



CITY COUNCIL AGENDA ITEM

TO: Mayor & City Council

DATE: July 11, 2013

FROM: John McDonough, City Manager

AGENDA ITEM: **201301406** - 6120 Peachtree-Dunwoody Road, *Applicant: Hilton Atlanta Perimeter*, to delete condition 1.e. of RZ08-013 to remove the requirement for renewal of the tent facility

MEETING DATE: For Submission onto the July 16, 2013, City Council Regular Meeting Agenda

BACKGROUND INFORMATION: (Attach additional pages if necessary)

See attached:

Memorandum
Zoning Modification Petition

APPROVAL BY CITY MANAGER: JMM APPROVED

PLACED ON AGENDA FOR: 7/16/2013

CITY ATTORNEY APPROVAL REQUIRED: () YES () NO

CITY ATTORNEY APPROVAL: [Signature]

REMARKS:

To: John McDonough, City Manager

From: Angela Parker, Director of Community Development 

Date: July 2, 2013 for submission onto the July 16, 2013 City Council meeting

Agenda Item: 201301406 6120 Peachtree Dunwoody Road, request for a zoning modification to the conditions of Sandy Springs zoning cases RZ08-013/CV08-011/U08-007

Department of Community Development Recommendation:

APPROVAL CONDITIONAL of the request for a zoning modification to the conditions of Sandy Springs zoning cases RZ08-013/CV08-011/U08-007

Background:

The site is located on the west side of Peachtree-Dunwoody Road. The property is zoned O-I (Office and Institutional District) conditional under RZ08-013/CV08-011/U08-007 and is currently developed with a hotel. The subject property is located within the Perimeter Community Improvement Design District (PCID).

Sandy Springs zoning cases RZ08-013/CV08-011/U08-007 were approved at the August 19, 2008 Mayor and City Council meeting.

Discussion:

To delete the following conditions of Sandy Springs zoning cases RZ08-013/CV08-011/U08-007:

1.e. The owner/developer shall resubmit a petition to renew the use permit (U08-007) for the tent after five (5) years from the date of the Mayor and City Council approval August 19, 2008.



Zoning Modification Petition No. 201301406

HEARING & MEETING DATES

Community Zoning Information Meeting
June 25, 2013

Mayor and City Council Hearing
July 16, 2013

APPLICANT/PETITIONER INFORMATION

Property Owners
Hilton Perimeter

Petitioner
Bob Belmonte

Representative
Trav Carter

PROPERTY INFORMATION

Address, Land Lot, and District 6120 Peachtree Dunwoody
Land Lot 18 , District 17

Council District 5

Frontage 440 feet of frontage along the west side of Peachtree Dunwoody.

Area 4.25 acres

Existing Zoning and Use O-I (Office and Institutional District) conditional under Sandy Springs zoning case RZ08-013/CV08-011/U08-007, developed with hotel.

Overlay District PCID (Perimeter Community Improvement District)

2027 Comprehensive Future Land Use Map Designation Live-Work Regional (LWR), Node 6: PCID (Perimeter Community Improvement District – Live Work Regional only)

INTENT

To delete the following conditions of Sandy Springs zoning cases RZ08-013/CV08-011/U08-007:

1.e. The owner/developer shall resubmit a petition to renew the use permit (U08-007) for the tent after five (5) years from the date of the Mayor and City Council approval August 19, 2008.

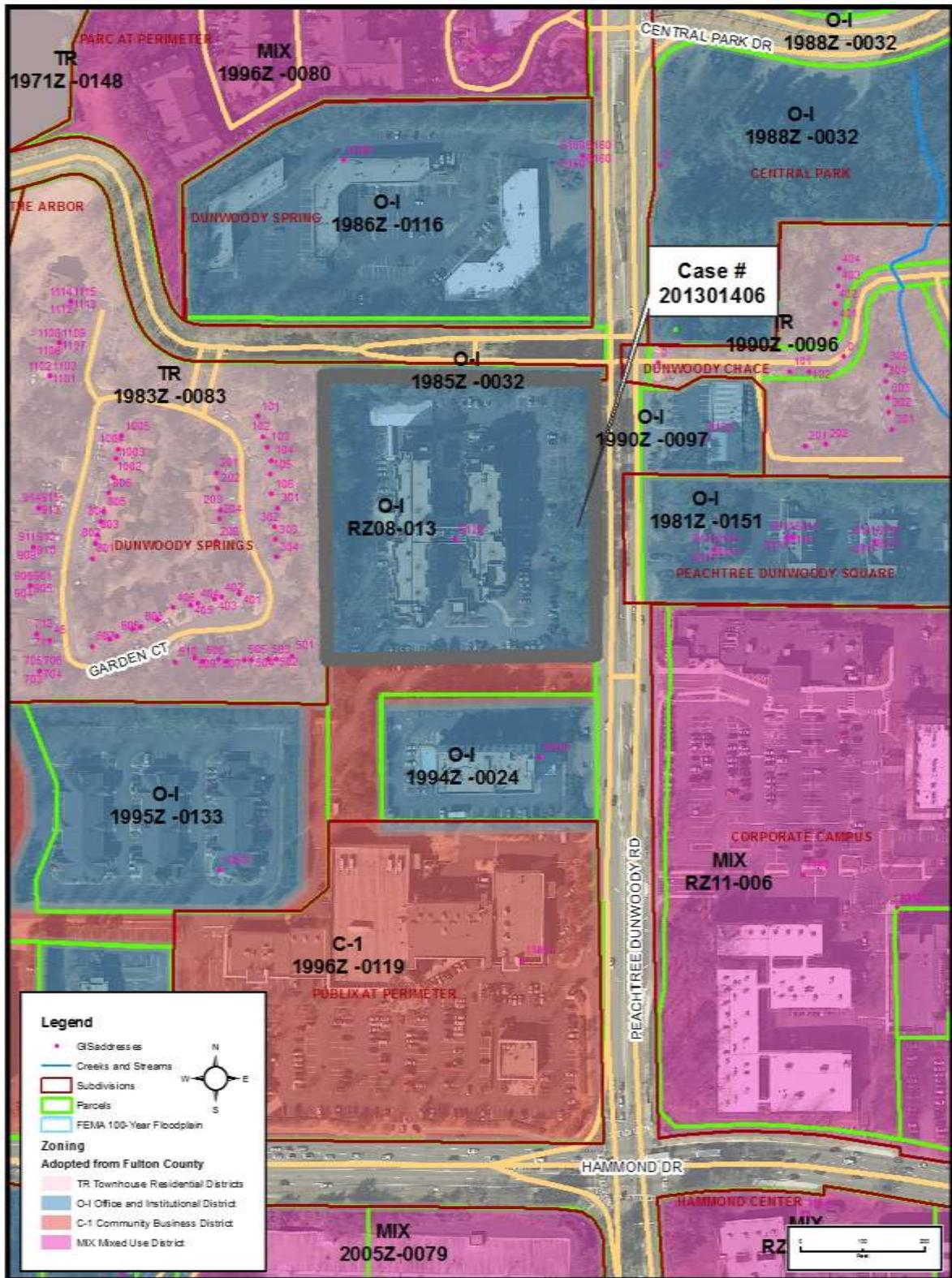
DEPARTMENT OF COMMUNITY DEVELOPMENT RECOMMENDATION
201301406-APPROVAL CONDITIONAL

EXISTING LAND USE AND ZONING OF ABUTTING PROPERTY

SUBJECT PETITION 201301406	Proposed Use		Land Area (Acres)	Square footage	Density (Number of Units per Acre)
		Hotel		4.25	224 rooms [180,000 sf]
Location in relation to subject property	Zoning	Use	Land Area (Acres)	Square Footage or Number of Units	Density (Number of Units per Acre)
North	O-I conditional Z86-0116	Dunwoody Springs	23.865	1,687,832 sf	54,463.77 sf/ac
East	O-I conditional Z90-0097	6133 Peachtree Dunwoody	.69	9,000 sf	13,043.478 sf/ac
East	O-I conditional Z81-0151	Peachtree-Dunwoody Square	5.09	48,200 sf	9,470 sf/ac
East	MIX conditional RZ07-038	Corporate Campus	19.47	753,000sf 400 units 160 rooms	38,759.69 sf/ac 20.59 u/ac 8.24rm/ac
South	C-1 conditional Z96-0119	Publix Perimeter	10.21	99,268 sf	9,722.62 sf/ac
South	O-I conditional Z94-0024	Comfort Suites	1.6106	70,161 sf	43,562.02 sf/ac
West	TR Z83-0083	The Garden of Dunwoody Springs	11.259	90 units	7.99 units per acre

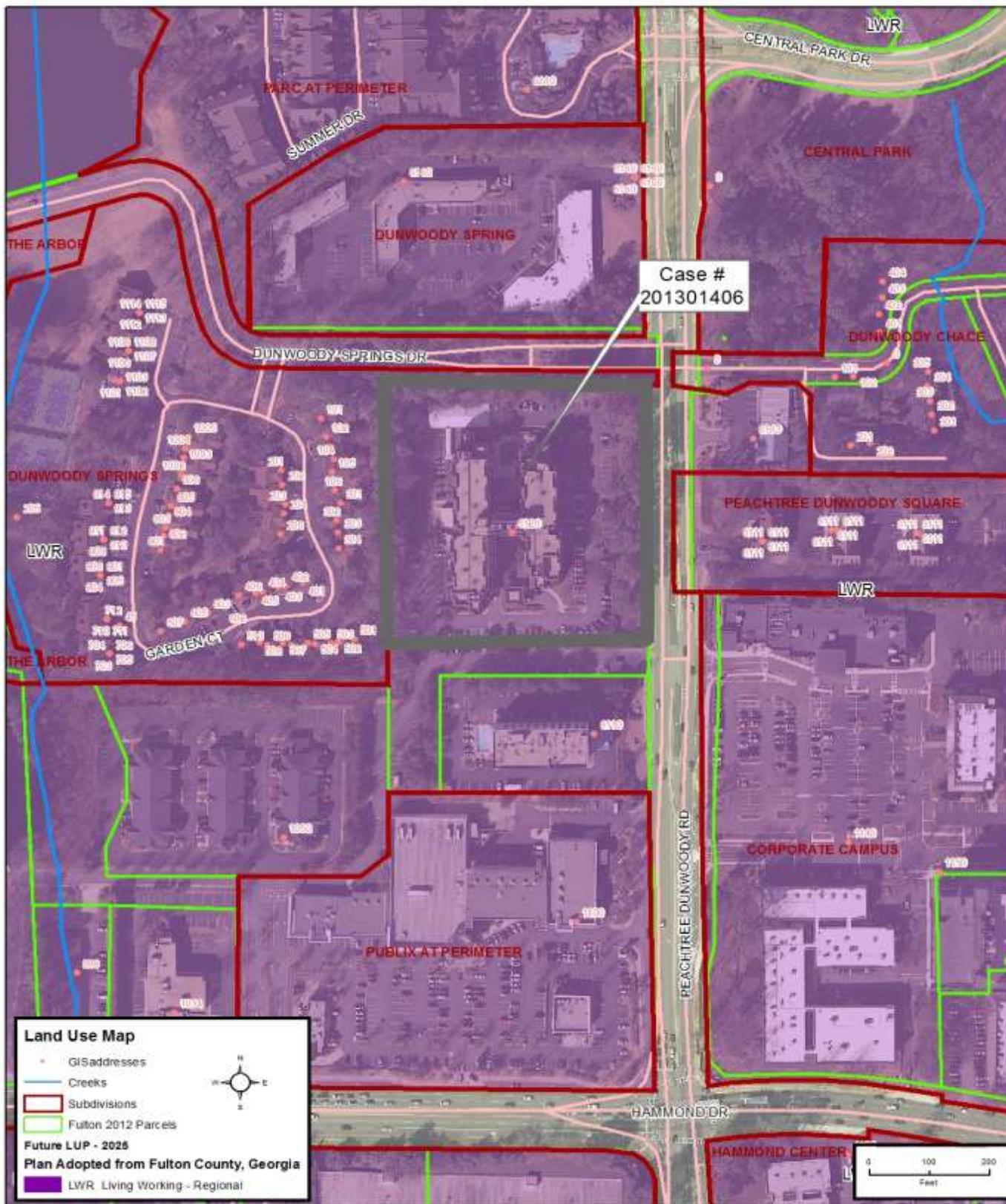
Zoning Map

6120 Peachtree Dunwoody Road



Future Land Use Map

6120 Peachtree Dunwoody Road



APPLICANT'S INTENT

The applicant is requesting a zoning modification to the conditions of Sandy Springs zoning cases RZ08-013/CV08-011/U08-007as follows:

1. To delete condition 1.e. The owner/developer shall resubmit a petition to renew the use permit (U08-007) for the tent after five (5) years from the date of the Mayor and City Council approval August 19, 2008.

*The staff is of the opinion that the applicant's request to delete the expiration date on the tent would create the following safety concerns: The tent is a temporary structure and is not constructed to meet permanent membrane structure standards, The tent does not have a permanent foundation and the quality of the flame retardant membrane is unknown. Staff has recommended the follow condition to insure the safety of the tent: e.An inspection report shall be submitted every six (6) months that certifies that the structural integrity of the tent and the flame retardant membrane meet the most current Sandy Springs building and fire code regulations. Said inspection must be conducted by a private professional engineer. Failure to comply with this condition will require that the tent facility be removed. Based on these reasons, the staff recommends **APPROVAL CONDITIONAL** of this modification request.*

DEPARTMENT COMMENTS

The staff held a Focus Meeting with Transportation, Building and Permitting, Fire, Code Enforcement, Site Development, and the Arborist on June 5, 2012 at which the following departments had comments.

(a) Modifications to Chapter 1:

1. Delete Section 1-3 in its entirety and substitute in its place the following:

“1-3 Application. This standard applies to new and existing facilities constructed after January 28, 1993.

“Exception No 1: Facilities constructed after April 1, 1968 but before January 1, 1991, shall be permitted to comply with the 1978 edition of NFPA 102, Standard for Grandstands, Folding, and Telescopic Seating, Tents, and Membrane Structures.

“Exception No 2: Facilities constructed after January 1, 1991, but before January 28, 1993, shall be permitted to comply with the 1986 edition of NFPA 102, Standard for Grandstands, Folding, and Telescopic Seating, Tents, and Membrane Structures.

“Exception No 3: Facilities constructed after January 28, 1993, but before the effective date of this standard, shall be permitted to comply with the 1992 edition of NFPA 102, Standard for Grandstands, Folding, and Telescopic Seating, Tents, and Membrane Structures.”

Fire Protection Engineer

(b) Modifications to Chapter 2:

1. Add a new definition in Section 2-2, inserted alphabetically, to read as follows:

“Existing. The term existing as applied in this standard shall mean a facility or structure constructed or approved for construction after January 28, 1993 but prior to the effective adoption date of this Standard.”

Georgia Department of Transportation

- There are no GDOT requirements that need to be addressed at this time.
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STAFF RECOMMENDATION

Should the Mayor and City Council decide to approve the modification the staff recommends the approval be subject to the following conditions. The applicant's agreement to these conditions would not change staff recommendations. These conditions shall prevail unless otherwise stipulated by the Mayor and City Council.

1. To the owner's agreement to restrict the use of the subject property as follows:
 - a. A 224-room hotel (with a restaurant) and associated accessory uses.
 - b. The maximum building height shall be 6 stories. (U08-007)
 - c. A 4,000 square foot outdoor tent facility.
 - d. The hours of operation for the outdoor tent facility shall be 8:00AM to 11:00PM.
 - e. ~~The owner/developer shall resubmit a petition to renew the use permit (U08-007) for the tent after five (5) years from the date of the Mayor and City Council approval August 19, 2008.~~
 - e. Should the property be sold to a franchise other than the Hilton Hotel Corporation the tent facility shall be removed.
 - f. Should the tent be replaced the new structure shall be brought into compliance with the Sandy Spring building and fire code regulations in effect at the time of construction.
2. To the owner's agreement to abide by the following:
 - a. To the site plan received by the Department of Community Development dated May 6, 2008. Said site plan is conceptual only and must meet or exceed the requirements of the Zoning Ordinance and these conditions prior to the approval of a Land Disturbance Permit. Unless otherwise noted herein, compliance with all conditions shall be in place prior to the issuance of a Certificate of Occupancy.
3. To the owner's agreement to provide the following site development standards:
 - a. The owner/developer shall dedicate fifty-five (55) feet of right-of-way from centerline of Peachtree-Dunwoody Road along the entire property frontage or ten and one-half (10.5) feet from back of curb, whichever is greater, to the City of Sandy Springs.
 - b. To reduce parking spaces from 280 spaces to 202 spaces. (CV08-011)
 - c. To reduce the required ten (10) foot improvement setback along the north property line to five (5) feet. (CV08-011).
 - d. ~~The tent will be inspected annually by the City of Sandy Springs Department of Community Development and Fire Department.~~
 - e. An inspection report shall be submitted every six (6) months that certifies that the structural integrity of the tent and the flame retardant membrane meet the most current Sandy Springs building and fire code regulations. Said inspection must be conducted by a private professional engineer. Failure to comply with this condition will require that the tent facility be removed.

Attachments

Letter of Intent dated received May 7, 2013
 Site Plan(s) received May 7, 2013
 Pictures

W. TRAV CARTER
ATTORNEY AT LAW
1579 MONROE DRIVE, NE
SUITE F-304
ATLANTA, GEORGIA 30324

RECEIVED

MAY 07 2013

City of Sandy Springs
Community Development

Mayor and City Council of
Sandy Springs, Georgia
Sandy Springs City Hall
Morgan Falls Office Park
7840 Roswell Road, Building 500
Sandy Springs, Georgia 30350

Re: Modification Application for 6120 Peachtree Dunwoody Road

Ladies and Gentlemen:

PROC GA, L.P., the owner (hereinafter "Applicant") of 6120 Peachtree Dunwoody Road, Sandy Springs, Fulton County, Georgia (the "Property"), desires to Modify the Zoning Conditions of the Property from O-I Conditional to O-I Conditional in order to delete the expiration of the outdoor tent facility use at the Applicant's hotel. The Property is a 4.25 acre tract approximately 800 feet north of the intersection of Hammond Drive and Peachtree Dunwoody. It is a Hilton property doing business as the Hilton Suites Atlanta Perimeter. It was zoned O-I conditional in 1987 and modified in 2008 which allowed for the use of the tent facility for a period of five (5) years. That condition expires in August, 2013.

The tent facility has been used as an accessory use by the hotel for hotel related functions. The Applicant desires to make the tent facility a permanent facility and seeks a Modification of Zoning Conditions to allow for its permanent use. The tent is a 40 foot by 100 foot enclosed facility with heating and air conditioning. It is in the rear of the hotel.

The Modification of Conditions proposal does permit a use that is suitable in view of the use and development of adjacent and nearby property. The property adjacent to the south is zoned O-I and is a hotel use, the same use as the Subject Property. There is C-1 property used as a shopping center to the south of the O-I tract at the corner of Hammond Drive and Peachtree Dunwoody Road. In addition, there is O-I zoned property to the east across Peachtree Dunwoody. The Subject Property has been used as a hotel since 1989 and the tent facility since 2002. The tent facility has been used with minimal impact on

the adjacent townhome community to the West by limiting the type of events as well as the hours of events. The demand for this facility has increased with the growth of the Perimeter Center area. In addition, Sandy Springs and the Perimeter Center area are attracting events in which the use of the tent facility will be needed.

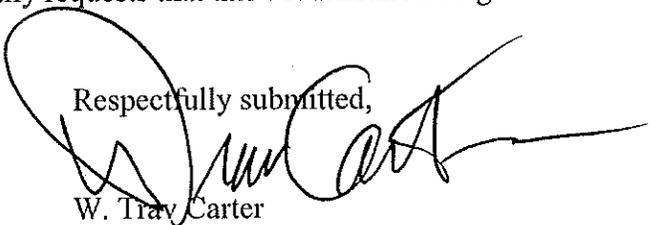
The Property as currently zoned as conditioned is unconstitutional and constitutes a taking of the Applicant's Property in violation of the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States, Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States denying the Applicant an economically viable use of its land while not substantially advancing legitimate state interests.

A denial of this Application would constitute an arbitrary and capricious act by the Sandy Springs City Council without any rational basis therefore constituting an abuse of discretion in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983 and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

A refusal by the Sandy Springs City Council to grant such Modification as requested by the Applicant would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and owners of similarly situated property in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

This Modification, if granted, would not cause any detriment to the public health, welfare or safety and will have little or no impact on the surrounding property. Accordingly, your Applicant respectfully requests that this Modification be granted as requested.

Respectfully submitted,



W. Tray Carter
Attorney for Applicant





