



Planning and Development Department Case Information

Case Number: LU23060022 and Z23060021

Meeting Dates: Planning Commission 08-03-2023

Board of Commissioners 09-12-2023

Current Zoning: B2

Request: Change Character Area from Village Center to Highway Corridor & Rezone 2.79 acres from B2 to B3 for major automotive repair and Variance to allow facility to be adjacent to a residential district.

Address: 3837 Malachi Way, Highway 81 & Youth Jersey Road

Map Number: N051D002

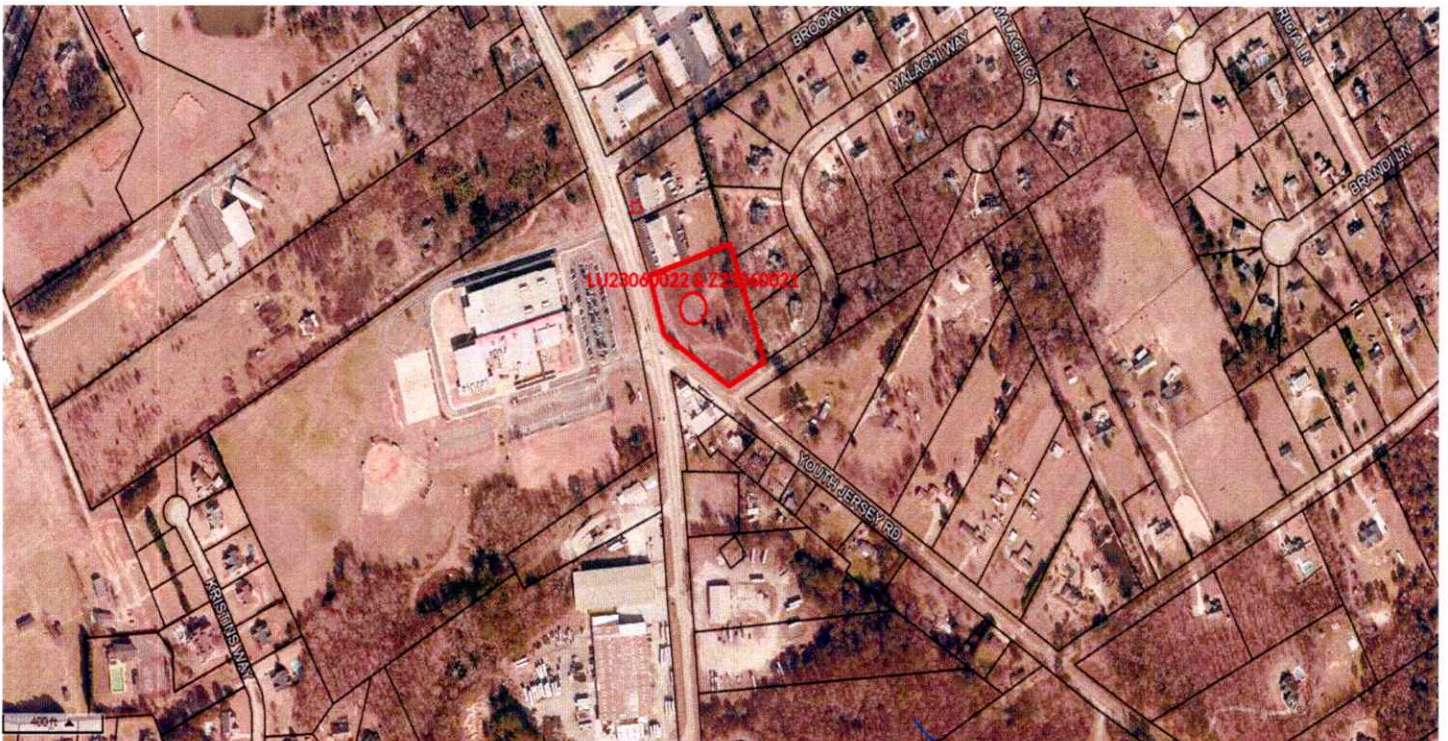
Site Area: 2.79 acres

Character Area: Village Center

District 3: Commissioner–Timmy Shelnett Planning Commission – John Pringle

Applicant:
Mitchell Construction Inc.
21 Rockbridge Road
Lilburn, Georgia 30047

Owner:
Robert & Katherine Von Itter
137 Everet Jenkins Road
Robbinsville, NC 28771-8928



Existing Site Conditions: Property consists of 2.79 acres and properties on each side are zoned to B2.

The surrounding properties are zoned A1, A2 and B2.

North – Parcel C0510198A00 – Zoned A1 – Walton County School

South – Residential – Zoned A2

West – Parcel C0510213 – Zoned B2 – Grocery Store

East – Parcels N051D001 and N051D001A00 – Zoned B2 – Different Businesses



Staff Comments/Concerns:

Article 6 Guidelines

Automotive, Major Repair and Maintenance (20)

- A. The use shall not be established on any lot which is either adjacent to or directly across from any residentially zoned district.
- B. The use shall not be within one hundred feet of a residential district.
- C. All repair and maintenance activities shall be carried on entirely within an enclosed building.
- D. Outdoor storage is limited to twenty-five (25%) percent of the total lot and shall comply with the outdoor storage regulation in this ordinance.
- E. Minor automotive repair and maintenance is allowed.

History: No History

Comments and Recommendations from various Agencies:

Public Works: Public Works has no issue with approval of this request per the design access submitted.

Sheriffs' Department: The Walton County Sheriff's Office conducts regular business checks on main corridors twice per night shift. This will increase business checks although WCSO already checks adjacent businesses next door.

Water Authority: This area is served by an existing 10" water main along Hwy 81 and Youth Jersey Road (static pressure: 55 psi, Estimated fire flow available: 2,500 gpm @ 20 psi). No system impacts anticipated.

Fire Department: Possible heavy fire risk with the number of vehicle planning on being inside the facility.

Fire Marshal: Shall comply with all current codes and ordinances set forth by State Fire Safety Minimums, NFPA, International Fire Code, and Walton County ordinances. Fire Hydrant shall be located within 500'ft of all buildings erected.

Board of Education: These will have no effect on the Walton County School District.

Development Inspector: No comment received.

DOT Comments: They will have to coordinate with GDOT.

PC ACTION 8/3/2023:

1. LU23060022 and Z23060021- Land Use Change from Village Center to Highway Corridor and Rezone 2.79 acres from B2 to B3 for major auto repair and Variance to allow facility to be adjacent to a residential district-Applicant: Mitchell Construction Inc - Owner: Robert & Katherine Von Itter-Property located on 3837 Malachi Way & Hwy 81 & Youth Jersey Rd-Map/Parcel N051D002-District 3.

Presentation: Andrea Gray, Attorney at Law, presented the case. She represents Mitchell Construction Inc. They are requesting an automotive repair facility. This property is located at 3837 Malachi Way, Highway 81 and Youth Jersey Road across from Youth Middle School. The Applicant would like to rezone 2.79 acres from B2 to B3, change the Character Area from Village Center to Highway Corridor and a Variance to allow this business to be next to a residential district. Applicant's plans are to build a 7,800 sq. ft. building which will be comprised of 6,300 sq. ft. of shop space and 1,500 sq. ft. of office space to support the shop. The building will be architectural steel with brick accents and will include roll-up doors for vehicle access and a glass storefront for customers' entry to the office area. Ms. Gray also stated that this will be a new home for Victory Motorsports which was previously located in Loganville, Georgia but the building was lost due to a fire.

The services for the car repair business would include engine and transmission repair, clutch work, performance upgrades, electrical work, and tune ups. Ms. Gray advised that the services will not include tires, quick-lube, paint, or body work. Ms. Gray also advised that the site design incorporates both buffers and access accommodations which will help mitigate impacts to adjoining property owners. The 50-foot transitional buffer between the development area and the adjacent residential properties is heavily wooded and mature trees which will

remain in place. Applicant will also install a 6-foot wooden privacy fence past the wooded 50-foot buffer and will have another 50 feet of grassed area between the fence and the paved parking and access drive area. The facility will share an access point off Hwy 81 with the adjoining commercial properties to its north which will be the sole point of ingress and egress. There will be no public access points on Malachi Way nor Youth Jersey Road. Minimal impacts to traffic are anticipated with an estimated of 8-12 cars coming to the facility Monday through Friday, 8am to 5pm. All work will be performed inside the facility which can hold 14-16 cars. Buffers will consist of 50 ft. buffers between residential properties with a wooden privacy fence, additional 50 ft. from fence to building and 200 ft. to Malachi Way. Electric tools, which generate significantly less noise than air tools, will be utilized to the greatest extent possible. Additionally, all lighting will be downward facing to mitigate glare yet provide adequate safety. Applicant's operations will be neighbor friendly. Ms. Gray advised that the Applicant is excited to rebuild to its full operations and has and continues to support the local community including the Walton County Fire Department and Loganville High School.

A Variance is required because this shop is for engine and transmission work which is considered major auto repair in the ordinance. Shops that do major repairs require a variance to be located adjacent to a residentially zoned property. The inability to conduct engine and transmission repair would be a hardship to the business. Since all work will be conducted inside the building and only during business hours, minimal impacts are anticipated to the surrounding properties. The building will not front or enter off Malachi Way nor Youth Jersey Road.

The Character Area is currently Village Center, but they are requesting Highway Corridor. Given the existing surrounding area, this change is a better reflection of actual development in the area.

Josh Ferguson asked will they be doing dyno testing? Ms. Gray referred to her client on this question and they advised yes to dyno testing. Ms. Gray also advised that the repair shop will be double insulated and all enclosed. She also advised that when this business was on Highway 78 there were no complaints and no issues.

Speaking: Joe Fagan spoke and stated that he has lived for 23 years on Malachi Court, and he doesn't want a big building there. He stated there is already a school and the traffic is already backed up. He stated that he has worked on Buford Highway and if this happens then a lot of people will leave, and he is not happy about this at all.

Nicholas Silverberg lives at the 1st house on the right on Malachi. He stated that he works 12-hour shifts, and he sleeps during the day and this could possibly interfere with this. The second thing is right now his son walks to Youth Middle and he walks on this property to get to school and if he rides the bus, it will take him 1 hour or more to get home.

Josh Ferguson asked if other children that live in this neighborhood walk on the property to school and if so, this is private property and Mr. Silverberg was asked does he understand this is private property and Nicholas Silverberg stated he did.

Jerry Morrow has lived here for 26 years and there are a lot of things to consider. He would like the property to remain zoned B2. If the property is zoned from B2 to B3 then the owner of the garage can divide the property and can sell off some it for a strip mall or something like that and it would be a congestive corner. He stated that there is no traffic light, and no business needs to be there, and he is opposed.

John Sauers advised that he and Mr. Mitchell had a great meeting, and he is not opposed to what he wants to do because he is a developer. He stated that he wrote down notes from their meeting and turned them in to all the people in the subdivision. Mr. Sauers stated that Applicant must buy the whole property and that the subdivision can't have any control over that. As a property owner he is opposed because the subdivision does not want it and wants to see retail under the current zoning. As a developer he would not put anything there and if they are allowed to put a building on the property then the Applicant can do whatever he wants. He said he guessed he was the unelected president of the HOA because he picks up things and cleans up all around their subdivision. Mr. Sauers stated it is 21 to 2 people of the people and the majority doesn't want it there and it does not fit.

Tim Hinton asked if the paper he was holding was a list of signatures and Mr. Sauers advised that it was just his paper he put notes on.

Andrea Gray came back for rebuttal and stated that her client has tried to speak to neighbors. Her client has no intent to divide the property. She advised there is going to be a detention pond. This property is already zoned commercial, and they can ask for entrance off Malachi Way, but they are not. She also advised that maybe her client could work out a way for children to be able to walk to the school and again stated that this is private property. Ms. Gray advised as far as

traffic is concerned this will only add 12 to 15 cars a day. This is not a lube business off Highway 81. This property is already zoned B2 for business and if they put something else there then there could be a substantial increase in traffic. Her client is trying to eliminate traffic and noise.

John Pringle asked if it was going to be 100 ft. in the back and 200 ft. on the side and Andrea Gray advised 100 ft. goes to the building itself.

Keith Prather asked if there was going to be an additional driveway off Highway 81 and he was advised that there would not be.

Recommendation: John Pringle made a motion to recommend approval with conditions, with a second by Pete Myers. The motion carried unanimously. The conditions are as follows:

1. Provide a 50-foot heavily wooded buffer, a 6-foot wooden privacy fence, and then another 50-feet of grassed/landscape area between the fence and paved areas and a 200-foot buffer along Malachi Way.
2. The only entrance for the shop will be off Hwy 81.
3. All automotive repair work will be conducted inside of the building.
4. All the cars being repaired will be inside the building while being repaired and when the business is closed (nights and weekends).
5. Electric tools will be used instead of air tools to the greatest extent possible.
6. Hours of operation are limited to 8am to 5pm, Monday through Friday.

Character Area Map Amendment

Application # LU23060022

Planning Comm. Meeting Date 8-3-2023 at 6:00PM held at **WC Board of Comm. Meeting Room**
Board of Comm. Meeting Date 9-12-2023 at 6:00PM held at **WC Historical Court House**
You or your agent must be present at both meetings

Please Type or Print Legibly

Map/Parcel N051D002

Applicant Name/Address/Phone # <u>Mitchell Construction, Inc.</u> <u>21 Rockbridge Road</u> <u>Lilburn, Georgia 30047</u> Phone # <u>770-294-9304</u> E-mail Address: <u>safeharbordev@yahoo.com</u>	Property Owner Name/Address/Phone <u>Robert and Katherine Von Itter</u> <u>137 Everet Jenkins Road</u> <u>Robbinsville, NC 28771-8928</u> <small>(If more than one owner, attach Exhibit "A")</small> Phone # _____
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Location: 3837 Malachi Way, Loganville GA 30052 Acreage 2.79
Highway 81 / Youth Jersey Road
Existing Character Area: Village Center
Proposed Character Area: Highway Corridor

Is this a Major or Minor amendment to the plan? Minor
Note: Major amendments to the plan DO NOT become effective until approved by RDC and DCA

Is the property located within a watershed protection overlay district? No

Proposed Development: Single-family Multi-family Commercial Industrial

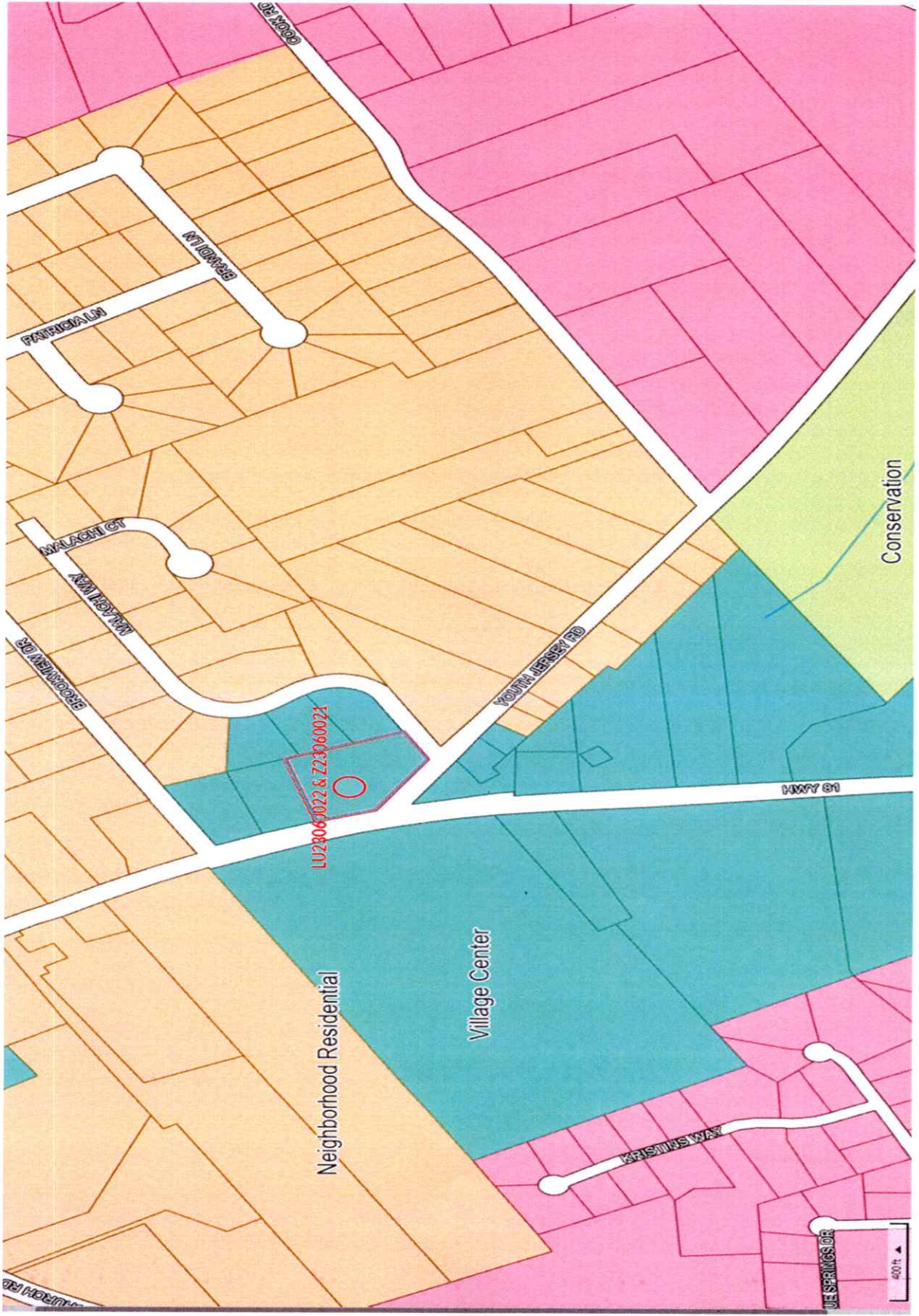
Proposed Zoning: B3 Number of Lots: _____ Minimum Lot Size: _____

Public Sewer: _____ Provider: _____ Septic Tank: X

The above statements and accompanying materials are complete and accurate. Applicant hereby grants permission for planning and zoning personnel to enter upon and inspect the property for all purposes allowed and required by the Comprehensive Land Development Ordinance.

Signature [Signature] Date 6-29-2023 Fee Paid \$ 250⁰⁰

LU23060022 and Z23060021 – 3837 Malachi Way/Highway 81 & Youth Jersey Road



Rezone Application # Z23060021
Application to Amend the Official Zoning Map of Walton County, Georgia

Planning Comm. Meeting Date 8-3-2023 at 6:00PM held at **WC Historical Court House, 111 S. Broad St, Monroe, Ga (2nd Floor)**

Board of Comm Meeting Date 9-12-2023 at 6:00PM held at **WC Historical Court House**

You or your agent must be present at both meetings

Map/Parcel N051D002

Applicant Name/Address/Phone #

Property Owner Name/Address/Phone

Mitchell Construction, Inc.

Robert & Katherine Von Itter

21 Rockbridge Rd

137 Everet Jenkins Rd

Lilburn, Georgia 30047

Robbinsville, NC 28771-8928

E-mail address: safeharbordev@yahoo.com

(If more than one owner, attach Exhibit "A")

Phone # 770-294-9304

Phone # _____

Location: 3837 Malachi Way, Hwy 81 Requested Zoning B3 Acreage 2.79
YOUTH Jersey Rd.

Existing Use of Property: Vacant

Existing Structures: None

The purpose of this rezone is to construct an automotive repair facility for high-end vehicles.

Variance requested to allow the facility to be adjacent to a residentially zoned district.

Request to change character area to Highway Corridor

Property is serviced by the following:

Public Water: _____ Provider: _____ Well: _____

Public Sewer: _____ Provider: _____ Septic Tank: X

The above statements and accompanying materials are complete and accurate. Applicant hereby grants permission for planning and zoning personnel to enter upon and inspect the property for all purposes allowed and required by the Comprehensive Land Development Ordinance.

Signature [Signature] Date 6/29/23 Fee Paid \$ 450

Public Notice sign will be placed and removed by P&D Office

Signs will not be removed until after Board of Commissioners meeting

Office Use Only:

Existing Zoning B2 Surrounding Zoning: North A1 South A2
 East B2 West B2

Comprehensive Land Use: Village Center **DRI Required?** Y _____ N /

Commission District: 3-Timmy Shelburt Watershed: / TMP /

I hereby withdraw the above application _____ Date _____

**AUTHORIZATION
BY PROPERTY OWNER**

I swear that I am the property owner of the property which is the subject matter of the attached Petition for Rezoning/Conditional Use Application, as is shown in the records of Walton County, Georgia.

I authorize the named below to act as Applicant in the pursuit of a Petition for Rezoning/Conditional Use Application.

Name of Applicant: Mitchell Construction, Inc.

Address: 21 Rockbridge Road, Lilburn GA 30047

Telephone: 770-294-9304

Location of Property: 3837 Malachi Way, Loganville, GA 30052

Map/Parcel Number: N051D002

Current Zoning: B2 Requested Zoning: B3

Robert Von Itter
Property Owner Signature

DECEASED
Property Owner Signature

Print Name: Robert Von Itter

Print Name: Katherine Von Itter

Address: 137 Everet Jenkins Rd
Robbinsville, NC 28771-8928

Address: 137 Everet Jenkins Rd
Robbinsville, NC 28771-8928

Phone #: 770 231-8970

Phone #: _____

Personally appeared before me and who swears that the information contained in this authorization is true and correct to the best of his/her knowledge.

Jeff West
Notary Public

6/26/23
Date

Orakham County NC

my commission expires 9/6/2024

Supplemental Responses to Application
and
Request for Variance and Character Area Change

A. Article 4, Part 4, Section 160 Standard Review Questions:

1. Existing uses and zoning of nearby property.

The Subject Property is located at the intersection of Hwy 81, Youth Jersey Road and Malachi Way which is an ideal location for an automotive repair facility. The property is bordered to its north by two retail developments zoned B2 and owned by Malone and Malone Investments, LLC and Clay Myers respectively. It is bordered to its east by three residential properties zoned A2. Walnut Grove Middle School is across Hwy 81 to the east of the property and across Youth Jersey Road to the south of the property is another commercial development zoned B2.

2. The extent to which property values are diminished by the particular zoning restrictions.

The current B2 zoning does allow some commercial uses, but a B3 zoning is required for Applicant's automotive repair facility due to its technical category as "major" because of transmission and engineer repairs, but by its operations, it will be a lower intensity use than most commercial businesses.

3. The extent to which the destruction of property values of the plaintiffs promotes the health, safety, morals or general welfare of the public;

The applicant's facility will provide a unique experience for customers in that its operations will more closely mirror a high-end dealership-quality repair shop that focuses on building long-term customer relationships and providing white glove service. It is not another quick lube and will stand out among other shops in Walton County. The facility will be modern and clean, and its operations will align with regular business hours. All cars being repaired will be inside the building both during the times they are worked on and during the hours that the business is closed (evenings and weekend).

4. The relative gain to the public, as compared to the hardship imposed upon the individual property owner;

Applicant's facility will add a needed variety to automotive repair shop options in Walton County as stated in response to question 3 above. It is also a less-intense use of the property than what could potentially be proposed under its current zoning including high-traffic volume retail.

5. The suitability of the subject property for the zoned purposes; and

This property is suitable for a B3 zoning because its proposed use is consistent with adjacent uses as commercial. Additionally, the size of the property easily accommodates the proposed building, adequate parking, and preserves significant wooded buffers between the building and adjacent property owners. It is also uniquely positioned to utilize an existing entrance off Hwy 81 thereby preventing the need for commercial access off of the arterial roads.

6. The length of time the property has been vacant as zoned, considered in the context of land development in the area in the vicinity of the property

The property is vacant. The commercial properties adjacent to it were developed in 1995 and the residential properties to its east were developed in the early 1990s. Given the Property's location on Hwy 81 and that it is adjacent to other commercial properties, it is suitable for the proposed use. Despite the reality that applicant's operations will be in line with a B2 use considering its modern operations, the Walton County Ordinance groups all major automotive repair shops under one category and requires a B3 zoning.

B. Request for Variance from application of a limiting provision of the Walton County Comprehensive Land Development Ordinance Article 6 Part 1 "Automotive, Major Repair and Maintenance"

Applicant respectfully requests that it be granted a variance from the provision which prohibits location of an automotive repair facility which undertakes "major repair and maintenance" from being established on any lot which is either adjacent to or directly across from any residentially zoned district." The ordinance further defines "major repair and maintenance" as shops providing,

among other things, engine and transmission repair. In support of this request, applicant provides the following:

1. There will be significant buffers between the adjacent residential properties and the shop operations including a 50-foot heavily wooded buffer, a 6-foot wooden privacy fence, and then another 50-feet of grassed/landscaped area between the fence and paved areas. There is more than 100 feet between the property line and the building.
2. The entrance for the shop is off Hwy 81 and there will be no commercial access off Malachi Way which is the road on which the residential properties front.
3. All automotive repair work will be conducted inside of the building.
4. All the cars being repaired will be inside the building while being repaired and when the business is closed (nights and weekends).
5. Electric tools which make significantly less noise will be used instead of air tools to the greatest extent possible.
6. Hours of operation are limited to 8am to 5pm, Monday through Friday.
7. Customer traffic is estimated at 8-12 cars per day which is a very low volume compared to other commercial uses and compared to repair shops which specialize in quick-service oil changes.
8. The development only encompasses about half of the overall acreage.
9. Inability to conduct engine and transmission work in its shop would be a substantial hardship on the applicant as these components are a critical part of its business given that its focus is less on volume of cars repaired and more on quality service for larger repairs. Additionally, the distinction between “major” and not “major” repairs seems arbitrary given that the operations of a repair facility and the buffers/site layout are more indicative of impacts to residential properties than what is occurring inside of the shop.

C. Request for change in character area

Applicant requests a change in the designated character area of Village Center to Highway Corridor to be consistent with the adjacent development and existing conditions of the area. The property, while at an intersection of three roads, is much better suited for the commercial uses contemplated in the Highway Corridor area than a Village Center given the existing commercial uses and the school in the immediate vicinity. The property is too small to accommodate the

mixed-use intent within a Village Center and its location does not support an expansion given that it abuts residential property to its east.



Andrea P. Gray LLC

Attorney at Law

June 29, 2023

Ms. Charna Parker
Director
Walton County Planning and Development
303 S Hammond Drive
Suite 98
Monroe, GA 30655

Re: Applicant: Mitchell Construction, Inc.
3837 Malachi Way, Loganville, GA 30052
Tax Parcel: N051D002
Request to 2.79 acres from B2 to B3
Variance to locate adjacent to a residentially zoned district
Change in Character Area from Village Center to Highway Corridor

Dear Ms. Parker:

Mitchell Construction, Inc. (“Applicant”) seeks to build an automotive repair facility on a 2.79-acre property with road frontage on Hwy 81, Youth Jersey Road and Malachi Way in Loganville, Georgia which is designated as Tax Parcel N051D002 (the “Property”). Applicant’s plans include an approximately 7,800 sf building which will be comprised of 6,300 sf of shop space and 1,500 sf of office space to support the shop. The building will be architectural steel with brick accents and will include roll-up doors for vehicle access and a glass storefront for customer entry to the office area.

The site design incorporates both buffers and access accommodations which will help mitigate impacts to adjoining property owners. The 50-foot transitional buffer between the development area and the adjacent residential properties is heavily wooded with mature trees which will remain in place. Applicant will also install a 6-foot wooden privacy fence past the wooded 50-foot buffer and will have another 50 feet of grassed area between the fence and the paved parking/access drive area. The facility will share an access point off of Hwy 81 with the adjoining commercial properties to its north which will be the sole point of ingress and egress. There will be no public access points on Malachi Way or Youth Jersey Road. Minimal impacts to traffic are anticipated with an estimated of 8-12 cars coming to the facility daily Monday through Friday. Additionally, all lighting will be downward facing to mitigate glare yet provide adequate safety.



300 E Church Street, Monroe, GA 30655
(678) 364-2384 www.andreapgray.com

Applicant's operations will be neighbor-friendly. Its hours and days of operation will be limited to Monday-Friday, 8am to 5pm. All work will be performed inside the facility which can hold 14-16 cars. Electric tools, which generate significantly less noise than air tools, will be utilized to the greatest extent possible. The services provided by the shop will include: engine and transmission repair, clutch work, performance upgrades, electrical work, and tune-ups. It will not include: tires, quick-service oil changes, paint work or body work. The business will be operated by Victory Motorsports, LLC which previously operated a shop in Loganville which was lost due to fire. It is excited to rebuild to its full operations and has and continues to support the local community including the Walton County fire department and Loganville High School.

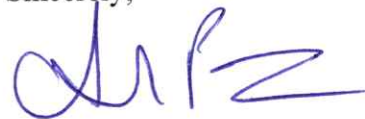
Applicant seeks to rezone the Property from B2 to B3 to accommodate its use as an automotive repair facility. It also requests a variance from Walton County Comprehensive Land Development Ordinance Article 6 Part 1 "Automotive, Major Repair and Maintenance" which limits such operations to areas not adjacent to residentially zoned districts. Given that the property fronts on a State Highway, there are significant buffers proposed between the structure and the adjacent residential properties, and applicant's operations will limit impacts, a variance is justified as further detailed in the supplement information contained with the application forms.

Finally, Applicant requires a change in character area from Village Center to Highway Corridor which is a better fit for this property given its size, frontage on Hwy 81, and its shared driveway with the adjacent commercial properties.

Applicant respectfully requests: (1) that the 2.79 acres at 3837 Malachi Way, Loganville GA, be rezoned from B2 to B3 to accommodate an automotive repair facility, (2) that the character area of the property be changed from Village Center to Highway Corridor, and (3) a variance to allow for development of the facility adjacent to a residential district.

Please let me know if you have any questions.

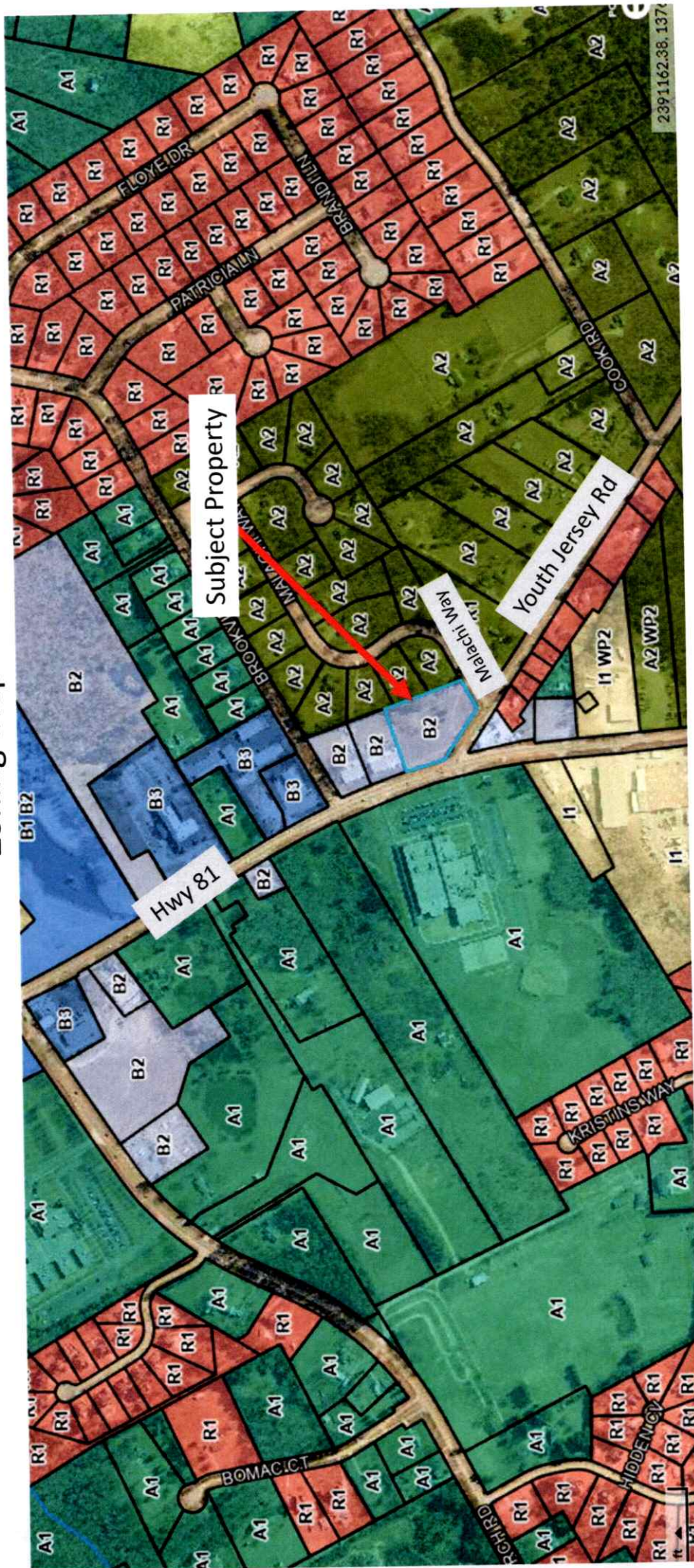
Sincerely,



Andrea Gray
Applicant's Representative



Zoning Map



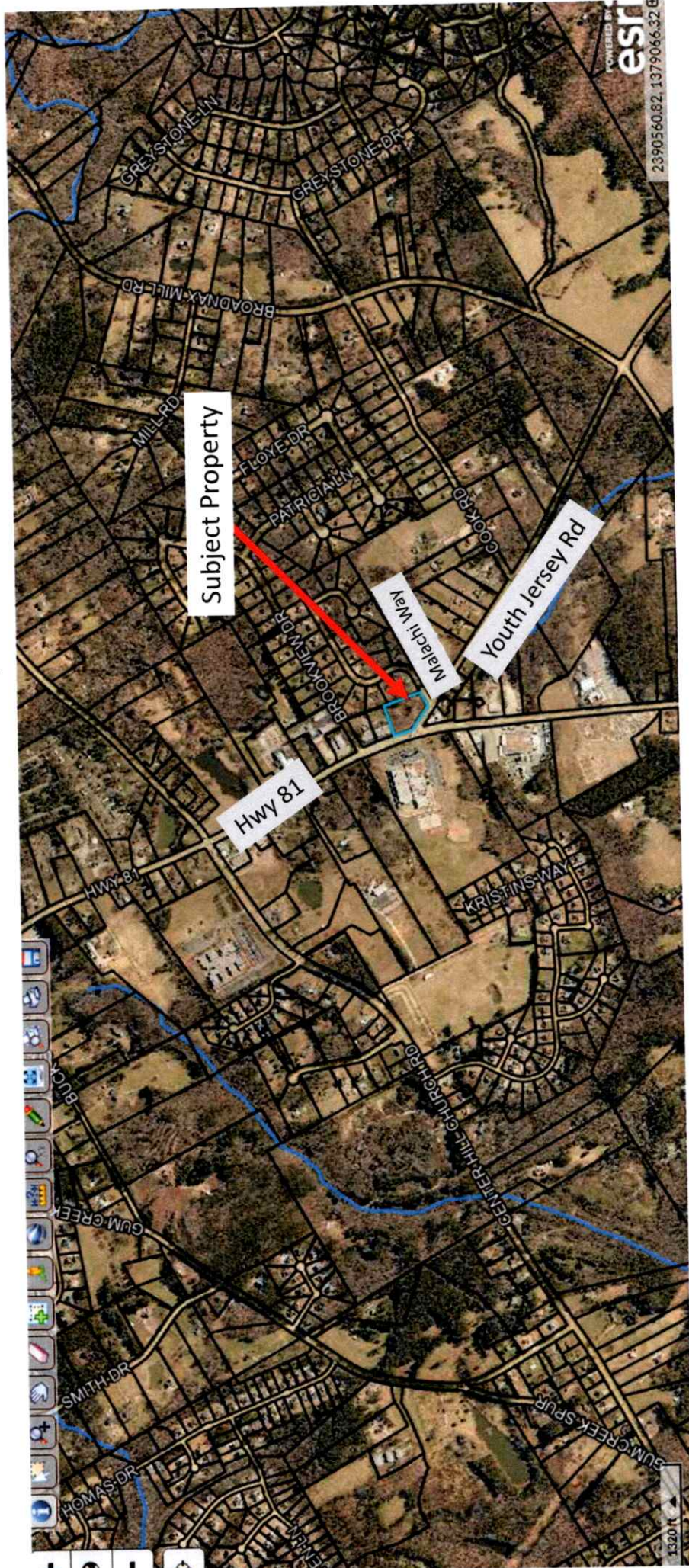
4. Legal Description

All That Tract or Parcel of Land lying and being in Land Lot 162 of the 4th Land District of Walton County, Georgia, containing 2.7916 acres, more or less, and described as Tract 2 in a plat of survey entitled “Robert W. Von Itter, Katherine P. Von Itter & Nevin J. Baker”, dated March 23, 1994; prepared by Von Itter & Associates, certified by Robert W. Von Itter, and recorded in Plat Book 62, Page 116, Walton County, Georgia, Records.

Reference is made to said plat and the record thereof for a more particular description of the property conveyed and for the purposes of incorporating the same herein.

Said property is known as Walton County Tax Parcel N051D002 and located at 3837 Malachi Way, Loganville, Georgia.

Location Map



AGENT AUTHORIZATION

Date: 6/29/23 Tax Map and Parcel Number(s): N051D002

PROPERTY ADDRESS: 3837 Malachi Way
Loganville, Georgia 30052

PROPERTY OWNER: Robert and Katherine Von Itter
137 Everet Jenkins Road
Robbinsville, NC 28771-8928

APPLICANT: Mitchell Construction, Inc.
21 Rockbridge Road
Lilburn, Georgia 30047

ATTORNEY/AGENT: Andrea P. Gray, LLC
300 E Church Street
Monroe, GA 30655
(678) 364-2384

ACTION: Rezone 2.79 acres from B2 to B3 with a variance to allow development adjacent to a residentially zoned district and to change the character area from Village Center to Highway Corridor for an automotive repair facility

The undersigned states under oath that it is the owner of the property and hereby authorizes Applicant through its Attorney/Agent to submit, execute and prepare any and all documents relating to or speak on its behalf regarding the request for a zoning of the property referenced herein.

ATTORNEY/AGENT

[Signature]
BY: Andrea P. Gray



Sworn to and subscribed before me this 29th Day of June 2023

[Signature]
NOTARY PUBLIC



APPLICANT: Mitchell Construction, Inc.

[Signature]
BY:

Sworn to and subscribed before me this 29 Day of June 2023

[Signature]
NOTARY PUBLIC



Andrea P. Gray LLC

Attorney at Law

June 30, 2023

Notice of Preservation of Constitutional Objections

Re: Applicant: Mitchell Construction, Inc.
Owner: Robert and Katherine Von Itter
Property: 3837 Malachi Way, Loganville, GA 30052
Request to zone 2.79 acres from B2 to B3
Variance for operations adjacent to residentially zoned district
Change in Character Area

Georgia law requires that Applicant include in its rezoning record a statement of constitutional objections to put the deciding board on notice of the Applicant's assertion of its constitutional and legal rights to the requested rezoning. In accordance with this requirement, Applicant asserts the following:

The current zoning of the Subject Property restricts said property in an unreasonable manner, is unconstitutional, null and void in that the restriction to the current zoning classifications affords the Applicant no reasonable use of the Property and is the equivalent of a taking of the Applicant's property rights without payment of just and adequate compensation and without due process in violation of the Fifth Amendment and Fourteenth Amendments to the Constitution of the United States, and Article I, Section I, Paragraph I, and Article I, Section III, Paragraph 1 of the Constitution of the State of Georgia.

A refusal by the board to approve the rezoning requested by the Applicant to permit a reasonable economic return on the Applicant's investment and a reasonable use of the Property would therefore be unconstitutional, null and void and would be arbitrary, capricious and without a rational basis, thus constituting an abuse of discretion. Further, a refusal by the board would discriminate in an arbitrary, capricious, and unreasonable manner between the Applicant and owners of similarly situated properties in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, and Article I, Section I, Paragraph II of the Georgia Constitution.

The continued application of the current zoning to the Subject Property results in little or no gain to the public in general and fails to promote the health, safety, morals or general welfare of the public and does not bear a substantial relation to the objectives of the Walton County,



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Georgia Zoning Ordinance, and would constitute a substantial reduction of the property value of the Applicant and is therefore confiscatory and void.

By filing this Statement of Constitutional Rights, the Applicant reserves all rights and remedies available to them under the United States Constitution, the Georgia Constitution, all applicable federal state and local laws and ordinances, and in equity.



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