

## DeKalb County Department of Planning & Sustainability

Lee May Interim Chief Executive Officer

Andrew A. Baker, AICP Director



## SPECIAL LAND USE PERMIT APPLICATION

Amendments will not be accepted after 5 working days after the filing date.

Date Received:	Application No.:						
APPLICANT NAME	Focus Brands c/o Julie L. Sellers						
Daytime Phone #:	(404) 665-1242 Fax #:						
Mailing Address: 1776 Peachtree Street NW, Suite 390N, Atlanta GA 30309							
	E-mail; jsellers@dillardsellers.com						
OWNER NAME:	Huckleberry Properties, Inc.						
(If more than one owner, attach contact information for each owner)							
Daytime Phone #:	/time Phone #: Fax #:						
Mailing Address:	5 Brewster Street, Glen Cove NY 11542-2549						
	E-mail:						
	RTY ADDRESS OR LOCATION: 2933 North Druid Hills Road						
	, DeKalb County, GA, <u>30329</u>						
District(s): 4	Land Lot(s):Block(s): Parcel(s):18 111 03 018						
Acreage or Square I	Feet: +/- 0.46 Commission District(s): Super District 6 Existing Zoning: C-1						
	and Use (SLUP): Development of Jamba Juice restaurant with a drive-thru facility						
l hereby authorize	the staff of the Planning and Development Department to inspect the property that is the						
subject of this applic	$\sim 10^{\circ}$						
Owner: Agent	Signature of Applicant:						
(55.1. 55)	Printed Name of Applicant:Julie L. Sellers						
Notary Signature and	Seal:						
Page 2 of 4	330 West Ponce de Leon Avenue – Suites 300-500 – Decatur, Georgia – 30030 (voice) 404.371.2155 – [Planning Fax] (304) 371-4556 [Development Fax] (404) 371-3007 Web Address http://www.dekalbcountyga.gov/planning Email Address: planningenddevelopment@dekalbcountyga.gov						
1 aga 2 01 4	Revised: 2/1/11						



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A. Filing Fee: \$400. Filing fees shall not be refunded at any time following the deadline for amendments.

- **B.** <u>Criteria</u>: <u>Sec. 27-873. Special land use permits; criteria to be applied.</u> The following criteria shall be applied by the Department of Planning and Sustainability, the Planning Commission, and the Board of Commissioners in evaluating and deciding any application for a special land use permit. No application for a special land use permit shall be granted by the Board of Commissioners unless satisfactory provisions and arrangements have been made concerning each of the following factors, all of which are applicable to each application:
  - A. Adequacy of the size of the site for use contemplated and whether or not adequate land area is available for the proposed use including provision of all required yards, open space, off-street parking, and all other applicable requirements of the zoning district in which the use is proposed to be located;
  - B. Compatibility of the proposed use with adjacent properties and land uses and with other properties and land uses in the district;
  - C. Adequacy of public services, public facilities, and utilities to serve the use contemplated;
  - Adequacy of the public street on which the use is proposed to be located and whether or not there is sufficient traffic-carrying capacity for the use proposed so as not to unduly increase traffic and create congestion in the area;
  - E. Whether or not existing land uses located along access routes to the site will be adversely affected by the character of the vehicles or the volume of traffic generated by the proposed use;
  - F. Ingress and egress to the subject property and to all proposed buildings, structures, and uses thereon, with particular references to pedestrian and automotive safety and convenience, traffic flow and control, and access in the event of fire or other emergency;
  - G. Whether or not the proposed use will create adverse impacts upon any adjoining land use by reason of noise, smoke, odor, dust, or vibration generated by the proposed use;
  - H. Whether or not the proposed use will create adverse impacts upon any adjoining land use by reason of the hours of operation of the proposed use;
  - I. Whether or not the proposed use will create adverse impacts upon any adjoining land use by reason of the manner of operation of the proposed use;
  - J. Whether or not the proposed plan is consistent with all of the requirements of the zoning district classification in which the use is proposed to be located;
  - K. Whether or not the proposed use is consistent with the policies of the Comprehensive Plan;
  - L. Whether or not the proposed plan provides for all required buffer zones and transitional buffer zones where required by the regulations of the district in which the use is proposed to be located;
  - M. Whether or not there is adequate provision of refuse and service areas;
  - N. Whether the length of time for which the special land use permit is granted should be limited in duration;
  - O. Whether or not the size, scale and massing of proposed buildings are appropriate in relation to the size of the subject property and in relation to the size, scale and massing of the adjacent and nearby lots and buildings;
  - P. Whether the proposed plan will adversely affect historic buildings, sites, districts, or archaeological resources;
  - Q. Whether the proposed use satisfies the requirements contained within the Supplemental Regulations for such special land use permit.
  - R. Whether or not the proposed building as a result of its proposed height will create a negative shadow impact on any adjoining lot or building.
  - S. Whether the proposed use would result in a disproportional proliferation of that or similar uses in the subject character area.
  - T. Whether the proposed use would be consistent with the needs of the neighborhood or of the community as a whole, be compatible with the neighborhood, and would not be in conflict with the overall objectives of the comprehensive plan.
- C. Additional Criteria is contained in Supplemental Regulations of Zoning Ordinance: Sec. 27-874. Additional criteria for specified uses: "In addition to the criteria contained in Sec. 27-873 and Sec. 27-863 listed above, which each applicant for special land use permit is required to meet, Article IV, Supplemental Regulations of the DeKalb County Zoning Ordinance shall apply to that specific land use being applied for. No application for a Special Land Use permit for the uses specified shall be granted by the Board of Commissioners unless it is determined that all requirements contained within the zoning district in which such property is located, and the criteria contained in Section 27-873 and Article IV, Supplemental Regulations have been met."



404.371.2155 (o) 404.371.4556 (f) DeKalbCountyGa.gov

Clark Harrison Building 330 W. Ponce de Leon Ave Decatur, GA 30030

#### DEPARTMENT OF PLANNING & SUSTAINABILITY

•	
	PERMIT APPLICATION AUTHORIZATION orm or a similar, signed and notarized form if the individual who it the property owner.
Date: 6/12/2020	
TO WHOM IT MAY CONCERN:	
(I) (WE),Huckleberry Propertie	Name of Owner(s)
	Name of Owner(s)
being (owner) (owners) of the subject property	y described below or attached hereby delegate authority to
Focus Brands c/o Julie Sellers	
Nam	ne of Applicant or Agent
to file an application on (my) (our) behalf.	Stillar
Notary Public /	Owner Stefan Cushman, Vice President
Amanda L. Link Notary Public, State of Maine Notary Public, State of Maine	
Notary Public Expires January 19, 2024	Owner
Notary Public	Owner
·	~~
Notary Public	Owner

#### Dear Property Owner:

We invite you to join us for a Community Meeting video conference to learn about a redevelopment plan for an outparcel in the Toco Hills Shopping Plaza for a Jamba Juice location. We anticipate filing a Special Land Use Permit Application for approval of a drive thru and are providing you this notice because your property may be within 500 feet of the redevelopment site.

REQUEST: Special Land Use Permit Application

STREET LOCATION: 2933 North Druid Hills Road

(former site of the Wing Stop)

PROPOSED DEVELOPMENT: Jamba Juice restaurant with a drive-thru facility

#### COMMUNITY MEETING July 1, 2020 6:30pm

Due to the COVID-19 outbreak and in accordance with social distancing guidelines, the meeting will take place by video conference. Online access through **GoToMeeting**:

https://global.gotomeeting.com/join/706232773

You can also dial in using your phone.

United States: +1 (312) 757-3121 Access Code: 706-232-773#

Other public hearings will likely include:

COMMUNITY COUNCIL August 11, 2020 6:30 p.m.\*

PLANNING COMMISSION HEARING September 1, 2020 6:30pm\*

BOARD OF COUNTY COMMISSIONERS HEARING September 22, 2020 6:30pm\*

If you have questions about the application or development plans, please contact Julie L. Sellers at (404) 665-1242 or jsellers@dillardsellers.com.

<sup>\*</sup>Location to be determined by DeKalb County

NGO JOSEPH 1404 FAMA DR NE ATLANTA GA 30329

AZCUY JOSE G 1334 AMANDA CIR DECATUR GA 30033 AZCUY JOSE G 1340 AMANDA CIR DECATUR GA 30033

PNC BANK 130 S JEFFERSON ST STE 300 CHICAGO IL 60601 NORTHERN REALTY LLC 45 OTTAWA AVE SW STE 600 GRAND RAPIDS MI 49503 TWENTY NINE SIXTY THREE NORTH 6000 LAKE FORREST DR STE 400 ATLANTA GA 30328

TOCO HILLS (E&A) LLC 1221 MAIN ST # 1000 COLUMBIA SC 29201 TOCO HILL INC P.O. BOX 528 COLUMBIA SC 29201 FOUR WAY REALTY PO BOX 8905 ASHEVILLE NC 28814

ZARINA INVESTMENTS LLLP 3987 MERRIWEATHER WOODS ALPHARETTA GA 30022

BOLLINENI VANAJAKSHI 1976 AZALEA CIR DECATUR GA 30033 MILLER PALMORE DEBRA 1962 AZALEA CIR DECATUR GA 30033

PARK CHONG WOO 2996 N DRUID HILLS RD NE ATLANTA GA 30329 TOCO HILL INC PO BOX 15518 ATLANTA GA 30333 JERRY TILLEM RESIDUAL TRUST 201 ALLEN RD # 300 ATLANTA GA 30328

TRIPLE L AND P REAL ESTATE LLC 2910 N DRUID HILLS RD ATLANTA GA 30329 SUBURBAN PARTNERS LLC 3549 HILL FOREST TRL NW ACWORTH HI 30101

HUCKLEBERRY PROPERTIES 5 BREWSTER ST GLEN COVE NY 11542 TOCO HILLS ( E&A) LLC 1221 MAIN ST # 1000 COLUMBIA SC 29201

PARK CHONG WOO 2996 N DRUID HILLS RD NE DECATUR GA 30033 KRAUS RICHARD 2968 N DRUID HILLS RD NE ATLANTA GA 30329

FIRST NATIONAL BANK OF ATLANTA PO BOX 26665 RICHMOND VA 26665 TOCO HILL INC P O BOX 15518 ATLANTA GA 30333

TOCO INSTANT PRINTING INC 2960 N DRUID HILLS RD NE ATLANTA GA 30329 LIMESTONE WELLS LLC 200 S BISCAYNE BLVD FLOOR 6TH MIAMI FL 33131

# Attendee Report

## Summary

**Total Meetings** 

Total Attendees

(includes

organizers)

Total Organizers

#### Details

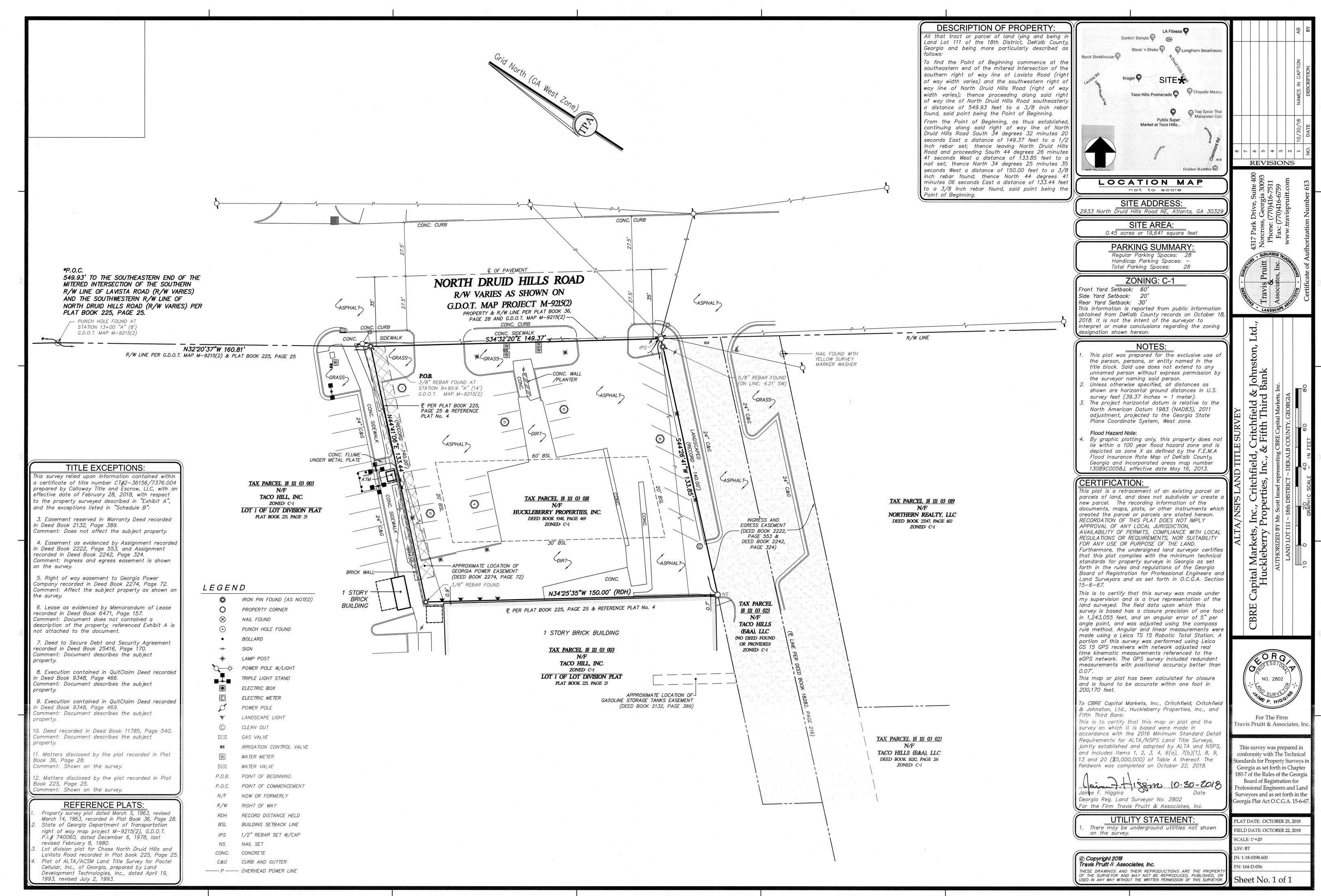
Details						
Meeting Date	Join Time	Leave Time	Meeting Title	Meeting ID	Attendee Name	Attendee Email Address
Jul 01, 2020	06:31 PM EDT	06:56 PM EDT	Community Meeting 2933 N Druid Hills	706-232-773	Ronnie Lester	rlester@focusbrands.com
Jul 01, 2020	06:32 PM EDT	06:51 PM EDT	Community Meeting 2933 N Druid Hills	706-232-773	Debbie	debbie@topofthekev.com
Jul 01, 2020	06:29 PM EDT	06:56 PM EDT	Community Meeting 2933 N Druid Hills	706-232-773	Katria Montepare	kmontepare@focusbrands.com
Jul 01, 2020	06:12 PM EDT	06:56 PM EDT	Community Meeting 2933 N Druid Hills	706-232-773	Julie Sellers	itaylor@dillardsellers.com
Jul 01, 2020	06:38 PM EDT	06:56 PM EDT	Community Meeting 2933 N Druid Hills	706-232-773	+14043791970	• 1 • 10 0 - mer mente der me

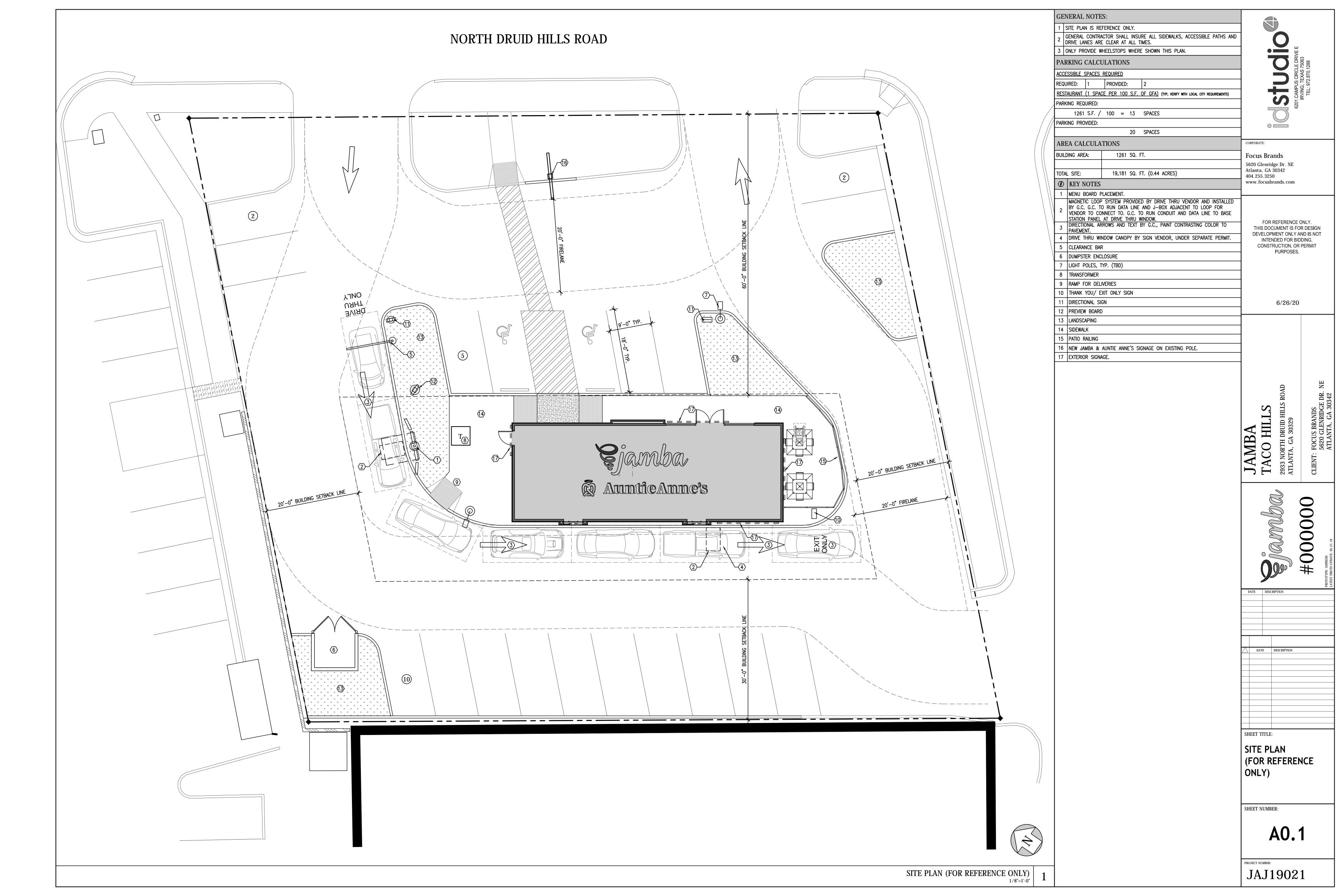
# DESCRIPTION OF PROPERTY:

All that tract or parcel of land lying and being in Land Lot 111 of the 18th District, DeKalb County, Georgia and being more particularly described as follows:

To find the Point of Beginning commence at the southeastern end of the mitered intersection of the southern right of way line of Lavista Road (right of way width varies) and the southwestern right of way line of North Druid Hills Road (right of way width varies); thence proceeding along said right of way line of North Druid Hills Road southeasterly a distance of 549.93 feet to a 3/8 inch rebar found, said point being the Point of Beginning.

From the Point of Beginning, as thus established, continuing along said right of way line of North Druid Hills Road South 34 degrees 32 minutes 20 seconds East a distance of 149.37 feet to a 1/2 inch rebar set; thence leaving North Druid Hills Road and proceeding South 44 degrees 26 minutes 41 seconds West a distance of 133.85 feet to a nail set; thence North 34 degrees 25 minutes 35 seconds West a distance of 150.00 feet to a 3/8 inch rebar found; thence North 44 degrees 41 minutes 06 seconds East a distance of 133.44 feet to a 3/8 inch rebar found, said point being the Point of Beginning.







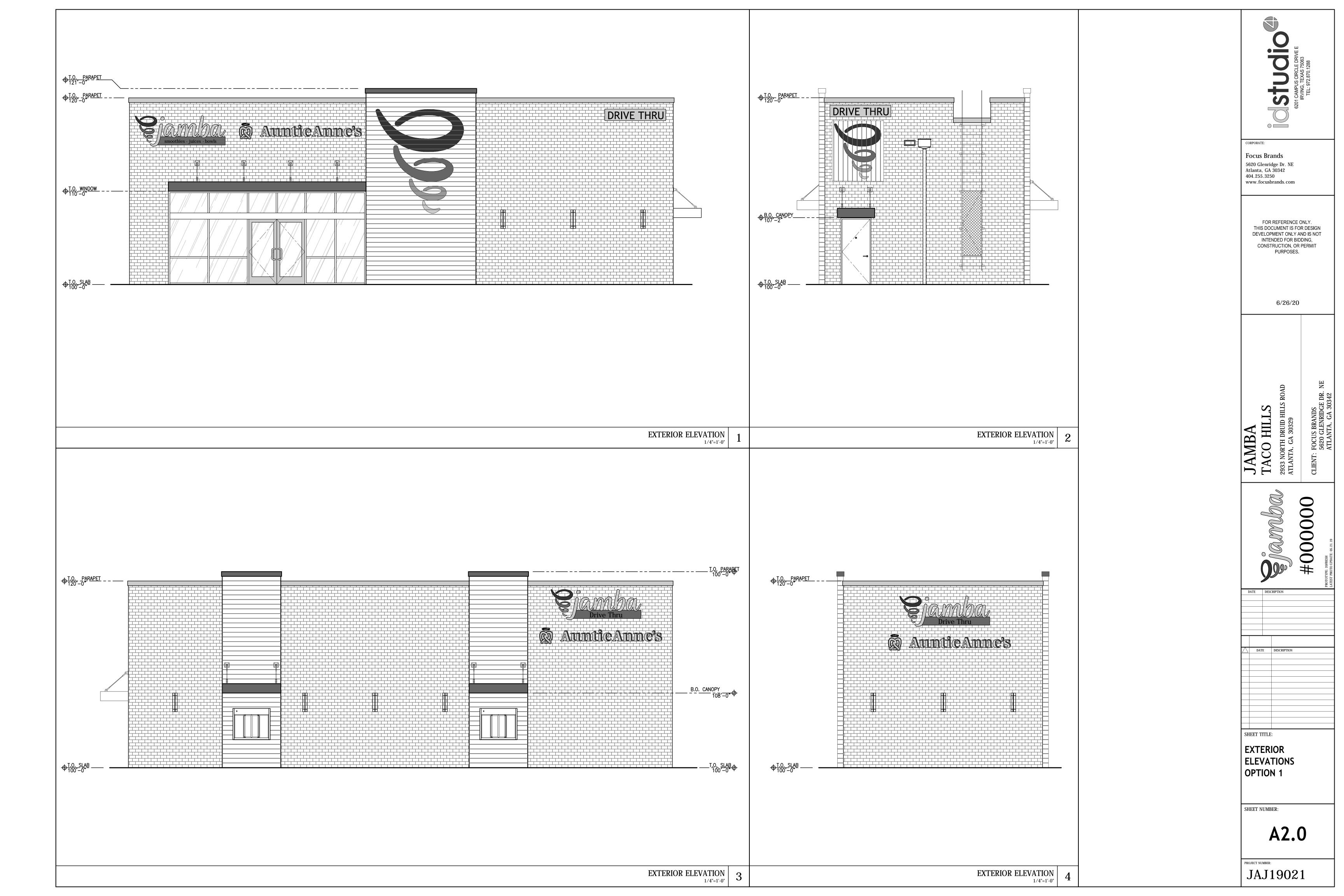
JAMBA – TOCO HILLS – ATLANTA, GA
EXTERIOR VIEWS
06-29-2020

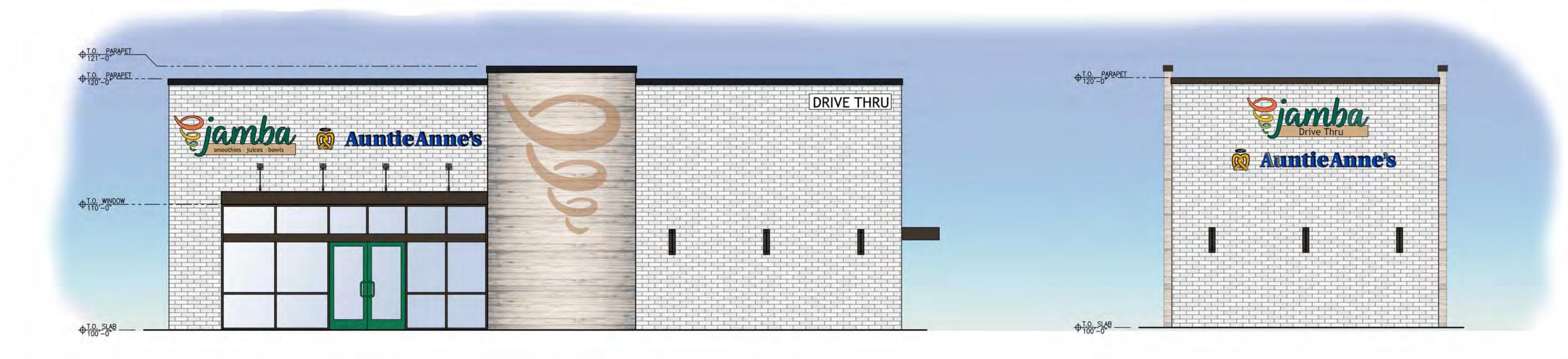
















## LETTER OF INTENT AND IMPACT ANALYSIS

## **Dekalb County**

## **Special Land Use Permit Application**

**Applicant:** Focus Brands

**Property:** 2933 North Druid Hills Road

Parcel ID No: 18 111 03 018

## Submitted for Applicant by:

Julie L. Sellers
DILLARD SELLERS
1776 Peachtree Street NW, Suite 390N
Atlanta, Georgia, 30309
(404) 665-1242
jsellers@dillardsellers.com

#### Introduction

Applicant, Focus Brands, request approval of a Special Land Use Permit for the property located at 2933 North Druid Hills Road, Atlanta, Georgia (tax parcel no. 18 111 03 018) (the "Property"). The Property is approximately +/- 0.46 acres of vacant land that was previously a Wing Stop restaurant. The property is zoned C-1, Local Commercial District, and is within the Town Center Activity Center Character Area.

On June 18, 2020 a pre-application meeting took place via video conference with the Planning Department staff. A pre-application community meeting was held via video conference on July 1, 2020. The attached notice was emailed to the Community Council District 2 members and sent via regular mail to the addresses attached. The sign in sheet from the community meeting is also attached.

Focus Brands is an Atlanta-based corporation that includes several national restaurant brands, including Jamba Juice and Auntie Anne's. Focus Brands seeks approval of this application to open a corporate operated restaurant with menu offerings of Jamba Juice and Auntie Anne's with a drive through facility. Restaurant drive-thru use within the Activity Center Character Area is subject to the grant of a Special Land Use Permit, pursuant to Dekalb County, Georgia Code of Ordinances Table 4.1. As our country continues to experience the impacts of a pandemic and residents are being urged to physically distance, the benefits and importance of drive through facilities has been highlighted. Even prior to the pandemic, drive through facilities provide a beneficial option for residents with physical and mobility impairments and families with children.

The restaurant will operate in accordance with all provisions of the County's Zoning Code §4.2.23. The establishment of a drive-thru restaurant will provide a use that is compatible

with the surrounding C-1 zoning and existing local commercial uses. The Property is bordered by multiple businesses, including a Wendy's drive-thru restaurant to the East and a Chase Bank drive-thru facility to the West. Thus, the commercial nature of this portion of North Druid Hills Road is consistent with the inclusion of a drive-thru facility. As shown on the attached site plan, the restaurant will utilize the existing curb cuts onto North Druid Hills and has access to one interparcel connection for vehicular traffic.

As set forth below, the Applicant satisfies the County's requirements for a special land use permit for drive-thru facilities. For these reasons, the Applicant respectfully requests its application be granted as submitted.

#### **Documented Impact Analysis**

The Applicant's application satisfies the applicable criteria set forth in the Dekalb County Zoning Code, Section 27-1836; 27-7.4.6.

A. Adequacy of the size of the site for use contemplated and whether or not adequate land area is available for the proposed use including provision of all required yards, open space, off-street parking, and all other applicable requirements of the zoning district in which the use is proposed to be located:

The size of the site is adequate for the contemplated use. All required yards, open space, off-street parking, and all other applicable requirements required by the C-1 zoning district are satisfied. The proposed development is an approximate +/- 0.46 acre site with all requirements being met.

B. Compatibility of the proposed use with adjacent properties and land uses and with other properties and land uses in the district:

As an outparcel of the Toco Hills shopping center, the drive through is appropriate and compatible with the surrounding area and land use within the district

C. Adequacy of public services, public facilities, and utilities to serve the use contemplated:

Adequate public services, facilities, and utilities exist to serve a drive-thru restaurant.

D. Adequacy of the public street on which the use is proposed to be located and whether or not there is sufficient traffic-carrying capacity for the use proposed so as not to unduly increase traffic and create congestion in the area:

North Druid Hills Road has two travel lanes in each direction and multiple turning lanes. There is sufficient capacity to support a drive-thru restaurant use and such use will not increase traffic or create congestion in the area.

E. Whether or not existing land uses located along access routes to the site will be adversely affected by the character of the vehicles or the volume of traffic generated by the proposed use:

No, traffic generated by the proposed drive-thru restaurant will not adversely impact existing land uses along access routes to the site.

F. Adequacy of ingress and egress to the subject property and to all proposed buildings, structures, and uses thereon, with particular references to pedestrian and automotive safety and convenience, traffic flow and control, and access in the event of fire or other emergency:

There is adequate ingress and egress to the subject property. Fire and other emergency vehicles will be able to access the property if there is an emergency.

G. Whether or not the proposed use will create adverse impacts upon any adjoining land use by reason of noise, smoke, odor, dust, or vibration generated by the proposed use:

No, the proposed drive-thru restaurant will not create adverse impacts upon any adjoining land uses by reason of noise, smoke, odor, dust or vibration.

H. Whether or not the proposed use will create adverse impacts upon any adjoining land use by reason of the hours of operation of the proposed use:

No, the proposed drive-thru restaurant will not create adverse impacts upon any adjoining land uses by reason of hours of operation.

I. Whether or not the proposed use will create adverse impacts upon any adjoining land use by reason of the manner of operation of the proposed use:

No, the proposed drive-thru restaurant will not create any adverse impacts upon any adjoining land use by reason of the manner of operation.

J. Whether or not the proposed plan is consistent with all of the requirements of the zoning district classification in which the use is proposed to be located:

Yes, the proposed restaurant and accompanying drive-thru is consistent will all requirements of C-1 classification.

# K. Whether or not the proposed use is consistent with the policies of the Comprehensive Plan:

Yes, the proposed drive-thru restaurants are consistent with the policies of the County's comprehensive plan.

L. Whether or not the proposed plan provides for all required buffer zones and transitional buffer zones where required by the regulations of the district in which the use is proposed to be located:

Yes, the proposed plan provides for all required buffer zones and transitional buffer zones.

M. Whether or not there is adequate provision of refuse and service areas:

Yes, there will be adequate provision of refuse and service areas.

N. Whether the length of time for which the special land use permit is granted should be limited in duration:

No, the length of time for the SLUP should not be limited in duration.

O. Whether or not the size, scale and massing of proposed buildings are appropriate in relation to the size of the subject property and in relation to the size, scale and massing of the adjacent and nearby lots and buildings:

The size, scale, and massing of the proposed drive-thru restaurant building is appropriate in relation to the size of the subject property and in relation to the size, scale and massing of adjacent and nearby lots and buildings.

P. Whether the proposed plan will adversely affect historic buildings, sites, districts, or archaeological resources;

No, the proposed drive-thru restaurant will not adversely affect historic buildings, sites, districts, or archaeological resources.

Q. Whether the proposed use satisfies the requirements contained within the Supplemental Regulations for such special land use permit:

The proposed restaurant with a drive-thru lane complies with the following supplemental regulations per Sec.27-4.2.23 of the DeKalb County Zoning Code:

a. Not located within sixty feet of a residentially zoned property.

- b. Drive-thru facility located on property greater than ten thousand square feet in area
- c. Drive-thru lanes and service windows serving drive-thru lanes are located on the side and rear of building
- d. No drive-thru canopies according to site plan
- e. Speaker boxes shall be directed away from any adjacent residential properties.
- f. All lighting from drive-thru facilities shall be shaded and screened to be directed away from adjacent residential property.
- R. Whether or not the proposed building as a result of its proposed height will create a negative shadow impact on any adjoining lot or building:

No, the restaurant is designed to be one story and will not create a negative shadow impact on any adjoining lot or building.

S. Whether the proposed use would result in a disproportional proliferation of that or similar uses in the subject character area:

No, the proposed drive-thru will not result in a disproportionate proliferation of that or similar uses in the subject character area. The location in the Toco Hills shopping center makes this site appropriate for a drive through.

T. Whether the proposed use would be consistent with the needs of the neighborhood or of the community as a whole, be compatible with the neighborhood, and would not be in conflict with the overall objectives of the comprehensive plan:

Yes, providing a different restaurant option with the fresh fruit and vegetables as well as the pretzel and other menu items in a convenient manner through a drive thru is consistent with the needs of the neighborhood and to the community as a whole. Such drive thru use is compatible with the neighborhood and will not be in conflict with the overall objectives of the comprehensive plan.

#### Required Constitution and Ante Litem Notice

Failure to approve the requested variances would be unconstitutional. Georgia law and the procedures of Dekalb County require the Applicant to raise Federal and State constitutional objections during the application process. While the Applicant anticipates a smooth application process, failure to raise constitutional objections at this stage may mean that the Applicant will be barred from raising important legal claims later in the process. Accordingly, the following constitutional objections are stated:

The portions of the Dekalb County Unified Development Code, facially and as applied to the Property, which restrict the Property to any uses, conditions, land use designations, development standards, or to any zoning district other than that proposed by the Applicant are 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 and 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.

The application of the Dekalb County Unified Development Code, facially and as applied to the Property, which restricts the Property to any uses, conditions, land use designations, development standards, or to any zoning district other than in accordance with the application as proposed by the Applicant is unconstitutional, illegal, null and void, constituting a taking of 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 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 denying the Applicant an economically viable use of its land while not substantially advancing legitimate state interests.

A denial of this application would be unconstitutional under the Takings Clause of the Fifth Amendment to the Constitution of the United States and the Just Compensation Clause of Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983. A refusal by Dekalb County to grant the application as requested would constitute a taking of the Applicant's property. Because of this unconstitutional taking, Dekalb County would be required to pay just compensation to the Applicant.

A denial of this application would constitute an arbitrary and capricious act by Dekalb County without any rational basis therefore constituting an abuse of discretion in violation of Article I, Section I, Paragraph I and 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 Dekalb County to approve this conditional use permit for the Property in accordance with the criteria as requested by the Applicant and required by the County would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and owners of the 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 approval of the requests subject to conditions which are different from the conditions requested by the Applicant, to the extent such different conditions would have the effect of further restricting Applicant's utilization of the Property, would also constitute an arbitrary, capricious and discriminatory act in zoning the Property to a unconstitutional classification and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove.

### CONCLUSION

For the foregoing reasons, the Applicant respectfully requests that this application be granted to allow the Property to be development with a restaurant with a drive-through facility. If there are any questions about this request, please do not hesitate to contact me at 404-665-1242 or jsellers@dillardsellers.com.

Sincerely,

DILLARD SELLERS, LLC

Julie L. Sellers

#### CAMPAIGN DISCLOSURE STATEMENT

Pursuant to the provisions of O.C.G.A. §36-67A-3, please find below a list of the contributions made by JULIE L. SELLERS to officials in DEKALB COUNTY in the past two years, aggregating \$250.00 or more, to local government officials who may review this Application.

NAME OF AMOUNT OF DATE OF CONTRIBUTION

Steve Bradshaw Board of Commissioners \$250.00 3/26/2018

DILLARD SELLERS LLC

Julie L. Sellers

Date:  $\frac{7/2/20}{}$