area. When birds may be breeding in the area, identifying the locations of any active nests and avoiding their destruction is a very helpful impact minimization measure. To see when birds are most likely to occur and be breeding in your project area, view the Probability of Presence Summary. [Additional measures](#) or [permits](#) may be advisable depending on the type of activity you are conducting and the type of infrastructure or bird species present on your project site.

What does IPaC use to generate the list of migratory birds that potentially occur in my specified location?

The Migratory Bird Resource List is comprised of USFWS [Birds of Conservation Concern \(BCC\)](#) and other species that may warrant special attention in your project location.

The migratory bird list generated for your project is derived from data provided by the [Avian Knowledge Network \(AKN\)](#). The AKN data is based on a growing collection of [survey, banding, and citizen science datasets](#) and is queried and filtered to return a list of those birds reported as occurring in the 10km grid cell(s) which your project intersects, and that have been identified as warranting special attention because they are a BCC species in that area, an eagle ([Eagle Act](#) requirements may apply), or a species that has a particular vulnerability to offshore activities or development.

<https://ipac.ecosphere.fws.gov/location/ZBKWNOELCNGSVJPLDRHBCQIO4M/resources>

11/15

Again, the Migratory Bird Resource list includes only a subset of birds that may occur in your project area. It is not representative of all birds that may occur in your project area. To get a list of all birds potentially present in your project area, please visit the [Rapid Avian Information Locator \(RAIL\) Tool](#).

What does IPaC use to generate the probability of presence graphs for the migratory birds potentially occurring in my specified location?

The probability of presence graphs associated with your migratory bird list are based on data provided by the [Avian Knowledge Network \(AKN\)](#). This data is derived from a growing collection of [survey, banding, and citizen science datasets](#).

Probability of presence data is continuously being updated as new and better information becomes available. To learn more about how the probability of presence graphs are produced and how to interpret them, go to the Probability of Presence Summary and then click on the "Tell me about these graphs" link.

How do I know if a bird is breeding, wintering or migrating in my area?

To see what part of a particular bird's range your project area falls within (i.e. breeding, wintering, migrating or year-round), you may query your location using the [RAIL Tool](#) and look at the range maps provided for birds in your area at the bottom of the profiles provided for each bird in your results. If a bird on your migratory bird species list has a breeding season associated with it, if that bird does occur in your project area, there may be nests present at some point within the timeframe specified. If "Breeds elsewhere" is indicated, then the bird likely does not breed in your project area.

What are the levels of concern for migratory birds?

Migratory birds delivered through IPaC fall into the following distinct categories of concern:

1. "BCC Rangewide" birds are [Birds of Conservation Concern](#) (BCC) that are of concern throughout their range anywhere within the USA (including Hawaii, the Pacific Islands, Puerto Rico, and the Virgin Islands);
2. "BCC - BCR" birds are BCCs that are of concern only in particular Bird Conservation Regions (BCRs) in the continental USA; and
3. "Non-BCC - Vulnerable" birds are not BCC species in your project area, but appear on your list either because of the [Eagle Act](#) requirements (for eagles) or (for non-eagles) potential susceptibilities in offshore areas from certain types of development or activities (e.g. offshore energy development or longline fishing).

Although it is important to try to avoid and minimize impacts to all birds, efforts should be made, in particular, to avoid and minimize impacts to the birds on this list, especially eagles and BCC species of rangewide concern. For more information on conservation measures you can implement to help avoid and minimize migratory bird impacts and requirements for eagles, please see the FAQs for these topics.

Details about birds that are potentially affected by offshore projects

For additional details about the relative occurrence and abundance of both individual bird species and groups of bird species within your project area off the Atlantic Coast, please visit the [Northeast Ocean Data Portal](#). The Portal also offers data and information about other taxa besides birds that may be helpful to you in your project review. Alternately, you may download the bird model results files underlying the portal maps through the [NOAA NCCOS Integrative Statistical Modeling and Predictive Mapping of Marine Bird Distributions and Abundance on the Atlantic Outer Continental Shelf](#) project webpage.

Bird tracking data can also provide additional details about occurrence and habitat use throughout the year, including migration. Models relying on survey data may not include this information. For additional information on marine bird tracking data, see the [Diving Bird Study](#) and the [nanotag studies](#) or contact [Caleb Spiegel](#) or [Pam Loring](#).

What if I have eagles on my list?

If your project has the potential to disturb or kill eagles, you may need to [obtain a permit](#) to avoid violating the Eagle Act should such impacts occur.

Proper Interpretation and Use of Your Migratory Bird Report

The migratory bird list generated is not a list of all birds in your project area, only a subset of birds of priority concern. To learn more about how your list is generated, and see options for identifying what other birds may be in your project area, please see the FAQ "What does IPaC use to generate the migratory birds potentially occurring in my specified location". Please be aware this report provides the "probability of presence" of birds within the 10 km grid cell(s) that overlap your project; not your exact project footprint. On the graphs provided, please also look carefully at the survey effort (indicated by the black vertical bar) and for the existence of the "no data" indicator (a red horizontal bar). A high survey effort is the key component. If the survey effort is high, then the probability of presence score can be viewed as more dependable. In contrast, a low survey effort bar or no data bar means a lack of data and, therefore, a lack of certainty about presence of the species. This list is not perfect; it is simply a starting point for identifying what birds of concern have the potential to be in your project area, when they might be there, and if they might be breeding (which means nests might be present). The list helps you know what to look for to confirm presence, and helps guide you in knowing when to implement conservation measures to avoid or minimize potential impacts from your project activities, should presence be confirmed. To learn more about conservation measures, visit the FAQ "Tell me about conservation measures I can implement to avoid or minimize impacts to migratory birds" at the bottom of your migratory bird trust resources page.

Facilities

National Wildlife Refuge lands

Any activity proposed on lands managed by the [National Wildlife Refuge](#) system must undergo a 'Compatibility Determination' conducted by the Refuge. Please contact the individual Refuges to discuss any questions or concerns.

There are no refuge lands at this location.

Fish hatcheries

There are no fish hatcheries at this location.

Wetlands in the National Wetlands Inventory (NWI)

Impacts to [NWI wetlands](#) and other aquatic habitats may be subject to regulation under Section 404 of the Clean Water Act, or other State/Federal statutes.

For more information please contact the Regulatory Program of the local [U.S. Army Corps of Engineers District](#).

Wetland information is not available at this time

This can happen when the National Wetlands Inventory (NWI) map service is unavailable, or for very large projects that intersect many wetland areas. Try again, or visit the [NWI map](#) to view wetlands at this location.

Data limitations

The Service's objective of mapping wetlands and deepwater habitats is to produce reconnaissance level information on the location, type and size of these resources. The maps are prepared from the analysis of high altitude imagery. Wetlands are identified based on vegetation, visible hydrology and geography. A margin of error is inherent in the use of imagery; thus, detailed on-the-ground inspection of any particular site may result in revision of the wetland boundaries or classification established through image analysis.

The accuracy of image interpretation depends on the quality of the imagery, the experience of the image analysts, the amount and quality of the collateral data and the amount of ground truth verification work conducted. Metadata should be consulted to determine the date of the source imagery used and any mapping problems.

Wetlands or other mapped features may have changed since the date of the imagery or field work. There may be occasional differences in polygon boundaries or classifications between the information depicted on the map and the actual conditions on site.

Data exclusions

Certain wetland habitats are excluded from the National mapping program because of the limitations of aerial imagery as the primary data source used to detect wetlands. These habitats include seagrasses or submerged aquatic vegetation that are found in the intertidal and subtidal zones of estuaries and nearshore coastal waters. Some deepwater reef communities (coral or tubercid worm reefs) have also

been excluded from the inventory. These habitats, because of their depth, go undetected by aerial imagery.

Data precautions

Federal, state, and local regulatory agencies with jurisdiction over wetlands may define and describe wetlands in a different manner than that used in this inventory. There is no attempt, in either the design or products of this inventory, to define the limits of proprietary jurisdiction of any Federal, state, or local government or to establish the geographical scope of the regulatory programs of government agencies. Persons intending to engage in activities involving modifications within or adjacent to wetland areas should seek the advice of appropriate Federal, state, or local agencies concerning specified agency regulatory programs and proprietary jurisdictions that may affect such activities.

NOT FOR CONSULTATION



FLOWERY BRANCH CITY COUNCIL



EXECUTIVE SUMMARY

SUBJECT: Consider January 16, 2025 City Council Meeting Minutes

COUNCIL MEETING DATE: February 6, 2025

HISTORY:

FACTS AND ISSUES:

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

SAMPLE MOTION:

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [Unofficial January 16, 2025 City Council Meeting Minutes.pdf](#)



**City of Flowery Branch
City Council Meeting
Thursday, January 16, 2025, 6:00 PM
City of Flowery Branch City Hall
5410 Pine Street, Flowery Branch, GA 30542**



CALL WORK SESSION TO ORDER:

Mayor Asbridge called the meeting to order at 6:02 p.m.

Present: Mayor Asbridge and Council Members Joe Anglin, Oliver McClellan, William McDaniel, and Joseph Mezzanotte.

Also present were City Manager Tonya Parrish, City Clerk Shelia Cooper, Finance Director Matthew Hamby, Planning and Community Development Director Chris McCrary, Director of Fun Renee Carden, Police Chief Chris Hulsey, and City Attorney Ted Baggett.

Absent: Council Member Chris Mundy

PLEDGE OF ALLEGIANCE:

Mayor Asbridge led the Pledge of Allegiance.

ADOPTION OF AGENDA:

There was a motion made to approve the adoption of the agenda as presented.

MOTION: Chris Mundy

SECOND: Joseph Mezzanotte

AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte

NAYS: None

Motion carried

AWARDS & RECOGNITIONS:

Hugh Gaines, Scouts BSA Troop 228, presented a Eagle Scout Project to the City of Flowery Branch. Hugh built two flag retirement boxes so citizens can drop off their flags that are to be retired and a scout will later pick the flags up to retire them properly. One box will remain at City Hall and the other box will remain at the Welcome Center on Main Street.



Pictured left to right:
Council Member William
McDaniel, Mayor Edward
Asbridge, Council
Member Joseph
Mezzanotte, Scout Hugh
Gaines, Council Member
Joe Anglin, and Council
Member Oliver McClellan

Council Member Chris Mundy arrived at the meeting at 6:15 p.m.

PUBLIC HEARING:

Consider Approval of Ordinance 725 for a Public Hearing and First Reading of Annexation at 4272 Thurmon Tanner Road for the Operation of a Pickleball Recreation Facility

Consider Approval of Ordinance 726 for a Public Hearing and First Reading of Rezoning and Conditional Use Permit at 4272 Thurmon Tanner Road for the Operation of a Pickleball Recreation Facility.

Director McCrary presented Ordinance 725 and Ordinance 726 for an annexation, rezoning, and Conditional Use Permit at 4272 Thurmon Tanner Road for the operation of a pickleball recreation facility. The applicant is seeking the annexation from unincorporated Hall County to the City of Flowery Branch. The applicant is proposing rezoning the tract from Hall County Light Industrial (I-I) to Flowery Branch Light Industrial (M-1) in order to develop and operate a private pickleball recreation facility with a Conditional Use Permit.

Staff recommend approval of the proposed annexation of parcel 08073 000012 along with approval of the rezoning request to rezone the subject property from Hall County I-I to Flowery Branch M-1. Additionally, staff recommends concurrent approval of the CUP for the operation of an indoor/outdoor commercial recreational facility with the following conditions:

1. Applicant shall implement 10' landscape strips along property boundary to minimize noise impact on adjacent properties. Preserved vegetation can be provided in lieu of planting trees and shrubs subject to approval by The Planning & Community Development Director

2. Adequate parking spaces shall be provided to support use. The maximum parking space should not exceed 102 spaces.
3. Any signage related to the facility must adhere to Flowery Branch regulations.
4. The applicant shall ensure that all facilities are properly maintained, including outdoor recreation areas, restrooms, and parking lots.
5. The applicant shall comply with all environmental regulations regarding stormwater runoff, waste management, and other applicable environmental concerns
6. The applicant must ensure that proper fire lanes, emergency access routes, and safety measures are in place in accordance with local fire codes and regulations.

Council held a discussion with Director McCrary.

There being no one to speak in favor or against the request, Mayor Asbridge closed the public hearing at 6:16 p.m.

Consider Approval of Ordinance 729 for a Public Hearing and First Reading of a Variance Request at 5201 Mulberry Street.

Director McCrary presented Ordinance 729 for a variance request at 5201 Mulberry Street. The applicant is seeking to build a new residential single-family home at 5201 Mulberry Street. The subject parcel is zoned TND (Traditional Neighborhood Development) and is subject to the development standards and dimensional standards of Article 7. The applicant provided a house location plan indicating the placement of a wider home floor plan that does not provide for an automobile garage in the rear yard. The applicant is seeking a variance to allow a front facing garage in TND zoning.

Staff recommends the approval of the proposed variance application for allowing a front entry garage in the TND zoning category with the following conditions:

1. The building permit application shall include a house location plan and be substantially similar to the plan provided with the variance application.
2. The applicant shall provide a Residential Drainage Plan including proposed grading to demonstrate no disturbance in the flood hazard area.
3. The applicant shall provide four-sided building elevations demonstrating compliance with the City of Flowery Branch's architectural standards.
4. The variance is for the location of the garage entrance only. The approval of the variance does not provide additional approvals of any local, state or federal regulations.

Council held a discussion with Director McCrary.

There being no one to speak in favor or against the request, Mayor Asbridge closed the public hearing at 6:21 p.m.

Out of an abundance of caution, the Public Hearing for Ordinance 726 was opened for public comments for the rezoning at 4272 Thurmon Tanner Road. There being no one to speak in favor or against the request, Mayor Asbridge closed the public hearing at 6:22 p.m.

UNFINISHED BUSINESS - WORK SESSION:

Consider the Second Reading of Ordinance 724 for a Variance Request at 4627 Atlanta Highway.

Director McCrary presented Ordinance 724 for a variance request at 4627 Atlanta Highway. The applicant is seeking to develop four office/warehouse buildings totaling 41,450 sq.ft., including associated parking and utilities, on a property limited in depth due to a state water creek adjacent to Atlanta Highway. To accommodate the necessary depth for warehousing and tractor trailer truck movement, the applicant is requesting encroachments into the City's 75-foot impervious setback and 50-foot undisturbed stream buffer, which are necessary to meet industry standards for the proposed buildings.

Staff recommends the approval of the proposed variance application for the encroachment into the required impervious setback and the City's undisturbed stream buffer per Code Section 26.7 with the following conditions:

1. The Land Disturbance Permit shall be substantially similar to the plan provided with the variance application, including the limits of the encroachment into the impervious setback and the City's stream buffer.
2. The area of preservation shall be substantially similar to the area in size and location shown on the site plan provided with the variance application.
3. In the areas where disturbance occurs within the 50' undisturbed buffer, the applicant shall provide a replanting plan using a native mixture of species of trees and shrubs. The plan shall be sealed by a Georgia registered Landscape Architect. The final plan shall be approved by the Community Development Director.
4. Prior to the issuance of the Certificate of Occupancy, the owner shall provide the City an as-built survey of the development including the encroachment areas and preservation area.
 - a) The area of encroachment into the impervious setback shall not exceed 1,045 SF.
 - b) The area of encroachment into the 50-foot undisturbed stream buffer shall not exceed 3,715 SF.
 - c) The area of undisturbed preservation shall be no less than 7,323 SF.

NEW BUSINESS -WORK SESSION:

Presentation of Mixed-Use Project at 4560 Hog Mountain Road

Kirkland Carden from The Residential Group, 3109 Abbotts Oak Way, Duluth, GA 30097, presented a mixed-use project at 4560 Hog Mountain Road. The proposed development is a 275-unit multifamily luxury apartment community with commercial outparcels. There will be a full range of amenities aimed at enhancing resident satisfaction and retention.

Discussion of FY2025 2nd Quarter Capital Update.

Director Hamby presented a Capital Projects Update through December 31, 2024. The City of Flowery Branch established a 5-year Capital Plan which is approved annually during the budget

process. Each year this plan is updated to reflect current and future capital needs. The summary sheets below shows the budget and expenditures to date.

CAPITAL PROJECT MASTER SUMMARY					
Tax Allocation District Capital Fund					
Project #	Project Description	Budget	Expenditures Project-to-Date	Encumbrances Project-to-Date	Unencumbered Balance
40200	Tenant Improvements - Main St Building	445,000	196,313	-	248,688
					-
	Total Project Budgets	445,000	196,313	-	248,688
Water/Sewer Capital Fund					
Project #	Project Description	Budget	Expenditures Project-to-Date	Encumbrances Project-to-Date	Unencumbered Balance
50130	Atlanta Hwy Water Line	980,000	87,537	-	892,464
50270	Wastewater Expansion Construction	48,014,834	5,730,949	-	42,283,885
50290	Wastewater Pump Station Modification	200,000	-	24,588	175,412
50300	Tank Connectivity Project	1,772,010	1,159,447	-	612,563
50310	Lights Ferry Water Line	400,000	-	-	400,000
50320	Well 4 & 5 Implementation/Rehab	2,428,768	445,000	-	1,983,768
50350	SCADA System Improvements	100,000	-	-	100,000
50380	New 250,000 Gallon Elevated Tank Construction	2,956,893	2,295,470	-	661,423
50380	Interim Wastewater Plant Improvements	922,488	910,829	-	11,859
50400	Modify Well House for Wells No. 1 and No. 3	200,000	81,650	-	118,350
50420	Gainesville Sewer Line	2,077,075	2,055,948	-	21,126
50440	Replacement Generator	127,990	90,167	-	37,823
50450	Wastewater Expansion Early Works	969,475	1,072,552	-	(103,077)
50480	Blower Rental	43,931	37,180	-	6,751
50480	4 Door Crew Truck (2)	115,000	97,480	-	17,520
50470	Elevated Water Tank Lights	100,000	-	-	100,000
50490	Lead Service Line Project	120,000	117,253	-	2,747
	Total Project Budgets	61,528,463	14,181,261	24,588	47,319,867
SPLOST Capital Fund					
Project #	Project Description	Budget	Expenditures Project-to-Date	Encumbrances Project-to-Date	Unencumbered Balance
30120	Annual Road Paving and Sidewalks Program	5,072,106	2,495,120	-	2,576,986
30130	Police Vehicles/Equipment	643,818	539,508	4,232	100,078
30180	Old Town Stormwater Improvements - Phase 2	550,000	-	-	550,000
30200	Wastewater Plant Entrance	550,000	-	-	550,000
30230	Highlands to Islands Trail	550,000	4,932	-	545,068
30240	Parks Property and Improvements	415,000	-	-	415,000
30250	Public Works Property	-	-	-	-
30260	McEver & Gaines Ferry Rd Traffic Improvements	2,060,000	385,971	-	1,674,029
30280	Mulberry Connector	100,000	-	-	100,000
30270	Roberts Drive Site Improvements	750,000	-	-	750,000
	Total Project Budgets	9,940,924	3,425,531	4,232	6,511,161

Local Resources Capital Fund					
Project #	Project Description	Budget	Expenditures Project-to-Date	Encumbrances Project-to-Date	Unencumbered Balance
20220	IT Equipment Upgrades Annual Program	297,210	301,512	-	(4,302)
20230	Website & Branding Upgrades	90,000	89,299	-	701
20250	Tourism Golf Cart	25,000	16,372	-	8,628
20270	Downtown Development Phase II	618,305	329,015	-	289,290
20280	City Building Security	120,000	19,337	-	100,663
20330	Land Acquisition	243,805	-	-	243,805
20340	Sidewalk Program	200,000	116,675	-	83,325
20360	Landscaping Design and Implementation	200,000	24,452	-	175,548
20370	Hammock Park	30,000	-	-	30,000
20380	Caboose Renovation	60,000	-	-	60,000
20290	Gateway Sign	450,000	19,676	-	430,324
20400	Public Bathroom	400,000	-	-	400,000
20420	Stormwater Program	259,957	6,280	-	253,677
20430	Tourism Building Renovation	50,000	-	-	50,000
20440	Tourism/Event Signs	100,000	-	-	100,000
20450	Amphitheater Stage Cover	200,000	-	-	200,000
20460	Track Loader	145,000	125,149	-	19,851
					-
					-
					-
Total Project Budgets		3,344,277	922,619	-	2,127,342

Consider the Addition of One Certified Police Officer Position and Associated Equipment for the Police Department and authorize a budget amendment for the associated expenditures.

Police Chief Hulsey presented a consideration for the addition of one certified police officer position and associated equipment for the Police Department and to authorize a budget amendment for the associated expenditures. The City of Flowery Branch Police Department has entered into an agreement with the Hall County Sheriff's Office to assign an officer to their Multi-Agency Special Investigations Unit (SIU). This officer will require a full-time position to be assigned to the Special Investigations Unit and will deplete the current police staff by one certified police officer.

Council held a discussion with Chief Hulsey.

DEPARTMENT REPORTS:

City Manager Report:

City Manager Parrish gave a highlighted review of the City of Flowery Branch in 2024. This report included statistics, completed certifications, and celebrations for each department in the City.

Department of Fun Report:

Director Carden noted upcoming events.

Finance Department Report:

Director Hamby noted upcoming events for the finance department.

Attorney Report:

Attorney Baggett reminded Council about the deadline for House Bill 581, If Council decides to opt out, a resolution must be passed by March 1, 2025. There are advertising, public hearing, and press release requirements to comply with House Bill 581. Attorney Baggett advised the timeline is urgent.

Council held a discussion with Attorney Baggett, Director Hamby, and City Manager Parrish regarding House Bill 581.

There was a motion made for Council to move forward with the opt out and the process procedures to investigate more about House Bill 581.

MOTION: Oliver McClellan

SECOND: None

AYES: None

NAYS: None

Motion Dies

Council Report:

Council Member Mundy thanked the public works department for their hard work during the snow events recently.

Council Member Mezzanotte stated City Manager's report and city update was a wonderful report and it reflects very highly on what is happening in Flowery Branch.

Mayor Asbridge stated the City has outstanding staff and he appreciates the staff very much.

ADJOURNMENT WORK SESSION:

Mayor Asbridge adjourned the work session at 7:20 p.m.

VOTING SESSION AGENDA

CALL VOTING SESSION TO ORDER:

Mayor Asbridge called the voting session to order at 7:20 p.m.

PUBLIC COMMENTS: There were no public comments.

CONSENT AGENDA:

- Consider January 2, 2025 City Council Meeting Minutes
- Consider January 4, 2025 Special Called City Council Meeting Minutes

There was a motion made to approve the consent agenda as presented.

MOTION: Chris Mundy

SECOND: William McDaniel

AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy

NAYS: None

Motion carried

UNFINISHED BUSINESS - VOTING SESSION:

Consider the Second Reading of Ordinance 724 for a Variance Request at 4627 Atlanta Highway.

There was a motion made to approve the second reading of Ordinance 724 for a Variance Request at 4627 Atlanta Highway.

MOTION: Joseph Mezzanotte

SECOND: Oliver McClellan

AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy

NAYS: None

Motion carried

Consider the Second Reading of Ordinance 728 for Publishing 2025 General Election Qualifying Fees

There was a motion made to approve the second reading of Ordinance 728 for publishing 2025 General Election Qualifying Fees.

MOTION: Oliver McClellan

SECOND: William McDaniel

AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy

NAYS: None

Motion carried

NEW BUSINESS - VOTING SESSION:

Consider the Addition of One Certified Police Officer Position and Associated Equipment for the Police Department and authorize a budget amendment for the associated expenditures.

There was a motion made to approve the addition of one certified police officer position and associated equipment for the police department and authorize a budget amendment for the associated expenditures.

MOTION: Chris Mundy

SECOND: Joseph Mezzanotte

AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy

NAYS: None

Motion carried

Consider Approval of Ordinance 725 for a Public Hearing and First Reading of Annexation at 4272 Thurmon Tanner Road for the Operation of a Pickleball Recreation Facility

There was a motion made to approve Ordinance 725.

MOTION: Oliver McClellan

SECOND: Chris Mundy

AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy

NAYS: None

Motion carried

Consider Approval of Ordinance 726 for a Public Hearing and First Reading of Rezoning and Conditional Use Permit at 4272 Thurmon Tanner Road for the Operation of a Pickleball Recreation Facility.

There was a motion made to approve Ordinance 726.

MOTION: Chris Mundy

SECOND: Oliver McClellan

AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy

NAYS: None

Motion carried

Consider Approval of Ordinance 729 for a Public Hearing and First Reading of a Variance Request at 5201 Mulberry Street.

There was a motion made to approve Ordinance 729.

MOTION: Oliver McClellan

SECOND: William McDaniel

AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy

NAYS: None

Motion carried

EXECUTIVE SESSION:

There was a motion made to enter an executive session for matters related to the acquisition/disposition of real estate, for matters related to certain personnel issues, and for matters related to pending or potential litigation at 7:27 p.m.

MOTION: Chris Mundy

SECOND: Oliver McClellan

AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy

NAYS: None

Motion carried

There was a motion made to exit the executive session at 8:31 p.m.

ADJOURNMENT:

There was a motion made to adjourn the meeting at 8:31 p.m.

Edward R. Asbridge, Mayor

Date

Shelia Cooper, City Clerk



FLOWERY BRANCH CITY COUNCIL



EXECUTIVE SUMMARY

SUBJECT: Consider December 2024 & January 2025 Per Diem for Council Member Mezzanotte

COUNCIL MEETING DATE: February 6, 2025

HISTORY:

FACTS AND ISSUES:

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

Yes

AMOUNT AND SOURCE OF FUNDS:

\$250.00 GL100-1110-511101

RECOMMENDATION:

SAMPLE MOTION:

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [December 2024 Council Member Mezzanotte Per Diem.pdf](#)
- [January 2025 Council Member Mezzanotte Per Diem.pdf](#)



City of Flowery Branch
Mayor & Council Attendance Sheet Per Diem Pay

Name: Joseph Mezzanotte Month/Year: December 2024

Meeting Date	Description of Meeting
December 12, 2024	Chamber of Commerce Eggs & Issues Meeting

My signature certifies that I am eligible to be paid for 1 meeting dates, a maximum of 5 per month, in accordance with the Per Diem Pay as described in Ordinance 477 and at a rate of \$50.00 per meeting.

Total of \$ 50.00

Signature



**City of Flowery Branch
Mayor & Council Attendance Sheet Per Diem Pay**

Name: Joseph Mezzanotte Month/Year: January 2025

Meeting Date	Description of Meeting
January 15, 2025	Gainesville/Hall County Issues
January 23, 2025	Greater Hall Chamber Board Meeting
January 28, 2025	Small Business Economic & Political Forecast
January 30, 2025	Meeting with U.S. Representative Rich McCormick

My signature certifies that I am eligible to be paid for 4 meeting dates, a maximum of 5 per month, in accordance with the Per Diem Pay as described in Ordinance 477 and at a rate of \$50.00 per meeting.

Total of \$200.00

Signature



FLOWERY BRANCH CITY COUNCIL



EXECUTIVE SUMMARY

SUBJECT: Consider Second Amendment to Nic St. Clair Lease Agreement at 5509 Main Street, Flowery Branch, Georgia

COUNCIL MEETING DATE: February 6, 2025

HISTORY:

FACTS AND ISSUES:

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:
No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

SAMPLE MOTION:

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [Second Amendment to Nic St. Claire Lease Agreement at 5509 Main Street.pdf](#)

SECOND AMENDMENT TO 5509 MAIN STREET
A MASTER CONDOMINIUM SHOPPING CENTER LEASE AGREEMENT

THIS SECOND AMENDMENT TO 5509 MAIN STREET A MASTER CONDOMINIUM SHOPPING CENTER LEASE AGREEMENT (this "Amendment"), is made and entered into effective the 6th day of February 2024, by and between the CITY OF FLOWERY BRANCH (hereinafter referred to as "Landlord") and Nicholas St. Clair Roland Stanley, Gustavo Godinez, Jr., and Craig Tabor (hereinafter referred to as "Tenants in Common").

WHEREAS, Landlord and Tenant Nicholas St. Clair entered into that certain lease agreement dated November 7th, 2024 (the "Original Lease"), for that certain property commonly known as 5509 Main Street, Flowery Branch, Georgia (the "Demised Premises"); and

WHEREAS, Landlord and Tenants in Common amended the Original Lease on desire to amend the Original Lease, on December 19th, 2024 (the "First Amendment"), for that certain property commonly known as 5509 Main Street, Flowery Branch, Georgia (the "Demised Premises"); and

WHEREAS, Landlord and Tenants in Common desire to amend the Original Lease and First Amendment, on and subject to the terms and conditions set forth herein.

NOW, THEREFORE, AND IN CONSIDERATION of the sum of One and No/100 Dollars (\$1.00), each to the other paid, the receipt and adequacy and sufficiency of which is hereby acknowledge, and the mutual covenants flowing between the parties hereto, the Original Lease is hereby amended as follows:

1. Recitals. Each of the foregoing recitals and representations in this Amendment form a material part of this Amendment and are incorporated herein by this reference, and such recitals and representations and the Original Lease are hereby ratified.
2. Basic Lease Provisions. Section 1.1. K. FIXED MINIMUM RENT COMMENCEMENT DATE is deleted in its entirety and replaced with the following: "Earlier of (i) Tenant opening for business or (ii) eight (8) months following the Lease Commencement Date."

EXCEPT AS HEREIN PROVIDED, all other terms and conditions of the Original Lease shall remain the same and the parties hereto do hereby ratify the Original Lease.

IN WITNESS WHEREOF, Landlord and Tenants in Common have carefully read and reviewed this Amendment and each term and provision contained herein, and by the execution of this Amendment shows their informed and voluntary consent thereto. The parties hereby agree that, at the time this Amendment is executed, the terms of this Amendment are commercially reasonable and effectuate the intent and purpose of Landlord and Tenants in Common with respect to the Demised Premises.

This 6th day of February, 2025.

LANDLORD: CITY OF FLOWERY BRANCH,
GEORGIA

By: _____
Edward R. Asbridge, Mayor

ATTEST:

Shelia Cooper, City Clerk

TENANTS IN COMMON:

By: _____
Nicholas St. Clair

By: _____
Roland Stanley

By: _____
Gustavo Godinez, Jr.

By: _____
Craig Tabor

Sworn to and subscribed before me
this _____ day of February, 2025.

NOTARY PUBLIC
My commission expires: _____



FLOWERY BRANCH CITY COUNCIL



EXECUTIVE SUMMARY

SUBJECT: Consider Terminating the Agreement for 5527 Main Street with Baby Bell Candy Apples, LLC.

COUNCIL MEETING DATE: February 6, 2025

HISTORY:

On September 21, 2023 the city entered into a lease agreement with Baby Bell Candy Apples, LLC that rent was to commence at the earlier of the tenant opening or four (4) months following the lease commencement date. On June 24, 2024, the city entered into another agreement (the First Amendment to the Original Lease Agreement) which allowed for an additional six (6) months before the rent payments were due which would be August 1, 2024.

FACTS AND ISSUES:

Baby Bell Candy Apples, LLC has been unable to make their rent payments to date.

OPTIONS:

- 1) Terminate the lease agreement.
- 2) Do not terminate the lease agreement.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

Yes

AMOUNT AND SOURCE OF FUNDS:

N/A

RECOMMENDATION:

Terminate the agreement for 5527 Main Street with Baby Bell Candy Apples, LLC.

SAMPLE MOTION:

I make a motion to terminate the lease agreement with Baby Bell Candy Apples, LLC for 5527 Main Street.

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [ES - Termination of Baby Bell Lease.pdf](#)
- [9.21.2023 Baby Bell Candy Apples, LLC Lease Agreement.pdf](#)
- [6.20.2024 First Amendment Baby Bell Candy Apples, LLC.pdf](#)
- [Baby Bell Candy Apples, LLC #20240917.pdf](#)
- [Baby Bell Candy Apples, LLC #20241017.pdf](#)
- [Baby Bell Candy Apples LLC #20241119.pdf](#)



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider terminating the agreement for 5527 Main Street with Baby Bell Candy Apples, LLC.

DATE: February 3, 2025

(X)RECOMMENDATION
() POLICY DISCUSSION
() STATUS REPORT
() OTHER

BUDGET INFORMATION:
ANNUAL- N/A
CAPITAL-

COUNCIL ACTION REQUESTED ON: February 6, 2025

PURPOSE: To terminate the agreement for 5527 Main Street with Baby Bell Candy Apples, LLC.

HISTORY: On September 21, 2023 the city entered into a lease agreement with Baby Bell Candy Apples, LLC that rent was to commence at the earlier of the tenant opening or four (4) months following the lease commencement date. On June 24, 2024, the city entered into another agreement (the First Amendment to the Original Lease Agreement) which allowed for an additional six (6) months before the rent payments were due which would be August 1, 2024.

FACTS AND ISSUES: Baby Bell Candy Apples, LLC has been unable to make their rent payments to date.

OPTIONS:

- 1) Terminate the lease agreement.
 - 2) Do not terminate the lease agreement.
-

RECOMMENDED SAMPLE MOTION:

I make a motion to terminate the lease agreement with Baby Bell Candy Apples, LLC for 5527 Main Street.

DEPARTMENT: Administration

Prepared by: Tonya Parrish

**FB MAIN STREET
A MASTER CONDOMINIUM
SHOPPING CENTER
LEASE AGREEMENT
5527 Main Street**

Flowery Branch, Georgia

LANDLORD: City of Flowery Branch

TENANT: Baby Bell Candy Apples, LLC

**ARTICLE I. BASIC LEASE PROVISIONS
AND ENUMERATION OF EXHIBITS**

SECTION 1.1. BASIC LEASE PROVISIONS

A.	DATE (for reference purposes):	September 21, 2023
B.	LANDLORD:	City of Flowery Branch, a Georgia municipal corporation
C.	LANDLORD'S ADDRESS:	5410 Pine Street Flowery Branch, Georgia 30542
D.	TENANT:	Baby Bell Candy Apples, LLC
E.	TENANT'S TRADE NAME:	Baby Bell Candy Apples
F.	TENANT'S NOTICE ADDRESS:	Gwendolyn Andreka Bell 1087 Liberty Park Drive Braselton, GA 30517
G.	PHONE NUMBER AND EMAIL:	404-661-6538 or 404-434-5283 babybellcandyapple@att.net
H.	POSSESSION DATE:	Upon delivery of a fully executed Lease and completion of Landlord's Work, if any.
I.	LEASE COMMENCEMENT DATE:	Upon delivery of a fully executed Lease and completion of Landlord's Work, if any.
J.	LEASE TERM:	Five (5) Years following the Rent Commencement Date.
K.	FIXED MINIMUM RENT COMMENCEMENT DATE:	Earlier of (i) Tenant opening for business or (ii) four (4) months following the Lease Commencement Date.
L.	FIXED MINIMUM RENT:	See Exhibit G for rent schedule.

M.	ESTIMATED ADDITIONAL MONTHLY RENT (for all relevant property expenses including but not limited to taxes, insurance, property management overhead and fee, maintenance, exterior building repairs and maintenance, and parking lot and landscaping maintenance):	\$288.52 Notwithstanding anything contained in this Lease to the contrary, the Additional Monthly Rent shall be adjusted to actual expenses annually.
N.	ADVANCE RENT:	\$2,622.92
	ADVANCE ADDITIONAL RENT:	\$288.52
	SECURITY DEPOSIT:	\$2,622.92 plus \$288.52
	TOTAL AMOUNT DUE WITH LEASE:	\$2,622.92 + \$288.52 + \$2,911.44
O.	GUARANTORS:	Gwendolyn Andreka Bell and owners having more than 20% interest in Tenant
P.	USE:	For the use of a restaurant and for no other purpose.
Q.	HOURS OF OPERATION:	Tenant agrees to remain open during standard operating hours for a restaurant (11 a.m. to 9 p.m.) on a daily basis (Monday through Sunday) during the lease term and any extensions.
R.	APPROXIMATE SIZE OF LEASED PREMISES:	1,259 Square Feet
S.	OPTION TO RENEW:	Subject to the conditions herein set forth. Tenant is hereby granted the option to renew the Term of this Lease (the "Renewal Option") for one (1) period of five (5) years (the "Renewal Term"), to commence at the expiration of the initial Term of this Lease. Tenant shall exercise the Renewal Option by delivering written notice of such election to Landlord at least six (6) months but no more than twelve (12) months prior to the expiration of the initial Term of this Lease. The renewal of this Lease shall be upon the same terms and conditions as this Lease, except: (a) the annual Minimum Guaranteed Rental during the Renewal Term shall be as shown on Exhibit G; (b) Tenant shall have no option to renew this Lease beyond the expiration of the Renewal Term; and (c) Tenant shall not have the right to assign the Renewal Option to any sublessee of the Leased Premises or assignee of the Lease, nor may any such sublessee or assignee exercise or enjoy the benefit of such Renewal

		Option. Notwithstanding the foregoing, Tenant shall not have the right to exercise the Renewal Option, unless: (i) this Lease shall be in full force and effect on the date of the exercise of the Renewal Option and the date of the expiration of the original Term; and (ii) on the date of the exercise of the Renewal Option and the date of the expiration of the original Term there exists no default on the part of the Tenant under this Lease.
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SECTION 1.2. SIGNIFICANCE OF BASIC LEASE PROVISIONS

Each reference in this Lease to any of the Basic Lease Provisions contained in Section 1.1 of this article shall be deemed and construed to incorporate all of the terms provided under each such basic lease provision.

SECTION 1.3. ENUMERATION OF EXHIBITS

The exhibits enumerated in this section and attached to this Lease are incorporated in this Lease by this reference and are to be construed as a part of this Lease.

Exhibit A.	Site Plan
Exhibit B.	Tenant's Work
Exhibit C.	Legal Description
Exhibit D.	Rules and Regulations
Exhibit E.	Sign Criteria
Exhibit F.	Lease Guarantee
Exhibit G.	Rent Schedule

ARTICLE II. LEASED PREMISES AND TERM

SECTION 2.1. SHOPPING CENTER

Landlord is the owner of a parcel of real estate, legally described on Exhibit C, located in 5519 Main Street, Flowery Branch, Georgia commonly known as the FB Main Street – a Master Condominium (the "Shopping Center"). It is agreed that the depiction of the Shopping Center on Exhibit A does not constitute a representation, covenant or warranty of any kind by Landlord. Landlord reserves the right to sell any portion or portions of the Shopping Center, such portion(s) thereafter shall not be included in the Shopping Center. Landlord reserves the right to change the number and location of buildings, building dimensions, the number of floors in any of the buildings, store dimensions, the identity and type of other stores and tenancies, and Landlord further reserves the right to locate kiosks and to make available common areas pursuant to the terms hereof, provided only that the Leased Premises as hereinafter defined shall be substantially as depicted on Exhibit A. Landlord further reserves the right to alter the Shopping Center, at

Landlord's sole election, however, no such alteration shall materially impair the visibility or accessibility of Tenants Leased Premises.

SECTION 2.2. LEASED PREMISES

Landlord hereby leases and demises to Tenant, and Tenant hereby accepts from Landlord, subject to and with the benefit of the terms and provisions of this Lease, the store premises sometimes herein referred to as the "Leased Premises" as more particularly described as follows:

5527 Main Street consisting of approximately 1,259 sq. ft. as shown on Exhibit "A".

Said Leased Premises shall extend from the exterior faces of all exterior walls and the center line of those walls separating the Leased Premises from adjacent leased premises in the Shopping Center.

SECTION 2.3. LEASE TERM

The Lease Term shall, commence on the Lease Commencement Date [Section 1.1.I.] and shall end on the last day of the last Lease Year (hereinafter "Termination Date"), unless sooner terminated.

SECTION 2.4. LEASE YEAR

The term "Lease Year" means a period of twelve (12) consecutive calendar months. The first full Lease Year shall begin on the Lease Commencement Date if the Lease Commencement Date shall occur on the first day of a calendar month; if not, then the first Lease Year shall commence upon the first day of the month next following the Lease Commencement Date. Each succeeding Lease Year shall commence upon the anniversary date of the first Lease Year.

SECTION 2.5. STATEMENT AS TO LEASE TERM

In the event the Lease Commencement Date and Termination Date of the Lease Term have not been determined, as of the date of execution hereof, Landlord and Tenant shall execute and deliver a written statement specifying therein the Lease Commencement Date and Termination Date of the Lease Term when determined.

SECTION 2.6. OBLIGATIONS OF TENANT BEFORE LEASE TERM BEGINS

Prior to the Possession Date, Tenant shall deliver to Landlord the required Certificate of Insurance (stated in Section 7.2). Prior to the Lease Commencement Date, and after first obtaining the prior written consent of Landlord, Tenant shall be permitted to install its leasehold improvements, fixtures and other equipment required by Tenant to conduct its business. Tenant shall observe and perform all of its obligations under this Lease, from the Possession Date [Section 1.1.H.] until the Lease Commencement Date [Section 1.1.I.], in the same manner as though the Lease Term began on the Possession Date, including but not limited to payment of Additional Rent as stated in Section 1.1.M. but excluding Fixed Minimum Rent. Landlord shall have no liability whatsoever

for loss or damage to Tenant's leasehold improvements, fixtures, equipment or other property of Tenant or Tenant's contractors.

ARTICLE III. RENT AND OTHER TENANT CONTRIBUTIONS

SECTION 3.1. FIXED MINIMUM AND ADDITIONAL RENT

Tenant agrees to pay rent to Landlord, or to such other person or entity as Landlord may direct, without demand, at such place as Landlord may by notice in writing to Tenant, from time to time, direct, a fixed amount of rent (the "Fixed Minimum Rent"), and an amount of additional rent based upon certain expenses relating to the Leased Premises and the Shopping Center (the "Additional Rent") at the following rates and times and as set forth on Exhibit G:

(a) Fixed Minimum Rent shall be payable in advance in equal successive monthly installments on the first day of each calendar month included in this Lease Term. For any portion of a calendar month included at the beginning of said term, one-thirtieth (1/30) of such a monthly payment for each day of such portion shall be payable on the first day of such portion; and

(b) Additional Rent shall be payable as provided in Sections 3.2, 5.3 and 8.1.

SECTION 3.2. TAXES

Tenant shall pay to Landlord, as Additional Rent hereunder, Tenant's prorata share of any and all special assessments, transportation or environmental protection taxes or levy or similar tax or levy, and Tenant's prorata share of real estate taxes attributable to the Shopping Center paid annually by Landlord during the Lease Term, prorated for any partial Lease Year beginning on the Possession Date. Tenant's prorata share shall be based on the ratio of the total Floor Area of the Leased Premises to the total Floor Area on all floors of building space within the Shopping Center as of the assessment date for the particular special assessment, tax or levy, or real estate tax in question. Tenant shall also pay its prorata share of all expenses, including reasonable attorneys' fees, expenses, administrative hearing and court costs incurred in contesting or negotiating the amount, assessment or rate of any such real estate tax, special assessment, tax or levy. Should the state, or any political subdivision thereof or any governmental authority having jurisdiction thereover, impose a tax and/or assessment upon or against the rentals and/or other charges payable hereunder by Tenant to Landlord, either by way of substitution for the taxes and assessments levied or assessed against such land and such buildings, or in addition thereto, or impose an income or franchise tax in substitution for the general tax levied against such land and buildings, such taxes and/or assessments shall be deemed to constitute a tax and/or assessment against such land and such buildings for the purpose of this section. The annual charges for such assessments or taxes shall be paid in monthly installments on the first day of each calendar month in advance in an amount estimated by Landlord. Landlord shall furnish Tenant, upon Tenant's request, a statement of the assessments or taxes paid or incurred by Landlord for each calendar year of the Lease Term and thereupon there shall be an adjustment between Landlord and Tenant with payment to Landlord or credit to Tenant for future tax payments, as the case may be, to the end that Landlord

shall receive the precise amount of Tenant's prorata share of such assessments and taxes for such period and no more. In the event any portion or portions of the Shopping Center are separately assessed, for purposes of the proration above, Tenant's proportionate share shall be the ratio of the total Floor Area of the Leased Premises to the total Floor Area of all floors of building space within the particular parcel assessed which includes the Leased Premises.

SECTION 3.3. SECURITY DEPOSIT

Tenant, contemporaneously with the execution of this Lease, has deposited with Landlord to secure the faithful performance by Tenant of all the covenants, conditions and agreements in this Lease set forth, and contained on the part of Tenant to be fulfilled, kept, observed and performed, such sum as set forth in Section 1.1 as a Security Deposit. Said deposit shall be held by Landlord, without liability for interest, as security for the faithful performance by Tenant of all the terms, covenants and conditions of this Lease, and Landlord may commingle the same with its other funds. Such interest, if any, may be retained as property of the Landlord, and will not be paid to the Tenant. Such Security Deposit or any portion thereof not previously applied may be applied to the curing of any default that may then exist under this Lease, without prejudice to any other remedy or remedies which Landlord may have on account thereof, and upon such application, Tenant shall pay Landlord on demand the amount so applied which shall be added to the Security Deposit so that the same may be restored to its original amount. In the event the Leased Premises are conveyed by Landlord, the deposit or any portion thereof not previously applied may be turned over to Landlord's grantee or successor, and in such event Tenant hereby releases Landlord from any and all liability with respect to the deposit and/or application or return and Tenant agrees to look to such grantee for such application or return. In the event Tenant shall faithfully fulfill, keep, perform and observe all the covenants, conditions and agreements in this Lease set forth and contained on the part of Tenant to be fulfilled, the sum deposited or the part or portion thereof not previously applied shall be returned to Tenant, without interest, no later than thirty (30) days after the expiration of the Term of this Lease or any renewal or extension thereof, provided Tenant has vacated the Leased Premises and surrendered possession thereof to Landlord at the expiration of said Term or any renewal thereof as provided herein.

ARTICLE IV. UTILITY SERVICES

SECTION 4.1. WATER, SEWER, ELECTRICITY AND GAS

Landlord has caused the necessary mains, conduits and other facilities to be provided to supply water, sewer, gas and electricity to the Shopping Center. Landlord shall provide gas service and facilities to Tenant, however, the same being the sole responsibility of Tenant. Tenant agrees to have all utility services transferred into Tenant's name on the Possession Date. If Tenant has not had any or all of the utilities transferred on the Possession Date, then Tenant agrees to pay Landlord, on demand, the actual cost paid by Landlord for such utilities, together with an administrative charge of One Hundred Fifty and no/100 Dollars (\$150.00) for each such payment. Tenant shall pay for all electricity used in the Leased Premises and all water and sewer charges, and gas charges, if applicable, at its own cost and expense. In the event Landlord, who shall have the option to do so, shall elect to supply any one or more or all of said services, Tenant shall purchase the use of said services as are tendered by Landlord and shall pay the rates, including any

established minimum charges, established by Landlord for such services, but the rate shall be no more than those charged by the public utility furnishing such services in the area. The charges for such services as are so furnished shall be deemed Additional Rent due and payable on the first day of the calendar month following rendition of a bill therefor. Landlord may discontinue furnishing such services if payment for same is not received by Landlord upon not less than five (5) days written notice, and no such discontinuation shall be deemed an eviction or render Landlord liable to Tenant for damages or relieve Tenant from performance of its obligations hereunder. In the event Landlord shall elect to furnish one or more of such services, from time to time, Landlord shall not be liable to Tenant in damages or otherwise if any one or more of said services is interrupted or terminated because of necessary repairs, installations, improvements or any cause beyond the control of Landlord. In any event, Landlord may cease to furnish any one or more of such services without any responsibility to Tenant, except to connect the service facilities with such other sources of supply as may be available for the services so discontinued. Tenant will not install any equipment which will exceed or overload the capacity of any utility facilities servicing the Leased Premises and if any equipment installed by Tenant shall require additional utility facilities, the same shall be installed and maintained at Tenant's expense in accordance with plans and specifications to be approved in writing by Landlord. In the event the Leased Premises are not separately metered for water and Tenant's use requires an excessive volume of water, at Landlord's discretion, a sub-meter will be installed at the Leased Premises at Tenant's expense.

SECTION 4.2. HEATING, VENTILATING AND COOLING

Tenant shall be solely responsible and shall pay for all charges rendered in connection with all heating, ventilating and cooling of the Leased Premises and shall promptly pay all bills for materials furnished or labor performed for Tenant or at Tenant's instance and request in connection with any repairs, replacements, alterations, improvements and installation of all fixtures and equipment in connection therewith on the Leased Premises, and shall keep said Leased Premises free from all claims for liens for work, labor or materials in connection therewith.

SECTION 4.3. OTHER SERVICES

In addition to the above and foregoing, Tenant shall be solely responsible for all garbage and sewage disposal and waste removal, janitorial and other services of any type or nature furnished to the Leased Premises, and shall pay promptly all bills for materials or labor performed in connection therewith. Tenant further covenants and agrees to keep the Leased Premises and the walks adjacent thereto at all times in a neat, clean and sanitary condition and free from snow, ice, waste or debris, and neither to commit or permit any waste or nuisance thereon.

ARTICLE V. COMMON AREAS AND FACILITIES

SECTION 5.1. COMMON AREAS AND FACILITIES

Landlord shall make available, from time to time, such areas and facilities of common benefit to the tenants and occupants of the Shopping Center as Landlord shall deem appropriate (the

“Common Areas”). Landlord shall operate, manage, equip, light, insure, repair and maintain the Common Areas and facilities for their intended purposes in such manner as Landlord shall, in its sole discretion, determine, and may, from time to time, change the size, location and nature of any Common Areas and facilities and may make installations therein and move and remove such installation. Landlord shall have the right to close the Common Areas, or any part thereof, on such business days as Landlord deems necessary for the improvement, maintenance or repair of the Common Areas and on such nonbusiness days or during such nonbusiness hours as Landlord shall, in its sole discretion, determine.

SECTION 5.2. USE OF COMMON AREAS

Tenant and its permitted concessionaires, officers, employees, agents, customers and invitees shall have the nonexclusive right, in common with Landlord and all others to whom Landlord has or may hereafter grant such rights, to use the Common Areas as designated from time to time by Landlord, subject to such reasonable regulations as Landlord may from time to time impose, including the designation of specific areas in which vehicles owned by Tenant, its permitted concessionaires, officers, employees and agents must be parked. Tenant agrees to abide by such regulations and to use its best efforts to cause its permitted concessionaires, officers, employees, agents, customers and invitees to conform thereto. Landlord may at any time close temporarily any part of the Common Areas to make repairs or changes, to prevent the acquisition of public rights in such area or to discourage noncustomer parking, and may do such other acts in and to the Common Areas as in its reasonable judgment may be desirable to improve the convenience thereof. Tenant shall upon request furnish to Landlord the license numbers and description of the vehicles operated by Tenant and its permitted concessionaires, officers and employees. Tenant shall not at any time interfere with the rights of Landlord and other tenants, its and their permitted concessionaires, officers, employees, agents, customers and invitees, to use any part of the parking areas and other part of the Common Areas.

SECTION 5.3. CHARGE FOR COMMON AREAS AND FACILITIES

Tenant shall pay to the Landlord, as Additional Rent, in the manner provided in Section 5.5 Tenant’s prorata share, as defined in Section 5.4, of Common Areas maintenance cost as hereinafter defined including the cost of Capital Improvements designed to protect the health and safety of the tenants in the Leased Premises and the Shopping Center.

Common Areas maintenance cost shall be deemed to include all costs and expenses of every kind and nature paid or incurred by Landlord during the Lease Term (including appropriate reserves) in operating, managing, equipping, policing and protecting (if and to the extent provided by Landlord), insuring, servicing (including heating, ventilating and cooling any enclosed mall, in the event Landlord elects to enclose any Common Areas), lighting, repairing, replacing and maintaining the Common Areas and facilities in the Shopping Center. Such costs and expenses shall include, but not be limited to, such maintaining and repairing as shall be required in Landlord’s judgment to preserve the utility of the Common Areas in condition and status the same as it was at the time of the completion of the original construction and installation thereof; all

exterior painting; all costs and expenses of security and fire protection; all costs of restriping, patching, repairing and maintaining parking areas, garages, entries, gutters and downspouts, the construction of new entries as required and work on roads, as needed, adjacent to the Shopping Center; pedestrian traffic direction and control; roof repairs; all costs and expenses of cleaning and removing of rubbish, dirt, debris, snow and ice; all costs and expenses of planting, maintaining, replanting and replacing flowers and landscaping; management fees; water and sewerage charges; premiums for liability and property damage, fire, extended coverage, malicious mischief, vandalism, workers' compensation and employer's liability, and any other casualty or risk insurance procured by Landlord in connection with Common Areas, wages, unemployment taxes, social security taxes, special assessments and personal property taxes attributable to the Common Areas; fees for audits, required licenses and permits; all costs and expenses incurred by Landlord in testing of sprinkler systems located in the Shopping Center, all charges for utility services for the Common Areas including all costs and expenses of maintaining lighting fixtures and providing electricity to the Common Areas and to Common Areas pole signage (including the cost of light bulbs and electric current); all costs, expenses, surcharges or other impositions or assessments incurred by Landlord in connection with environmental protection legislation or regulation assessed against or imposed on the Shopping Center or any part thereof with regard thereto; reasonable depreciation of equipment, machinery and facilities, rents paid for the leasing of equipment and finance charges paid under any installment purchase of equipment, machinery and facilities used in the operation of the Common Areas and administrative costs at the rate of Fifteen Percent (15%) of the total costs of operating and maintaining the Common Areas (except the appropriate reserves); and such other costs as Landlord may reasonably determine are required for the proper maintenance of the Common Areas, except that all Capital Improvement expenses shall be excluded therefrom.

SECTION 5.4. TENANT'S PRORATA SHARE

Tenant's prorata share of the Common Areas maintenance cost shall be determined by multiplying the total cost incurred or paid by Landlord by a fraction whose numerator is the gross leasable area of the Leased Premises as set forth in Section 2.2 and the denominator of which is the total square feet of gross leasable area within the Shopping Center. The "Gross Leasable Area" shall mean with respect to the Leased Premises and with respect to all other leasable areas, the number of square feet of floor area on all levels, including any mezzanines, basements, or balconies, but excluding "Common Areas" measured from the exterior face of exterior walls and/or the exterior face of service corridor walls, the exterior of building line from all frontage, and the center line of party walls. No deduction shall be made for columns, stairs, elevators, or any interior construction or equipment. Provided, however, for any Common Areas maintenance cost separately metered, billed to or paid directly by any Tenant, the floor area of such tenant space attributable to such Common Areas cost shall be deleted from the above proration for such separate cost. The Floor Area hereinabove provided shall not include the floor area of roof structures used for mechanical equipment.

SECTION 5.5. PAYMENT OF COMMON AREAS MAINTENANCE COST

The annual charges for Common Areas maintenance cost shall be paid in monthly installments on the first day of each calendar month in advance in an amount estimated by Landlord. Landlord shall furnish Tenant, upon Tenant's request, a statement in reasonable detail of the actual Common Areas maintenance cost paid or incurred by Landlord at the end of each calendar year and thereupon there shall be an adjustment between Landlord and Tenant with payment to Landlord or credit to Tenant against any current or future amounts due from Tenant to Landlord pursuant to this Lease, as the case may be, to the end that Landlord shall receive the precise amount of Tenant's prorata share of said costs for such period and no more.

ARTICLE VI. LANDLORD'S ADDITIONAL COVENANTS

SECTION 6.1. REPAIRS BY LANDLORD

Landlord covenants at its expense to keep the foundations and roof of the Leased Premises, and the structural soundness of the exterior walls thereof, in good order, repair and condition, unless any necessary work is required because of damage caused by any act, omission or negligence of Tenant, any permitted concessionaire or their respective employees, agents, invitees, licensees or contractors. Landlord shall not be required to commence any such repair until a reasonable time after written notice from Tenant that the same is necessary. The provisions of this section shall not apply in the case of damage or destruction by fire or other casualty or taking under the power of eminent domain, in which events the obligations of Landlord shall be controlled by Article VIII. Except as provided in this Section 6.1, Landlord shall not be obligated to make repairs, replacements or improvements of any kind upon the Leased Premises, or any equipment, facilities or fixtures contained therein, which shall be the responsibility of Tenant as hereinafter provided.

SECTION 6.2. QUIET ENJOYMENT

Landlord covenants and agrees that so long as Tenant has committed no default under this Lease, Tenant's peaceful and quiet possession of the Leased Premises during the Lease Term shall not be disturbed by Landlord or by anyone claiming by, through or under Landlord.

SECTION 6.3. LIMITATION ON RIGHT OF RECOVERY AGAINST LANDLORD

Tenant acknowledges and agrees that the liability of Landlord under this Lease shall be limited to Landlord's interest in the Shopping Center and any judgments rendered against Landlord shall be satisfied solely out of its interest in the Shopping Center. No personal judgment shall lie against Landlord upon extinguishment of its rights in the Shopping Center and any judgment so rendered shall not give rise to any right of execution or levy against Landlord's assets. The provisions hereof shall inure to Landlord's successors and assigns including any mortgagee of Landlord. The foregoing provisions are not intended to relieve Landlord from the performance of any of Landlord's obligations under the Lease, but only to limit the personal liability of Landlord in case of recovery of a judgment against Landlord; nor shall the foregoing be deemed to limit Tenant's rights to obtain injunctive relief or specific performance or to avail itself of any other right or

remedy which may be awarded Tenant by law or under the Lease.

If Tenant claims or asserts that Landlord has violated or failed to perform a covenant of Landlord not to unreasonably withhold or delay Landlord's consent or approval, Tenant's sole remedy shall be an action for specific performance, declaratory judgment or injunction and in no event shall Tenant be entitled to any money damages for a breach of such covenant and in no event shall Tenant claim or assert any claim for any money damages in any action or by way of set off, defense or counterclaim, and Tenant hereby specifically waives the right to any money damages or other remedies.

ARTICLE VII. TENANT'S ADDITIONAL COVENANTS

SECTION 7.1. TENANT'S COVENANTS

Tenant covenants, at its expense, at all times during the Lease Term and at such further time as Tenant occupies the Leased Premises or any part thereof:

A. To perform promptly all of the obligations of Tenant set forth in this Lease; and pay when due the Fixed Minimum Rent, Additional Rent, and all charges, rates and other sums which by the terms of this Lease are to be paid by Tenant, without any right of recoupment, set-off, deduction or counterclaim whatsoever.

B. To open for business within thirty (30) days after the Lease Commencement Date; to use the Leased Premises only for the use provided in Section 1.1 and in compliance with the Rules and Regulations set forth in Exhibit D; not to use the Leased Premises for any exclusive use granted by Landlord to any other tenant in the Shopping Center; to keep its business located upon the Leased Premises open at all times throughout the term of this Lease during minimum Standard Operating Hours as set for in Section 1.1.Q; that it will not cease operations at said Leased Premises for a period of more than three (3) consecutive days or five (5) days in any Lease Year, without the express written consent of Landlord, which consent may be granted or withheld at Landlord's sole discretion, unless prevented from doing business therein by reason of applicable ordinances or other acts of governmental authority or acts of God.

C. Except for repairs required in Section 6.1 to be performed by Landlord, to keep the Leased Premises, including, but not limited to all partitions, doors, fixtures, equipment, apparatus and appurtenances thereof (including lighting, plumbing fixtures, sewer lines and the HVAC systems), clean, neat and safe, and in good order, repair and condition (including all necessary painting and decorating), and to keep all glass, including that in windows, doors, fixtures and skylights, clean and in good condition, and to replace glass which may be damaged or broken with glass of the same quality, damage by fire or other casualty covered by Landlord's insurance excepted. Tenant shall store all trash and garbage within the Leased Premises and arrange for the regular pickup of such trash and garbage at the Tenant's expense. Tenant shall not burn any trash or garbage at any time in or about the building and Tenant shall attend to the daily disposal thereof in the manner designated by Landlord. If Landlord shall provide any services or facilities for such pickup, the

Tenant shall be obligated to use the same and shall pay a proportionate share of the actual cost thereof within ten (10) days after being billed therefor. (See Exhibit B "Landlord and Tenant's Work" for additional requirements.)

D. To make all repairs, alterations, additions or replacements to the Leased Premises required by any law or ordinance or any order or regulation of any public authority, or fire underwriters or underwriters' fire prevention engineers; to keep the Leased Premises equipped with all safety appliances so required because of such use; to procure any licenses and permits required for any such use; and to comply with the orders and regulations of all governmental authorities.

E. To the extent permissible by state law and except for Landlord's negligence or willful misconduct, Tenant waives and releases Landlord and Landlord's agents and employees from all claims for damage to person or property sustained by Tenant and/or any person claiming through Tenant resulting from any accident or occurrence in or upon the Leased Premises or the building of which it shall be a part, or any other part of the Shopping Center, including, but not limited to, claims for damage resulting from: (i) any equipment or appurtenances becoming out of repair; (ii) Landlord's failure to keep said building or the Leased Premises in repair; (iii) injury done or occasioned by wind, water or other natural elements; (iv) any defect in or failure of plumbing, heating or air conditioning equipment, electric wiring or installation thereof, gas, water and steam pipes, stairs, porches, railings or walks; (v) broken glass; (vi) the backing up of any sewer pipe or downspout; (vii) the bursting, leaking or running of any tank, tub, sink, water closet, waste pipe, drain or any other pipe or tank in, upon or about such building or Leased Premises; (viii) the escape of steam or hot water; (ix) water, snow or ice being upon or coming through the roof, skylight, trap door, stairs, walks or any other place upon or near such building or the Leased Premises or otherwise; (x) the falling of any fixture, plaster or stucco; and (xi) any act, omission or negligence of co-tenants or of other persons or occupants of said buildings or of adjoining or contiguous buildings or of owners of adjacent or contiguous property.

F. To permit Landlord and its agents, upon reasonable notice, except in the event of an emergency, to enter the Leased Premises at reasonable times for the purpose of inspecting same, making repairs, additions or alterations thereto or to the building in which the same are located and of showing the Leased Premises to prospective purchasers, lenders and tenants.

G. To remove, at the termination of this Lease or earlier vacation of the Leased Premises, such of Tenant's goods and effects as are not permanently affixed to the Leased Premises; to remove such of the alterations and additions made by Tenant as Landlord may request; to repair any damage caused by such removal; and peaceably to yield up the Leased Premises and all alterations and additions thereto (except such as Landlord has requested Tenant to remove) and all fixtures, furnishings, floor coverings and equipment which are permanently affixed to the Leased Premises which shall thereupon become the property of Landlord, in clean and good order, repair and condition, damage by fire or other unavoidable casualty and ordinary wear and tear excepted. Any personal property of Tenant not removed within five (5) days following such termination or earlier vacation of the Leased Premises shall, at Landlord's option, become the property of Landlord.

H. If any mortgagee or trustee named in any first mortgage or trust deed hereafter placed upon the Shopping Center or any portion thereof shall elect to subject and subordinate the rights and

interests of the Tenant under this Lease (in whole or in part) to the lien of its mortgage or trust deed, the rights and interests of Tenant under this Lease shall be so subject and subordinate automatically without further action needing to occur, provided that the mortgagee or trustee shall agree in writing to recognize this Lease of Tenant in the event of foreclosure if Tenant is not in default. Any mortgagee or trustee may in the alternative elect to give some or all of the rights and interest of Tenant under this Lease priority over the lien of its mortgage or trust deed. This election of such mortgagee or trustee shall be binding upon Tenant whether this Lease is dated prior to or subsequent to the date of said mortgage or trust deed. Tenant shall execute and deliver whatever instruments may be required for such purposes, and in the event Tenant fails so to do within ten (10) days after demand in writing, Tenant does hereby make, constitute and irrevocably appoint Landlord as its attorney-in-fact and in its name, place and stead so to do.

I. To promptly furnish Landlord, from time to time, financial statements reflecting Tenant's current financial condition whenever requested by Landlord.

J. To give Landlord prompt written notice of any accident, casualty, damage or other similar occurrence in or to the Leased Premises or in or to the Common Areas of which Tenant has knowledge.

K. To pay on demand the prevailing party's expenses, including reasonable attorney's fees and court costs incurred either directly or indirectly in enforcing any obligation of either party under this Lease in curing any default by the other party as provided herein and in defending or otherwise participating in any legal proceedings initiated by or on behalf of either party against the other.

L. Not to make any nonstructural alterations, additions or improvements to the Leased Premises in excess of Five Thousand and no/100 Dollars (\$5,000.00), nor to make any structural changes whatsoever without first obtaining Landlord's written consent.

M. Not to suffer or allow any mechanic's lien to be filed against the Leased Premises or the Shopping Center or any interest therein by reason of any work, labor, services or materials performed at or furnished to the Leased Premises. If any such mechanic's lien shall at any time be filed, Tenant shall forthwith cause the same to be discharged of record by payment, bond, order of a court of competent jurisdiction or otherwise, but Tenant shall have the right to contest any and all such liens, provided security satisfactory to Landlord is deposited with Landlord. If Tenant shall fail to contest the same with due diligence (having secured Landlord as herein provided) or shall fail to cause such lien to be discharged within thirty (30) days after being notified of the filing thereof and in any case before judgment of sale thereunder, then, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge the same by paying the amount claimed to be due or by bonding or other proceeding deemed appropriate by Landlord, and the amount so paid by Landlord and/or all costs and expenses, including reasonable attorneys' fees, incurred by Landlord in procuring the discharge of such lien, shall be deemed to be Additional Rent and together with interest thereon as provided in Section 9.2 shall be due and payable by Tenant to Landlord on the first day of the next following month. Nothing in this Lease shall be construed as a consent on the part of the Landlord to subject Landlord's estate in the Leased Premises to any lien or liability under the mechanic's lien law of the state.

N. Not to affix or maintain upon the glass panes and supports of the show windows, doors and the exterior of the Leased Premises any signs, advertising placards, names, insignia, trademarks, descriptive material or any other such like item or items except such as shall have first received the written approval of Landlord as to size, type, color, location, copy, nature and display qualities. Anything to the contrary in this Lease notwithstanding, the Tenant shall not affix any sign to the roof of the Leased Premises.

SECTION 7.2. TENANT'S INSURANCE

Tenant covenants, at its expense, at all times during the Lease Term and at such further time as Tenant occupies the Leased Premises or any part thereof, to indemnify, save and hold Landlord and Landlord's agents harmless from and against all liability, injury, loss, cost, damage and/or expense (including reasonable attorneys' fees) in respect of any injury to, or death of, any person, and/or damage to, or loss or destruction of, any property while on the Leased Premises or any other part of the Shopping Center occasioned by any act or omission of Tenant, or anyone claiming by, through or under Tenant including without limitation, Tenant's agents, contractors, employees, licensees, and suppliers. Tenant further covenants to maintain, in responsible companies approved by Landlord, public liability insurance insuring Tenant and Landlord and Landlord's agents, as their interests may appear, as Additional Insured, against all claims, demands or actions for injury to or death of any one person in an amount of not less than One Million Dollars (\$1,000,000) and for injury or death of more than one person in any one occurrence in an amount of not less than One Million Dollars (\$1,000,000) and for damage to property in an amount of not less than Five Hundred Thousand Dollars (\$500,000) made by or on behalf of any persons, firm or corporation, arising from, related to, or connected with the conduct and operations of Tenant's business in the Leased Premises, and in addition, and in like amounts covering Tenant's contractual liability under the aforesaid indemnity and hold harmless clause; to carry like coverage against loss or damage by boiler or compressor or internal explosion of boilers or compressors, if there is a boiler or compressor in the Leased Premises; to maintain plate glass insurance covering all exterior plate glass in the Leased Premises and fire insurance with usual extended coverage endorsements covering all of Tenant's stock in trade, fixtures, furniture, furnishings, floor coverings and equipment in the Leased Premises. Tenant shall be responsible for and shall insure against damage to the buildings occasioned by theft of Tenant's property. All of said insurance shall be in form and in responsible companies satisfactory to Landlord and shall provide that it will not be subject to cancellation, termination or change except after at least thirty (30) days prior written notice to Landlord. *A duly executed Certificate of Insurance clearly stating the insurance requirements provided for herein, naming Landlord and Landlord's agent as Additional Insured (which shall evidence the insurer's waiver of subrogation) together with satisfactory evidence of the payment of the premium thereon, shall be deposited with Landlord on or before the date of delivery of the Leased Premises to Tenant and upon renewals of such policies, not less than thirty (30) days prior to the expiration of the term of such coverage;* and that if Tenant fails to comply with such requirements, Landlord may obtain such insurance and keep the same in effect, and Tenant shall pay Landlord the premium cost thereof upon demand.

SECTION 7.3. ASSIGNMENT OF LEASE

Tenant shall not mortgage, pledge or assign this Lease or sublet the whole or any part of the Leased

Premises, or permit any other person to occupy same or any part thereof, without prior written consent of Landlord, which consent shall not be unreasonably withheld so long as the assignee or sublessee has equal or better credit and business experience. Any assignment or sub-letting, even with Landlord's consent, shall not relieve Tenant from liability for payment of Fixed Minimum Rent, Additional Rent and all charges, rates and other sums; or from the obligations of Tenant set forth in this Lease.

In the event any assignment or subletting, even with the consent of Landlord, results in rental income or other lease charges in an amount greater than that provided for in this Lease, then such excess shall belong to Landlord and shall be payable to Landlord as Additional Rent herein reserved. The acceptance of rent from any other person shall not be deemed to be a waiver of any of the agreements of this Lease, or to be a consent to any assignment for the benefit of creditors or by operation of law and shall not be effective to transfer any rights to any assignee without prior written consent of Landlord.

In the event Tenant wishes to assign this Lease and Landlord consents to such assignment, Landlord may charge a reasonable fee, not to exceed Seven Hundred Fifty and no/100 Dollars (\$750.00), to help offset any costs Landlord may have in preparing such assignment, or in examining the information, financial statements, operating history, references, etc., necessary to effectuate same. If Tenant desires to assign the Lease or sublease all or part of the Leased Premises, Tenant shall submit to Landlord, at least sixty (60) days prior to the effective date of the proposed assignment or sublease, a written notice of its intent, which notice shall; (a) state the name of the proposed assignee or sublessee; (b) state the nature and character of the business of the proposed assignee or sublessee; (c) state the term, use, rental rate and other particulars of the proposed assignment or sublease, including, without limitation, evidence satisfactory to Landlord that the proposed assignee or sublessee is financially responsible and will immediately occupy and thereafter use the Leased Premises for the use stated in Section 1.1 and in accordance with Section 7.1.B; and (d) be accompanied by a copy of the proposed assignment or sublease documents. Upon receipt of said notice including items (a)—(d) above, Landlord shall have the right, at Landlord's sole discretion, within thirty (30) days after receipt of such notice, to approve or disapprove the proposed assignment or sublease, or to terminate this Lease effective as of the proposed effective date of the assignment or sublease (provided, however, that Tenant may nullify Landlord's termination right by withdrawing the proposed assignment or sublease). No assignee of the Lease or sublessee of the Leased Premises or any portion thereof may further assign or sublet the Leased Premises or any portion thereof. In the event Landlord consents to any assignment or subletting, any Renewal Options provided for in this Lease shall become null and void.

ARTICLE VIII. FIRE AND EXTENDED COVERAGE INSURANCE; DAMAGE OR EMINENT DOMAIN

SECTION 8.1. FIRE AND EXTENDED COVERAGE INSURANCE

From and after the Lease Commencement Date of the Lease and throughout the remainder of the Term of this Lease, Landlord shall procure and pay for windstorm, fire and extended coverage insurance, insuring the Shopping Center building in which the Leased Premises are located for

such amount as Landlord's lender shall require, in a responsible insurance company authorized to do business in the State in which the Shopping Center exists. Such insurance policy may insure against loss or damage from fire, windstorm, tornado, hail, disaster, earthquake, vandalism, riot, malicious mischief (and including boiler insurance and war risk insurance if then available), insurance against floods if required by the Federal Flood Disaster Protection Act of 1973 and Regulations issued thereunder, and such other insurance as commonly, or in the judgment of Landlord prudently, maintained by those whose business, improvement to and use of the Leased Premises is similar to that of the Tenant. Such insurance may contain the so-called "Replacement Cost" or "Restoration Endorsement," a provision to the effect that the waiver of subrogation rights by the insured does not void the coverage, and such special endorsements as reasonably requested by Landlord. Tenant shall pay to Landlord, as Additional Rent hereunder, on the first day of each calendar month Tenant's prorata share of the premiums for said fire and extended coverage insurance, Tenant's prorata share to be the same as its prorata share of Common Areas expense.

SECTION 8.2. FIRE, EXPLOSION OR OTHER CASUALTY

In the event the Leased Premises are damaged by fire, explosion or any other casualty to an extent which is less than Fifty Percent (50%) of the cost of replacement of the Leased Premises, the damage shall promptly be repaired by Landlord at Landlord's expense, provided that Landlord shall not be obligated to expend for such repair an amount in excess of the insurance proceeds recovered or recoverable as a result of such damage, and that in no event shall Landlord be required to repair or replace Tenant's stock in trade, fixtures, furniture, furnishings, floor coverings and equipment. In the event of any such damage and (i) Landlord is not required to repair as hereinabove provided, or (ii) the Leased Premises shall be damaged to the extent of Fifty Percent (50%) or more of the cost of replacement, or (iii) the building of which the Leased Premises are a part is damaged to the extent of Twenty Five Percent (25%) or more of replacement, or (iv) the buildings (taken in the aggregate) in the Shopping Center shall be damaged to the extent of more than Twenty Five Percent (25%) of the aggregate cost of replacement, Landlord may elect either to repair or rebuild the Leased Premises or the building or buildings, or to terminate this Lease upon giving notice of such election in writing to Tenant within ninety (90) days after the occurrence of the event causing the damage. If the casualty, repairing or rebuilding shall render the Leased Premises untenable, in whole or in part, and the damage shall not have been due to the act or omission of Tenant, a proportionate abatement of the Fixed Minimum Rent shall be allowed from the date when the damage occurred until the date Landlord completes its work, plus the earlier of (i) sixty (60) days or (ii) the date Tenant reopens for business, however, Tenant shall pay all Additional Rent charges beginning on the date Landlord completes its works, said proportion to be computed on the basis of the relation which the gross square foot area of the space rendered untenable bears to the floor space of the Leased Premises. In the event the Leased Premises shall be damaged or destroyed and the same are not repaired or rebuilt by Landlord within three hundred sixty-five (365) days after the date of the damage or destruction, unless said repair is held up by Tenant, or in the event that Thirty Percent (30%) or more of the Gross Leasable Area of the Shopping Center shall be damaged or destroyed and the same is not repaired or rebuilt within four hundred fifty-five (455) days after the date of damage or destruction, or in the event of any material damage or destruction to the Leased Premises during the last year of the Lease Term, then, in such event, Tenant shall have the right to terminate this Lease upon written notice to Landlord.

SECTION 8.3. EMINENT DOMAIN

If the whole of the Leased Premises shall be taken by any public authority by the exercise, or under the threat of the exercise, of the power of eminent domain, the Lease Term shall cease as of the day the right to possession shall be taken by such public authority, and Tenant shall pay rent up to that date with an appropriate refund by Landlord of such rent as may have been paid in advance for any period subsequent to the date the right of possession is taken. If less than all of the Floor Area of the Leased Premises shall be so taken, the Lease Term shall cease only on the parts so taken as of the day the right to possession shall be taken by such public authority, and Tenant shall pay rent up to that date with appropriate refund by Landlord of such rent as may have been paid in advance for any period subsequent to the date the right to possession is taken and thereafter the Fixed Minimum Rent shall be equitably adjusted. Landlord shall, at its expense, make all necessary repairs or alterations to the basic building and exterior work so as to constitute the remaining premises a complete architectural unit, provided that Landlord shall not be obligated to undertake any such repairs and alterations if the cost thereof exceeds the award received by Landlord. If the Floor Area of the Leased Premises so taken leaves space no longer suitable for the use set forth in Section 1.1, then the Lease Term shall cease and Tenant shall pay rent up to the date the right to possession is taken, with an appropriate refund by Landlord of such rent as may have been paid in advance for any period subsequent to the date of the taking of the right to possession. If more than Twenty Five Percent (25%) of the Floor Area of the building in which the Leased Premises are located, or more than Twenty Five Percent (25%) of the aggregate Floor Area of all buildings in the Shopping Center, shall be taken by the exercise, or under the threat of the exercise, of the power of eminent domain, Landlord may, by notice in writing to Tenant delivered on or before the day of surrendering the right to possession to the public authority, terminate this Lease and rent shall be paid or refunded as of the date of termination. In the event fifty percent (50%) of the Shopping Center is lost due to such taking and such taking significantly impairs Tenant's ability to do business in the Leased Premises, Tenant shall have the right to terminate this Lease by sending a written notice ("Termination Notice") to Landlord setting forth the grounds for such termination and setting a date for such termination ("Termination Date") at least ninety (90) days prior to such Termination Date. All compensation awarded for any taking under the power of eminent domain, whether for the whole or a part of the Leased Premises, shall be the property of Landlord, whether such damages shall be awarded as compensation for diminution in the value of the leasehold or to the fee of the Leased Premises or otherwise, and Tenant hereby assigns to Landlord all of Tenant's right, title and interest in and to any and all such compensation.

ARTICLE IX. DEFAULTS BY TENANT AND REMEDIES

SECTION 9.1. DEFAULTS BY TENANT

Without further notice, Landlord may terminate this Lease:

- (i) five (5) days after notice of default, if any default by Tenant continues after notice of default, in case of nonpayment of rent or the nonpayment of any other charges or payments to be made hereunder by Tenant, for more than five (5) days (except no notice need be given for a monetary

default occurring after the second such monetary default in any Lease Year); or

(ii) thirty (30) days after notice of default, if Tenant does not cure any nonmonetary default within a reasonable time, but in any event no later than thirty (30) days after notice of default; or

(iii) immediately if Tenant makes any assignment for the benefit of creditors, commits any act of bankruptcy or files or is subject to a petition under any bankruptcy or insolvency law, and if such a petition filed against Tenant is not dismissed within ninety (90) days; or

(iv) immediately if a receiver or similar officer becomes entitled to this leasehold; or

(v) immediately if Tenant's interest in this Lease is taken upon execution or other process of law in any action against Tenant; or

(vi) immediately if the Leased Premises are levied upon by any revenue officer or similar officer; or

(vii) immediately if Tenant does, or permits to be done, any act which creates a mechanic's lien or claim therefor against the land or building of which the Leased Premises are a part and Tenant does not comply with the provisions of Section 7.1.M; or

(viii) immediately if Tenant shall abandon, vacate or cease to continually operate its business within said Leased Premises during the term of this Lease for a period of more than three (3) consecutive days or five (5) days in any Lease Year; or

(ix) immediately if Tenant fails to open for business within thirty (30) days after the Lease Commencement Date.

Upon termination of this Lease, Landlord may re-enter the Leased Premises with or without process of law, using such force as may be necessary, and remove all persons, fixtures and chattels therefrom, and Landlord shall not be liable for any damages resulting therefrom. Upon such repossession of the Leased Premises, Landlord shall not be liable for any damages resulting therefrom. Upon such repossession of the Leased Premises, Landlord shall be entitled to recover as liquidated damages and not as a penalty, immediately and upon demand, a lump sum of money equal to (a) the value of the Fixed Minimum Rent and other sums provided herein to be paid by Tenant to Landlord for the remainder of the Lease Term where recoverable under applicable state law (the "Total Rent Amount") or (b) the Total Rent Amount, less the fair rental value of the Leased Premises for said period. Upon the happening of any one or more of the above-mentioned events, Landlord may repossess the Leased Premises by forcible entry or detainer suit, or otherwise, without demand or notice of any kind to Tenant (except as hereinabove expressly provided for) and without terminating this Lease, in which event Landlord may, but shall be under no obligation so to do, relet all or any part of the Leased Premises for such rent and upon such terms as shall be satisfactory to Landlord (including the right to relet the Leased Premises for a term greater or lesser than that remaining under the Lease Term, and the right to relet the Leased Premises as a part of a larger area, and the right to change the character or use made of the Leased Premises). For the purpose of such reletting, Landlord may decorate and make any repairs,

changes, alterations or additions in or to the Leased Premises that may be necessary or convenient. If Landlord does not relet the Leased Premises, Tenant shall pay to Landlord on demand as liquidated damages and not as a penalty a sum equal to the amount of the Fixed Minimum Rent, and other sums provided herein to be paid by Tenant for the remainder of the Lease Term. If the Leased Premises are relet and a sufficient sum shall not be realized from such reletting, after paying all of the expenses of such decorations, repairs, changes, alterations, additions, the expenses of such reletting and the collection of the rent accruing therefrom, to satisfy the rent herein provided to be paid for the remainder of the Lease Term, Tenant shall pay to Landlord, on demand, any deficiency and Tenant agrees that Landlord may file suit from time to time to recover any sums falling due under the terms of this section. Any recovery under this section shall be without relief from valuation and appraisal laws.

SECTION 9.2. INTEREST ON LATE PAYMENT; LATE CHARGE

Any payment due Landlord by Tenant pursuant to the terms and conditions of this lease including but not limited to all Fixed Minimum Rent, and Additional Rent which shall not be paid when due shall bear interest at the maximum rate payable by Tenant under state law, or in the absence of a maximum rate, at the rate of Eighteen Percent (18%) per annum from the date when the same is payable under the terms of this Lease until the same shall be paid. In the event any monetary payment is made more than seven (7) days after its due date, Landlord shall be entitled to a late payment fee of ONE HUNDRED and no/100 DOLLARS (\$100.00) in addition to such interest charge as hereinabove set forth.

SECTION 9.3. HOLDOVER BY TENANT

In the event Tenant remains in possession of the Leased Premises after the expiration of the tenancy created hereunder, and without the execution of a new lease, Tenant shall be deemed to be occupying the Leased Premises as a tenant from month-to-month at One Hundred Fifty Percent (150%) of the Fixed Minimum Rent subject to all the other conditions, provisions and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy.

SECTION 9.4. LANDLORD'S RIGHT TO CURE DEFAULTS

Landlord may, but shall not be obligated to, cure at any time, without notice, any default by Tenant under this Lease at Tenant's expense. Such cost to be immediately reimbursed upon written notice from Landlord that such expense has been paid.

SECTION 9.5. EFFECT OF WAIVERS OF DEFAULT

No consent or waiver, expressed or implied, by Landlord to or of any breach of any covenant, condition or duty of Tenant shall be construed as a consent of waiver to or of any other breach of the same or other covenant, condition or duty.

SECTION 9.6. REMEDIES CUMULATIVE

No remedy herein or otherwise conferred upon or reserved to Landlord shall be considered to exclude or suspend any other remedy but the same shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute, and every power and remedy given by this Lease to Landlord may be exercised, from time to time, and so often as occasion may arise or as may be deemed expedient.

SECTION 9.7. TERMINATION OF TENANT'S ADDITIONAL RIGHTS

In consideration for the faithful observance of the terms of this Lease, and any extension hereof, Tenant has negotiated for (and Landlord has granted herein) certain option rights at Section 1.1.S. (referred to in this Section as "Tenant's Additional Rights"). For so long as no event of default occurs and remains uncured beyond the cure period, if any, set out in Section 9.1 of this Lease, Tenant's Additional Rights shall remain in full force and effect. However, should an event of default occur at any time during the term hereof or any extension(s) (and remain uncured beyond the applicable cure period, if any) Tenant's Additional Rights shall terminate, and the same shall be deemed null and void thereafter. Said termination shall occur as provided herein without further notice from Landlord, and Tenant's subsequent cure after the expiration of the appropriate cure period shall not reinstate or otherwise preserve Tenant's terminated rights.

ARTICLE X. MISCELLANEOUS PROVISIONS

SECTION 10.1. MUTUAL WAIVER OF SUBROGATION RIGHTS

Whenever (i) any loss, cost, damage or expense resulting from fire, explosion or any other casualty or occurrence is incurred by either of the parties to this Lease in connection with the Leased Premises, and (ii) such party is then covered in whole or in part by insurance with respect to such loss, cost, damage or expense, then the party so insured hereby releases the other party from any liability it may have on account of such loss, cost, damage or expense to the extent of any amount recovered by reason of such insurance and waives any right of subrogation which might otherwise exist in or accrue to any person or account thereof, provided that such release of liability and waiver of the right of subrogation shall not be operative in any case where the effect thereof is to invalidate such insurance coverage or increase the cost thereof (provided that in the case of increased cost the other party shall have the right, within thirty (30) days following written notice, to pay such increased cost thereupon keeping such release and waiver in full force and effect).

SECTION 10.2. NOTICES FROM ONE PARTY TO THE OTHER

All notices provided for in the Lease shall be in writing and shall be deemed to be given (a) upon the earlier of (i) actual receipt; (ii) refusal thereof; or (iii) three (3) days after having been sent, if notice was sent by prepaid registered or certified mail, return receipt requested; or (b) one (1) day after having been sent, if notice was sent by a nationally recognized overnight courier service which requires the recipient to sign a receipt; addressed, if to Tenant, at the address of Tenant set forth in Section 1.1.F, or such other address as Tenant shall have last designated by notice in

writing to Landlord (which written notice to Landlord must clearly be labeled "Change of Tenant's Address for Notice Purposes"), and if to Landlord, to the place then established for the payment of rent, or such other address as Landlord shall have last designated by notice in writing to Tenant. The customary receipt shall be conclusive evidence of such service.

SECTION 10.3. BROKERAGE

Tenant warrants that it has had no dealings with any broker in connection with this Lease other than the City of Flowery Branch and covenants to pay, hold harmless and indemnify Landlord from and against any and all costs (including reasonable attorneys' fees), expense or liability for any compensation, commissions and charges claimed by any other broker or other agent with respect to this Lease or the negotiation thereof.

SECTION 10.4. RELATIONSHIP TO THE PARTIES

Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto or any other relationship, other than the relationship of Landlord and Tenant. Whenever herein the singular number is used, the same shall include the plural and the masculine gender shall include the feminine and neuter genders.

SECTION 10.5. ESTOPPEL CERTIFICATES

At any time and from time to time, Tenant agrees, upon request in writing from Landlord, to execute, acknowledge and deliver to Landlord no later than ten (10) days after such request, a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), the dates through which the Fixed Minimum Rent, Additional Rent, and other charges have been paid, and making such other reasonable certifications as Landlord, Landlord's mortgagee or Landlord's potential mortgagee may require.

SECTION 10.6. APPLICABLE LAW AND CONSTRUCTION

The laws of the State in which the Shopping Center exists shall govern the validity, performance and enforcement of this Lease. The invalidity or unenforceability of any provision of this Lease shall not affect or impair any other provision. The headings of the several articles and sections contained herein are for convenience only and do not define, limit or construe the contents of such articles or sections.

SECTION 10.7. FORCE MAJEURE

Whenever a period of time is provided in this Lease for either party to do or perform any act or

thing, said party shall not be liable or responsible for any delay due to strikes, lockouts, casualties, acts of God, war, governmental regulation or control or other causes beyond the reasonable control of said party, and in any such event said time period shall be extended for the amount of time said party is so delayed, provided that this section shall not apply to Tenant's covenants to pay Rent and other charges hereunder.

SECTION 10.8. EXECUTION OF LEASE BY LANDLORD

The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for, the Leased Premises and this document becomes effective and binding only upon the execution and delivery hereof by Landlord and by Tenant. All negotiations, considerations, representations and understandings between Landlord and Tenant are incorporated herein and may be modified or altered only by agreement in writing between Landlord and Tenant, and no act or omission of any employee or other agent of Landlord or of Landlord's broker shall alter, change or modify any of the provisions hereof.

SECTION 10.9. BINDING EFFECT OF LEASE

The covenants, agreements and obligations herein contained, except as herein otherwise specifically provided, shall extend to, bind and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns. Landlord, at any time and from time to time, may make an assignment of its interest in this Lease, and in the event of such assignment and the assumption by the assignee of the covenants and agreements to be performed by Landlord herein, Landlord and its successors and assigns (other than the assignee of this Lease) shall be released from any and all liability hereunder.

SECTION 10.10. SURVIVAL

All representations, warranties, covenants, conditions and agreements contained herein which either expressly survive the expiration or termination of this Lease or, by their nature, are to be performed or observed, in whole or in part, after the termination or expiration of this Lease, shall survive the termination or expiration of this Lease.

SECTION 10.11. NO MODIFICATION

This writing is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms thereof, all negotiations, considerations and representations between the parties having been incorporated herein. No course of prior dealings between the parties or their officers, employees, agents or affiliates shall be relevant or admissible to supplement, explain or vary any of the terms of this Lease. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement between the parties or their affiliates shall not be relevant or admissible to determine the meaning of any of the terms of this Lease. No representations, understandings or agreements have been made or relied upon in the

making of this Lease other than those specifically set forth herein. This Lease can be modified only by a writing signed by the party against whom the modification is enforceable.

SECTION 10.12. SEVERABILITY

If any portion of any term or provision of this Lease, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

SECTION 10.13. SIGN CRITERIA

Within fifteen (15) days after full Lease execution, Tenant shall submit to Landlord two (2) sets of drawings for all proposed signage. The drawings shall clearly show location of sign on storefront elevation, graphics, colors and materials. No signs of any type or description shall be erected, placed or painted in or about the Leased Premises except those signs submitted to Landlord in writing and approved by Landlord in writing, and which signs are in conformity with all applicable laws, regulations, codes and ordinances and in conformity with Landlord's sign criteria as stated in Exhibit E (including without limitation restrictions on duration of posting of sale signs or other signs by Tenant) established for the Shopping Center. Landlord reserves the right to remove, at Tenant's expense, all signs other than signs approved in writing by Landlord under this Section 10.13, without notice to Tenant and without liability to Tenant for any damages sustained by Tenant as a result thereof, and Tenant shall repair any damage caused by such removal. Tenant shall have thirty (30) days from the Possession Date in which to install approved signage on the building facade or Tenant shall be deemed in default.

SECTION 10.14. SALES AND RENTAL TAX

Tenant covenants and agrees to pay to Landlord any and all sales and/or rental taxes imposed by the State in which the Shopping Center exists or any other governmental agency with respect to all Fixed Minimum Rent, Additional Rent, and all other payments of monies, including but not limited to, Common Areas maintenance charges and Real Estate Taxes paid by Tenant to Landlord pursuant to the terms of this Lease.

SECTION 10.15. FAILURE OF TENANT TO OPEN

If Tenant fails to open for business within thirty (30) days after the Lease Commencement Date, then Landlord may terminate this Lease, at Landlord's option, and all monies paid to Landlord shall remain the property of Landlord.

SECTION 10.16. HAZARDOUS MATERIALS

Tenant shall not (either with or without negligence) cause or permit the escape, disposal or release of any biologically or chemically active or other hazardous substances, or materials. Tenant shall not allow the storage or use of such substances or materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such substances or materials, nor allow to be brought into the Leased Premises any such materials or substances. Without limitation, hazardous substances and materials shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C.A. §§ 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C.A. §§ 6901 et seq., and any applicable state or local laws and the regulations adopted under these acts. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials, then the reasonable costs thereof shall be reimbursed by Tenant to Landlord upon demand as additional charges if such requirement applies to acts and/or omissions of the Tenant. In addition, Tenant shall execute affidavits, representations and the like from time to time at Landlord's request concerning Tenant's best knowledge and belief regarding the presence of hazardous substances or materials on the Leased Premises. In all events, Tenant shall indemnify and hold Landlord harmless in the manner elsewhere provided in this Lease from any release of hazardous materials on the Leased Premises occurring while Tenant is in possession, or elsewhere if caused by Tenant or persons acting under Tenant. The within covenants shall survive the expiration or earlier termination of the Lease term.

Landlord, to the best of Landlord's knowledge and belief, states that there are no hazardous materials within the Leased Premises as of the date of this Lease.

Landlord acknowledges that materials potentially presenting a biohazard risk may be present on the site during the course of Tenant's business activities and that such biohazardous material will be collected and stored in containers using the universal biohazardous symbol in the Leased Premises prior to proper disposal. Tenant will at all times store such material in the required manner and shall assure that the material is disposed of as required by all governmental agencies. The parties acknowledge that Landlord shall not be responsible for the disposal or storage of any such materials and that in the event Landlord, its agents or employees shall enter the Leased Premises such party shall use best efforts and caution to deal in a reasonable manner with any such materials if required to do so.

SECTION 10.17. RIGHT TO RELOCATE

In the event Landlord shall add additional buildings to the Shopping Center or expand any of the buildings currently contained therein or renovate or reconfigure any part of the Shopping Center in the vicinity of the Leased Premises, Landlord shall have the right, subject to Tenant's right of termination as set forth below to relocate Tenant's operation to other premises (the "New Premises") in another part of the Shopping Center or building in accordance with the following:

Landlord shall notify Tenant, at least one hundred fifty (150) days prior to the proposed relocation

date, of Landlord's intention to relocate Tenant's operation to the New Premises; the proposed relocation date and the size, configuration and location of the New Premises shall be set forth in Landlord's notice; and the New Premises shall be substantially the same in size and configuration as the Leased Premises described in the Lease.

In the event Landlord relocates Tenant and has completed the Tenant Improvements at Landlord's expense, Tenant shall enter into a new lease agreement with Landlord for a period of five (5) years under the same terms and conditions of this Lease.

In the event the New Premises described in Landlord's relocation notice are unacceptable to Tenant, Tenant shall have the right, exercisable by written notice to Landlord, given thirty (30) days following receipt of Landlord's relocation notice, to reject the relocation request. Upon Landlord's receipt of Tenant's rejection Landlord shall, in its sole discretion, have the right to terminate this Lease, such termination to be effective as of the proposed relocation date as set forth in Landlord's notice or to retract the relocation request and this Lease shall continue in full force and effect. Failure by Tenant to timely exercise such right shall be deemed a waiver with respect thereto and confirmation that the New Premises are acceptable to Tenant. Tenant shall have the right to accept the New Premises only for the unexpired term of this Lease.

Landlord has made no representation as to any additional improvements or stores or any existing stores in the Shopping Center and this provision does not create any rights of option, first refusal or otherwise with respect to any present or future space in the Shopping Center.

SECTION 10.18. AMERICANS WITH DISABILITIES ACT

Landlord agrees that at the time of delivery to Tenant all common areas, such as sidewalks and parking lots to the best of Landlord's knowledge will comply with the Americans with Disabilities Act of 1990 and the regulations promulgated thereunder. At Tenant's expense, Tenant agrees to design, furnish, and construct the Leased Premises to comply with the Americans with Disabilities Act of 1990.

Within ten (10) days after receipt, Landlord and Tenant shall advise the other party in writing, and provide the other with copies of (as applicable), any notices alleging violation of the Americans with Disabilities Act of 1990 ("ADA") relating to any portion of the Property or of the Leased Premises; any claims made or threatened in writing regarding noncompliance with the ADA and relating to any portion of the Property or of the Leased Premises; or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to any portion of the Property or the Leased Premises.

SECTION 10.19. RECORDATION

Neither this Lease nor a short form or memorandum thereof shall be recorded in the public records.

SECTION 10.20. LANDLORD'S RESTRICTIONS

Except as permitted by existing leases, Landlord, to the best of Landlord's ability, agrees that no part of the Shopping Center shall be occupied by an adult book or adult video store or other businesses which sell or display pornographic material, however, any sale of adult magazines or rental of adult videos in less than ten percent (10%) of the sales floor area of any tenant shall not be considered a violation of this agreement.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease the day and year first above written.

Date: September 21, 2023

Date: September 21, 2023

LANDLORD: City of Flowery Branch, GA

TENANT: Baby Bell Candy Apples, LLC

Edward R. Asbridge

By: Edward R. Asbridge, Mayor

Gwendolyn Andreka Bell

By: Gwendolyn Andreka Bell, Manager

ATTEST:

Shelia R. Cooper

By: Shelia Cooper, City Clerk

Sworn to and subscribed before me
this 21st day of September 2023.

Nancy Galvan Rodriguez

NOTARY PUBLIC

My Commission Expires: April 1, 2025

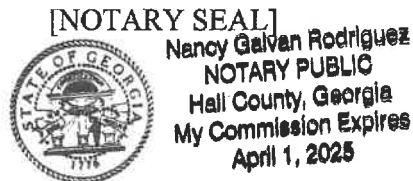


EXHIBIT A
SITE PLAN

This Exhibit is solely for the purpose of showing the approximate location of the Leased Premises within the Shopping Center and for no other reason whatsoever. Landlord reserves the right to relocate, change, expand or delete parking spaces or parking areas, curb cuts, entrances, service areas, total building area, frontage, etc., including expansion or demolition of existing or new buildings.

5527 Main Street

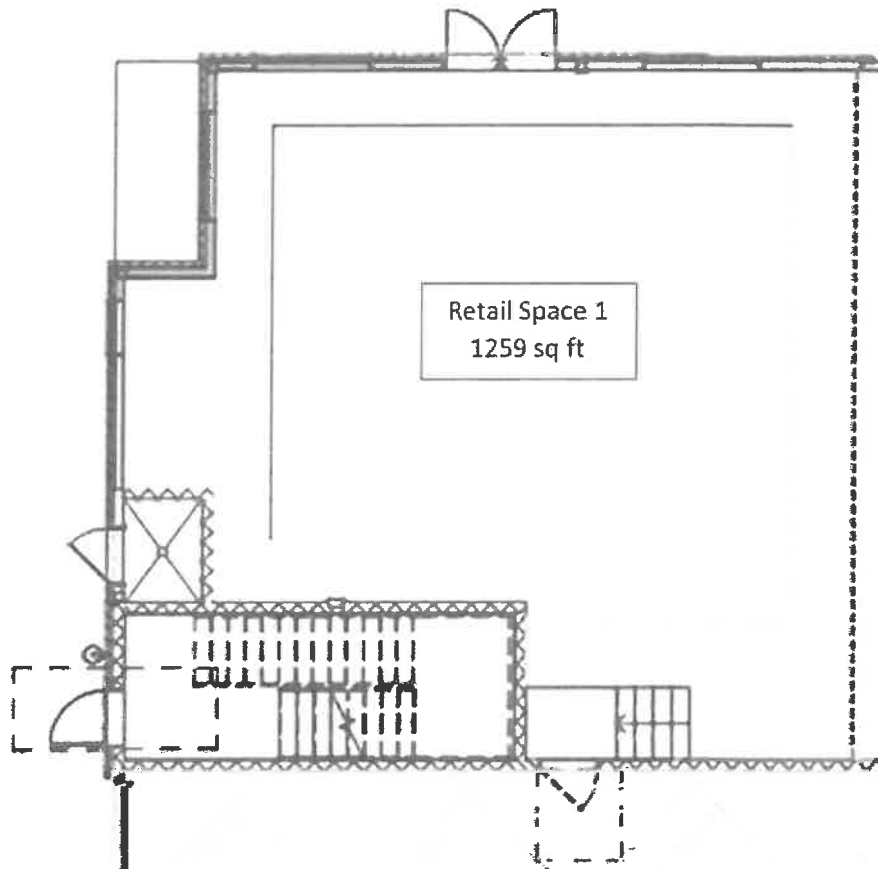


EXHIBIT B
LANDLORD AND TENANT'S WORK

Landlord's Work

1. Notwithstanding anything to the contrary contained herein, Tenant acknowledges and agrees to accept delivery of possession of the Leased Premises in the present "AS IS" condition, without any representation or warranty as to said condition, it being understood that Landlord has no obligation to perform any work or repairs in connection with the preparation of the Leased Premises for Tenant's occupancy, except as set forth below:

a. Landlord shall deliver the major components of the internal grease trap, sanitary sewer stub, ventilation chase for hood exhaust and an undistributed HVAC system in good working order.

2. Provided Tenant is not in default hereunder and shall have completed Tenant's Work in compliance with the plans and specifications approved by Landlord and in compliance with all governmental codes, ordinances and the terms hereof, Landlord shall pay to Tenant a sum up to Sixty Two Thousand, Nine Hundred Fifty and No/100 Dollars (\$62,950.00) as a construction allowance (the "Tenant Improvement Allowance"), in no event to exceed the actual costs of improvements constituting Tenant's Work which are installed in the Leased Premises. The Tenant Improvement Allowance shall be paid by Landlord in four installments at the following times: (a) completion of 25% of the Tenant Work; (b) completion of 50% of the Tenant Work; (c) completion of 75% Tenant Work; and (d) the date Tenant opens the Leased Premises to the public. The payment of all installments shall be subject to Landlord's inspection confirming the percentage of Tenant Work has been completed in compliance with all applicable laws, codes, rules, and regulations. Additionally, the payment of the final installment is conditioned upon the Tenant delivers to Landlord the following documentation: (i) a certificate of occupancy for the Leased Premises, (ii) waivers of lien in form and substance satisfactory to Landlord, (iii) paid invoices for Tenant's Work for which the Tenant Improvement Allowance will be or has been applied, (iv) proof of installation of a Landlord approved exterior sign on the Leased Premises which identifies Tenant's business. Any portion of the Tenant Improvement Allowance not utilized by Tenant in connection with initial improvement of the Leased Premises in accordance with the provisions of this Work Schedule shall be retained by Landlord for Landlord's benefit. No portion of the Tenant Improvement Allowance shall be applied toward Tenant's moving expenses, furniture, trade fixtures, equipment or any other personal property of Tenant. In the event of default under this Lease by Tenant, which default shall not have been fully cured by Tenant within any applicable cure period allowed under this Lease, any and all portions of the Tenant Improvement Allowance which shall have theretofore been disbursed to Tenant shall constitute additional rent and shall be immediately due and payable as such to Landlord.

3. During the construction of the Tenant Improvements, Landlord shall make disbursements of the Tenant Improvement Allowance for the benefit of Tenant in installments as set forth in Paragraph 2 above and shall authorize the release of monies for the benefit of the Tenant as follows:

During the construction of the Tenant Improvements (or such other date as the Landlord may designate), Tenant shall deliver to Landlord: (a) a request for reimbursement of amounts paid to the contractor, approved by Tenant in a form to be provided by landlord, showing the schedule, by trade, of percentage of completion of the Tenant Improvements in the Premises, detailing the portion of the work completed and the portion not completed, (b) all invoices for labor rendered and materials for the Premises, (c) executed mechanic's lien releases as applicable, from all of Tenant's agents performing work in the Premises, and (d) all other information reasonably required by Landlord. Tenant's request for payment shall be deemed Tenant's acceptance and approval of the work furnished and/or the materials supplied as set forth in the Tenant's reimbursement request. Within thirty (30) days thereafter, Landlord shall deliver a check to Tenant made payable to Tenant in payment of the lesser of (i) the amounts so requested by Tenant as, or (ii) the balance of any remaining available portion of the Tenant Improvement Allowance balance provided that Landlord does not dispute any request for payment based on non-compliance of any work with the plans and specifications or due to any substandard work. Landlord's payment of such amounts shall not be deemed Landlord's approval or acceptance of the work furnished or materials supplies as set forth in Tenant's payment request. Upon completion of the construction of the Tenant Improvements, Tenant shall deliver to Landlord properly executed mechanic's liens for work furnished and/or the materials supplied.

Tenant's Work

1. Tenant agrees to submit to Landlord plans and specifications covering the Tenant Improvements in such detail as Landlord or Managing Agent may require within fifteen (15) days of execution of this Lease and Tenant agrees not to commence work on any of the Tenant Improvements until Landlord has approved such plans and specifications in writing. On or before the Possession Date, Tenant shall deposit with Landlord a certificate of insurance clearly stating the insurance requirements specified in Section 7.2, Tenant shall commence Tenant's Work and proceed diligently and continuously to completion, including installation of fixtures and equipment in the Leased Premises. At all times during Tenant's construction, Landlord and its representatives shall have the right to enter upon the Leased Premises for the purpose of inspecting construction and progress of the Tenant Improvements. Tenant, at its sole cost, shall complete all interior improvements needed to operate its business.

2. Heating and Air Conditioning Maintenance Provisions:

Tenant, at its sole cost, shall maintain the air conditioning (includes heating) units(s) for the Leased Premises in good condition and repair throughout the term of this Lease.

As a part of its air conditioning maintenance obligation, Tenant shall enter into an annual contract with an air conditioning repair firm, fully licensed to repair air conditioning units in the State in which the Shopping Center exists, which firm shall:

a. Regularly service the air conditioning unit(s) on the Leased Premises on a monthly basis, changing belts, filters and other parts as required; and supply Landlord with copies of the maintenance reports should Landlord request them to do so.

b. Perform energy and extraordinary repairs on the air conditioning unit(s).

c. Keep a detailed record of all services performed on the Leased Premises and prepare an annual service report to be furnished to the Tenant at the end of each calendar year.

Tenant shall furnish to Landlord at the end of each calendar year, a copy of said annual service report. Not later than thirty (30) days prior to the Lease Commencement Date of the term of this Lease and annually thereafter, Tenant shall furnish to Landlord a copy of the air conditioning maintenance contract described above, and proof that the annual premium for the maintenance contract has been paid. Nothing stated herein above shall limit Tenant's obligation to maintain the air conditioning unit(s) in good condition and repair throughout the Term of this Lease.

EXHIBIT C
LEGAL DESCRIPTION

All that tract or parcel of land lying and being in GMD 1270, City of Flowery Branch, Hall County, Georgia and being more particularly described as follows:

The Retail Master Unit of the FB Main Street Master Condominium, as established by the Declaration of Condominium for FB Main Street, A Master Condominium, of record in Deed Book 8924, Page 507-595, Hall County, Georgia records, together with the undivided percentage of interest in the Common Elements appurtenance to said Unit as set forth in Exhibit B of the Declaration of Condominium for FB Main Street, A Master Condominium. Reference is hereby made to the plat of FB Main Street, A Master Condominium of record in Plat Book 880, Page 440 in Plat Book 880, Pages 441-445 Hall County, Georgia records, for a more complete identification and description of the Retail Master Unit.

EXHIBIT D
RULES AND REGULATIONS

Tenant covenants and agrees that Tenant, at its own cost and expense:

(a) Will keep all exterior and interior store front surfaces clean and will maintain the rest of the Leased Premises and all corridors and loading areas immediately adjoining the Leased Premises in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests;

(b) Will not permit accumulations of any refuse, but will remove the same and keep such refuse in odor-proof, rat-proof containers within the interior of the Leased Premises shielded from the view of the general public until removed and will not burn any refuse whatsoever but will cause all such refuse to be removed by such person or companies, including Landlord, as may be designated in writing by Landlord and will pay all charges therefor, which shall in all events be competitive within the same geographical area for similar services performed by a reputable person or company; provided, however that Landlord may decline to designate any such person or company in which event all such refuse shall be removed by such person or company as Tenant, subject to Landlord's prior written approval, shall select;

(c) Will promptly replace, any plate glass or window glass of the Leased Premises which may become cracked or broken, with glass of a like kind and quality;

(d) Will not, without Landlord's prior written consent, place or maintain any merchandise or other articles in any vestibule or entry of the Leased Premises or within two (2) feet of any entrance from the Leased Premises, on the foot walk adjacent thereto or elsewhere on the exterior thereof;

(e) Will not use or permit the use of any apparatus, or sound reproduction or transmission, or any musical instrument in such manner that the sound so produced, transmitted or reproduced shall be audible beyond the confines of the Leased Premises, and will not use any other advertising medium, including without limitation flashing lights, or search lights which may be heard or seen outside of the Leased Premises;

(f) Will keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the confines of the Leased Premises;

(g) Will not cause or permit objectionable odors to emanate or be dispelled from the Leased Premises;

(h) Will not solicit business, distribute handbills or other advertising matter or hold demonstrations in the parking areas or other Common Areas;

(i) Will not permit the parking of delivery vehicles so as to interfere with the use of any driveway, walk, parking area, or other Common Areas in the Shopping Center;

(j) Will comply with all laws, rules, regulations, guidelines, orders and ordinances of applicable

federal, state and local governmental authorities, commissions, boards and agencies with respect to this Lease, the use of Leased Premises or any work to be performed in the Leased Premises by Tenant and Tenant shall secure all permits, leases and approvals required for Tenant's use of the Leased Premises. In addition, Tenant shall also comply with all recommendations of the Association of Fire Underwriters, Factory Mutual Insurance Companies, the Insurance Services Organization, or other similar body establishing standards for fire insurance ratings with respect to the use occupancy of the Leased Premises by Tenant, and will participate in periodic fire brigade instructions and drills at the request of Landlord and will supply, maintain, repair and replace for the Leased Premises any fire extinguisher or other fire prevention equipment and safety equipment (including insulation of approved hoods and ducts if cooking activity is conducted in the Leased Premises) required by the aforementioned rules, regulations and associations or other body in order to obtain insurance at the lowest available premium rate throughout the Term of the Lease;

(k) Will keep all outside areas immediately adjoining the Leased Premises including, but not limited to, sidewalks and loading docks free from ice and snow and Tenant hereby agrees that Tenant is solely liable for any accidents occurring on said outside areas due or alleged to be due to any accumulation of ice and snow;

(l) Will not use the plumbing facilities for any other purpose than that for which they are constructed and will not permit any foreign substance of any kind to be thrown therein and the expense of repairing any breakage, stoppage, seepage or damage, whether occurring on or off the Leased Premises, resulting from a violation of this provision by Tenant or Tenant's employees, agents or invitees shall be borne by Tenant. All grease traps and other plumbing traps shall be kept clean and operable by Tenant at Tenant's own cost and expense;

(m) Will not permit any shopping carts in the Common Areas even if taken there by customers;

(n) Will not place or cause or permit to be placed within the Leased Premises, pay telephones, vending machines (except those for the exclusive use of this Tenant's employees) or amusement devices of any kind without the prior written consent of Landlord;

(o) Will comply with all obligations of the FB Main Street – A Master Condominium Declaration of Covenants and By-Laws.

EXHIBIT E
SIGN CRITERIA

Signs shall be furnished and installed by Tenant according to the following:

1. Landlord may erect and maintain such suitable signs or signage as Landlord, in its sole discretion, may deem appropriate to advertise the Premises.
2. Tenant may erect and maintain, at its sole cost and expense, not more than one (1) sign upon the exterior of the Premises, identifying Tenant's business by name. No such sign erected by Tenant shall contain a listing of merchandise or service or any slogan related to Tenant's business.
3. Tenant shall submit sign layout to Landlord for approval prior to its fabrication and installation.
4. All signs and sign locations must be approved by Landlord prior to installation, and Landlord reserves the right, in its sole discretion, to reject any sign proposed by Tenant that does not meet Landlord's requirements.
5. All signs must comply with applicable government regulations and requirements, and Tenant shall keep all signs property maintained and in good working order.
6. Care should be taken to prevent damage to the façade during sign installation.
7. Signage shall be installed in a manner so as not to create leaks through penetrations of the façade.
8. All permits and licenses for sign installation shall be the responsibility of Tenant or sign contractor.

EXHIBIT F
GUARANTY OF LEASE

LANDLORD:	CITY OF FLOWERY BRANCH, GEORGIA
TENANT:	BABY BELL CANDY APPLES, LLC
LEASE DATE:	

GUARANTY

FOR VALUE RECEIVED, and in consideration of, and as an inducement for the execution and delivery of the Lease dated above, for demising store premises in the FB Main Street – A Master Condominium Shopping Center (hereinafter called the “Lease”), by and between CITY OF FLOWERY BRANCH, GEORGIA, (hereinafter called “Landlord”), and BABY BELL CANDY APPLES, LLC, (hereinafter called “Tenant”), the undersigned, Gwendolyn Andreka Bell, an individual, (hereinafter called “Guarantor”), hereby guarantees to Landlord, its successors and assigns, the full and prompt payment of rent, including, but not limited to, the Fixed Minimum Rent, Additional Rent and any and all other sums and charges payable by Tenant, its successors and assigns, under said Lease, including specifically, but not by way of limitation, real estate taxes, insurance premiums, Common Areas and facilities charges, utility charges, heating, ventilating and cooling charges, air conditioning service charges, charge for heating, and Tenant’s share of special assessments, and further hereby guarantees the full and timely performance and observance of all the covenants, terms, conditions and agreements herein provided to be performed and observed by Tenant, its successors and assigns; and Guarantor hereby covenants and agrees to and with Landlord, its successors and assigns, that if default shall at any time be made by Tenant, its successors and assigns, in the payment of any such Fixed Minimum Rent, Additional Rent and any and all other sums and charges payable by Tenant, its successors and assigns, under said Lease, including specifically, but not by way of limitation, real estate taxes, insurance premiums, Common Areas and facilities charges, utility charges, heating, ventilating and cooling charges, air conditioning service charges, charge for heating, and Tenant’s share of special assessments, or if Tenant should default in the performance and observance of any of the terms, covenants, provisions or conditions contained in said Lease, Guarantor will forthwith pay such Fixed Minimum Rent, Additional Rent and other such sums and charges to Landlord, its successors and assigns, and any arrearages thereof, and will forthwith faithfully perform and fulfill all of such terms, covenants, conditions and provisions, and will forthwith pay to Landlord all damages that may arise in consequence of any default by Tenant, its successors and assigns, under said Lease, including, without limitation, all reasonable attorneys’ fees, disbursements incurred by Landlord or caused by any such default and/or by the enforcement of this Guaranty.

This Guaranty is an absolute and unconditional guarantee of payment and of performance. It shall be enforceable against Guarantor without the necessity of any suit or proceedings on Landlord’s part of any kind or nature whatsoever against Tenant, its successors and assigns, and without the necessity of any notice of nonpayment, nonperformance or nonobservance or of any notice of acceptance of this Guaranty or of any other notice or demand to which Guarantor hereby expressly waives; and Guarantor hereby expressly agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in nowise be terminated, affected, diminished or impaired

by reason of the assertion or the failure to assert by Landlord against Tenant, or against Tenant's successors and assigns, of any of the rights or remedies reserved to Landlord pursuant to the provisions of said Lease.

This Guaranty shall be a continuing guaranty and the liability of Guarantor hereunder shall in no way be affected, modified or diminished by reason of any assignment, renewal, modification or extension of the Lease or by reason of any modification or waiver of or change in any of the terms, covenants, conditions or provisions of the Lease, or by reason of any extension of time that may be granted by Landlord to Tenant, its successors or assigns, or a changed or different use of the Leased Premises consented to in writing by Landlord, or by reason of any dealings or transactions or matter or thing occurring between Landlord and Tenant, its successors or assigns, whether or not notice thereof is given to Guarantor. Guarantor shall promptly furnish Landlord, from time to time, financial statements reflecting Tenant's current financial condition whenever requested by Landlord.

Landlord's consent to any assignment or assignments, and successive assignments by Tenant, of the Lease made either with or without notice to Guarantor shall in no manner whatsoever release Guarantor from any liability as Guarantor.

The assignment by Landlord of the Lease and/or the avails and proceeds thereof made either with or without notice to Guarantor shall in no manner whatsoever release Guarantor from any liability as Guarantor.

All of Landlord's rights and remedies under the said Lease or under this Guaranty are intended to be distinct, separate and cumulative and no such right and remedy therein or herein mentioned is intended to be in exclusion of or a waiver of any of the others. If there is more than one Guarantor hereunder, each Guarantor is jointly and severally liable hereunder, and they are collectively herein referred to as the Guarantor.

IN WITNESS WHEREOF, the undersigned Guarantor has executed this Guaranty the date above set forth.

GUARANTOR(S):

GWENDOLYN ANDREKA BELL, INDIVIDUALLY



By: Gwendolyn Andreka Bell, an Individual
Address: 1087 Liberty Park Drive, Braselton GA 30517
Social Security Number: *[Insert]*

Sworn to and subscribed before me
this is 21st day of September 2023.


NOTARY PUBLIC

My Commission Expires:
April 1, 2025

[SEAL]



Nancy Galvan Rodriguez
NOTARY PUBLIC
Hall County, Georgia
My Commission Expires
April 1, 2025

EXHIBIT G
RENT SCHEDULE

The following schedule shall begin on the Fixed Minimum Rent Commencement Date. Notwithstanding the foregoing, beginning on the Possession Date Tenant shall begin the payment of Tenant's prorata share of Additional Rent as shown in Section 1.1.M.

LEASE TERM

Term	Monthly Fixed Minimum Rent	Annual Fixed Minimum Rent	Additional Rent
Months 1 - 12	\$ 2,622.92	\$ 31,475.00	Full Amount Due Under the Lease
Months 13 - 24	\$ 2,701.60	\$ 32,419.25	Full Amount Due Under the Lease
Months 25 - 36	\$ 2,782.65	\$ 33,391.83	Full Amount Due Under the Lease
Months 37 - 48	\$ 2,866.13	\$ 34,393.58	Full Amount Due Under the Lease
Months 49 - 60	\$ 2,952.12	\$ 35,425.39	Full Amount Due Under the Lease

FIRST OPTION

Term	Monthly Fixed Minimum Rent	Annual Fixed Minimum Rent	Additional Rent
Months 61 - 72	\$ 3,040.68	\$ 36,488.15	Full Amount Due Under the Lease
Months 73 - 84	\$ 3,131.90	\$ 37,582.80	Full Amount Due Under the Lease
Months 85 - 98	\$ 3,225.86	\$ 38,710.28	Full Amount Due Under the Lease
Months 99 - 110	\$ 3,322.63	\$ 39,871.59	Full Amount Due Under the Lease
Months 111 - 122	\$ 3,422.31	\$ 41,067.74	Full Amount Due Under the Lease

FIRST AMENDMENT TO FB MAIN STREET
A MASTER CONDOMINIUM SHOPPING CENTER LEASE AGREEMENT

THIS FIRST AMENDMENT TO FB MAIN STREET A MASTER CONDOMINIUM SHOPPING CENTER LEASE AGREEMENT (this "Amendment"), is made and entered into effective the 20th day of June, 2024, by and between the CITY OF FLOWERY BRANCH (hereinafter referred to as "Landlord") and BABY BELL CANDY APPLES, LLC, a limited liability company, (hereinafter referred to as "Tenant").

WHEREAS, Landlord and Tenant entered into that certain lease agreement dated September 21, 2023 (the "Original Lease"), for that certain property commonly known as 5527 Main Street, Flowery Branch, Georgia (the "Demised Premises"); and

WHEREAS, Landlord and Tenant desire to amend the Original Lease, on and subject to the terms and conditions set forth herein.

NOW, THEREFORE, AND IN CONSIDERATION of the sum of One and No/100 Dollars (\$1.00), each to the other paid, the receipt and adequacy and sufficiency of which is hereby acknowledge, and the mutual covenants flowing between the parties hereto, the Original Lease is hereby amended as follows:

1. Recitals. Each of the foregoing recitals and representations in this Amendment form a material part of this Amendment and are incorporated herein by this reference, and such recitals and representations and the Original Lease are hereby ratified.
2. Basic Lease Provisions. Section 1.1. K. FIXED MINIMUM RENT COMMENCEMENT DATE is deleted in its entirety and replaced with the following: "Earlier of (i) Tenant opening for business or (ii) ten (10) months following the Lease Commencement Date."

EXCEPT AS HEREIN PROVIDED, all other terms and conditions of the Original Lease shall remain the same and the parties hereto do hereby ratify the Original Lease.

IN WITNESS WHEREOF, Landlord and Tenant have carefully read and reviewed this Amendment and each term and provision contained herein, and by the execution of this Amendment shows their informed and voluntary consent thereto. The parties hereby agree that, at the time this Amendment is executed, the terms of this Amendment are commercially reasonable and effectuate the intent and purpose of Landlord and Tenant with respect to the Demised Premises.

This 20th day of June, 2024.

Signatures Next Page

LANDLORD: CITY OF FLOWERY BRANCH,
GEORGIA

By: Edward R. Asbridge
Edward R. Asbridge, Mayor

ATTEST:

Shelia Cooper
Shelia Cooper, City Clerk

TENANT: BABY BELL CANDY APPLES, LLC

By: Gwendolyn A. Bell
Gwendolyn Andreka Bell, Manager

Sworn to and subscribed before me
this 2 day of July, 2024.

Sandie Benitez
NOTARY PUBLIC
My commission expires: April 11, 2028



Sandie Benitez
NOTARY PUBLIC
Hall County, Georgia
My Commission Expires
April 11, 2028

CITY OF FLOWERY BRANCH

5410 Pine Street
Flowery Branch, GA. 30542
Phone: (770) 967-6371

INVOICE

PAST DUE

INVOICE #	DATE
20240917	9/17/2024

BILL TO
Baby Bell Candy Apples, LLC Gwendolyn Andreka Bell 1087 Liberty Park Drive Braselton, GA 30517 babybellcandyapple@att.net

CUSTOMER ID	TERMS
Baby Bell Candy Apples, LLC	Due Upon Receipt

DESCRIPTION	QTY	UNIT PRICE	AMOUNT
Security Deposit	1	2911.44	2,911.44
August Monthly Rent	1	2,622.92	2,622.92
August Advance Additional Rent	1	288.52	288.52
September Monthly Rent	1	2,622.92	2,622.92
September Advance Additional Rent	1	288.52	288.52
September Late Fee	1	100.00	100.00
September Interest	1	1.5%	43.67
October Monthly Rent	1	2,622.92	2,622.92
October Advance Additional Rent	1	288.52	288.52

Thank you for your business!



SUBTOTAL	11,789.43
TAX RATE	0.000%
Payments Received	-
TOTAL	\$ 11,789.43

Payments must be received at City Hall: 5410 Pine Street Flowery Branch, GA 30542

CITY OF FLOWERY BRANCH

INVOICE

PAST DUE

5410 Pine Street
Flowery Branch, GA. 30542
Phone: (770) 967-6371

INVOICE #

20241017

DATE

10/17/2024

BILL TO

Baby Bell Candy Apples, LLC
Gwendolyn Andreka Bell
1087 Liberty Park Drive
Braselton, GA 30517
babybellcandyapple@att.net

CUSTOMER ID

Baby Bell Candy Apples, LLC

TERMS

Due Upon Receipt

DESCRIPTION	QTY	UNIT PRICE	AMOUNT
Security Deposit	1	2911.44	2,911.44
August Monthly Rent	1	2,622.92	2,622.92
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October Monthly Rent	1	2,622.92	2,622.92
October Advance Additional Rent	1	288.52	288.52
October Late Fee	1	100.00	100.00
October Interest	1	1.5%	43.67
November Monthly Rent	1	2,622.92	2,622.92
November Advance Additional Rent	1	288.52	288.52

Thank you for your business!



SUBTOTAL

14,844.54

TAX RATE

0.000%

Payments Received

-

TOTAL**\$ 14,844.54**

Payments must be received at City Hall: 5410 Pine Street Flowery Branch, GA 30542

CITY OF FLOWERY BRANCH

INVOICE

PAST DUE

5410 Pine Street
Flowery Branch, GA. 30542
Phone: (770) 967-6371

INVOICE #

20241119

DATE

11/19/2024

BILL TO

Baby Bell Candy Apples, LLC
Gwendolyn Andreka Bell
1087 Liberty Park Drive
Braselton, GA 30517
babybellcandyapple@att.net

CUSTOMER ID

Baby Bell Candy Apples, LLC

TERMS

Due Upon Receipt

DESCRIPTION	QTY	UNIT PRICE	AMOUNT
Security Deposit	1	2911.44	2,911.44
August Monthly Rent	1	2,622.92	2,622.92
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October Advance Additional Rent	1	288.52	288.52
October Late Fee	1	100.00	100.00
October Interest	1	1.5%	43.67
November Monthly Rent	1	2,622.92	2,622.92
November Advance Additional Rent	1	288.52	288.52
November Late Fee	1	100.00	100.00
November Interest	1	1.5%	43.67
December Monthly Rent	1	2,622.92	2,622.92
December Advance Additional Rent	1	288.52	288.52

Thank you for your business!



SUBTOTAL

17,899.65

TAX RATE

0.000%

Payments Received

-

TOTAL**\$ 17,899.65**

Payments must be received at City Hall: 5410 Pine Street Flowery Branch, GA 30542



FLOWERY BRANCH CITY COUNCIL



EXECUTIVE SUMMARY

SUBJECT: Consider the Second Reading of Ordinance 725 for Annexation at 4272 Thurmon Tanner Parkway for the Operation of a Pickleball Recreation Facility.

COUNCIL MEETING DATE: February 6, 2025

HISTORY:

Ordinance 725 first reading was held on January 16, 2025

FACTS AND ISSUES:

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

Approval of Ordinance 725 with staff recommended conditions.

SAMPLE MOTION:

I make a motion to Approve Ordinance 725 with staff recommended conditions.

COLLABORATING DEPARTMENT:

DEPARTMENT: Planning

Prepared by: Shelia Cooper

ATTACHMENTS

- [Ordinance 725 Annexation 4272 Thurmon Tanner Parkway 2-6-2025.pdf](#)
- [Annexation request 12-5-2024.pdf](#)

ORDINANCE NO. 725

AN ORDINANCE TO ANNEX AND BRING WITHIN THE CORPORATE LIMITS OF THE CITY OF FLOWERY BRANCH, STATE OF GEORGIA, REAL PROPERTY TOTALING 6.72 +/- ACRES OF LAND, OWNED BY AROUND THE PICKLE LLC, IDENTIFIED AS 4272 THURMON TANNER PARKWAY, TAX PARCEL 08073 000012 AND AS SHOWN ON ATTACHED EXHIBIT “A”, PROVIDING FOR SEVERABILITY, REPEALING CONFLICTING ORDINANCES, PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER LAWFUL PURPOSES.

WHEREAS, Around the Pickle LLC, owns the subject parcel of land identified as Parcel Tax Identification No. 08073 000012 as shown and described on Exhibit “A”; and

WHEREAS, the City Council of the City of Flowery Branch has considered the application of Around the Pickle LLC and in conjunction with the standards set forth in O.C.G.A. §§ 36-36-1 through 36-36-110, O.C.G.A. § 36-60-111, and the City of Flowery Branch Community Agenda for annexation into the City’s corporate limits; and

WHEREAS, said parcels of land identified as Parcel Tax Identification No. 08073 000012 is within the unincorporated area of Hall County, State of Georgia, and is contiguous to the existing corporate limits of the City of Flowery Branch, Georgia at this time; and

WHEREAS, Around the Pickle LLC has submitted to the City Council of Flowery Branch, Georgia, a written and signed application and affidavit showing consent to being annexed, and whereas a survey and complete description of the subject parcel being considered to be annexed, is included in the application; and

WHEREAS, the City Council held a public hearing at the meeting of January 16, 2025 duly noticed as prescribed by law and published in the Gainesville Times, regarding said application, as shall be set forth in the minutes of said meeting.

**NOW THEREFORE, THE COUNCIL OF THE CITY OF FLOWERY BRANCH
HEREBY ORDAINS AS FOLLOWS:**

SECTION 1. RECITALS.

All of the foregoing recitals of this Ordinance are incorporated by reference as if fully set forth herein and are made part of this annexation ordinance.

SECTION 2. ANNEXATION.

The City Council of Flowery Branch, Georgia, does hereby annex and include within the corporate limits of the City of Flowery Branch, Georgia real parcels of land known as Parcel Tax

Identification No. 08073 000012 as shown and described on Exhibit “A”. Said Exhibit is incorporated by reference as if fully set forth herein.

SECTION 3. CERTIFICATION BY THE CITY CLERK

The City Council of Flowery Branch, Georgia, authorizes and directs the City Clerk of Flowery Branch, Georgia to certify this Ordinance and attached Exhibit and have a certified copy of this Ordinance and its Exhibits filed with the Department of Community Affairs and any other public official or agencies as required by law.

SECTION 4. SEVERABILITY.

Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of this Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

SECTION 5. EFFECTIVE DATE.

The effective date of this Ordinance shall be February 6, 2025 as required by O.C.G.A. § 36-36-2.

SECTION 6. REPEALER.

All ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

Approved this 6th day of February 2025.

Edward R. Asbridge, Mayor

Shelia R. Cooper, City Clerk

APPROVED AS TO FORM

Ted C. Baggett, City Attorney

Exhibit A

All that lot, tract or parcel of land lying, situate and being in Land Lot 73 of the 8th Land District of Hall County, Georgia, being more fully and particularly described as follows:

BEGINNING at a point on the northern right of way line of Thurman Tanner Road (having a sixty (60) foot right of way line) which point is located a distance of 507.73 feet in a southwesterly direction as measured along the northern right of way line of Thurman Tanner Road from the intersection of the northern right of way line of Thurman Tanner Road with the western right of way line of W. White Road; running thence along the northern right of way line of Thurman Tanner Road the following courses and distances: South 59 degrees 32 minutes 37 seconds West a distance of 11.79 feet to a point; South 61 degrees 33 minutes 29 seconds West a distance of 81.73 feet to a point; South 62 degrees 19 minutes 55 seconds West a distance of 180.86 feet to a point; South 62 degrees 00 minutes 57 seconds West a distance of 151.59 feet to a point; South 64 degrees 26 minutes 10 seconds West a distance of 101.24 feet to a point marked by a ¼ inch rebar; leaving the northern right of way line of Thurman Tanner Road and running thence North 28 degrees 48 minutes 27 seconds West a distance of 925 feet to a point; running thence South 76 degrees 54 minutes 02 seconds East a distance of 627.24 feet to a point; running thence South 35 degrees 26 minutes 14 seconds East a distance of 521.22 feet to a point on the northern right of way line of Thurman Tanner Road and the POINT OF BEGINNING.

The above-described property is more fully and particularly set out on a survey for Screens Atlanta, Inc., dated November 27, 1996, by Wallace Long Hambrick, Georgia Registered Land Surveyor Number 1375.

LESS AND EXCEPT:

All that tract or parcel of land in that Right of Way Deed from Frigid Tech, L.L.C. to Hall County dated October 6, 2000, recorded in Deed Book 3749, Page 584, Hall County Deed Records; all that tract or parcel of land in that Right of Way Deed from Frigid Tech, L.L.C. to Hall County dated June 8, 2000, recorded in Deed Book 3687, Page 370, Hall County Deed Records; and all that tract or parcel of land in that Right of Way Deed from Frigid Tech, L.L.C. to the City of Oakwood dated June 8, 2000, recorded in Deed Book 3687, Page 368, Hall County Deed Records.

Exhibit 'B'

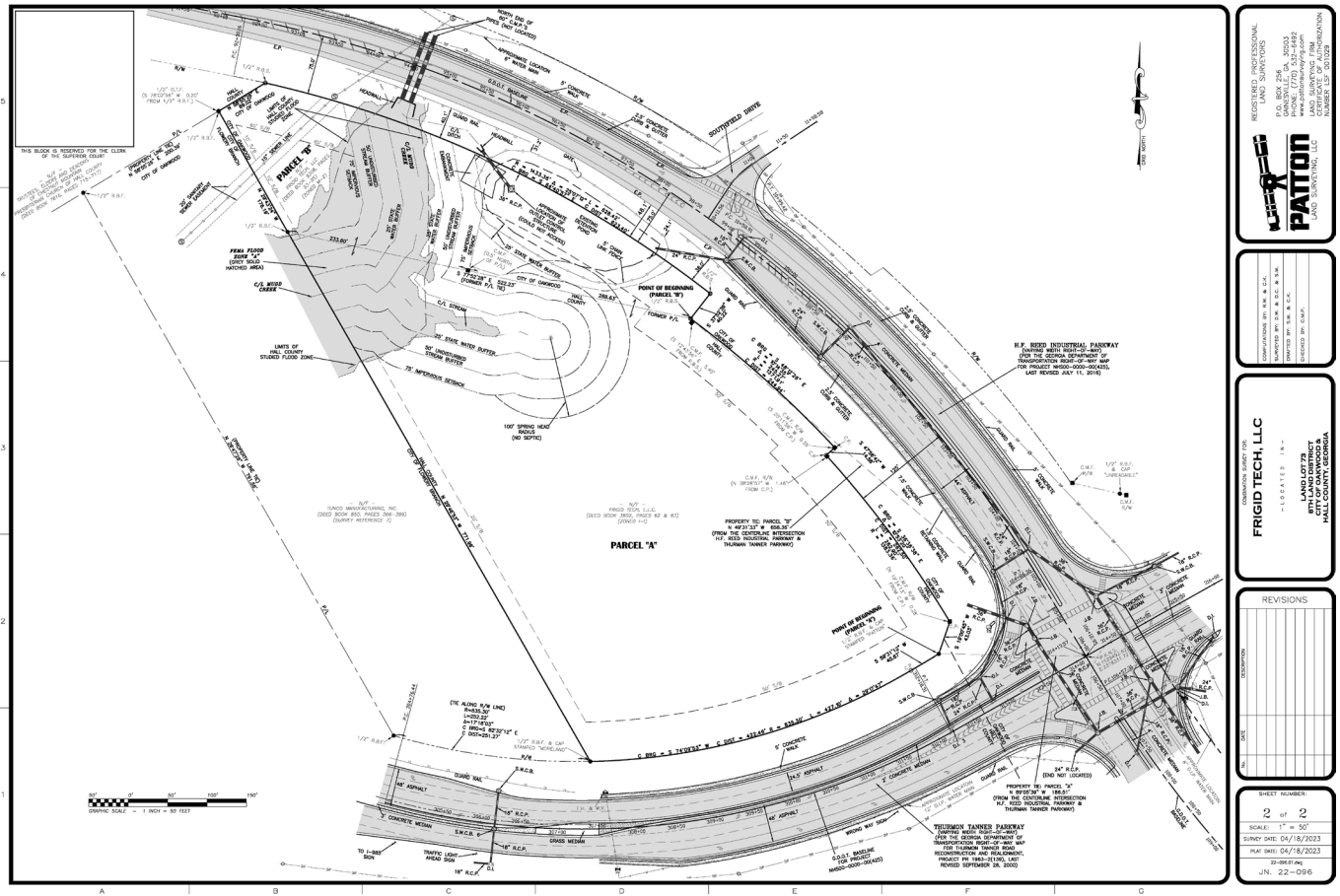


Exhibit 'C'

1. The applicant shall implement 10' landscape strips along the property boundary to minimize noise impact on adjacent properties. Preserved vegetation can be provided in lieu of planting trees and shrubs with the approval of the Planning and Community Development Director.
2. Adequate parking spaces shall be provided to support the proposed use. The maximum parking space should not exceed 102 spaces.
3. Any signage related to the commercial recreational facility must adhere to Flowery Branch's sign regulations, including size, lighting, and placement.
4. The applicant shall ensure that all facilities are properly maintained, including outdoor recreational areas, restrooms, and parking lots.
5. The applicant shall comply with all environmental regulations regarding stormwater runoff, waste management, and other applicable environmental concerns.
6. The applicant must ensure that proper fire lanes, emergency access routes, and safety measures are in place in accordance with local fire codes and regulations.

October 18, 2024

Dear City of Flowery Branch Officials,

We are formally requesting to have the tax parcel located at 4272 Thurmond Tanner Parkway (Hall County Tax Parcel No. 08073-000012) be annexed into the City of Flowery Branch. We have recently purchased this property, which is currently vacant, unimproved land and plan to develop a large scale Pickleball Facility that will have both indoor and outdoor courts available.

We therefore authorize the City of Flowery Branch staff and/or City Council to inspect the subject property as a part of this annexation request.

Thank you for your consideration of our request. We look forward to working with you during the process and bringing a great development to the city.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rena S. Millwood". The signature is fluid and cursive, with the first name "Rena" being more prominent and the last name "Millwood" following in a similar style.

Rena S. Millwood

Around the Pickle, LLC



FLOWERY BRANCH CITY COUNCIL



EXECUTIVE SUMMARY

SUBJECT: Consider the Second Reading of Ordinance 726 for a Rezoning and Conditional Use Permit at 4272 Thurmon Tanner Parkway for the Operation of a Pickleball Recreation Facility.

COUNCIL MEETING DATE: February 6, 2025

HISTORY:

Ordinance 726 First Reading was on the January 16, 2025, Agenda

FACTS AND ISSUES:

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

Approval of Ordinance 726 with staff recommended conditions.

SAMPLE MOTION:

I make a motion to approve Ordinance 726 with staff recommended conditions.

COLLABORATING DEPARTMENT:

DEPARTMENT: Planning

Prepared by: Shelia Cooper

ATTACHMENTS

- [Ordinance 726 Rezone and CUP for 4272 Thurmon Tanner Parkway 2-6-2025.pdf](#)
- [Annexation and Rezoning Report 4272 Thermon Tanner Parkway final for February 6.pdf](#)
- [Rezoning Application M-1 for 4272 Thurmond Tanner Parkway-2.pdf](#)
- [CUP App.pdf](#)

ORDINANCE NO. 726

AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF FLOWERY BRANCH, GEORGIA, BY REZONING ONE PARCEL OF REAL PROPERTY TOTALING 6.72+/- ACRES OF LAND, OWNED BY AROUND THE PICKLE LLC, IDENTIFIED AS 4272 THURMON TANNER PARKWAY, TAX PARCEL 08073 000012, TO BE REZONED FROM UNINCORPORATED HALL COUNTY LIGHT INDUSTRIAL (I-I) TO CITY OF FLOWERY BRANCH LIGHT INDUSTRIAL (M-1), AND TO GRANT A CONDITIONAL USE PERMIT (CUP) FOR USE AS A COMMERCIAL RECREATIONAL FACILITY AS SHOWN AND DESCRIBED ON ATTACHED EXHIBIT “A”, AND AS CONDITIONED ON ATTACHED EXHIBIT “B”, PROVIDING FOR SEVERABILITY, REPEALING CONFLICTING ORDINANCES, PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER LAWFUL PURPOSES.

WHEREAS, Around the Pickle LLC owns the subject parcel of land identified as Parcel Tax Identification No. 08073 000012, as shown and described on Exhibit “A”; and

WHEREAS, Around the Pickle LLC submitted to the City of Flowery Branch, Georgia, a written and signed application requesting a rezoning, and whereas a survey and complete description of the land to be rezoned is included in the application; and

WHEREAS, the City Council held a public hearing at the meeting of January 16, 2025 duly noticed as prescribed by law and published in the Gainesville Times, regarding said application, as shall be set forth in the minutes of said meeting.

NOW THEREFORE, THE COUNCIL OF THE CITY OF FLOWERY BRANCH HEREBY ORDAINS AS FOLLOWS:

SECTION 1. FINDINGS.

The City Council finds that the proposed rezoning from Unincorporated Hall County Light Industrial (I-I) to City of Flowery Branch Light Industrial (M-1) and granting a CUP for use as a Commercial Recreational Facility is consistent with the adopted standards for governing the exercise of the zoning power consistent with O.C.G.A. § 36- 66-5 and requirements of the Zoning Ordinance as identified below.

1. The proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property.
2. The proposal is not expected to adversely affect the existing use or usability of adjacent or nearby property.

Public Hearing Published 12/11/2024
Public Hearing 01/16/2025

First Reading 01/16/2025
Second Reading 02/06/2025

3. The property could be used in accordance with the existing regulations and has a reasonable economic use as currently zoned; however, an alternative use is appropriately considered.
4. The development if approved and constructed is not expected to result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.
5. The proposal is generally in conformity with the policy and intent of the comprehensive plan including the character area map and future land use plan map.
6. The proposal is considered appropriate in view of existing use(s) and zoning of the subject property and nearby properties.
7. No determination has been made by staff with regard to the value differential between development under the current zoning as opposed to Residential, Detached Single Family(R-2).
8. A proposed development will not be a deterrent to the value or improvement of development of adjacent property in accordance with existing regulations.
9. There are no known adverse effects that would result from the change in zoning district map, or change in use, on the character of a zoning district.
10. Development as proposed is not expected to impact on the environment, including but not limited to, drainage, soil erosion and sedimentation, flooding, air quality and water quality. Compliance with city subdivision and land development regulations will be required, which include but are not limited to soil erosion and sedimentation, stormwater, and flood damage prevention.

SECTION 2. REZONING AND APPROVAL OF A CUP.

The subject parcel, as shown and described on Exhibit “A”, is hereby rezoned from Unincorporated Hall County Light Industrial (I-I) to City of Flowery Branch Light Industrial (M-1) and hereby granted a Conditional Use Permit (CUP) for use as a Commercial Recreational Facility, subject to conditions as shown on attached Exhibit “B”. Said Exhibits are hereby incorporated herein.

SECTION 3. AMENDMENT OF THE ZONING MAP.

This Ordinance is enacted as an amendment to the Zoning Map of Flowery Branch, Georgia. Accordingly, the Zoning Administrator is hereby authorized to update the Official Map consistent with Article 3 of the Zoning Ordinance.

Public Hearing Published 12/11/2024
Public Hearing 01/16/2025

First Reading 01/16/2025
Second Reading 02/06/2025

SECTION 4. SEVERABILITY.

Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of this Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

SECTION 5. EFFECTIVE DATE.

The effective date of this Ordinance shall be February 06, 2025 or immediately upon the inclusion of the subject property in the city limits.

SECTION 6. REPEALER.

All ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

Approved this 6th day of February 2025.

Edward R. Asbridge, Mayor

Shelia R. Cooper, City Clerk

APPROVED AS TO FORM

Ted C. Baggett, City Attorney

Exhibit A

All that lot, tract or parcel of land lying, situate and being in Land Lot 73 of the 8th Land District of Hall County, Georgia, being more fully and particularly described as follows:

BEGINNING at a point on the northern right of way line of Thurman Tanner Road (having a sixty (60) foot right of way line) which point is located a distance of 507.73 feet in a southwesterly direction as measured along the northern right of way line of Thurman Tanner Road from the intersection of the northern right of way line of Thurman Tanner Road with the western right of way line of W. White Road; running thence along the northern right of way line of Thurman Tanner Road the following courses and distances: South 59 degrees 32 minutes 37 seconds West a distance of 11.79 feet to a point; South 61 degrees 33 minutes 29 seconds West a distance of 81.73 feet to a point; South 62 degrees 19 minutes 55 seconds West a distance of 180.86 feet to a point; South 62 degrees 00 minutes 57 seconds West a distance of 151.59 feet to a point; South 64 degrees 26 minutes 10 seconds West a distance of 101.24 feet to a point marked by a 1/4 inch rebar; leaving the northern right of way line of Thurman Tanner Road and running thence North 28 degrees 48 minutes 27 seconds West a distance of 925 feet to a point; running thence South 76 degrees 54 minutes 02 seconds East a distance of 627.24 feet to a point; running thence South 35 degrees 26 minutes 14 seconds East a distance of 521.22 feet to a point on the northern right of way line of Thurman Tanner Road and the POINT OF BEGINNING.

The above-described property is more fully and particularly set out on a survey for Screens Atlanta, Inc., dated November 27, 1996, by Wallace Long Hambrick, Georgia Registered Land Surveyor Number 1375.

LESS AND EXCEPT:

All that tract or parcel of land in that Right of Way Deed from Frigid Tech, L.L.C. to Hall County dated October 6, 2000, recorded in Deed Book 3749, Page 584, Hall County Deed Records; all that tract or parcel of land in that Right of Way Deed from Frigid Tech, L.L.C. to Hall County dated June 8, 2000, recorded in Deed Book 3687, Page 370, Hall County Deed Records; and all that tract or parcel of land in that Right of Way Deed from Frigid Tech, L.L.C. to the City of Oakwood dated June 8, 2000, recorded in Deed Book 3687, Page 368, Hall County Deed Records.

Public Hearing Published 12/11/2024
Public Hearing 01/16/2025

First Reading 01/16/2025
Proposed Second Read 02/06/2025

Exhibit “B”

The rezoning and granting of the CUP are subject to the following conditions:

1. The applicant shall implement 10’ landscape strips along the property boundary to minimize noise impact on adjacent properties. Preserved vegetation can be provided in lieu of planting trees and shrubs with the approval of the Planning and Community Development Director.
2. Adequate parking spaces shall be provided to support the proposed use. The maximum parking space should not exceed 102 spaces.
3. Any signage related to the commercial recreational facility must adhere to Flowery Branch’s sign regulations, including size, lighting, and placement.
4. The applicant shall ensure that all facilities are properly maintained, including outdoor recreational areas, restrooms, and parking lots.
5. The applicant shall comply with all environmental regulations regarding stormwater runoff, waste management, and other applicable environmental concerns.
6. The applicant must ensure that proper fire lanes, emergency access routes, and safety measures are in place in accordance with local fire codes and regulations.



Memorandum

To: City of Flowery Branch, City Manager, and City Council

From: Chris McCrary, Planning and Community Development Director

Date: February 6, 2025

Subject: Annexation, Rezoning, and Conditional Use Permit

Applicant: Around the Pickle LLC
379 East Lake Drive
Gainesville, GA 30506
678-617-4257

Existing Zoning: I-I – Light Industrial, Unincorporated Hall County

Proposed Zoning: M-1 – Light Industrial with a Conditional Use Permit for operation of an indoor and outdoor recreational facility. (Table 9.1)

Location:

- 4272 Thurmon Tanner Parkway; tax parcel identification number **08073 000012**

Annexation & Rezoning Request:

The applicant is seeking the annexation of 4272 Thurmon Tanner Parkway from unincorporated Hall County to the City of Flowery Branch for the development of a pickle ball outdoor and indoor event center. The subject site is currently zoned as Hall County Light Industrial (I-I), and the applicant is proposing to rezone the tract to Flowery Branch Light Industrial (M-1).

The applicant intends to develop a private pickleball recreational facility including twelve (12) outdoor pickleball courts and eighteen (18) indoor courts within three (3) buildings. The sports complex will be accessed from both Thurmon Tanner Parkway and H F Reed Industrial Parkway.



Code Section:

Table 9.1 – Permitted and Conditional Uses in Nonresidential Zoning Districts

Use	O-P	INST	NS	HB	CBD	M-1	M-2
Commercial recreational facility, indoor (Ord. 348-11)	X	X	C	P	X	C	C
Commercial recreational facility, outdoor	X	X	X	C	C	C	C

Most tennis and pickleball facilities are located within the recreational areas of established subdivisions. The City Code addresses this in Section 12.1 –Community Recreation Facility:

Within a residential subdivision or multiple-family residential development, community recreation facilities as defined by this Zoning Ordinance must be platted when a part of a subdivision or part of the site plan approval for a multiple-family residential development. Community recreation facilities shall be subject to the following requirements:

- a) Exterior lighting. If lighted, exterior lighting shall require a lighting plan to be submitted and approved prior to installation. See Article 23 of this Zoning Ordinance.*
- b) Swimming Pools and Tennis Courts. Swimming pools and tennis courts shall be setback a minimum of twenty-five (25) feet from all property lines of the tract of land devoted to community recreation, with a minimum ten (10) foot wide landscape strip along all property lines of said tract. See Article 19 of this Zoning Ordinance for landscape strip specifications.*
- c) Buildings. Buildings (excluding accessory structures) shall be setback a minimum of twenty-five (25) feet from the property line of the tract. If outdoor patios or decks are provided, they shall be located no closer than twenty-five (25) feet from the property line of the tract and a minimum ten (10) foot wide landscape strip shall be provided between said outdoor patio or deck and the property line or boundary of said tract. See Article 19 of this Zoning Ordinance for landscape strip specifications.*
- d) Parking. Parking shall be provided per the requirements of Article 21 of this Zoning Ordinance.*

Since the proposed use is not within a recreational area of a single-family subdivision, the only similar entry in Table 9.1 is Commercial Recreation Facility, Indoor and Outdoor. The scale the code describes for a Commercial Recreational Facility is not what is proposed by the Applicant.



Section 14.5. – Commercial Recreation Facility, Indoor / Outdoor:

This code section may not apply to the scale of a recreational pickleball as proposed. This section contemplates uses such as: *“stadiums, amphitheaters, outdoor firearms shooting ranges, and racetracks for animals and motor driven vehicles; such projects may be required to construct noise attenuation walls or otherwise address off-site noise impacts. A traffic impact analysis shall be required for amphitheaters, stadiums, racetracks for animals or motor-driven vehicles, and recreational vehicle parks”*.

The review concludes that the proposed pickleball facility does not neatly fit into any existing categories within the zoning code. As pickleball's popularity has surged, the code has primarily focused on tennis and other recreational courts within single-family subdivisions, leaving this type of use unanticipated. Nonetheless, it is reasonable to apply the dimensional criteria outlined in Section 12.1 to the project, despite its location outside a subdivision plat.

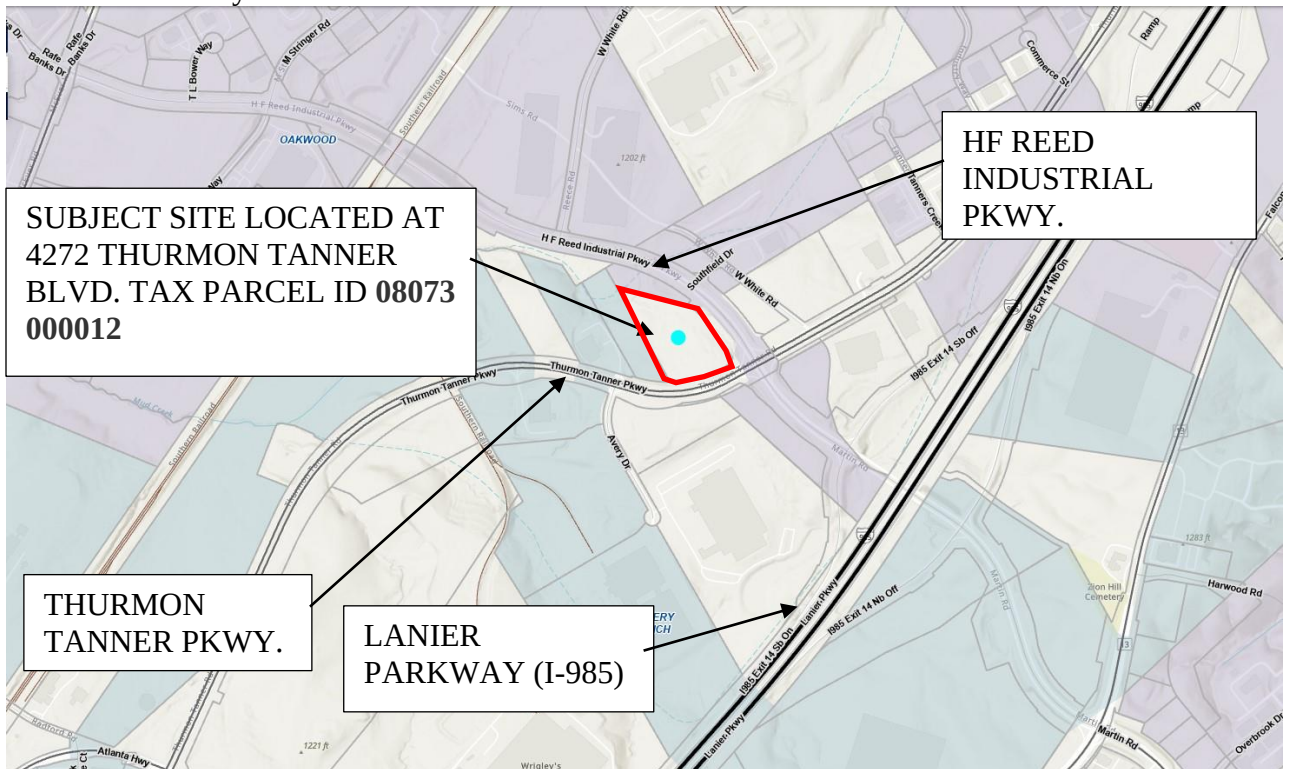
The M-1 (Light Industrial) zoning classification appears most appropriate for the site due to its proximity to the Industrial Employment Character Area. Rezoning the property to M-1, with conditions aligned to Section 12.1, would facilitate the development of the pickleball facility in harmony with the surrounding industrial context. Given the site's existing industrial setting, the need for extensive buffering is minimal. Furthermore, the facility's peak operating hours would be staggered to coincide with the typical schedules of nearby industrial businesses, minimizing potential conflicts.

A Conditional Use Permit (CUP) would be required for both indoor and outdoor recreational facilities, as specified in the code. Staff recommends rezoning the property to M-1 with conditions consistent with Section 12.1 and approving the CUP. This approach would ensure the development aligns with the Comprehensive Plan.



Location Map:

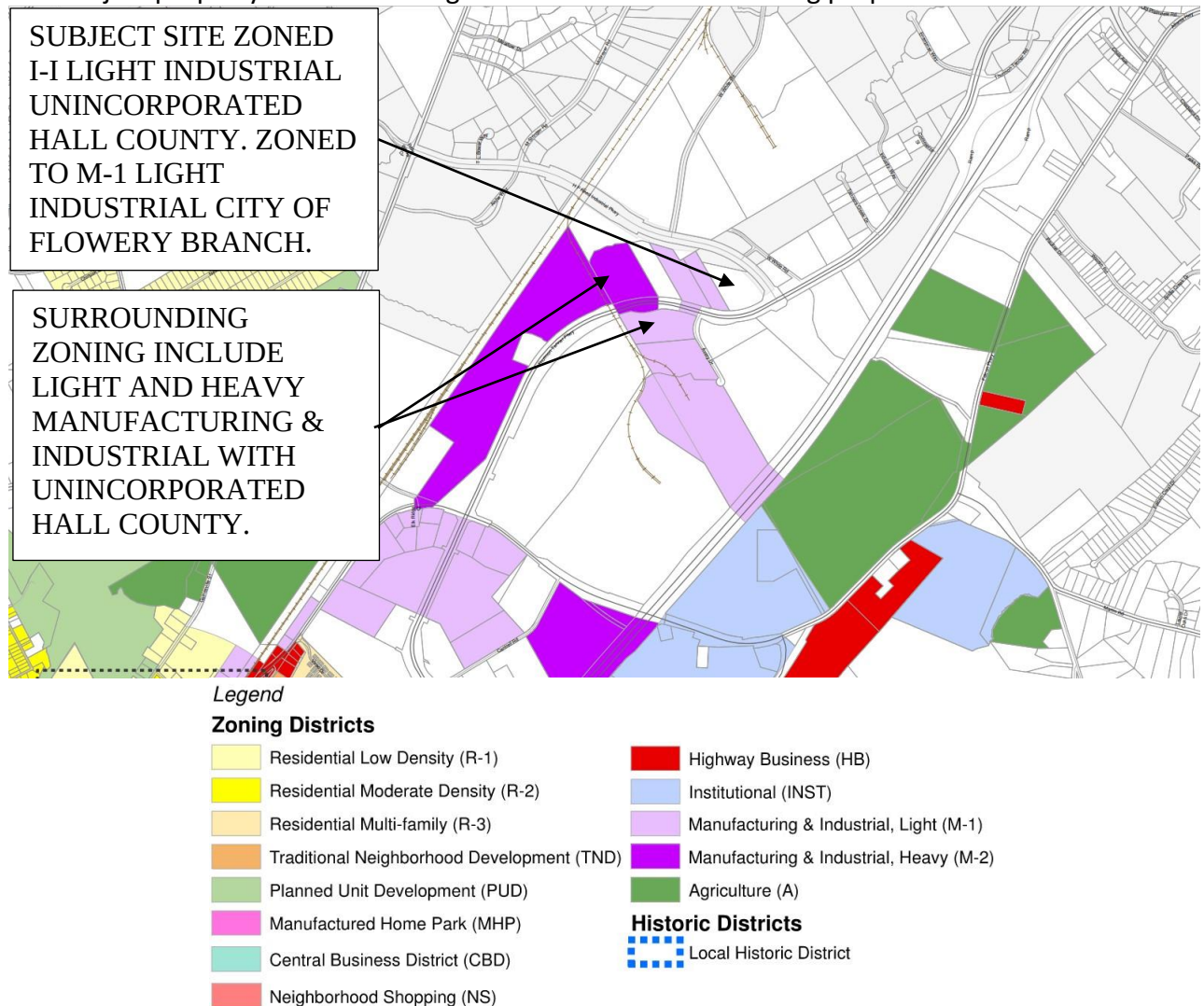
The subject site is located at 4272 Thurmon Tanner Parkway near the intersection of HF Reed Industrial Parkway.





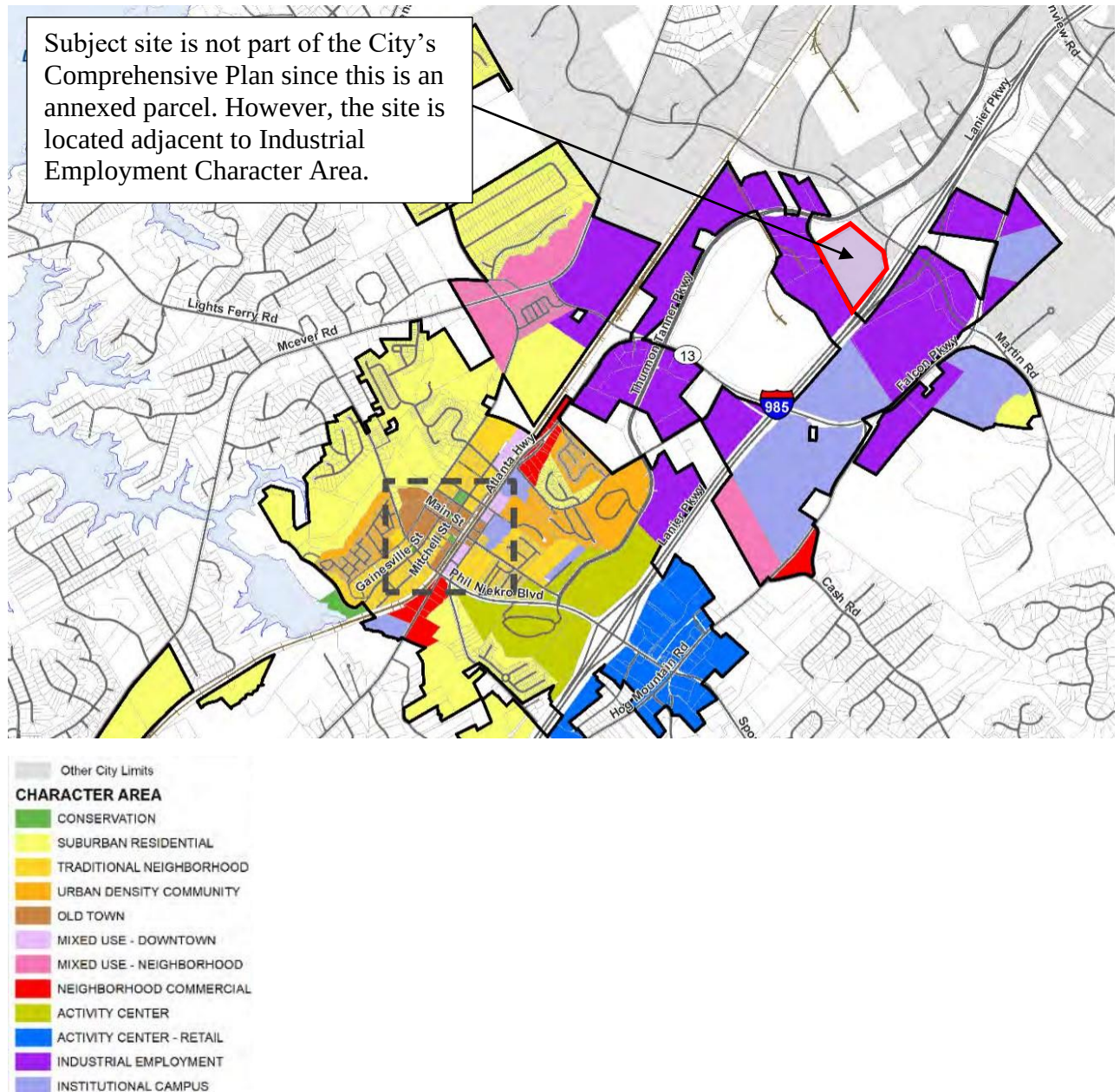
Zoning Map:

The subject property is zoned I-I – Light Industrial. The surrounding properties are also zoned M-1.





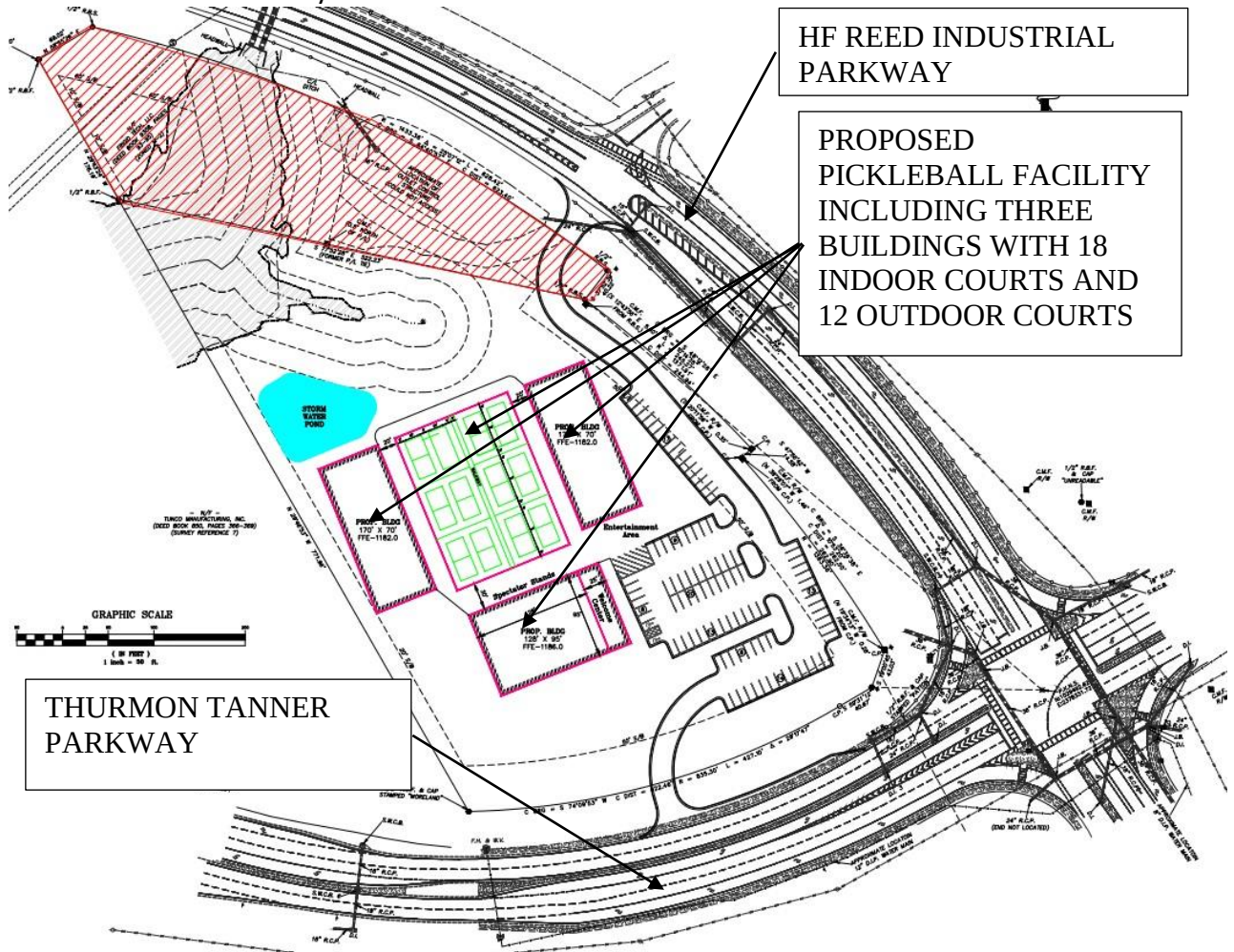
Future Development Plan:





Site Plan:

The proposed pickleball facility includes three buildings with 18 indoor courts and 12 outdoor courts. The development includes parking and entrances at both HF Reed Industrial Parkway and Thurmon Tanner Parkway.



Parking Space Maximum Count:

- **Parking Requirements:** According to Article 21, the maximum parking requirement is 3 spaces per court for tennis facilities. (pickleball is reasonably similar).
- **Proposal Details:** The applicant is planning a facility with 30 courts, which would typically require up to 90 parking spaces (3 spaces per court).
- **Proposed Parking:** The applicant is proposing 102 parking spaces, which exceeds the maximum by 12 spaces.



- **Justification:** The applicant argues that additional parking is necessary to accommodate peak demand during tournaments, when more visitors would be expected.
- **Stormwater Consideration:** The proposal for additional parking will be reviewed for stormwater runoff impacts as part of the LDP (Land Development Plan) review process.

Conclusion: The increase in parking spaces is considered reasonable based on the applicant's justification and will be subject to review for environmental impacts, particularly regarding stormwater runoff.

Sec. 34.7. - Analysis Requirements.

Applications to amend the official zoning map and applications for conditional uses shall provide a written analysis comparing the proposed action with the criteria in this Section. A zoning map amendment or conditional use application may be justified only if it bears a reasonable relationship to the public health, safety, morality, or general welfare, and after consideration of the analysis requirements which may in individual cases be considered criteria relevant to the Zoning Administrator in making recommendations and by the City Council in the decision-making process.

- a) Whether the proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property.*
The development of a pickleball recreational facility adjacent and nearby industrial developments is reasonable due to the activity and noise associated with pickleball.
- b) Whether the proposal will adversely affect the existing use or usability of adjacent or nearby property.*
The proposed use will not adversely affect the existing use or usability of adjacent or nearby property.
- c) Whether the property to be affected by the proposal can be used in accordance with the existing regulations and has reasonable economic use as currently zoned.*
The applicant has proposed the subject site as an ideal location for developing a recreational pickleball facility. However, the City of Flowery Branch only provides sewer services to parcels within its city limits. Annexation is necessary to connect the site to Flowery Branch's sanitary sewer system, while rezoning is required to align the site with the city's zoning designations. Without access to sewer services, the proposed recreational facility would not be viable, leaving the site economically unfeasible under its current zoning within unincorporated Hall County.



- d) *Whether the 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 will not result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.
- e) *Whether the proposal is in conformity with the policy and intent of the comprehensive plan including but not limited to the character area map and future land use plan map.*
The proposed pickleball facility would be in conformity with the policy and intent of the comprehensive plan.
- f) *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 proposal.*
There are no other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the proposal.
- g) *Existing use(s) and zoning of the subject property and nearby properties.*
The proposed pickleball center is a hybrid of light industrial and commercial uses. The amount of traffic and noise at peak demands seems to fit best within a light industrial area. Should more independent, private pickleball and / or tennis events centers come into demand, the City may look at defining this use and allowing it in more zoning districts such as light industrial without the need of a Conditional Use Permit.
- h) *Existing value of the property under the existing zoning district classification, the extent to which the property value of the subject property is diminished by the existing zoning district, and the value of the property under the proposed zoning district; if such information is provided by the applicant or can be discerned. This consideration may include the length of time the property has been vacant or unused as currently zoned and efforts taken by the property owner(s) to use the property or sell the property under the existing zoning district classification.*
The site is undeveloped and suggests the size of the property and the presence of stream buffers are not economically feasible for a warehouse distribution center. For a lot this size, the proposed use may be best as a pickleball events facility.
- i) *Whether a proposed zoning map amendment or conditional use approval will be a deterrent to the value or improvement of development of adjacent property in accordance with existing regulations.*
The proposed use should have no impact on the value or improvement of development of adjacent property.



- j) *The possible creation of an isolated zoning district unrelated to adjacent and nearby districts.*
Staff recommends the rezoning be to M-1 to prevent an isolated HB zoning in an area primarily zoned industrial.
- k) *Possible effects of the change in zoning district map, or change in use, on the character of a zoning district.*
The proposed use should have no negative effects on the character of the area.
- l) *The possible impact on the environment, including but not limited to, drainage, soil erosion and sedimentation, flooding, air quality and water quality.*
The subsequent LDP will be required to be compliant with all erosion and stormwater regulations.
- m) *The relation that the proposed map amendment or conditional use bears to the purpose of the overall zoning scheme and the purposes of this Zoning Ordinance.*
The proposed rezoning will have no impact on the purpose of the overall zoning scheme and the purposes of this Zoning Ordinance.



Staff Recommendation for Annexation, Rezoning, and Conditional Use Permit (CUP)

Recommendation:

Staff recommends **approval** of the proposed **annexation** of parcel **08073 000012**. Furthermore, staff recommends **approval** of the rezoning request to rezone the subject parcel from **Hall County I-1 Light Industrial** to **Flowery Branch M-1 Light Industrial**. Additionally, staff recommends **concurrent approval** of the **Conditional Use Permit (CUP)** for the operation of an **indoor and outdoor commercial recreational facility** with the following conditions:

Conditions of Approval:

1. The applicant shall implement 10' landscape strips along the property boundary to minimize noise impact on adjacent properties. Preserved vegetation can be provided in lieu of planting trees and shrubs with the approval of the Planning and Community Development Director.
2. Adequate parking spaces shall be provided to support the proposed use. The maximum parking space should not exceed 102 spaces.
3. Any signage related to the commercial recreational facility must adhere to Flowery Branch's sign regulations, including size, lighting, and placement.
4. The applicant shall ensure that all facilities are properly maintained, including outdoor recreational areas, restrooms, and parking lots.
5. The applicant shall comply with all environmental regulations regarding stormwater runoff, waste management, and other applicable environmental concerns.
6. The applicant must ensure that proper fire lanes, emergency access routes, and safety measures are in place in accordance with local fire codes and regulations.

Conclusion:

Staff finds that the proposed annexation, rezoning, and CUP for the commercial recreational facility are consistent with the city's growth and development goals and will provide positive economic impacts while mitigating potential negative effects through the recommended conditions.



Property owner information (if different than the applicant)

Property owner (please print): David Laird

Signature of property owner: David Laird 10-18-2024

Notary:



Melissa Brown Leigh
10/18/2024

Property Information

Tax Map Number: 08073-000012

Current Zoning: I-I Total Acres: 6.72

Is this property located within the city-limits of Flowery Branch? Not yet

Proposed City of Flowery Branch Zoning: _____

Current Use: Vacant land to be developed into Pickleball Facilities

Please review the Flowery Branch Code of Ordinances, Appendix C, "Zoning Ordinance", Article 34, for complete requirements.

Please provide the following at time of submittal in (one hard copy and digitally):

- Legal description
- Current survey of property



CONDITIONAL USE PERMIT APPLICATION

City Provided Permit #

Date: _____

Address of Request:

4272 Thurmond Tanner Parkway

Tax Map # 08073-000012 Current Zoning: 1-1 (Hall Co.)

Is this site located within the boundaries of the historic district? No

Currently a conforming use? Yes

Any conditions of zoning, CUP's, etc.? No (not yet)

Applicant Information

Applicant: Around the Pickle, LLC

Address: 379 East Lake
Gainesville, GA 30506

E-mail address: trey@aroundthepickle.com

Phone number: 770-540-3128

Signature: [Signature]

Notary Seal:



DANIELLE M NASH
NOTARY PUBLIC
Hall County
State of Georgia
My Comm. Expires February 20, 2028



Property owner Information

Property owner (please print): Around the Pickle, LLC

Address: 379 East Lake Dr.
Gainesville, GA 30506

E-mail address: trex@aroundthepickle.com

Phone number: 770-540-3128

Signature: [Signature] - agent

Notary Seal:



DANIELLE M NASH
NOTARY PUBLIC
Hall County
State of Georgia
My Comm. Expires February 20, 2028

Applicant Information Required at Time of Submittal

Please review the Flowery Branch Code of Ordinances, Appendix C, "Zoning Ordinance", Article 34, for complete requirements.

- Legal description – one hard copy and on a flash drive
- Current survey of property – one hard copy and on a flash drive
- Site plan – one hard copy and on a flash drive
- Site plan shall meet the requirements of the Flowery Branch Code of Ordinances; Appendix C, "Zoning Ordinance", Article 34 sections 34.5
- Detailed description of request
- Development statistics per the Flowery Branch Code of Ordinances; Appendix C, "Zoning Ordinance", Article 34 sections 34.6
- Analysis requirements per the Flowery Branch Code of Ordinances; Appendix C, "Zoning Ordinance", Article 34 sections 34.7
- Conflict of interest disclosure (attached)
- Disclosure of campaign contributions (attached)



Conflict of Interest Disclosure

Identify all members of the City Council of the City of Flowery Branch and Employees of the City of Flowery Branch Community Development Department who

Have a property interest in the real property affected by this request

Have a financial interest (direct ownership interest) of the total assets or capital stock of a business entity where such ownership interest is more than 10% in any business entity which has a property interest in the real property affected by this request

Have a member of the family (spouse, mother, father, brother, sister, son or daughter) having a property financial interest as herein defined, in the real property affected by this request

Disclosure of Campaign Contributions

List below the names of local government officials of the City of Flowery Branch to whom campaign contributions were made, within two (2) years immediately preceding the filing of this application, which campaign contributions total \$250.00 or more or to whom gifts were made having a total value of \$250.00 or more.

Elected Officials Name

Amount of Description of Gift

None



Received by City of Flowery Branch Staff on _____

Name: _____

Title _____



FLOWERY BRANCH CITY COUNCIL



EXECUTIVE SUMMARY

SUBJECT: Consider the Second Reading of Ordinance 729 for a Variance Request at 5201 Mulberry Street.

COUNCIL MEETING DATE: February 6, 2025

HISTORY:

Ordinance 729 first reading was placed on the January 16, 2025 Agenda

FACTS AND ISSUES:

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

Approval of Ordinance 729 with staff recommended conditions.

SAMPLE MOTION:

I make a motion to approve Ordinance 729 with staff recommended conditions.

COLLABORATING DEPARTMENT:

DEPARTMENT: Planning

Prepared by: Shelia Cooper

ATTACHMENTS

- [Ordinance 729 2-6-2025.pdf](#)
- [Variance Report 5201 Mulberry Street.pdf](#)
- [Variance Application 10.28.24.pdf](#)
- [5201 Mulberry Street HLP.pdf](#)
- [GRIFFIN-II-ELEV-B-1958-01.pdf](#)

Public Hearing Published 12/11/2024
Public Hearing 1/16/2025

First Reading 1/16/2025
Second Reading 02/06/2025

ORDINANCE 729

5201 Mulberry Street Variance Request

AN ORDINANCE GRANTING A VARIANCE FROM THE REQUIREMENTS SET FORTH IN THE CITY OF FLOWERY BRANCH ZONING ORDINANCE ARTICLE 7, SECTION 7.1, PURPOSE AND DESCRIPTION: AUTOMOBILE GARAGES LOCATED TO THE REAR OR SIDE OF RESIDENTIAL LOTS, 5201 MULBERRY STREET, TAX PARCEL IDENTIFICATION NO. 08112 004009, OWNED BY Investnland, LLC; AS SHOWN ON EXHIBIT "A", DESCRIBED ON EXHIBIT "B", AND SUBJECT TO THE CONDITIONS SET FORTH IN EXHIBIT "C"; PROVIDING FOR SEVERABILITY; REPEALING CONFLICTING ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE; AND FOR ALL OTHER LAWFUL PURPOSES.

WHEREAS, Tabb Bowen, agent for owner, has submitted a written and signed application to the City of Flowery Branch, Georgia requesting a specific variance for the property located at 5201 Mulberry Street; and

WHEREAS, a survey and complete description of the property subject to the requested variance is included in the application; and

WHEREAS, the City Council of the City of Flowery Branch, Georgia held a public hearing on 1/16/2025, to consider the application, which was duly advertised as prescribed by law and published in the Gainesville Times, as shall be set forth in the minutes of said meeting; and

WHEREAS, the City Council of the City of Flowery Branch, Georgia has considered the subject variance application of Tabb Bowmen, agent for owner, in conjunction with the standards set forth in Article 7, Section 7.1 Purpose and Description: automobile garages located to the rear or side of residential lots.

NOW THEREFORE, THE COUNCIL OF THE CITY OF FLOWERY BRANCH HEREBY ORDAINS AS FOLLOWS:

SECTION 1. FINDINGS:

The City Council finds that the proposed variance from the City of Flowery Branch Zoning Ordinance Article 7, Section 7.1 is consistent with the adopted standards for governing the exercise of the zoning power consistent with O.C.G.A. § 36-66-5 and requirements of Article 37, Section 37.5 of the City of Flowery Branch Zoning Ordinance as identified below.

SECTION 37.5. CRITERIA FOR GRANTING VARIANCES:

Any applicant requesting consideration of a variance to any provision of the zoning ordinance shall provide a written justification that one or more of the following condition(s) exist. The City Council shall not approve a variance application unless it shall have adopted findings that one or more of the following conditions exist:

- (a) There are extraordinary and exceptional conditions or practical difficulties pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district;
- (b) A literal interpretation of the provisions of this ordinance would effectively deprive the applicant of rights commonly enjoyed by other properties of the district in which the property is located;
- (c) Granting the variance requested will not confer upon the property of the applicant any special privileges that are denied to other properties of the district in which the applicant's property is located;
- (d) The requested variance will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare;
- (e) The special circumstances are not the result of the actions of the applicant;
- (f) The variances requested are the minimum variances that will make possible the proposed use of the land, building, or structure in the use district proposed; and
- (g) The variance shall not permit a use of land, buildings or structures, which is not permitted by right in the zoning district or overlay district involved.

SECTION 2. LEGAL DESCRIPTION, VARIANCES GRANTED AND CONDITIONS IMPOSED:

The property as shown in attached Exhibit "A" and as legally described in Exhibit "B" shall be granted the following variance from the requirements set forth in the Flowery Branch Zoning Ordinance Article 7, Section 7.1: Purpose and Description: automobile garages located to the rear or side of residential lots.:

This zoning district is intended to provide for neighborhoods that are designed according to the principles of "new urbanism" with a grid or modified-grid street network, pedestrian scale and orientation, shallow front yards, relatively narrow local streets planted with shade trees and provided with wide sidewalks, and with automobile garages located to the rear or side of residential lots. TND districts are further distinguished from conventional suburban subdivision developments in their provision of public greens or common areas, when new neighborhoods are created.

Conditions set forth in Exhibit "C" are imposed on said property. Said Exhibits are incorporated by reference as if fully set forth herein.

SECTION 3. SEVERABILITY.

Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of this Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

SECTION 4. EFFECTIVE DATE.

Public Hearing Published 12/11/2024
Public Hearing 1/16/2025

First Reading 1/16/2025
Second Reading 02/06/2025

The effective date of this Ordinance shall be upon adoption by the City Council of the City of Flowery Branch, Georgia.

SECTION 5. REPEALER.

All ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

Adopted this 6th day of February 2025.

Edward R. Asbridge, Mayor

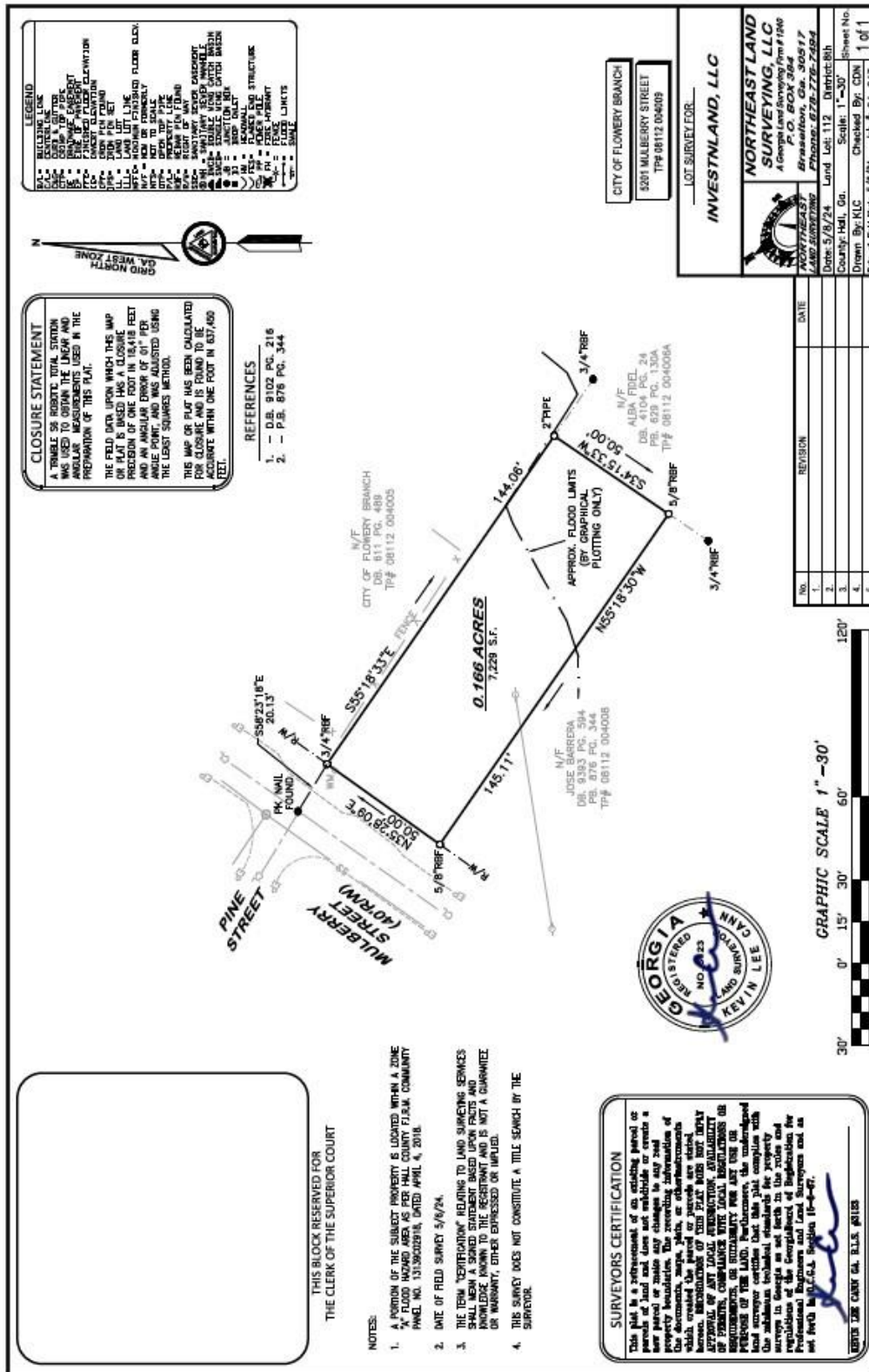
ATTEST:

Shelia R. Cooper, City Clerk

APPROVED AS TO FORM:

Ted C. Baggett, City Attorney

Exhibit "A"



Public Hearing Published 12/11/2024
Public Hearing 1/16/2025

First Reading 1/16/2025
Second Reading 02/06/2025

Exhibit "B"

Legal Description

All that tract or parcel of land lying and being in the Town of Flowery Branch, Hall County, Georgia and being that property shown as Tract 3 on that plat of survey entitled "Survey for BVP Contractors, LLC," dated December 14, 2018, prepared by D. Keith Kilby, GRLS, of D. Keith Kilby, LS, as recorded at Plat Book 876, page 344 of the Hall County, Georgia Plat Records, which plat is incorporated herein by reference as part of this description.

Exhibit "C"

1. The Building Permit application shall include a house location plan and be substantially similar to the plan provided with the variance application.
2. The applicant shall provide a Residential Drainage Plan including proposed grading to demonstrate no disturbance in the flood hazard area.
3. The applicant shall provide four-sided building elevations demonstrating compliance with the City of Flowery Branch's architectural standards.
4. The Variance is for the location of the garage entrance only. The approval of the Variance does not provide additional approvals of any local, state, or federal regulations.



Memorandum

To: City of Flowery Branch, City Manager, and City Council

From: Chris McCrary, Community Development and Planning Director

Date: February 6, 2024

Subject: To allow front entry garage in TND Zoning

Applicant: Tabb Bowen
4513 Winder Highway
Flowery Branch, GA 30542
770-561-1831

Existing Zoning: TND – Traditional Neighborhood District

Location:

- 5201 Mulberry Street; tax parcel identification number **08112 004009**,

Variance Request:

The applicant is seeking to build a new residential single-family home at 5201 Mulberry Street. The subject parcel is zoned TND (Traditional Neighborhood Development) and is subject to the development standards and dimensional standards of Article 7. The applicant provided a House Location Plan indicating the placement of a wider home floor plan that does not provide for an automobile garage in the rear yard. The applicant is seeking a Variance to allow a front facing garage in TND zoning.



Code Section:

Sec. 7.1. - Purpose and Description.

This zoning district is intended to provide for neighborhoods that are designed according to the principles of "new urbanism" with a grid or modified-grid street network, pedestrian scale and orientation, shallow front yards, relatively narrow local streets planted with shade trees and provided with wide sidewalks, and with **automobile garages located to the rear or side of residential lots**. TND districts are further distinguished from conventional suburban subdivision developments in their provision of public greens or common areas, when new neighborhoods are created.



Location Map:

The subject site is located at 5201 Mulberry Street adjacent to the intersection of Pine Street.





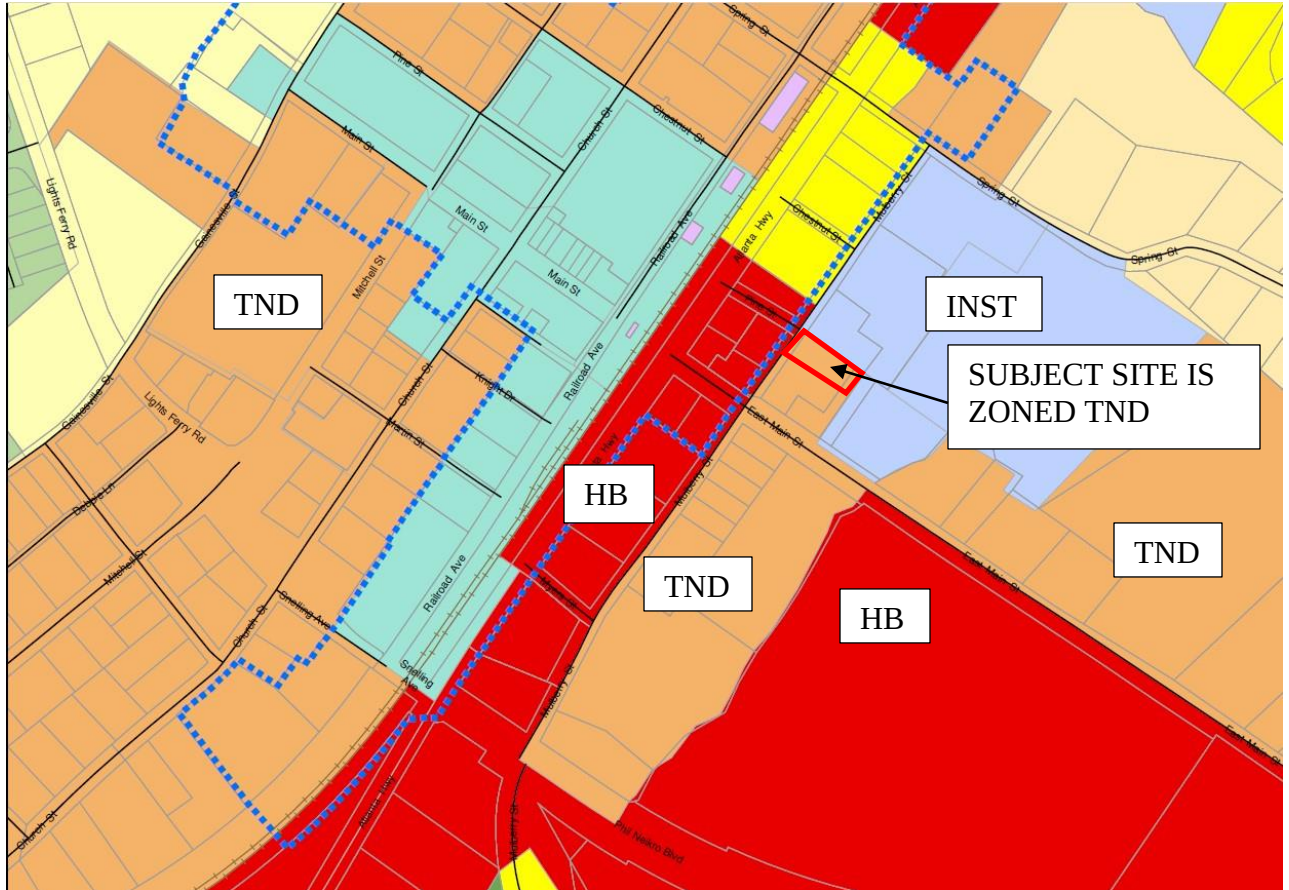
Street View:





Zoning Map:

The subject property is zoned TND – Traditional Neighborhood Development. The surrounding properties are zoned TND, HB, INST and CBD across Atlanta Highway.



Legend

Zoning Districts

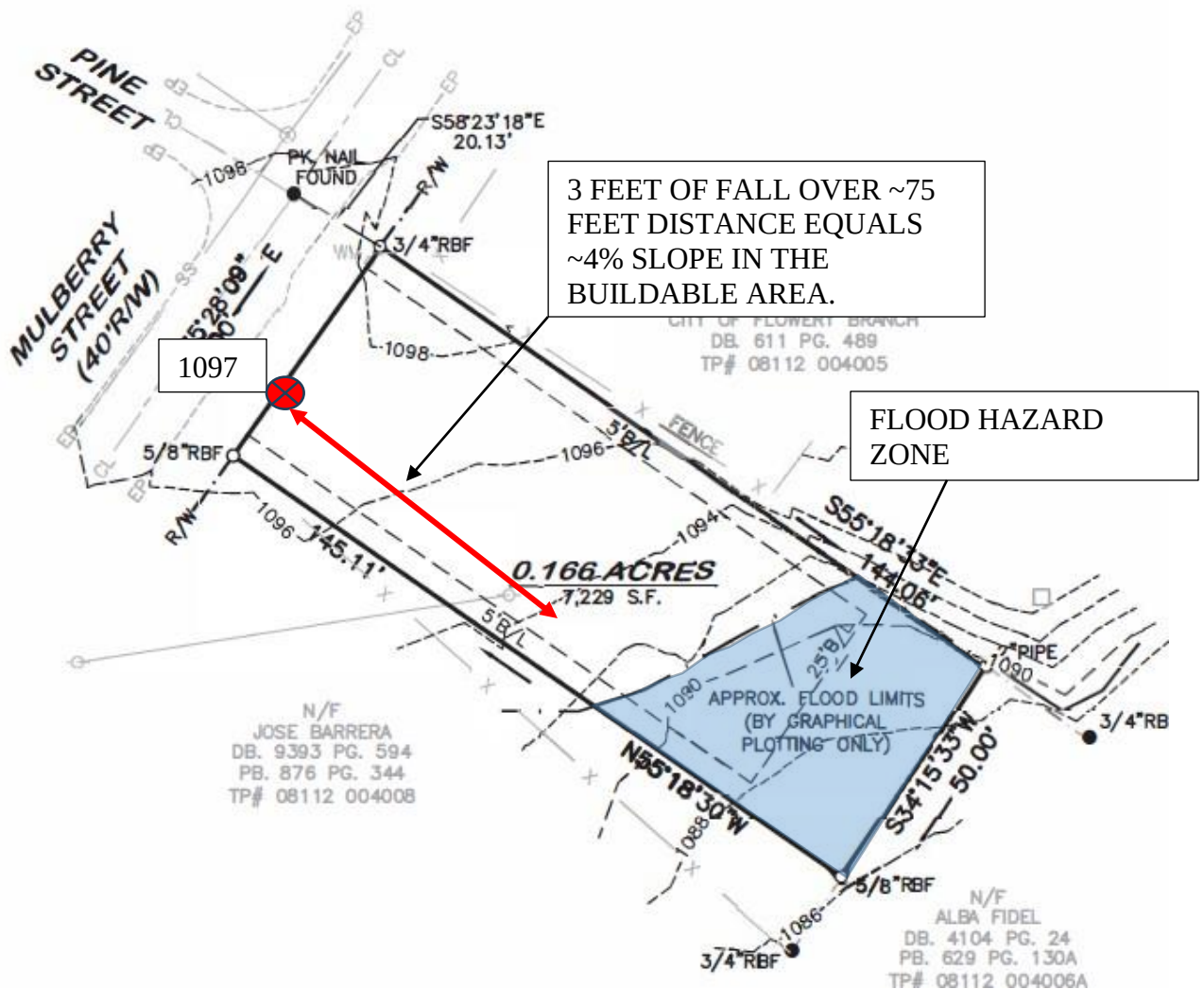
	Residential Low Density (R-1)		Highway Business (HB)
	Residential Moderate Density (R-2)		Institutional (INST)
	Residential Multi-family (R-3)		Manufacturing & Industrial, Light (M-1)
	Traditional Neighborhood Development (TND)		Manufacturing & Industrial, Heavy (M-2)
	Planned Unit Development (PUD)		Agriculture (A)
	Manufactured Home Park (MHP)		
	Central Business District (CBD)		
	Neighborhood Shopping (NS)		

Historic Districts

	Local Historic District
--	-------------------------



TOPOGRAPHIC ANALYSIS



Applicant's Statement of Hardship

Floodplain Details: The floodplain runs across the back of the lot and extends approximately 118.25 feet from front to the flood on the right side and 125.92 on the left side. A house with the garage placed at the rear would require a minimum depth of 81 feet, which would encroach on the floodplain, effectively placing the house within that area.

Floodplain Impact: The required length of the house would put the corner of the house on the flood zone and the slope of the lot would require a retaining wall.



Staff's Analysis

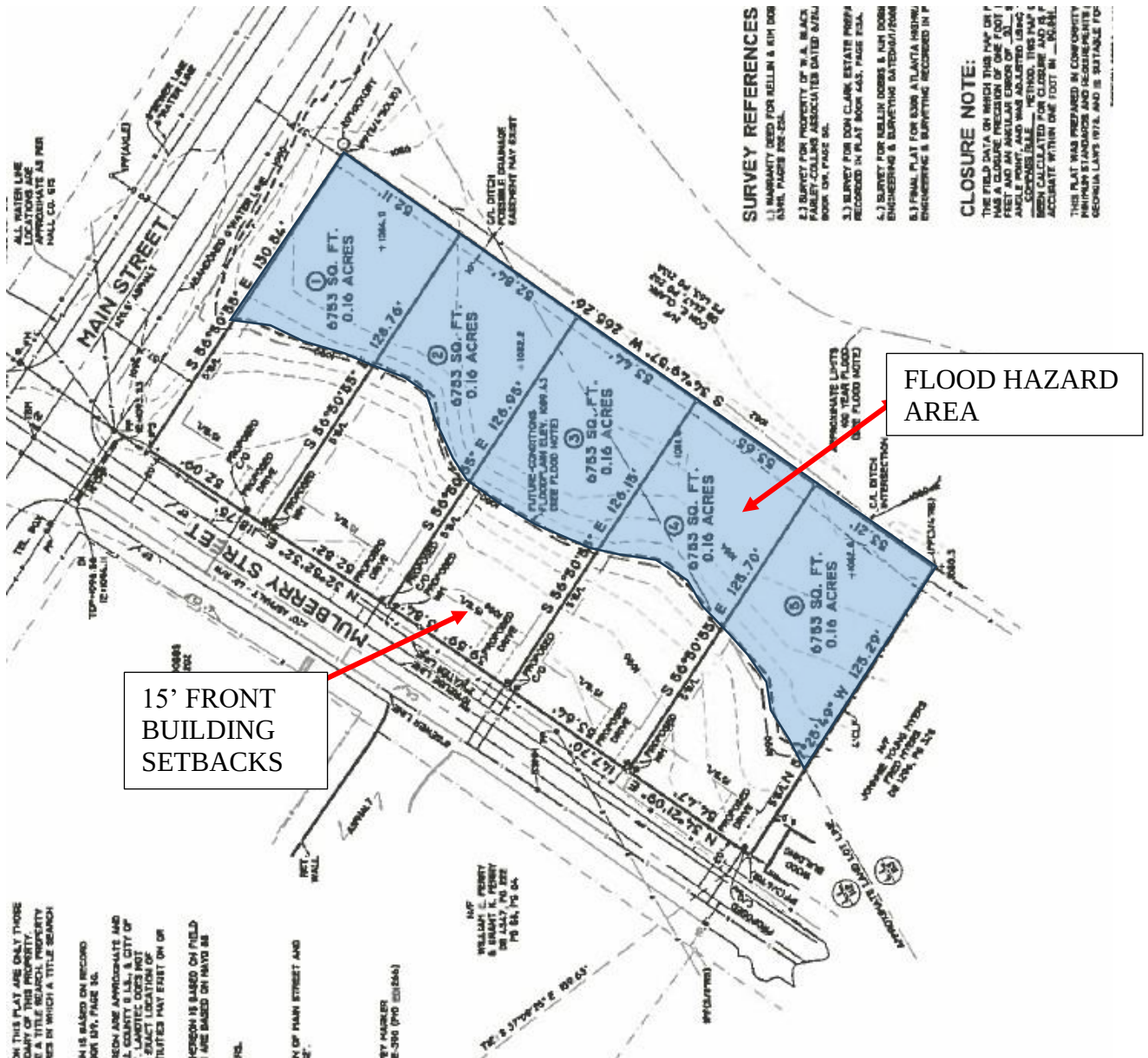
The flood hazard area is located at the rear of the subject site, where the slope is relatively gentle at approximately 4%. This minimal slope descends from the street toward the rear of the property. The topography becomes steeper closer to the flood zone.

The distance from the front property pin to the nearest flood hazard area is approximately 90 feet. The front setback for single-family homes in TND zoning is zero. With appropriate home placement near the front right-of-way, a different floor plan could feasibly accommodate a rear-entry garage.

There are precedents within this area in TND zoning district where homes approved with front entry garages due to the location of flood hazard zones. The project called Mulberry Cottages was approved with variances around June of 2017.

Mulberry Cottages





At the time of the Cottages development, the TND code required a 15' front building setback line. The applicant requested a variance at the time to encroach on the front setback. The flood hazard zone impacts these lots more than the subject site for this variance. Review of the Mulberry Cottages file reveals trouble during construction staying out of the flood zone. The City Engineer had several meetings concerning the impact of the flood zone and the variances appear to be justified and needed to develop the homes.



Flowery Branch Code Sec. 37.5. - Criteria for Granting Variances.

Any applicant requesting consideration of a variance to any provision of the zoning ordinance shall provide a written justification that one or more of the following condition(s) exist. The City Council shall not approve a variance application unless it shall have adopted findings that one or more of the following conditions exist:

- (a) There are extraordinary and exceptional conditions or practical difficulties pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district;**

The subject parcel includes a portion designated as a flood hazard area, with the site sloping from the road toward the rear. The slope within the buildable area is approximately 4%. The topography and the location of a flood hazard zone provides extraordinary and exceptional conditions.

- (b) A literal interpretation of the provisions of this ordinance would effectively deprive the applicant of rights commonly enjoyed by other properties of the district in which the property is located;**

The literal interpretation of the provisions of the current ordinance would not allow a front entry garage and a literal compliant floorplan may encroach the flood hazard zone and / or impact the area with grading.

- (c) Granting the variance requested will not confer upon the property of the applicant any special privileges that are denied to other properties of the district in which the applicant's property is located;**

The requirement for rear-entry garages has been consistently enforced for many TND lots of similar width and depth. Nearby TND developments featuring front-entry garages were approved based on unique circumstances specific to each individual site.

- (d) The requested variance will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare;**

The TND zoning district is intended to provide neighborhoods that are designed according to the principles of "new urbanism" with a grid or modified-grid street network, pedestrian scale and orientation, shallow front yards, relatively narrow local streets planted with shade trees and provided with wide sidewalks, and with automobile garages located to the rear or side of residential lots.



(e) The special circumstances are not the result of the actions of the applicant;

The topography and flood hazard zone is not the result of the applicant's actions.

(f) The variance requested is the minimum variance that will make possible the proposed use of the land, building, or structure in the use district proposed; and

An alternative site plan with a floor plan of comparable size could show incorporating a rear-entry garage encroaching on or disturbing the flood hazard area or requiring the construction of a retaining wall.

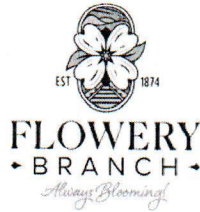
(g) The variance shall not permit a use of land, buildings or structures, which is not permitted by right in the zoning district or overlay district involved.

Single-family residential homes are not prohibited in the TND zoning district.

Recommendation:

Staff recommends the **APPROVAL** of the proposed variance application for allowing front entry garage in the TND zoning category with the following conditions:

1. The Building Permit application shall include a house location plan and be substantially similar to the plan provided with the variance application.
2. The applicant shall provide a Residential Drainage Plan including proposed grading to demonstrate no disturbance in the flood hazard area.
3. The applicant shall provide four-sided building elevations demonstrating compliance with the City of Flowery Branch's architectural standards.
4. The Variance is for the location of the garage entrance only. The approval of the Variance does not provide additional approvals of any local, state or federal regulations.



VARIANCE APPLICATION

Address of Request:

5201 Mulberry St, Flowery Branch, GA 30542

Type of Variance Requested

Complete requirements for variances can be found in the Flowery Branch Code of Ordinances; Appendix C, "Zoning Ordinance", Article 37;

Please verify all the requirements of the Flowery Branch Code of Ordinances; Appendix C, "Zoning Ordinance", Article 37, section 37.5 are being met.

Explain below:

We are meeting the requirements of the ordinances because there is a substantial flooding issue on the lot that was not cause by the owner's actions. The house plan mantains the aesthetics of the surrounding area, and the requested variance does not grant any special privileges. Additionally, the proposed use is permitted within the zoning district.

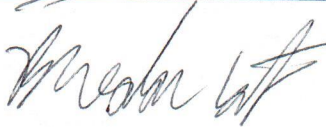
Applicant: Tabb Bowen

Address: 4513 Winder Highway
Flowery Branch, GA 30542

E-mail address: tbowen@chestateebrokers.com

Phone number: 770-561-1831

Signature: 

Notary Seal: 

BRENDON COATS
NOTARY PUBLIC
Hall County
State of Georgia
My Comm. Expires Aug. 23, 2025



Property owner information (if different than the applicant)

Property owner (please print): _____

Signature of property owner: _____

Notary Seal:

Please provide the following at time of submittal:

- Legal description – one hard copy and on a flash drive
- Current survey of property – one hard copy and on a flash drive
- Site plan – one hard copy and on a flash drive
- Detailed description of request
- Conflict of interest disclosure (attached)
- Disclosure of campaign contributions (attached)



Conflict of Interest Disclosure

Identify all members of the City Council of the City of Flowery Branch and Employees of the City of Flowery Branch Community Development Department who

Have a property interest in the real property affected by this request

None

Have a financial interest (direct ownership interest) of the total assets or capital stock of a business entity where such ownership interest is more than 10% in any business entity which has a property interest in the real property affected by this request

None

Have a member of the family (spouse, mother, father, brother, sister, son or daughter) having a property financial interest as herein defined, in the real property affected by this request

None

Disclosure of Campaign Contributions

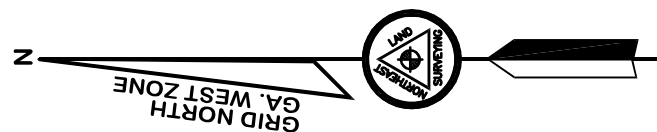
List below the names of local government officials of the City of Flowery Branch to whom campaign contributions were made, within two (2) years immediately preceding the filing of this application, which campaign contributions total \$250.00 or more or to whom gifts were made having a total value of \$250.00 or more.

Elected Officials Name

Amount of Description of Gift

None





HOUSE LOCATION PLAN FOR:

INVESTNLAND, LLC



***NORTHEAST LAND
SURVEYING, LLC***
A Georgia Land Surveying Firm # 1240
***P.O. BOX 384
Braselton, Ga. 30517
Phone: 678-776-7494***

Date: 5/8/24 Land Lot: 112 District: 8th
 County: Hall, Ga. Scale: 1"=30'
 Drawn By: KLC Checked By:
 Date of Field Work: 5/6/24 Job #: 24-043

LOT # _____

ADDRESS _____

PLAN GRIFFIN II 1958 _____

ELEV B _____

GARAGE RIGHT _____

NO.	DESCRIPTION	BY	DATE

1679

GRIFFIN II

LOT #

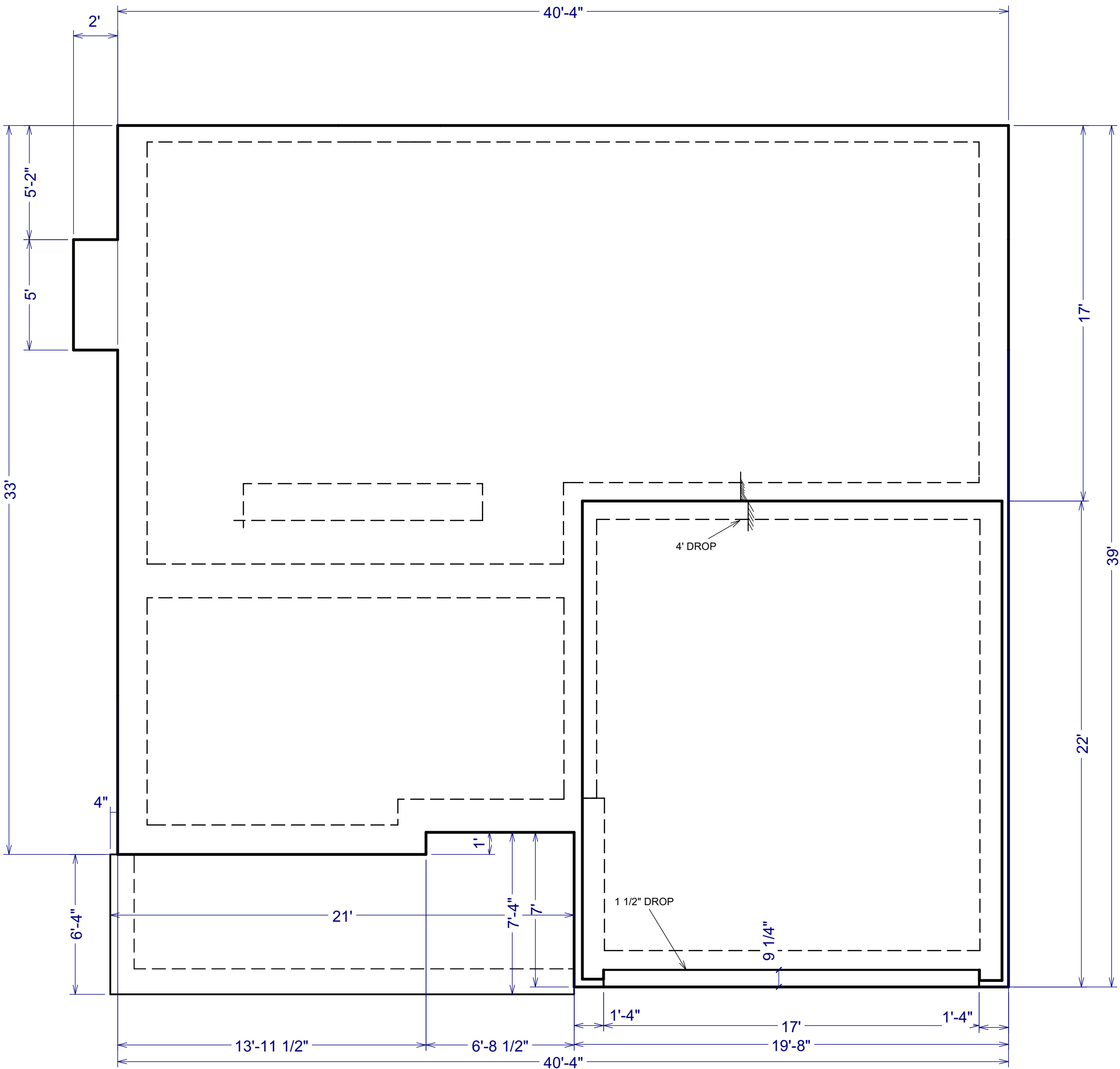
DATE:

7/30/2024

SCALE:

SHEET:

A-1



SLAB FOUNDATION PLAN

NO.	DESCRIPTION	BY	DATE

1679

GRIFFIN II

LOI #

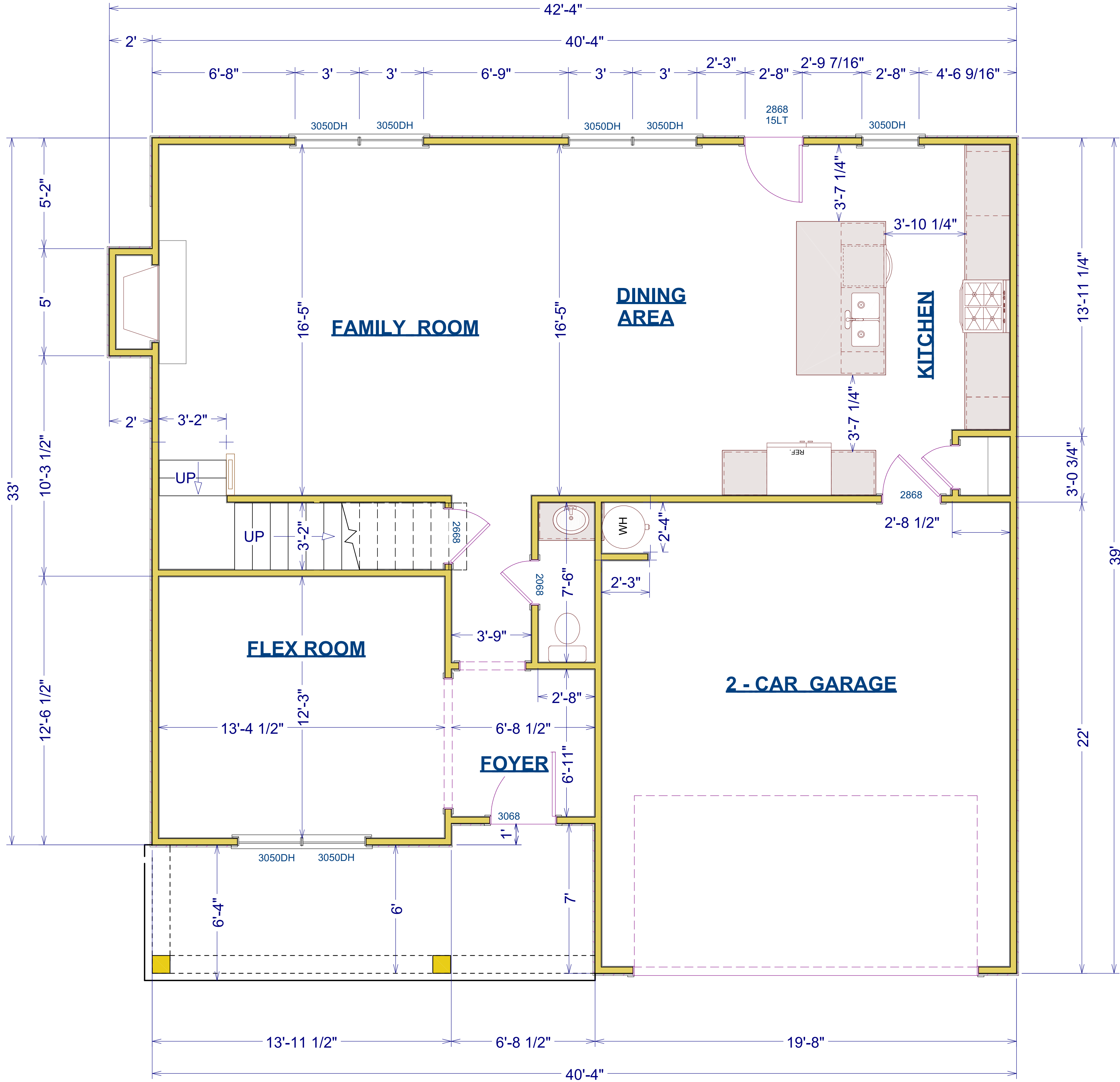
DATE:

7/30/2024

SCALE:

SHEET:

A-2



HEATED SQUARE FOOTAGE

FIRST FLOOR	920 SQ. FT.
2ND FLOOR	1038
TOTAL HEATED	1958
GARAGE	384

FIRST FLOOR PLAN

NO.	DESCRIPTION	BY	DATE

1679

GRIFFIN II

LOT #

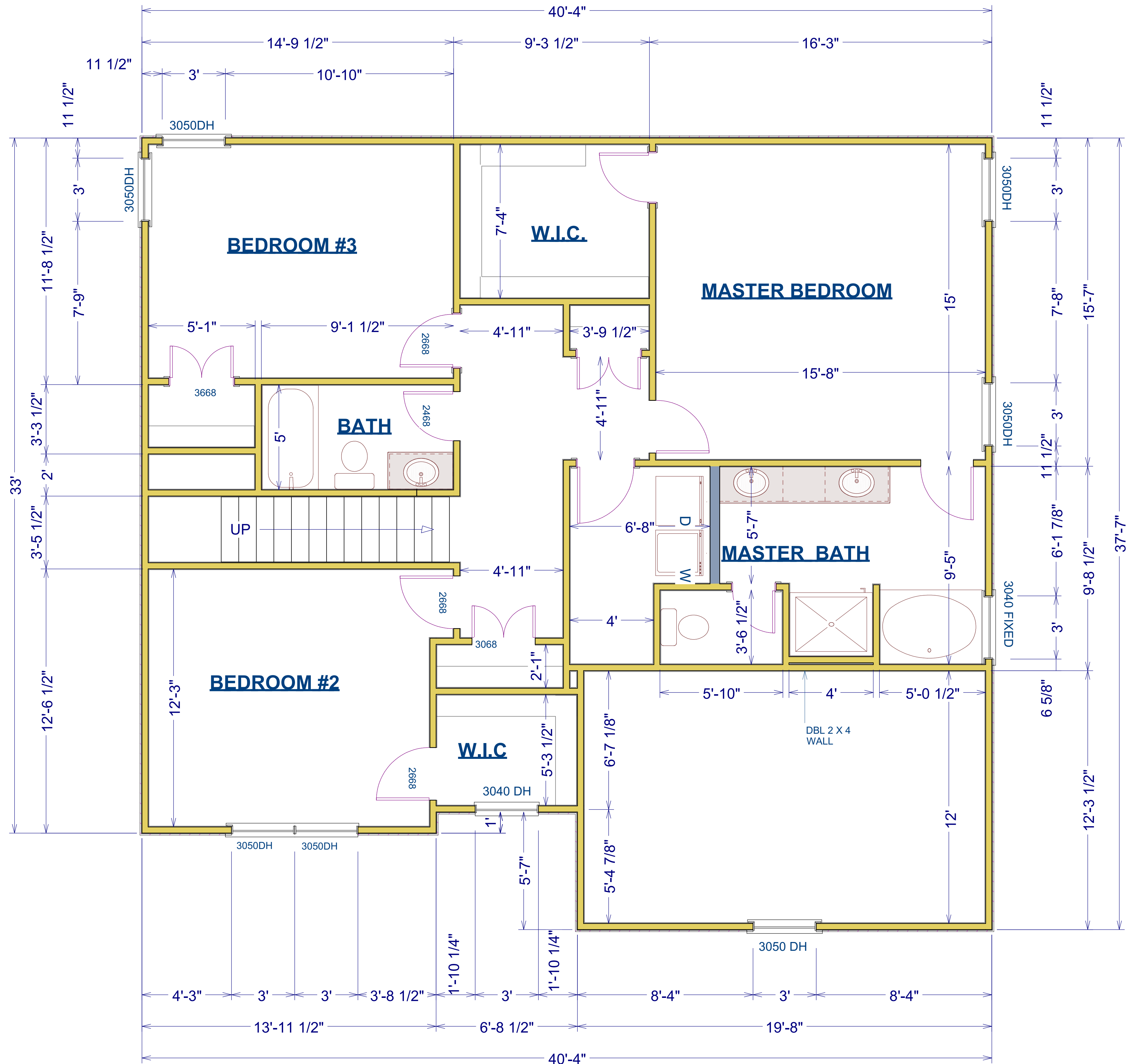
DATE:

7/30/2024

SCALE:

SHEET:

A-3



2ND FLOOR PLAN

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NO.	DESCRIPTION	BY	DATE

1679

GRIFFIN II

LOT #

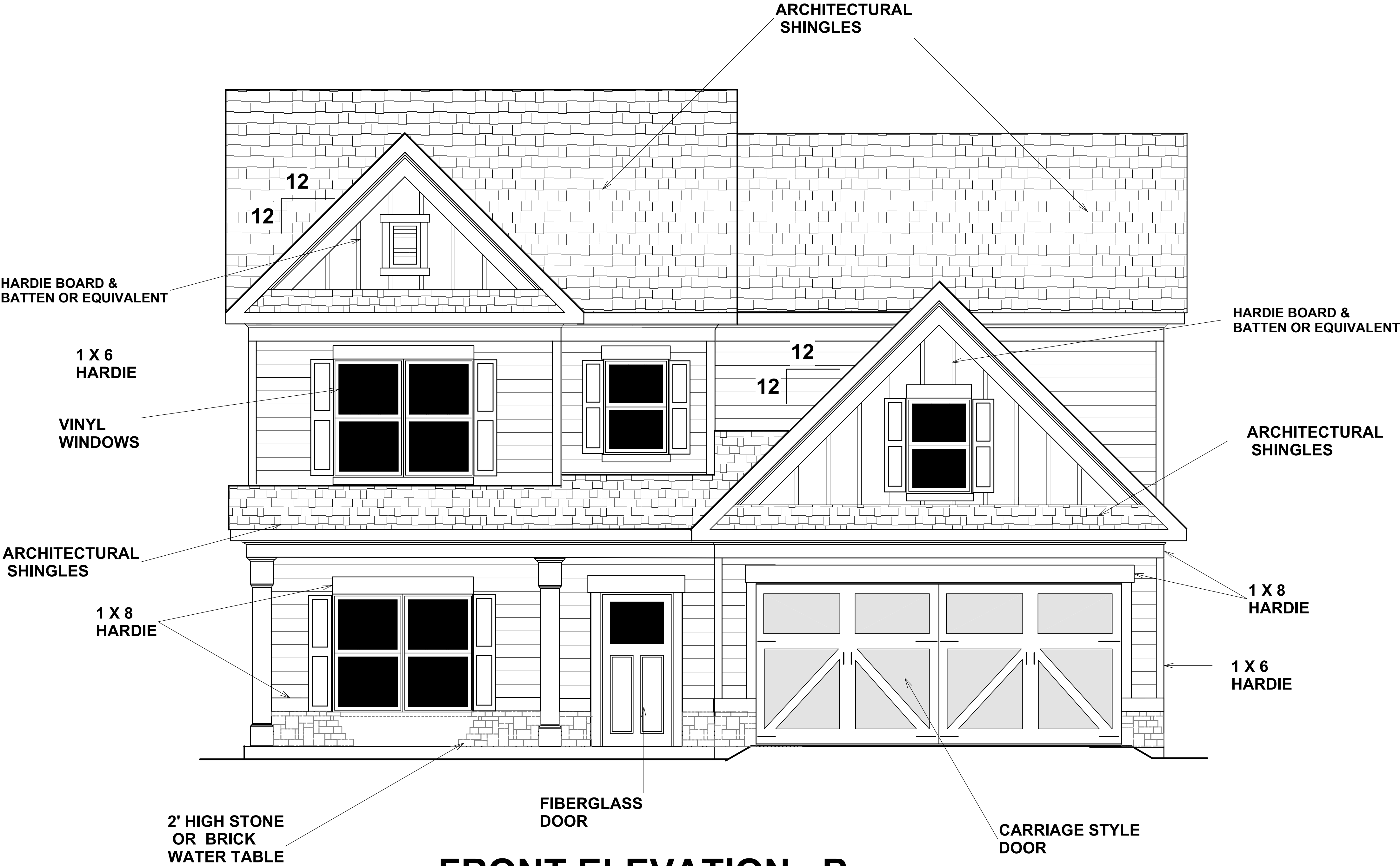
DATE:

7/30/2024

SCALE:

SHEET:

A-4



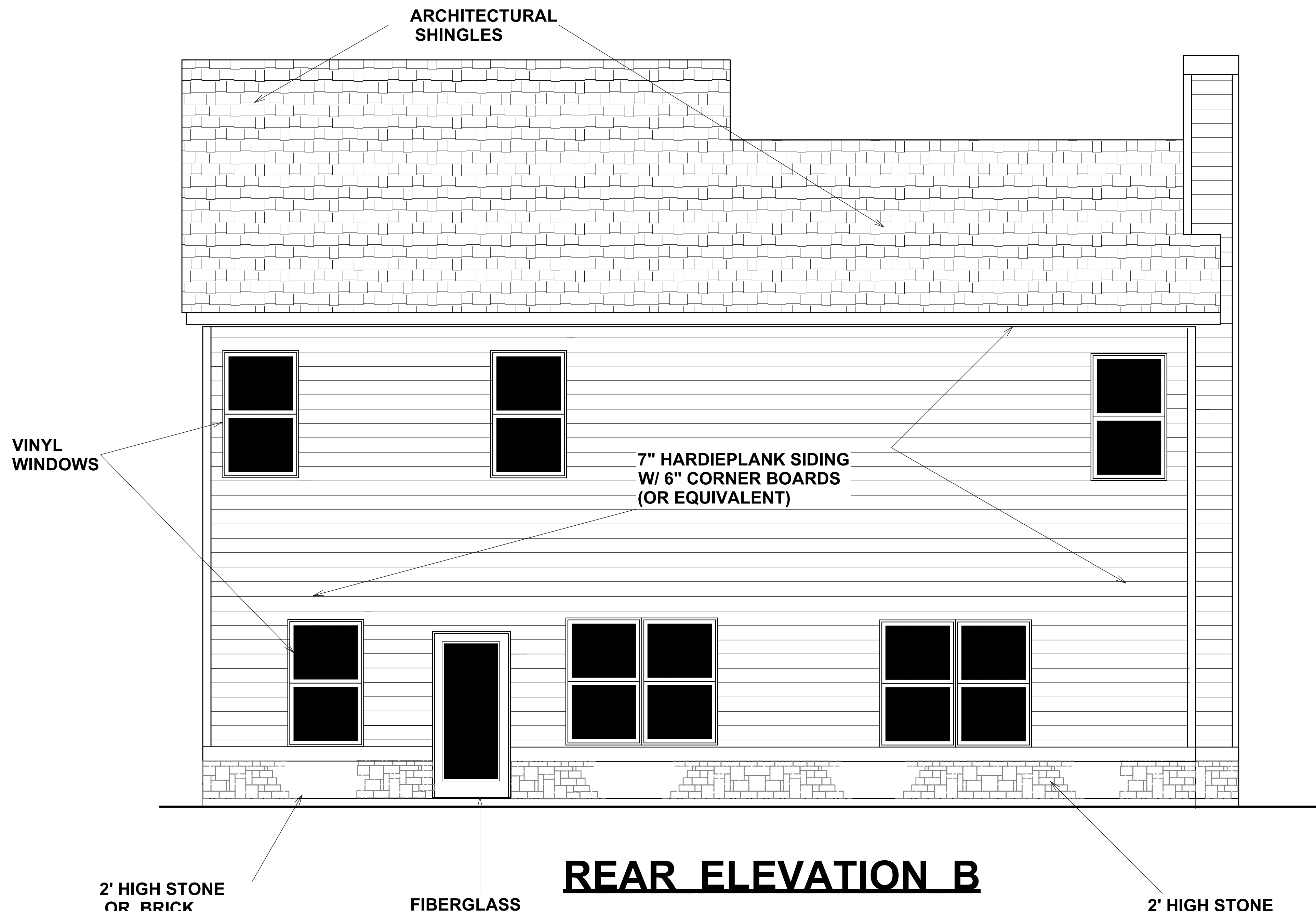
NO.	DESCRIPTION	BY	DATE

1679

GRIFFIN II

LOT #

DATE:
7/30/2024
SCALE:
SHEET:
A-5



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NO.	DESCRIPTION	BY	DATE

1679

GRIFFIN II

LOT #

DATE:

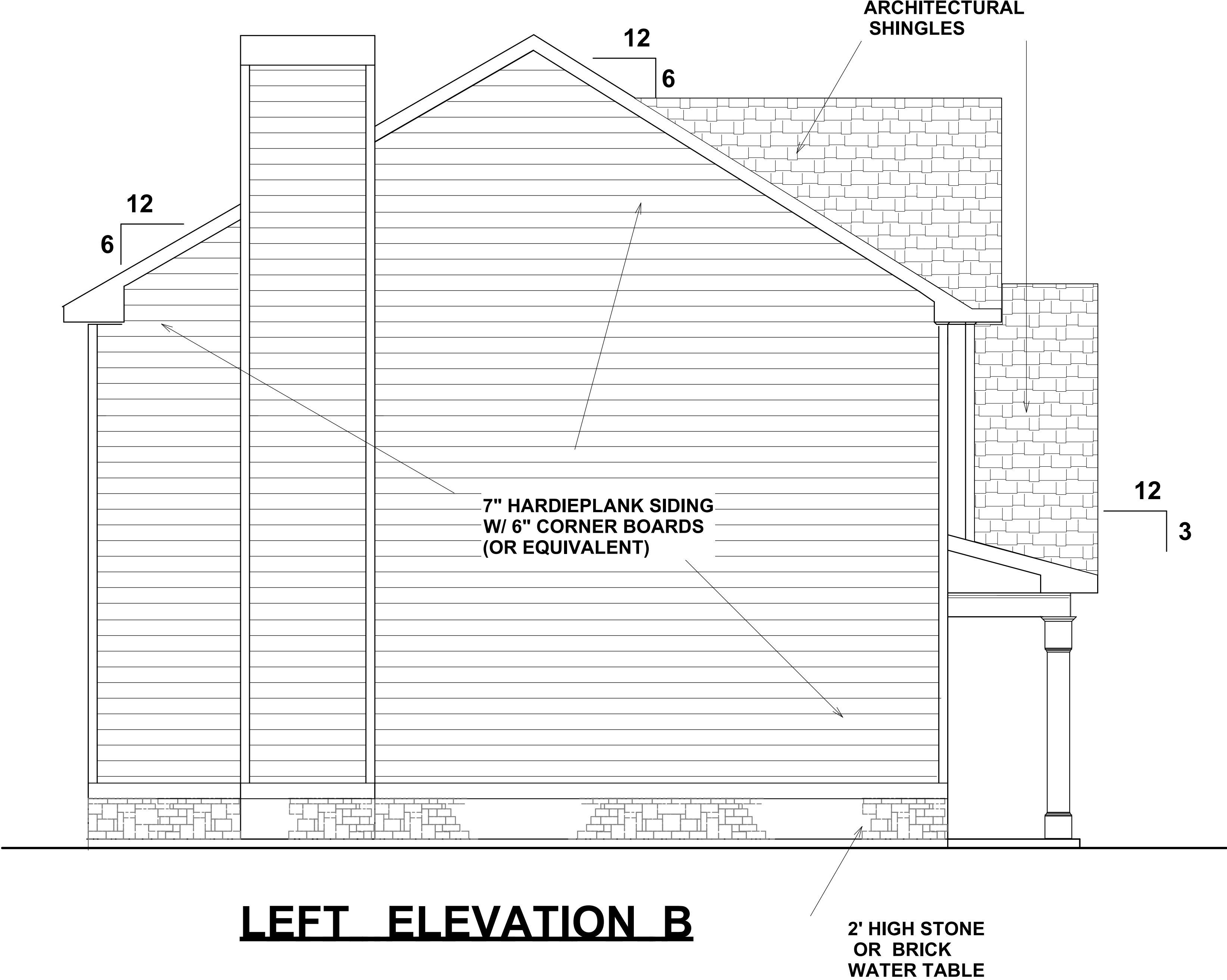
7/30/2024

SCALE:

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SHEET:

A-6



LEFT ELEVATION B

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NO.	DESCRIPTION	BY	DATE

1679

GRIFFIN II

LOT #

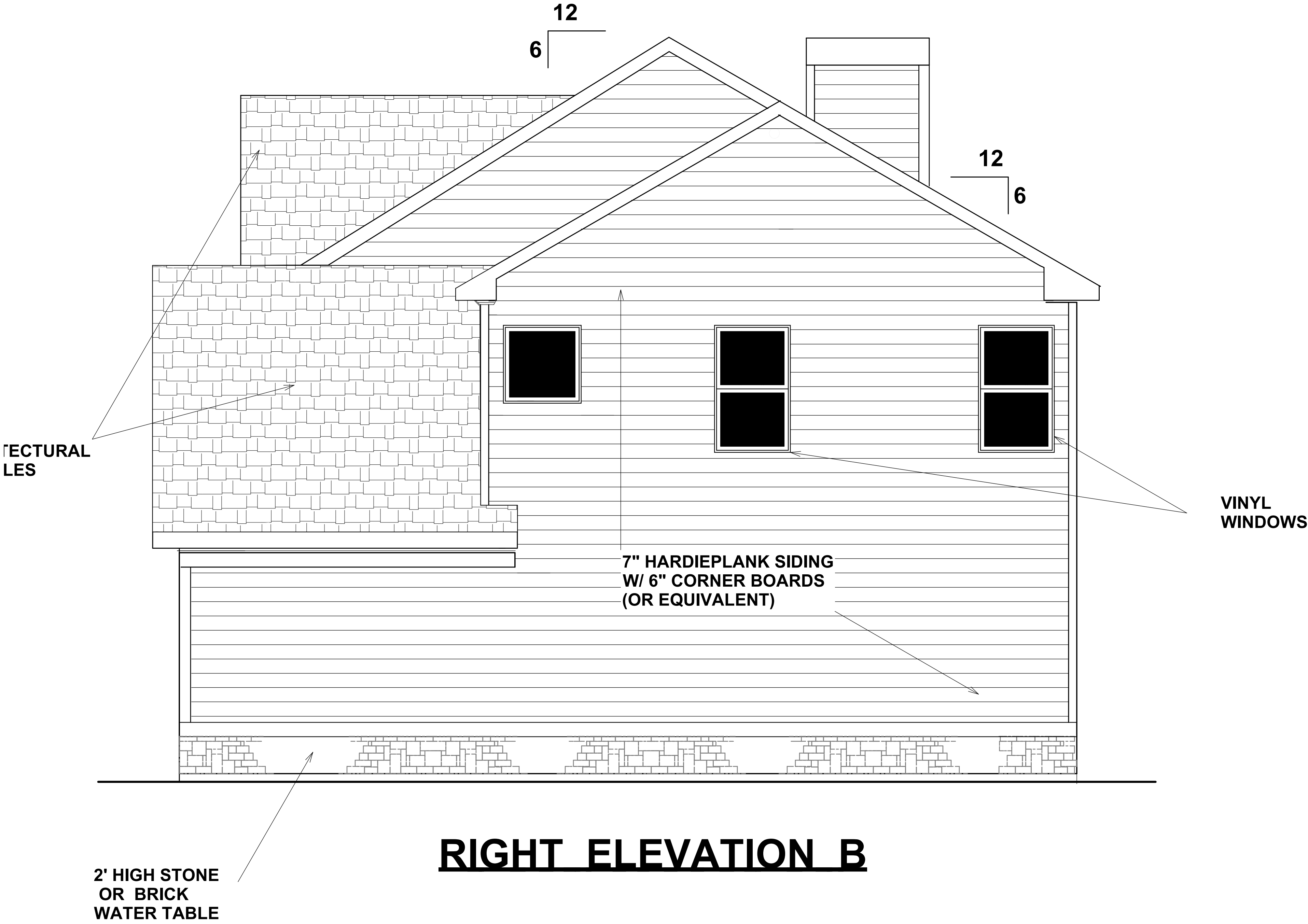
DATE:

7/30/2024

SCALE:

SHEET:

A-7



RIGHT ELEVATION B

--

NO.	DESCRIPTION	BY	DATE

1679

GRIFFIN II

LOT #

DATE:

7/30/2024

SCALE:

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SHEET:

A-8



FLOWERY BRANCH CITY COUNCIL



EXECUTIVE SUMMARY

SUBJECT: Consider Approval of Ordinance 730 for a Public Hearing and First Reading of a Conditional Use Permit at 5205 Railroad Avenue for the Operation of a Micro-Brewery.

COUNCIL MEETING DATE: February 6, 2025

HISTORY:

The Public Hearing was published on January 8th, 2025; First Reading and Public Hearing is scheduled for February 6th, 2025 and anticipated final vote on March 6th, 2025.

FACTS AND ISSUES:

A micro-brewery requires a Conditional Use Permit to operate in CBD zoning

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

I make a motion for the approval of Ordinance 730 with staff recommended conditions.

SAMPLE MOTION:

COLLABORATING DEPARTMENT:

DEPARTMENT: Planning

Prepared by: Shelia Cooper

ATTACHMENTS

- [Ordinance 730 CUP for 5205 Railroad Avenue.pdf](#)
- [CUP Report 5205 Railroad Avenue Micro Brewery and Restaurant.pdf](#)

Public Hearing Published	01/08/2025	First Reading	02/06/2025
Public Hearing	02/06/2025	Second Reading	03/20/2025

ORDINANCE NO. 730

AN ORDINANCE APPROVING A CONDITIONAL USE PERMIT (CUP) TO OPERATE A MICRO-BREWERY ON A PARCEL OF REAL PROPERTY OWNED BY KEVIN HOBGOOD, IDENTIFIED AS 5205 RAILROAD AVE., TAX PARCEL 08112 016001, TOTALING 0.30+/- ACRES AND AS SHOWN ON ATTACHED EXHIBIT “A”, AND AS CONDITIONED ON ATTACHED EXHIBIT “B”; PROVIDING FOR SEVERABILITY, REPEALING CONFLICTING ORDINANCES, PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER LAWFUL PURPOSES.

WHEREAS, Kevin Hobgood owns a parcel of land totaling 0.30+/- acres identified as Parcel Tax Identification No. 08112 016001, as shown and described on Exhibit “A”; and

WHEREAS, the subject property is zoned Central Business District and located in the Downtown Overlay District thus requiring a conditional use permit in order to be used as a micro-brewery; and

WHEREAS, Kevin Hobgood, has submitted to the City Council of Flowery Branch, Georgia, a written and signed application requesting a conditional use permit (CUP) for the operation of a micro-brewery; and

WHEREAS, the City Council held a public hearing at the meeting of February 6, 2025 duly noticed as prescribed by law and published in the Gainesville Times, regarding said application, as shall be set forth in the minutes of said meeting.

NOW THEREFORE, THE COUNCIL OF THE CITY OF FLOWERY BRANCH HEREBY ORDAINS AS FOLLOWS:

SECTION 1. FINDINGS.

The City Council finds that the proposed conditional use permit request is consistent with the adopted standards for governing the exercise of the zoning power consistent with O.C.G.A. § 36-66-5 and requirements of the Zoning Ordinance as identified below.

1. The proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property.
2. The proposal is not expected to adversely affect the existing use or usability of adjacent or nearby property.
3. The property could be used in accordance with the existing regulations and has a reasonable economic use as without the issuance of a conditional use permit however, an alternative use is appropriately considered.

4. The development if approved and constructed is not expected to result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.
5. The proposal is generally in conformity with the policy and intent of the comprehensive plan including the character area map and future land use plan map.
6. The proposal is considered appropriate in view of existing use(s) and zoning of the subject property and nearby properties.
7. No determination has been made by staff with regard to the value differential between a development with or without a conditional use permit.
8. A proposed development will not be a deterrent to the value or improvement of development of adjacent property in accordance with existing regulations.
9. There are no known adverse effects that would result from the issuance of a conditional use permit on the character of a zoning district.
10. Development as proposed is not expected to impact on the environment, including but not limited to, drainage, soil erosion and sedimentation, flooding, air quality and water quality. Compliance with city subdivision and land development regulations will be required, which include but are not limited to soil erosion and sedimentation, stormwater, and flood damage prevention.

SECTION 2. APPROVAL OF CUP AND LEGAL DESCRIPTIONS.

A conditional use permit to operate a micro-brewery is hereby granted for the subject parcel, as shown and described on Exhibit “A”, subject to the conditions set forth in Exhibit “B”. Said Exhibits are incorporated by reference as if fully set forth herein.

SECTION 3. AMENDMENT OF THE ZONING MAP.

This Ordinance is enacted as an amendment to the Zoning Map of Flowery Branch, Georgia. Accordingly, the Zoning Administrator is hereby authorized to update the Official Map consistent with Article 3 of the Zoning Ordinance.

SECTION 4. SEVERABILITY.

Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of this Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

SECTION 5. EFFECTIVE DATE.

The effective date of this Ordinance shall be March 6, 2025.

SECTION 6. REPEALER.

All ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

Approved this 6th day of March, 2025.

Edward R. Asbridge, Mayor

ATTEST:

Shelia R. Cooper, City Clerk

APPROVED AS TO FORM

Ted C. Baggett, City Attorney

All that tract or parcel of land lying and being in Land Lot 112, 8th Land District, City of Flowery Branch, Hall County, Georgia as shown on a plat prepared by Patton Land Surveying, LLC, for Kevin Hobgood, dated December 17th, 2024 and being more particularly described as follows:

**Thence South 55 degrees 14 minutes 26 seconds East for a distance of 45.00 feet to a 1/2" rebar pin set;
Thence South 34 degrees 45 minutes 34 seconds West for a distance of 290.00 feet to a 1/2" rebar pin set;
Thence North 55 degrees 14 minutes 26 seconds West for a distance of 45.00 feet to a 1/2" rebar pin set;
Thence North 34 degrees 45 minutes 34 seconds East for a distance of 290.00 feet to a PK Nail set and
said point being the POINT OF BEGINNING.**

Exhibit B

Conditions of Conditional Use Permit

1. The Conditional Use Permit is issued to the entity obtaining the business license and should the occupant vacate the building, the Conditional Use Permit expires.
2. Adequate parking spaces shall be provided to support the proposed micro-brewery and restaurant per the requirements of Table 21.3. The applicant shall provide a parking plan with a combination of proposed parking, street parking along Spring Street, and shared parking with any privately owned entity. The Planning and Community Development Director shall be provided a copy of the shared parking agreement should the applicant arrange approval of shared parking.
3. All parking spaces proposed must be compliant with Article 21.
4. The approval of the Conditional Use Permit does not provide approval of variances to Federal, State, or Local codes and regulations.
5. The applicant must ensure that proper fire lanes, emergency access routes, and safety measures are in place in accordance with local fire codes and regulations.
6. The building plans shall be substantially similar to the area use breakdown provided by the applicant: The building is +/- 8,700 square feet. 2,000 square feet of brewery, 1,000 square feet of bathroom, 4,900 square feet of restaurant, and 800 square feet of mechanical.



Memorandum

To: City of Flowery Branch, City Manager, and City Council

From: Chris McCrary, Planning and Community Development Director

Date: February 6th, 2025

Subject: Conditional Use Permit – Certificate of Appropriateness

Applicant: Kevin Hobgood
7233 Sherwood Mill Drive
Flowery Branch, GA 30542
404-925-2400

Existing Zoning: CBD – Central Business District

Location:

- 5205 Railroad Avenue; tax parcel identification number **08112 016001**

Conditional Use Permit (CUP) Request:

The applicant is seeking the approval of a Conditional Use Permit for the operation of a micro-brewery within the existing building located at 5205 Railroad Avenue. The building is ~8,700 square feet and the applicant intends to occupy the building with 2,000 square feet of brewery, 1,000 square feet of bathroom, 4,900 square feet of restaurant, and 800 square feet of mechanical.



Code Section:

Table 9.1 – Permitted and Conditional Uses in Nonresidential Zoning Districts

Properties located within the boundaries of the downtown overlay district with the underlying zoning of CBD are hereby permitted to operate micro-breweries subject to the granting of a conditional use permit under the terms and conditions of Article 34 and compliance with all applicable state and local alcoholic beverage licensing requirements. Table 9.1 are hereby provided to reflect this potential use:

Use	O-P	INST	NS	HB	CBD	M-1	M-2
Micro-brewery	X	X	X	X ₁	C	X	X
Micro-distillery	X	X	X	X ₁	C	X	X

Table 21.3 – Minimum and Maximum Number of Off-Street Parking Spaces Required

Use	Minimum Parking Required	Maximum Parking Permitted
Restaurant, bar, or tavern	One per 125 square feet	One per 75 square feet
Manufacturing, processing...	One per 1,300 square feet	One per 1,000 square feet

The total area to be used for the micro-brewery and restaurant is 8,700 square feet. The breakdown will be 2,000 square feet of the brewery, 1,000 square feet of bathroom, 4,900 square feet of restaurant, and 800 square feet of mechanical.

Restaurant bar or tavern: $5,900 / 125 = 47$ parking spaces minimum and $5,900 / 75 = 79$ parking spaces maximum.

Brewery (Manufacturing): $2,000 / 1,300 = 2$ parking spaces minimum and $2,000 / 1,000 = 2$ parking spaces maximum.

A total of 49 parking spaces minimum and 81 parking spaces maximum.

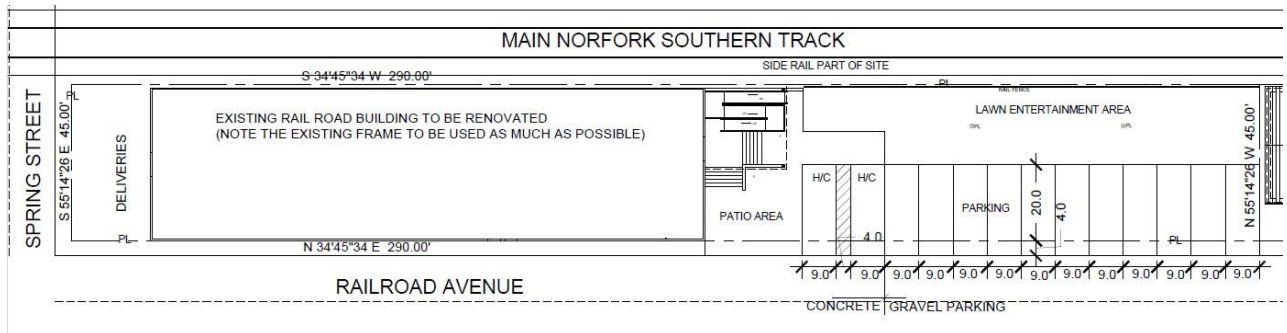


Sec. 21.5. - Parking Requirements in the CBD Zoning District.

It is the intent of this Section to give the Zoning Administrator maximum flexibility in administering the off-street parking requirements of this Article within the CBD zoning district, to promote redevelopment while ensuring that parking problems do not occur. Notwithstanding other provisions of this Article, off-street parking requirements of this Article may be administratively varied by the Zoning Administrator after considering the specific uses involved and the availability of on street and other (nearby) off-street parking.

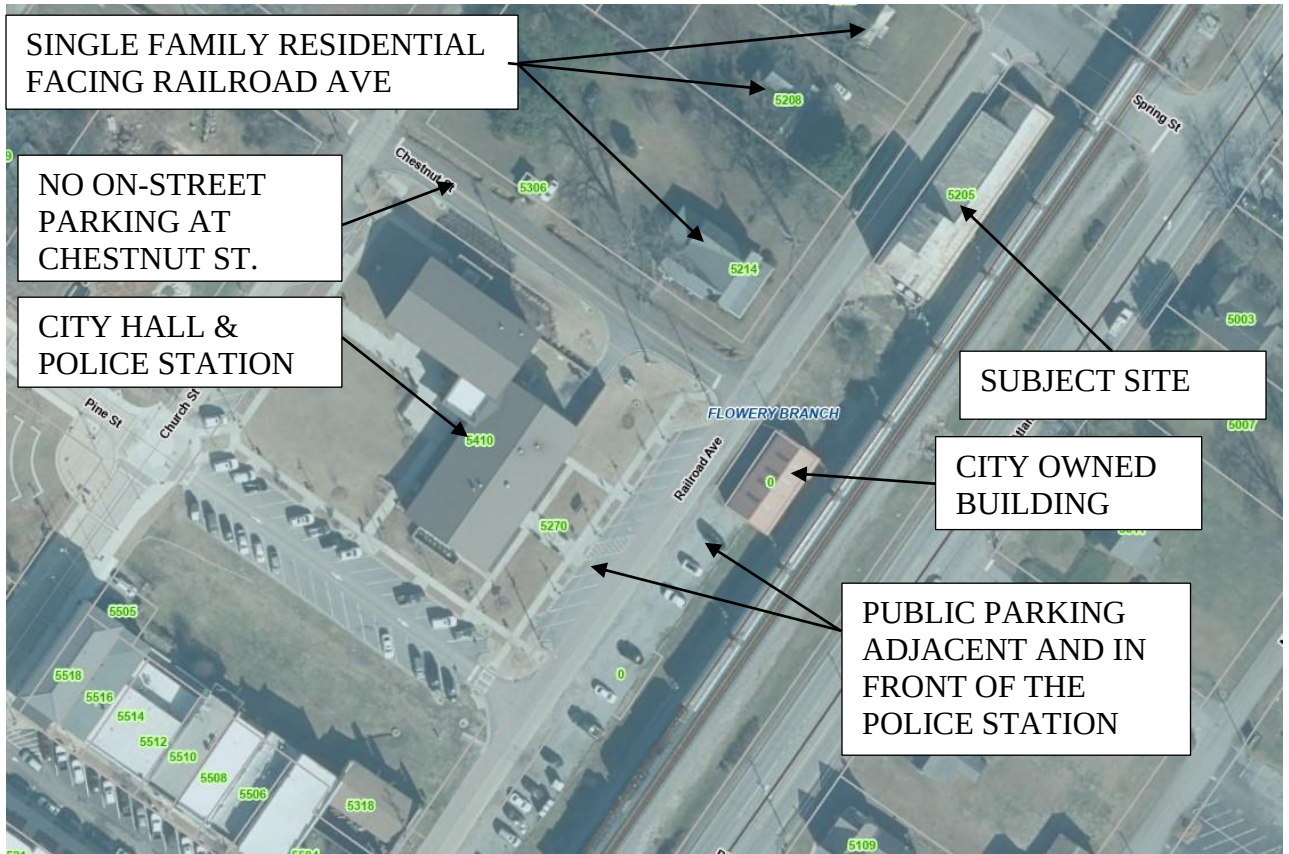
Zoning Administrator Response:

One of the heaviest uses for parking requirements is a restaurant. With +/- 5,900 square feet of restaurant area the required parking is significant. For the restaurant area alone, the required parking is 47 parking spaces. The applicant shows 13 parking spaces on the site plan.



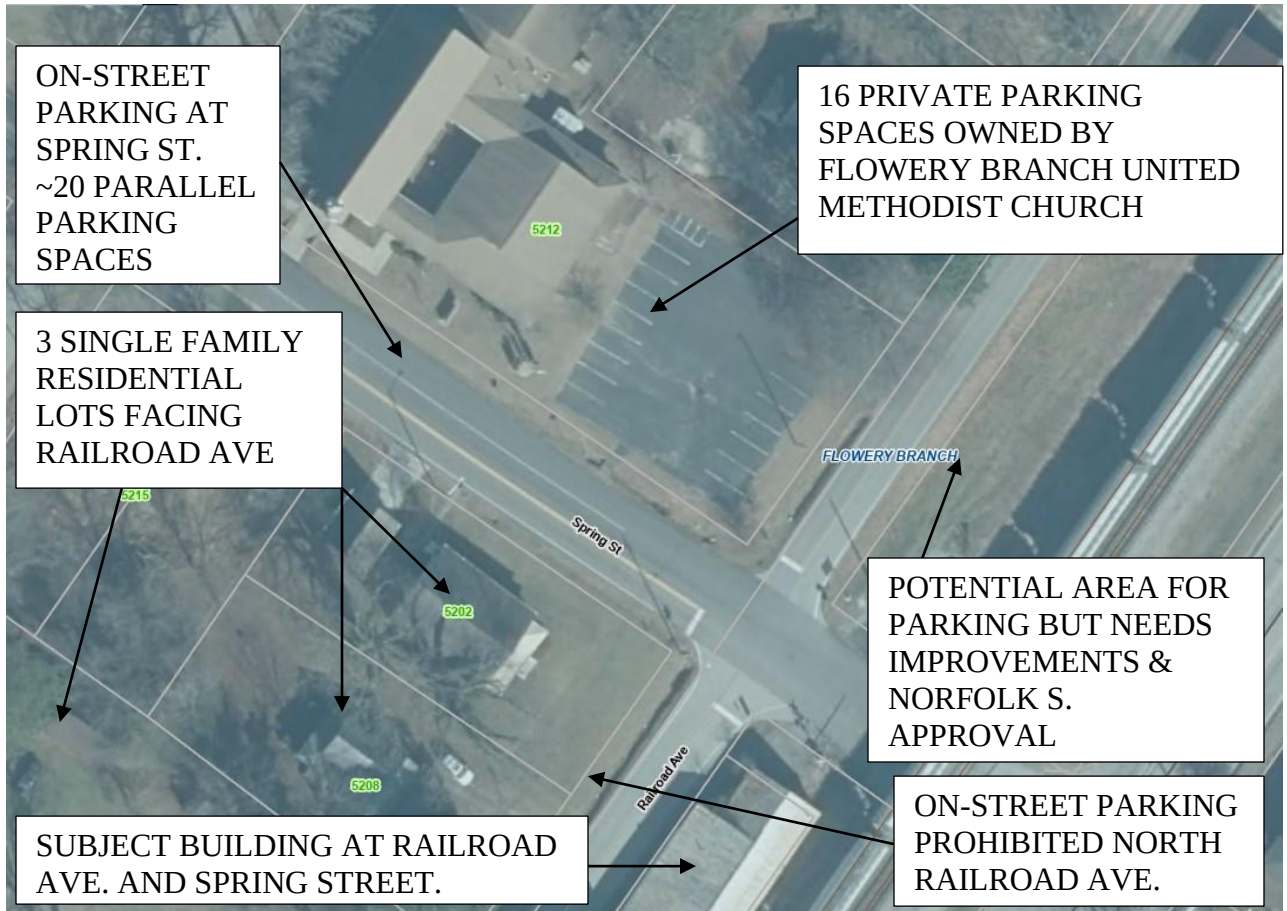


The image below focuses on public parking south of the subject building.





The image below focuses on public parking north of the subject building.



The parking area near the Police Headquarters supports the police fleet and is typically at full capacity. The proposed restaurant and brewery are expected to operate concurrently with other entertainment destinations in the downtown core, intensifying the demand for parking. During special events, parking availability for businesses in the area is already limited, and the addition of the restaurant would further increase this demand.

Existing and Potential Parking Options

1. **Core Downtown Parking:** The applicant shouldn't expect the availability of parking to support the restaurant exclusively along Railroad Avenue, Spring Street, and Main Street due to the current demands for the existing businesses.
2. **Spring Street On-Street Parking:** Approximately 20 parallel parking spaces are available on Spring Street, located north of the site.



3. **Norfolk Southern Property:** Additional parking may be possible on Norfolk Southern property north of the intersection of Railroad Avenue and Spring Street. However, this option would require the applicant to secure approval from Norfolk Southern and comply with the City's Development Regulations for parking lot improvements.
4. **Flowery Branch United Methodist Church:** There are an estimated 16 parking spaces at the church that could potentially be used. The applicant would need to establish a shared parking agreement with the church, record the agreement, and submit it to the City. However, there is no guarantee that the church will agree to this arrangement.

Parking Requirements and Recommendations

Given the existing parking constraints in the area, it is reasonable to require the applicant to address the parking deficiency through a combination of available options to meet the required parking capacity. The applicant must present a comprehensive parking solution.

If a sufficient solution is not provided, the Zoning Administrator concludes that parking issues will arise with the introduction of a restaurant at this location.

Sec. 21.11. - Stormwater Requirements for Large Parking Lots.

All off-street parking lots with ten or more spaces shall be required to have an oil/water separator device designed and constructed and shown in the stormwater management plan. Such device shall be approved by the City Engineer and shall be the responsibility of the property owner for maintenance and operation. The applicant is required to provide proper stormwater management at the issuance of a Land Disturbance Permit following the Conditional Use Permit approval.

Improvements for Pedestrians at offsite parking.

To ensure pedestrian safety, the City will evaluate the pathways from the offsite parking areas to the proposed business. If adequate infrastructure is not already in place, the applicant should be prepared to install marked crosswalks, appropriate signage at intersections, and sidewalk connections leading to the business.



Certificate of Appropriateness

Per the Historic District Ordinance, the subject building at 5205 Railroad Avenue (Parcel 08112 016001) is designated as historic building #62. A certificate of appropriateness shall be obtained prior to any material change in appearance of the designated historic property or any structure, site, or work of art located within a designated historic district; except as otherwise may be exempted by the City of Flowery Branch Historic Preservation Ordinance, Ordinance No. 375, as may be amended from time to time.

The applicant provided an existing condition report for the subject building by Tom Wright a Georgia registered Architect. The report provides an accurate representation of the building's current condition and highlights critical areas to address during the redevelopment process.

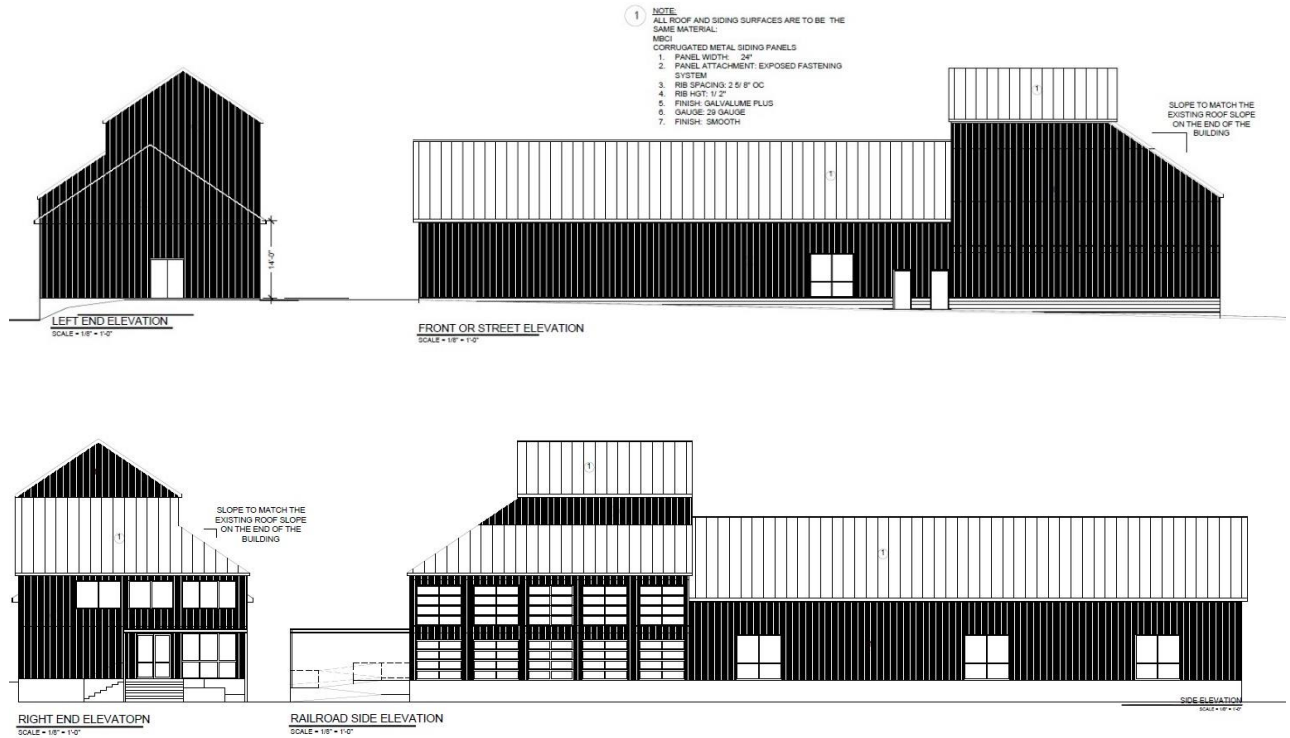
Summary of Recommended Actions

1. **Roof:** Full replacement or extensive repairs to address leaks and structural issues.
2. **Exterior Walls:** Repair and seal damaged wood elements; apply protective coatings to block walls.
3. **Foundation:** No action required at this time.
4. **Windows and Doors:** Replace or repair for improved functionality and aesthetics.
5. **Interior Repairs:** Address moisture infiltration, repair finishes, and consider new flooring installation.
6. **Utilities:** Conduct detailed inspections and upgrade as necessary to meet future operational demands.

The applicant will be required to file an application for a Building Permit and all required building codes will be reviewed for compliance.



The applicant provided black and white elevations with some description of the material.



1

NOTE:

ALL ROOF AND SIDING SURFACES ARE TO BE THE SAME MATERIAL:

MBCI

CORRUGATED METAL SIDING PANELS

1. PANEL WIDTH: 24"
2. PANEL ATTACHMENT: EXPOSED FASTENING SYSTEM
3. RIB SPACING: 2 5/8" OC
4. RIB HGT: 1/2"
5. FINISH: GALVALUME PLUS
6. GAUGE: 29 GAUGE
7. FINISH: SMOOTH



The applicant provided the following color renderings of the subject building:



Facing Atlanta Highway and the Railroad Tracks.



Facing Railroad Avenue.

Subject: Review of Code Section 10.7 Application

The application of Code Section 10.7 should be reviewed with consideration that the building in question is an existing structure, previously used as a cabinet shop. This building has long been part of the character of the area between Railroad Avenue and the Norfolk Southern Railway, where most structures feature metal facades.

While the current condition of the building has deteriorated, requiring upgrades to the foundation and framing to be occupiable, its metal construction aligns with the historical character of the area. Typically, a metal building would be non-compliant; however, the code section allows for architectural designs to reflect the surrounding area's character. In this case, retaining a metal exterior would honor the building's history and maintain the corridor's aesthetic.

That said, there are other ways to achieve compliance with Code Section 10.7. For example:

- The façade parallel to Railroad Avenue is a continuous wall plane. To break up its length, the architect could incorporate windows and doors. While it may be challenging to add



- fenestrations due to the existing foundation, elements similar to those on the railroad-facing façade could be introduced.
- Landscaping shrubs could also be added to the grassed area between the building and the road to enhance visual appeal.

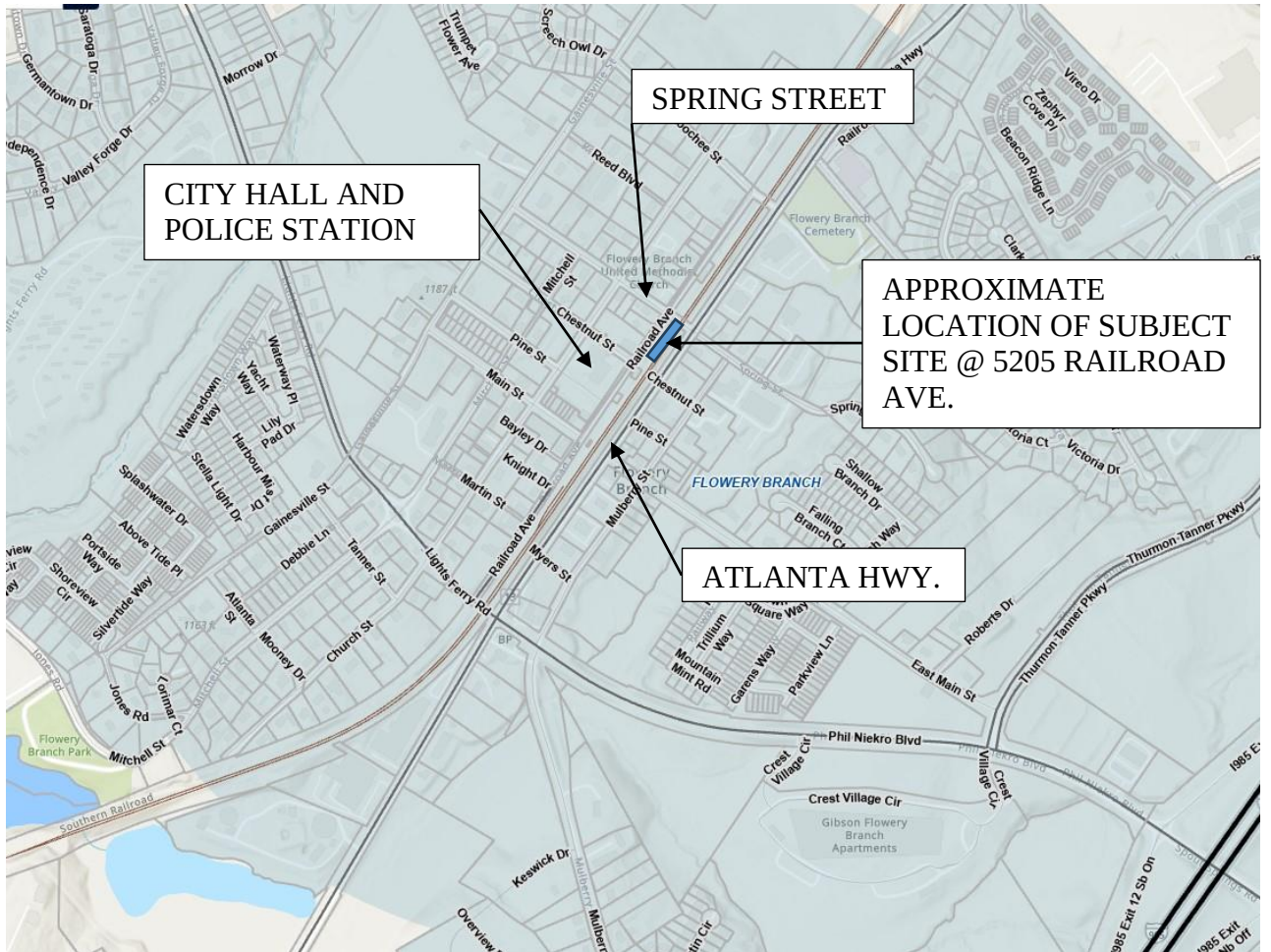
These design decisions would bring the structure closer to compliance while preserving its historic character.

Per the illustrations, the color of the Galvalume Plus metal siding appears to be a tan color with the roof material a darker grey. The architectural design prohibits highly reflective, shiny, or mirror-like materials.



Location Map:

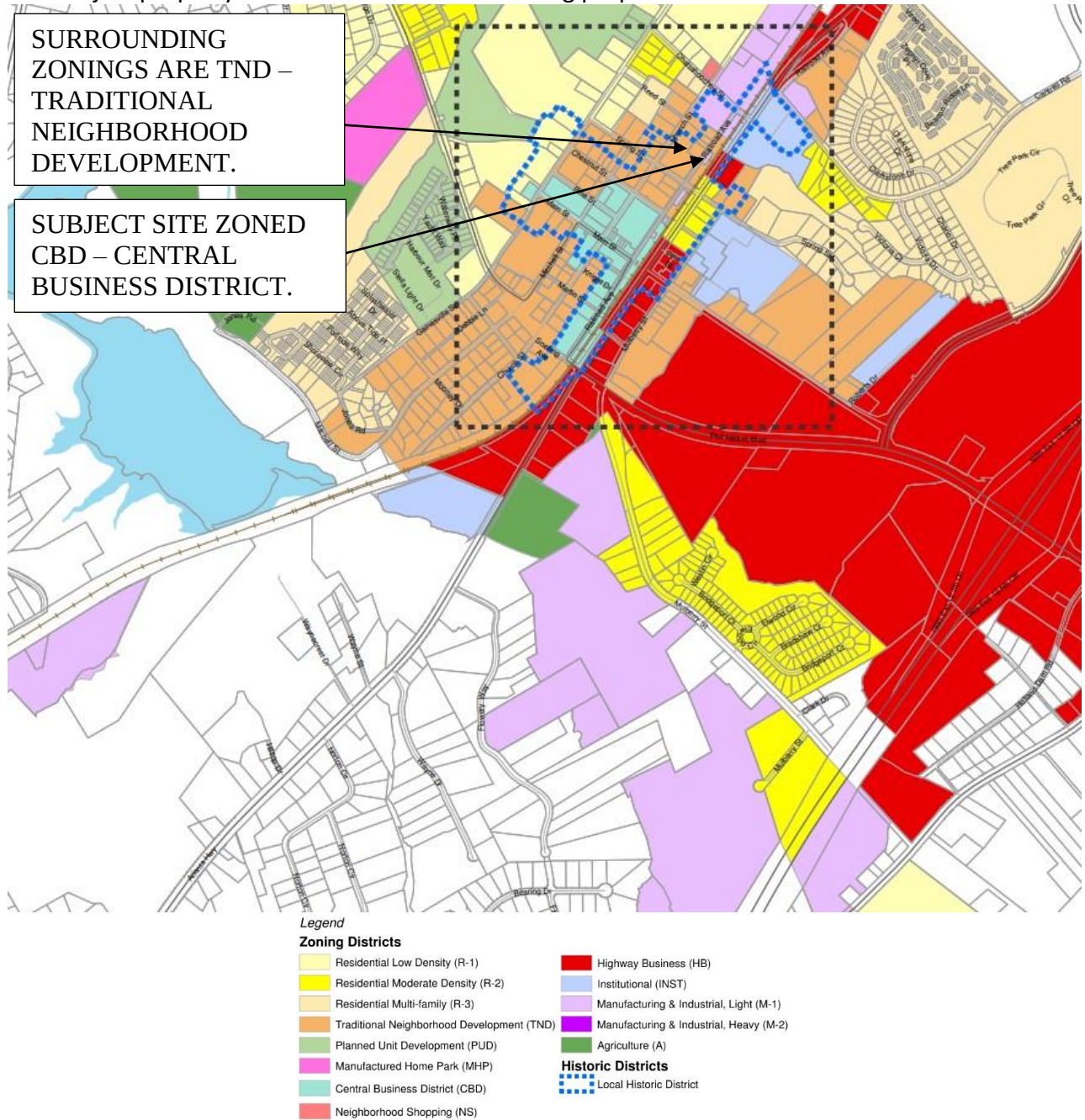
The subject site is located at 5205 Railroad Avenue near the intersection of Spring Street.





Zoning Map:

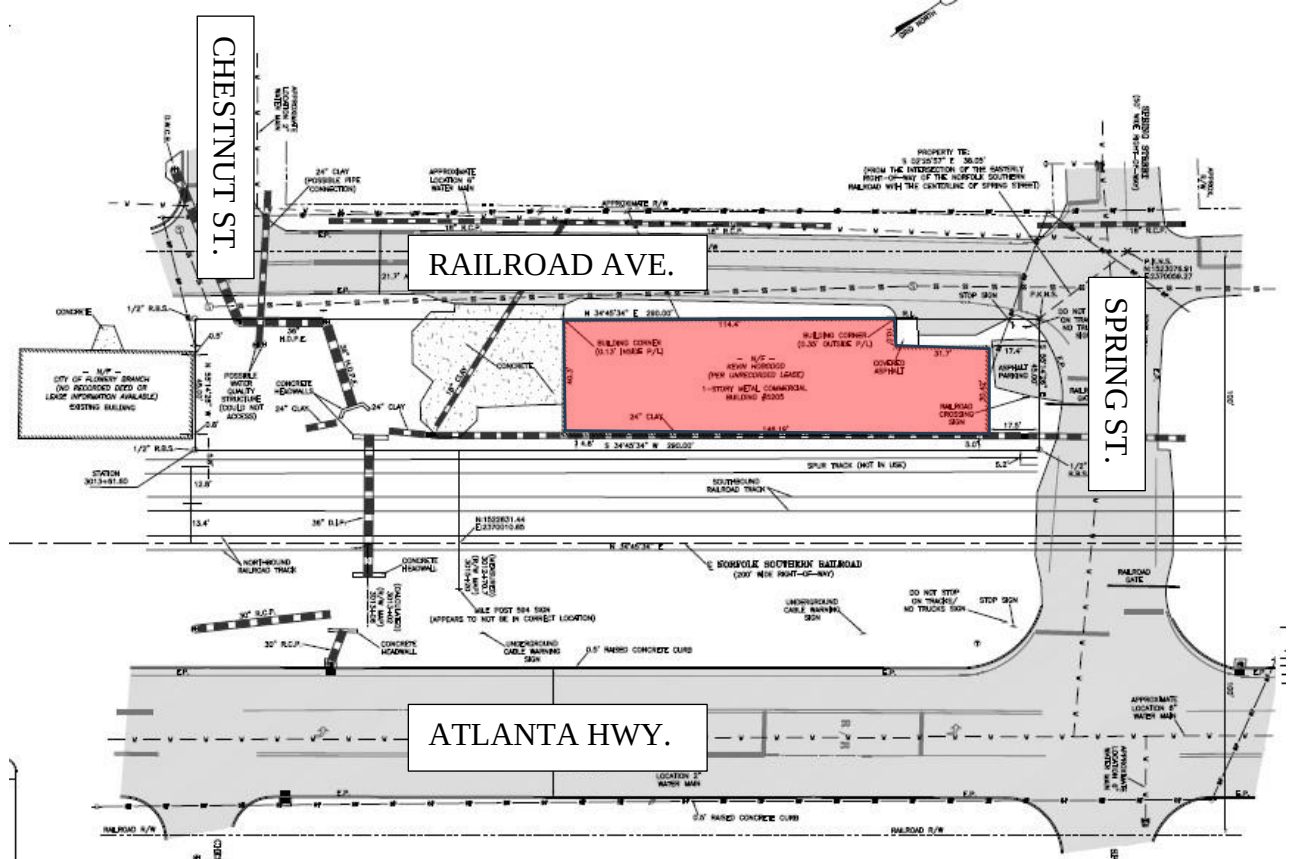
The subject property is zoned CBD. The surrounding properties are zoned TND.





Survey:

The survey provided with the CUP application shows the building relative to the property line but not the parking locations. A more current survey may be required prior to the issuance of permits.





Applications to amend the official zoning map and applications for conditional uses shall provide a written analysis comparing the proposed action with the criteria in this Section. A zoning map amendment or conditional use application may be justified only if it bears a reasonable relationship to the public health, safety, morality, or general welfare, and after consideration of the analysis requirements which may in individual cases be considered criteria relevant to the Zoning Administrator in making recommendations and by the City Council in the decision-making process.

- a) *Whether the proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property.*
Directly adjacent to the subject site are existing single-family residential uses. Most commercial uses nearby are further west on Railroad Avenue near Main Street.
- b) *Whether the proposal will adversely affect the existing use or usability of adjacent or nearby property.*
A higher intensity use, such as a restaurant, pub, or tavern could adversely impact the adjacent single-family residential uses that have only been adjacent to an unoccupied building.
- c) *Whether the property to be affected by the proposal can be used in accordance with the existing regulations and has reasonable economic use as currently zoned.*
The building is not occupied. Allowing the CUP would help the building be more economically viable.
- d) *Whether the 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 use will not result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools. Parking within the right-of-way of Railroad Avenue should be prohibited to not impact traffic patterns along the roadway.
- e) *Whether the proposal is in conformity with the policy and intent of the comprehensive plan including but not limited to the character area map and future land use plan map.*
The proposed micro-brewery would be in conformity with the policy and intent of the comprehensive plan.



- f) *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 proposal.*
There are no other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the proposal.
- g) *Existing use(s) and zoning of the subject property and nearby properties.*
Zoning adjacent to the subject building is zoned TND for single-family residential. The railroad is to the rear and no other uses are located on the sides.
- h) *Existing value of the property under the existing zoning district classification, the extent to which the property value of the subject property is diminished by the existing zoning district, and the value of the property under the proposed zoning district; if such information is provided by the applicant or can be discerned. This consideration may include the length of time the property has been vacant or unused as currently zoned and efforts taken by the property owner(s) to use the property or sell the property under the existing zoning district classification.*
The applicant did not provide data indicating the change to property value. The applicant did not provide the length of time that the building area has been vacant.
- i) *Whether a proposed zoning map amendment or conditional use approval will be a deterrent to the value or improvement of development of adjacent property in accordance with existing regulations.*
The proposed use should have no impact on the value or improvement of development of adjacent property.
- j) *The possible creation of an isolated zoning district unrelated to adjacent and nearby districts.*
The subject site is already zoned CBD.
- k) *Possible effects of the change in zoning district map, or change in use, on the character of a zoning district.*
The applicant provided limited architectural details. The existing building is constructed with corrugated metal siding. There is not enough detail to understand how the construction will change the character of the area.
- l) *The possible impact on the environment, including but not limited to, drainage, soil erosion and sedimentation, flooding, air quality and water quality.*



The applicant is subject to the requirements of an LDP including erosion control during land disturbance.

- m) *The relation that the proposed map amendment or conditional use bears to the purpose of the overall zoning scheme and the purposes of this Zoning Ordinance.*

The proposed CUP will have no impact on the purpose of the overall zoning scheme and the purposes of this Zoning Ordinance.

Staff Recommendation for Conditional Use Permit (CUP) & Certificate of Appropriateness

Recommendation:

Staff recommends **approval** of a **Certificate of Appropriateness** with the following conditions:

1. The building materials shall be similar to the information provided in note 1 on the building elevations.
2. The applicant shall add more wall openings adjacent to Railroad Avenue to break up the wall plane. It should be similar to the elevation facing Atlanta Highway. Final design to be approved by the Planning and Community Development Director.
3. The building finish shall be Galvalume Plus similar in color to the existing building maintaining the character of the building. The finish shall not be reflective or mirror-like finish. The applicant shall provide a sample of the material with colors for approval by the Planning and Community Development Director.
4. The applicant shall provide architectural details of the windows and doors including material and color. Final design to be approved by the Planning and Community Development Director.
5. The applicant shall provide details of the stepped decking and handicap ramps at the entrance for review of material and colors. Final design to be approved by the Planning and Community Development Director.

Staff recommends **approval** of the proposed **Conditional Use Permit (CUP)** for the operation of a micro-brewery located within the existing building at 5205 Railroad Avenue with the following conditions:

Conditions of Approval:

1. The Conditional Use Permit is issued to the entity obtaining the business license and should the occupant vacate the building, the Conditional Use Permit expires.
2. Adequate parking spaces shall be provided to support the proposed micro-brewery and restaurant per the requirements of Table 21.3. The applicant shall provide a parking plan



- with a combination of proposed parking, street parking along Spring Street, and shared parking with any privately owned entity. The Planning and Community Development Director shall be provided a copy of the shared parking agreement should the applicant arrange approval of shared parking.
3. All parking spaces proposed must be compliant with Article 21.
 4. The approval of the Conditional Use Permit does not provide approval of variances to Federal, State, or Local codes and regulations.
 5. The applicant must ensure that proper fire lanes, emergency access routes, and safety measures are in place in accordance with local fire codes and regulations.
 6. The building plans shall be substantially similar to the area use breakdown provided by the applicant: The building is +/- 8,700 square feet. 2,000 square feet of brewery, 1,000 square feet of bathroom, 4,900 square feet of restaurant, and 800 square feet of mechanical.



FLOWERY BRANCH CITY COUNCIL



EXECUTIVE SUMMARY

SUBJECT: Consider Approval of a Certificate of Appropriateness for the Alteration of a Historic Building at 5205 Railroad Avenue.

COUNCIL MEETING DATE: February 6, 2025

HISTORY:

FACTS AND ISSUES:

The applicant is proposing to renovate the existing building located at 5205 Railroad Avenue. The building is listed as #62 in the historic registry

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

I make a motion to issue a Certificate of Appropriateness with staff recommended conditions.

SAMPLE MOTION:

I make a motion to approve the Certificate of Appropriateness with the staff recommended conditions.

COLLABORATING DEPARTMENT:

DEPARTMENT: Planning

Prepared by: Shelia Cooper

ATTACHMENTS

- [CUP Report 5205 Railroad Avenue Micro Brewery and Restaurant.pdf](#)



Memorandum

To: City of Flowery Branch, City Manager, and City Council

From: Chris McCrary, Planning and Community Development Director

Date: February 6th, 2025

Subject: Conditional Use Permit – Certificate of Appropriateness

Applicant: Kevin Hobgood
7233 Sherwood Mill Drive
Flowery Branch, GA 30542
404-925-2400

Existing Zoning: CBD – Central Business District

Location:

- 5205 Railroad Avenue; tax parcel identification number **08112 016001**

Conditional Use Permit (CUP) Request:

The applicant is seeking the approval of a Conditional Use Permit for the operation of a micro-brewery within the existing building located at 5205 Railroad Avenue. The building is ~8,700 square feet and the applicant intends to occupy the building with 2,000 square feet of brewery, 1,000 square feet of bathroom, 4,900 square feet of restaurant, and 800 square feet of mechanical.



Code Section:

Table 9.1 – Permitted and Conditional Uses in Nonresidential Zoning Districts

Properties located within the boundaries of the downtown overlay district with the underlying zoning of CBD are hereby permitted to operate micro-breweries subject to the granting of a conditional use permit under the terms and conditions of Article 34 and compliance with all applicable state and local alcoholic beverage licensing requirements. Table 9.1 are hereby provided to reflect this potential use:

Use	O-P	INST	NS	HB	CBD	M-1	M-2
Micro-brewery	X	X	X	X ₁	C	X	X
Micro-distillery	X	X	X	X ₁	C	X	X

Table 21.3 – Minimum and Maximum Number of Off-Street Parking Spaces Required

Use	Minimum Parking Required	Maximum Parking Permitted
Restaurant, bar, or tavern	One per 125 square feet	One per 75 square feet
Manufacturing, processing...	One per 1,300 square feet	One per 1,000 square feet

The total area to be used for the micro-brewery and restaurant is 8,700 square feet. The breakdown will be 2,000 square feet of the brewery, 1,000 square feet of bathroom, 4,900 square feet of restaurant, and 800 square feet of mechanical.

Restaurant bar or tavern: $5,900 / 125 = 47$ parking spaces minimum and $5,900 / 75 = 79$ parking spaces maximum.

Brewery (Manufacturing): $2,000 / 1,300 = 2$ parking spaces minimum and $2,000 / 1,000 = 2$ parking spaces maximum.

A total of 49 parking spaces minimum and 81 parking spaces maximum.

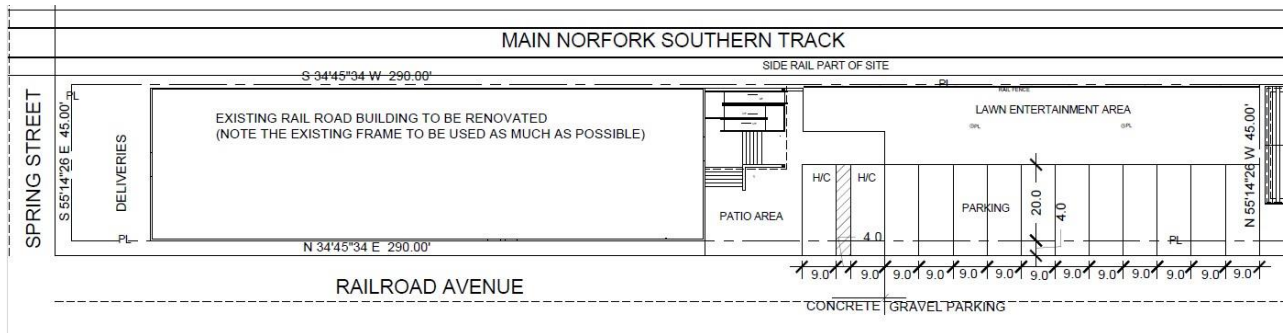


Sec. 21.5. - Parking Requirements in the CBD Zoning District.

It is the intent of this Section to give the Zoning Administrator maximum flexibility in administering the off-street parking requirements of this Article within the CBD zoning district, to promote redevelopment while ensuring that parking problems do not occur. Notwithstanding other provisions of this Article, off-street parking requirements of this Article may be administratively varied by the Zoning Administrator after considering the specific uses involved and the availability of on street and other (nearby) off-street parking.

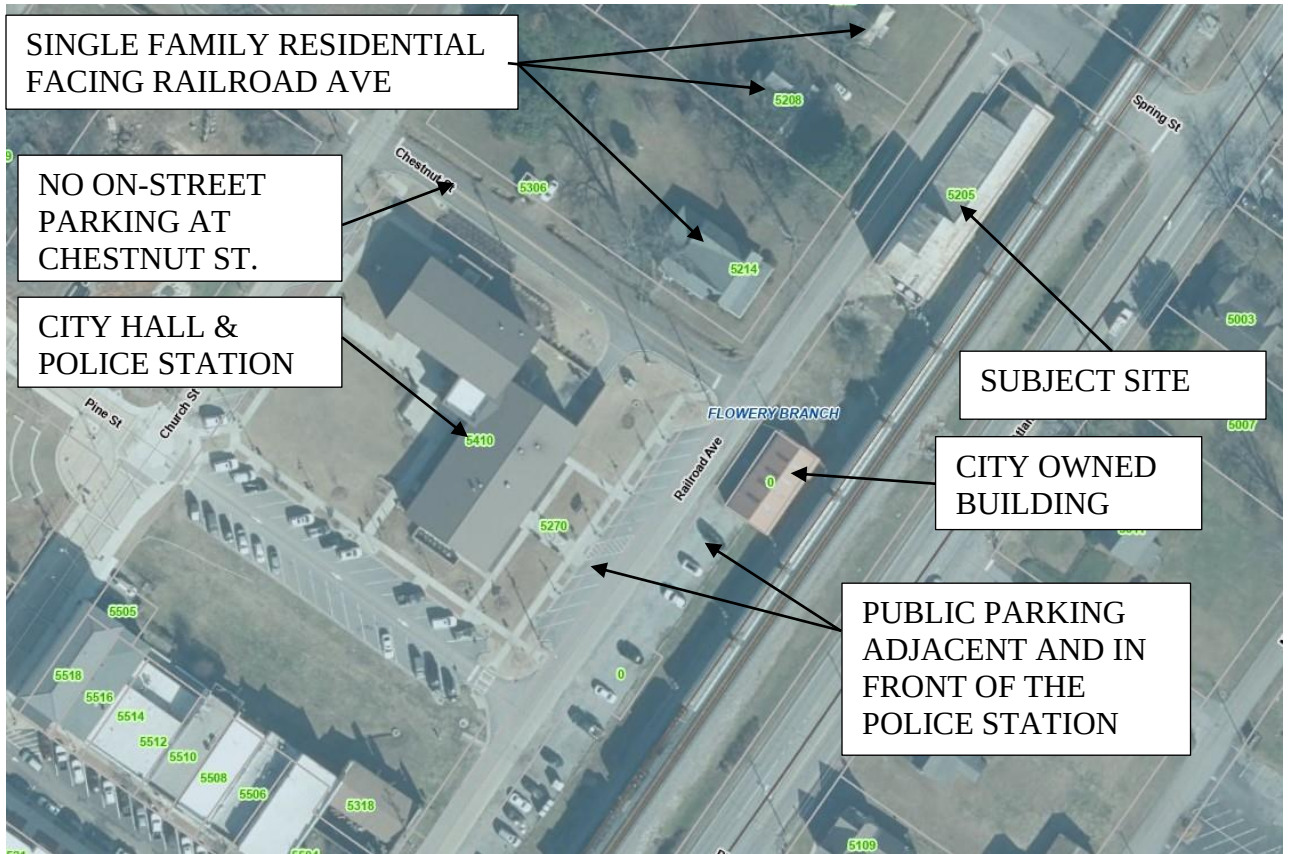
Zoning Administrator Response:

One of the heaviest uses for parking requirements is a restaurant. With +/- 5,900 square feet of restaurant area the required parking is significant. For the restaurant area alone, the required parking is 47 parking spaces. The applicant shows 13 parking spaces on the site plan.



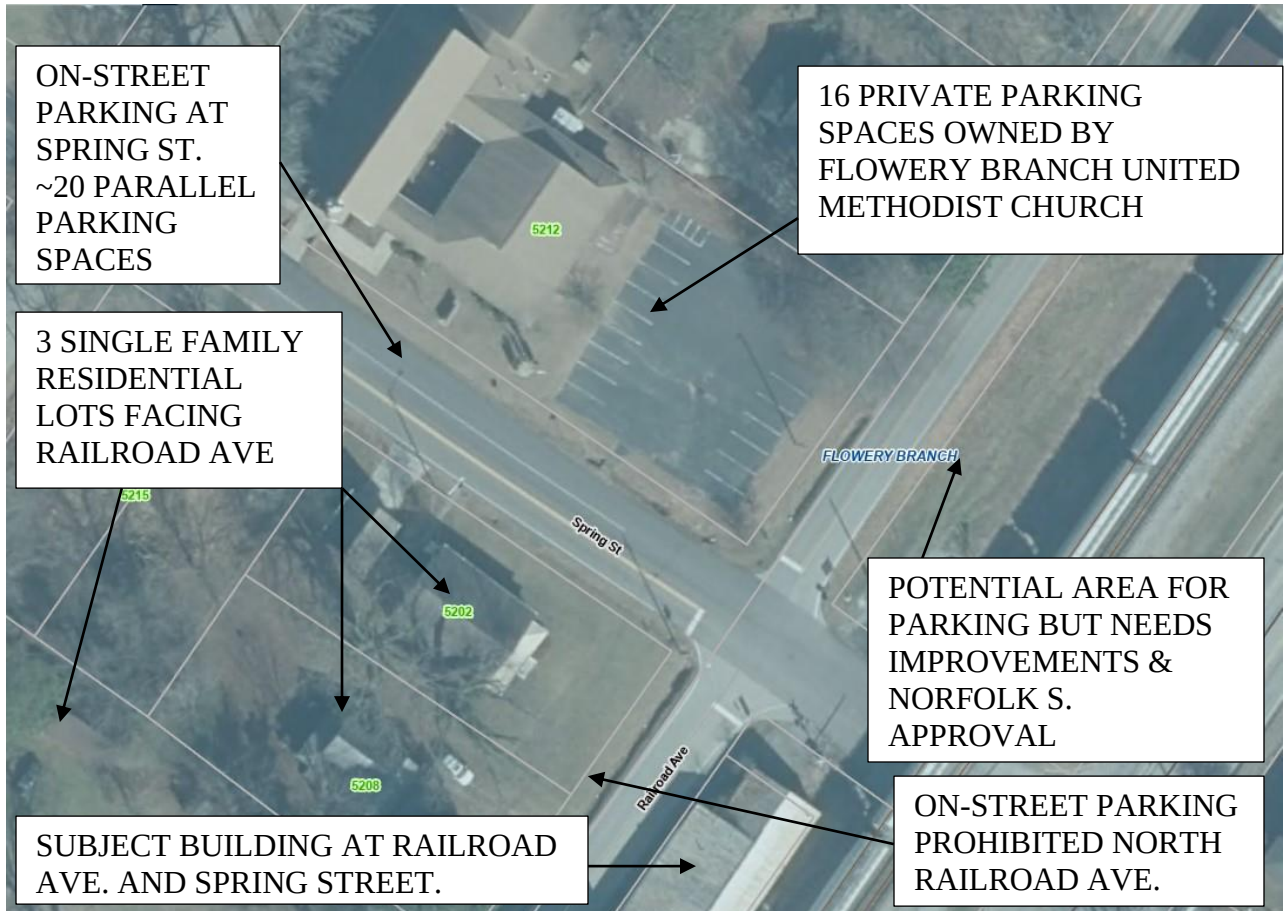


The image below focuses on public parking south of the subject building.





The image below focuses on public parking north of the subject building.



The parking area near the Police Headquarters supports the police fleet and is typically at full capacity. The proposed restaurant and brewery are expected to operate concurrently with other entertainment destinations in the downtown core, intensifying the demand for parking. During special events, parking availability for businesses in the area is already limited, and the addition of the restaurant would further increase this demand.

Existing and Potential Parking Options

1. **Core Downtown Parking:** The applicant shouldn't expect the availability of parking to support the restaurant exclusively along Railroad Avenue, Spring Street, and Main Street due to the current demands for the existing businesses.
2. **Spring Street On-Street Parking:** Approximately 20 parallel parking spaces are available on Spring Street, located north of the site.



3. **Norfolk Southern Property:** Additional parking may be possible on Norfolk Southern property north of the intersection of Railroad Avenue and Spring Street. However, this option would require the applicant to secure approval from Norfolk Southern and comply with the City's Development Regulations for parking lot improvements.
4. **Flowery Branch United Methodist Church:** There are an estimated 16 parking spaces at the church that could potentially be used. The applicant would need to establish a shared parking agreement with the church, record the agreement, and submit it to the City. However, there is no guarantee that the church will agree to this arrangement.

Parking Requirements and Recommendations

Given the existing parking constraints in the area, it is reasonable to require the applicant to address the parking deficiency through a combination of available options to meet the required parking capacity. The applicant must present a comprehensive parking solution.

If a sufficient solution is not provided, the Zoning Administrator concludes that parking issues will arise with the introduction of a restaurant at this location.

Sec. 21.11. - Stormwater Requirements for Large Parking Lots.

All off-street parking lots with ten or more spaces shall be required to have an oil/water separator device designed and constructed and shown in the stormwater management plan. Such device shall be approved by the City Engineer and shall be the responsibility of the property owner for maintenance and operation. The applicant is required to provide proper stormwater management at the issuance of a Land Disturbance Permit following the Conditional Use Permit approval.

Improvements for Pedestrians at offsite parking.

To ensure pedestrian safety, the City will evaluate the pathways from the offsite parking areas to the proposed business. If adequate infrastructure is not already in place, the applicant should be prepared to install marked crosswalks, appropriate signage at intersections, and sidewalk connections leading to the business.



Certificate of Appropriateness

Per the Historic District Ordinance, the subject building at 5205 Railroad Avenue (Parcel 08112 016001) is designated as historic building #62. A certificate of appropriateness shall be obtained prior to any material change in appearance of the designated historic property or any structure, site, or work of art located within a designated historic district; except as otherwise may be exempted by the City of Flowery Branch Historic Preservation Ordinance, Ordinance No. 375, as may be amended from time to time.

The applicant provided an existing condition report for the subject building by Tom Wright a Georgia registered Architect. The report provides an accurate representation of the building's current condition and highlights critical areas to address during the redevelopment process.

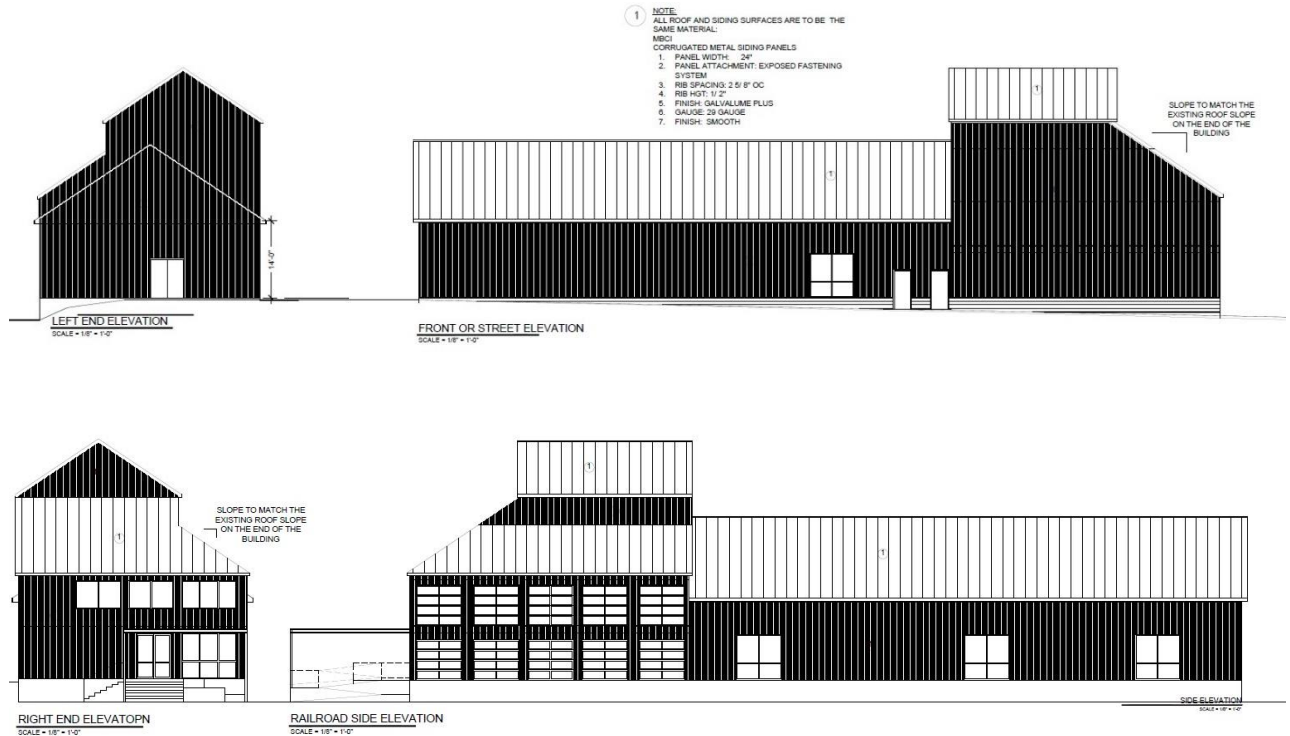
Summary of Recommended Actions

1. **Roof:** Full replacement or extensive repairs to address leaks and structural issues.
2. **Exterior Walls:** Repair and seal damaged wood elements; apply protective coatings to block walls.
3. **Foundation:** No action required at this time.
4. **Windows and Doors:** Replace or repair for improved functionality and aesthetics.
5. **Interior Repairs:** Address moisture infiltration, repair finishes, and consider new flooring installation.
6. **Utilities:** Conduct detailed inspections and upgrade as necessary to meet future operational demands.

The applicant will be required to file an application for a Building Permit and all required building codes will be reviewed for compliance.



The applicant provided black and white elevations with some description of the material.



NOTE:

ALL ROOF AND SIDING SURFACES ARE TO BE THE SAME MATERIAL:

MBCI

CORRUGATED METAL SIDING PANELS

1. PANEL WIDTH: 24"
2. PANEL ATTACHMENT: EXPOSED FASTENING SYSTEM
3. RIB SPACING: 2 5/8" OC
4. RIB HGT: 1/2"
5. FINISH: GALVALUME PLUS
6. GAUGE: 29 GAUGE
7. FINISH: SMOOTH



The applicant provided the following color renderings of the subject building:



Facing Atlanta Highway and the Railroad Tracks.



Facing Railroad Avenue.

Subject: Review of Code Section 10.7 Application

The application of Code Section 10.7 should be reviewed with consideration that the building in question is an existing structure, previously used as a cabinet shop. This building has long been part of the character of the area between Railroad Avenue and the Norfolk Southern Railway, where most structures feature metal facades.

While the current condition of the building has deteriorated, requiring upgrades to the foundation and framing to be occupiable, its metal construction aligns with the historical character of the area. Typically, a metal building would be non-compliant; however, the code section allows for architectural designs to reflect the surrounding area's character. In this case, retaining a metal exterior would honor the building's history and maintain the corridor's aesthetic.

That said, there are other ways to achieve compliance with Code Section 10.7. For example:

- The façade parallel to Railroad Avenue is a continuous wall plane. To break up its length, the architect could incorporate windows and doors. While it may be challenging to add



- fenestrations due to the existing foundation, elements similar to those on the railroad-facing façade could be introduced.
- Landscaping shrubs could also be added to the grassed area between the building and the road to enhance visual appeal.

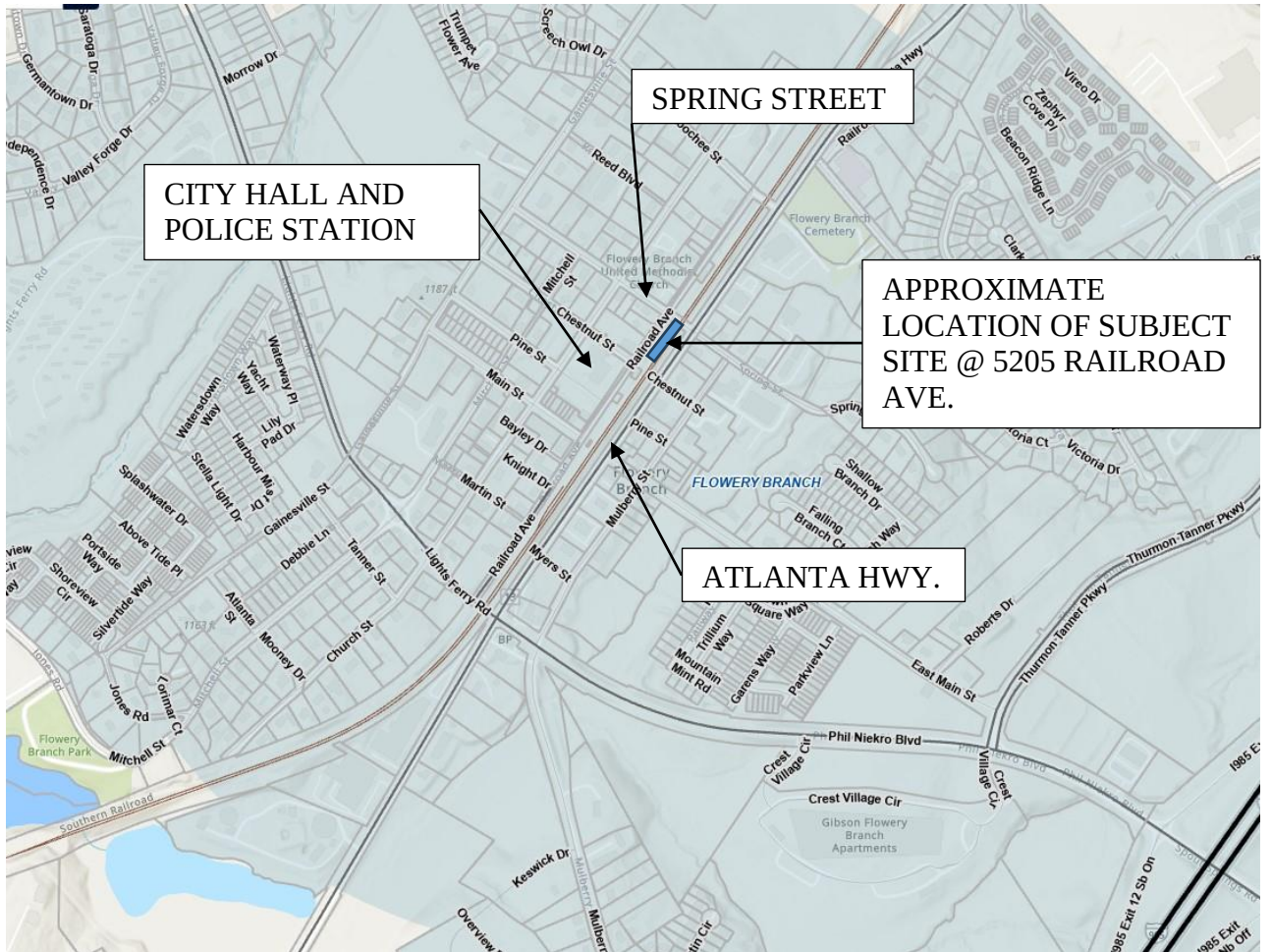
These design decisions would bring the structure closer to compliance while preserving its historic character.

Per the illustrations, the color of the Galvalume Plus metal siding appears to be a tan color with the roof material a darker grey. The architectural design prohibits highly reflective, shiny, or mirror-like materials.



Location Map:

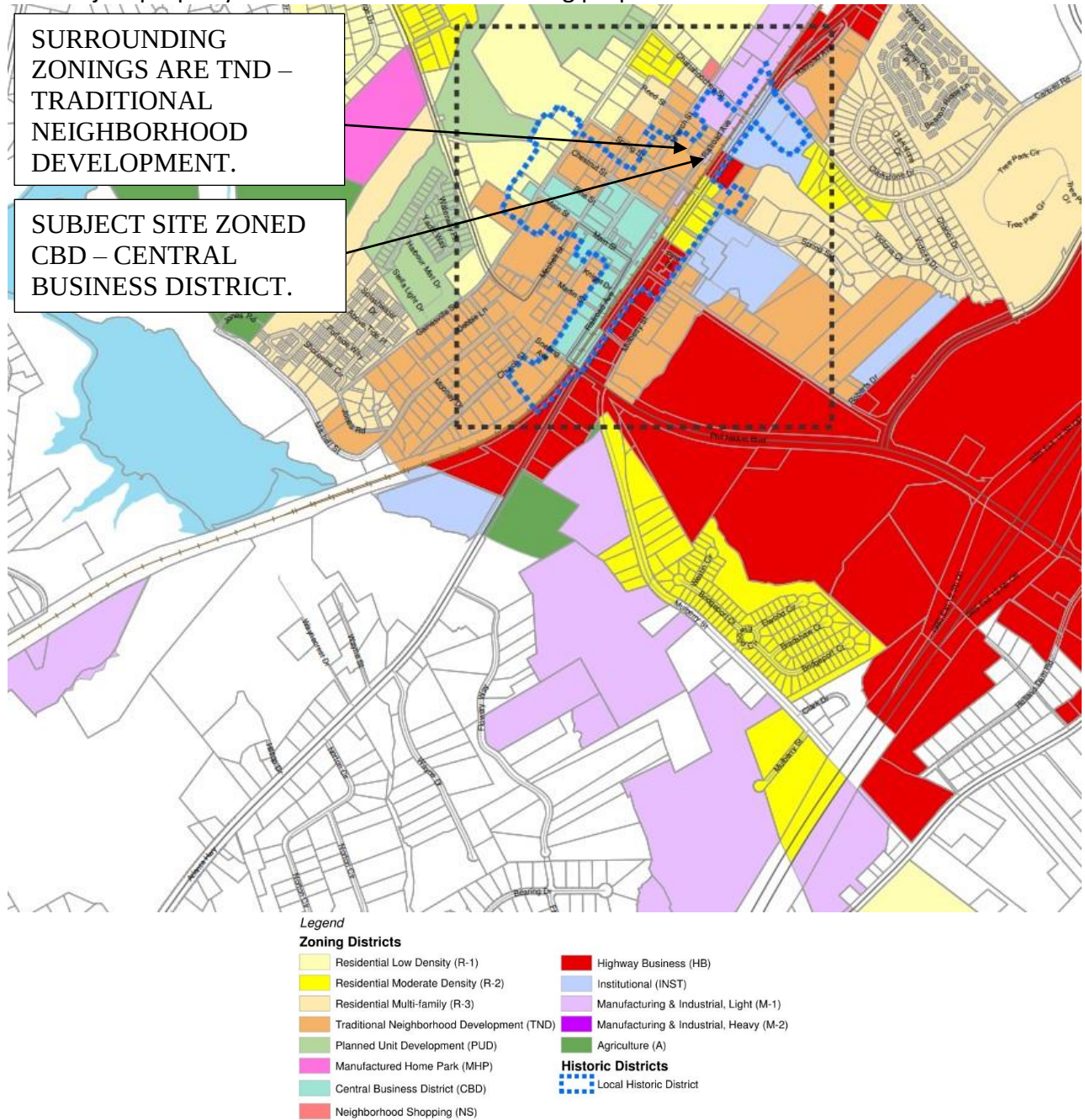
The subject site is located at 5205 Railroad Avenue near the intersection of Spring Street.





Zoning Map:

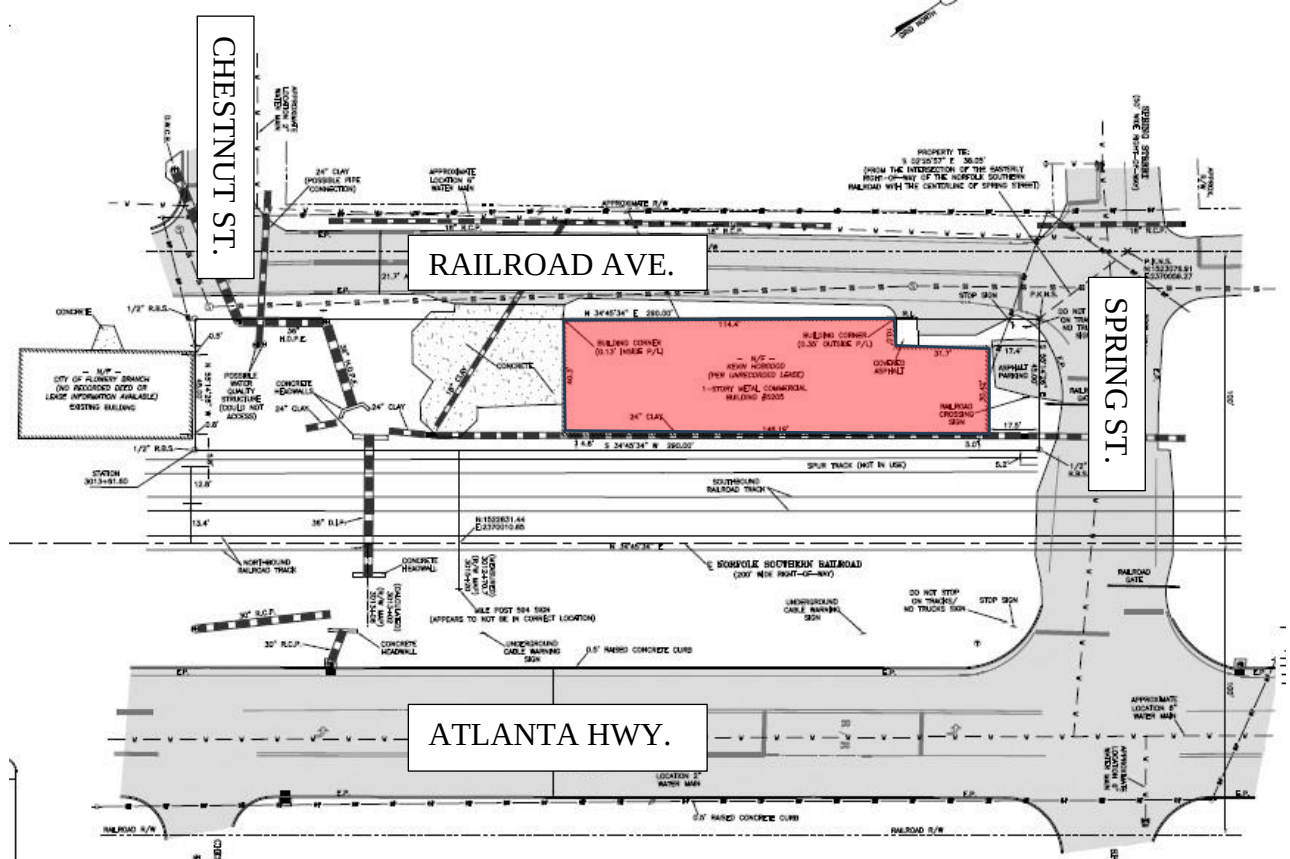
The subject property is zoned CBD. The surrounding properties are zoned TND.





Survey:

The survey provided with the CUP application shows the building relative to the property line but not the parking locations. A more current survey may be required prior to the issuance of permits.





Applications to amend the official zoning map and applications for conditional uses shall provide a written analysis comparing the proposed action with the criteria in this Section. A zoning map amendment or conditional use application may be justified only if it bears a reasonable relationship to the public health, safety, morality, or general welfare, and after consideration of the analysis requirements which may in individual cases be considered criteria relevant to the Zoning Administrator in making recommendations and by the City Council in the decision-making process.

- a) *Whether the proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property.*
Directly adjacent to the subject site are existing single-family residential uses. Most commercial uses nearby are further west on Railroad Avenue near Main Street.
- b) *Whether the proposal will adversely affect the existing use or usability of adjacent or nearby property.*
A higher intensity use, such as a restaurant, pub, or tavern could adversely impact the adjacent single-family residential uses that have only been adjacent to an unoccupied building.
- c) *Whether the property to be affected by the proposal can be used in accordance with the existing regulations and has reasonable economic use as currently zoned.*
The building is not occupied. Allowing the CUP would help the building be more economically viable.
- d) *Whether the 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 use will not result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools. Parking within the right-of-way of Railroad Avenue should be prohibited to not impact traffic patterns along the roadway.
- e) *Whether the proposal is in conformity with the policy and intent of the comprehensive plan including but not limited to the character area map and future land use plan map.*
The proposed micro-brewery would be in conformity with the policy and intent of the comprehensive plan.



- f) *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 proposal.*
There are no other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the proposal.
- g) *Existing use(s) and zoning of the subject property and nearby properties.*
Zoning adjacent to the subject building is zoned TND for single-family residential. The railroad is to the rear and no other uses are located on the sides.
- h) *Existing value of the property under the existing zoning district classification, the extent to which the property value of the subject property is diminished by the existing zoning district, and the value of the property under the proposed zoning district; if such information is provided by the applicant or can be discerned. This consideration may include the length of time the property has been vacant or unused as currently zoned and efforts taken by the property owner(s) to use the property or sell the property under the existing zoning district classification.*
The applicant did not provide data indicating the change to property value. The applicant did not provide the length of time that the building area has been vacant.
- i) *Whether a proposed zoning map amendment or conditional use approval will be a deterrent to the value or improvement of development of adjacent property in accordance with existing regulations.*
The proposed use should have no impact on the value or improvement of development of adjacent property.
- j) *The possible creation of an isolated zoning district unrelated to adjacent and nearby districts.*
The subject site is already zoned CBD.
- k) *Possible effects of the change in zoning district map, or change in use, on the character of a zoning district.*
The applicant provided limited architectural details. The existing building is constructed with corrugated metal siding. There is not enough detail to understand how the construction will change the character of the area.
- l) *The possible impact on the environment, including but not limited to, drainage, soil erosion and sedimentation, flooding, air quality and water quality.*



The applicant is subject to the requirements of an LDP including erosion control during land disturbance.

- m) *The relation that the proposed map amendment or conditional use bears to the purpose of the overall zoning scheme and the purposes of this Zoning Ordinance.*

The proposed CUP will have no impact on the purpose of the overall zoning scheme and the purposes of this Zoning Ordinance.

Staff Recommendation for Conditional Use Permit (CUP) & Certificate of Appropriateness

Recommendation:

Staff recommends **approval** of a **Certificate of Appropriateness** with the following conditions:

1. The building materials shall be similar to the information provided in note 1 on the building elevations.
2. The applicant shall add more wall openings adjacent to Railroad Avenue to break up the wall plane. It should be similar to the elevation facing Atlanta Highway. Final design to be approved by the Planning and Community Development Director.
3. The building finish shall be Galvalume Plus similar in color to the existing building maintaining the character of the building. The finish shall not be reflective or mirror-like finish. The applicant shall provide a sample of the material with colors for approval by the Planning and Community Development Director.
4. The applicant shall provide architectural details of the windows and doors including material and color. Final design to be approved by the Planning and Community Development Director.
5. The applicant shall provide details of the stepped decking and handicap ramps at the entrance for review of material and colors. Final design to be approved by the Planning and Community Development Director.

Staff recommends **approval** of the proposed **Conditional Use Permit (CUP)** for the operation of a micro-brewery located within the existing building at 5205 Railroad Avenue with the following conditions:

Conditions of Approval:

1. The Conditional Use Permit is issued to the entity obtaining the business license and should the occupant vacate the building, the Conditional Use Permit expires.
2. Adequate parking spaces shall be provided to support the proposed micro-brewery and restaurant per the requirements of Table 21.3. The applicant shall provide a parking plan



- with a combination of proposed parking, street parking along Spring Street, and shared parking with any privately owned entity. The Planning and Community Development Director shall be provided a copy of the shared parking agreement should the applicant arrange approval of shared parking.
3. All parking spaces proposed must be compliant with Article 21.
 4. The approval of the Conditional Use Permit does not provide approval of variances to Federal, State, or Local codes and regulations.
 5. The applicant must ensure that proper fire lanes, emergency access routes, and safety measures are in place in accordance with local fire codes and regulations.
 6. The building plans shall be substantially similar to the area use breakdown provided by the applicant: The building is +/- 8,700 square feet. 2,000 square feet of brewery, 1,000 square feet of bathroom, 4,900 square feet of restaurant, and 800 square feet of mechanical.