

MEMORANDUM

To: Mayor and City Council

From: Steve Dush, AICP

Date: May 13, 2013

Subject: **SLUP 13-051:** Pursuant to the City of Dunwoody Zoning Ordinance, applicant, HDP Acquisitions, LLC c/o Hotel Development Partners, LLC, seeks a Special Land Use Permit for a change in the maximum allowable building height. The tax parcels are 18 350 01 009, 011, and 170.



BACKGROUND

The site is located on the northern side of Perimeter Center East, on the southeast corner of Ashford Dunwoody Road and Perimeter Center North. The property is currently zoned OCRc (Office-Commercial-Residential Conditional district).

Pursuant to the City of Dunwoody Zoning Ordinance §27-925, applicant, HDP Acquisitions, LLC seeks permission on behalf of Hotel Development Partners, LLC for a Special Land Use Permit (SLUP) to increase the maximum allowable building height from two-stories to eight-stories in an OCR district, which is a modification to the existing SLUP that permits up to 10 stories. This application runs concurrently with a request for rezoning the subject property from Office-Commercial-Residential Conditional (OCRc) to Office-Commercial-Residential Conditional (OCRc) to allow for a change of previous conditions. The property consists of approximately 11.53 acres of land, located at 303, 301, and 275 Perimeter Center North, Dunwoody, Georgia 30346. The concurrent rezoning proposes modifications of the original site plan approved in 2008 with the development of a 134-room, eight (8)-story hotel, a

one (1)-story restaurant of up to 10,600 square feet, two (2) one (1)-story retail structures of up to 4,500 square feet each, and one (1)-story retail building up to 6,000 square feet where a ten (10)-story hotel, containing up to 200 rooms, and an 8,500 square foot restaurant were previously approved (Exhibit A).

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 deviate 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 27-1491 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:

- (a) Adequacy of the size of the site for the use contemplated and whether or not adequate land area is available for the proposed use including provision of all required yards, open space, off-street parking, and all other applicable requirements of the zoning district in which the use is proposed to be located; ***The subject parcels are currently zoned OCRC and contain approximately 11.53 acres of land. This is somewhat adequate for all uses being proposed in order to create a mixed use development. The Office-Commercial-Residential District requires a 50' front yard setback, 40' rear yard setback, and 20' side yard setback. The setbacks being proposed, however, are a 6' front yard, 40' rear yard, and 10' side yard. The site plan also identifies a parking deficiency that must be processed before the ZBA for approval. Lastly, all suggested landscaping plans conform with the "Perimeter Public Space Standards" for the area.***
- (b) Compatibility of the proposed use with adjacent properties and land uses and with other properties and land uses in the district; ***The proposal will establish a parity among the allowable land uses of the adjacent properties on the east side of Ashford Dunwoody Road.***

- (c) Adequacy of public services, public facilities, and utilities to serve the use contemplated; **The current infrastructure is adequate to serve the proposed use.**
- (d) Adequacy of the public street on which the use is proposed to be located and whether or not there is sufficient traffic-carrying capacity for the use proposed so as not to unduly increase traffic and create congestion in the area; **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. A right turn lane is proposed to be added along Ashford Dunwoody Road to facilitate deceleration from the travel lanes.**
- (e) Whether or not existing land uses located along access routes to the site will be adversely affected by the character of the 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.**
- (f) Ingress and egress to the subject property and to all proposed buildings, structures, and uses thereon, with particular reference to pedestrian and automotive safety and convenience, traffic flow and control, and access in the event of fire or other emergency; **The proposed plan provides adequate ingress and egress to the site and its structures for vehicular and pedestrian traffic.**
- (g) Whether or not 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.**
- (h) Whether or not 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.**
- (i) Whether or not 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.**
- (j) Whether or not the proposed plan is otherwise consistent with the requirements of the zoning district classification in which the use is proposed to be located; **The plan appears to be substantially compliant with the zoning district classification, save for the previously mentioned characteristics, for which variances are to be sought.**
- (k) Whether or not 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.**

- (l) Whether or not the proposed plan provides for all required buffer zones and transitional buffer zones where required by the regulations of the district in which the use is proposed to be located; **The proposed height of the hotel will not affect any buffer zones.**
- (m) Whether or not there is adequate provision of refuse and service areas; **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.**
- (n) Whether the length of time for which the special land use permit is granted should be limited in duration; **There should be no limit to the special land use permit because the use, if found to be compatible with the surrounding neighborhood, should run with the land, not with the operator. There has not been found any demonstrable benefit to creating an arbitrary time frame for when an approved use is appropriate, and when the use is no longer appropriate, in the absence of a major land use change in the neighborhood or surrounding region. Expirations for a SLUP only force the applicant to again apply, which necessitates a nearly four month-long process, only to re-initiate a use already found to be appropriate at an earlier date.**
- (o) Whether or not 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; **The size, scale and massing of proposed buildings are appropriate in relation to the size of the property, which consists of approximately 11.53 acres of land. The position of the proposed additional structures is to the front and side of the hotel. They will include a one (1)-story restaurant of up to 10,600 square feet, two (2) one (1)-story retail structures of up to 4,500 square feet each, and a 6,000 square foot retail space. As a result, the combination of uses will help fulfill one of the goals of the Perimeter Center Character Area –reduce surface parking and promote livable centers.**
- (p) Whether the proposed plan will adversely affect historic buildings, sites, districts, or archaeological resources; **There are no known historic buildings, sites, districts, or archaeological resources in any proximity to the site, nor would any such resources be impacted by the proposed use.**
- (q) Whether the proposed use satisfies the requirements contained within the supplemental regulations for such special land use permit. **The proposed height of the hotel satisfies the requirements of the supplemental regulations.**
- (r) Whether or not 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

Staff recommends **approval** of the Special Land Use Permit application to increase the maximum allowable building height from two-stories to eight-stories in an OCR district with the following updated conditions to the February 28, 2013 application submittal, reconciled with the March 14, 2013 site plan:

1. The total height of the development shall not exceed: (~~1a~~) an existing six (6)-story office building; (~~2b~~) an existing eight (8)-story office building; (~~3c~~) an existing seven (7) level-story parking garage; (~~4d~~) a proposed ~~ten (10)-story~~ hotel; (~~5 not to exceed eight (8) stories~~); (~~e~~) a proposed one (1)-story ~~free-standing restaurant~~; and (~~6 restaurant~~); (~~f~~) three (3) proposed one (1)-story retail buildings; and (~~g~~) a proposed two (2)-level parking deck.

The Community Council heard the applicant's request to increase the allowable maximum height of a building in the OCR zoning district at their regular March meeting and recommended approval of the request, as submitted. The motion passed 6 – 0 votes.

The Planning Commission reviewed the item at a special called April meeting and voted in favor of the Special Land Use Permit with staff conditions, 7 – 0.

Attachments

- Application Packet
- Exhibit A – 2008 Sterling Pointe Site Plan

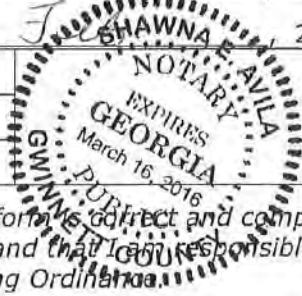


City of Dunwoody
41 Perimeter Center East
Dunwoody, GA 30346
Phone: (678) 382-6800
Fax: (770) 396-4828

RECEIVED
2/28/13

Special Land Use Application

Applicant	Name: HDP Acquisitions, LLC / Hotel Development Partners, LLC c/o Kathryn M. Zickert, Esq.	
	Address: 1230 Peachtree Street, NE., Ste. 3100, Atlanta, GA 30309	
	Phone: (404) 815-3704	Fax: (404) 685-7004
Property Owner	Owner's Name: RB Sterling Point LLC	
	Owner's Address: P.O. Box 421185, Atlanta, GA 30342	
	Phone: 404-965-1070	Fax: 678-338-3513
Property Information	Property Address: 301, 303 and 275 Perimeter Center North	Parcel ID: 18-350-01-009, 011 and 170
	Current Zoning Classification: OCR	
	Requested Use of the property: Mixed Use	
Applicant Affidavit	<i>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>	
	Applicant's Name: <i>HDP Acquisitions LLC / Hotel Development Partner, LLC</i>	
	Applicant's Signature: <i>[Signature]</i>	Date: <i>2/28/13</i>
Notary	Sworn to and subscribed before me this <i>28</i> Day of <i>Feb</i> , 20 <i>2013</i>	
	Notary Public: <i>Shawna E. Avila</i>	
	Signature: <i>[Signature]</i>	My Commission Expires: <i>3-16-16</i>
Owner Affidavit	<i>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>	
	Property Owner's Name: RB Sterling Pointe, LLC	
	Property Owner's Signature: <i>[Signature]</i>	Date: <i>2/28/13</i>
Notary	Sworn to and subscribed before me this <i>28</i> Day of <i>Feb</i> , 20 <i>13</i>	
	Notary Public: <i>Shawna E. Avila</i>	
	Signature: <i>[Signature]</i>	My Commission Expires: <i>3-16-16</i>

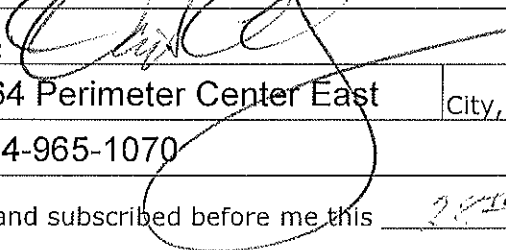
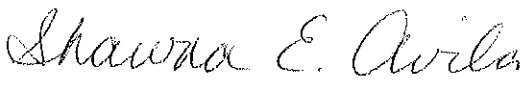
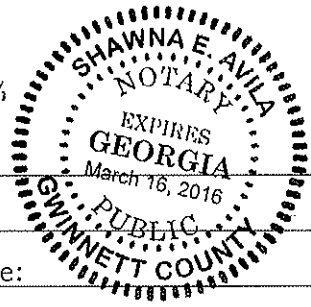




City of Dunwoody
41 Perimeter Center East
Dunwoody, GA 30346
Phone: (678) 382-6800
Fax: (770) 396-4828

Property Owner(s) Notarized Certification

The owner and petitioner acknowledge that this Land Use Petition application form is correct and complete. If additional materials are determined to be necessary, they understand that they are responsible for filing additional materials as specified by the City of Dunwoody Zoning Ordinances.

Property Owner (If Applicable)	Signature: 		Date: 2/28/13	
	Address: 64 Perimeter Center East	City, State: Atlanta, Georgia	Zip: 30346	
	Phone: 404-965-1070			
	Sworn to and subscribed before me this 28 th day of Feb., 2013			
Notary Public: 				
Signature:				Date:
Address:	City, State:			Zip:
Phone:				
Property Owner (If Applicable)	Sworn to and subscribed before me this _____ day of _____, 20____			
	Notary Public:			
	Signature:		Date:	
	Address:	City, State:	Zip:	
Property Owner (If Applicable)	Sworn to and subscribed before me this _____ day of _____, 20____			
	Notary Public:			
	Signature:		Date:	
	Address:	City, State:	Zip:	



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

Notary Public:

Applicant/Petitioner Notarized Certification

Petitioner states under oath that: (1) he/she is the executor or Attorney-In-Fact under a Power-of-Attorney for the owner (attach a copy of the Power-of-Attorney letter and type name above as "Owner"); (2) he/she has an option to purchase said property (attach a copy of the contract and type name of owner above as "Owner"); (3) he/she has an estate for years which permits the petitioner to apply (attach a copy of lease and type name of owner above as "Owner").

Applicant / Petitioner	Signature:		Date:
	Address:	City, State:	Zip:
	Phone:		
	Sworn to and subscribed before me this _____ day of _____, 20____		
Notary Public:			
Attorney / Agent	Signature: <i>[Handwritten Signature]</i>		Date:
	Address: 1230 Peachtree St., NE, Ste. 3100	City, State: Atlanta, GA	Zip: 30309
	Phone: (404) 815-3704		
	Sworn to and subscribed before me this <u>28th</u> day of <u>Feb</u> , 20 <u>13</u>		
Notary Public: <i>[Handwritten Signature]</i>			

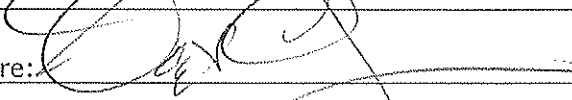




City of Dunwoody
41 Perimeter Center East
Dunwoody, GA 30346
Phone: (678) 382-6800
Fax: (770) 396-4828

Statement

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	Signature: 
	Address: 64 Perimeter Center East, Atlanta, Ga 30346
	Date: 2/28/13

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

Date	Government Official	Official Position	Description	Amount



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

Statement

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	Signature: <i>HDP Acquisitions LLC / Hotel Development Partners LLC</i>
	Address: <i>3414 Peachtree Rd NE Ste 1075 Atlanta, GA 30326</i>
	Date: <i>2/28/13</i>

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

Date	Government Official	Official Position	Description	Amount



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

Campaign Disclosure Statement

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	Signature: <i>Kathryn M. Zickert</i> Kathryn M. Zickert
	Address: 1230 Peachtree Street, NE, Ste. 3100, Atlanta, GA 30309
	Date: 2-28-13

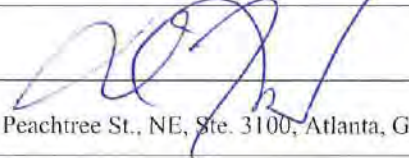
If the answer above is yes, please complete the following section:

Date	Government Official	Official Position	Description	Amount

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

Campaign Disclosure Statement

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	Signature:  Dennis J. Webb, Jr.
	Address: 1230 Peachtree St., NE, Ste. 3100, Atlanta, GA 30309
	Date: 2-28-13

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

Date	Government Official	Official Position	Description	Amount

RECEIVED
2/28/13

STATEMENT OF INTENT

and

Other Material Required by
The City of Dunwoody
for the
Modification of Conditions

of

HDP Acquisitions LLC
c/o Hotel Development Partners, LLC

For

± 11.53 Acres of Land
located in
Land Lot 350, 18th District, DeKalb County
Address: 301 and 275 Perimeter Center North

Submitted for Applicant by:

Kathryn M. Zickert
Dennis J. Webb, Jr.
Smith, Gambrell & Russell, LLP
Promenade II Suite 3100
1230 Peachtree Street, NE
Atlanta, Georgia 30309
404-815-3500

I. INTRODUCTION

The Applicant seeks a Modification of Conditions imposed by DeKalb County in Case Numbers Z-08-15025 and SLUP-08-15024 upon an 11.53 acre tract known as Sterling Point and located in the southeast quadrant of the intersection of Ashford-Dunwoody Road and Perimeter Parkway North (hereafter the "Subject Property"). Specifically, the Applicant seeks a modification of the site plan and conditions approved therein so as to allow for the development of a 134-room, six (6)-story hotel, a one (1)-story restaurant of up to 10,000 square feet, two (2) one (1)-story retail structures of up to 4,500 square feet each, and a 1,400 square foot retail space.

The 2008 approvals contemplated similar uses, allowing for a ten (10)-story, 200 unit hotel and an 8,500 square foot free-standing restaurant. The current site plan re-orientes the location of the hotel on-site, increases the amount of restaurant space by potentially 1,500 square feet and increases the amount of retail space by up to 10,400 square feet. The previous site plan and conditions approved by DeKalb County in 2008 are attached as Exhibit A. The current proposed plan is attached as Exhibit B. All other provisions in the 2008 conditions of approval shall remain intact.

The Applicant is agreeable to self-imposed conditions of approval of this modification as follows:

A. Zoning Conditions

1. The development shall substantially comply with the Site Plan dated January 30, 2013, prepared by McFarland-Dyer & Associates.
2. Curbcut access from Ashford-Dunwoody Road shall be restricted to a right-in/right-out turning movement.
3. Setbacks shall be measured from existing right-of-way, versus any future right-of-way which the City might demand incidental to development.

4. The development shall contain a hotel not to exceed eight (8)-stories with up to 134 rooms; an outparcel restaurant with up to 10,000 feet of space; additional outparcel retail space of no more than 10,400 square feet of space, an existing eight (8) story office building; an existing six (6)-story office building; an existing seven (7) level parking garage; and a new, one (1)-story parking deck. The total number of parking spaces shall not be less than 1,261.
5. One of the outparcels shall contain a bike rack.
6. Neon, gas, flashing, animated, sound emitting, or rotating signs are prohibited. The Developer shall follow the 2007 Perimeter CID Public Standards for "Boulevards" for all signs in the public right-of-way.
7. Developer will provide sidewalks along its property frontage along Ashford-Dunwoody Road and Perimeter Center North per PCID standards.
8. Outdoor seating shall be allowed in the front of the hotel and restaurant. Sidewalks adjacent to the area of outdoor seating shall have a minimum of eight (8)-foot wide clear walkways for pedestrians.
9. The Developer shall follow the 2007 Perimeter CID Public Standards for "Boulevards" for all lighting it installs in the public right-of-way.
10. All utilities shall be underground. All street lighting shall be installed with an underground feed.
11. Developer shall follow the "Best Practice Management for Erosion Guidelines" and shall be particularly sensitive to erosion control along the property lines.
12. Water Quality for this newly re-developed portion of Sterling Pointe development shall meet the minimum requirements of Georgia Stormwater Management Manual or the City of Dunwoody.
13. All HVAC equipment located on the roofs of buildings shall be screened from the view of pedestrians on public right-of-way.
14. Signs located at the entrances to the development shall be monument style signs and shall be externally lit.
15. Parts of the Property may be conveyed as separate tracts and to separate owners with different ownership structures under the zoning plan.
16. Should there be a conveyance of part of the property to different owners, all zoning conditions and variances shall remain applicable to any portion

of the conveyed Property, regardless of what future person or entity owns the subdivided Property.

17. Conveyance of part of the property to different owners shall not require any changes to the zoning plan for the Development nor any variances. The newly-created property lines which arise from these conveyances are not required to observe setback, buffer or other requirements provided the building layout for the project as a whole continues to comply substantially with the submitted plan and existing condition of the site.

B. SLUP Condition:

1. The total height of the development shall not exceed: (a) an existing six (6)-story office building; (b) an existing eight (8)-story office building; (c) an existing seven (7)-story parking garage; (d) a proposed hotel not to exceed eight (8) stories; (e) a proposed one (1)-story restaurant; (f) two (2) proposed one (1)-story retail buildings; (g) a proposed one (1)-story retail outlet attached to the hotel; and (h) a proposed two (2)-level parking deck.

II. HISTORY

This 11.53 acre tract originally was zoned O-I and developed as part of the Taylor and Mathis Plan for Perimeter Center for one six (6)-story office building, one eight (8)-story office building, a seven (7)-story parking deck, and a surface parking lot with 512 spaces.

In 1998, a 3.45 portion of the property which faces Ashford-Dunwoody Road was zoned from OI to C-1 to allow for the development of two (2) restaurants along the Ashford-Dunwoody frontage. They were never developed.

In 2008, the entire tract was rezoned from O-I and C-1 to OCR per Z-08-15025. Further, a Special Land Use Permit was approved (SLUP-08-15024) to allow building heights of up to ten (10)-stories.

Both the 1996 and 2008 zoning approvals were conditioned upon substantial DHA input into the zoning process. DHA's focus then, as it remains today, was to make the site "pedestrian friendly" by orienting users close to Ashford-Dunwoody Road, creating outdoor seating and other gathering areas, and by providing substantial street scape treatment.

III. SLUP IMPACT ANALYSIS

A. Adequacy of the size of the site for the use contemplated and whether or not adequate land area is available for the proposed use including provision of all required yards, open space, off-street parking, and all other applicable requirements of the zoning district in which the use is proposed to be located.

The Subject Property consists of ±11.53 acres, which is more than adequate for the use contemplated. The Subject Property is currently developed with an eight (8)-story office building and a six (6)-story office building, among other things. Additionally, it has been approved for the development of (1) a ten (10)-story, 200-room hotel; (2) an 8,500 square foot free-standing restaurant; and (3) a two (2) level parking deck, among other things (Z-08-15025; SLUP-08-15024). The development proposed represents a modest increase in use from what has already been approved for the Subject Property. Those approvals authorized a reduction in the required yards and off-street parking. The development proposed will provide required yards and off-street parking consistent with the previous approval.

B. Compatibility of the proposed use with adjacent properties and land uses and with other properties and land uses in the district.

This proposal contemplates additional hotel, restaurant and retail space in an area already designated for such uses. The conversion of surface parking into usable buildings is highly desirable and fully consistent with surrounding development patterns. The proposed height fits with the existing office buildings. Location of retail uses on Ashford-Dunwoody is also consistent, and improvement of pedestrian access is enhanced as well.

C. Adequacy of public services, public facilities, and utilities to serve the use contemplated.

Utilities are available to serve the site. There will be no school-age children generated as a consequence of this development and therefore no impact on schools.

D. Adequacy of the public street on which the use is proposed to be located and whether or not there is sufficient traffic-carrying capacity for the use proposed so as not to unduly increase traffic and create congestion in the area.

The Subject Property is located in the southeast quadrant of the intersection of Ashford-Dunwoody Road and Perimeter Parkway North. The Applicant has submitted a traffic impact study with this application that demonstrates that the existing roadway network has sufficient traffic carrying capacity for the development proposed.

E. Whether or not existing land uses located along access routes to the site will be adversely affected by the character of the vehicles or the volume of traffic generated by the proposed use.

The Applicant has submitted a traffic impact study with this application that demonstrates that the proposed development will create no adverse effects.

F. Ingress and egress to the Subject Property and to all proposed buildings, structures, and uses thereon, with particular reference to pedestrian and automotive safety and convenience, traffic flow and control, and access in the event of fire or other emergency.

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.

G. Whether or not 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 is not inherently dusty, smelly, smoky or vibrating.

H. Whether or not the proposed use will create adverse impacts upon any adjoining land use by reason of the hours of operation of the proposed use.

The hours of operation proposed are consistent with the hours of operation on neighboring properties in the Perimeter Center area.

I. Whether or not the proposed use will create adverse impacts upon any adjoining land use by reason of the manner of operation and the proposed use.

The property is adjoined by only one parcel – an unmanned Georgia Power Substation to the south, which will not be affected in any way. The remainder of the Subject Property abuts public right-of-way.

J. Whether or not the proposed plan is otherwise consistent with the requirements of the zoning district classification in which the use is proposed to be located.

See Section A above.

K. Whether or not the proposed use is consistent with the policies of the comprehensive plan.

This proposal is compliant with the City’s Land Use Plan. Perimeter Center as a whole is designated as its own “Character Area” on the Dunwoody Comprehensive Plan. It is a regional center which is intended to contain first-class office, retail and restaurants in a pedestrian and bicycle-oriented environment. This particular tract, given its existing surface parking lot, expressly is denoted as a potential development opportunity within this regional setting.

There are a number of goals for the Perimeter Center Character Area which will be served by this project if approved:

- Encourage hotel and convention development near MARTA to foster commerce;
- Create bicycle and pedestrian options to connect with the rest of the City;
- Promote/establish new connectivity objections set forth in the plan;
- Maximize use of existing infrastructure and minimize conversion of undeveloped land at the urban periphery;
- Alternatives to transportation by automobile, including mass transit, bicycle routes and pedestrian facilities should be made available in each community;
- Each region should promote and preserve a regional identity or sense of place; and

- The businesses encouraged to develop should be suitable in terms of job skills required, long-term sustainability, and linkages to other economic activities in the regions.

Finally, there are also land use policies and goals served by this project:

- Preserve character of existing residential neighborhoods;
- Encourage a mix of compatible land uses in future infill development;
- Promote walk-and-bike-ability;
- Promote conversion of surface parking to other land uses; and
- Promote reduction of parking minimums while setting maximums in commercial zones.

L. Whether or not the proposed plan provides for all required buffer zones and transitional buffer zones where required by the regulations of the district in which the use is proposed to be located.

Yes.

M. Whether or not there is adequate provision of refuse and service areas.

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

N. Whether the length of time for which the special land use permit is granted should be limited in duration.

No. It will be impossible to secure funding needed to build the facility if it faces termination within a certain period of time.

O. Whether or not 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 the adjacent and nearby lots and buildings.

Yes. The size, scale and massing of proposed buildings are comparable (1) to those already on the Subject Property and/or already approved for the Subject Property; and (2) those found on neighboring properties all over the Perimeter Center area.

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

No. To the applicant's knowledge this site does not contain historic buildings, chimney, farmhouses, remains of Spruill family residences or any specific archaeological resources. It is a surface parking lot.

Q. Whether the proposed use satisfies the requirements contained within the supplemental regulations for such special land use permit.

Not applicable.

R. Whether or not the proposed building as a result of its proposed height will create a negative shadow impact on any adjoining lot or building.

No. See Section I above.

IV. PRESERVATION OF CONSTITUTIONAL RIGHTS

As owner of the property, 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.

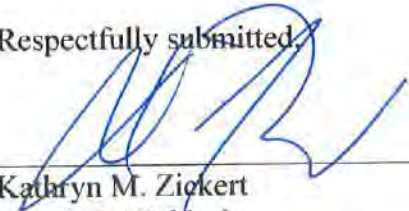
A refusal to allow the development in question would be unjustified from a fact-based standpoint and instead would result only from constituent opposition, which would be an unlawful delegation of authority in violation of Article IX, Section II, Paragraph IV of the Georgia Constitution.

A refusal to allow the development 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 Modification of Conditions of Approval at issue be approved. The Applicant also invites and welcomes any comments from Staff or other officials of the City of Dunwoody so that such recommendations or input might be incorporated as conditions of approval of this Application.

This ^{28th} day of February, 2013.

Respectfully submitted,


Kathryn M. Zickert
Dennis J. Webb, Jr.
Attorneys For Applicant

**COMPARISON OF APPROVED CONDITIONS OF SPECIAL LAND USE PERMIT
(SLUP-08-15024) AND PROPOSED CONDITIONS**

1. The total height of the development shall not exceed: ~~(1a) an existing six (6) -story office building; (2b) an existing eight (8) -story office building; (3c) an existing seven (7)-level-story parking garage; (4d) a proposed ten (10)-story hotel; (5 not to exceed eight (8) stories; (e) a proposed one (1)-story free-standing restaurant; and (6 restaurant; (f) two (2) proposed one (1)-story retail buildings; (g) a proposed one (1)-story retail outlet attached to the hotel; and (h) a proposed two (2) -level parking deck.~~ (1a) an existing six (6) -story office building; (2b) an existing eight (8) -story office building; (3c) an existing seven (7)-level-story parking garage; (4d) a proposed ten (10)-story hotel; (5 not to exceed eight (8) stories; (e) a proposed one (1)-story free-standing restaurant; and (6 restaurant; (f) two (2) proposed one (1)-story retail buildings; (g) a proposed one (1)-story retail outlet attached to the hotel; and (h) a proposed two (2) -level parking deck.

245



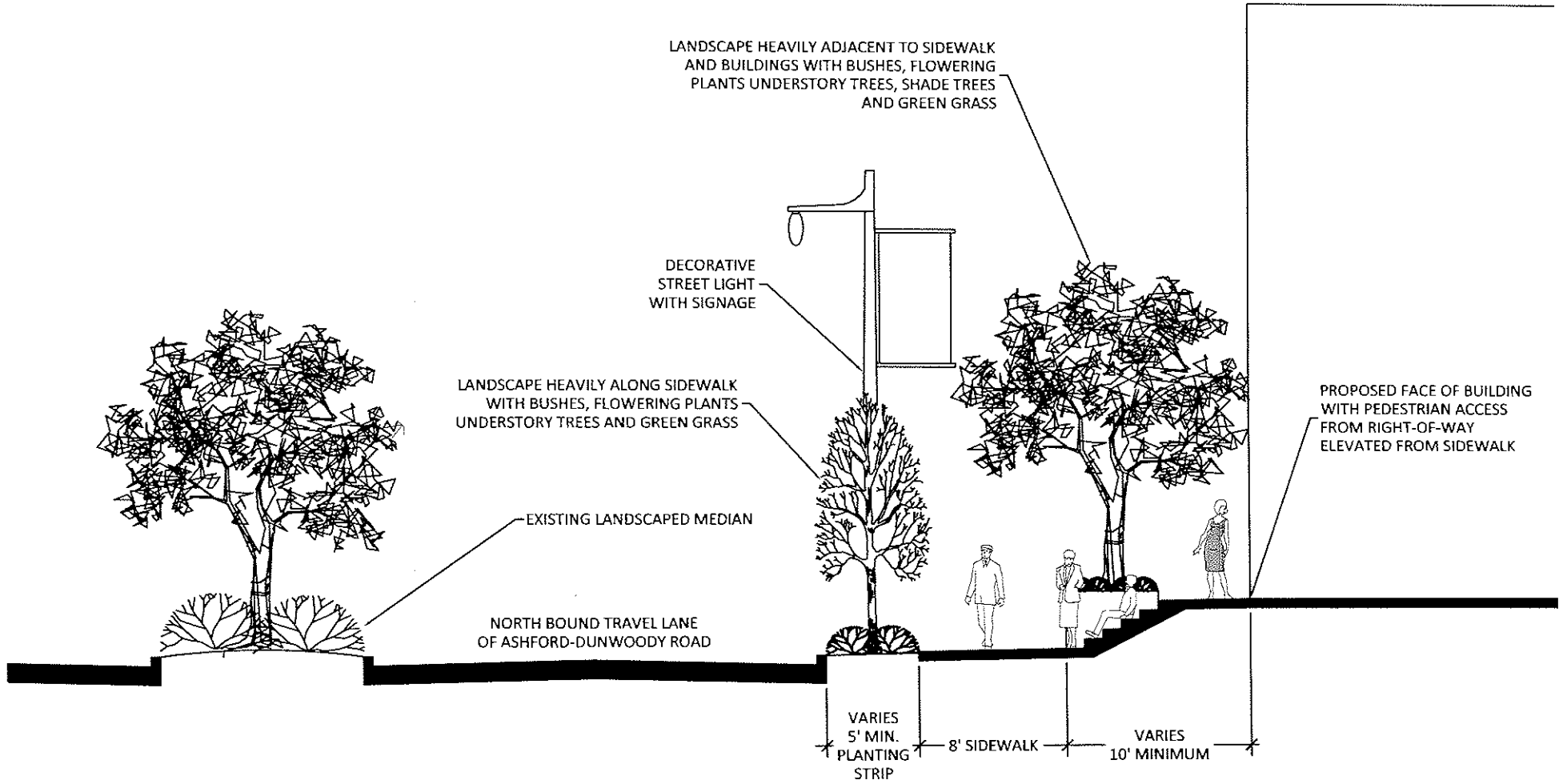
STERLING POINTE
DUNWOODY, GEORGIA

11.26.2012





-247-



STERLING POINTE REZONING SITE PLAN - STREET CROSS SECTION

PERIMETER CENTER NORTH, DUNWOODY, GEORGIA
FEBRUARY 28, 2013

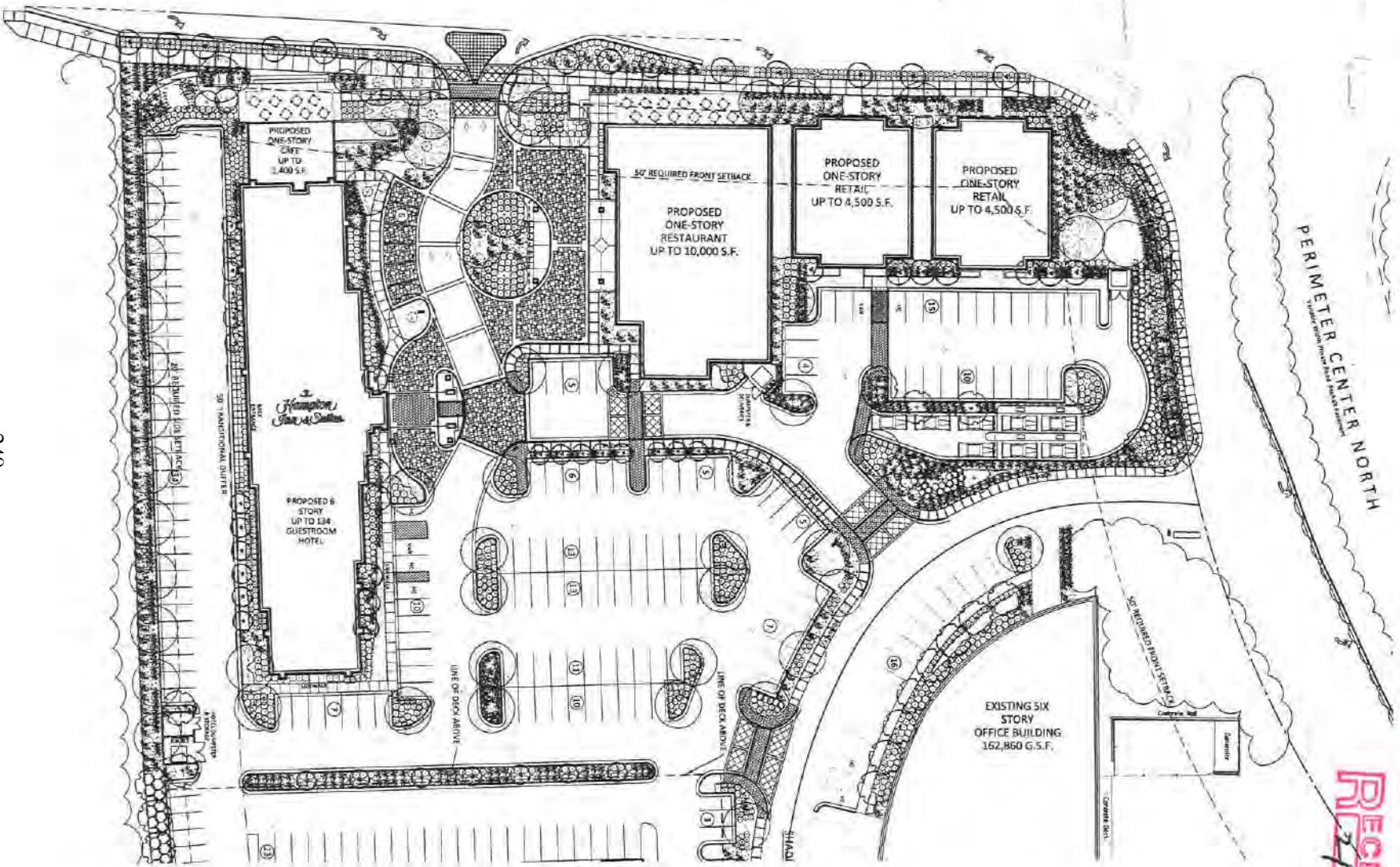


MCFARLAND-DYER & ASSOCIATES
4174 SILVER PEAK PARKWAY, SUWANEE, GEORGIA 30024
PHONE: (770) 932-6550 FAX: (770) 932-6551
WWW.GOMDA.NET

#M.4.

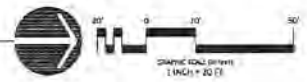
ASHFORD-DUNWOODY ROAD
120' Public Right of Way (Right of Way)

LEGEND	
STREET LIGHT POLE	
STREET TREE	
SHADE TREE	
UNDERSTORY TREE	
LOW SHRUBBERY	
SHRUBBERY	
GROUND COVER	
500' GRASS	



-249-

STERLING POINTE
LANDSCAPE ARCHITECTURAL CONCEPT
 PERIMETER CENTER NORTH, DUNWOODY, GEORGIA
 FEBRUARY 28, 2013



RECEIVED
 2/28/13

MDA
 M. FARU ANSARI & ASSOCIATES
 877 North Peachtree Street, Atlanta, GA 30309
 (404) 750-8122 FAX (404) 750-8123
 WWW.MDA-USA.COM

#M.4.

LEGAL DESCRIPTION:

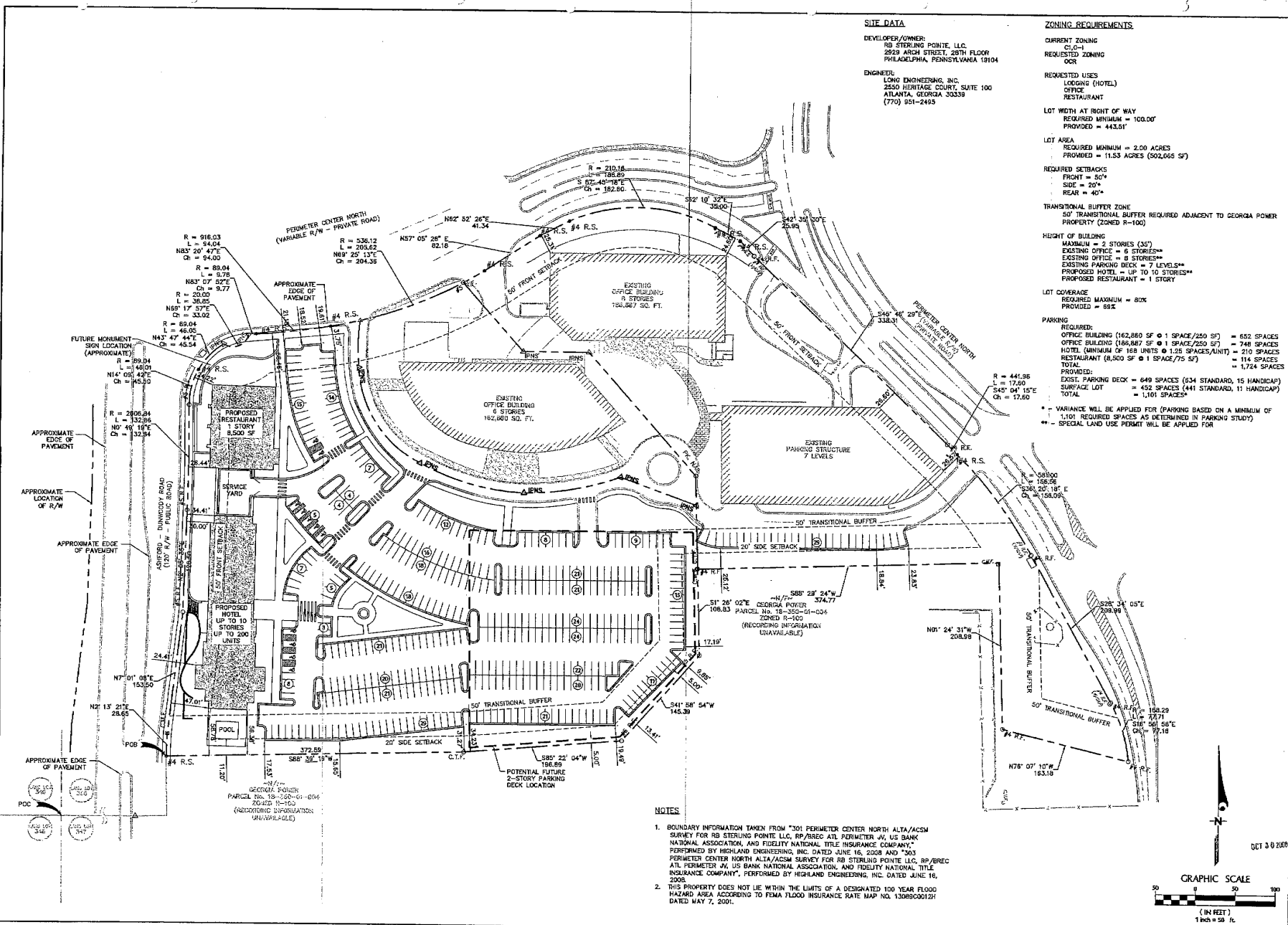
ALL THAT CERTAIN LOT, TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOTS 350 OF THE 18th DISTRICT OF DEKALB COUNTY, GEORGIA AND HAVING THE FOLLOWING METES AND BOUNDS TO WIT:

TO FIND THE TRUE POINT OF BEGINNING, COMMENCE AT THE CORNER COMMON TO LAND LOTS 347, 348, 349 & 350, THENCE ALONG THE SOUTH LINE OF LAND LOT 350, BEING ALSO THE NORTH LINE OF LAND LOT 347, SOUTH 89 DEGREES 53 MINUTES 41 SECONDS EAST (S89°53'41"E) A DISTANCE OF 246.90' TO A POINT; THENCE CONTINUING ALONG THE SOUTH LINE OF LAND LOT 350, NORTH 88 DEGREES 39 MINUTES 19 SECONDS EAST (N88°39'19"E) A DISTANCE OF 39.56' TO A POINT ON THE EASTERLY RIGHT-OF-WAY OF ASHFORD-DUNWOODY ROAD (120' FT PUBLIC RW); THENCE ALONG THE EASTERLY RIGHT-OF-WAY LINE OF ASHFORD-DUNWOODY ROAD NORTH 00 DEGREES 47 MINUTES 41 SECONDS WEST (N00°47'41"W) A DISTANCE OF 74.90' TO A #4 REBAR SET, SAID POINT BEING THE TRUE POINT-OF-BEGINNING, (P.O.B.); THENCE TURNING AND CONTINUING ALONG THE EASTERLY RIGHT-OF-WAY LINE OF ASHFORD-DUNWOODY ROAD NORTH 02 DEGREES 13 MINUTES 21 SECONDS EAST (N02°13'21"E) A DISTANCE OF 28.65' TO A CONCRETE MONUMENT FOUND; THENCE TURNING AND CONTINUING ALONG THE EASTERLY RIGHT-OF-WAY LINE OF ASHFORD-DUNWOODY ROAD NORTH 07 DEGREES 01 MINUTES 08 SECONDS EAST (N07°01'08"E) A DISTANCE OF 153.50' TO A #5 REBAR FOUND; THENCE TURNING AND CONTINUING ALONG THE EASTERLY RIGHT-OF-WAY LINE OF ASHFORD-DUNWOODY ROAD NORTH 02 DEGREES 05 MINUTES 35 SECONDS EAST (N02°05'35"E) A DISTANCE OF 128.50' TO A #5 REBAR FOUND; THENCE TURNING AND CONTINUING ALONG THE EASTERLY RIGHT-OF-WAY LINE OF ASHFORD-DUNWOODY ROAD, ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 2606.84' AND ARC LENGTH OF 132.86' BEING SUBTENDED BY A CHORD BEARING NORTH 00 DEGREES 49 MINUTES 19 SECONDS EAST (N00°49'19"E) A CHORD DISTANCE OF 132.84' TO A #4 REBAR SET FOR A POINT ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF PERIMETER CENTER NORTH (VARIABLE RW - PRIVATE ROAD); THENCE TURNING AND CONTINUING ALONG THE SOUTHERLY LINE OF PERIMETER CENTER NORTH ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 89.04' AND ARC LENGTH OF 46.01' BEING SUBTENDED BY A CHORD BEARING NORTH 14 DEGREES 09 MINUTES 42 SECONDS EAST (N14°09'42"E) A CHORD DISTANCE OF 45.50' TO A #4 REBAR SET; THENCE TURNING AND CONTINUING ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF PERIMETER CENTER NORTH ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 89.04' AN ARC DISTANCE OF 46.05' BEING SUBTENDED BY A CHORD BEARING NORTH 43 DEGREES 47 MINUTES 44 SECONDS EAST (N43°47'44"E) A CHORD DISTANCE OF 45.54 FEET TO A POINT; THENCE TURNING AND

CONTINUING ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF PERIMETER CENTER NORTH ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 20.00' AND ARC LENGTH OF 38.85' BEING SUBTENDED BY A CHORD BEARING NORTH 69 DEGREES 17 MINUTES 57 SECONDS EAST (N69°17'57"E) A CHORD DISTANCE OF 33.02' TO A POINT; THENCE TURNING AND CONTINUING ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF PERIMETER CENTER NORTH ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 89.04' AN ARC DISTANCE OF 9.78' BEING SUBTENDED BY A CHORD BEARING NORTH 83 DEGREES 07 MINUTES 52 SECONDS EAST (N83°07'52"E) A CHORD DISTANCE OF 9.77 FEET TO A #4 REBAR SET; THENCE TURNING AND CONTINUING ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF PERIMETER CENTER NORTH ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 916.03' AND ARC LENGTH OF 94.04' BEING SUBTENDED BY A CHORD BEARING NORTH 83 DEGREES 20 MINUTES 47 SECONDS EAST (N83°20'47"E) A CHORD DISTANCE OF 94.00' TO A #4 REBAR SET; THENCE TURNING AND CONTINUING ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF PERIMETER CENTER NORTH ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 536.12' AN ARC LENGTH OF 205.62' BEING SUBTENDED BY A CHORD BEARING NORTH 69 DEGREES 25 MINUTES 13 SECONDS EAST (N69°25'13"E) A CHORD DISTANCE OF 204.36' TO A #5 REBAR FOUND; THENCE TURNING AND CONTINUING ALONG SAID LINE NORTH 57 DEGREES 05 MINUTES 28 SECONDS EAST (N57°05'28"E) A DISTANCE OF 82.18' TO A #4 REBAR SET; THENCE TURNING AND CONTINUING ALONG SAID LINE NORTH 62 DEGREES 52 MINUTES 26 SECONDS EAST (N62°52'26"E) A DISTANCE OF 41.34' TO A #4 REBAR SET; THENCE TURNING AND CONTINUING ALONG SAID LINE AND ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 210.18', AN ARC LENGTH OF 188.89' AND BEING SUBTENDED BY A CHORD BEARING SOUTH 87 DEGREES 45 MINUTES 18 SECONDS EAST (S87°45'18"E) A CHORD DISTANCE OF 182.60' TO A #4 REBAR SET; THENCE TURNING AND CONTINUING ALONG SAID LINE SOUTH 62 DEGREES 10 MINUTES 32 SECONDS EAST (S62°10'32"E) A DISTANCE OF 35.00' TO A #4 REBAR SET; THENCE TURNING AND CONTINUING ALONG SAID LINE SOUTH 42 DEGREES 35 MINUTES 30 SECONDS EAST (S42°35'30"E) A DISTANCE OF 25.95' TO A #4 REBAR SET; THENCE TURNING AND CONTINUING ALONG SAID LINE SOUTH 45 DEGREES 46 MINUTES 29 SECONDS EAST (S45°46'29"E) A DISTANCE OF 338.31' TO A #4 REBAR SET; THENCE TURNING AND CONTINUING ALONG SAID LINE AND ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 441.96', AN ARC LENGTH OF 17.60' AND BEING SUBTENDED BY A CHORD BEARING SOUTH 45 DEGREES 04 MINUTES 15 SECONDS EAST (S45°04'15"E) A CHORD DISTANCE OF 17.60' TO A #4 REBAR SET; THENCE TURNING AND CONTINUING ALONG SAID LINE AND ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 581.00', AN ARC LENGTH OF 156.56' AND BEING SUBTENDED BY A CHORD BEARING SOUTH 36 DEGREES 20

MINUTES 18 SECONDS EAST (S36°20'18"E) A CHORD DISTANCE OF 156.09' TO A #4 REBAR FOUND; THENCE TURNING AND CONTINUING ALONG SAID LINE SOUTH 28 DEGREES 34 MINUTES 05 SECONDS EAST (S28°34'05"E) A DISTANCE OF 208.99' TO A #4 REBAR SET; THENCE TURNING AND CONTINUING ALONG SAID LINE AND ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 188.29, AN ARC LENGTH OF 77.71' AND BEING SUBTENDED BY A CHORD BEARING SOUTH 16 DEGREES 56 MINUTES 58 SECONDS EAST (S16°56'58"E) A CHORD DISTANCE OF 77.16' TO A #4 REBAR FOUND; THENCE TURNING AND LEAVING SAID RIGHT-OF-WAY LINE AND CONTINUING ALONG THE LINE OF NOW OR FORMERLY GEORGIA POWER NORTH 76 DEGREES 07 MINUTES 10 SECONDS WEST (N76°07'10"W) A DISTANCE OF 163.18' TO A #4 REBAR SET; THENCE TURNING AND CONTINUING ALONG SAID LINE NORTH 01 DEGREES 24 MINUTES 31 SECONDS WEST (N01°24'31"W) A DISTANCE OF 208.98' TO A CONCRETE MONUMENT FOUND; THENCE TURNING AND CONTINUING ALONG SAID LINE SOUTH 88 DEGREES 29 MINUTES 24 SECONDS WEST (S88°29'24"W) A DISTANCE OF 374.77' TO A CONCRETE MONUMENT FOUND; THENCE TURNING AND CONTINUING ALONG SAID LINE SOUTH 01 DEGREES 26 MINUTES 02 SECONDS EAST (S01°26'02"E) A DISTANCE OF 108.83' TO A #5 REBAR FOUND; THENCE TURNING AND CONTINUING ALONG SAID LINE SOUTH 41 DEGREES 58 MINUTES 54 SECONDS WEST (S41°58'54"W) A DISTANCE OF 145.39' TO A POINT; THENCE TURNING AND CONTINUING ALONG SAID LINE SOUTH 85 DEGREES 22 MINUTES 04 SECONDS WEST (S85°22'04"W) A DISTANCE OF 196.89' TO A CRIMPED TOP FOUND; THENCE TURNING AND CONTINUING ALONG SAID LINE SOUTH 88 DEGREES 39 MINUTES 19 SECONDS WEST (S88°39'19"W) A DISTANCE OF 372.59' TO A #4 REBAR SET; SAID POINT BEING THE POINT-OF-BEGINNING, (P.O.B.)

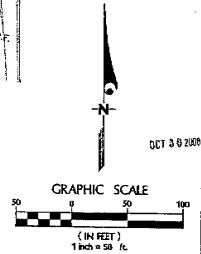
SAID TRACT CONTAINING 11.53 ACRES OR 502,065 SQUARE FEET.



SITE DATA
 DEVELOPER/OWNER:
 RB STERLING POINTE, LLC
 2923 ARCH STREET, 26TH FLOOR
 PHILADELPHIA, PENNSYLVANIA 19104
 ENGINEER:
 LONG ENGINEERING, INC.
 2350 HERITAGE COURT, SUITE 100
 ATLANTA, GEORGIA 30339
 (770) 951-2495

ZONING REQUIREMENTS
 CURRENT ZONING: C1-C
 REQUESTED ZONING: OCR
 REQUESTED USES: LODGING (HOTEL), OFFICE, RESTAURANT
 LOT WIDTH AT RIGHT OF WAY: REQUIRED MINIMUM = 100.00', PROVIDED = 443.51'
 LOT AREA: REQUIRED MINIMUM = 2.00 ACRES, PROVIDED = 11.53 ACRES (502,066 SF)
 REQUIRED SETBACKS: FRONT = 50', SIDE = 20', REAR = 40'
 TRANSITIONAL BUFFER ZONE: 50' TRANSITIONAL BUFFER REQUIRED ADJACENT TO GEORGIA POWER PROPERTY (ZONED R-100)
 HEIGHT OF BUILDING: MAXIMUM = 2 STORES (35')
 EXISTING OFFICE = 9 STORES
 EXISTING OFFICE = 6 STORES
 EXISTING OFFICE = 8 STORES
 EXISTING PARKING DECK = 7 LEVELS
 PROPOSED HOTEL = UP TO 10 STORES
 PROPOSED RESTAURANT = 1 STORY
 LOT COVERAGE: REQUIRED MAXIMUM = 80%, PROVIDED = 68%
 PARKING: REQUIRED OFFICE BUILDING (162,860 SF @ 1 SPACE/250 SF) = 652 SPACES
 OFFICE BUILDING (186,867 SF @ 1 SPACE/250 SF) = 748 SPACES
 HOTEL (MINIMUM OF 168 UNITS @ 1.28 SPACES/UNIT) = 210 SPACES
 RESTAURANT (8,500 SF @ 1 SPACE/75 SF) = 114 SPACES
 TOTAL = 1,724 SPACES
 PROVIDED: EXIST. PARKING DECK = 649 SPACES (634 STANDARD, 15 HANDICAP)
 SURFACE LOT = 452 SPACES (441 STANDARD, 11 HANDICAP)
 TOTAL = 1,101 SPACES
 * VARIANCE WILL BE APPLIED FOR (PARKING BASED ON A MINIMUM OF 1:101 REQUIRED SPACES AS DETERMINED IN PARKING STUDY)
 ** SPECIAL LAND USE PERMIT WILL BE APPLIED FOR

- NOTES**
- BOUNDARY INFORMATION TAKEN FROM "301 PERIMETER CENTER NORTH ALTA/ACSM SURVEY FOR RB STERLING POINTE LLC, RP/BREC ATL PERIMETER JV, US BANK NATIONAL ASSOCIATION, AND FIDELITY NATIONAL TITLE INSURANCE COMPANY", PERFORMED BY HIGHLAND ENGINEERING, INC. DATED JUNE 16, 2009 AND "303 PERIMETER CENTER NORTH ALTA/ACSM SURVEY FOR RB STERLING POINTE LLC, RP/BREC ATL PERIMETER JV, US BANK NATIONAL ASSOCIATION, AND FIDELITY NATIONAL TITLE INSURANCE COMPANY", PERFORMED BY HIGHLAND ENGINEERING, INC. DATED JUNE 16, 2009.
 - THIS PROPERTY DOES NOT LIE WITHIN THE LIMITS OF A DESIGNATED 100 YEAR FLOOD HAZARD AREA ACCORDING TO FEMA FLOOD INSURANCE RATE MAP NO. 13068C0012I DATED MAY 7, 2001.



REVISIONS

NO.	DATE	REVISION

2350 Heritage Court
 Atlanta, Georgia 30339
 Tel: (770) 951-2495
 Fax: (770) 951-2496
 www.longeng.com

LONG ENGINEERING, INC.

HOTEL STERLING POINTE
 307 & 303 PERIMETER CENTER NORTH
 ATLANTA, DEKALB COUNTY, GEORGIA
 EXHIBIT

OCT 3 0 2009

DATE: 10/29/09
 DESIGNED BY: [signature]
 CHECKED BY: [signature]
 DRAWN BY: [signature]

SHEET 1

Exhibit A