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MAY 09 2023

RZ-23-0002

PLANNING & ZONING

J. Ethan Underwood
eunderwood@mhtlegal.com

LETTER OF INTENT REGARDING LAND USE APPLICATION

Applicant:	Miles, Hansford & Tallant, LLC c/o Billy Morgan Jr.
Subject Property:	4.44 Acres Designated as Fulton County Tax Parcel(s): 11 080002801420, 11 080002800182, 11 080002801321, 11 080002801339, 11 080002801347, 11 080002801354, 11 080002801362, 11 080002801370, 11 080002801388, 11 080002801396, 11 080002801404, 11 080002801412
Current Zoning:	R-4A – Single Family Dwelling District
Proposed Use:	Single-Family Dwellings
Application:	Change In Condition
ROW Access:	Pauls Walk
Governing Jurisdiction:	Johns Creek

This statement is intended to comply with the application procedures established by the Zoning Ordinance of Johns Creek (the “Zoning Ordinance”), the Johns Creek Application for Public Hearing, and other Johns Creek Ordinances and Standards. The Applicant incorporates all statements made in the Application for Public Hearing by the Applicant (the “Application”) as its letter of intent required by Johns Creek.

The Subject Property is located at 720 Pauls Walk, Johns Creek Georgia 30097. The Applicant requests a Change In Condition to remove Condition #7 of RZ-17-012 which states:

“Provide pedestrian access to existing trail on southwestern portion of site. Access shall be contained in an easement to be maintained by the mandatory homeowners’ association for the subdivision. The final location and design shall be subject to the review and approval of the Director of Community Development.”

Specifically, the Applicant requests the following:

- a) Delete Condition #7 of RZ-17-012.**

The Subject Property is located in the Parsons Retreat Home Owners Association (“Parsons”) along Pauls Walk. The Residents of Parsons Retreat have voted to remove condition number seven (7) of RZ-17-012 which creates a pedestrian access easement to an existing trail located southwest of the subdivision. This access creates a burden to the property owners and to Parsons to maintain this access easement.

The aforementioned access easement leads to the detention pond of the Randolph Hall Subdivision. There are no existing trails around the pond accessible by pedestrians and guests of Parsons are not legally permitted to access Randolph Hall Subdivision amenities or common areas.

Zoning Impact Analysis

- 1. Does the zoning proposal permit a use that is suitable in view of the use and development of adjacent and nearby property?**

Yes, the proposal is for a Change In Condition and is not proposing any additional developments or altering the current use of the Subject Property.

- 2. Does the zoning proposal adversely affect the existing use or usability of adjacent or nearby property?**

No, the zoning proposal will not adversely affect the existing use or usability of adjacent properties.

- 3. Does the property to be rezoned have a reasonable economic use as currently zoned?**

The Application is for a Change In Condition to remove the requirement of a pedestrian access easement located southwest of the subdivision.

- 4. Will the zoning proposal result in a use that could cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools?**

No, the zoning proposal will not result in a use that will cause excessive or burdensome use of streets, transportation facilities, utilities, or schools.

- 5. Is the zoning proposal in conformity with the policies and intent of the land use plan?**

The zoning proposal is in conformity with the policies and intent of the land use plan as the existing use is not being changed.

- 6. Are there existing or changing conditions that affect the use and development of the property which support either approval or denial of the zoning proposal?**

Yes, existing Condition #7 of RZ-17-012 affects the use of the burdened property owners right to use their respective properties and burdens the HOA with additional unnecessary maintenance expenses to maintain the easement.

- 7. Does the zoning proposal permit a use that can be considered environmentally adverse to the natural resources, environment and citizens of the City of Johns Creek?**

The zoning proposal does not permit a use that can be considered environmentally adverse to the natural resources, environment and citizens of Johns Creek.

The Applicant respectfully requests that the Application, as requested by the Applicant, be approved.

The Applicant also reserves the right to amend this Letter of Intent and the Application by supplementing further responses and documents.

Sincerely,

Ethan Underwood

Ethan Underwood
Attorney for Applicant

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Property Owners

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Property Owners

Address	Name
610 & 625 Pauls Walk, Johns Creek, GA 30097	Parsons Retreat, LLC
635 Pauls Walk, Johns Creek, GA 30097	Swathi Prakash & Vijaianand Kannan
640 Pauls Walk, Johns Creek, GA 30097	Gustavo Andres Hidalgo & Camila Sayuri Luppi Sato
655 Pauls Walk, Johns Creek, GA 30097	Hui Woo Woong, Yong Won, & Lisa Yung Eun Won
660 Pauls Walk, Johns Creek, GA 30097	Michael Robinson & Tracee Watson Robinson
675 Pauls Walk, Johns Creek, GA 30097	Anna Nguyet Vu and James Hicks, Jr.
680 Pauls Walk Johns Creek, GA 30097	William Pumphrey
705 Pauls Walk Johns Creek, GA 30097	Alexander Kim
720 Pauls Walk Johns Creek, GA 30097	Billy Gene & Christine Morgan
725 Pauls Walk Johns Creek, GA 30097	Kengatharan Sivalingam & Thillaichelvi Selvanayagm
770 Pauls Walk Johns Creek, GA 30097	Natasha Sabnani & Mahesh Sabnani

Sincerely,



Ethan Underwood
Attorney for Applicant

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RESERVATION OF CONSTITUTIONAL AND OTHER LEGAL RIGHTS

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This Reservation of Constitutional and Other Legal Rights (“the Reservation”) is intended to supplement and form a part of the land use application (including any request for zoning, conditional use permit, site plan approval, and variances) (collectively, the “Application”) of the Applicant and the owners of the Subject Property (collectively, the “Owner”) and to put the Governing Jurisdiction on notice of the Applicant’s assertion of its constitutional and legal rights.

The Applicant has filed a timely application, has provided all required information and has submitted the appropriate application fees. The Application meets all judicial and statutory requirements for approval.

The Applicant objects to the standing of any opponents who are not owners of land adjoining the Subject Property and to the consideration by the Governing Jurisdiction of testimony or evidence presented by any party without standing in making its decision regarding the Application. The Applicant also objects to the consideration of testimony or evidence that is hearsay, violates any applicable rules of procedure or evidence, or that is presented by any party who fails to comply with notice and campaign disclosure requirements.

The Current Zoning (and/or zoning conditions) of the Subject Property is unconstitutional and deprives the Subject Property and all viable economic use thereof. The Proposed Use is the only viable economic use of the Subject Property, and the Governing Jurisdiction has deemed this Application necessary to allow the Proposed Use. As such, the Applicant and Owner file this Application for the purpose of changing the Current Zoning (and/or zoning conditions and requesting variances) to facilitate the Proposed Use, and to exhaust administrative remedies in the event the Application is denied. As such, the filing of this application is not an admission of the need for any such approval of the Applicant’s right to develop the property. The Applicant and Owner reserve the right to challenge the Current Zoning and any zoning conditions and other restrictions affecting the Subject Property.

Denial of the Application or approval of the Application in any form that is different than as requested by the Applicant will impose a disproportionate hardship on the Applicant and Owner of the Subject Property without benefiting any surrounding property owners. There is no reasonable use of the Subject Property other than as proposed by the Application and no resulting benefit to the public from denial of or modification to the Application.

Any provisions in the applicable land use, subdivision, and /or zoning ordinances (collectively the “Zoning Ordinance”) that classify, or may classify, the Subject Property into any of the non-requested zoning or use classifications, including the Proposed Zoning District and Proposed Use at a density or intensity less than that requested by the Applicant, are unconstitutional in that they constitute a taking of the Applicant’s and Owner’s property rights without first paying fair, adequate, and just compensation for such rights in violation of Article I, Section III, Paragraph I of the Georgia Constitution of 1983, as amended and the Fifth and Fourteenth Amendments to the Constitution of the United States.

The Subject Property is suitable for development as proposed in the Application and it is not suitable for development under any other zoning classification, use, or at a density or intensity less than that requested by the Applicant. Failure to approve the Application as requested by the Applicant would be an unreasonable application of local land use authority, which bears no relationship to the public health, safety, morality or general welfare of the public and would constitute an arbitrary and capricious abuse of discretion in violation of Article I, Section I, Paragraph I of the Georgia Constitution of 1983, as amended and the Due Process Clause of the Fifth and Fourteenth Amendments to the Constitution of the United States.

A refusal by the Governing Jurisdiction to approve the Application as requested by the Applicant will prohibit the only viable economic use of the Subject Property, will be unconstitutional and will discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and Owner and the owners of similarly situated properties in violation of Article I, Section I, Paragraph II of the Georgia Constitution of 1983, as amended, and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

A refusal by the Governing Jurisdiction to approve the Application as requested by the Applicant without the consent of persons elected to the governing body of the Governing Jurisdiction will amount to an unlawful delegation of the Governing Jurisdiction’s authority, in violation of Article IX, Section II, Paragraph IV of the Georgia Constitution of 1983, as amended.

Furthermore, the Governing Jurisdiction cannot lawfully impose more restrictive standards on the Subject Property’s development than are presently set forth in the Zoning Ordinance. Any conditions or other restrictions imposed on the Subject Property without the consent of the Applicant and Owner that do not serve to reasonably ameliorate the negative impacts of the development are invalid and void. The imposition of improvements or design requirements unnecessary to facilitate the proposed development constitute an illegal impact fee, an unconstitutional condemnation, or both. As such, the Applicant and Owner reserve the right to challenge any such conditions, restrictions, or design requirements.

The Applicant and Owner assert that each has expended substantial sums and significantly changed its economic position in reliance upon versions of the Zoning Ordinance that allow the development of the Subject Property as proposed by the Applicant. As such, the Applicant has acquired vested rights to develop the property and the filing of this Application shall not constitute a waiver of those vested rights. Finally, the Applicant and Owner assert that the current Zoning Ordinance, Character Area Map, Future Development Map and Comprehensive Plan were not adopted in compliance with the laws or constitutions of the State of Georgia or of the United States, and a denial of the Applicant's request based upon provisions illegally adopted will deprive the Applicant and Owner of due process under the law.

This Reservation constitutes an Ante Litem Notice pursuant to O.C.G.A. § 36-11-1, which places the Governing Jurisdiction and all other agents of the Governing Jurisdiction, in their official and individual capacities, on notice of the Applicant's and Owner's intent to seek monetary damages and attorney's fees against the Governing Jurisdiction for any rezoning action, zoning condition, illegal impact fee, and any other unlawful restrictions and exactions that are imposed upon the Subject Property, the Applicant, or the Owner.

By filing this Reservation, the Applicant reserves all rights and remedies available to it under the United States Constitution, the Georgia Constitution, all applicable federal, state, and local laws and ordinances, and in equity.

The Applicant and Owner respectfully request that the Application be approved as requested by the Applicant and in the manner shown on the Application, which is incorporated herein by reference. This Reservation forms an integral part of the Application, and we ask that this Reservation be included with the Applicant's other Application materials. The Applicant and Owner reserve the right to amend and supplement this Reservation at any time.

Sincerely,



Ethan Underwood
Attorney for Applicant