



**Land Use Petitions:** SLUP-21-0004, CV-21-0002, CV-21-0003, CV-21-0004, & CV-22-0006

**Date of Revised Staff Recommendation Preparation:** April 13, 2022

**Full Cycle Deferral - Planning Commission:** April 21, 2022

**Full Cycle Deferral - Mayor and City Council, 1<sup>st</sup> Read:** May 9, 2022

**Full Cycle Deferral - Mayor and City Council, 2<sup>nd</sup> Read:** June 13, 2022

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<b>PROJECT LOCATION:</b>	4435 Hugh Howell Road and 2239 Dillard Street
<b>DISTRICT/LANDLOT(S):</b>	18 <sup>th</sup> District, Land Lot 214
<b>ACREAGE:</b>	±2.33
<b>EXISTING ZONING</b>	DT-2 (Downtown Corridor Zone) and C-1 (Local Commercial)
<b>EXISTING LAND USE</b>	Former Restaurant and <i>existing contractor's office</i>
<b>CURRENT FUTURE LAND USE DESIGNATION:</b>	Downtown and <i>Suburban</i>
<b>OVERLAY DISTRICT:</b>	N/A
<b>APPLICANT:</b>	Chick-fil-A, Inc. c/o Jennifer Santelli
<b>OWNER:</b>	John Poulakis; <i>Scott and Wanda Nelson</i>
<b>PROPOSED DEVELOPMENT:</b>	SLUP to allow a drive-through restaurant with four concurrent variances for inter-parcel access, setbacks, drive-through location, <i>and transitional buffer requirements</i>
<b>STAFF RECOMMENDATION:</b>	<b>APPROVAL with conditions of SLUP-21-0004</b> (restaurant with drive-through) <b>DENIAL of CV-21-0002</b> (drive-through locational requirements) <b>DENIAL of CV-21-0003</b> (setback requirements) <b>APPROVAL of CV-21-0004</b> (inter-parcel access requirements) <b>APPROVAL of CV-22-0006</b> ( <i>transitional buffer requirements</i> )

## **UPDATE**

### **April 13, 2022 Update:**

*At the March 14, 2022 Mayor and City Council meeting, the applicant requested a full cycle deferral to go back through the Land Use process (Planning Commission and two reads before Mayor and City Council) due to a major change in the application. The major change included adding an additional parcel to their application (2239 Dillard), which would allow for two access points to the subject property, and an additional concurrent variance (CV-22-0006) to reduce the transitional buffer on the additional parcel. A revised application was submitted on March 15, 2022. New information and analysis are in italics.*

*The original SLUP and three concurrent variances went to Planning Commission on September 16, 2021, where the Board recommended approval of SLUP-21-0004, denial of CV-21-0002, denial of CV-21-0003, and approval of CV-21-0004, subject to amended staff recommended conditions. The amended conditions addressed the Planning Commission concerns regarding transportation related elements of traffic safety. The application then went before Mayor and City Council several times:*

- *October 12, 2021 MCC: 1<sup>st</sup> read*
- *November 8, 2021 MCC: deferral*
- *December 13, 2021 MCC: deferral (exploration of closing Rosser Terrace begun)*
- *January 18, 2022 Public Information Meeting: Rosser Terrace Road Closure meeting*
- *January 24, 2022 MCC: 1<sup>st</sup> read*
- *February 15, 2022 MCC: deferral*
- *February 28, 2022 MCC: deferral (applicant working to add adjacent parcel to the request)*
- *March 14, 2022: full cycle deferral granted*

*Staff will note that the full cycle deferral did not require a new neighborhood meeting to be held. However, it did require new advertising of the case (new public notice signs, letters to a revised 500' mailing list, new legal ads).*

## **BACKGROUND**

The applicant, Chick-fil-A, Inc., is requesting a Special Land Use Permit (SLUP) with *four* concurrent variances for the properties located at 4435 Hugh Howell Road and 2239 Dillard Street, for a restaurant with a drive-through configuration. *The subject site consists of two parcels, totaling approximately 2.33 acres and is developed with several buildings.* 4435 Hugh Howell contains a building previously occupied by The Greater Good BBQ. 2239 Dillard Road contains a single-story building and accessory structure, associated parking, and is used as a contractor's office for Southland Electric Inc.

## **PROJECT DATA**

*The larger of the two parcels, is located at the southwestern intersection of Hugh Howell and Rosser Terrace, across from 'The Centre on Hugh Howell' shopping center. The additional parcel is a smaller, wide, but short, trapezoid shaped parcel. This property is approximately .28 acres and adjacent and to the west of the original 2.05-acre parcel, and is accessed from Dillard Street.* The 2.05-acre tract is zoned

DT-2 (Downtown Corridor Zone) and the .28 acre parcel is zoned C-1 (Local Commercial), both of which allow restaurants without drive-throughs by right, however restaurants with a drive-through configuration require a SLUP in the DT-2 zoning district.

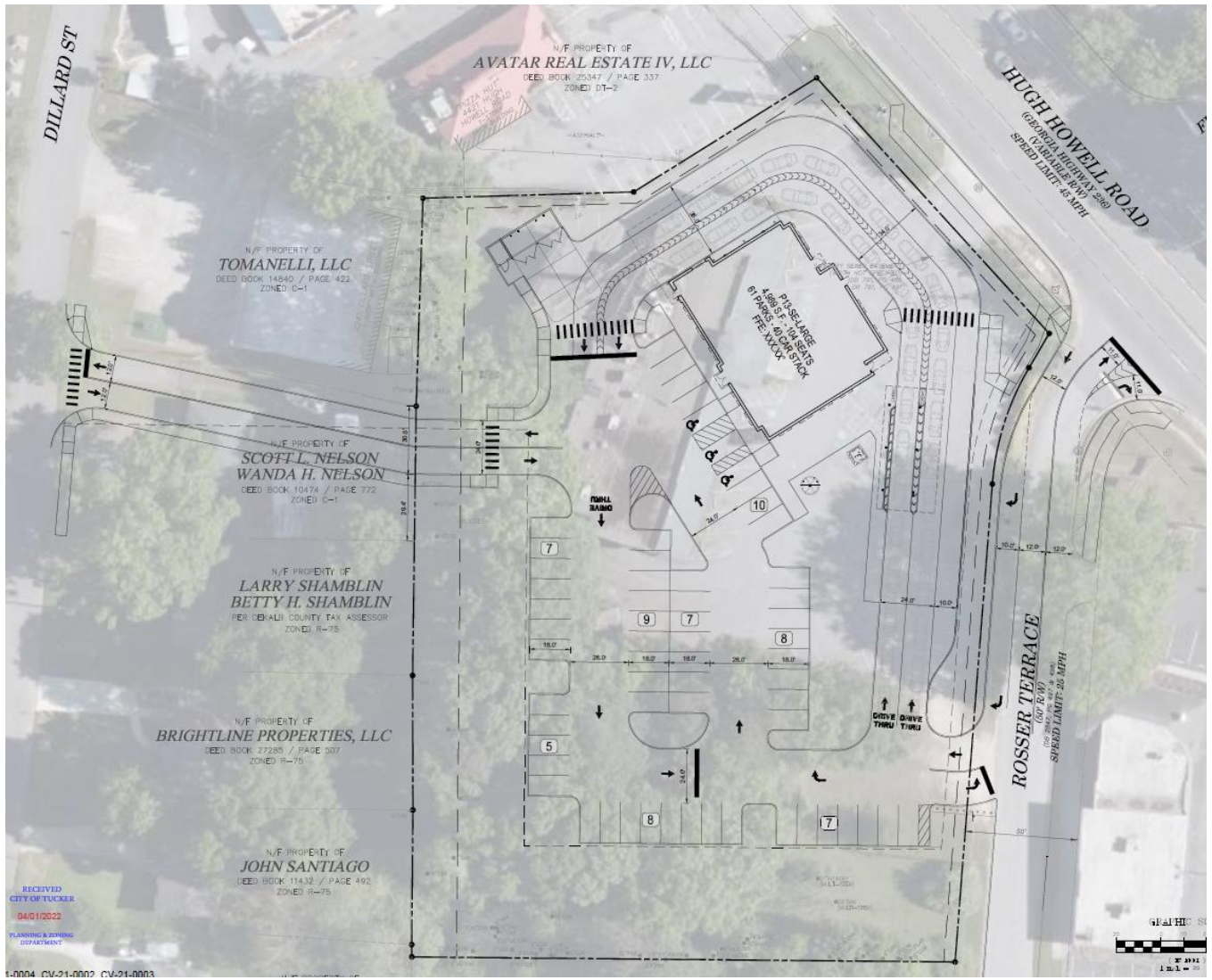
The applicant is requesting relief from the requirement prohibiting drive-through facilities between the public street and building (CV-21-0002), relief from the maximum building setback along Rosser Terrace (CV-21-0003), relief from the requirement to provide inter-parcel access (CV-21-0004), and *relief from transitional buffer requirements on south property line of the 2239 Dillard parcel, where it abuts R-75 zoning (CV-22-0006)*. The proposed drive-through restaurant will be a relocation of the existing Chick-fil-A, which is currently located at 4340 Hugh Howell Road. The applicant is proposing a relocation to a larger site that provides adequate space for Chick-fil-A's new design standards for drive-through facilities.

The applicant is proposing removing the existing buildings and billboard from *both properties* and constructing a new ±4,978-square foot restaurant with three lanes, two drive-through lanes and one bypass lane, as well as order and pick up canopies. *The submitted site plan shows two full-access points from Rosser Terrace and Dillard Street and the proposed restaurant located in the northeastern corner of the larger 2.05-acre parcel.* The submitted site plan shows that the proposed drive-through lanes would be constructed in front of the building. Pursuant to Section 46-1166, supplemental regulations for restaurants with drive-through facilities, drive-through lanes shall be located to the side or rear of the building. The applicant is asking for a variance for this requirement (CV-21-0002). *It should be noted that the additional commercially zoned parcel along Dillard Street is being proposed only as a full-access drive aisle, which will connect to the parking lot of the proposed restaurant on the 2.05-acre parcel. No structures are proposed for the 2239 Dillard parcel.*

The submitted site plan shows 62 proposed parking spaces, which meets the minimum off-street parking requirements for restaurants with seating for patrons of one space per 250 sq.ft. of floor area. The site plan also allows room for 32 stacking spaces across the two drive-through lanes. The existing Chick-fil-A at 4340 Hugh Howell Road has stacking for 18 vehicles and the existing Chick-fil-A at 4071 Lavista has stacking for 17 spaces. While our code only requires stacking for 10 vehicles, Chick-fil-A generates more traffic than the majority of other drive-through facilities. The peak stacking for Chick-fil-A during COVID has averaged around 20-25 cars. Pre-COVID stacking numbers were closer to 18-20.

The Downtown Tucker Zoning Districts transitional buffer regulations require that any DT district adjoining an RE, RLG, R-100, R-85, R-75, or R-60 district, must have a 50-foot transitional buffer zone. The subject property abuts residentially zoned properties to the south and west and the site plan shows the proposed 50-foot buffers along the property lines will be maintained. *Like the transitional buffer regulations for any DT zoning district adjacent to residentially zoned properties, commercially zoned parcels have similar requirements when adjacent to residential properties. The applicant is requesting a variance (CV-22-0006) to reduce the required 50' transitional buffer to 29', a reduction of 21'. This request is to allow for a full-access drive aisle into the site from Dillard Street as opposed to just an access point from Rosser Terrace.*

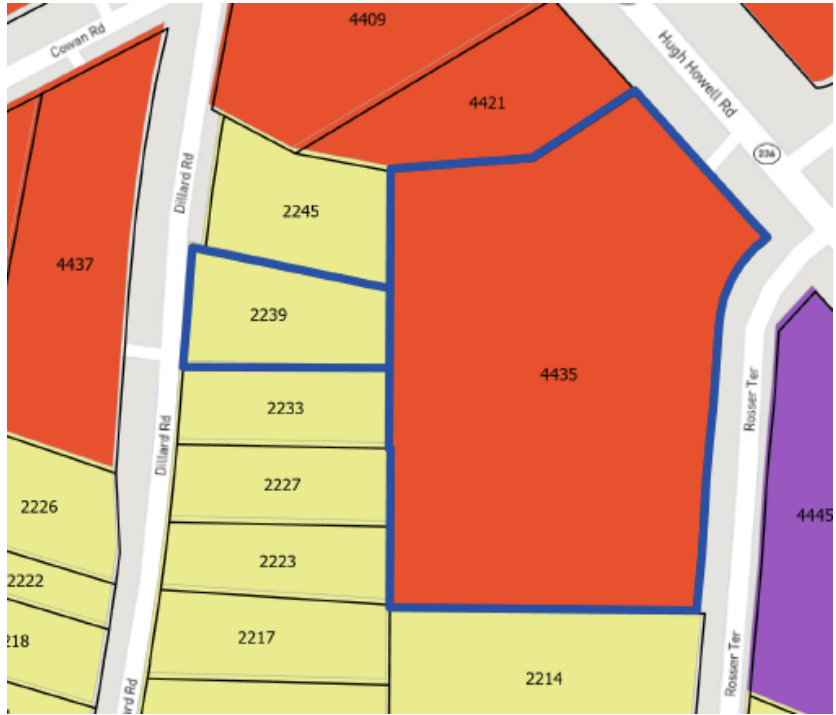
The site plan also shows a 6-foot sidewalk and 5-foot landscape strip along Hugh Howell Road, which complies with the regulations in *Section 46-994 Streets and sidewalks* for the Downtown Tucker Zoning Districts. These improvements are not shown along Rosser Terrace but are required by code.



Revised site plan-submitted April 1, 2022

**CHARACTER AREA (Future Land Use)**

*The subject parcels are located within the Downtown Character Area and Suburban Character Area on the future land use map. It should be noted that although an access point and drive aisle are proposed on the Dillard parcel, the requested SLUP only pertains to the larger parcel, zoned DT-2, at the intersection of Rosser Terrace and Hugh Howell Road. While a SLUP is not required for 2239 Dillard, it had to be added to the application as it is part of the overall development/site plan. That said, the parcel located at 2239 Dillard Street is within the Suburban Character Area, and is proposed to contain a drive-aisle for the neighboring property.*



Character Areas are generally used as a visioning guide for an area that identifies items such as primary land uses, development strategies, and design considerations. Character Areas speak to the adopted vision of the community as it continues to grow and develop over time.

The Downtown Character Area encourages the following commercial land uses: various residential uses, retail and service commercial, office, vertical mixed use, incubator start-ups and shared tenant spaces, and civic uses. One of the development strategies of the Downtown Character Area is to “encourage new development and redevelopment that preserves downtown’s special small-town qualities, keeps Main Street wide and open, and is designed to complement the size and style of Tucker’s older buildings.”

*One of the development strategies of the Suburban Character Area is to prevent the encroachment of higher density residential development and non-residential uses within existing neighborhoods. Although the parcel along Dillard Street is within the Suburban Character Area, the property is zoned commercially and will help to meet the goal of this strategy, to allow traffic to move and be routed by the existing, more intense uses, as opposed to enabling all traffic to inundate Rosser Terrace, a relatively residential road. The removal of the structures and the restricted use of a drive-aisle will make the property more compatible with regards to the Suburban Character Area and the adjacent parcels.*

Staff finds the special land use request for a drive-through is not consistent with the comprehensive plan, however, it will not cause a disproportionate proliferation of drive throughs in the Downtown Character Area, as the proposed development would be a relocation of an existing Chick-fil-A northwest of the subject property. *Additionally, the applicant is proposing two access points for the property, furthering Goal 2 of the City of Tucker’s Comprehensive Plan to improve transportation connections. The access on*

*Dillard will allow customers to travel to the light at Cowen and Hugh Howell in order to make safer left turns than having to turn left onto Hugh Howell from Rosser Terrace.*

**PUBLIC PARTICIPATION PLAN REPORT**

The applicant hosted a community meeting at the subject property on May 25, 2021 after mailing a letter and site plan explaining the proposed project to all property owners within 500 feet of the subject parcel. There were 25 people in attendance including the applicant, owner, representatives of Chick-fil-A, and community members. The applicant’s report listed concerns and questions regarding traffic, access, trash, a traffic signal, speed bumps, and Rosser Terrace being a cut through to Hwy 78. It does not appear that any changes were made to the site plan as a result of the Public Participation Meeting.

**NEARBY/SURROUNDING LAND ANALYSIS & ZONING**

Adjacent & Surrounding Properties	Zoning	Existing Land Use
Nearby: North	DT-2 (Downtown Corridor Zone); and C-1 (Local Commercial)	Tucker Plaza Shopping Center and commercial
Adjacent: Northwest	DT-2 (Downtown Corridor Zone)	Drive-through Zaxby’s and empty commercial space (formerly Pizza Hut)
Adjacent: South	R-75	Single-family detached homes
Adjacent: East (across Rosser Terrace)	C-1 (Local Commercial)	Commercial & drive-through Wendy’s
Adjacent: West and west across Dillard Street	R-75 (Residential Medium Lot – 75); and DT-2 (Downtown Corridor Zone)	residential single-family detached homes and Enzo’s Pizza



Zoning and Aerial Exhibits showing surrounding land uses.

**SLUP-21-0004: Restaurant with drive through**

**CRITERIA TO BE APPLIED – SPECIAL LAND USE PERMIT**

Criteria (standards and factors) for special land use decisions are provided in Section 46-1594 of the City of Tucker Zoning Ordinance. The applicant is required to address these criteria (see application); below are staff’s findings which are independent of the applicant’s responses to these criteria.

- A. Adequacy of the size of the site for the 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 subject site is approximately 2.33 acres. The applicant meets the requirements for off-street parking based on the submitted site plan. Additionally, the applicant meets the required 20-foot rear setback; however, they are seeking a variance for the required side corner setback along Rosser Terrace. While the applicant is requesting *four* concurrent variances, none are a direct impact of the size of the site. *It should also be noted that the applicant is requesting a variance for the Dillard Street parcel, to allow for a reduction in the required transitional buffer located along the southern property line of this tract, adjacent to a residentially zoned property to accommodate an additional drive aisle to the site.*

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

The proposed development is compatible with the commercial land uses and commercial development of adjacent properties as there are two other drive-through restaurants within 500 feet of the subject property, however, it is not compatible with the adjacent residential zoning to the west and south. *While the 50' transitional buffer is being maintained completely along all property lines adjacent to residentially zoned parcels on the larger of the two parcels within this request, which helps to minimize the impact to these residential properties, relief is being requested for the transitional buffer required, adjacent to the southern property line of the Dillard Street parcel. However, no structures are being proposed on this parcel – only a drive aisle.*

**C. Adequacy of public services, public facilities, and utilities to serve the proposed use.**

**Schools.** There will be no impact on public school facilities.

**Stormwater management.** No comments.

**Water and sewer.** No comments. Sewer capacity approval has already been obtained for this project.

**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.**

The project site is located at the southwestern intersection of Hugh Howell Road and Rosser Terrace *and along Dillard Street*. Hugh Howell, a major arterial road, has four travel lanes and a center turn lane. Rosser Terrace *and Dillard Street* are two-lane local roads. The applicant provided a Traffic Impact Study that was conducted in June 2021 *and later revised in March of 2022 when 2239 Dillard Street was added to the application.*

The previous traffic study found that the site would benefit from a right turn lane from northbound Rosser Terrace onto eastbound Hugh Howell Road. *However, this is no longer needed with the restricted access into the development as staff is recommending that the curb cut be right in only (no exit).*

While the drive-through lanes begin immediately to the north when you enter the site from Rosser Terrace, stacking for 32 cars has been provided across two lanes which should limit any cars queuing on Rosser Terrace. The deceleration lane on Rosser Terrace further limits any impact to vehicles traveling Rosser Terrace.

*The addition of 2239 Dillard Street provides a second access point for the development and allows vehicles to safely get to the signalized intersection at Cowan and Hugh Howell. This will reduce the impact to Rosser Terrace and provide safer left turning movements onto Hugh Howell. The additional parcel also removes the potential need to close Rosser Terrace, as previously discussed at the January 18, 2022, public information meeting. Staff recommends that a northbound left turn lane onto Cowan Road at Hugh Howell be added, as well as construct the corresponding traffic signal improvements, due to the large increase in vehicle trips that will use this intersection.*



No curb cuts are shown along Hugh Howell due to GDOT restrictions. This also minimizes impact to a major arterial as the consolidation of curb cuts on major roads helps to reduce potential traffic accidents.

A traffic signal at the intersection of Hugh Howell and Rosser Terrace would not be permitted by GDOT due to the close proximity of the signal at Hugh Howell and Cowan Road.

**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.**

The subject property abuts residential lots along the southern and western property lines. During their neighborhood meeting, residents who live along Rosser Terrace expressed concern that the introduction of a Chick-fil-A would increase the traffic queue to turn onto Hugh Howell Road from Rosser Terrace. The applicant conducted a traffic study that found the addition of a right turn lane from northbound Rosser Terrace on to eastbound Hugh Howell Road would help mitigate some of the traffic. The study also found that the intersection of Hugh Howell Road and Rosser Terrace would experience an overall increase in delay, even with the addition of the right turn lane. *As a result of the concerns expressed by neighbors and the city, the applicant has added an additional parcel to the request. This parcel, with frontage on Dillard Street, is being proposed as a full access point and drive aisle to accommodate and help mitigate the influx of traffic that may access the site from Rosser Terrace. However, some traffic improvements will need to be made at the intersection of Cowan and Hugh Howell in order to avoid adversely affecting other areas.*

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

The applicant is proposing one right in/left out curb cut being on Rosser Terrace and *one full access curb cut and associated drive aisle being proposed from Dillard Street. The City Engineer has recommended that the access point along Rosser Terrace be a restricted access point (right-in only/no exit).*

The applicant is requesting a concurrent variance for relief from the requirement to have inter-parcel access due to the limited options for connectivity from the shape of the parcel at the north and the residential uses to the west and south. The submitted site plan shows that the only pedestrian access being provided is from an ADA ramp that connects to the proposed sidewalk on Rosser Terrace. A sidewalk on Rosser Terrace will be required for the proposed development to meet the districts streetscape dimensional requirements. Dekalb Fire Department has no comments for the proposed project.

**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.**

The proposed development will not generate excessive noise, nor will it emit smoke, odor, dust or vibration. The proposed use includes a restaurant with a drive-through facility. No adverse

impacts by reason of noise, smoke, odor, dust, or vibration are anticipated. The ordering canopy and pick up canopy are located at the north of the site, away from the residential properties.

**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.**

The application states the restaurant will operate Monday through Saturday from 6 AM – 10 PM. The hours of operation are consistent with the other commercial uses along Hugh Howell.

**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.**

If developed in accordance with the recommended conditions, including transportation improvements, land uses along Rosser Terrace, *Dillard Street*, and Hugh Howell Road should not be adversely affected by the manner or operation of the development.

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

The drive-through restaurant does not specifically comply with the downtown zoning district classification, as it does not add to the Main Street atmosphere, create a dynamic development, or add to the walkability of the area. However, it should be noted that this is the relocation of an existing Chick-fil-A, also located in the DT-2 zoning classification, rather than a new fast-food restaurant with a drive-through configuration. The proposed location is located on the far eastern edge of the Downtown Districts.

**K. Whether or not the proposed use is consistent with the policies of the comprehensive plan.**

The proposed development is not entirely consistent with the adopted comprehensive plan. The subject property is located within the Downtown and *Suburban Character* Areas on the Future Land Use Map. Downtown primary land uses include retail and service commercial uses provided to the community. *Suburban primary land uses include single family residential, townhomes, lower density multi-family, and institutional. While the proposed use is not compatible with the Suburban Character area, the property currently does not comply with its current use and C-1 zoning designation. The change to a drive aisle would be an improvement. Additionally, the proposed use is permitted in C-1.* The proposed drive-through does not comply with all of the relevant development strategy and design considerations as it does not preserve the downtown's special small-town qualities, complement the style of Tucker's older buildings, transform parking, or promote walkability. It should be noted that although this use is not specifically referenced in the Comprehensive Plan, the proposed development would be a relocation of an existing Chick-fil-A with a drive-through configuration that is also designated Downtown on the Future Land Use Map.

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

The submitted site plan shows the existing 50-foot transitional buffers along the southern and western property lines, *of the parcel along Rosser Terrace*, adjacent to residentially zoned properties, as being maintained. *A variance has been requested for the required 50-foot transitional buffer adjacent to the south of the Dillard Street parcel, from 50' to 29'.*

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

The site plan shows a proposed dumpster and its enclosure in the southwestern corner of the parking lot, at the rear of the site. Section 46-1339 requires all dumpster must be screened from view on all four sides so as to not be visible from adjacent properties and the public street.

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

Staff does not recommend any limits on the length of time of the special land use permit (if granted), so long as the applicant obtains all local licensing requirements including compliance with approved conditions and annual occupational tax certificate renewal.

**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 adjacent and nearby lots and buildings.**

It is staff's opinion that the building size, mass, and scale will be appropriate in relation to surrounding land uses.

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

The proposed site is not near any 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 applicant does not meet all of the requirements in the supplemental regulations, Sec. 46-1166 - Drive-through facility restaurant, as shown below.

**Restaurants with drive-through services shall meet the following requirements:**

- A. Drive-through facilities shall not be located within sixty (60) feet of a residentially zoned property, as measured from any menu or speaker box to the property line of adjacent residential property.**

Although the property abuts residentially zoned properties, the drive-through facilities are not located within sixty feet of them.

- B. No drive-through facility shall be located on a property less than ten thousand**

**(10,000) square feet in area. Stacking spaces for queuing of cars shall be provided for the drive-through area as required in Article 6.**

The property is ±2.33 acres. There is stacking for approximately 32 cars in the queue, which complies with Article 6 of the Zoning Ordinance.

- C. Drive-through lanes and service windows shall be located to the side or rear of buildings. If on a corner lot, only the pickup window may be located on the side between the principal structure and a public street.**

The subject property is an *assemblage of two parcels, with frontage along Rosser Terrace, Dillard Street and Hugh Howell Road*. The submitted site plan shows the proposed drive-through lanes along both Rosser Terrace and Hugh Howell and located in front of the building. A requirement of a drive-through facility is that its lanes and service windows should be located to the side or rear of the building. While corner lots may have the pickup window located on the side of the building, between the principal structure and a public street, the proposal is for the menu/ordering canopy and drive through lanes to be located between the building and the public street. A concurrent variance has been requested.

- D. Drive-through canopies and other structures, where present, shall be constructed from the same materials as the primary building and with a similar level of architectural quality and detailing.**

A full review to ensure compliance of the drive-through canopy, building, and other structures will be conducted by staff when building permits are submitted.

- E. Speaker boxes shall be pointed away from adjacent residential properties. Speaker boxes shall not play music but shall only be used for communication for placing orders.**

The speaker box is pointed towards Rosser Terrace, away from adjacent residential properties. A full review to ensure compliance of the drive-through speaker box(es) will be conducted by staff when building permits and sign permits are submitted.

- F. Stacking spaces shall be provided for any use having a drive-through facility or areas having drop-off and pick-up areas in accordance with the following requirements. Stacking spaces shall be a minimum of ten (10) feet wide and twenty-five (25) feet long. Stacking spaces shall begin at the last service window for the drive-through lane (typically the “pick-up” window).**

The proposed stacking spaces appear to be in compliance.

- G. Financial institutions with drive-through windows, car washes (automated or staffed facilities), drive-through coffee sales facilities, and any other uses with drive-through facilities with the exception of restaurants with drive-through facilities, shall provide three stacking spaces for each window or drive-through service facility.**

Not applicable.

- H. Restaurants with drive-through facilities shall provide ten (10) stacking spaces per lane for each window or drive-through service facility.**

The application is in compliance. 32 stacking spaces are provided.

- I. The following general standards shall apply to all stacking spaces and drive-through**

**facilities:**

- a. **Drive-through lanes shall not impede on and off-site traffic movements, shall not cross or pass through off-street parking areas, and shall not create a potentially unsafe condition where crossed by pedestrian access to a public entrance of a building.**

The drive-through lanes being located in front of the building creates a potentially unsafe condition for pedestrians. The site plan illustrates an ADA ramp that gives pedestrians access from the sidewalk on Hugh Howell Road to the building's front entrance. Pedestrians will have to cross three lanes of traffic in order to reach the building.

- b. **Drive-through lanes shall be separated by striping or curbing from off-street parking areas. Individual lanes shall be striped, marked or otherwise distinctly delineated.**

The application is in compliance.

- c. **All drive-through facilities shall include a bypass lane with a minimum width of ten (10) feet, by which traffic may navigate around the drive-through facility without traveling in the drive-through lane. The bypass lane may share space with a parking access aisle.**

The application is in compliance.

- J. **Drive-through lanes must be set back five (5) feet from all lot lines and roadway right-of-way lines.**

The application is in compliance.

- R. **Whether or not the proposed use will create a negative shadow impact on any adjoining lot or building as a result of the proposed building height.**

The proposed use will not produce an adverse shadow effect.

- S. **Whether the proposed use would result in a disproportionate proliferation of that or similar uses in the subject character area.**

The proposed development will be a relocation of the existing Chick-fil-A, located at 4340 Hugh Howell Road. The applicant has stated the current location will close when the proposed Chick-fil-A (4435 Hugh Howell Road) opens. The proposed use will not increase the number restaurants with drive-through configurations being offered in the vicinity, however, there are three other drive-through facilities in the area. Zaxby's is located approximately 90' to the northwest; Wendy's is located approximately 135' to the southeast; and Cook Out is located approximately 535' to the southeast. The applicant has stated the existing Chick-fil-A at 4340 Hugh Howell will be demolished if this SLUP is approved, resulting in no net increase in drive-through facilities.

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

**Downtown Character Area.** While the proposal is in conflict with the intent of the Downtown Character Area to create a more walkable downtown core and enhance downtown’s special small-town qualities, it does comply with the other standards as this is the relocation of an existing drive-through facility and thus would not be in conflict with the strategies of the Downtown Character Area to encourage redevelopment or improve transportation connections.

## **CONCLUSION**

While the proposed use is not completely consistent with the Downtown or Suburban Character Areas, staff does not believe this use would cause a disproportionate proliferation of drive-through facilities, as the proposed Chick-fil-A would be a relocation of an existing Chick-fil-A located just north of the subject property. Potential impacts can be mitigated by transportation improvements.

## **CONCURRENT VARIANCE (CV-21-0002) – LOCATIONAL REQUIREMENTS**

The City of Tucker Zoning Ordinance includes Supplemental Regulations for restaurants with drive-through facilities. Section 46-1166(3) states “drive-through lanes and service windows shall be located to the side or rear of buildings. If on a corner lot, only the pickup window may be located on the side between the principal structure and a public street.” The site plan shows the menu/ordering canopy between the building and Rosser Terrace and the drive-through lanes are located between the building and Hugh Howell. **A concurrent variance has been requested to allow a drive-through facility to be located between two public streets and the building.**

Criteria for variance approval are provided in Section 46-1633 of the City of Tucker Zoning Ordinance.

### **CRITERIA TO BE APPLIED – CONCURRENT VARIANCE**

- 1. By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic and other site conditions (such as, but not limited to, floodplain, major stand of trees, steep slopes), which were not created by the owner or applicant, the strict application of the requirements of this chapter would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district.**

While the subject property is not unusual in size, narrowness, or shallowness, it is somewhat unusual in shape. Development options are limited with the corner lot and the high number of stacking spaces required by Chick-fil-A. The applicant has made modifications to their standard menu/ordering canopy to improve aesthetics along the frontage.

- 2. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located.**

The requested variance does go beyond the minimum necessary to afford relief by allowing the drive-through to be located in front of the building. The other drive-through restaurants located along Hugh Howell, including the existing Chick-fil-A at 4340 Hugh Howell Road, have their drive-through facilities located on the side and rear of the buildings. Section 46-1166 (3) states that drive-through lanes and service windows shall be located to the side or rear of the buildings.

**3. The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located.**

The granting of the variance may be detrimental to the public welfare, per Section 46-1166(9)a which states, “drive-through lanes shall not create a potentially unsafe condition where crossed by pedestrian access to a public entrance of a building.”

**4. The literal interpretation and strict application of the applicable provisions or requirements of this chapter would cause undue and unnecessary hardship.**

The literal interpretation and strict application of the applicable provisions or requirements of this chapter would not cause undue and unnecessary hardship as there is space to locate the drive-through lanes behind the building, however, it would push the building back away from Hugh Howell which is not in line with the Downtown Zoning District.

**5. The requested variance would be consistent with the spirit and purpose of this chapter and the Comprehensive Plan text.**

The proposed variance would not be in line with the Downtown Character Area’s intent to promote walkability with design elements that privilege pedestrian and bicyclist over the automobile and incentivize new walkway connectivity. The proposed location of the drive-through in front of the building does not privilege pedestrians and bicyclists over the automobile. The submitted site plan shows only one pedestrian access from Hugh Howell Road. Pedestrians would then have to cross three lanes to enter the building. However, the installation of streetscape requirements along both frontages does improve pedestrian elements within the city.

**Conclusion:** Staff recommends **DENIAL of CV-19-0002.**

**CONCURRENT VARIANCE (CV-21-0003) – SETBACK REQUIREMENTS**

The City of Tucker Zoning Ordinance includes dimensional requirements for the Downtown Districts which includes a 5’ minimum setback/no maximum setback along Hugh Howell and a 0’ minimum/20’ maximum along Rosser Terrace. Section 46-986 *Dimensional requirements* for Downtown Districts explains that a maximum front setback can be increased when an open space, such as a park or plaza, is provided between the respective building and the adjacent street. The applicant’s submitted site plan does not meet this provision for an increased setback.

**A concurrent variance has been requested to increase the maximum building setbacks along Rosser Terrace to 65’.**

Criteria for variance approval are provided in Section 46-1633 of the City of Tucker Zoning Ordinance.

**CRITERIA TO BE APPLIED – CONCURRENT VARIANCE**

- 1. By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic and other site conditions (such as, but not limited to, floodplain, major stand of trees, steep slopes), which were not created by the owner or applicant, the strict application of the requirements of this chapter would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district.**

While the subject property is not unusual in size, narrowness, or shallowness, it is somewhat unusual in shape; however, the parcel could be developed with the building pushed closer to Rosser Terrace. The need for two drive-through lanes and a by-pass lane pushes the building past the 20’ maximum front building setback along Rosser Terrace.

- 2. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located.**

The requested variance does not go beyond the minimum necessary to afford relief by allowing the proposed restaurant to be setback more than the maximum along Rosser Terrace as the applicant is only asking to increase the maximum setback to 65’.

- 3. The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located.**

The granting of the variance may be detrimental to improvements in the zoning district. The Downtown Character Area encourages developments be built closer to the street to create a better pedestrian experience. The applicant is asking for this variance in order to place drive-through lanes between the building and Rosser Terrace. This creates a potential unsafe condition for pedestrians.

- 4. The literal interpretation and strict application of the applicable provisions or requirements of this chapter would cause undue and unnecessary hardship.**

The literal interpretation and strict application of the applicable provisions or requirements of this chapter would not cause undue and unnecessary hardship as Section 46-986 states that when a maximum front setback applies it may be increased when an open space, such as park or plaza, is provided between the respective building and the adjacent street. The applicant is requesting to increase the maximum setback in order to locate drive-through lanes between the building and street. It should be noted that there is no setback maximum for Hugh Howell Road.



**5. The requested variance would be consistent with the spirit and purpose of this chapter and the Comprehensive Plan text.**

The intent for the Downtown Character Area of the Comprehensive Plan is to encourage greater density, including allowances for zero-lot line development for both commercial and residential uses. The design considerations for the Downtown Character Area encourage buildings to be closer to street frontage and require parking in the rear. While the proposed site plan meets the parking standards, the requested variance for increased setbacks would not be in line with the Comprehensive Plan.

**Conclusion:** Staff recommends **DENIAL of CV-19-0003.**

### **CONCURRENT VARIANCE (CV-21-0004) – REQUIRED INTER-PARCEL ACCESS**

The City of Tucker Zoning Ordinance requires inter-parcel access for all new developments in the Downtown Tucker Zoning Districts. Section 46-989 (b) states “Inter-parcel access for vehicles between abutting and nearby properties must be provided so that access to individual properties can be achieved between abutting and nearby developments as an alternative to forcing all movement onto highways and public roads, unless the community development director during the land disturbance permitting process determines that it is unnecessary to provide inter-parcel access due to the unlikelihood of patrons traveling among abutting or nearby sites, or due to inability after reasonable efforts by the property owner to obtain legal permission.” **A concurrent variance has been requested for relief from the requirement to provide inter-parcel access.**

Criteria for variance approval are provided in Section 46-1633 of the City of Tucker Zoning Ordinance.

#### **CRITERIA TO BE APPLIED – CONCURRENT VARIANCE**

- 1. By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic and other site conditions (such as, but not limited to, floodplain, major stand of trees, steep slopes), which were not created by the owner or applicant, the strict application of the requirements of this chapter would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district.**

While the subject property is not unusual in size, narrowness, or shallowness, it is somewhat unusual in shape. Inter-parcel access to the west is not possible because of how the properties are developed with buildings at the rear. Connectivity to the northwest is challenged due to the shape and limited size of the parcel.

- 2. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located.**

The requested variance does not go beyond the minimum necessary to afford relief by allowing the parcel to be developed without inter-parcel access due to the challenges with the commercial properties to the northwest and west and the remaining residential properties.

- 3. The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located.**

The granting of the variance may be detrimental to the public welfare, as it will force all movements onto Hugh Howell and Rosser Terrace. However, transportation improvements such as a deceleration lane and right turn lane will help limit the impact.

- 4. The literal interpretation and strict application of the applicable provisions or requirements of this chapter would cause undue and unnecessary hardship.**

The literal interpretation and strict application of the applicable provisions or requirements of this chapter could cause undue and unnecessary hardship given the challenges with interparcel connectivity with the surrounding parcels.

- 5. The requested variance would be consistent with the spirit and purpose of this chapter and the Comprehensive Plan text.**

While the spirit and purpose of the proposal may be consistent with much of the comprehensive plan text, the regulation regarding inter-parcel access is to allow access for vehicles between properties as an alternative to forcing all movement onto highways.

**Conclusion:** Staff recommends **APPROVAL** of CV-19-0004.

## **CONCURRENT VARIANCE (CV-22-0006) –TRANSITIONAL BUFFER REQUIREMENTS**

Section 46-1338 requires transitional buffers when nonresidential, mixed use, or higher intensity residential developments are adjacent to single-family residential land uses. These transitional buffers create a visual screen and help diminish the potential negative impacts of the adjacent use. Buffer widths are established in Table 5.2. When C-1 abuts residential, such as the case of 2239 Dillard abutting 2233 Dillard, a 50' transitional buffer is required.

**A concurrent variance has been requested to reduce the 50' transitional buffer to 29' in order to construct a drive aisle Chick-fil-A. Staff will note that no transitional buffer exists today between the two properties. If this application and concurrent variances are approved, the existing principal**

**structure and large warehouse building on 2239 Dillard will be demolished and 29' of planted buffer will be installed adjacent to the drive aisle.**

Criteria for variance approval are provided in Section 46-1633 of the City of Tucker Zoning Ordinance.

**CRITERIA TO BE APPLIED – CONCURRENT VARIANCE**

- 1. By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic and other site conditions (such as, but not limited to, floodplain, major stand of trees, steep slopes), which were not created by the owner or applicant, the strict application of the requirements of this chapter would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district.**

*The subject property (2239 Dillard Street) is exceptionally narrow. The rear property line is approximately 69', which would only leave 19' of width outside of the 50' transitional buffer area. Additionally, while a drive aisle does not have to comply with building setbacks, the side interior setback in C-1 is 20'. These dimensional requires make the lot undevelopable, and therefore, some relief has to be granted. The lot is currently nonconforming with no transitional buffer. If approved, the lot will improve with 29' of transitional buffer installed.*

- 2. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located.**

*The requested variance does not go beyond the minimum necessary to afford relief by allowing the parcel to be developed with a full access drive and a reduction of 21' of the required transitional buffer adjacent to the residential property to the south. If improved, the lot will gain more compliance than it has now.*

- 3. The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located.**

*The granting of the variance would not be detrimental to the public welfare as only a drive aisle is proposed for this parcel. Additional mitigation will be provided by a fence, as required by the code.*

- 4. The literal interpretation and strict application of the applicable provisions or requirements of this chapter would cause undue and unnecessary hardship.**

*The literal interpretation and strict application of the applicable provisions or requirements of this chapter would cause undue and unnecessary hardship given the challenges with the narrowness of the subject property.*

5. **The requested variance would be consistent with the spirit and purpose of this chapter and the Comprehensive Plan text.**

*The proposed access point and reduction of the required transitional buffer, while not entirely consistent with the comprehensive plan text will help to improve traffic connections by allowing customers to get to a traffic signal.*

**Conclusion:** Staff recommends **APPROVAL** of CV-22-0006.

## Staff Recommendation

Based on the findings and conclusions herein, Staff recommends **APPROVAL** of Land Use Petition **SLUP-21-0004**, **DENIAL** of **CV-21-0002**, **DENIAL** of **CV-21-0003**, **APPROVAL** of **CV-21-0004**, and **APPROVAL** of **CV-22-0006** subject to the following conditions.

Should the board(s) want to approve the request as submitted, all concurrent variances would need to be approved. Additional conditions would be needed for CV-21-0002 and CV-21-0003.

1. The property should be developed in general conformance with the site plan submitted on *April 1, 2022*, with revisions to meet these conditions.
2. A landscape plan shall be submitted with the Land Disturbance Permit, subject to the review and approval of the Planning and Zoning Director.
3. A mix of trees, shrubs, and ground cover shall be planted in the landscape strip between the drive-through restaurant and both Hugh Howell Road and Rosser Terrace to screen the appearance of the drive-through lanes from the street.
4. The drive-through canopies, windows, and lanes shall comply with the requirements of Section 46-995 and Section 46-1166.
5. Outdoor dining shall meet the requirements outlined in Section 46-998.
6. The drive-through establishment shall close no later than 10:00 p.m.
7. The Special Land Use Permit shall not be able to be transferred to another business.
8. Owner/ Developer shall provide direct pedestrian entrances from Hugh Howell Road and Rosser Terrace. The required pedestrian entrances must face the public street and provide ingress and egress.
9. Owner/Developer shall remove the existing billboard located on the northwestern portion of the property.
10. Inter-parcel access is not required (CV-21-0004).
11. *The transitional buffer along the southern property line of 2239 Dillard Street shall be reduced from 50' to 29' (CV-22-0006). A 6' tall wood fence shall be installed on or near the southern property line.*
12. Owner/Developer shall install six foot (6') wide sidewalk with a five foot (5') wide landscape strip along the entire frontage of Rosser Terrace and Hugh Howell Road.
13. *The development shall be limited to one (1) limited access driveway on Rosser Terrace (right in only/no exit) and one (1) full access driveway on Dillard Street. Curb cut locations are subject the*

*sight distance requirements and the approval of the City Engineer. Further, Owner/Developer shall add a "No Left Turn" sign and a raised median at the Rosser Terrace curb cut to restrict all turning movements except a right turn in.*

14. *Owner/Developer shall construct a southbound deceleration lane on Rosser Terrace at the new entrance, subject to the approval of the City Engineer.*
15. *Owner/Developer shall construct a northbound left turn lane on Cowan Road at Hugh Howell Road, and construct the corresponding traffic signal improvements, subject to the approval of the City Engineer. Said improvements will be at no cost to the City of Tucker.*
16. Owner/Developer shall dedicate at no cost to the City of Tucker such additional right-of-way as required to construct the above improvements and have a minimum of two feet (2') from the back of the future sidewalk.
17. Owner/Developer shall provide ADA compliant pedestrian connectivity between the sidewalks along both frontages and the building entrance.
18. Owner/Developer shall comply with Section 14-39 of the City of Tucker Code of Ordinances concerning tree protection and replacement. A minimum tree density of thirty (30) units/acre shall be required. Any specimen trees removed during the redevelopment shall require additional tree replacement units as required in the ordinance.
19. Owner/Developer shall provide stormwater management in compliance with Tucker's Post Construction Stormwater Management Ordinance.

**DEPARTMENT COMMENTS**

**DEKALB COUNTY DEPARTMENT OF WATERSHED MANAGEMENT**

No comments. Sewer capacity approval has already been obtained for this project.

**DEKALB COUNTY FIRE MARSHAL OFFICE**

No comments.

**DEKALB COUNTY SCHOOL SYSTEM**

Not applicable.

**CITY ENGINEER**

**Traffic Study Comments**

1. The traffic study should be signed by a registered engineer.
2. The 35% trip distribution from Dillard turning left onto Cowan seems high.
3. Cowan Rd @ Hugh Howell Rd – the Build volumes on the northbound approach are double the 2022 volumes. However, Table 8 shows no change in Level of Service or Delay with no improvements to the intersection.

**Recommended Conditions**

1. The development shall be limited to one (1) limited access driveway on Rosser Terrace (right in only) and one (1) full access driveway on Dillard Street. Curb cut locations are subject the sight distance requirements and the approval of the City Engineer. Further, Owner/Developer shall add a “No Left Turn” sign and a raised median at the Rosser Terrace curb cut to restrict all turning movements except a right turn in.
2. Owner/Developer shall install a 5’ sidewalk along the entire frontage of Rosser Terrace.
3. Owner/Developer shall construct a right turn lane from Hugh Howell Road onto Rosser Terrace, subject to the approval of the City Engineer and the Georgia Department of Transportation.
4. Owner/Developer shall construct a northbound left turn lane on Cowan Road at Hugh Howell Road, and construct the corresponding traffic signal improvements, subject to the approval of the City Engineer. Said improvements will be at no cost to the City of Tucker.
5. Owner/Developer shall dedicate at no cost to the City of Tucker such additional right-of-way as required to construct the above improvements and have a minimum of two feet (2’) from the back of the future sidewalk.
6. Owner/Developer shall provide ADA compliant pedestrian connectivity between the sidewalks along both frontages and the building entrance.
7. Owner/Developer shall comply with Section 14-39 of the City of Tucker Code of Ordinances concerning tree protection and replacement. A minimum tree density of thirty (30) units/acre shall be required. Any specimen trees removed during the redevelopment shall require additional tree replacement units as required in the ordinance.

8. Owner/Developer shall provide stormwater management in compliance with Tucker's Post Construction Stormwater Management Ordinance.