

LETTER OF INTENT

City of Johns Creek

Change in Conditions Application, Concurrent Variance to Reduce Parking, and Concurrent
Variance to Eliminate Internal Landscape Strip

Applicant:

Willow Capital Partners, LLC

Property:

5805 State Bridge Road
Johns Creek, GA 30097

Parcel ID Number:

11-094002990166

Date: 03.14.2023

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MAR 14 2023

RZ-23-0001, VC-23-0002, VC-23-0003

PLANNING & ZONING

I. INTRODUCTION

Applicant, Willow Capital Partners, LLC, submits this request for a change in conditions, concurrent variances to reduce parking, and eliminate 15' internal landscape strip adjacent to non-residential uses for the property located at 5805 State Bridge Road, Johns Creek, Georgia 30097 (tax parcel id 11-094002990166) ("Property"). The Property is a total of 8.65 acres. The proposed project is on approximately 0.72 acres of the overall Property. The request seeks approval to modify existing conditions to develop a ~3,500 fast casual restaurant building, with a drive-thru window and outdoor patio, as an outparcel of ~0.72 acres to be subdivided from the larger parcels in accordance with the proposed conceptual site plan.

The Property is zoned C-1-C and has a future land use of Commercial Retail/Shopping Centers. The surrounding properties are zoned C-1 and the use in this area is commercial/retail. As such, this request is consistent with the City's current zoning and long-term planning for the future (Medlock Comprehensive Plan). Specifically, the Property is part of the Medlock Corners shopping center that includes multiple commercial buildings and businesses. The Property currently includes commercial buildings with ample surface parking. There is a recorded Declaration of Reciprocal Easements and Covenants Agreement that sets forth shared parking and access agreements for the Medlock Corners shopping center. Additionally, there is a recorded Access Easement Agreement that provides for access, ingress and egress, to the Property from State Bridge Road.

As demonstrated in the attached elevations and site plan, the development is requested for a ~3,500 square foot building for a restaurant user. The building is one story and is consistent with the surrounding buildings and will be developed to high architectural standard and quality. This requested change in conditions is consistent with commercial/retail use in the area and will provide an additional service(s) for the residents in the community.

The development for the new building will utilize existing access and utilities for the Property. The development will remove parking spaces from the Property. However, the overall parking immediately available to the Property is more than sufficient and allows for positive redevelopment to take place provide usable open space and pedestrian connectivity. Several parking space were removed to incorporate site amenities into the parking lot in addition to large outdoor patio further activating the outdoor space. The Applicant, therefore, requests a concurrent variance to reduce the required parking from 355 required parking spaces to approximately 304 spaces as show on the proposed site plan. A reduction of 51 parking spaces.

As stated above, the Applicant is proposing to develop the newly created outparcel in a cohesive design consistent with the comprehensive plan. As such, providing a 15' landscape strip between the new outparcel and parent parcel is not feasible due to the requirement for parking that serves both the new building and existing buildings. Installing a 15' landscape strip at all interior property lines is not necessary due the existing parking and access easements and would negatively impact the public's ability to access and park within the Property. Therefore,

the Applicant request a variance the eliminate the 15' landscape strip along the interior property lines as indicated on the site plan.

II. CONCURRENT VARIANCE CONSIDERATIONS

As set forth above, the Medlock Corners shopping center, as with most shopping centers, has a recorded agreement(s) in place for the easements related to access and parking. Given the number of parking spaces on the Property and immediately adjacent and shared parking spaces totaling appx 836, this Application satisfies the standards for a variance approval to reduce the parking on the Property by appx 51 spaces. This application also meets the standards for a variance approval to eliminate the 15' landscape strip along the interior property lines.

a. Relief, if granted, would be in harmony with, or could be made to be in harmony with, the general purpose and intent of the Zoning Ordinance; or

The general intent of the Zoning Ordinance is to promote and regulate development in line with the City's future development goals and in relationship to the surrounding development. This request is consistent with the purpose and intent. The shopping center parking and landscape strip is sufficient and the addition of a new development closer to State Bridge Road is also consistent with the City's goals. The reduction in parking and landscape strip is more than sufficient for the public's use.

b. The application of the particular provision of the Zoning Ordinance to a particular piece of property, due to extraordinary and exceptional conditions pertaining to that property because of it's size, shape, or topography, would create an unnecessary hardships for the owner while cause no detriment to the public;

The extraordinary and exceptional conditions present for this Property include the parking easement, the number of spaces at the shopping center. The customers' ability to access the Property is not hindered due to the access agreement and the cohesive design of the development. There is no detriment to the public in the approval of this parking and landscape strip reduction.

c. Variance to Article 33 shall be in accordance with the standards enumerated there.

Not applicable to this request.

III. REQUIRED CONSTITUTIONAL AND ANTE LITEM NOTICE

Failure to approve the requested variances would be unconstitutional. Georgia law and the procedures of the City of Johns Creek require the applicant to raise Federal and State constitutional objections during the application process. While the Applicant

anticipates a smooth application process, failure to raise constitutional objections at this stage may mean that the applicant will be barred from raising important legal claims later in the process. Accordingly, the following constitutional objections are stated:

The portions of the City of Johns Creek Unified Development Code, facially and as applied to the Property, which restrict the property to any uses, conditions, land use designations, development standards, or to any zoning district other than that proposed by the Applicant are unconstitutional in that they would destroy the applicants property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section I, Paragraph I and Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Due Process clause of the 14th amendment to the Constitution of the United States.

The application of the City of Johns Creek Unified Development Code, facially and as applied to the Property, which restricts the Property to any uses, conditions, land use designations, development standards, or to any zoning district other than in accordance with the application as proposed by the Applicant is unconstitutional, illegal, null and void, constitution 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 Section III, Paragraph I of the Fourteenth Amendment to the Constitution of the United State denying the Applicant an economically viable use of its land while not substantially advancing legitimate state interests.

A denial of this application would be unconstitutional under the Takings Clause of the Fifth Amendment to the constitution of the United States and the Just Compensation Clause of article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983. A refusal by the City of Johns Creek to grant the application as requested would constitute a taking of the applicant's property. Because of this unconstitutional taking, the City of Johns Creek would be required to pay just compensation to the applicant.

A denial of this application would constitute an arbitrary and capricious act by the City of Johns Creek without any rational basis therefore constituting an abuse of discretion in violation of Article I, Section I, Paragraph I and Section III, Paragraph I of the Constitution of the state of Georgia of 1983, and the Due Process Clause of the 14th Amendment to the Constitution of the United States.

A refusal by the City of Johns Creek to approve this rezoning and conditional use permit for the property in accordance with the criteria as requested by the Applicant and required by the City would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and owners of the 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 14th amendment to the Constitution of the United states. Any approval of this request subject to conditions

which are different from the conditions requested by the Applicant, to the extent such different conditions would have the effect of further restricting Applicant's utilization of the Property, would also constitute an arbitrary, capricious and discriminatory act in zoning the Property to a unconstitutional classification and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove.

IV. **CONCLUSION**

For the foregoing reasons, the Applicant respectfully requests that this application be granted as requested by the Applicant. If there any questions about this request, you may contact me at 404-227-3786 or tm@willowcapitalpartners.com.

Sincerely,

WILLOW CAPITAL PARTNERS, LLC

A handwritten signature in black ink, appearing to read "Tyler Morris", written in a cursive style.

Tyler Morris, Authorized Agent

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