

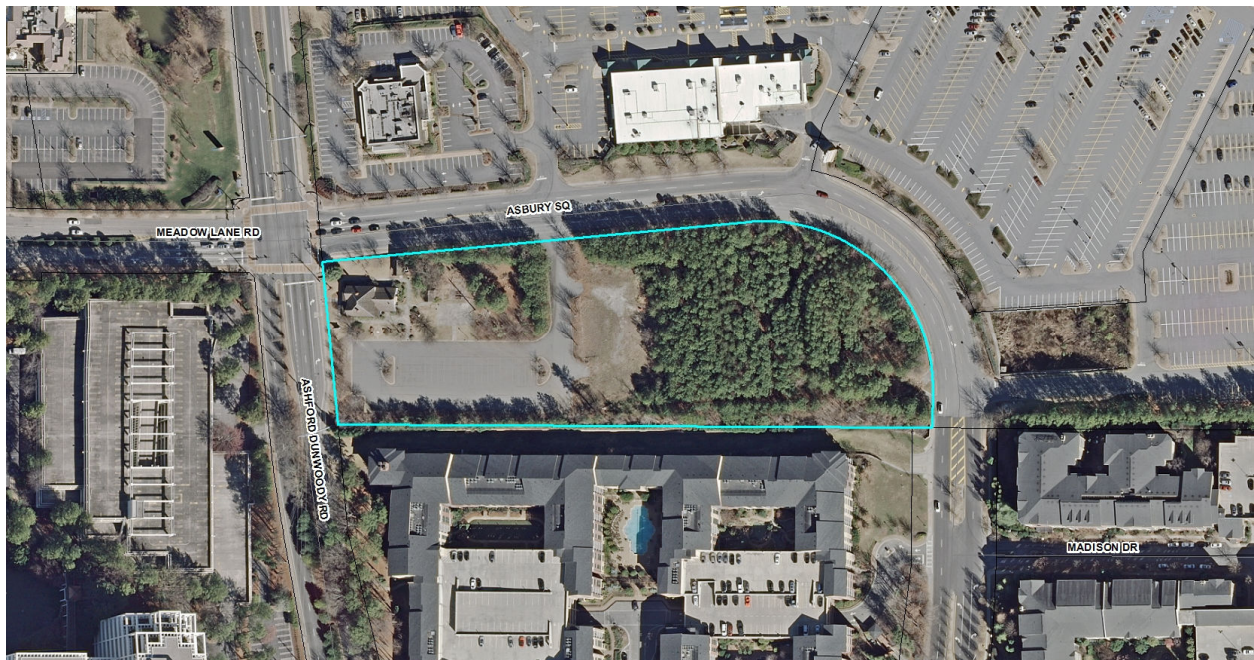
MEMORANDUM

To: Mayor and City Council

From: Steve Foote, AICP

Date: June 9, 2014 & June 24, 2014

Subject: **SLUP 14-062:** Pursuant to the City of Dunwoody Zoning Ordinance, applicant, HDP Acquisitions, LLC c/o Hotel Development Partners, LLC, seeks a Special Land Use Permit to increase the maximum allowable building height from three (3) stories to four (4) stories in Commercial-Residential Mixed-Use (CR-1) District. The subject property is located at 4681 Ashford Dunwoody Road, Dunwoody, GA 30338. The tax parcel is 18 350 01 015.



BACKGROUND

The site is located on the eastern side of Ashford Dunwoody Road, at its intersection with Asbury Square and Meadow Lane Road. The property is currently zoned PC-3c (Pedestrian Community conditional District) and C-1 (Local-Commercial District).

Pursuant to the City of Dunwoody Zoning Ordinance, applicant, HDP Acquisitions, LLC seeks permission on behalf of Hotel Development Partners, LLC to rezone the property currently zoned Pedestrian Community Conditional (PC-3c) and Local-Commercial (C-1) to Commercial Residential Mixed-Use (CR-1). The property consists of approximately 5.2 acres of land, located at 4681 Ashford Dunwoody Road, Dunwoody, Georgia 30338.

In 2005, the subject property was rezoned by DeKalb County to PC-3c for a 346,485 square foot mixed-use development consisting of 257 units of multi-family residential, 32,865 square feet of retail floor area, and 43,588 square feet of cultural arts facility floor area—all located in a single use building.

The applicant proposes to change the property's zoning to Commercial-Residential Mixed-Use (CR-1) in order to:

- Provide convenient local retail shopping and service areas within a mixed-use (commercial-residential) setting; and
- Promote development patterns that accommodate residential, employment and entertainment within a walkable, mixed-use environment.

The proposed site plan modifies the parcel to include a four (4)-story, 128-room hotel approximately 80,000 sq. ft., a one (1)-story retail/restaurant space of up to 8,000 square feet, and a one (1)-story retail/restaurant space of up to 6,000 square feet, while maintaining the location of the Spruill Arts Center. Because the CR-1 District limits the maximum allowable building height to three-stories or 45 feet, the applicant seeks a Special Land Use Permit to increase the height to four-stories for the proposed hotel.

ANALYSIS

When considering the proposal as submitted, the Mayor & City Council have three action options:

1. Approve the SLUP as presented; or
2. Approve the SLUP with additional conditions; or
3. Deny the request outright (this leaves the existing entitlement in place with no proposed changes as presented).

The first and third options are: approve the use consistent with the submittal documents, after finding they comply and are congruent with the terms found in the above analysis, or deny the application, for not being appropriate.

When creating conditions of approval, the choices may seem endless, but in fact are limited to those conditions which are found to have a rational nexus between the uses proposed and the conditions assigned, and those conditions which do not derivate from the established policies and procedures found in the City Code. The conditions of approval must only apply directly to the initiation of the new use as submitted.

Conditions of the Zoning Ordinance

Chapter 27, Section 27-359 identifies the following criteria to be applied by the department of planning, the planning commission, and the city council in evaluating and deciding any application for a special land use permit. No application for a special land use permit shall be granted by the city council unless satisfactory provisions and arrangements have been made concerning each of the following factors, all of which are applicable to each application:

1. Whether the proposed use is consistent with the policies of the comprehensive plan;
The proposed use is consistent with the current Comprehensive Plan. The subject parcel is located in the 'Perimeter Center Area,' which is indicated to be approved for uses such as first-class office, retail, and high-end

restaurants in a pedestrian and bicycle-oriented environment, consistent with the applicant's request.

2. Whether the proposed use complies with the requirements of this zoning ordinance;
The plan appears to be substantially compliant with the proposed zoning district classification, CR-1—meeting the requirements for all setbacks, maximum density, impervious surface ratio, and parking ratios.
3. Whether the proposed site provides adequate land area for the proposed use, including provision of all required open space, off-street parking and all other applicable requirements of the subject zoning district;
The subject parcel is currently zoned PC-3c and C-1 and contains approximately 5.2 acres of land. This is adequate for all uses being proposed in order to create a mixed use development. The Commercial-Residential Mixed-Use District (CR-1) requires a 0' front and side street yard setback, 30' rear yard setback, and 20' interior side yard setback. Not only are all the setbacks being proposed compliant with city standards, but the maximum lot coverage and minimum parking ratios meet or exceed the standards as well. The only deficiency seen on the site plan is in regard to parking lot landscaping requirements; however, the applicant has already filed for a variance to be heard by the Zoning Board of Appeals in July, and all the proposed landscaping plans conform with the "Perimeter Public Space Standards" for the area.
4. Whether the proposed use is compatible with adjacent properties and land uses, including consideration of:
 - a. Whether 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 use will not generate adverse impacts from excessive noise, smoke, odor, dust, or vibration towards adjoining land uses.
 - b. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of the hours of operation of the proposed use;
The proposed use will not create adverse impacts upon any adjoining land use due to the hours of business's operations.
 - c. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of the manner of operation of the proposed use;
The use will not be substantially different from what is currently carried out in the surrounding area, so it should not create adverse impacts on neighboring land uses.
 - d. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of the character of vehicles or the volume of traffic generated by the proposed use;
It is unlikely that adjacent land uses will be adversely affected by the volume of cars created by the proposed use. It may be expected that traffic is increased as a function of the development. However, the increase would be nominal and inconsequential, thus traffic congestion would not be unduly increased during peak travel times. Two right-turn lanes are proposed to be added along Meadow Lane Road to facilitate deceleration from the travel lanes.

- e. Whether 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; and
The size, scale and massing of proposed buildings are appropriate in relation to the size of the property, which consists of approximately 5.2 acres of land. The Spruill Center for the Arts is a one (1)-story cultural arts facility consisting of 2,380 square feet. The retail/restaurant spaces that adjoin the historic home are proposed to be one (1)-story of up to 8,000 square feet and one (1)-story of up to 6,000 square feet. The four (4)-story hotel, on the other hand, will be situated on the eastern-half of the property, closer to the higher neighboring multi-family residential complexes. As a result, the combination of uses helps fulfill one of the goals of the Perimeter Center Character Area—promote livable centers.
- f. Whether the proposed plan will adversely affect historic buildings, sites, districts, or archaeological resources.
The only historic building in proximity to the proposed development is the Spruill Center for the Arts, which is currently located on the northwest corner of the site. The developers plan to leave the Spruill Home intact and have incorporated it into the project's design so as to not negatively impact the establishment's on-going classes and exhibitions. In fact, all stakeholders hope to bring more business to the Spruill Center through the addition of the retail, restaurant, and hotel development.
5. Whether public services, public facilities and utilities—including motorized and nonmotorized transportation facilities—are adequate to serve the proposed use;
The current infrastructure is adequate to serve the proposed use.
6. Whether adequate means of ingress and egress are proposed, with particular reference to nonmotorized and motorized traffic safety and convenience, traffic flow and control and emergency vehicle access;
The proposed plan provides adequate ingress and egress to the site and its structures for vehicular and pedestrian traffic. There are already two curb-cuts in existence along Meadow Lane Road, which will provide vehicular access to both the commercial/entertainment and hotel uses. Pedestrian access is enhanced both off- and on-site through connecting sidewalks and crosswalks.
7. Whether adequate provision has been made for refuse and service areas; and
The site plan indicates adequate disposal areas for the proposed hotel as well as additional refuse and service areas for the proposed restaurant and retail sites.
8. Whether the proposed building as a result of its proposed height will create a negative shadow impact on any adjoining lot or building.
The proposed height of the hotel will not create a negative shadow on any adjoining lot or building due to buildings in the area being of the same elevation.

RECOMMENDATION

Planning Commission

At their regular May meeting, the Planning Commission reviewed the applicant's request to increase the maximum allowable building height in CR-1 district. Discussion resulted in a motion to approve with staff conditions. The motion was voted and passed (7 – 0).

Staff Recommendation

Staff recommends **approval** of the Special Land Use Permit application to increase the maximum allowable building height from three-stories to four-stories in a CR-1 district, subject to the following conditions:

1. The four-story building height is approved for the proposed hotel use only, and shall not transfer to other land uses or development plans.

Attachments

- Application Packet

Special Land Use Application



41 Perimeter Center East | Dunwoody, GA 30346
Phone: (678) 382-6800 | Fax: (770) 396-4828

A special land use permit is a means by which the City Council gives special consideration, pursuant to a clear set of standards and criteria, to those types of uses which may or may not be compatible with uses and structures authorized by right within a particular zoning district. Special land use permits are required for uses that have operational characteristics and/or impacts that are significantly different from the zoning district's principal authorized uses and therefore require individual review pursuant to the standards and criteria set forth in the City's Zoning Ordinance. Special land use permit applications shall be authorized only for those uses specifically listed in the applicable zoning district regulations as permitted by special land use permit. An applicant desiring to apply for a special land use permit authorized within a district contained within the Zoning Ordinance shall file an application with the Community Development Department. The City Council, following recommendation by the Planning Commission, shall determine whether the proposed use, in the particular location contemplated, meets the standards and criteria set forth in this division and Chapter. Such uses may further require special conditions imposed by City Council in order to assure their compatibility with surrounding uses and to minimize adverse impacts of the use on surrounding property.

No application for an amendment to the land use plan shall be filed and/or accepted for filing until such time as the applicant has conducted neighbor communications. The purpose of neighbor communication summary requirements is to help educate applicants for development approvals and neighbors about one another's interests, to attempt to resolve issues in a manner that respects those interests and to identify unresolved issues. The following information is required to be submitted with an application for special land use permit:

1. Efforts to notify neighbors about the proposal (how and when notification occurred, and who was notified);
2. How information about the proposal was shared with neighbors (mailings, work-shops or meetings, open houses, flyers, door-to-door handouts, etc.);
3. Who was involved in the discussions;
4. Suggestions and concerns raised by neighbors; and
5. What specific changes to the proposal were considered and/or made as a result of the communications.

To initiate a request for a special land use permit within the City of Dunwoody, an applicant must also attend a pre-application conference (Conceptual Review) with key City personnel. Those meetings are scheduled as-needed, but the deadline for having such a meeting is set to ensure the appropriate time for staff review and communication prior to the special land use application deadline. The purpose of the Conceptual Review Process is to establish an expectation on the part of both staff and the applicant for the special land use process. At the meeting(s), the applicant should display any preliminary site plans and/or other illustrative documents as necessary. The applicant will then detail an overview of their proposed application and their reasoning for why the application is necessary. Staff can then inform the applicant of the City's process to effect the change proposed and offer a preliminary analysis of the feasibility of the proposal, including ways upon which the proposal may need improvements or revisions.

Following the Conceptual Review Process, applicants can submit their application and required supplemental materials (detailed in the following checklist) to the Community Development Department, located at 41 Perimeter Center East, Dunwoody, GA 30346. Our mailing address for correspondence is 41 Perimeter Center East, Suite 250, Dunwoody, Georgia 30346.

Special Land Use Application Checklist



41 Perimeter Center East | Dunwoody, GA 30346
Phone: (678) 382-6800 | Fax: (770) 396-4828

- ☐ Neighbor Communications Summary Report (or site plan indicating no residential zoning within 500 feet of the property).
- ☐ Completed application with all applicable information.
- ☐ Electronic version of the entirety of your application submittal, saved as a single PDF
- ☐ Signed and notarized affidavits of all owners. Use application and attached sheet, as necessary.
- ☐ Signed and notarized affidavits of all applicants. Use application and attached sheet, as necessary.
- ☐ Complete and detailed site plan of the proposed use prepared, signed and sealed by an architect, landscape architect or engineer licensed in the State of Georgia, showing the following, as relevant:
 - a. All buildings and structures proposed to be constructed and their location on the property;
 - b. Height of proposed building(s);
 - c. Proposed use of each portion of each building;
 - d. All driveways, parking areas, and loading areas;
 - e. Location of all trash and garbage disposal facilities;
 - f. Setback and buffer zones required in the district in which such use is proposed to be located;
 - g. Landscaping plan for parking areas.
- ☐ Please respond to the following criteria, in your own words, as required by state law and City of Dunwoody Zoning Ordinance (use additional pages where necessary):
 - a. Whether the proposed use is consistent with the policies of the comprehensive plan;
 - b. Whether the proposed use complies with the requirements of this zoning ordinance;
 - c. Whether the proposed site provides adequate land area for the proposed use, including provision of all required open space, off-street parking and all other applicable requirements of the subject zoning district;
 - d. Whether the proposed use is compatible with adjacent properties and land uses, including consideration of:
 - e. Whether 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;
 - f. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of the hours of operation of the proposed use;
 - g. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of the manner of operation of the proposed use;
 - h. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of the character of vehicles or the volume of traffic generated by the proposed use;
 - i. Whether 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;
 - j. Whether the proposed plan will adversely affect historic buildings, sites, districts, or archaeological resources;
 - k. Whether public services, public facilities and utilities—including motorized and non-

- motorized transportation facilities—are adequate to serve the proposed use;
- l. Whether adequate means of ingress and egress are proposed, with particular reference to non-motorized and motorized traffic safety and convenience, traffic flow and control and emergency vehicle access;
 - m. Whether adequate provision has been made for refuse and service areas; and
 - n. Whether the proposed building as a result of its proposed height will create a negative shadow impact on any adjoining lot or building.

SPECIAL LAND USE PERMIT APPLICATION



41 Perimeter Center East | Dunwoody, GA 30346
Phone: (678) 382-6800 | Fax: (770) 396-4828

* Applicant Information:

Company Name:	HDP Acquisition, LLC, c/o Hotel Development Partners, LLC		
Contact Name:	Robert D. Griest		
Address:	1230 Peachtree St., NE, Ste. 3100, Atlanta, GA 30309		
Phone:	(404) 815-3500	Fax:	(404) 815-3509
Email:	rgriest@sgrlaw.com		
Pre-application conference date (required):	3/3/14		

* Owner Information: ☐ Check here if same as applicant

Owner's Name:	Spruill Center for the Arts, Inc.		
Owner's Address:	5339 Chamblee Dunwoody Rd., St. B, Atlanta, GA 30338		
Phone:	770-394-3447 Ext. 223	Fax:	770-394-6179
Email:	rkinsey@spruillarts.org		

* Property Information:

Property Address:	4681 Ashford Dunwoody Road, NE, Dunwoody, GA 30346		Parcel ID:	18-350-01-015
Zoning Classification:	PC-3c			
Requested Use of the Property:	CR-1			

* Applicant Affidavit:

I hereby certify that to the best of my knowledge, this special land use application form is correct and complete. If additional materials are determined to be necessary, I understand that I am responsible for filing additional materials as specified by the City of Dunwoody Zoning Ordinance. I certify that I, the applicant (if different), am authorized to act on the owner's behalf, pursuant to this application and associated actions.

Applicant's Name: Steven C. Smith, Hotel Development Partners, LLC

Applicant's Signature: [Signature] Date: March 14, 2014

* Notary:

Sworn to and subscribed before me this	14	Day of	March	, 20	14
Notary Public:	Katherine E. Fowler				
Signature:	<u>[Signature]</u>				
My Commission Expires:	02-14-17				
KATHERINE E FOWLER NOTARY PUBLIC FULTON COUNTY STATE OF GEORGIA MY COMMISSION EXPIRES 02-14-2017					

* Owner Affidavit:

I hereby certify that to the best of my knowledge, this special land use application form is correct and complete. If additional materials are determined to be necessary, I understand that I am responsible for filing additional materials as specified by the City of Dunwoody Zoning Ordinance. I certify that the applicant(s) (if different) are authorized to act on my behalf, pursuant to this application and associated actions.

Property Owner's Name: Robert Kinsey, CEO, Spruill Center for the Arts, Inc.

Property Owner's Signature: [Signature] Date: MARCH 18, 2014

* Notary:

Sworn to and subscribed before me this	18	Day of	MARCH	, 20	14
Notary Public:	Katherine E. Fowler				
Signature:	<u>[Signature]</u>				
My Commission Expires:	02-14-17				
KATHERINE E FOWLER NOTARY PUBLIC FULTON COUNTY STATE OF GEORGIA MY COMMISSION EXPIRES 02-14-2017					

Additional Property Owner(s) Notarized Certification



41 Perimeter Center East | Dunwoody, GA 30346
Phone: (678) 382-6800 | Fax: (770) 396-4828

I hereby certify that to the best of my knowledge, this special land use application form is correct and complete. If additional materials are determined to be necessary, I understand that I am responsible for filing additional materials as specified by the City of Dunwoody Zoning Ordinance. I certify that the applicant(s) (if different) are authorized to act on my behalf, pursuant to this application and associated actions.

*** Property Owner (If Applicable):**

Signature: _____	Date: _____
Address: _____	
Phone: _____	Fax: _____ Email: _____
Sworn to and subscribed before me this _____ Day of _____, 20____	
Notary Public:	

*** Property Owner (If Applicable):**

Signature: _____	Date: _____
Address: _____	
Phone: _____	Fax: _____ Email: _____
Sworn to and subscribed before me this _____ Day of _____, 20____	
Notary Public:	

*** Property Owner (If Applicable):**

Signature: _____	Date: _____
Address: _____	
Phone: _____	Fax: _____ Email: _____
Sworn to and subscribed before me this _____ Day of _____, 20____	
Notary Public:	

Additional Applicant Notarized Certification



41 Perimeter Center East | Dunwoody, GA 30346
Phone: (678) 382-6800 | Fax: (770) 396-4828

I hereby certify that to the best of my knowledge, this application form is correct and complete. If additional materials are determined to be necessary, I understand that I am responsible for filing additional materials as specified by the City of Dunwoody Zoning Ordinance. I certify that I, the applicant (if different), am authorized to act on the owner's behalf, pursuant to this application and associated actions.

* Applicant:

Signature: _____	Date: _____
Address: _____	
Phone: _____	Fax: _____ Email: _____
Sworn to and subscribed before me this _____ Day of _____, 20____	
Notary Public: _____	

* Applicant:

Signature: _____	Date: _____
Address: _____	
Phone: _____	Fax: _____ Email: _____
Sworn to and subscribed before me this _____ Day of _____, 20____	
Notary Public: _____	

* Applicant:

Signature: _____	Date: 3414 Peachtree Road, Suite 400
Address: March 14, 2014	
Phone: _____	Fax: _____ Email: _____
Sworn to and subscribed before me this _____ Day of _____, 20____	
Notary Public: _____	

Campaign Disclosure Ordinance



41 Perimeter Center East | Dunwoody, GA 30346
Phone: (678) 382-6800 | Fax: (770) 396-4828

Campaign Disclosure Ordinance

Please read the law and complete the Campaign Disclosure Statement on the following page if you are requesting a Rezoning, Concurrent Variance, or Conditional Use.

GA Citation/Title

GA Code 36-67A-3, Disclosure of campaign contributions

*38069 Code, 36-67A-3

CODE OF GEORGIA TITLE 36. LOCAL GOVERNMENT PROVISIONS APPLICABLE TO COUNTIES AND MUNICIPAL CORPORATIONS CHAPTER 67A. CONFLICT OF INTEREST IN ZONING ACTIONS
(Current through 2000 General Assembly)

36-67A-3 Disclosure of campaign contributions.

- a) When any applicant for rezoning action has made, within two years immediately preceding the filing of that applicant's application for the rezoning action, campaign contributions aggregating \$250.00 or more to a local government official who will consider the application, it shall be the duty of the applicant to file a disclosure report with the governing authority of the respective local government showing:
 - 1) The name and official position of the local government official to whom the campaign contribution was made; and
 - 2) The dollar amount and description of each campaign contribution made by the applicant to the local government official during the two years immediately preceding the filing of the application for the rezoning action and the date of each such contribution.
- b) The disclosures required by subsection (a) of this Code section shall be filed within ten days after the application for the rezoning action is first filed.
- c) When any opponent of a rezoning action has made, within two years immediately preceding the filing of the rezoning action being opposed, campaign contributions aggregating \$250.00 or more to a local government official of the local government which will consider the application, it shall be the duty of the opponent to file a disclosure with the governing authority respective local government showing:
 - 1) The name and official position of the local government official to whom the campaign contribution was made; and
 - 2) The dollar amount and description of each campaign contribution made by the opponent to the local government official during the two years immediately preceding the filing of the application for the rezoning action and the date of each such contribution.
- d) The disclosure required by subsection (c) of this Code section shall be filed at least five calendar days prior to the first hearing by the local government of any of its agencies on the rezoning application.

(Code 1981, 36-67A-3, enacted by Ga. L. 1986, p. 1269, 1; Ga. L. 1991, p. 1365, 1; Ga. L. 1993, p. 91, 36.)

Official Code of Georgia Annotated Copyright 1982 – 2000 State of Georgia.

Campaign Disclosure Statement



41 Perimeter Center East | Dunwoody, GA 30346
Phone: (678) 382-6800 | Fax: (770) 396-4828

Have you, within the two years immediately preceding the filing of this application, made campaign contributions aggregating \$250.00 or more to a member of the City of Dunwoody City Council or a member of the City of Dunwoody Planning Commission?

☐ YES ☒ NO

* **Applicant / Owner:** HDP Acquisitions, LLC

Signature: [Signature] Date: March 14, 2014

Address: 3414 Peachtree Road, Suite 1075, Atlanta, GA 30326

If the answer above is yes, please complete the following section:

Date	Government Official	Official Position	Description	Amount

Campaign Disclosure Statement



41 Perimeter Center East | Dunwoody, GA 30346
Phone: (678) 382-6800 | Fax: (770) 396-4828

Have you, within the two years immediately preceding the filing of this application, made campaign contributions aggregating \$250.00 or more to a member of the City of Dunwoody City Council or a member of the City of Dunwoody Planning Commission? ☐ YES ☒ NO

* Applicant / Owner: Hotel Development Partners, LLC

Signature: [Signature] Date: March 14, 2014

Address: 3414 Peachtree Road, Suite 1075, Atlanta, GA 30326

If the answer above is yes, please complete the following section:

Date	Government Official	Official Position	Description	Amount

Campaign Disclosure Statement



41 Perimeter Center East | Dunwoody, GA 30346
Phone: (678) 382-6800 | Fax: (770) 396-4828

Have you, within the two years immediately preceding the filing of this application, made campaign contributions aggregating \$250.00 or more to a member of the City of Dunwoody City Council or a member of the City of Dunwoody Planning Commission? ☐ YES ☒ NO

* Applicant/Owner: Robert Kinsey, Spruill Center for the Arts, Inc.

Signature: Robert Kinsey Date: MARCH 18, 2014
Address: 3414 Peachtree Road, Suite 1075, Atlanta, GA 30326

If the answer above is yes, please complete the following section:

Date	Government Official	Official Position	Description	Amount

Campaign Disclosure Statement



41 Perimeter Center East | Dunwoody, GA 30346
Phone: (678) 382-6800 | Fax: (770) 396-4828

Have you, within the two years immediately preceding the filing of this application, made campaign contributions aggregating \$250.00 or more to a member of the City of Dunwoody City Council or a member of the City of Dunwoody Planning Commission?

☐ YES ☒ NO

* **Applicant / Owner:** Robert D. Griest, Esq., Smith, Gambrell & Russell, LLP

Signature: *Robert D. Griest* Date: 03/18/2014

Address: 1230 Peachtree St., NE, Ste. 3100, Atlanta, GA 30309

If the answer above is yes, please complete the following section:

Date	Government Official	Official Position	Description	Amount

Campaign Disclosure Statement



41 Perimeter Center East | Dunwoody, GA 30346
Phone: (678) 382-6800 | Fax: (770) 396-4828

Have you, within the two years immediately preceding the filing of this application, made campaign contributions aggregating \$250.00 or more to a member of the City of Dunwoody City Council or a member of the City of Dunwoody Planning Commission? ☐ YES ☒ NO

* **Applicant / Owner:** Dennis J. Webb, Jr., Esq., Smith, Gambrell & Russell, LLP

Signature: [Signature] Date: 3/18/14

Address: 1230 Peachtree St., NE, Ste. 3100, Atlanta, GA 30309

If the answer above is yes, please complete the following section:

Date	Government Official	Official Position	Description	Amount

STATEMENT OF INTENT

and

Other Material Required by
The City of Dunwoody Zoning Ordinance
for the
Special Land Use Permit Application

of

HDP Acquisitions LLC
c/o Hotel Development Partners, LLC

for

± 5.2 Acres of Land
located in
Land Lot 350, 18th District, DeKalb County
Address: 4681 Ashford Dunwoody Road, NE

Hotel Height of Four (4) Stories

Submitted for Applicant by:

Dennis J. Webb, Jr.
Robert D. Griest
Smith, Gambrell & Russell, LLP
Promenade, Suite 3100
1230 Peachtree Street, NE
Atlanta, Georgia 30309
404-815-3620

I. INTRODUCTION

This Application seeks a Special Land Use Permit (“SLUP”) pursuant to § 27-351 et seq. of the City of Dunwoody Zoning Ordinance to allow for a four (4)-story hotel located within a mixed-use development on ± 5.2 acres of land located in the southeast quadrant of the intersection of Ashford Dunwoody Road NE and Meadow Lane Road NE (hereinafter the “Subject Property”). The Applicant has simultaneously submitted a request to rezone the Subject Property from PC-3 (Pedestrian Community) (conditional) and C-1 (Local Commercial) to CR-1 (Commercial-Residential Mixed-Use). By code, buildings greater than three (3) stories or 45 feet in height require a SLUP from the City of Dunwoody City Council (“City Council”) pursuant to § 27-351 et seq. of the Dunwoody Zoning Ordinance. Except for the hotel structure, all other proposed buildings will comply with the relevant height requirements.

The Subject Property is adjacent to and due north of the Gables Metropolitan apartment complex and directly south of the Perimeter Village shopping center. It is the site of the Spruill Center for the Arts Gallery, which is a 19th century historic farm house that displays art exhibits. It is currently zoned PC-3 and C-1 for a 325,638 square foot mixed-use building containing 238 apartments, retail space and a cultural arts facility. The City of Dunwoody 2030 Comprehensive Plan designates the Subject Property as “Perimeter Center – Transitional”, which does not allow the residential density contemplated in the currently approved, PC-3-based site plan.

The Applicant submits this document as a Statement of Intent with regard to this Application, a preservation of the Applicant’s constitutional rights, and a Written Justification for the Application as required by the City of Dunwoody Zoning Ordinance, § 27-1 et seq. This document is also intended to address and substantiate the requisite responses to the state

“Steinberg Act”, O.C.G.A. § 36-67-1 et seq. A site plan has been filed with the original Application, along with the other required materials.

II. HISTORY

This 5.2 acre tract was originally zoned R-100 and R-150 (Single Family Residential). In 1992, the DeKalb County Board of Commissioners rezoned the property to O-I (Office-Institutional) based on a site plan and other conditions (CZ-92065). The proposed development was never accomplished.

In 2005, DeKalb County approved a request to rezone the Subject Property from O-I (Office-Institutional) and C-1 (Local Commercial) to PC-3 (Pedestrian Community) to allow for a mixed-use development consisting of a 325,638 square foot building containing 238 apartment units, 30,000 square feet of retail floor area, and 50,000 square feet for a cultural arts facility (CZ-04-134). The rezoning application was approved “site plan specific” and subject to two (2) conditions.

III. IMPACT ANALYSIS

A. Whether the proposed use is consistent with the policies of the comprehensive plan.

Yes. The City of Dunwoody Comprehensive Land Use Plan (the “Plan”) designates the Subject Property as “Perimeter Center – Transitional”. As a whole, the intent of the Perimeter Center Character Area is to “create a ‘livable’ regional center with first-class office, retail and high-end restaurants in a pedestrian and bicycle-oriented environment [].” The Perimeter Center area was created, in part, as a reaction to the strain that high-density residential complexes have put on the City’s schools and infrastructure. As such, the Plan’s goals for the area include paying close attention to the potentially negative effects of residential developments, promotion of

pedestrian, bicycle, and mass-transit systems, and the encouragement of hotel and convention development near MARTA connections to foster commerce.

The Perimeter Center Character Area is further divided into three sub-areas: Transitional, High-Density, and Transit Village. The Subject Property is within the Transitional sub-area. The Transitional sub-area is meant for “low and medium density office and some residential.” “Low density” means a maximum of eight (8) units per acre and “medium density” means up to twelve (12) units per acre.

The current zoning and conditioned site plan are inconsistent with the City’s Plan. Specifically, the site plan upon which the 2005 rezone was conditioned is for the development of 238 units in a multi-family housing complex. At only 5.2 acres, the 2005 site plan allows a density of 45.77 residential units per acre, in addition to substantial retail space and a cultural arts facility. Clearly, the current zoning is not in line with the Plan and development in accordance with the conditioned site plan would be a major deviation from the underlying goals of the City for this area.

On the other hand, the proposed rezoning and use will help further the goals of the Plan. In terms of the Perimeter Center Character Area as a whole, the proposed development will advance the City’s desire for hotel developments near MARTA, as well as the vision of establishing additional high-end retail and restaurants in the area. Finally, and with respect to the Transitional sub-area, the proposed use is substantially more desirable than the excessive residential development currently allowed, and will effectively prevent the potential negative effects of another high-density apartment complex.

B. Whether the proposed use complies with the requirements of the zoning ordinance.

Yes. The proposed development complies with the requirements of the CR-1 zoning district except for the allowed height, which must be increased subject to the Special Land Use Permit under consideration.

C. Whether the proposed site provides adequate land area for the proposed use, including provision of all required open space, off-street parking and all other applicable requirements of the subject zoning district.

Yes. The Subject Property consists of \pm 5.2 acres, which is more than adequate for the use contemplated. The Subject Property is currently entitled to be developed into a 325,638 square foot mixed-use development that includes, in part, a 238-unit apartment complex. The proposed development is considerably less dense. Additionally, the development will have 73% total coverage, which is below the 80% allowed in CR-1. Finally, the maximum number of parking spaces that could be required (assuming that both of the smaller buildings become restaurants) is 268, which is below the 277 spaces to be provided.

D. Whether the proposed use is compatible with adjacent properties and land uses.

Yes. The Subject Property is located on Ashford Dunwoody Road and Meadow Lane Road. One block west across Ashford Dunwoody Road is Perimeter Place, a large shopping center with retail, restaurants and office uses. Directly north and across Meadow Lane Road is Perimeter Village, which also has a wide range of retail and restaurants. To the south of the Subject Property is Gables Metropolitan, a large apartment complex.

First, it must be recognized that there are no possible uses that would be consistent with the actual Spruill Home as it is a historic farm house built in 1840s. However, because it currently operates as a cultural center and art museum, the addition of a hotel will be a

particularly fitting use as it will likely attract out-of-town guests to the Spruill Home. The retail and restaurant uses will also add potential visitors.

Second, the proposed development is consistent with and will complement the larger area surrounding the Subject Property. In terms of the hotel, guests will be able to walk to the many dining establishments as well as the surrounding retail shopping centers and Perimeter Mall. This eliminates the need for out-of-town visitors to rent cars during their stay and will cut down on congestion in the area. With regard to the retail/restaurant buildings, the close proximity to the existing residential complexes will further encourage pedestrian and bicycle transportation.

In sum, the proposed development will naturally complement the surrounding residential, retail, and office uses, thereby creating a more balanced mixture of land uses. The requested Special Land Use Permit is entirely consistent with and suitable in light of the current and future development plans and patterns. The intended final appearance of this development will include appropriate attention to scale, buffering, setbacks, and landscaping so that it will blend harmoniously with its surroundings.

E. Whether 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.

No. The proposed use is not inherently noisy, dusty, smelly, smoky, or vibrating.

F. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of the hours of operation of the proposed use.

No. The Subject Property is directly adjacent to uses similar to the proposed development, namely a large commercial/retail center and a large apartment complex, and will be operated in a similar manner and at similar times.

G. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of the manner of operation of the proposed use.

No. The manner of operation of the hotel and retail/restaurant buildings will not adversely affect adjoining or nearby land uses, which are similar in character and operation. Further, the proposed uses are fully consistent with the larger Perimeter Center Character Area.

H. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of the character of vehicles or the volume of traffic generated by the proposed use.

No. The proposed development should not significantly affect existing traffic capacities. According to the ITE Trip Generation Manual, the hotel (ITE category 310) will generate 1,046 trips on a weekday based on its 128 rooms. The hotel will generate 67 trips during the A.M. peak hour and 78 trips during the P.M. peak hour.

Applicant is not yet certain whether the two additional buildings will be retail (ITE category 814) or restaurant (ITE category 931) uses. The table below shows the potential trip generation:

	Weekday Total Trips	A.M. Peak Trips	P.M. Peak Trips
8,000 sq. ft. - Retail	512	30	56
8,000 sq. ft. - Restaurant	720	45	72
6,000 sq. ft. – Retail	384	23	42
6,000 sq. ft. – Restaurant	540	33	54

Assuming *arguendo* that the development ultimately builds the most traffic-intense uses, the total weekday trip generation for the hotel and two restaurants should be 2,306 trips, with 145 A.M. peak trips and 204 P.M. peak trips. Further, these numbers should not be read in a vacuum. The site could be developed today with 238 apartment units, 30,000 square feet of retail space, and 50,000 square feet for a cultural arts facility, all of which collectively would generate significantly more traffic than the proposed development.

The Subject Property is located on Ashford Dunwoody Road, an urban minor arterial road, as well as Meadow Lane Road, a partially-private road. The proposed development will not require a curb cut on Ashford Dunwoody Road; rather, visitors will access the site via two existing curb cuts on Meadow Lane Road. The curb cut closest to Ashford Dunwoody Road will serve as the primary entrance/exit for the Spruill Home and the two retail/restaurant buildings. Visitors will be able to enter the site traveling from either direction on Meadow Lane Road, and will be able to exit in either direction as well (directly to Ashford Dunwoody Road or around the Subject Property to Perimeter Center North). The second curb cut, which is right-in, right-out, is located further down Meadow Lane Road and will serve as the primary entrance/exit for the hotel. Thus, the majority of the traffic exiting the hotel parking lot will be forced to take a right turn and travel east and then south to connect with Perimeter Center North. This will limit the proposed development's burden on the Ashford Dunwoody Road/Meadow Lane Road intersection. Because of the multiple routes of ingress and egress to high-capacity streets, the proposed development will not be an excessive burden on the existing infrastructure.

I. Whether 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.

Yes. The size, scale and massing of the proposed buildings are comparable to those found on neighboring properties throughout the Perimeter Center Character Area. The only adjoining development to the Subject Property, Gables Metropolitan, is five (5) stories high. Directly across Ashford Dunwoody Road is 400 Perimeter Terrace, an 11-story office building and an accompanying multi-level parking deck. The requested Special Land Use Permit for four (4) stories is compatible with these nearby structures.

J. Whether the proposed plan will adversely affect historic buildings, sites, districts, or archaeological resources.

No. The ownership of the Spruill Home is seeking the approval of this Application in order to provide necessary funding to continue operating the exhibits and programs at the Home. Accordingly, the proposed development will ensure that the house is maintained for future generations to enjoy. Further, the hotel and retail/restaurant buildings will likely bring new visitors to the Home. The existing Home and accessory structures will not be adversely affected by this proposal. Applicant knows of no other historic building, sites, districts, or archaeological resources either on the Subject Property or located in the immediate vicinity that will suffer adverse impacts from this rezoning request.

K. Whether public services, public facilities and utilities – including motorized and non-motorized transportation facilities – are adequate to serve the proposed use.

Yes. Utilities and sewage capacity are available to serve the site. Additionally, the proposed development will not overly burden existing transportation facilities. See “Subsection H”, above.

L. Whether adequate means of ingress and egress are proposed, with particular reference to non-motorized and motorized traffic safety and convenience, traffic flow and control and emergency vehicle access.

No. The proposed development adequately accommodates ingress and egress and provides for pedestrian and automotive safety as well as convenience, traffic flow and control, and access in the event of an emergency. There are two (2) existing curb cuts on Meadow Lane Road: one will serve as the primary entrance for the Spruill Home and the two retail/restaurant buildings, and the other will be the primary entrance to the hotel. There will also be numerous pedestrian connections from Ashford Dunwoody Road and Meadow Lane Road, as shown on the site plan.

M. Whether adequate provision has been made for refuse and service areas.

Yes. Such facilities will be provided and, if necessary, screened.

N. Whether the proposed building as a result of its proposed height will create negative shadow impact on any adjoining lot or building.

No. The hotel will be located on the opposite side of the property from the Spruill Home (which sits on the east side of the property) and therefore will not create a negative shadow impact on it. To the south, the one development that adjoins the Subject Property, the Gables Metropolitan apartment complex, is five (5) stories and therefore higher than the proposed hotel. Finally, shadows to the north and east of the hotel will be cast on the street right-of-way.

IV. PRESERVATION OF CONSTITUTIONAL RIGHTS

The Applicant respectfully submits that the current zoning classification of and rules relative to the property owner's right to use the Subject Property established in the City of Dunwoody Zoning Ordinance, to the extent they prohibit this use, constitute an arbitrary, irrational abuse of discretion and unreasonable use of the zoning power because they bear no substantial relationship to the public health, safety, morality or general welfare of the public and substantially harm the property owners in violation of the due process and equal protection rights of the property owner guaranteed by the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia. Further, the failure to allow this use would constitute a taking of the owner's private property without just compensation and without due process in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia.

Further, the Applicant respectfully submits that the City Council's failure to approve the requested Special Land Use Permit would be unconstitutional and would discriminate in an arbitrary, capricious and unreasonable manner between the property owner and owners of similarly situated property in violation of Article I, Section III, Paragraph I of the Constitution of the State of Georgia and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

A refusal to allow the use in question would be unjustified from a fact-based standpoint and instead would result only from constituent opposition, which would be an unlawful delegation of authority in violation of Article IX, Section II, Paragraph IV of the Georgia Constitution.

A refusal to allow the use in question would be invalid inasmuch as it would be denied pursuant to an ordinance which is not in compliance with the Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq., due to the manner in which the Ordinance as a whole and its map(s) have been adopted.

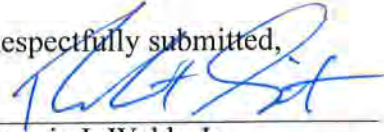
V. CONCLUSION

For the foregoing reasons, the Applicant respectfully requests that the Special Land Use Permit at issue be approved. The Applicant also invites and welcomes any comments from Staff or any other officials of the City of Dunwoody so that such recommendations or input might be incorporated as conditions of approval of this Application.

This 18th day of March, 2014.

Smith, Gambrell & Russell, LLP
Promenade, Suite 3100
1230 Peachtree Street, N.E.
Atlanta, Georgia 30309
404-815-3500

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "D. Webb, Jr.", written over a horizontal line.

Dennis J. Webb, Jr.
Robert D. Griest
Attorneys For Applicant

NEIGHBOR COMMUNICATIONS SUMMARY REPORT

The Gables Metropolitan apartment complex is the only residential use within 500 feet of the Subject Property. However, the Applicant has voluntarily met with the Dunwoody Homeowners Association (“DHA”) and anticipates meeting with the DHA again after the Applications are filed. The Applicant is willing to meet with any other individuals or groups who are interested in the proposed development.

(1) Efforts to notify neighbors about the proposal (how and when notification occurred, and who was notified).

Notice of the Applications to (1) rezone the Subject Property and (2) obtain a Special Land Use Permit for additional height was mailed to Gables Metropolitan on March 14, 2014. (See copy of Notice attached hereto). Because Gables Metropolitan is an apartment complex, the notice was mailed to its ownership, Metropolitan III, LLC.

(2) How information about the proposal was shared with neighbors (mailings, workshops or meeting, open houses, flyers, door-to-door handouts, etc.).

In addition to the mailing described above, the Applicant voluntarily met with the DHA on March 5, 2014 to discuss the proposed development.

(3) Who was involved in the discussions.

The meeting included members of the DHA’s Zoning and Development Committee.

(4) Suggestions and concerns raised by neighbors.

Throughout the planning process, the main entrance (curb cut) to the hotel has been moved farther away from the intersection at Ashford Dunwoody Road. The members of the DHA felt that this was a positive improvement to the site plan.

(5) What specific changes to the proposal were considered and/or made as a result of the communications.

See above.

NOTICE

An application to rezone property located at 4681 Ashford Dunwoody Road, NW, Dunwoody, Georgia from PC-3c and C-1 to CR-1 and a Special Land Use Permit for additional height is being filed with the City of Dunwoody by HDP Acquisitions, LLC.

Should you have any questions regarding this development, please contact Robert D. Griest at (404) 815-3734.

Postcard mailed

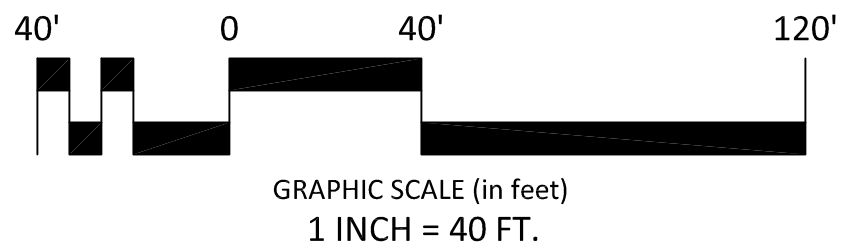
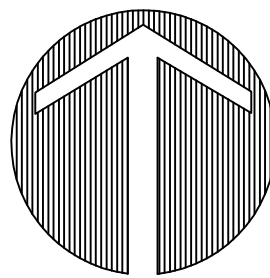
3/14/14 SEA

Shawna E. Avila, Paralegal
Smith, Gambrell & Russell, LLP
Promenade II, Suite 3100
1230 Peachtree Street, N.E.
Atlanta, Georgia 30309
(404) 815-3558 or savila@sgrlaw.com

Metropolitan III, LLC
1801 Peachtree St. NE Ste. 225
Atlanta, GA 30309-1884

SPRUILL CENTER
REZONING PLAN

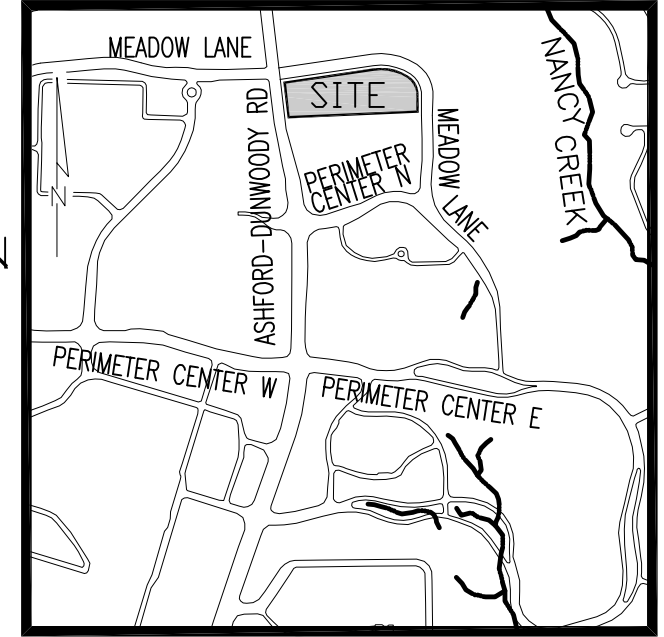
MEADOW LANE ROAD, DUNWOODY, GEORGIA
MAY 30, 2014-REV.



PARKING	
Required Parking Spaces	
Hotel 128 keys / 1.25 per guestroom	160
Retail/Restaurant 6,000 gsf / (6.67 per 1000 per sf)	40
Retail/Restaurant 8,000 gsf / (6.67 per 1000 per sf)	54
Spruill Center 360 gsf Assembly Area (40 per 1000 sf)	15
Total Required Parking	269
Surface Parking (Standard 8'-6" x 18'-0", Compact 8'-0" x 15'-6")	211
Proposed Parking Deck (Under Hotel)	58
Total Parking Provided	269

- GENERAL NOTES:
1. SITE AREA : 5.212 ACRES
TRACT 1: 4.942 ACRES, TRACT 2: 0.270 ACRES
 2. LOCATION : ASHFORD-DUNWOODY ROAD & MEADOW LANE
PARCEL: LANDLOT 350, DISTRICT 18th DeKALB COUNTY
 4. LAST EXISTING USE : SPRUILL ARTS CENTER, PARKING LOT & UNDEVELOPED LAND
 5. PROPOSED USE: MIXED USE COMPLEX AND PARKING LOT
 6. APPLICANT : HDP - ACQUISITIONS, LLC.
c/o HOTEL DEVELOPMENT PARTNERS, LLC
3414 PEACHTREE ROAD NE, SUITE 1075
ATLANTA, GEORGIA 30326
STEVE SMITH, 770-330-3233
 - CONTACT PERSON: MCFARLAND - DYER & ASSOCIATES, INC.
4174 SILVER PEAK PARKWAY
SUWANEE, GEORGIA 30024
JEFF DYER (770) 932-6550 ,
JDyer@gomda.net
 7. BOUNDARY & SITE INFORMATION PREPARED BY ARMSTRONG LAND SURVEYING, INC DATED 010/23/2007. TOPOGRAPHY FROM FIELD RUN SURVEY.
 8. ALL CONSTRUCTION SHALL CONFORM TO THE CITY OF DUNWOODY DEVELOPMENT REGULATIONS. ALL CONSTRUCTION SHALL ALSO COMPLY WITH ALL APPLICABLE COUNTY, STATE AND FEDERAL CODES, STANDARDS AND REGULATIONS.
 9. FIRM MAP NUMBER 13089C0012J, EFFECTIVE MAY 16, 2013, INDICATES THAT THIS TRACT DOES NOT LIE IN AN AREA DESIGNATED AS HAVING FLOOD HAZARD. THE SUBJECT SITE IS LOCATED IN A FLOOD ZONE "X" AREA DETERMINED TO BE OUTSIDE OF THE 500 YEAR FLOOD PLAIN.
 10. COVERAGE: 80% MAXIMUM, PROPOSED COVERAGE: 73%
 11. STORM WATER MANAGEMENT SHALL BE PROVIDED ON SITE IN SUB-SURFACE FACILITIES.
 12. THERE ARE NO LAKES, STREAMS, WETLANDS OR WATERS OF STATE OR THEIR ASSOCIATED BUFFERS ON THIS SITE.
 13. PROPOSED ZONING: CR-1
13.1. STREET, FRONT AND SIDE: 0 FEET
13.2. SIDE INTERIOR: 20 FEET
13.3. REAR: 30 FEET
13.4. BUILDING HEIGHT: 3 STORIES, 45 FEET (SUBJECT TO SLUP)

MDA #M.7.
MCFARLAND-DYER & ASS
4174 SILVER PEAK PARKWAY, SUWANEE, GE
PHONE (770) 932-6550 FAX (770) 932-6550
WWW.GOMDA.NET



VICINITY MAP
NOT TO SCALE

SYMBOL LEGEND

- R/W - Right-of-Way
P/L - Adjoiner Property Line
P.O.B. - Place/Point of Beginning
P.O.C. - Place/Point of Commencement
No. - Schedule B-Section II Item
No. - Number
Rad - Radius
Arc - Arc Length
D - Delta Angle
ChL - Chord Length
ChB - Chord Bearing
Msd. - Measured
Dd. - Deed
(Record) Actual
- Monumentation Found as Noted
5/8" Rebar w/Cap Set or to be Set
Iron Nail or Drill Hole Set
Monument Box w/Iron Pin
Storm Manhole
Curb Inlet Basin w/ Grate
Square Catch Basin
Curb Inlet Basin w/out Grate
Sanitary Manhole
Sanitary Manhole
Fire Hydrant
Water Valve
Electric Transformer
Electric Manhole
Telephone Manhole
Handicap Space
Sign
Wall
Light Pole
Fence
Concrete Area
No Parking Area
Building Area

LEGEND

- STREET LIGHT POLE
STREET TREE
SHADE TREE
UNDERSTORY TREE
LOW SHRUBBERY
SHRUBBERY
GROUND COVER
SOD / GRASS