



STAFF REPORT

MORGAN COUNTY PLANNING COMMISSION

PETITION FOR: ZONING MAP AMENDMENT

Property location:	Corner of Highway 441 and Sidwell Road, Apalachee community
Property tax parcel:	015-028D
Acreage:	2.99 acres
Applicant:	SW Bostwick LLC, 4151 Ashford Dunwoody Rd, Atlanta, GA
Applicant's Agent:	N/A
Property Owner:	Apalachee Enterprises Inc, Lawrenceville, GA
Existing Zoning:	Agricultural (AG)
Proposed Zoning:	General Commercial (C2)

Summary

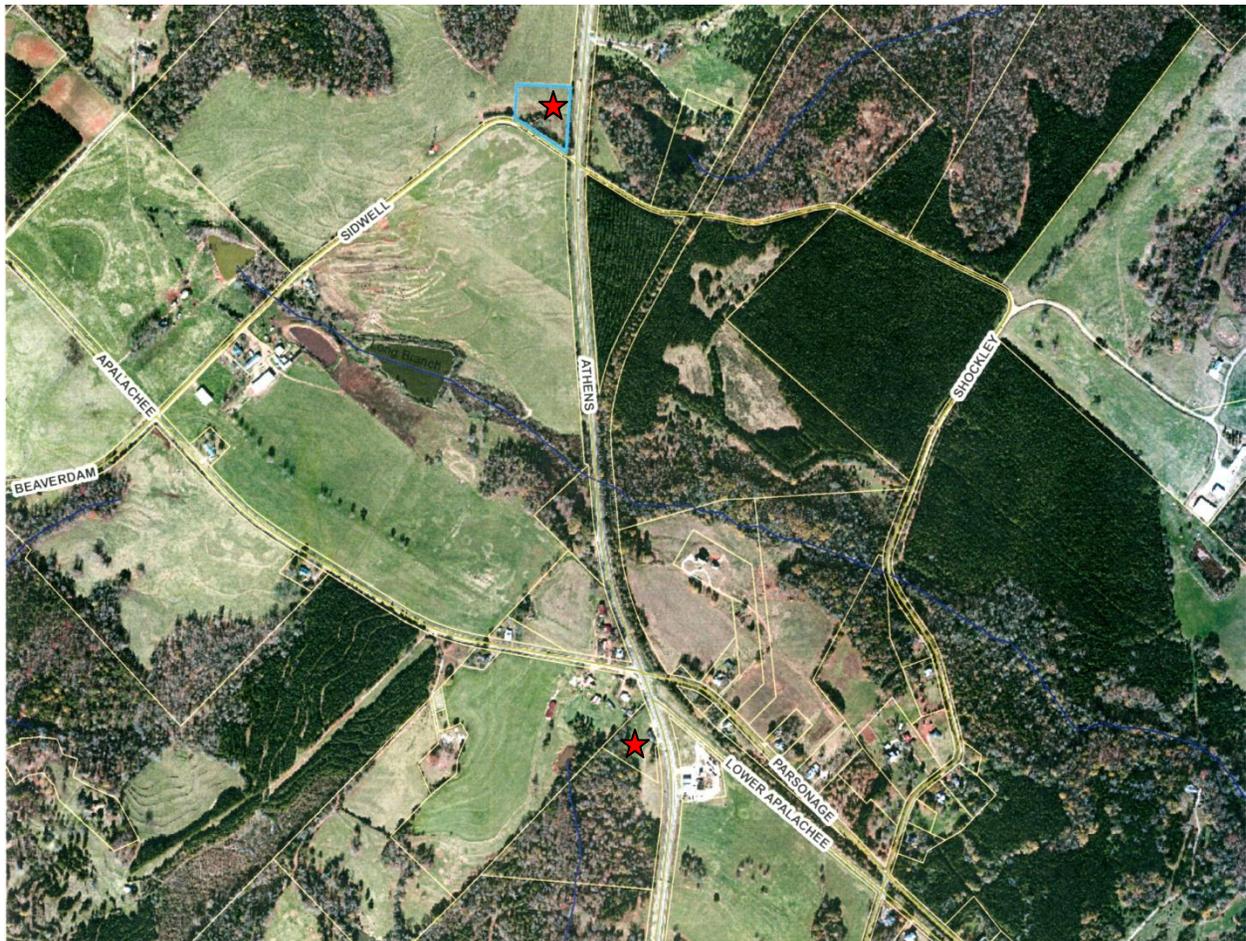
SW Bostwick is requesting the rezoning of 2.99 acres on Highway 441, at the intersection with Sidwell Road, from AG to C2, to locate a Dollar General. This is the second location in the Apalachee community where a Dollar General has been proposed. The applicant was approved for rezoning last year on a parcel south of the current proposed location. The applicant was unable to reach a satisfactory agreement with GDOT regarding the proposed widening of Highway 441 and Dollar General terminated the project.

Like last year's proposal, the applicant is asking that the property's zoning designation be changed from AG to C2. However, the property is not located in the vicinity of any currently zoned commercial property, unlike last year's application, which was across the highway from the Rainbow convenience store.

The applicant has provided a letter explaining their request and a site plan. These documents contain a couple of discrepancies. The plan accurately states that the square footage of the building will require 46 parking spaces and shows a total of 46 spaces, whereas the letter states that the project will only have 37 spaces. The letter states that the project will have a decel lane and a center turn lane, but the center turn lane is not shown on the plan. There is no mention in the letter of the illustrated re-alignment of Sidwell Road at Highway 441, which makes the intersection with Shockley Road more awkward than it already is.

Regarding the decel lane, the additional road width is obviously coming from the applicant's side, but there is no indication (since it is not shown) where the additional road width will be given for the center turn lane, especially considering that the location of the turn lane does not align with the applicant's property. Will GDOT utilize existing right-of-way, or will the applicant procure additional right-of-way for this purpose?

Regarding the pavement of Sidwell Road, the site plan shows a 50' prescriptive easement (meaning that the county does not hold a deed on the right-of-way). The Morgan County Development Regulations require a Local Street to have a 60' wide right-of-way and 20' width of pavement. It is likely that GDOT may require a wider right-of-way at the intersection. The site plan and letter also show/state that the applicant will only pave from Highway 441 to just past the entrance into the retail parking lot. Currently, Sidwell Road is used as a cut-through from Apalachee Road to Highway 441. However, if the retail store is constructed, traffic on Sidwell Road will dramatically increase, as customers on the Bostwick side of the area will not enter Highway 441 to go back to Apalachee Road if they can cut through on Sidwell Road.



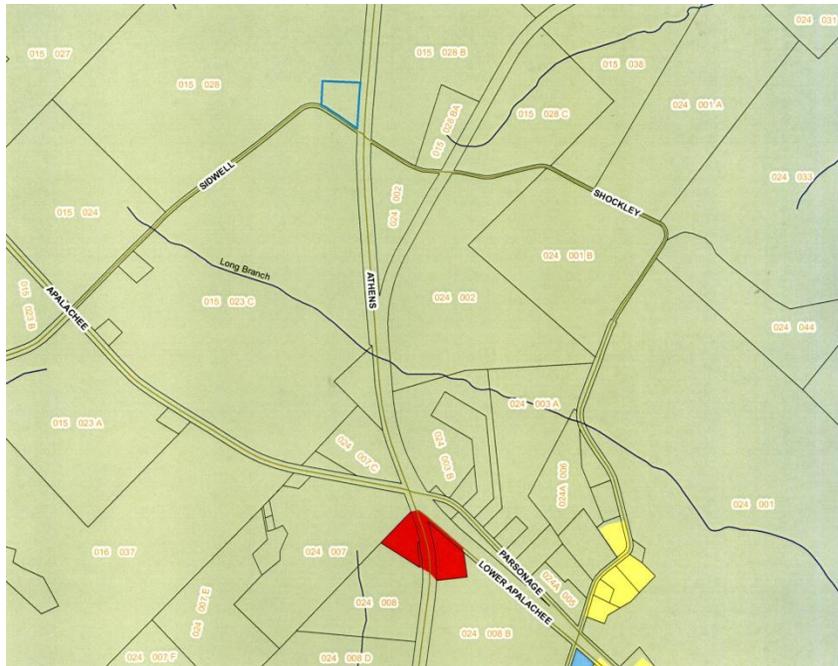
An aerial showing the location of the proposed location (top red star) and the location of the site that was approved last year (bottom red star). This aerial also shows Sidwell Road connecting to Apalachee Road.



A closer aerial showing that the property contains an old dairy structure, and is still used as cow pasture. The slightly awkward alignment of Sidwell Road and Shockley Road can be seen, but is more evident on-site.



The zoning map shows the area is agricultural (green). Yellow indicates residential and pink denotes commercial. The darker pink is the former Dollar General site.



The Future Land Use Map. The green is agricultural, red is commercial, yellow is residential and blue is institutional. The former Dollar General site was changed to commercial when the project was approved last year.

The Comprehensive Plan states that declining farm land in Morgan County is a concern and that spot zoning should be prohibited. It states that commercial development should be encouraged in areas shown as appropriate on the Future Land Use Map. However, it also notes that small businesses should be encouraged and stresses the need for jobs.

Past Planning commission & Board of Commissioners Minutes (excerpts)

From the September 25, 2014 Planning Commission meeting

- I. SW Bostwick, LLC is requesting the rezoning of approximately 2.16 acres, located near the corner of Athens Highway and Apalachee Road (across from Rainbow convenience store) from Agricultural (AG) to General Commercial (C2) (Tax Parcel 024-008).

Mr. Jarrell presented the staff report on behalf of Morgan County and confirmed that the applicant intended to locate a Dollar General on the property. He gave a brief history of the property and showed the proposed site plan for the Dollar General. Mr. Jarrell described the August 21, 2014 town hall meeting, including who attended and what concerns were discussed. He showed a photograph of the proposed design, as well as architectural elements from downtown Apalachee that Staff suggested could be incorporated. Mr. Jarrell also informed the Planning Commission that a Future Land Use Map amendment would be necessary if the application was approved.

Colin Edwards from Sullivan Wickley spoke on behalf of the applicant and noted that Dollar General stores typically do not draw more than local traffic. He stated that they were working with Georgia DOT regarding the decel lane, curb cut and turn lane. He stated that the design submitted showed false shutters, but Dollar General would be willing to work with local architectural elements.

Mr. Jarrell noted that one letter of opposition had been received from Ginny Marie Giacchino. The letter was passed to all Planning Commission members.

Faye Jordan, Apalachee Road, spoke in opposition to the application, stating that there was no benefit to a new Dollar General when there were already two dollar stores in Madison. She stated that Apalachee was a farming community and did not need commercialism. She also cited concerns regarding traffic and crime.

The Planning Commission asked Ed Prior, seated in the audience, if the Rainbow convenience store had ever been robbed and he said yes, but that he doubted there was a convenience store that had not been robbed. He explained how he was approached by the company to purchase the land and his initial reluctance. He also explained the drive necessary to pick up small items: 10 miles to Madison or 12 miles to Watkinsville. The Planning Commission discussed the new Dollar General in Rutledge, the possibility of loiterers, and the appropriateness of commercial development on the highway.

Motion: Mr. Cardwell made a motion to recommend approval of the request to rezone approximately 2.16 acres near the corner of Athens Highway and Apalachee Road from AG to C2.

Second: Ms. Booth

Vote: 6:2 The motion to recommend approval of the rezoning request was approved. Ms. Sheppard and Mr. Knight dissented.

Motion: Mr. Cardwell made a motion to recommend approval of the Future Land Use Map amendment for the same parcel (approximately 2.16 acres near the intersection of Athens Highway and Apalachee Road) from Agricultural/Forestry to Commercial.

Second: Mr. Campbell

Vote: 6:2 The motion to recommend approval of the Future Land Use Map amendment was approved. Ms. Sheppard and Mr. Knight dissented.

From the October 7, 2014 Board of Commissioners' Minutes

1. SW Bostwick, LLC is requesting the rezoning of approximately 2.16 acres, located near the corner of Athens Highway and Apalachee Road (across from Rainbow convenience store) from Agricultural (AG) to General Commercial (C2) (Tax Parcel 024-008).

Tara Cooner, Senior Planner, provided a report from the Planning Commission meeting. She stated the property is located across Highway 441 from the Rainbow convenience store, which is zoned C1. The history of this property is that it was zoned C2, but was changed with the 2006 zoning atlas adoption.

The proposed plan meets the requirements for setbacks and buffers. Dollar General has been talking to DOT about the requirements for the curb cut, decel lane and turn lane. Staff suggested that elements of Apalachee's architecture be added to the design of the building. Colin Edwards from Sullivan Wickley spoke on behalf of Dollar General and explained that the stores typically draw only local traffic and he confirmed that Dollar General would work with the local architectural elements. Ed Prior explained how the company approached him about buying the property and the drive that was necessary to purchase minor grocery items which is 10 miles to Madison or 12 miles to Watkinsville. The Planning office received one letter in opposition which was from Ginny Marie Giacchino, who lives in Bishop, Georgia. She stated that although she does not live nearby, she drives through daily and is concerned about the loss of history in the area and the possibility of additional commercial properties. Faye Jordan, who lives close by the proposed location, spoke in opposition to the application, saying that Apalachee has always been a farming community and does not need commercialism. She cited concerns regarding traffic and crime. A town hall meeting was held on August 21st where various concerns were addressed. Only two Apalachee residents were present at this meeting. The Planning Commission asked if the new Dollar General in Rutledge was beneficial. Wes Holt confirmed that it was convenient to pick up small items there instead of driving into Madison. The Planning Commission voted 6:2 to recommend approval of the rezoning. Starr Sheppard and Spencer Knight dissented. The vote was also 6:2 to recommend approval of the FLUM amendment to reflect the zoning change. Two votes are needed.

Chairman Ainslie allowed proponents and opponents to speak. There were no proponents or opponents.

MOTION by Comm. Clack, seconded by Comm. Harris to approve rezoning of approximately 2.16 acres, located near the corner of Athens Highway and Apalachee Road (across from Rainbow convenience store) from Agricultural (AG) to General Commercial (C2) (Tax Parcel 024-008). Unanimously Approved.

MOTION by Comm. Clack, seconded by Comm. Harris to approve amending the Future Land Use Map from Agricultural to Commercial/Estate/Forestry. Unanimously Approved.

Criteria for Consideration

(Please note that the criteria below are bulleted in the Morgan County Zoning Ordinance. They are numbered here for ease of use. Staff comments are written in blue.

1. Compatibility with Adjacent Uses and Districts: Existing uses and use districts of surrounding and nearby properties, whether the proposed use district is suitable in light of such existing uses and use districts of surrounding and nearby properties, and whether the proposal will adversely affect the existing use or usability of adjacent or nearby properties.
2. Property Value: The existing value of the property contained in the petition under the existing use district classification, the extent to which the property value of the subject property is

diminished by the existing use district classification, and whether the subject property has a reasonable economic use under the current use district.

3. Suitability: The suitability of the subject property under the existing use district classification, and the suitability of the subject property under the proposed use district classification.
4. Vacancy and Marketing: The length of time the property has been vacant or unused as currently used under the current use district classification; and any efforts taken by the property owner(s) to use the property or sell the property under the existing use district classification.
5. Evidence of Need: The amount of undeveloped land in the general area affected which has the same use district classification as the map change requested. It shall be the duty of the applicant to carry the burden of proof that the proposed application promotes public health, safety, morality or general welfare.
6. Public Facilities Impacts: Whether the proposal will result in a use, which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, schools, parks or other public facilities and services.
7. Consistency with Comprehensive Plan: Whether the proposal is in conformity with the policy and intent of the locally adopted comprehensive plan.
8. Other Conditions: Whether there are any other existing or changing conditions affecting the use and development of the property that give supporting grounds for either approval or disapproval of the proposal.

Staff Comments

Strict application of the criteria demonstrates that the proposed rezoning fails to meet criteria 1, 2, 3 and 7. A commercial use is not compatible in a cow pasture and the site is more suitable for the current agricultural use. The property has been for sale for a lengthy time, but there is no evidence that a reasonable economic return is impossible under the current zoning classification. Approval of the application would be spot zoning.

Consideration may be given to criteria 5 and 8 in favor of the application. The residents of the Apalachee community have spoken that they are frustrated that minor retail items require a 10-12 mile drive, to either Watkinsville or Madison, indicating a need. Criterion 8 may apply if GDOT will not cooperate in any other location but this one. The proposed widening of Highway 441 creates extremely difficulty in locating any structure along the highway. The applicant's letter indicates that they have been given assurances by GDOT that this location is suitable according to their future plans. Should the recommendation be given to approve the rezoning application, Staff recommends the following conditions:

1. Parking must meet the required number of spaces (46 as shown on the site plan)
2. Both a decel lane and center turn lane must be installed. Applicant must work out required right of way with GDOT and adjacent land owners.
3. Sidwell Road must comply with the minimum right-of-way as required by the ordinance for the length of the Dollar General property. Applicant must work out required right of way with adjacent land owners. Deeded right-of-way must be given to Morgan County.

4. Sidwell Road must be paved in accordance with Morgan County specifications the full length of the Dollar General property, not just to the entrance.
5. Prior approval of the Dollar General building required that the design of the store incorporate architectural features such as arches instead of shutters (similar to the Dollar General in Rutledge). Staff recommends these stipulations again, in order to pay homage to the architecture of the Apalachee community.



Constitutional Objections

Rezoning of approx 2.99 acres on the NW corner of Athens Hwy & Sidwell Road (the "Property"), Morgan County Georgia

The portions of the Zoning Resolution of Morgan County, Georgia, also variously known as the Zoning Code of Morgan County, Georgia and/or Official Zoning Map of Morgan County, that classify, or that may classify the Property, into the zoning classification of AG Agricultural as it presently exists violate the Applicant's right to the unfettered use of the property in that the existing zoning classification limiting use of the land and improvements to a district with only a narrow range of uses, which are no longer economically viable for the market area within which the property lies and does not bear a substantial relation to the public health, safety, morality or general welfare and is, therefore, confiscatory and void. Further, said classification is unconstitutional in that it is arbitrary and unreasonable, resulting in relatively little gain or benefit to the public, while inflicting serious injury and loss upon the Applicant.

The portions of the Morgan County Zoning Resolution and Zoning Map that classify, or that may classify the Property, into any zoning district other than the C-2 General Commercial category requested by the Applicant or to any of the other zoning districts of the County which specifically allow for Retail Store uses, are or would be unconstitutional in that they would destroy the Applicant's property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983 and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

Any application of the Morgan County Zoning Resolution/Zoning Code of Morgan County or Zoning Map to the Property that restricts its use to any zoning classification other than the category requested by the Applicant or an equivalent category of equal utility for C-2 General Commercial development is unconstitutional, illegal, null and void because such an application constitutes a taking of the Applicant's property in violation of the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States, Article I, Section I, Paragraph I, and Article I, Section III, Paragraph I, of the Constitution of the State of Georgia of 1983 and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States, because such an application denies the Applicant an economically viable use of its land while not substantially advancing legitimate state interests.

A denial of this Application would constitute an arbitrary and capricious act by the Morgan County Board of Commissioners without any rational basis, thereby constituting an abuse of discretion in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983 and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

A refusal by Morgan County to amend the official Zoning District Map of Morgan County, as it relates to the Property, to the zoning categories requested by the Applicant, or an equivalent category of equal utility for Retail Store uses in the manner requested by the Applicant use would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and owners of similarly situated property in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

Any change in the designation of the Property by the Official Zoning Map of the Morgan County that subjects the Property to conditions that are different from the conditions requested by the Applicant, to the extent such different conditions would have the effect of further restricting the Applicant's utilization of the Property, would also constitute an arbitrary, capricious and discriminatory act in zoning the Property to an unconstitutional category and would likewise violate each of the provisions of the State and Federal Constitutions set forth herein above.

A denial of this Application or approval subject to more restrictive conditions than those requested by the Applicant will give rise to a claim by the Applicant for the monetary damages in the amount of the diminution in value of the Property caused by the restrictions, on the theory, among others, of inverse condemnation in that the Applicant's Property has been taken without the payment of just compensation in violation of the Just Compensation Clause of the Fifth Amendment and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States and Article I of the Constitution of the State of Georgia of 1983. This notice is being given to comply with the provisions of O.C.G.A. § 36-11-1.



4151 Ashford Dunwoody Road, NE
Suite 155
Atlanta, GA 30319
404.475.9000 • 404.475.9600 (Fax)

August 12, 2015

Morgan County Planning & Development
384 Hancock Street, Suite 300
Madison, GA 30650

Re: Letter of Intent to rezone property on the NW corner of Athens Hwy & Sidwell Rd, Unincorporated Morgan County

Planning Staff,

As the applicant for this rezoning, SW Bostwick, LLC is respectfully requesting approval to rezone a 2.99 acre tract on the NW corner of Athens Hwy & Lower Sidwell Rd from Agricultural (AG) to General Commercial (C2) for use as a Dollar General Retail Store. The building will be 9,100 square feet (7,310 square feet of sales floor) and will have 37 parking spaces. The surrounding acreage will remain zoned AG.

The irregular shaped property is bordered to the north and west by a cattle pasture and to the south and east by roads. The east side of the property is bordered by Athens Hwy and across the street from the property to the east is raw, agricultural land. Across Sidwell Road to the south is cattle pasture.

The project will have one full curb cut on Sidwell Road, with a GDOT approved decel lane and center turn lane on Athens Hwy. Sidwell Road will be paved from Athens Hwy to just past the driveway on Sidwell Rd. The proposed curb cut and required setbacks including right of way are based off of discussions with the GDOT.

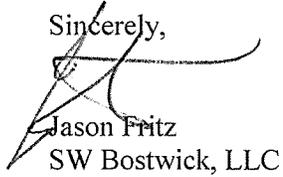
The proposed Dollar General building would be constructed of brick on four sides with several sets of shutters situated along the front and sides of the building to give the impression of windows, but also serving to visually break-up the façade and add additional architectural elements to the design. Step down parapets will be included on 3 sides of the building so as to hide the HVAC units on the roof from public view. The property would be landscaped in accordance with the County's landscape requirements, all building lights would be full-cutoffs (shielded) to direct the light downward and not outward, while the two or three parking lot lights would be "shoe-box" type fixtures directing the light downward to prevent artificial light from impacting surrounding properties. A monument style street sign in lieu of a pylon sign will be used.

The Dollar General retail store would bring over 10 immediate full time local jobs to the area in addition to the short-term construction-related jobs. The store would also bring additional consumer services to

the area allowing local residents to purchase everyday goods such as milk, bread, frozen foods, medicines, dry goods, general retail items and other household items. Residents today require a further drive to grocery stores or convenience stores where costs are often 25%-40% higher for the same name brand items such as Kraft, Hanes, Proctor & Gamble, Kellogg's, General Mills, and Mattell just to name a few. Dollar General is not a "dollar store" or a "\$0.99 cent store," in fact fewer than 25% of the merchandise sold by Dollar General costs a dollar or less. Dollar General is a neighborhood general store that serves the nearby community by providing quality, name brand household goods and groceries at convenient and low prices.

We would appreciate your positive consideration of our rezoning request. Should you need any additional information or have questions regarding our rezoning request, please call me at 404-475-9000 or via email at jason@sullivanwickley.com

Sincerely,



Jason Fritz
SW Bostwick, LLC

PRELIMINARY SITE PLAN

CITY, STATE - STREET:
BOSTWICK, GA - U.S. HWY. 441

PROTOTYPE: C	DEVELOPER	DESIGNER	DATE:
BLDG/SALES SF: 9,100/7,302	COMPANY: SULLIVAN-WICKLEY	COMPANY: ROCHESTER & ASSOC.	7/8/15
ACREAGE: 3.00	NAME: BRIAN SULLIVAN	NAME: KEVIN REED	
PARKING SPACES: 46	PHONE #: (404) 475-9000	PHONE #: (770) 718-0600	

NOTES:

- EXISTING ZONING: AG (AGRICULTURAL)
PROPOSED ZONING: C1 (COMMERCIAL)
- PARKING SPACES REQUIRED: 5 SP/1000 SF = 45.5
PARKING SPACES PROVIDED: 46
- EXISTING FEATURES SHOWN ARE APPROXIMATED
BASED ON AERIAL PHOTOS.
- NO BOUNDARY SURVEY HAS BEEN CONDUCTED.
BEARINGS & DISTANCES SHOWN ARE BASED ON
PARCEL INFORMATION PROVIDED BY THE CLIENT.

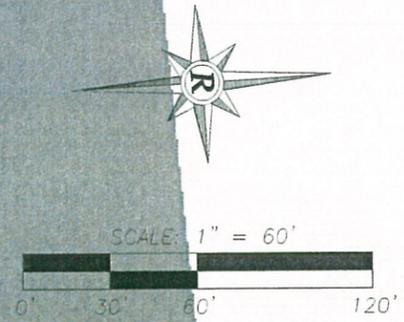


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U.S. 441 (ATHENS HWY.)
130' RIGHT-OF-WAY
SPEED LIMIT = 55 MPH

ZONED AG
AGRICULTURAL

PROPOSED
DOLLAR GENERAL
9,100 SF
AREA: 3.00 AC

RESERVE SEPTIC

PRIMARY SEPTIC

DETENTION
AREA

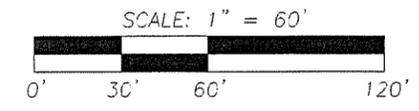
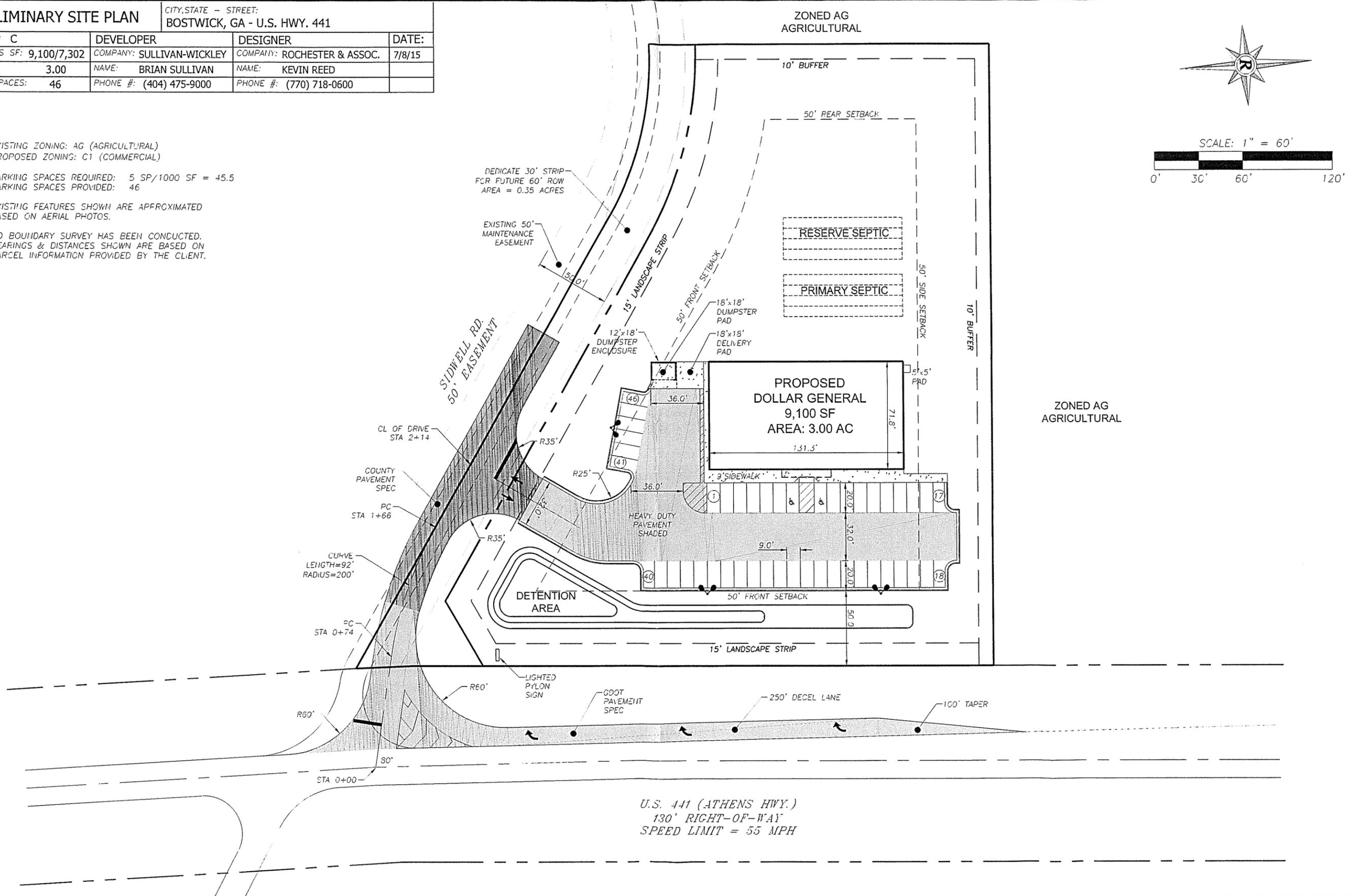
PRELIMINARY SITE PLAN

CITY, STATE - STREET:
BOSTWICK, GA - U.S. HWY. 441

PROTOTYPE: C	DEVELOPER	DESIGNER	DATE:
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ACREAGE: 3.00	NAME: BRIAN SULLIVAN	NAME: KEVIN REED	
PARKING SPACES: 46	PHONE #: (404) 475-9000	PHONE #: (770) 718-0600	

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