

6/13/2024

Re: **Letter of Intent – Parking Variance**
4045 Five Forks Trickum Road
PEC+ Project No. 23067.00

Dear Community Development officials,

The developer and applicant request a variance to Gwinnett County UDO Table 240.1 to permit an increase in maximum permitted parking spaces from 5 to 8 spaces. The approval of the proposed variance would facilitate the development of a new, 7 Brews drive thru and new, public park space along the Five Forks Trickum frontage.

Variance proposal and rationale

The proposed variance follows the recent approval of a change in conditions (CIC 2023-00028) to allow a new outparcel (the subject site) to an existing development. The outparcel was proposed to be developed with the 7 Brews business, a drive-thru only establishment. As the change in conditions application went through the public hearing process, the development team added new public open space and seating onto the frontage in lieu of a dining room in at the 7 Brews. As a result, the footprint of the 7 Brews is small, requiring a maximum of 5 parking spaces per Gwinnett County Code.

The requested variance is consistent with the goals and intent of the Gwinnett County UDO and comprehensive plan because the parking directly supports community gathering, which in turn improves the health, safety, and welfare of the overall community. The three additional parking spaces would allow patrons of 7 Brews to park and enjoy their coffee outside in the new seating area, as opposed to leaving immediately after the drive thru. This design was reached as a compromise between the development team and the community, who cited a desire for a gathering space on the additional outparcel.

Strict adherence to the parking standards in the UDO is an unnecessary hardship applicable to this site; the site is already small and the amount of impervious coverage would be the same, regardless if the site plan proposed five or fifteen spaces. Additionally, traffic is not a concern, considering the outparcel could facilitate a larger fast food establishment with a dining room, which would result in more parking spaces on the same area. Strict adherence to the UDO directly interferes with the goals of the outparcel development as it relates to the broader community context.

Constitutional Objections

The portions of the Code of Ordinances and Zoning Ordinance for Gwinnett County (the “Zoning Ordinance”) which classifies or conditions the Property into any more or less intensive zoning classification and/or zoning conditions other than as requested by the Applicant and property owner are unconstitutional, in that they would destroy the Applicant's and property owner’s property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983, the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

The application of the Zoning Ordinance which presently restricts the Property’s use to the present zoning classification, uses, regulations, requirements, and conditions is unconstitutional, illegal, null and void, and constitutes a taking of the Applicant's and the property owner's property rights in violation of the Just Compensation Clause of the Fifth Amendment and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, Article I, Section I, Paragraphs I and II of the Constitution of the State of Georgia of 1983, and in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States by denying economic and viable use of the Property while not substantially advancing legitimate state interests.

The Property is presently suitable for the proposed variance as amended by the Applicant, and is not economically suitable for uses restricted under the existing conditions of zoning and development classification, conditions, regulations, and restrictions due to its location, shape, size, surrounding development, and other factors. A denial of the requested rezoning and related variances would constitute an arbitrary and capricious act by Gwinnett County and the Board of Commissioners without any rational basis therefore, constituting an abuse of discretion in violation of Article I, Section I, Paragraphs I and II of the Constitution of the State of Georgia of 1983 and the Due Process Clause of the Fourteenth Amendment. A refusal by Gwinnett County ZBA to approve this requested variance, with only such additional conditions as agreed to by the Applicant and/or owner, so as to permit the only feasible economic use of the Property, would be unconstitutional between the Applicant, owner, and similarly situated

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property owners, in violation of Article I, Section I, Paragraph II of the Constitution of the State by discriminating of Georgia of 1983 and the Equal Protection Clause of the Fourteenth Amendment.

Conclusion

The applicant and owner respectfully request that the Gwinnett County Zoning Board of Appeals and Planning Staff approve and support the Applicant's request for a variance to Gwinnett County UDO Table 240.1 to permit an increase in maximum permitted parking spaces from 5 to 8 spaces. This will contribute to an overall better site plan, improved user experience and aesthetics. The developer and their representatives welcome the opportunity to meet with all interested parties and representatives.

Sincerely,

Hayley Todd

Zoning Manager, Planners and Engineers Collaborative, Inc.