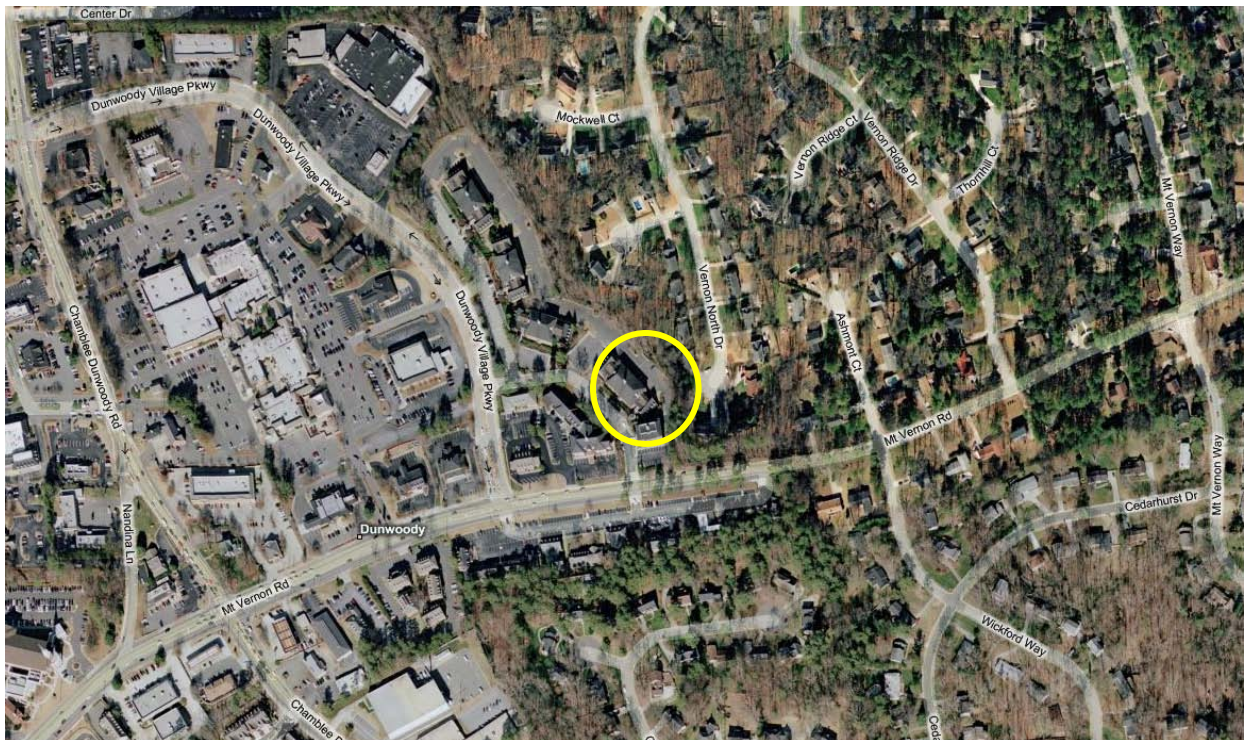


Property Location	1536 Dunwoody Village Parkway (LL 366)
Petitioner	Warren S. Jolly, Owner 1532 Dunwoody Village Parkway, Suite 100; Rich & Peggy Kernan, Applicants 210 Scotney Glen Circle John's Creek, Georgia 30022
Variance Requests	Permission to encroach into both an undisturbed and impervious surface stream buffer

### Vicinity Map



The site is located at 1536 Dunwoody Village Parkway, which is approximately on the northeast corner of Dunwoody Village Parkway and Mount Vernon Road. The property is currently zoned O-I/DVOD (Office-Institution/Dunwoody Village Overlay District). The applicant's request is to encroach into an undisturbed state waters stream buffer to remove/remodel a portion of an impervious parking lot and in its place construct a child's playground to facilitate the establishment of a child day care facility.

## Site Plan Analysis

The site, 1536 Dunwoody Village Parkway, is zoned O-I and located in the Dunwoody Village Overlay District. 1536 is a minor parcel, what was recently a part of the larger parent parcel which comprised eight-acres and is developed with multi-tenant planned office park of multiple two-story buildings. The building at issue in this request is the southern-most building, now existing on a separate parcel. The site has only one manner of direct automobile ingress/egress: from Dunwoody Village Parkway. As it is currently configured, the site is capable of allowing indirect access from Mount Vernon Road through the State Farm Insurance building parking lot to the south; however, following construction, the southern-most parking lot drive aisle would be closed off with curb & gutter to preclude vehicle access around the rear of the structure.

The property also abuts a single family home development, zoned R-100, along its northeast property line, and commercial office and bank properties on the remaining sides zoned both O-I/DVOD and C-1/DVOD (Local Commercial district), some of which are located across Dunwoody Village Parkway.

The property line between the subject property and the adjoining single family residences is a stream. Georgia state law requires there be no less than a 25-foot undisturbed buffer yard adjacent and contiguous with stream banks, and the City of Dunwoody recognizes an additional 25-foot of buffer yard -above and beyond the state requirement- for disturbing the soil in any manner, and 25 additional feet after that which precludes the installation of impervious surfaces. The total stream buffer in the City of Dunwoody is 75 feet overall, as measured from that point where vegetation has been wrested by normal stream flow or wave action (typically referred to as 'top of the stream bank') with differing allowable uses in the buffer.

As asphalt surfaces replace the natural land cover, pollutants from human activities begin to accumulate on these impervious surfaces. During storm events, these pollutants are then washed off into the streams.

Stream buffers are vegetated areas situated between water bodies and developed land, which are known to promote water quality by acting as filters to slow runoff flows and remove sediment, excessive nutrients, and other pollutants. The width of stream buffers substantially affects the amount of pollutants entering a stream. Studies have shown that stream buffers can reduce pollutant loadings in storm water runoff by as much as 46%.

In this specific situation, previous development saw construction of an asphalt parking lot within the area normally reserved for the stream buffer. Replacement of the asphalt with a pervious surface within this area will promote better water quality by reducing runoff, removing the impervious surface that previously collected pollutants, and filtering storm water flows.

The child care use, as proposed, requires the construction of a playground. The site plan submitted by the applicant would encroach into this required buffer, primarily to remove the existing asphalt parking spaces and the drive aisle behind the 1536 building, and in its place construct an outdoor playground for the proposed child care use.

## History

The applicant first appeared at the regular May 2009 meeting of the Zoning Board of Appeals seeking three variances, this stream buffer variance, a parking variance and a playground square footage reduction. The request was ZBA09-053. A shared parking agreement with the neighboring property to the north has satisfied the parking requirement for the proposed use, negating a requirement for a variance, and the playground area variance was further investigated by staff and found to be unnecessary per the Dunwoody Zoning Ordinance. This revised request has been re-advertised for Public Hearing and comes forward with a new case number, ZBA09-061.

## Conditions of the Zoning Ordinance

Article 5, Section 5D-15 of the City of Dunwoody Zoning Ordinance identifies the following criteria for evaluation that should be examined when determining the appropriateness of a variance:

1. By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic conditions, 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 site's proximity to a stream, specifically, the location of the building adjacent to- and in some instances inside the modern day stream buffer is not a condition created by the applicant. The stream buffer variance requested actually seeks to reduce the square footage of impervious surface in that buffer, thereby lessening the non-conforming condition on the site. This is requested so that the applicants can utilize the site for a use permitted by right in the O-I zoning district, consistent with other similarly zoned properties in the corporate limits of Dunwoody.*
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 applicant actually seeks the maximum amount of variance allowable on the site they propose to redevelop. This request is made not because it is the minimum necessary to afford relief to the city development standards, but to maximize the playground space for the benefit of the children who will recreate at the child care facility proposed. For this reason staff can support this specific request for the maximum variance allowed for two reasons: it removes the most amount of impervious surface possible, and provides the greatest amount of square footage for use as a playground.*
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; *Negative effects to the adjoining property owners, those property owners located downstream, (especially those directly along the stream itself) and the general public welfare would not be realized by the granting of the variance; to grant the request would in fact facilitate an improvement to the current environmental situation on the site as it sits developed today.*
4. The literal interpretation and strict application of the applicable provisions or requirements of this Chapter would cause undue and unnecessary hardship; and... *The literal interpretation of the land development code in concert with the zoning ordinance makes the further development of this building nearly impossible, but that does not preclude the use of the structure as it sits today, for uses other than a child daycare facility, without site/structure renovation or rezoning to change the use.*

5. The requested variance would be consistent with the spirit and purpose of this Chapter and the City of Dunwoody Comprehensive Plan text. *The requested variance was applied for to allow the proper establishment of a use permitted by right in the zoning district in question. Granting the variance will not compromise the spirit and purpose of the zoning ordinance, or compromise the spirit and purpose of the city's comprehensive plan. The granting of this request does not convey to the applicant any special land use or special privilege that couldn't be achieved by any other operator of a child care facility in the O-I district anywhere else in the City's O-I district by right.*

### **Recommendation**

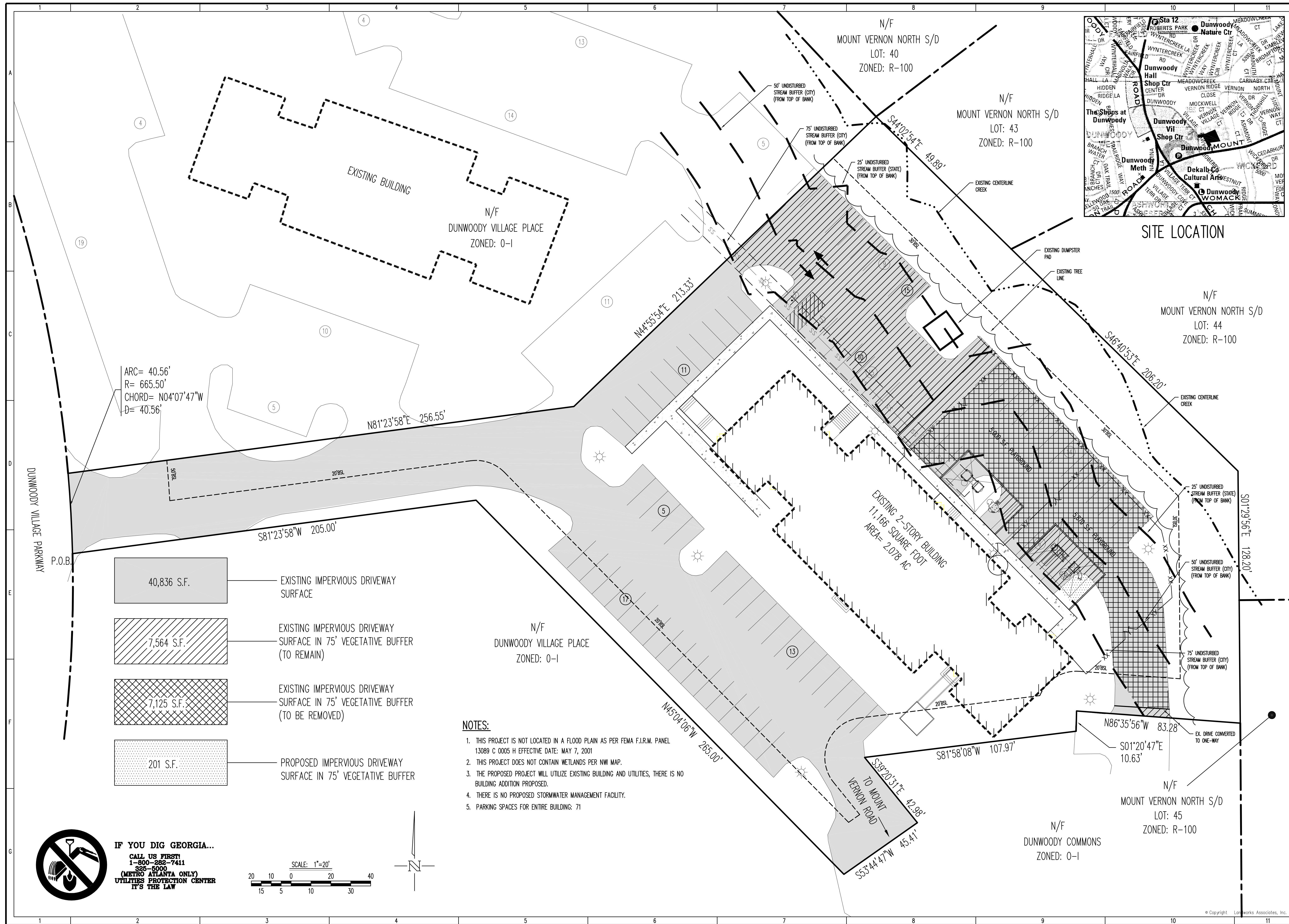
Staff recommends the application, as has been detailed and submitted to city staff, be approved subject to the following conditions:

1. Approval of the variance request is not permission to begin construction. Construction documents must be submitted, reviewed and if possible approved by city – and where applicable – county staff. All applicable permits, both state and local, must be secured. A copy of the shared parking agreement with the neighboring property must be submitted to staff and made a part of the approval to initiate the child care facility at the proposed location.

### **Attachments**

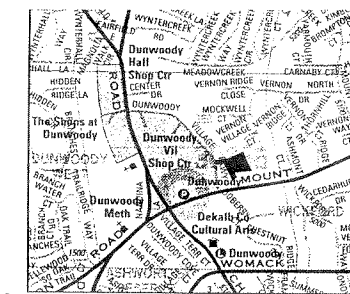
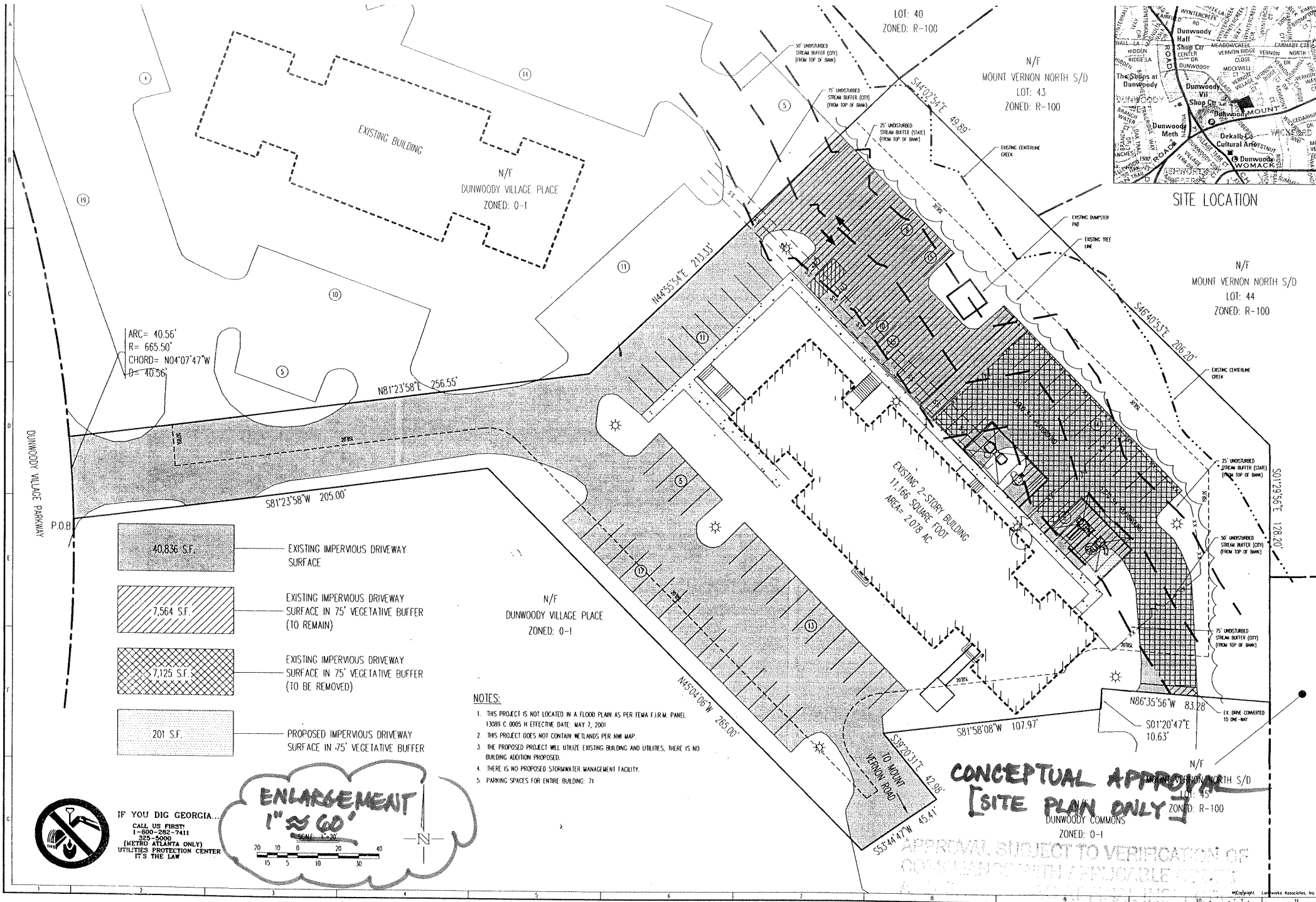
- Application packet, including the revised letter of intent and site plan.





REVISIONS	
1	03-31-09 ADD STATE BUFFER
2	05-01-09 CITY VARIANCE SUBMITTAL
3	05-13-09 REVISED PARKING TOTALS
4	06-03-09 REVISED PLAN
5	06-17-09 REVISED PLAN





3 00-15-01 REVED PARKING STALS 4 00-15-01 REVED PARK 5 00-17-01 REVED PARK	
GSWCC LEVEL II CERTIFICATION #0000010885 EXPIRES 5-16-09	
<b>Landworks Associates, Inc.</b> 3331 HAMILTON MILL ROAD, SUITE 2206 BUFORD, GEORGIA 30519 PHONE/FAX (770) 513-1100	
<b>THE GODDARD SCHOOL</b> <b>DUNWOODY</b> 1535 DUNWOODY VILLAGE PARKWAY LAND LOT 316, 18th DISTRICT DEKALB COUNTY, GEORGIA	
PROJECT DESCRIPTION SHEET TITLE SURVEY/SITE PLAN	
DATE: 04-06-09 JOB: 455-090302 DRAW: MZ CHK: TLP SHEET NUMBER C-1	

DATE: 6.24.2009  
 BY: *[Signature]*  
 DEKALB COUNTY FIRE MARSHALS OFFICE







