



REZONING APPLICATION ANALYSIS

ZONING CASE #: Z2015-11

LEGISTAR: #20150202

LANDOWNERS:

**Mark A. Deal
75 Gatewood Drive
Marietta, GA 30068**

APPLICANT:

Same as above

AGENT:

n/a

PROPERTY ADDRESS:

369 McArthur Drive

PARCEL DESCRIPTION:

16 11610 0350

AREA:

COUNCIL WARD: 5A

EXISTING ZONING:

R-4 (Single Family Residential – 4 units / acre)

REQUEST:

R-4 with additional use as a duplex

FUTURE LAND USE:

MXD (Mixed Use Development)

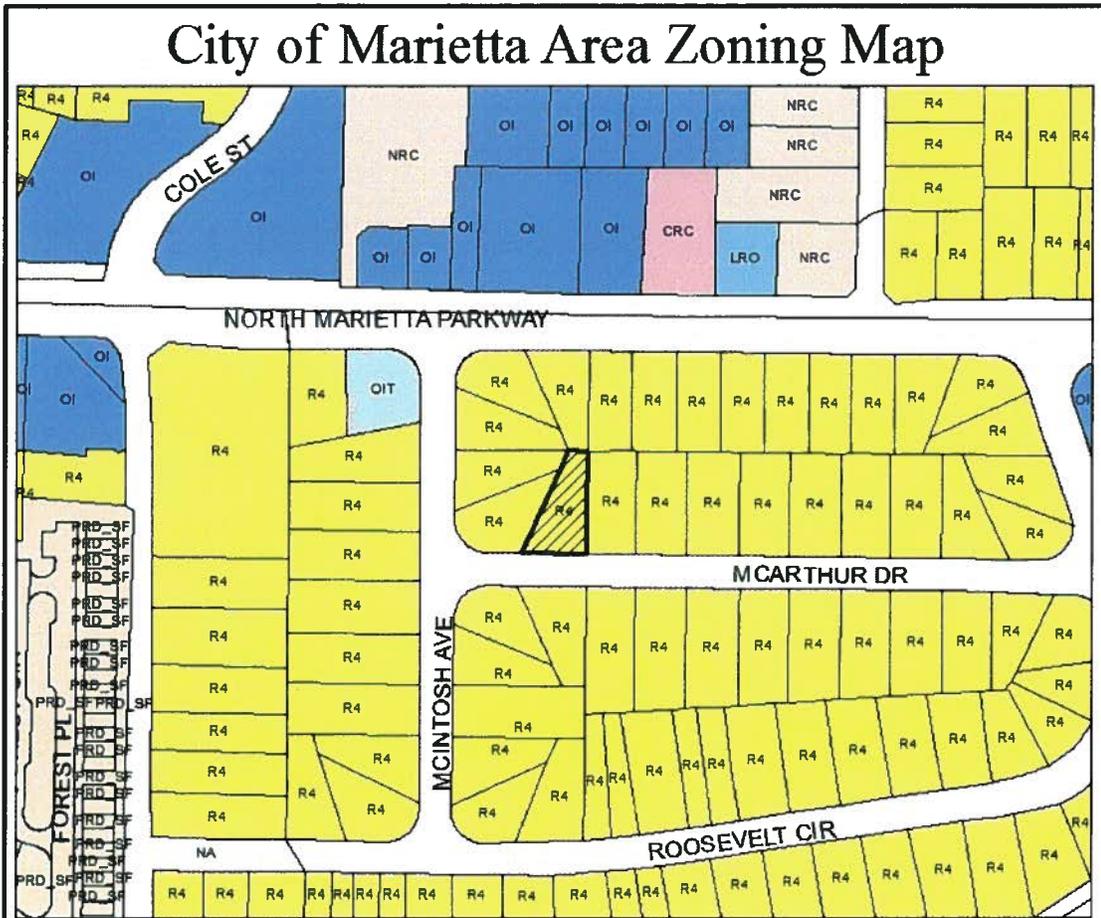
REASON FOR REQUEST: The applicant is requesting to rezone the property to R-4 with an additional use so the property may be legally reestablished as a duplex.

PLANNING COMMISSION HEARING: Wednesday, April 1, 2015 – 6:00 p.m.

CITY COUNCIL HEARING: Wednesday, April 8, 2015 – 7:00 p.m.

MAP

City of Marietta Area Zoning Map

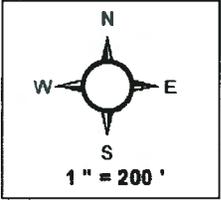


Zoning		District	Land Lot	Parcel	Current Zoning	Proposed Zoning
SINGLE FAMILY RESIDENTIAL S-1 One Unit/Acre S-2 Two Units/Acre S-3 Three Units/Acre S-4 Four Units/Acre ATTACHED FAMILY RESIDENTIAL A-4 Four Units/Acre A-6 Six Units/Acre A-8 Eight Units/Acre PRD(SF) Planned Residential Dev. MHP Middle Home Park MULTI FAMILY RESIDENTIAL M-8 Eight Units/Acre M-10 Ten Units/Acre M-12 Twelve Units/Acre RIR Residential High Rise PRD(HF) Planned Residential Dev.	COMMERCIAL NRC Neighborhood Retail CRC Community Retail RRC Regional Retail CBD Central Business District PCD Planned Commercial Dev. MCD Mixed-Use Dev. OI Office Institutional Trans. LRO Low-Rise Office OI Office Institutional OS Office Surrounding OHS Office High-Rise INDUSTRIAL LI Light Industrial HI Heavy Industrial PID Planned Industrial Dev.	16	11610	0350	R-4	R-4 w/ addtl use

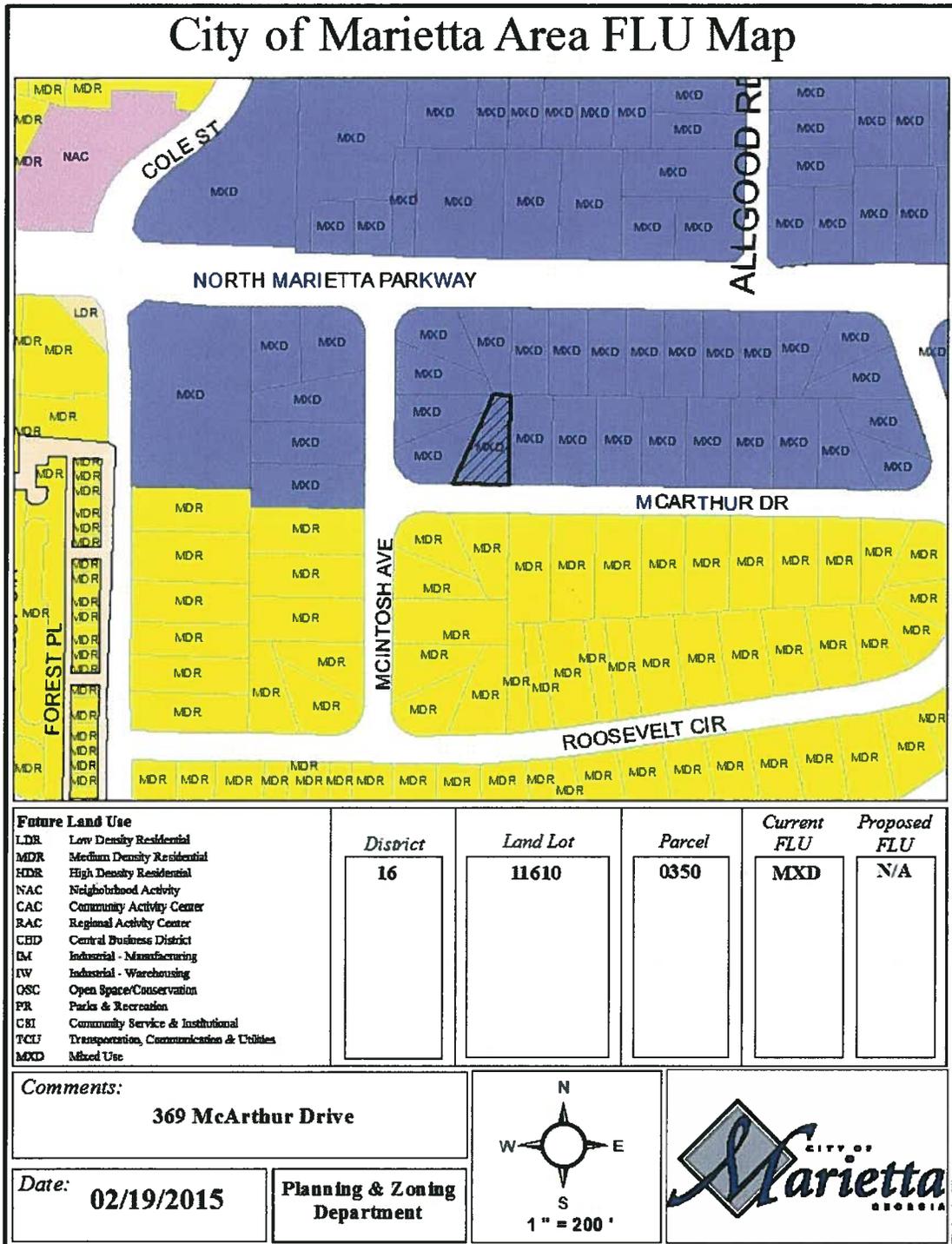
Comments:
 369 McArthur Dr

Date: 02/19/2015

Planning & Zoning Department



FLU MAP



PICTURES OF PROPERTY



367 & 369 McArthur Drive



367 & 369 McArthur Drive

STAFF ANALYSIS

Location Compatibility

Mark A. Deal is requesting the property located at 369 McArthur Drive be rezoned from R-4 (Single Family Residential – 4 units/ac) to R-4 (Single Family Residential – 4 units/ac) with additional use so the property may be legally reestablished as a duplex. The 0.216 acre parcel of property contains a residential structure that had been used as a duplex until it was vacated in 2009. (*Section 706.02 of the Zoning Ordinance regarding Nonconforming Uses states that once the property has been vacant for more than 6 months, a nonconforming use cannot be reestablished.*)

Mr. Deal explains that he purchased the foreclosed property in 2009, and no zoning issues were disclosed to Mr. Deal. Shortly after acquiring the property, Mr. Deal states that he began to renovate and remodel the property. Due to a number of issues, the property has been rented sporadically from 2009 to January 2014. At that time, the tenant in unit 369 moved out and that unit remained vacant past July when Code Enforcement notified Mr. Deal that the property had lost its status as a Nonconforming Use, and could no longer be used as a duplex.

Mr. Deal also cites a history of the repairs to the two units to emphasize his willingness to comply with City regulations. However, the Building Permit Office has no record of any permits ever being issued for such work.

The majority of the surrounding properties are zoned R-4, except for the Turner Chapel property at the end of Roosevelt Circle, which is zoned OI, Office Institutional. The adjacent residential properties are a mix of single family residences and duplexes.

Use Potential and Impacts

According to Cobb County Tax Assessor records the structure was built in 1962; and was originally built as a duplex. However, on June 4, 2013 the utility services for #369 were terminated; and utility services for #367 were terminated on April 11, 2014 when that tenant vacated the property. The property owner currently has the electric service on in his name in #369, but the entire structure appears to be unoccupied.

This duplex is one of only two remaining duplexes still existing on McArthur Drive.

Research into zoning regulations indicates that the 1974 Zoning Ordinance included duplexes, along with single family residences, as permitted uses under the R-10 zoning classification.

By the time the 1984 Zoning Ordinance was approved, duplexes were eliminated as a permitted use in R-10. So at that time, any duplexes that had already been built became



nonconforming uses.

In 1998, a new Zoning Ordinance was approved, and under the zoning classification system, R-10 became R-4, which is the category under which the property is zoned today.

Section 706, Nonconforming Uses, allows a use that is nonconforming to continue, except that it cannot be "Reestablished after discontinuance for a continuous period of 6 months or 18 months during any 3 year period". The intent of the nonconforming use clause in the Zoning Ordinance is to permit non-conformities to continue until they are removed, but not to encourage their survival. Marietta's code is similar to many other codes, including Cobb County, in that "grandfathered" uses do not survive if disestablished for a period of time.

In similar circumstances, rezoning of nonconforming properties have been approved with a condition that if the main structure is demolished, the zoning will revert back to the original R-4 zoning, without the residential duplex use.

The following structures in that neighborhood were previously legally nonconforming duplexes, but have now been converted to legal single family residences:

- 253 McIntosh Avenue
- 269 McIntosh Avenue
- 351 McArthur Drive
- 333 Roosevelt Circle

Also, the following properties on Roosevelt Circle are no longer using them as duplexes, but have not yet been converted to single-family homes. These properties have been notified by Code Enforcement that they can no longer be used as duplexes:

- 384/386 Roosevelt Circle
- 405/407 Roosevelt Circle
- 446/446-A Roosevelt Circle

In addition, several new single family residences have been constructed on Roosevelt Circle and on McArthur Drive.

There have been other properties in the City that have lost their nonconforming use status, and have been renovated and converted to single family homes. These properties include:

- 450 Morningside Drive
- 447 Birney Street
- 141 Gramling Street

In December 2013 City Council did approve the rezoning of two properties – 107-109 Gramling Street and 120-122 Gramling Street – in order to allow duplexes to be re-established as permitted uses in an R-4 zoned district. Also, on July 9, 2014, the property at 443-445 Roosevelt Circle was also rezoned to allow a duplex to be re-established.



The Future Land Use (FLU) of this parcel, as specified in the City’s Comprehensive Plan, is Medium Density Residential (MDR). The FLU serves as a guide for long-term growth and how development should occur over time and into the future. The purpose of the Medium Density Residential category is to provide for areas that are suitable for housing with densities from three (3) to six (6) dwelling units per acre. R-4 zoning is compatible with the MDR Future Land Use, and is compatible with the current development in the area.

Environmental Impacts

Any proposed changes to the site should be minimal, so there should be no additional environmental impacts caused by the proposed request. There is no indication of any wetlands, streams, or endangered species existing on the property.

Economic Functionality

The Roosevelt Circle area, including McArthur Drive, was developed with a mix of duplexes and single family homes, during the 1940s-1960s, and the majority of the properties have been used consistently as residences. Most of the duplexes are rental units on both sides, and some have deteriorated due to lack of maintenance.

Infrastructure

There is a two car parking pad in front of the left side unit (#367), but no parking area is available on the right hand side (#369). Single family attached uses require 2.2 parking spaces per unit. This property does not contain enough parking. Should the duplex use be approved then the following variance would be necessary to allow the parking configuration remain as-is:

- Variance to reduce the required parking from 5 (4.4) spaces to 2 spaces. [*§716.01 TABLE J.*]

Two spaces is sufficient for one single family detached unit.

History of Property

There is no history of any variances, Special Land Use Permits, or past rezonings for this property. However, there have been eight (8) Code Enforcement cases on this property related to overgrown grass, trash, rubbish or outside storage.

ANALYSIS & CONCLUSION

Mark A. Deal is requesting the property located at 369 McArthur Drive be rezoned from R-4 (Single Family Residential – 4 units/ac) to R-4 (Single Family Residential – 4 units/ac) with additional use so the property may be legally reestablished as a duplex. The 0.216 acre parcel of property contains a residential structure that had been used as a duplex until it was vacated in 2009. (*Section 706.02 of the Zoning Ordinance regarding Nonconforming Uses states that once the property has been vacant for more than 6 months, a nonconforming use cannot be reestablished.*)

Mr. Deal explains that he purchased the foreclosed property in 2009, and no zoning issues were disclosed to Mr. Deal. Shortly after acquiring the property, Mr. Deal states that he began to renovate and remodel the property. Due to a number of issues, the property has been rented sporadically from 2009 to January 2014. At that time the tenant in unit 369 moved out and that unit remained vacant past July when Code Enforcement notified Mr. Deal that the property had lost its status as a Nonconforming Use, and could no longer be used as a duplex.

According to Cobb County Tax Assessor records the structure was built in 1962; and was originally built as a duplex. However, on June 4, 2013 the utility services for #369 were terminated; and utility services for #367 were terminated on April 11, 2014 when that tenant vacated the property. The property owner currently has the electric service on in his name in #369, but the entire structure appears to be unoccupied.

The following structures in the area of that neighborhood were previously legally nonconforming duplexes, but have now been converted to legal single family residences:

- 253 McIntosh Avenue
- 269 McIntosh Avenue
- 351 McArthur Drive
- 333 Roosevelt Circle
- 450 Morningside Drive
- 447 Birney Street

This duplex is one of only two remaining duplexes still existing on McArthur Drive.

Should approval of the proposed zoning request be considered, the following language may need to be included since it has been used for other nonconforming properties in similar situations:

- The use of the property as a duplex is hereby approved; however, if the main structure is demolished, the zoning will revert back to R-4, without the residential duplex use.

Should the duplex use be approved then the following variance would be necessary to allow the parking configuration remain as-is:



Department of Development Services
205 Lawrence Street
Marietta, Georgia 30060
Brian Binzer, Director

-
- Variance to reduce the required parking from 5 (4.4) spaces to 2 space. [*§716.01 TABLE J.*]

The Future Land Use (FLU) of this parcel, as specified in the City's Comprehensive Plan, is Medium Density Residential (MDR). The FLU serves as a guide for long-term growth and how development should occur over time and into the future. The purpose of the Medium Density Residential category is to provide for areas that are suitable for housing with densities from three (3) to six (6) dwelling units per acre. R-4 zoning is compatible with the MDR Future Land Use, and is compatible with the current development in the area.

Prepared by: Shelly Hill

Approved by: Rusty Roth



Department of Development Services
205 Lawrence Street
Marietta, Georgia 30060
Brian Binzer, Director



DATA APPENDIX

CITY OF MARIETTA - WATER

Is a water line adjacent to the property?

If not, how far is the closest water line?

Size of the water line?

Capacity of the water line?

Approximate water usage by proposed use?

CITY OF MARIETTA - SEWER

Is a sewer line adjacent to the property?

If not, how far is the closest sewer line?

Size of the sewer line?

Capacity of the sewer line?

Estimated waste generated by proposed development?

A.D.F Peak

Treatment Plant Name?

Treatment Plant Capacity?

Future Plant Availability?



DATA APPENDIX CONTINUED

DRAINAGE AND ENVIRONMENTAL CONCERNS

Does flood plain exist on the property? _____

What percentage of the property is in a floodplain? _____

What is the drainage basin for the property? _____

Is there potential for the presence of wetlands as determined by the U.S. Environmental Protection Agency? _____

If so, is the use compatible with the possible presence of wetlands? ---

Do stream bank buffers exist on the parcel? _____

Are there other topographical concerns on the parcel? ---

Are the storm water issues related to the application? ---

Potential presence of endangered species in the area? _____

Transportation

What is the road effected by the proposed change? _____

What is the classification of the road? _____

What is the traffic count for the road? _____

Estimated number of cars generated by the proposed development? ---

Estimated number of trips generated by the proposed development? ---

Do sidewalks exist in the area? _____

Transportation improvements in the area? _____

If yes, what are they? _____

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DATA APPENDIX CONTINUED

EMERGENCY SERVICES

Nearest city or county fire station from the development?

Distance of the nearest station?

Most likely station for 1st response?

Service burdens at the nearest city fire station (under, at, or above capacity)?

MARIETTA POWER - ELECTRICAL

Does Marietta Power serve this site? Yes _____ No _____

If not, can this site be served? Yes _____ No _____

What special conditions would be involved in serving this site?

Additional comments:



DATA APPENDIX CONTINUED

MARIETTA CITY SCHOOLS

Marietta City Schools Impact Assessment:

Elementary School Zone Servicing Development:

Grades six (6) through twelve (12) will be serviced by:

- Marietta Sixth Grade Academy
- Marietta Middle School
- Marietta High School

Current Capacity at Servicing Elementary School:

Current Capacity at Marietta Sixth Grade Academy:

Current Capacity at Marietta Middle School:

Current Capacity at Marietta High School:

Current Enrollment at Servicing Elementary School:

Current Enrollment at:

- Marietta Sixth Grade Academy:
- Marietta Middle School:
- Marietta High School:

Number of students generated by present development:

Number of students projected from proposed development at:

- Elementary level:
- Sixth Grade level:
- Middle School 7th & 8th Grade level:
- High School level:

New School(s) planned that might serve this area:

Comments:

TO: Marietta Daily Journal

FROM: City of Marietta

RUN AD DATE: March 13, 2014

PUBLIC NOTICE OF REZONINGS AND SPECIAL LAND USE PERMIT

The City of Marietta hereby gives notice that a public hearing will be held on the following rezonings and special land use permit by the Planning Commission on **Wednesday, April 1, 2015, 6:00 P.M.**, City Hall, for a recommendation to the City Council at their meeting on **Wednesday, April 8, 2015, 7:00 p.m.**, City Hall, for a final decision to be made.

Z2015-11 [REZONING] MARK A. DEAL requests rezoning for a portion of property located in Land Lot 1161, District 16, Parcel 0350, 2nd Section, Marietta, Cobb County, Georgia and being known as 367 & 369 McArthur Drive from R-4 (Single Family Residential – 4 units / acre) to R-4 (Single Family Residential – 4 units / acre) with an additional use as a duplex. Ward 5.

A description and plat of the property sought for the rezoning and future land use assignment are on file in the Planning and Zoning Office, City Hall, and is available for inspection between 8:00 A.M. and 5:00 P.M., Monday through Friday. Anyone wishing to attend may do so and be heard relative thereto.

For additional information please call the Planning and Zoning Office (770) 794-5669.

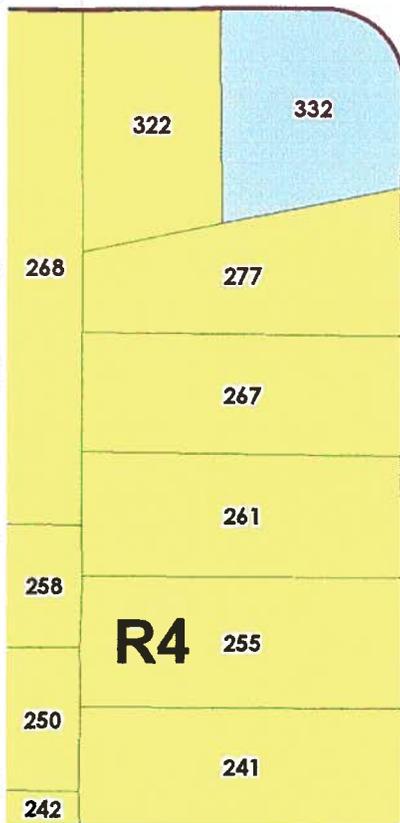
Accessibility to Meetings: If you believe you may need the City/BLW to provide special accommodations in order to attend/or participate in any of the above meetings, please call Mr. Patrick Henley, ADA Coordinator, at 770-794-5558 (voice) or 770-794-5560 (TDD) no later than 48 hours before the date of the above meeting.

City of Marietta
205 Lawrence Street
Marietta, Georgia 30060



Rezoning

N MARIETTA PKWY

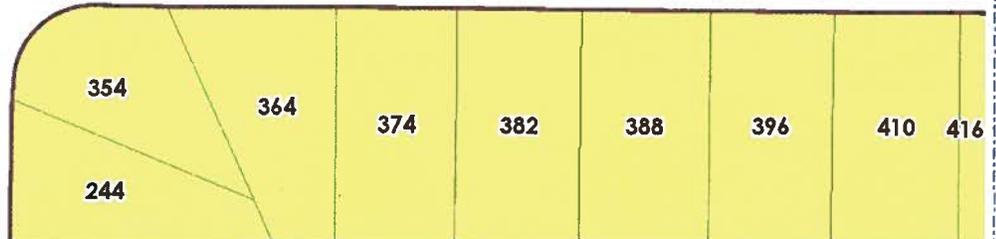


MCINTOSH AVE

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MCARTHUR DR



Address	Parcel Number	Acreage	Ward	Zoning	FLU
369 MCARTHUR DR	16116100350	0.216	5A	R4	MXD
353 MCARTHUR DR	16116100360	0.244	5A	R4	MXD

Property Owner: Mark A. Deal

Applicant:

Proposed Zoning: R4 w/add'l use as duplex

Agent:

Proposed Use:

Planning Commission Date: 4/1/15

City Council Hearing Date: 4/8/15

Case Number: Z2015-11

City of Marietta Planning & Zoning

Zoning Symbols

- Railroads
- City Limits
- Cobb County Pockets
- NA
- R1 - Single Family Residential (1 unit/acre)
- R2 - Single Family Residential (2 units/acre)
- R3 - Single Family Residential (3 units/acre)
- R4 - Single Family Residential (4 units/acre)
- RA4 - Single Family Residential - Attached
- RA6 - Single Family Residential - Attached
- RA8 - Single Family Residential - Attached
- MHP - Mobile Home Park
- PRD-SF - Planned Residential Dev. Single Family
- RM8 - Multi Family Residential (8 units/acre)
- RM10 - Multi Family Residential (10 units/acre)
- RM12 - Multi Family Residential (12 units/acre)
- RHR - Residential High Rise
- PRD-MF - Planned Residential Dev Multi Family
- NRC - Neighborhood Retail Commercial
- CRC - Community Retail Commercial
- RRC - Regional Retail Commercial
- PCD - Planned Commercial Development
- LI - Light Industrial
- HI - Heavy Industrial
- PID - Planned Industrial Development
- MXD - Mixed Use Development
- CBD - Central Business District
- OIT - Office Institutional Transitional
- LRO - Low Rise Office
- OI - Office Institutional
- OS - Office Services
- OHR - Office High Rise

**Mark A. Deal
75 Gatewood Drive
Marietta, Georgia 30068
Mark.deal@gmail.com
678.371.4423**

January 23, 2015

Department of Development Services
205 Lawrence Street
Marietta, Georgia 30060

**Re: Application for Rezoning
Property: 367/369 McArthur Drive
Marietta, GA 30060**

Dear Sir or Madam:

I submit the above mentioned Application for Rezoning for your consideration. Along with my application I would like to provide you with some background and history for this property.

This property was foreclosed on by the bank. I purchased this property in 2009 at an auction. I had driven by the property but at the time of the purchase I had not seen the inside of the property. There was no disclosure statement or zoning information provided at the time of purchase. I bought this property blind believing that I could improve on its condition. As soon as the property was purchased, I started to renovate and remodel the vacant property. We completely remodeled the interior of each unit with new tile in the kitchen and bathrooms, rejuvenating the existing hardwood floors, fresh paint throughout, new appliances, and new gutters.

While the renovations were taking place, both units were broken into and tools were stolen. However, we were able to complete the renovation of both units and each unit was rented and occupied.

On New Year's Eve 2010, both units were broken into again and many personal items of the occupants were stolen. I lost both tenants due to this incident as they did not feel safe living in the neighborhood.

I repaired the damage caused by the break-in and as an added measure of security for the property I installed an 8 ft. privacy fence and 8 pt. motion sensing lights. The lights helped in cutting down walking traffic behind the other adjoining vacant lots.

Things were moving along well until in 2011 lightning struck the property and we had to repair the some electrical circuits. In 2012, the City of Marietta notified me that the 50-year-old oak tree in front of the property needed to be removed. After consulting with

the City's Arborist, we decided that the tree was, in fact, diseased and needed to be cut down. As it was a large tree close to the property, we incurred a huge expense in removing it. In 2013 we installed new HVAC for the 369 unit.

In January 2014 a long term tenant, who had large dogs, moved out of the 369 unit. There was considerable damage to the unit. I, again, had to start a sizable remodeling effort.

In April 2014, the tenant in the 367 unit moved out and that unit had some damage as well. I had to remodel this unit as well to make it safe for another occupant.

I have been active in renovating this property since January 2014. When the second tenant moved out my goal was to get both units ready before listing the property for rent. Since I do or supervise most of the renovations and lease the property myself, I thought that would be the best use of my time.

In July 2014 I was notified by the City that I had lost the duplex zoning and could no longer operate the property as 2 units. I was not aware that the property would lose its status as a duplex otherwise I would have acted more quickly and leased one unit while I was working on the next.

I give you this history to show that I have at all times tried to comply with the City's instructions and have always tried to take pride in this property and maintain it in the best possible condition. Currently both units have been renovated and can be placed on the market for rent.

I need the rental income to invest more into the property. My long term goal is to make this property into a single family home. Unfortunately I do not have the financial ability to make this investment now. I have taken the time since I received the notices from the city to explore this option but I simply cannot afford to do it at this time.

Please allow me to operate this property as a duplex to allow me to gather the funds necessary to eventually renovate this property to be a single family home.

Thank you in advance for your time and consideration.

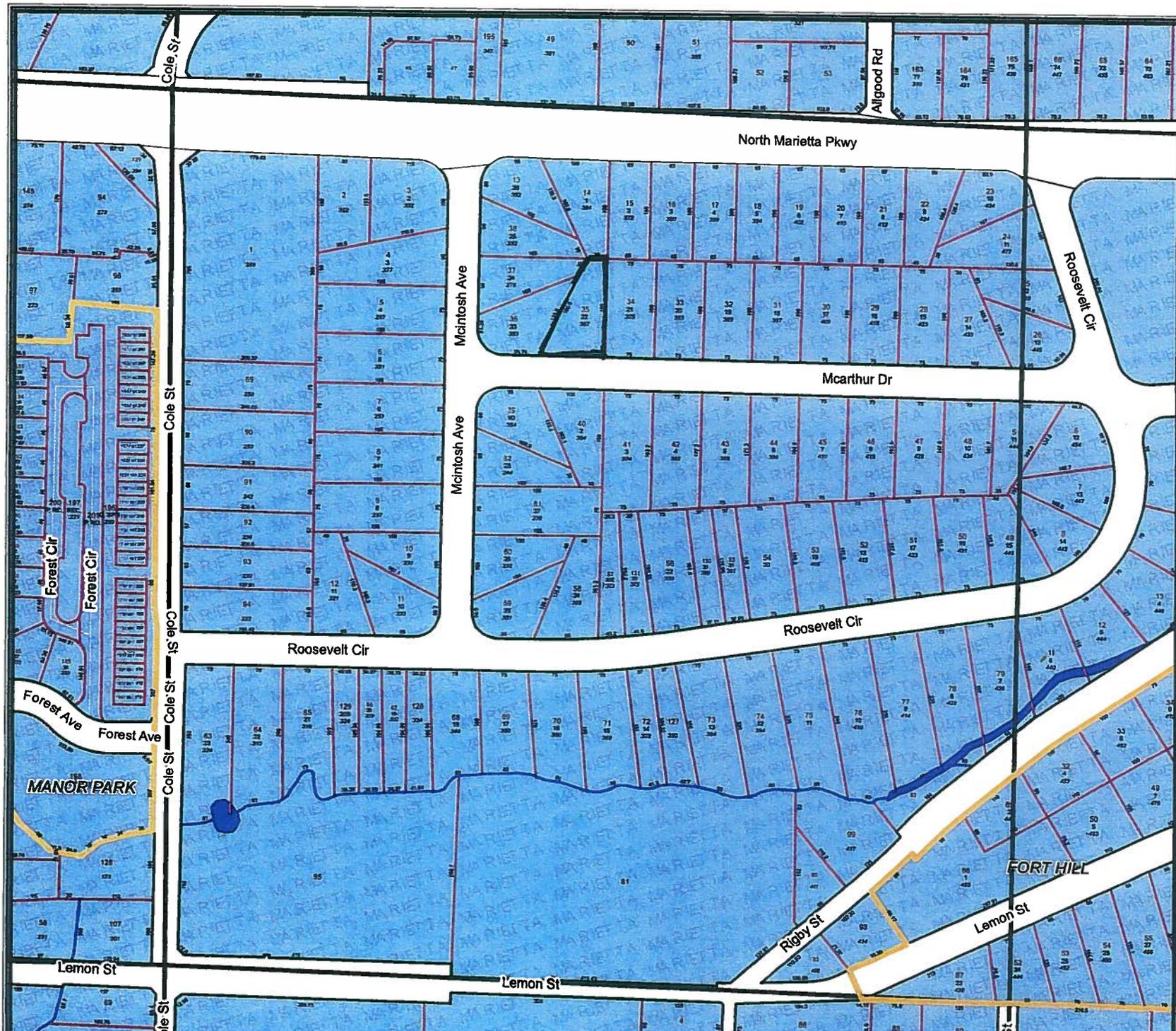
Sincerely,

A handwritten signature in blue ink, appearing to read "Mark A. Deal". The signature is fluid and cursive, with the first name "Mark" being the most prominent.

Mark A. Deal

Enclosures

16-1161



Legend

- Parcel
- Railroad ROW
- Trail ROW
- Water Region
- Land Lots
- Subdivision Boundary
- Cobb Boundary

City Limits

- Acworth
- Austell
- Kennesaw
- Marietta
- Powder Springs
- Smyrna
- Unincorporated

C.I.D Limits

- Cumberland Mall
- Town Center

Misc

- Land hooks
- Water Property line
- Parks

16-1145	16-1144	16-1143
16-1160		16-1162
16-1217	16-1216	16-1215

Cobb County Board of Tax Assessors Mapping Division
 726 Whitlock Ave, Ste 200
 Marietta, Georgia 30064
 770-526-3180

Disclaimer: This map is prepared for the primary use of land parcels. It is not intended to be used for any other purpose. The user of this map is advised that the information contained herein is for informational purposes only and should not be used for any other purpose. The user of this map is advised that the information contained herein is for informational purposes only and should not be used for any other purpose. The user of this map is advised that the information contained herein is for informational purposes only and should not be used for any other purpose.

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McArthur Ave

McArthur Dr