

MEMORANDUM

To: City Council

From: John Olson, AICP

Date: November 13, 2017

Subject: Prado Perimeter Center, LLC owner of 121 Perimeter Center West, tax parcel 18-349-05-029, by Dennis J. Webb, Jr., attorney for the owner, seeks the following:

1. **MA17-02:** Request to modify previous zoning conditions;
2. **SLUP 17-04 A):** Section 27-23(b) to vary maximum building height in and OCR (Office, Commercial, Residential) District from 2 stories/35 feet to a 7-story hotel and five-story parking structure;
3. **SLUP 17-04 B):** Section 27-98(b)(6) to vary the Minor Parkway Street Type requirement (Perimeter Center Place); and
4. **SLUP 17-04 C):** Section 27-98(b)(7) to vary the Primary Street Type requirement (Olde Perimeter Way).



BACKGROUND

The subject site is located at the northwest corner of Perimeter Center West and Perimeter Center Place. The property in question is currently improved with a three-story, 49,590 square foot office building that includes a Tin Lizzy's restaurant and SunTrust Bank. Along the western edge of the property, there is also a bank drive-thru building used by SunTrust. The remainder of the site consists of a surface parking lot with several islands of mature hardwood trees.

The site is zoned OCR (Office Commercial Residential) District Conditional and is immediately adjacent to OCR zoning to the north, east, and west of the property; a C-1 (Commercial) District is also found to the south, across Perimeter Center West. According to the Perimeter Center Zoning District regulating map, the parcel is also recognized as a permitted location of a PC-1 (Perimeter Center) District, which calls for the highest intensity of buildings within Perimeter Center.

SITE PLAN ANALYSIS

In 2010 the property was rezoned from an O-I (Office-Institution) District to OCR (Office Commercial Residential) District conditional per case RZ 10-041. The site plan and conditions of this case permits a three (3) story office building with approximately 4,600 square feet of retail or restaurant uses on the ground floor and a bank. To allow for additional buildings and uses on the site, the applicant (Prado Perimeter Center LLC, c/o Dennis J. Webb) is requesting to modify conditions of RZ 10-41 as required by Sections 27-335 and 27-337 of the Dunwoody Zoning Ordinance. According to the site plan, dated August 29, 2017, the major amendment (MA17-02) seeks to amend the site plan to allow for a new restaurant building up to 10,000 square feet, a hotel with 157 rooms, a parking deck providing 364 spaces, and a new location for the drive-thru parking structure. The existing three-story office building that includes a SunTrust Bank and Tin Lizzy's restaurant will remain on the subject property. The applicant also seeks a Special Land Use Permit from Chapter 27, Section 27-73(b) to vary the maximum allowable building height in an OCR (Office Commercial Residential) District from 2 stories/35 feet to permit a 7-story hotel and 5-story parking deck. Staff would note that the proposed height is similar to the 6-story apartment complex to north, and lesser in height to several 12-story buildings further east and south of the property. Additionally, the applicant seeks two SLUPs to vary the minor parkway and primary type requirements of the Perimeter Center Overlay. The aforementioned requests relate to two companion variances and a special exception that were approved by the Zoning Board of Appeals on September 7, 2017:

- ZBA 17-14 A): reduction of the rear yard from 40 to 20 feet for the parking deck;
- ZBA17-14 B): reduction of the side setback reduction from 20 to 10 for the parking deck; and
- SE 17-01: A reduction of parking requirements from 444 to 342 spaces.

An applicant initiated meeting was held on June 29, 2017 from 5:00 to 7:00 P.M. at Hampton Inn and Suites, located at 4565 Ashford Dunwoody Road. Staff received no notice of opposition during this meeting.



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TREE ANALYSIS

Approximately 63 existing parking lot trees, including 14 willow oak specimen trees, are proposed to be removed for grading and land development. Of the specimens, three have a diameter breast height of 24 inches, one is 28 inches, one is 29 inches, one is 30 inches, one is 38 inches, and seven are 32 inches. Review of the site plan indicates that five trees internal to the site and 11 existing street trees will be saved. As well, 17 additional street trees are proposed to be planted along the site’s perimeter street frontage, located along Perimeter Center West. In an effort to save mature oak trees on the site, staff has added condition 17, which states that the applicant will save the 38 inch willow oak at the corner of Perimeter Center West and Perimeter Center Place, and prior to issuance of land development permit submit a landscape plan that attempts to save other specimen sized oaks on the property. Should the applicant be able to save additional trees, the condition allows the Community Development Director to approve of a revised site plan. Finally, condition 18 requires the applicant to plant 60% of the street tree plantings as 4” DBH trees.

PARKING ANALYSIS

Code Section 27-421 of the City's Zoning Ordinance permits the Zoning Board of Appeal the ability to waive or reduce the required number of parking spaces in any district upon a finding that the character of the use makes the full provision of parking or loading spaces unnecessary. As demonstrated by the shared parking analysis below, the character of the development makes the full required number of parking spaces unnecessary as office parking is generally in greatest demand during the day, and hotel and restaurant parking during the evening. In response to this demand, the Zoning Board of Appeals approved a reduction of parking from 444 to 342 spaces as a Special Exception (SE17-01) on September 7th, 2017.

Shared parking calculation (ULI methodology)													
USE	SIZE/NUMBER	UNIT	RATE TYPE	WEEKDAY		WEEKEND		PEAK MONTH	PEAK HOUR	MODE ADJUSTMENT	TOTAL SPACES NEEDED	PER CITY CODE (Sec. 27-202)	
				RATE	SPACES	RATE	SPACES	DEC.	7PM			RATE	SPACES
RESTAURANT	14600	ft ²	VISITOR	15.25	223	17	249	100%	100%		223	6.67	98
			EMPLOYEE	2.75	41	3	44	100%	100%		41		
HOTEL	157	rooms	VISITOR	1	157	0.9	142	67%	75%	66%	53	1.25	197
			EMPLOYEE	0.25	40	0.18	29	100%	20%		8		
OFFICE	44990	ft ²	VISITOR	0.3	14	0.03	2	100%	2%		1	3.30	149
			EMPLOYEE	3.5	158	0.35	16	100%	10%		16		
					633		482				342		444
Potential reduction with shared parking (ULI rates): -46%													
Potential reduction with shared parking (City code): -23%													

SURROUNDING LAND USE

Direction	Zoning	Future Land Use	Current Land Use
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N	OCR	Perimeter Center	Multi-family
S	C-1	Perimeter Center	Commercial
E	OCRc	Perimeter Center	Office
W	OCR	Perimeter Center	Commercial

Zoning Ordinance Requests

MA17-02

MA17-02 is a Major Amendment request to modify the conditioned site plan and uses imposed in RZ010-041. This amendment will allow for a new restaurant building up to 10,000 square feet, a hotel with 157 rooms, a parking deck providing 364 spaces, and a new location for the drive-thru parking structure. In light of the surrounding uses that are similar in character, and the fact that it aligns with many of goals of the Comprehensive Plan as outlined in the zoning analysis, staff supports the requested amendment.

SLUP 17-04 A)

Through the process of a Special Land Use Permit, the applicant has requested to increase the building height in an OCR District from 2 stories/35 feet for a seven-story 83-foot hotel and five-story parking deck. The request for height is consistent to properties to the east and north of the subject property. Further, the Perimeter Center District Regulations call for this site to be a PC-1 district, which would allow for a height of 16 stories and 200 feet by right. For these reasons, staff supports the request for additional height.

Relevant Code Sections:

1. Section 27-97(b): The maximum building height (stories/feet) in a OCR District is 2 stories and 35 feet.
2. Section 27-97(b)(4): Buildings in excess stated height limits may be approved through the special land use permit procedures of article V, division 3.

SLUP 17-04 B)

Perimeter Center Place is listed as a Minor Parkway that requires a minimum 6-foot street buffer with street trees, 12-foot shared use path (or 6-foot sidewalk with separate bike lane), and 6-foot yard treatment to building location. Due to an underground gas line, the applicant is requesting to move the street trees from the street buffer to the landscape buffer, located on the other side of the sidewalk. With the exception to the location of the street trees, review of the site plan indicates that the proposed streetscaping meets all other aspects of the minor parkway frontage requirements (see section below). Staff is of the opinion that full compliance along Perimeter Center Place can be waived if, during the Land Disturbance Permit process, the applicant can substantiate the exact location of the gas line. In response to this request, condition 16 has been added to the recommended list of conditions, wherein during the land development phase, the Community Development Director will review information provided by the applicant to determine whether or not the trees need to be moved.

Relevant Code Sections:

The applicant requests a SLUP from the following standards of the Overlay:

1. Section 27-98(b)(6): Minor Parkway Street Type requires a separate bicycle lane, 6-foot street buffer, and 10-foot sidewalk (Perimeter Center Place);

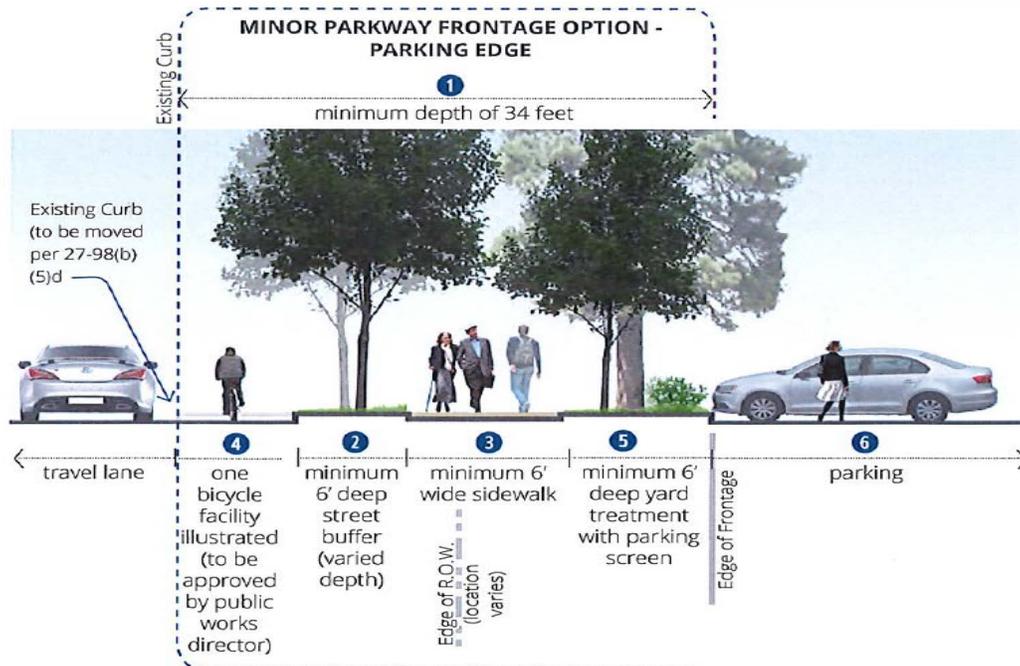


Figure 27-98-12 Minor Parkway Frontage Option - Parking Edge

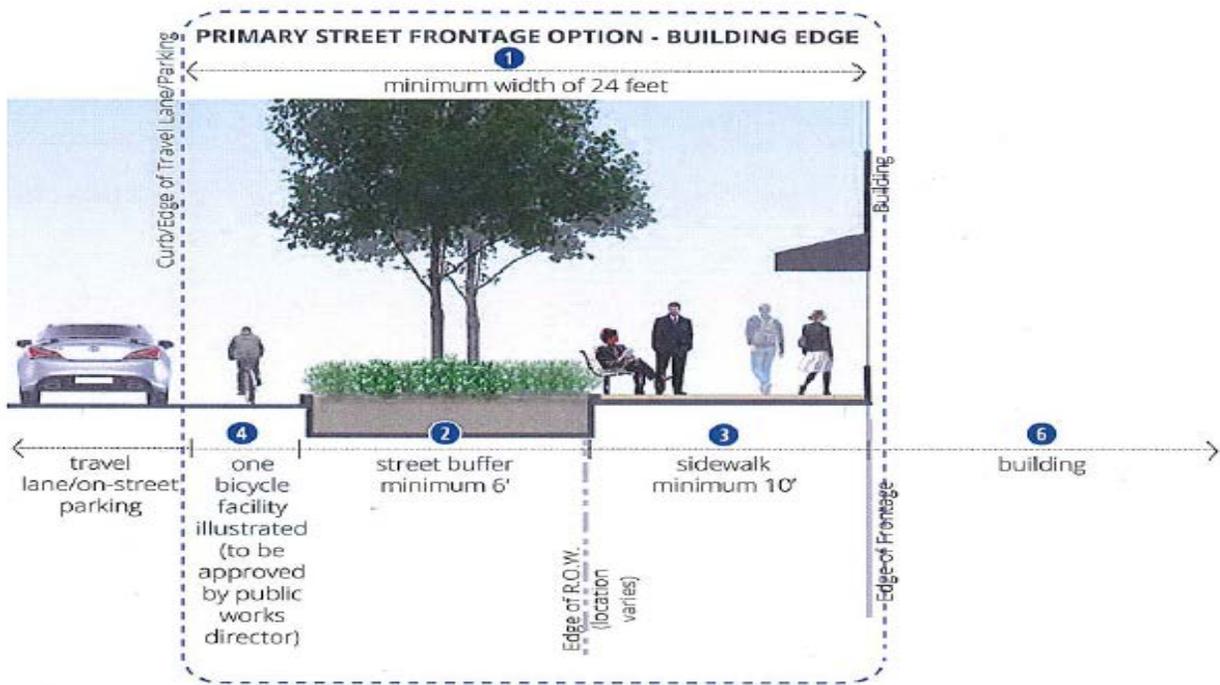
SLUP 17-04 C)

Olde Perimeter Way is listed as a Primary Street that requires a separate bicycle facility, 6-foot street buffer with street trees, and 10-foot sidewalk to building (see street transect below). The applicant has requested a waiver to the requirement for Olde Perimeter Way to keep the streetscape as it is until the neighboring property redevelops. Review of the site indicates that there is space to build the streetscape improvement; as such, staff does not support the request as proposed. Based on discussions with Public Works, they are agreeable to eliminating the bicycle lane due to its location on a private road. This would alter the required frontage to only a 6-foot street buffer and 10-foot sidewalk.

Relevant Code Sections:

The applicant requests a SLUP from the following standards of the Overlay:

2. Section 27-98(b)(7): Primary Street Type requires a separate bicycle lane, 6-foot street buffer, and 10-foot sidewalk (Olde Perimeter Way);





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ZONING ANALYSIS FOR MAJOR AMENDMENT REQUEST

In accordance with Section 27-335 of the Dunwoody Zoning Code, the following review and approval criteria shall be used in reviewing the respective amendment applications:

1. Whether the zoning proposal is in conformity with the policy and intent of the comprehensive plan;
The development of the subject property is consistent with the following policies of Comprehensive Plan: 1) encourage a "reduction in excessive surface parking"; 2) promote redevelopment with "high quality design standards and building materials"; 3) encourage development of "pedestrian and bicycle oriented environments"; 4) and create a "livable" regional center with a mix of uses. Additionally, as outlined in the Comprehensive Plan and Zoning Ordinance, the subject site is identified as a permitted location of a PC-1 District. Based on the review of submitted site plan, it appears the development is consistent with this designation, as it promotes a higher intensity of buildings with a mix of uses.
2. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby properties;
The proposed uses are suitable, in light of the existing mix of retail, restaurant, and office uses in the area.
3. Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned;
While the property does have an economic use as an OCR zoned District, it remains conditioned to a site plan, which limits the highest and best use of the property. The request for an increase in height and modifications of the site plan are intended to align with the intended Comprehensive Plan and PC regulations, which supports a higher intensity of buildings on the site.
4. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property;
The rezoning proposal aligns with the mix of office, retail and restaurant uses in the area. From a use or usability standpoint there should be no adverse effects to adjacent or nearby property. Staff would note that the proposed parking deck will be mitigated by landscape screening and architectural treatments.
5. Whether there are other existing or changing conditions affecting the use and development of the property that provide supporting grounds for either approval or disapproval of the zoning proposal;
The proposed density and uses of the property aligns with the goals of the Comprehensive Plan, Perimeter Center Overlay, and Perimeter Center District requirements that provide supporting grounds for approval.
6. Whether the zoning proposal will adversely affect historic buildings, sites, districts, or archaeological resources;
The zoning proposal is located on an existing surface parking lot wherein its redevelopment will not affect historic buildings, sites, districts or archaeological facilities.

7. Whether the zoning proposal will result in a use that will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.
The zoning proposal will not result in a use that will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.

ZONING ANALYSIS FOR SPECIAL LAND USE PERMIT REQUESTS

In accordance with Section 27-359 of the Dunwoody Zoning Code, the following review and approval criteria shall be used in reviewing the respective SLUP applications:

1. Whether the proposed use is consistent with the policies of the comprehensive plan;
The proposed use is consistent with policies of the Comprehensive Plan. See statement number one in the review and approval criteria for zoning map amendments above.
2. Whether the proposed use complies with the requirements of this zoning ordinance;
The proposed development complies with the OCR zoning district with the exception of the rear and side setbacks for the parking deck, which was applied for and approved as a variance (ZBA17-14), the parking spaces provided, which was applied for and approved as a special exception (SE17-01), and some of the Perimeter Center Overlay Standards, which is applied for in this application as noted above. While the project is located within the newly adopted Perimeter Center Overlay, it remains non-compliant as developed. However, as a mixed use redevelopment with pedestrian and bicycle oriented environments, the proposed redevelopment will bring the subject property into greater compliance with the goals of the Perimeter Center Overlay.
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;
While the development provides adequate land area for the proposed uses, it will require the removal of several parking lot trees to make space available. Additionally, the shared parking analysis indicates that the proposed parking will be appropriate to meet the parking demands of the site. Staff would note that the Zoning Board of Appeals approved a Special Exception (SE17-01) that reduced the required parking from 444 to 342 spaces.
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 uses will not impact adjoining uses by reasons of noise, smoke, odor, dust or vibration generated by the proposed use. To help mitigate the impacts of the parking deck in relation to the adjacent apartment building, staff has provided condition 14 requiring hooded lights and architectural treatments, and condition 10 requiring a Transition Yard 2 on the side (west) and rear (north) of the parking deck.
 - 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;



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The proposed uses are compatible to what exists in the area, and therefore, will not create adverse impacts upon any adjoining land use by reason of the hours of operation.

- 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 proposed uses are compatible to what exists in the area, and therefore, will not create adverse impacts upon any adjoining land use by reason of the manner of operation of the proposed use.
 - 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;
The development contains compatible uses that will generate traffic at different peak hours, so it appears that the proposed use will not create adverse impacts upon any adjoining land use by reason of the character of vehicles.
 - 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 the 7- story hotel development is appropriate in relation to the size, scale and massing of 6-story apartment building found to the north. Additionally, there is a higher intensity 12-story office building to the east of the development, and more focused urban development further west of the site; all of which support the size, scale and massing of the building proposed on the site.
 - f. Whether the proposed plan will adversely affect historic buildings, sites, districts, or archaeological resources.
As previously noted, the zoning proposal is located on an existing surface parking lot wherein its redevelopment will not affect historic buildings, sites, districts or archaeological facilities.
5. Whether public services, public facilities and utilities—including motorized and nonmotorized transportation facilities—are adequate to serve the proposed use;
Public services and facilities, and utilities appear to be 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 site is served by three different streets that all have adequate means of ingress and egress.
 7. Whether adequate provision has been made for refuse and service areas; and
The site plan provides adequate provisions for refuse and service areas.
 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 apartments to the north of the property are approximately 20 feet from the property line and 33 feet from the proposed parking deck. Given the proximity of the buildings, and the fact that the parking structure will go up to five stories, the proposed parking deck may have some shadow impact on the lower level apartments found immediately adjacent to the deck.

Planning Commission

The Planning Commission heard the applicant's request at the August, September, and October Planning Commission meetings. At the September hearing, a motion was made to approve MA17-02 to modify conditions of zoning and defer SLUP17-04 to the October hearing. The motion passed 7-0. At the October hearing, a motion was made to approve of SLUP17-04 A) Section 27-23(b) to vary maximum building height from two stories and 35 feet to seven stories and five stories, and SLUP17-04 B) Section 27-98(b)(6) to vary the Minor Parkway Street Type requirement (Perimeter Center Place), and deny SLUP17-04 C) to vary a Primary Street Type. The motion was voted and passed 5 to 2. As part of the approval, the Planning Commission recommended the following conditions be placed on the project:

1. The applicant will use hooded lights and architectural treatments, as approved by the Community Development Director, to lessen the impact on the south and north elevations of the parking deck.
2. Within the cross-hatched area shown on the plans, the uses are limited to a bank drive-thru and restaurants.
3. For any trees removed that cannot be replaced on site, the funds paid into the tree bank should go to planting trees within the PCID.
4. The applicant shall return to the Planning Commission prior to receiving a building permit for a restaurant with color elevations and site plan.
5. The Community Development Director must approve the removal of existing trees on the site prior to the construction of a restaurant.

The City Attorney has reviewed condition 4, and in a statement to staff, it was advised that this condition is not legal, as there's no established procedure for design review by the Planning Commission. As such, staff has removed this condition from staff's recommendation.

Staff Recommendation

Staff recommends **APPROVAL** of SLUP 17-04 A) Section 27-23(b) to vary maximum building height from two stories and 35 feet to seven stories and 83 feet, and B) Section 27-98(b)(6) to vary the Minor Parkway Street Type requirement with the following conditions:

1. Unless otherwise approved, the site plan shall be modified to be in compliance with all Perimeter Center Overlay and all zoning requirements.
2. The total density on the Property shall not exceed (a) an existing $\pm 50,000$ square foot, three-story office building with office, commercial, financial services, retail and/or restaurant uses; (b) a seven-story, 157 room hotel; (c) a single-story standalone restaurant space of up to 10,000 square feet; (d) a standalone, two-lane bank drive-thru; and (e) a five-story parking deck, accepting that the Owner may construct up to a combined total of 15,000 square feet of new restaurant, retail sales, commercial and/or office space in the cross-hatched area on the Site Plan if it

- can demonstrate to the Director of Community Development that adequate parking can be provided. Total parking on the Property shall be a minimum of 342 spaces.
3. Maximum height allowed on the Property will be seven-stories for the hotel and five stories for the parking deck.
 4. Dumpster(s) for the proposed standalone restaurant(s) will be located so as to not be seen from public right of way.
 5. Once no longer required by Tin Lizzy's lease, the shed located on western side of existing three-story office building will be removed.
 6. Once no longer required by Tin Lizzy's lease, the ventilation piping on the western façade of the existing three-story office building will be removed and all HVAC equipment will be screened.
 7. The existing SunTrust sign on Perimeter Center West will come into full compliance with current sign code within 12 months of the issuance of a building permit for the new development proposed by this application.
 8. Should any existing street tree(s) become diseased and/or die, the Owner shall replant new 6 inch DBH tree(s) of the same species in their place.
 9. The drive-thru shown on the Site Plan shall be allowed in lieu of the requirements of the Perimeter Center Overlay, including but not limited to Section 27-98(d)(8); which regulates accessory drive-thru structures in the Perimeter Center Overlay.
 10. Applicant should provide a Transition Yard 2 on the side (west) and rear (north) of the parking deck. Such Transition Yard shall contain no surface parking.
 11. The applicant shall remove the bypass lane found at the drive-thru.
 12. The proposed driveway off of Perimeter Center West should be reduced in width from 28 feet to 26 or less.
 13. For any trees removed that cannot be replaced on site, the funds paid into the tree bank should go to planting trees with in the PCID.
 14. The applicant will use hooded lights and architectural treatments, as approved by the Community Development Director, to lessen the impact on the south and north elevations of the parking deck.
 15. Within the cross-hatched area shown on the plans, the uses are limited to a bank drive-thru and restaurants.
 16. During the Land Development Permit process, applicant shall show the exact location of the gas line in relation to the intended location of the street trees along Perimeter Center Place. Based on the information provided, the Community Development Director will review and determine whether the street trees on Perimeter can be planted between the sidewalk and the road as shown in the Perimeter Center Overlay. If it is determined that the gas line will not impact placement of street trees, the street trees will need to be planted per streetscape requirements for a Minor Parkway Street Type.
 17. During the land development phase, the applicant shall work with the City Arborist and Community Development Director to save the 38" Willow Oak at the corner of Perimeter Center West and Perimeter Center Place. Further, prior to the issuance of land disturbance permit, the applicant shall submit a landscape plan to attempt to save some of the specimen sized oaks on the property. In the event that the site plan needs to be amended to save trees, the Community Development Director is authorized to approve of a revised plan.
 18. A minimum of 60% of the trees proposed for planting on the landscape plan shall be 4" DBH, unless otherwise approved by the City Arborist.
 19. The Community Development Director must approve the removal of existing trees on the site prior to the construction of a restaurant.

Staff believes that there is adequate room on the property to fully comply with all Perimeter Center Overlay requirements on Olde Perimeter Way and that the applicant has failed to demonstrate why it is necessary to vary the requirements. For these reasons, staff recommends **Denial** of SLUP 17-04 C) Section 27-98(b)(7) to vary the Primary Street Type requirement.

Attachments

- Ordinance granting MA17-01
- Ordinance granting SLUP17-04 (A)&(B)
- SLUP 17-04 Original Application packet
- MA17-01 Original Application packet
- Site plan dated 8-29-2017
- Tree Survey and Landscape Plan date 10-5-2017
- Architectural Renderings
- Parking deck treatments
- Shared Parking Calculations
- Dunwoody Comprehensive Plan excerpt
- Perimeter Center Overlay
- Site photos

**AN ORDINANCE TO AMEND THE CITY OF DUNWOODY ZONING
MAP FOR ZONING CONDITIONS OF TAX PARCEL 18-349-05-029 IN
CONSIDERATION OF SPECIAL LAND USE PERMIT SLUP 17-04(A) and
AND(B) (121 Perimeter Center West)**

WHEREAS: Notice to the public regarding said modification to conditions of zoning has been duly published in The Dunwoody Crier, the Official News Organ of the City of Dunwoody, Georgia; and

WHEREAS, Applicant Prado Perimeter Center, LLC seeks a Special Land Use Permit from Chapter 27, Section 27-23(b) to vary maximum building height in and OCR (Office, Commercial, Residential) District from 2 stories/35 feet to a 7-story hotel and five-story parking structure; and

WHEREAS: Applicant Prado Perimeter Center, LLC further seeks a Special Land Use Permit from Section 27-98(b)(6) to vary the Minor Parkway Street Type requirement (Perimeter Center Place); and

WHEREAS: Applicant Prado Perimeter Center, LLC Section 27-98(b)(7) to vary the Primary Street Type requirement (Olde Perimeter Way); and

WHEREAS: The Mayor and City Council find that this parts (A) and (B) of this SLUP request would be consistent with the vision of the Dunwoody Comprehensive Plan and Perimeter Center Overlay and will have a positive impact on the area, transforming it into a walkable office and commercial center.

NOW THEREFORE, The Mayor and City Council of the City of Dunwoody hereby ordains denies Special Land Use Permit 17-04(C) to vary the Primary Street Type requirement (Olde Perimeter Way) and approves Special Land Use Permit 17-04(A) and (B) for this said property to allow an increase in building height from 2 stories/35 feet to permit a 7-story hotel and 5-story parking deck. Development shall be in substantial compliance with the conditions:

1. **Unless otherwise approved, the site plan shall be modified to be in compliance with all Perimeter Center Overlay and all zoning requirements.**
2. **The total density on the Property shall not exceed (a) an existing ±50,000 square foot, three-story office building with office, commercial, financial services, retail and/or restaurant uses; (b) a seven-story, 157 room hotel; (c) a single-story standalone restaurant space of up to 10,000 square feet; (d) a standalone, two-lane bank drive-thru; and (e) a five-story parking deck, accepting that the Owner may construct up to a combined total of 15,000 square feet of new restaurant, retail sales, commercial and/or office space in the cross-hatched area on the Site Plan if it can demonstrate to the Director of Community Development that adequate parking can be provided. Total parking on the Property shall be a minimum of 342 spaces.**
3. **Maximum height allowed on the Property will be seven-stories for the hotel and five stories for the parking deck.**
4. **Dumpster(s) for the proposed standalone restaurant(s) will be located so as to not be seen from public right of way.**
5. **Once no longer required by Tin Lizzy's lease, the shed located on western side of existing three-story office building will be removed.**

6. Once no longer required by Tin Lizzy's lease, the ventilation piping on the western façade of the existing three-story office building will be removed and all HVAC equipment will be screened.
7. The existing SunTrust sign on Perimeter Center West will come into full compliance with current sign code within 12 months of the issuance of a building permit for the new development proposed by this application.
8. Should any existing street tree(s) become diseased and/or die, the Owner shall replant new 6 inch DBH tree(s) of the same species in their place.
9. The drive-thru shown on the Site Plan shall be allowed in lieu of the requirements of the Perimeter Center Overlay, including but not limited to Section 27-98(d)(8); which regulates accessory drive-thru structures in the Perimeter Center Overlay.
10. Applicant should provide a Transition Yard 2 on the side (west) and rear (north) of the parking deck. Such Transition Yard shall contain no surface parking.
11. The applicant shall remove the bypass lane found at the drive-thru.
12. The proposed driveway off of Perimeter Center West should be reduced in width from 28 feet to 26 or less.
13. For any trees removed that cannot be replaced on site, the funds paid into the tree bank should go to planting trees with in the PCID.
14. The applicant will use hooded lights and architectural treatments, as approved by the Community Development Director, to lessen the impact on the south and north elevations of the parking deck.
15. Within the cross-hatched area shown on the plans, the uses are limited to a bank drive-thru and restaurants.
16. During the Land Development Permit process, applicant shall show the exact location of the gas line in relation to the intended location of the street trees along Perimeter Center Place. Based on the information provided, the Community Development Director will review and determine whether the street trees on Perimeter can be planted between the sidewalk and the road as shown in the Perimeter Center Overlay. If it is determined that the gas line will not impact placement of street trees, the street trees will need to be planted per streetscape requirements for a Minor Parkway Street Type.
17. During the land development phase, the applicant shall work with the City Arborist and Community Development Director to save the 38" Willow Oak at the corner of Perimeter Center West and Perimeter Center Place. Further, prior to the issuance of land disturbance permit, the applicant shall submit a landscape plan to attempt to save some of the specimen sized oaks on the property. In the event that the site plan needs to be amended to save trees, the Community Development Director is authorized to approve of a revised plan.
18. A minimum of 60% of the trees proposed for planting on the landscape plan shall be 4" DBH, unless otherwise approved by the City Arborist.
19. The Community Development Director must approve the removal of existing trees on the site prior to the construction of a restaurant.

SO ORDAINED AND EFFECTIVE, this ____ day of _____, 2017.

Approved by:

Denis L. Shortal, Mayor

Attest:

Approved as to Form and Content

Sharon Lowery, City Clerk

City Attorney

SEAL

2017163

SLUP 17-04

#6.

RECEIVED
7/5/17

SPECIAL LAND USE PERMIT APPLICATION

Community Development
Dunwoody
Smart people - Smart city

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

* Applicant Information: **2017163 SLUP 17-04**

Company Name: Prado Perimeter Center, LLC, c/o Dennis J. Webb, Jr.
 Contact Name: Dennis J. Webb, Jr.
 Address: 1230 Peachtree St., NE, Ste. 3100, Atlanta, GA 30309
 Phone: 404-815-3620 Fax: 404-685-6920 Email: djwebb@sgrlaw.com
 Pre-application conference date (required): 6/6/17

* Owner Information: Check here if same as applicant

Owner's Name: Prado Perimeter Center, LLC
 Owner's Address: P.O. Box 988, Duluth, GA 30096
 Phone: 404-983-2510 Fax: _____ Email: brucewilliamsproperties@earthlink.net

* Property Information:

Property Address: 121 Perimeter Center West Parcel ID: 18-349-05-029
 Zoning Classification: OCRC
 Requested Use of the Property: Hotel, parking deck, restaurant

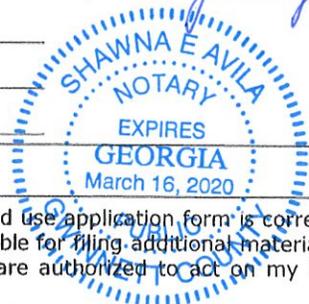
* Applicant Affidavit:

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: Dennis J. Webb, Jr.
 Applicant's Signature: [Signature] Date: 7/5/17

* Notary:

Sworn to and subscribed before me this 5th Day of July, 2017
 Notary Public: Shawna E. Avila
 Signature: Shawna E. Avila
 My Commission Expires: 3-16-20



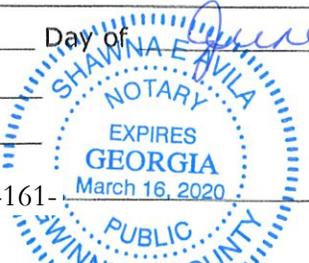
* Owner Affidavit:

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: Prado Perimeter Center, LLC
 Property Owner's Signature: [Signature] Date: 6/29/17

* Notary:

Sworn to and subscribed before me this 29th Day of June, 2017
 Notary Public: Shawna E. Avila
 Signature: Shawna E. Avila
 My Commission Expires: 3-16-20



\$ 500.00

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: Prado Perimeter Center, LLC

Signature: 	Date: 6/29/17
Address: P.O. Box 988, Duluth, GA 30096	

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: Kathryn M. Zickert

Signature: <u></u>	Date: <u>7/5/17</u>
Address: <u>1230 Peachtree St., NE, Ste. 3100, Atlanta, GA 30309</u>	

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

Date	Government Official	Official Position	Description	Amount

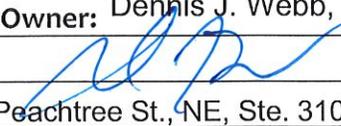
Campaign Disclosure Statement



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.

Signature: 	Date: <u>7/5/17</u>
Address: <u>1230 Peachtree St., NE, Ste. 3100, Atlanta, GA 30309</u>	

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: Vickie C. Rusek

Signature: <u><i>Vickie C. Rusek</i></u>	Date: <u>6/27/17</u>
Address: <u>1230 Peachtree St., NE, Ste. 3100, Atlanta, GA 30309</u>	

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
City of Dunwoody Zoning Ordinance
For the
Special Land Use Permit Application

of

Prado Perimeter Center, LLC

for

± 4.70 Acres of Land
located in
Land Lot 349, 18th District, DeKalb County
Address: 121 Perimeter Center West

Submitted for Applicant by:

Dennis J. Webb, Jr.
Vickie C. Rusek
Smith, Gambrell & Russell, L.L.P.
Promenade, Suite 3100
1230 Peachtree Street, N.E.
Atlanta, Georgia 30309
404-815-3500

I. INTRODUCTION

This Application seeks a Special Land Use Permit (“SLUP”) in order to allow for a seven (7)-story hotel and five (5)-story parking structure as part of the redevelopment of ±4.70 acres of land located in Land Lot 349, 18th District of DeKalb County (the “Subject Property”) at the intersection of Perimeter Center West and Perimeter Center Place.¹ The proposed 157-room hotel, along with a one (1)-story restaurant of up to 4,600 square feet and five (5)-story parking deck with 350 spaces will replace an existing large surface parking lot. The Subject Property is zoned OCRC, which allows for a maximum height of two stories or 35 feet as of right.² The Applicant requests this SLUP pursuant to Section 27-73 to increase the allowable height up to seven stories or 83 feet. This request is in line with the City’s vision for this area, as articulated in the Perimeter Center Overlay, for more urban, denser, and taller development to be clustered in the central core area of Perimeter Center. In fact, the Overlay designates the Subject Property as a permitted location for the PC-1 district, which has a maximum allowable height of 16 stories or 200 feet as of right and up to 36 stories or 360 feet with a SLUP.

This document is submitted as a Statement of Intent with regard to the Application, a preservation of the Applicant’s legal and constitutional rights, and written justification for the proposed SLUP as required by Sections 27-359 of the Dunwoody Zoning Ordinance.

II. IMPACT ANALYSIS

The criteria considered by the City in granting a SLUP are listed in Article V, Division 3, Section 27-359 of the Code. The requested SLUP should be granted because all applicable criteria are met.

¹ In addition to this SLUP application, the Applicant has also submitted an application to modify zoning conditions approved in RZ-10-041 to substitute a new site plan and allow for the proposed uses, a variance application to reduce side and rear setbacks, a special exception application to reduce required parking, and a separate SLUP application for variations from the Perimeter Center Overlay requirements.

² A SLUP already has been issued (SLUP-10-041) to allow the existing, 3-story office building.

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

The Subject Property is located within the Perimeter Center Character Area of the Comprehensive Plan and within the Perimeter Center Overlay under the Code. The Subject Property is not currently in compliance with the Overlay requirements, but the proposed redevelopment will bring the Subject Property closer to compliance and advance the goals of the Overlay. Furthermore, the proposed redevelopment is entirely consistent with these designations, which encompass high quality mixed-use, transit-oriented developments that provide services to the residents, workers and visitors of Perimeter Center. In particular, the proposed redevelopment will further the following stated policies of the Comprehensive Plan:

- (a) Promoting redevelopments that encourage a “victory friendly “livable” regional center with first-class office, retail, entertainment, hotels and high-end restaurants”
- (b) Promoting redevelopments that promote a “pedestrian and bicycle-oriented environment”
- (c) Promoting redevelopments that “reduce remaining excessive surface parking”
- (d) Creating a “true live-work environment”
- (e) Promoting redevelopment that “continues to emphasize high quality design standards and building materials”

Additionally, the Subject Property is located in the PC-1 subarea under the Comprehensive Plan and designated for PC-1 under the Perimeter Center Overlay. The proposed development is consistent with these designations, which promote the highest intensity of buildings supporting pedestrian and bicycle activity.

2. Whether the proposed use complies with the requirements of this zoning ordinance.

The Subject Property was rezoned to OCR-conditional in 2010 (zoning case number RZ-10-041) subject to five conditions. In addition to its SLUP requests, the Applicant also seeks to modify two of these conditions to substitute the new site plan submitted herein and allow for the proposed uses. The proposed site plan complies with all lot and building regulations of the OCR zoning district with the exception of two minor setback variances and the height increase requested here. In particular, the following requirements are met: minimum lot area of 87,120 square feet; minimum lot frontage of 100 feet; and maximum lot coverage of 80%. Additionally, the proposed redevelopment will bring the Subject Property into greater compliance with the requirements and goals of the Perimeter Center Overlay.

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.

There is more than adequate land area to accommodate the proposed uses. The Subject Property is \pm 4.70 acres. The OCR zoning district imposes no maximum building floor area and up to 80% lot coverage, which the proposed development meets. Concurrently with this Application, the Applicant seeks a special exception to reduce the required number of parking spaces from 457 to 378, which is justified by the Subject Property's proximity to the Dunwoody and Sandy Springs MARTA stations and consistent with the City's goal of moving away from auto-centric development in favor of more pedestrian and bicycle-friendly development.

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;**

No, the Subject Property will not create any adverse impacts due to noise, smoke, odor, dust or vibration.

- 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;**

No. Hours of use will mirror those of the existing businesses in the Perimeter Center commercial core.

- 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;**

No. Hotel and restaurant uses have existed near the Subject Property for many years with no adverse impact on the surrounding properties.

- 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;**

No. The proposed development has been designed to maximize vehicle and pedestrian connectivity between the uses on the Subject Property and adjoining properties while also maximizing circulation. The Subject Property is served by three four access points: an existing driveway from Olde Perimeter way through the site to Perimeter Center Place, a driveway connecting to Perimeter Center West, and a curb cut on the northeastern corner of the property

onto Perimeter Center Place. The proposed development will maintain all of these access points and in addition to providing sidewalk improvements throughout the site. The Subject Property is in close proximity to major thoroughfares that can accommodate the proposed uses. The Institute of Traffic Engineers (ITE) Trip Generation Manual (Ninth Edition) provides that an average of 0.67 trips are generated per occupied room during the A.M. peak hour, or 0.70 for the P.M. peak hour. For a fully-occupied 157-room hotel, this would be 105 trips during an A.M. peak hour or 110 trips during a P.M. peak hour. As the proposed hotel will not be fully booked all the time and some hotel guests will choose to take MARTA, this number should actually be lower. For a roughly 12,000 square foot “sit down” restaurant, an average of 90 trips is anticipated for the evening weekday peak period. Sit down restaurants are typically not open during the morning peak hours, so this use would not affect the morning rush hour.

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;

Yes. The existing and proposed buildings are appropriate in terms of their size, scale and massing compared to other buildings in the Perimeter Center commercial core. The Perimeter Center Overlay and the Comprehensive Plan both encourage more urban developments with greater densities and heights in this part of the City. The apartments directly north of the Subject Property are six stories and the office buildings directly across Perimeter Center Place are up to eleven stories.

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

The Applicant knows of no historic buildings, sites, districts, or archaeological resources either on the Subject Property or located in the immediate vicinity that would suffer adverse impacts from the requested SLUP.

5. Whether public services, public facilities and utilities—including motorized and nonmotorized transportation facilities—are adequate to serve the proposed use.

The Subject Property is located within walking distance of two MARTA rail stations. Any additional vehicular traffic generated by the proposed development can be accommodated. As there is no residential component, the proposed development will have no impact on school enrollment. There is sufficient utility, water and sewer capacity to supply this site.

6. 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.

The proposed development will be serviced by existing driveways on Olde Perimeter Way, Perimeter Center West, and Perimeter Center Place. Ingress, egress and traffic flow for the proposed uses will not be a problem.

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

Yes. See the attached site plan.

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

No. As stated above, the proposed height of the hotel is consistent with buildings immediately adjacent to the Subject Property.

III. NOTICE OF CONSTITUTIONAL CHALLENGE TO UNDERLYING ZONING AND PRESERVATION OF CONSTITUTIONAL RIGHTS

The Applicant respectfully submits that the Zoning Ordinance of the City of Dunwoody lacks adequate standards for the City Council to exercise its power to grant special land use permits. In essence, the standards are not sufficient to contain the discretion of the City Council and to provide the Courts with a reasonable basis for judicial review. Because the stated standards (individually and collectively) are too vague and uncertain to provide reasonable guidance to the City Council, the Zoning Ordinance violates the Fifth and Fourteenth Amendments of the Constitution of the United States in matters of zoning.

The City Council is granted the power to zone pursuant to Article IX, Section II, Paragraph 4 of the Constitution of the State of Georgia, 1983. It is a power which must be fairly exercised. Based on this element of fairness, the Zoning Ordinance of the City of Dunwoody violates Article IX, Section II, Paragraph 4 of the Constitution of the State of Georgia, 1983.

The Zoning Ordinance presently in effect is contrary to the best interest of the health and welfare of the citizens of the City of Dunwoody, and constitutes an arbitrary and capricious act. As a result, the Zoning Ordinance is in violation of Article I, Section I, Paragraphs 1 and 2 of the Constitution of the State of Georgia 1983; Article I, Section III, Paragraph 1 of the Constitution of the State of Georgia; and Article I, Section II, Paragraph 3 of the Constitution of the State of Georgia, 1983. Furthermore, the Zoning Ordinance violates the due process clause and equal protection clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

In addition, the Zoning Ordinance presently in effect is unconstitutional in that it renders this property unusable and destroys its marketability. Therefore, the Zoning Ordinance constitutes a taking of applicant's property without just and adequate compensation and without

due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitutional and in violation of Article I, Section I, Paragraph 1 and Article I, Section III, Paragraph 1(a) of the Constitution of Georgia.

Any limitation on the time for presentation of the issues before the City Council who have the power to zone and rezone is a violation of the guarantees of free speech under Article I, Section I, Paragraph 5 of the Constitution of the State of Georgia, 1983 and the First Amendment of the Constitution of the United States of America. Further, said limitations are in violation of the right to petition and assemble, in violation of Article I, Section I, Paragraph IX of the Constitution of Georgia, 1983 and the First Amendment of the Constitution of the United States of America as well as the due process clauses of the Constitution of Georgia, 1983 and the Constitution of the United States of America.

The Zoning Ordinance of the City of Dunwoody is unlawful, null and void in that its adoption and map adoption/maintenance did not comply with the requirements of its predecessor ordinance and/or the Zoning Procedures Law, O.C.G.A. § 36-66-1, et seq.

The Applicant respectfully submits that the Mayor and 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 Subject Property's owner and owners of similarly situated property in violation of Article I, Section III, Paragraph I of the Constitution of the State of Georgia, 1983, 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, 1983.

Finally, the Applicant respectfully submits that the Mayor and City Council cannot lawfully impose more restrictive standards upon the development of the Subject Property than presently exist as to do so not only would constitute a taking of the property as set forth above, but also would amount to an unlawful delegation of their authority, in response to neighborhood opposition, in violation of Article IX, Section IV, Paragraph II of the Georgia Constitution, 1983.

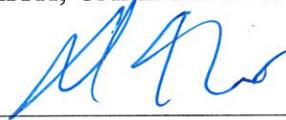
IV. CONCLUSION

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

This 5th day of July, 2017.

Respectfully submitted,

SMITH, GAMBRELL & RUSSELL, L.L.P.



Dennis J. Webb, Jr.
Vickie C. Rusek
Attorneys For Applicant

Promenade II, Suite 3100
1230 Peachtree Street, N.E.
Atlanta, Georgia 30309
404-815-3500



Permit #2017163

Address		Payment Info	
Address	121 PERIMETER CTR W	Receipt #	104
City	DUNWOODY	Date	7/10/2017
State	GA	Paid By	PRADO PERIMETER CENTER LLC
Zip	30346	Description	SLUP FEE
		Payment Type	CHECK 1129
		Accepted By	Tammy Hiler

Fees Paid

Fee	Fee Description	Factor	Total Fee Amount	Amount Paid
All Other Use Permits			0 500.00	500.00
			Total Payment: 500.00	

SLUP

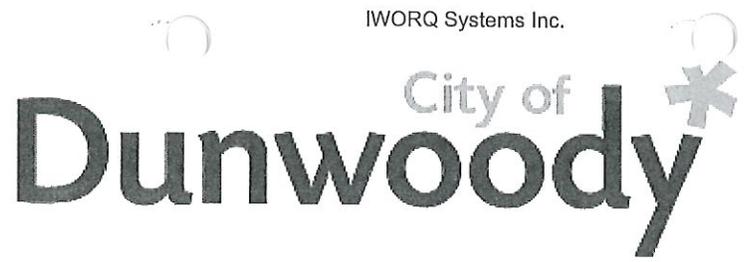


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All Other Use Permits			0 500.00	500.00
			Total Payment: 500.00	



Permit #2017163

Address		Payment Info	
Address	121 PERIMETER CTR W	Receipt #	110
City	DUNWOODY	Date	7/10/2017
State	GA	Paid By	PRADO PERIMETER CENTER LLC
Zip	30346	Description	SIGN FEES FOR: 2 SLUPS SLUP17-04, 17-05 MA 17-02 SE 17-01 ZBA 17-14, 17-05
		Payment Type	CHECK 1129
		Accepted By	Tammy Hiler

Fees Paid

Fee	Fee Description	Factor	Total Fee Amount	Amount Paid
All Signs	Enter additional # of signs.		5 810.00	810.00
			Total Payment: 810.00	

6 Signs for all

\$ 135.00

ALTA/ACSM LAND TITLE SURVEY FOR PRADO PERIMETER CENTER LLC

121 PERIMETER CENTER WEST, DUNWOODY, GEORGIA 30346-1250

BLUE LANDWORKS
BLUE LANDWORKS LLC
CONSULTING ENGINEERS & SURVEYORS
400 PEACHTREE INDUSTRIAL BLVD.
SUITE 5-290
SUWANEE, GEORGIA 30024
TELEPHONE: (678) 804-8586
INFO@BLUELANDWORKS.COM
WWW.BLUELANDWORKS.COM

PREPARED FOR:
PRADO PERIMETER
CENTER LLC
PO BOX 988
DULUTH, GEORGIA 30096

GENERAL NOTES - [9-16-2015]

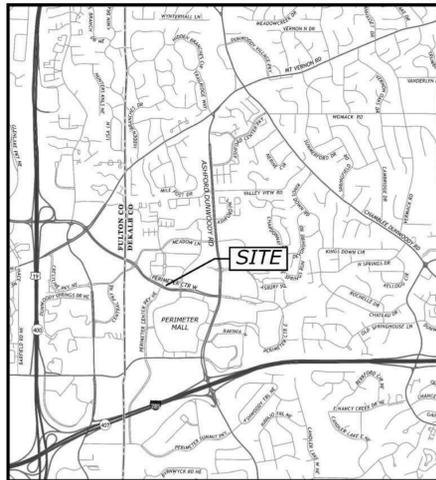
1. IPS (Iron pin set) is 1/4" re-bar; NS (nail set) is Magnall.
2. Said described property is located within an area having a Zone Designation "Zone X" by the Secretary of Housing and Urban Development, on Flood Insurance Rate Map No. 13089C0012J, with a date of identification of May 16, 2013, for Community Number 130679, in DeKalb County, State of Georgia, which is the current Flood Insurance Rate Map for the community in which said property is situated.
3. There was no observed evidence of current earth moving work, building construction or building additions.
4. There was no observed evidence of recent street or sidewalk construction or repairs.
5. There was no observed evidence of site use as a solid waste dump, sump or sanitary landfill.
6. No portion of this property lies in a designated wetland area per the National Wetlands Inventory prepared by the U.S. Fish and Wildlife Service.
7. The locations of underground utilities are taken from visible evidence, construction plans and/or previous surveys and should be considered approximate. Other underground utilities may be located on this property. Pipe sizes are taken from construction plans and/or previous surveys where not verifiable.

SITE DATA - 121 Perimeter Center West, Dunwoody, Georgia 30346-1250

1. Gross land area is 4.70 acres.
2. Property is identified as DeKalb County tax parcel ID 18 349 05 029.
3. Gross building area is approximately 50,570 square feet (per DeKalb County Tax Commissioner records).
4. Building height is 45 feet (three stories).
5. This property is zoned OCr - Office-Commercial-Residential conditional District (Zoning Ordinance of the City of Dunwoody, Georgia):
 - Permitted uses: Bank, credit union and other similar financial institution; Office; Restaurant
 - Minimum lot area: 87,120 sq. ft.
 - Minimum lot frontage: 100 feet
 - Maximum lot coverage: 80%
 - Actual lot coverage: approximately 49%
 - Minimum setbacks
 - Street, front and side: 0 feet
 - Side, interior: 20 feet
 - Rear: 40 feet
 - Maximum building height: Three stories (Per Special Land Use Permit SLUP 10-041 approved on May 24, 2010)
 - Off-Street Parking Provided: 174 standard spaces and 7 handicap spaces [181 spaces total]
 - Minimum required (per Zoning Ordinance):
 - 45,591 sf of office (1 per 250 square feet): 183 spaces
 - 4,979 sf of restaurant (1 per 75 square feet): 67 spaces
 - Total required: 250 spaces
 - Per Special Exception SE 10-061, parking reduction to 181 spaces approved on June 3, 2010.

REFERENCES

1. ALTA/ACSM Land Title Survey prepared for: The Simpson Organization, prepared by Millman Surveying, Inc. and last revised November 14, 2012;
2. ALTA/ACSM Land Title Survey for: GLL US Retail, L.P., et al, prepared by GeoSurvey, Ltd. and dated April 22, 2013
3. Survey Plat of Perimeter Place Master Condominium, prepared by Planners and Engineers Collaborative, and last revised August 25, 2006;
4. Right-of-Way Map, DeKalb County Department of Public Works, MSL-0004-00(417), dated November 12, 2004;
5. Site Grading & Drainage Plan for Trust Company Bank, prepared by Bailey Engineering Associates, Inc., and last revised December 16, 1985; and
6. Plat of Survey for Dedication Purposes of Perimeter Center Place, prepared by James Robert Cheatham, and dated April 5, 1976.



VICINITY MAP
NOT TO SCALE

EXCEPTIONS FROM COVERAGE as to 121 Perimeter Center West, FIRST AMERICAN TITLE INSURANCE COMPANY - COMMITMENT FOR TITLE INSURANCE File No: NCS-735577-ATL

12. Matters as shown on that certain plat recorded in Plat Book 66, Page 97, aforesaid records. (AFFECTS SUBJECT PROPERTY AS SHOWN)
13. Easements & Use Restrictions as contained in that Limited Warranty Deed [With Declaration of Restrictions and Reservations of Easements] by and among Taylor & Mathis Enterprises, a Georgia general partnership, as to an undivided fifty percent (50%) interest, Charles McKenzie Taylor, as to a 42.14% interest, T. Harvey Mathis, as to a 42.14% interest, Graydon B. Leake, Jr., as to a 13.72% interest, and James D. Fluker, Jr., as to a 2% interest and Centennial Equities Corporation, a New York corporation, as to an undivided fifty percent (50%) interest, in said tract or parcel of land hereinbelow described, Taylor & Mathis Enterprises and Centennial Equities Corporation being joint venturers doing business as Perimeter Center Associates, and The Southern Bell Telephone and Telegraph Company, a New York corporation, dated October 10, 1974, filed for record October 11, 1974, and recorded in Deed Book 3250, Page 346, DeKalb County, Georgia records; as affected by that certain Release and Quit-Claim of Easement and Grant of Easement by and between Southern Bell Telephone and Telegraph Company, a New York corporation and Blue Cross of Georgia/Atlanta, Inc., a Georgia corporation, dated January 30, 1975, filed for record February 7, 1975, and recorded in Deed Book 3291, Page 408, aforesaid records. (AFFECTS SUBJECT PROPERTY)
14. Terms and provisions of that certain Reciprocal Easement Grant and Agreement, by and between Southern Bell Telephone and Telegraph Company, a New York corporation and Blue Cross of Georgia/Atlanta, Inc., a Georgia corporation, dated October 10, 1974, filed for record October 11, 1974, and recorded in Deed Book 3250, Page 356, aforesaid records. (AFFECTS SUBJECT PROPERTY/BLANKET EASEMENT)
15. DeKalb County Sewer Easement from Blue Cross and Blue Shield of Georgia/Atlanta, Inc. to DeKalb County, Georgia, its successors and assigns, dated March 12, 1979, filed for record April 3, 1979, and recorded in Deed Book 4014, Page 388, aforesaid records. (INSUFFICIENT DESCRIPTION/UNABLE TO LOCATE)
16. Terms and provisions of that certain Agreement, by and among Taylor & Mathis Enterprises, a Georgia General Partnership composed of Charles McKenzie Taylor, T. Harvey Mathis, Graydon B. Leake, Jr., James D. Fluker, Jr., and E. H. Avery, Metropolitan Life Insurance Company, a New York corporation, and 2154 Trading Corporation, a New York corporation, doing business as Perimeter Center Associates, a joint venture and doing business as Perimeter Center North Associates, a joint venture and Southern Bell Telephone and Telegraph Company, a New York corporation, dated June 28, 1979, filed for record June 29, 1979, and recorded in Deed Book 4074, Page 196, aforesaid records. (AFFECTS SUBJECT PROPERTY/NOT PLOTTABLE)
17. Terms and provisions of that certain Reciprocal Easement Grant and Agreement, by and among Metropolitan Life Insurance Company, a New York corporation, as to an undivided ninety-five percent (95%) interest in Tract I, 2154 Trading Corporation, a New York corporation, as to an undivided five percent (5%) interest in Tract I, Metropolitan Life Insurance Company and 2154 Trading Corporation are joint venturers doing business as Perimeter Center Investments, Trust Company Bank, as Successor to Peachtree Bank and Trust Company, as to Tract II, Metropolitan Life Insurance Company, a New York corporation, as holder of a Deed to Secure Debt and Security Agreement in Tract I and Southern Bell Telephone and Telegraph Company, a New York corporation, as tenant of a portion of Tract I, dated August 20, 1984, filed for record August 21, 1984, and recorded in Deed Book 5047, Page 613, aforesaid records; as amended by that certain First Amendment to Reciprocal Easement Grant and Agreement by and among Metropolitan Life Insurance Company, a New York corporation, and 2154 Trading Corporation, a New York corporation, as joint venturers doing business as Perimeter Center Investments, Trust Company Bank, a state chartered bank, as successor to Peachtree Bank and Trust Company, and Metropolitan Life Insurance Company, a New York corporation, dated July 31, 1985, filed for record August 5, 1985, and recorded in Deed Book 5268, Page 702, aforesaid records; and as amended by that certain Second Amendment to Reciprocal Easement Grant and Agreement by and between Bell Semblor II, LLC, a Georgia limited liability company, and SunTrust Bank, a Georgia banking corporation, dated April 30, 2004, filed for record May 3, 2004, and recorded in Deed Book 16084, Page 615, aforesaid records. (AFFECTS SUBJECT PROPERTY AS SHOWN)
18. Easement from Trust Company Bank to Georgia Power Company dated January 15, 1986, filed for record March 7, 1986, and recorded in Deed Book 5419, Page 712, aforesaid records. (AFFECTS SUBJECT PROPERTY AS SHOWN)
19. Terms and provisions of that certain Drainage Easement Agreement, by and between Metropolitan Life Insurance Company, a New York corporation, as to an undivided ninety-five (95%) interest and 2154 Trading Corporation, a New York corporation, as to an undivided five percent (5%) interest, dated April 16, 1986, filed for record April 23, 1986, and recorded in Deed Book 5454, Page 330, aforesaid records. (AFFECTS SUBJECT PROPERTY AS SHOWN)
20. Permanent Construction and Maintenance Easement for Construction or Improvement of Sidewalks and Transportation Improvements from SunTrust Bank Atlanta to DeKalb County, Georgia, dated May 7, 2002, filed for record May 30, 2002, and recorded in Deed Book 13278, Page 514, aforesaid records. (AFFECTS SUBJECT PROPERTY AS SHOWN)
21. Sidewalk Easement from SunTrust Bank, a Georgia banking corporation to Bell Semblor II, LLC, a Georgia limited liability company, dated April 30, 2004, filed for record May 3, 2004, and recorded in Deed Book 16084, Page 789, aforesaid records. (AFFECTS SUBJECT PROPERTY AS SHOWN)

LAND DESCRIPTION FOR 121 Perimeter Center West

ALL that tract or parcel of land lying and being in Land Lot 349 of the 18th District, DeKalb County, Georgia, and being more particularly described as follows:

BEGINNING at a brass disk lying at the intersection of the western margin of Perimeter Center Place (public right-of-way varies) and the northwestern margin of Perimeter Center West (public right-of-way varies) having State Plane Coordinates (Georgia West) of North 1428660.932 East 2243508.909, said point being **THE TRUE POINT OF BEGINNING**; Thence along the northwestern margin of Perimeter Center West, South 47 degrees 29 minutes 41 seconds West, 104.72 feet to a right-of-way monument found; Thence continuing along said margin, North 88 degrees 37 minutes 07 seconds West, 171.85 feet to a point; Thence continuing along said margin and following along the arc of a curve to the right 232.10 feet to a point, said curve having a radius of 522.09 feet and a chord bearing and distance of North 75 degrees 52 minutes 48 seconds West, 230.19 feet; Thence continuing along said margin, North 63 degrees 08 minutes 48 seconds West, 73.80 feet to a right-of-way monument found; Thence continuing along said margin, North 28 degrees 59 minutes 58 seconds East, 18.35 feet to a right-of-way monument found; Thence continuing along said margin, North 49 degrees 13 minutes 33 seconds West, 46.34 feet to a brass disk found at the intersection of the eastern margin of Olde Perimeter Way (private driveway) and Perimeter Center West (public right-of-way varies); Thence along the eastern margin of said private driveway, North 23 degrees 53 minutes 45 seconds East, 126.58 feet to an iron pin set with cap; Thence departing said private driveway, South 86 degrees 50 minutes 23 seconds East, 175.00 feet to an iron pin found (1/2" rebar); Thence North 03 degrees 05 minutes 41 seconds East, 237.00 feet to an iron pin set with cap; Thence South 86 degrees 50 minutes 25 seconds East, 382.11 feet to an iron pin found (5/8" rebar) on the western margin of Perimeter Center Place (public right-of-way varies); Thence along the western margin of Perimeter Center Place, following along the arc of a curve to the left 178.28 feet to a point, said curve having a radius of 954.93 and a chord bearing and distance of South 11 degrees 02 minutes 14 seconds West, 178.02 feet; Thence South 05 degrees 38 minutes 53 seconds West, 217.50 feet to a brass disk found, said disk being **THE TRUE POINT OF BEGINNING**.

Said tract or parcel of land contains 4.70 acres more or less.

SURVEYOR'S CERTIFICATION

This survey was prepared in conformity with the technical standards for property surveys in Georgia as set forth in Chapter 180-7 of the Rules of the Georgia Board of Registration for Professional Engineers and Land Surveyors and as set forth in the Georgia Plat Act O.C.G.A. 15-6-67. Authority O.C.G.A. Secs. 15-6-67, 43-15-4, 43-15-6, 43-15-19, 43-15-22.

Field information for this survey was obtained with a Trimble S6 robotic total station electronic instrument. The field data upon which this map or plat is based has a closure precision of one foot in 22,996 feet and an angular error of 0.5 seconds per angle point and was adjusted using the compass rule. This map or plat has been calculated for closure and is found to be accurate within one foot in 363,635 feet.

To PRADO PERIMETER CENTER LLC, KANSAS CITY LIFE INSURANCE COMPANY and FIRST AMERICAN TITLE INSURANCE COMPANY:

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 2, 3, 4, 6(b), 7(a), 7(b)(1), 8, 9, 10(a), 11(a), 13, 14, 16, 17, 18, 19, and 20(a) of Table A thereof. Pursuant to the Accuracy Standards as adopted by ALTA and NSPS and in effect on the date of this certification, the undersigned further certifies that in my professional opinion, as a land surveyor registered in the State of Georgia, the Relative Positional Accuracy of this survey does not exceed that which is specified therein. The field work was completed on 9-16-2015.

Date of Plot or Map: 9-16-2015

(signed) Thomas W. Woodsmall (seal)
Name: Thomas W. Woodsmall
Registration/License Number: 2767 (Georgia)

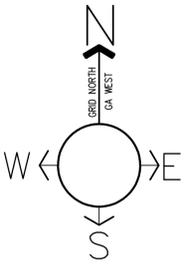


ISSUE #	DATE	REVISIONS
1	07/09/2015	CLIENT REVIEW
2	07/22/2015	CLIENT REVIEW
3	08/17/2015	REUSE PARKING COUNT AND STORM DRAINAGE
4	09/16/2015	SIGNED AND SEALED

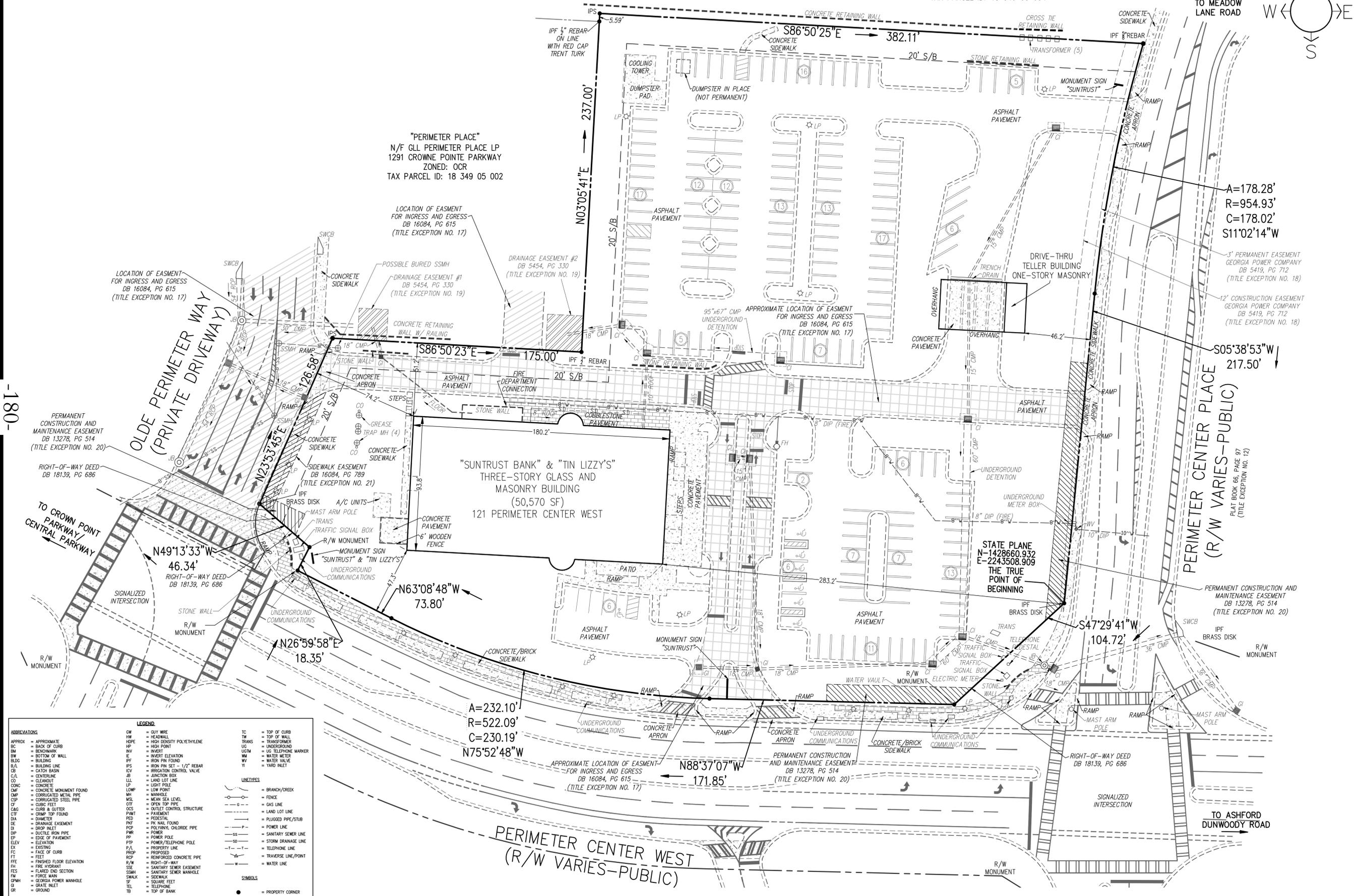
121 PERIMETER CENTER WEST
DUNWOODY, GEORGIA 30346-1250
18th LAND DISTRICT
LAND LOT(S) 349
DEKALB COUNTY, GA
PARCEL 18-349-05-029
CITY OF DUNWOODY
CHECKED: SAM
APPROVED: TWM
DRAWN: BG

ALTA/ACSM LAND TITLE SURVEY
for
PRADO PERIMETER
CENTER LLC
PROJECT#2015
ISSUE #4
SHEET 1 OF 2

"AML1 AT PERIMETER PLACE"
 N/F MILLBROOK APARTMENTS ASSOCIATE
 60 PERIMETER CENTER PLACE
 DEED BOOK 19100, PAGE 187
 ZONED: OCR
 TAX PARCEL ID: 18 349 05 034



-180-



"PERIMETER PLACE"
 N/F GLL PERIMETER PLACE LP
 1291 CROWNE POINTE PARKWAY
 ZONED: OCR
 TAX PARCEL ID: 18 349 05 002

LOCATION OF EASEMENT FOR INGRESS AND EGRESS DB 16084, PG 615 (TITLE EXCEPTION NO. 17)

POSSIBLE BURIED SSMH
 DRAINAGE EASEMENT #1 DB 5454, PG 330 (TITLE EXCEPTION NO. 19)

DRAINAGE EASEMENT #2 DB 5454, PG 330 (TITLE EXCEPTION NO. 19)

LOCATION OF EASEMENT FOR INGRESS AND EGRESS DB 16084, PG 615 (TITLE EXCEPTION NO. 17)

OLDE PERIMETER WAY (PRIVATE DRIVEWAY)

PERMANENT CONSTRUCTION AND MAINTENANCE EASEMENT DB 13278, PG 514 (TITLE EXCEPTION NO. 20)

RIGHT-OF-WAY DEED DB 18139, PG 686

TO CROWN POINT PARKWAY CENTRAL PARKWAY

"SUNTRUST BANK" & "TIN LIZZY'S"
 THREE-STORY GLASS AND MASONRY BUILDING
 (50,570 SF)
 121 PERIMETER CENTER WEST

STATE PLANE N-1428660.932
 E-2243508.909
 THE TRUE POINT OF BEGINNING

PLAT BOOK 66, PAGE 97
 (TITLE EXCEPTION NO. 12)

PERMANENT CONSTRUCTION AND MAINTENANCE EASEMENT DB 13278, PG 514 (TITLE EXCEPTION NO. 20)

A=232.10'
 R=522.09'
 C=230.19'
 N75°52'48"W

APPROXIMATE LOCATION OF EASEMENT FOR INGRESS AND EGRESS DB 16084, PG 615 (TITLE EXCEPTION NO. 17)

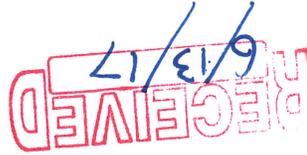
PERMANENT CONSTRUCTION AND MAINTENANCE EASEMENT DB 13278, PG 514 (TITLE EXCEPTION NO. 20)

PERIMETER CENTER WEST (R/W VARIES-PUBLIC)

TO ASHFORD DUNWOODY ROAD

ABBREVIATIONS		LEGEND	
APPROX	= APPROXIMATE	GW	= GUY WIRE
BC	= BACK OF CURB	HW	= HEADWALL
BM	= BENCHMARK	HDPE	= HIGH DENSITY POLYETHYLENE
BTM	= BOTTOM OF WALL	HP	= HIGH POINT
BLOC	= BUILDING	INVT	= INVERT
B/L	= BUILDING LINE	IE	= INVERT ELEVATION
CB	= CATCH BASIN	IPF	= IRON PIN SET - 1/2" REBAR
C/A	= CENTERLINE	ICV	= IRRIGATION CONTROL VALVE
CO	= CLEANOUT	JB	= JUNCTION BOX
CONC	= CONCRETE	LL	= LAND LOT LINE
CONC	= CONCRETE MONUMENT FOUND	LLP	= LAND LOT POINT
CMP	= CORRUGATED METAL PIPE	MAN	= MANNING
CSP	= CORRUGATED STEEL PIPE	MSL	= MEAN SEA LEVEL
CF	= CUBIC FEET	OC	= OPEN TOP PIPE
C&G	= CURB & GUTTER	OTM	= OUTLET CONTROL STRUCTURE
CIT	= CURB TOP FOUND	PMT	= PAVEMENT
DI	= DIAMETER	PE	= PEDESTAL
DE	= DRAINAGE EASEMENT	PK	= P.K. NAIL FOUND
DI	= DROP INLET	PCP	= POLYVINYL CHLORIDE PIPE
DIP	= DUCTILE IRON PIPE	PBR	= POWER
EP	= EDGE OF PAVEMENT	PP	= POWER POLE
ELEV	= ELEVATION	PTP	= POWER/TELEPHONE POLE
EX	= EXISTING	PL	= PROPERTY LINE
FC	= FACE OF CURB	P/P	= PROPOSED
FT	= FEET	RCF	= REINFORCED CONCRETE PIPE
FT	= FINISHED FLOOR ELEVATION	R/W	= RIGHT-OF-WAY
FH	= FIRE HYDRANT	SS	= SANITARY SEWER EASEMENT
FES	= FLARED END SECTION	SSMH	= SANITARY SEWER MANHOLE
FM	= FORCE MAIN	SWALK	= SIDEWALK
OPMH	= GEORGIA POWER MANHOLE	SF	= SQUARE FEET
GI	= GRATE INLET	TEL	= TELEPHONE
GR	= GROUND	TB	= TOP OF BANK

Prado Perimeter Center, LLC
Brogdon Consulting
3425 Duluth Park Lane
Duluth, Georgia 30096



June 9, 2017

**INFORMATION MEETING FOR PROPERTY LOCATED AT
121 PERIMETER CENTER WEST
DUNWOODY, GEORGIA**

We are notifying all nearby property owners of a proposed site plan amendment under the existing OCR zoning to allow the development of a new parking deck, hotel and free standing restaurant. The property is zoned OCR.

A public information meeting will take place on June 29, 2017 from 5:00 pm to 7:00 pm to discuss this proposal. This meeting will be held at the Hampton Inn & Suites, 4565 Ashford Dunwoody Road, Dunwoody, Georgia 30346 in the Sterling Room. Please feel free to attend this meeting should you have any questions regarding the proposed Zoning Amendment. If you are unable to attend but would like to obtain information, please contact Bruce Williams at 404-983-2510.

Sincerely,

Prado Perimeter Center, LLC

2017166

SLUP 17-05

RECEIVED
7/5/17

Community Development

Dunwoody
Smart people - Smart city

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

SPECIAL LAND USE PERMIT APPLICATION

* Applicant Information: 2017166 SLUP 17-05

Company Name: Prado Perimeter Center, LLC, c/o Dennis J. Webb, Jr.
 Contact Name: Dennis J. Webb, Jr.
 Address: 1230 Peachtree St., NE, Ste. 3100, Atlanta, GA 30309
 Phone: 404-815-3620 Fax: 404-685-6920 Email: djwebb@sgrlaw.com
 Pre-application conference date (required): 6/6/17

* Owner Information: Check here if same as applicant

Owner's Name: Prado Perimeter Center, LLC
 Owner's Address: P.O. Box 988, Duluth, GA 30096
 Phone: 404-983-2510 Fax: _____ Email: brucewilliamsproperties@earthlink.net

* Property Information:

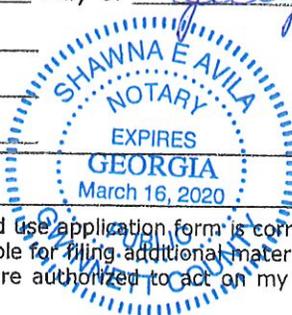
Property Address: 121 Perimeter Center West Parcel ID: 18-349-05-029
 Zoning Classification: OCRC
 Requested Use of the Property: Hotel, parking deck, restaurant

* 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: Dennis J. Webb, Jr.
 Applicant's Signature: [Signature] Date: 7/5/17

* Notary:

Sworn to and subscribed before me this 5th Day of July, 2017
 Notary Public: Shawna E. Avila
 Signature: Shawna E. Avila
 My Commission Expires: 3-16-20

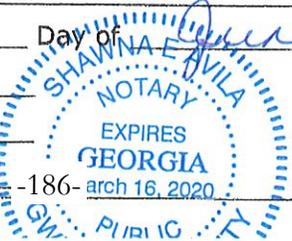


* Owner Affidavit:

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: Prado Perimeter Center, LLC
 Property Owner's Signature: [Signature] Date: 6/29/17

* Notary:

Sworn to and subscribed before me this 29th Day of June, 2017
 Notary Public: Shawna E. Avila
 Signature: Shawna E. Avila
 My Commission Expires: 3-16-20



\$ 500.00

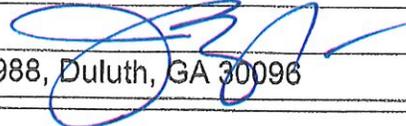
Campaign Disclosure Statement



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: Prado Perimeter Center, LLC

Signature: 	Date: 6/29/17
Address: P.O. Box 988, Duluth, GA 30096	

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

Date	Government Official	Official Position	Description	Amount

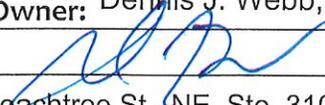
Campaign Disclosure Statement



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.

Signature: 	Date: <u>7/5/17</u>
Address: <u>1230 Peachtree St., NE, Ste. 3100, Atlanta, GA 30309</u>	

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

Date	Government Official	Official Position	Description	Amount

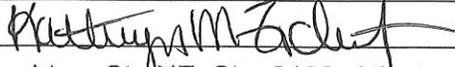
Campaign Disclosure Statement



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: Kathryn M. Zickert

Signature: <u></u>	Date: <u>7/5/17</u>
Address: <u>1230 Peachtree St., NE, Ste. 3100, Atlanta, GA 30309</u>	

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: Vickie C. Rusek

Signature: <u><i>Vickie C. Rusek</i></u>	Date: <u>6/27/17</u>
Address: <u>1230 Peachtree St., NE, Ste. 3100, Atlanta, GA 30309</u>	

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
City of Dunwoody Zoning Ordinance
For the
Special Land Use Permit Application:

1. To allow for variations from the Major Parkway Street Type Requirements of Section 27-98(b)(5); and
2. To allow for variations from the Minor Parkway Street Type Requirements of Section 27-98(b)(6); and
3. To allow for variations from the Primary Street Type Requirements of Section 27-98(b)(7); and
4. To allow the proposed SunTrust drive-thru ATM to be visible from a primary street under Section 27-98(d)(8)(a); and
5. To allow the proposed SunTrust drive-thru ATM to front a primary street under Section 27-98(d)(9)(a).

of

Prado Perimeter Center, LLC

for ± 4.70 Acres of Land
located in
Land Lot 349, 18th District, DeKalb County
Address: 121 Perimeter Center West

Submitted for Applicant by:

Dennis J. Webb, Jr.
Vickie C. Rusek
Smith, Gambrell & Russell, L.L.P.
Promenade, Suite 3100
1230 Peachtree Street, N.E.
Atlanta, Georgia 30309
404-815-3500

I. INTRODUCTION

This Application seeks five Special Land Use Permits (“SLUPs”) in order to redevelop ±4.70 acres of land located in Land Lot 349, 18th District of DeKalb County (the “Subject Property”), which is located in the Perimeter Center Overlay (the “Overlay”) area at the intersection of Perimeter Center West and Perimeter Center Place.¹ The Applicant seeks to transform an existing surface parking lot into an up to 157-room, seven (7)-story hotel, a one (1)-story restaurant of up to 4,600 square feet, and five (5)-story parking deck with 350 spaces. The existing three (3)-story office building with a SunTrust Bank and drive-thru and Tin Lizzy’s restaurant will remain on the Subject Property, although the drive-thru will be relocated.

Due to the limitations of the site and existing conditions, the Applicant will require SLUPs for the drive-thru location as well as certain Overlay street frontage requirements. However, the new ATM will have a much smaller visual impact from public rights-of-way and the new streetscape and sidewalk improvements will be in much greater compliance with Overlay standards compared to what exists currently. The existing standalone drive-thru ATM in the northwestern portion of the Subject Property will be removed and replaced with a much smaller, two-lane ATM on the side of the existing office building that contains the SunTrust Bank. This new drive-thru ATM will replace an existing utility “shed” that currently detracts from the site’s aesthetic quality. New sidewalks will be provided throughout the site to increase pedestrian connectivity and access and existing sidewalks around the site will be improved.

Existing conditions severely limit what the Applicant can provide in terms of street frontage. As shown on the survey submitted with this Application, there are significant

¹ In addition to this SLUP application, the Applicant has also submitted an application to modify zoning conditions approved in RZ-10-041 to substitute a new site plan and allow for the proposed uses, a variance application to reduce side and rear setbacks, a special exception application to reduce required parking, and a separate SLUP application to increase the allowable height under the OCR district.

underground utility lines for communications, power and gas. Additionally, in 2009, the Perimeter Center Improvement District (“PCID”) installed attractive brick and concrete sidewalks, seatwalls and street trees along the portion of Perimeter Center West adjacent to the Subject Property’s southern boundary. In the pre-application conference for this Application, it was agreed that it would be prudent for the Applicant to salvage as much of the PCID improvements as possible.

By eliminating the large surface parking lot and redeveloping the site into a pedestrian-scale, mixed-use center, the Applicant will bring the Subject Property into greater compliance with the regulations and overall goals of the new Perimeter Center Overlay. The SLUPs requested in this Application are as follows:

1. To allow for variations from the Major Parkway Street Type Requirements of Section 27-98(b)(5); and
2. To allow for variations from the Minor Parkway Street Type Requirements of Section 27-98(b)(6); and
3. To allow for variations from the Primary Street Type Requirements of Section 27-98(b)(7); and
4. To allow the proposed SunTrust drive-thru ATM to be visible from a primary street under Section 27-98(d)(8)(a); and
5. To allow the proposed SunTrust drive-thru ATM to front a primary street under Section 27-98(d)(9)(a).

The frontage on Perimeter Center West will meet the minimum 34’ frontage depth required of major parkways under the Overlay. The existing 4’ bike lane will remain, and the applicant will remove a 30” portion of the existing 11.5’ brick sidewalk to provide a planted

buffer. In addition, up to 21 feet of landscaped area will be provided between buildings fronting Perimeter Center West and the sidewalk. However, to the extent that the dimensions in Figure 27-98-5 of the Overlay are strictly required, the Applicant will need a SLUP to reduce the 8' street buffer to 30".

On Perimeter Center Place, which is classified as a minor parkway under the Overlay, the Applicant will install a 4' bike lane which will connect with an existing bike lane north of the Subject Property. The existing 6' sidewalk and existing 19' landscape buffer, which is planted on a Georgia Power easement, will remain. The overall minimum frontage depth will therefore be 29 feet. The Applicant therefore requires a variance from the requirements of Figure 27-98-11 to reduce the 6' street buffer to 0' and minimum frontage depth from 34' to 29'.

The Overlay classifies Olde Perimeter Way as a primary street even though it is a private road. Under Figure 27-98-18, primary streets adjacent to a yard are required to provide street frontage with a minimum depth of 16' and a minimum street buffer of 6'. The existing 8' sidewalk, street trees and yard will remain. It is the Applicant's belief that the City's authority to aesthetically regulate a private driveway is limited. However, a SLUP to reduce the minimum 6' street buffer to 0' is request herein out of an abundance of caution.

Finally, the Applicant will require SLUPs to relocate the ATM drive-thru to its proposed location. As stated above, the new ATM will be smaller than the existing drive-thru canopy and will make much less of a visual impact. It will also be replacing an unattractive utility structure attached to the existing office building.

This document is submitted as a Statement of Intent with regard to the Application, a preservation of the Applicant's legal and constitutional rights, and written justification for the proposed SLUPs as required by Sections 27-359 of the Dunwoody Zoning Ordinance.

II. IMPACT ANALYSIS

The criteria considered by the City in granting a SLUP are listed in Article V, Division 3, Section 27-359 of the Code. The requested SLUPs should be granted because all applicable criteria are met.

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

The Subject Property is located within the Perimeter Center Character Area of the Comprehensive Plan and within the Perimeter Center Overlay under the Code. The Subject Property is not currently in compliance with the Overlay requirements, but the proposed redevelopment will bring the Subject Property closer to compliance and advance the goals of the Overlay. Furthermore, the proposed redevelopment is entirely consistent with these designations, which encompass high quality mixed-use, transit-oriented developments that provide services to the residents, workers and visitors of Perimeter Center. In particular, the proposed redevelopment will further the following stated policies of the Comprehensive Plan:

- (a) Promoting redevelopments that encourage a “victory friendly “livable” regional center with first-class office, retail, entertainment, hotels and high-end restaurants”
- (b) Promoting redevelopments that promote a “pedestrian and bicycle-oriented environment”
- (c) Promoting redevelopments that “reduce remaining excessive surface parking”
- (d) Creating a “true live-work environment”
- (e) Promoting redevelopment that “continues to emphasize high quality design standards and building materials”

Additionally, the Subject Property is located in the PC-1 subarea under the Comprehensive Plan and designated for PC-1 under the Perimeter Center Overlay. The proposed development is consistent with these designations, which promote the highest intensity of buildings supporting pedestrian and bicycle activity.

2. Whether the proposed use complies with the requirements of this zoning ordinance.

The Subject Property was rezoned to OCR-conditional in 2010 (zoning case number RZ-10-041) subject to five conditions. In addition to its SLUP requests, the Applicant also seeks to modify two of these conditions to substitute the new site plan submitted herein and allow for the proposed uses. The proposed site plan complies with all lot and building regulations of the OCR zoning district with the exception of two minor setback variances and the height increase requested in the companion SLUP application. In particular, the following requirements are met: minimum lot area of 87,120 square feet; minimum lot frontage of 100 feet; and maximum lot coverage of 80%.

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.

There is more than adequate land area to accommodate the proposed uses. The Subject Property is \pm 4.70 acres. The OCR zoning district imposes no maximum building floor area and up to 80% lot coverage, which the proposed development meets. Concurrently with this Application, the Applicant seeks a special exception to reduce the required number of parking spaces from 457 to 378, which is justified by the Subject Property's proximity to the Dunwoody and Sandy Springs MARTA stations and consistent with the City's goal of moving away from

auto-centric development in favor of more pedestrian and bicycle-friendly development.

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;

No, the Subject Property will not create any adverse impacts due to noise, smoke, odor, dust or vibration.

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;

No. Hours of use will mirror those of the existing businesses in the Perimeter Center commercial core.

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;

No. Hotel and restaurant uses have existed near the Subject Property for many years with no adverse impact on the surrounding properties.

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;

No. The proposed development has been designed to maximize vehicle and pedestrian connectivity between the uses on the Subject Property and adjoining properties while also maximizing circulation. The Subject Property is served by three four access points: an existing driveway from Olde Perimeter way through the site to Perimeter Center Place, a driveway

connecting to Perimeter Center West, and a curb cut on the northeastern corner of the property onto Perimeter Center Place. The proposed development will maintain all of these access points and in addition to providing sidewalk improvements throughout the site. The Subject Property is in close proximity to major thoroughfares that can accommodate the proposed uses. The Institute of Traffic Engineers (ITE) Trip Generation Manual (Ninth Edition) provides that an average of 0.67 trips are generated per occupied room during the A.M. peak hour, or 0.70 for the P.M. peak hour. For a fully-occupied 157-room hotel, this would be 105 trips during an A.M. peak hour or 110 trips during a P.M. peak hour. As the proposed hotel will not be fully booked all the time and some hotel guests will choose to take MARTA, this number should actually be lower. For a roughly 12,000 square foot “sit down” restaurant, an average of 90 trips is anticipated for the evening weekday peak period. Sit down restaurants are typically not open during the morning peak hours, so this use would not affect the morning rush hour.

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;

Yes. The existing and proposed buildings are appropriate in terms of their size, scale and massing compared to other buildings in the Perimeter Center commercial core. The Perimeter Center Overlay and the Comprehensive Plan both encourage more urban developments with greater densities and heights in this part of the City. The apartments directly north of the Subject Property are six stories and the office buildings directly across Perimeter Center Place are up to eleven stories.

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

The Applicant knows of no historic buildings, sites, districts, or archaeological resources either on the Subject Property or located in the immediate vicinity that would suffer adverse impacts from the requested SLUPs.

5. Whether public services, public facilities and utilities—including motorized and nonmotorized transportation facilities—are adequate to serve the proposed use.

The Subject Property is located within walking distance of two MARTA rail stations. Any additional vehicular traffic generated by the proposed development can be accommodated. As there is no residential component, the proposed development will have no impact on school enrollment. There is sufficient utility, water and sewer capacity to supply this site.

6. 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.

The proposed development will be serviced by existing driveways on Olde Perimeter Way, Perimeter Center West, and Perimeter Center Place. Ingress, egress and traffic flow for the proposed uses will not be a problem.

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

Yes. See the attached site plan.

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

No. As stated above, the proposed height of the hotel is consistent with buildings immediately adjacent to the Subject Property.

III. NOTICE OF CONSTITUTIONAL CHALLENGE TO UNDERLYING ZONING AND PRESERVATION OF CONSTITUTIONAL RIGHTS

The Applicant respectfully submits that the Zoning Ordinance of the City of Dunwoody lacks adequate standards for the City Council to exercise its power to grant special land use permits. In essence, the standards are not sufficient to contain the discretion of the City Council and to provide the Courts with a reasonable basis for judicial review. Because the stated standards (individually and collectively) are too vague and uncertain to provide reasonable guidance to the City Council, the Zoning Ordinance violates the Fifth and Fourteenth Amendments of the Constitution of the United States in matters of zoning.

The City Council is granted the power to zone pursuant to Article IX, Section II, Paragraph 4 of the Constitution of the State of Georgia, 1983. It is a power which must be fairly exercised. Based on this element of fairness, the Zoning Ordinance of the City of Dunwoody violates Article IX, Section II, Paragraph 4 of the Constitution of the State of Georgia, 1983.

The Zoning Ordinance presently in effect is contrary to the best interest of the health and welfare of the citizens of the City of Dunwoody, and constitutes an arbitrary and capricious act. As a result, the Zoning Ordinance is in violation of Article I, Section I, Paragraphs 1 and 2 of the Constitution of the State of Georgia 1983; Article I, Section III, Paragraph 1 of the Constitution of the State of Georgia; and Article I, Section II, Paragraph 3 of the Constitution of the State of Georgia, 1983. Furthermore, the Zoning Ordinance violates the due process clause and equal protection clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

In addition, the Zoning Ordinance presently in effect is unconstitutional in that it renders this property unusable and destroys its marketability. Therefore, the Zoning Ordinance constitutes a taking of applicant's property without just and adequate compensation and without

due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitutional and in violation of Article I, Section I, Paragraph 1 and Article I, Section III, Paragraph 1(a) of the Constitution of Georgia.

Any limitation on the time for presentation of the issues before the City Council who have the power to zone and rezone is a violation of the guarantees of free speech under Article I, Section I, Paragraph 5 of the Constitution of the State of Georgia, 1983 and the First Amendment of the Constitution of the United States of America. Further, said limitations are in violation of the right to petition and assemble, in violation of Article I, Section I, Paragraph IX of the Constitution of Georgia, 1983 and the First Amendment of the Constitution of the United States of America as well as the due process clauses of the Constitution of Georgia, 1983 and the Constitution of the United States of America.

The Zoning Ordinance of the City of Dunwoody is unlawful, null and void in that its adoption and map adoption/maintenance did not comply with the requirements of its predecessor ordinance and/or the Zoning Procedures Law, O.C.G.A. § 36-66-1, et seq.

The Applicant respectfully submits that the Mayor and 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 Subject Property's owner and owners of similarly situated property in violation of Article I, Section III, Paragraph I of the Constitution of the State of Georgia, 1983, 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, 1983.

Finally, the Applicant respectfully submits that the Mayor and City Council cannot lawfully impose more restrictive standards upon the development of the Subject Property than presently exist as to do so not only would constitute a taking of the property as set forth above, but also would amount to an unlawful delegation of their authority, in response to neighborhood opposition, in violation of Article IX, Section IV, Paragraph II of the Georgia Constitution, 1983.

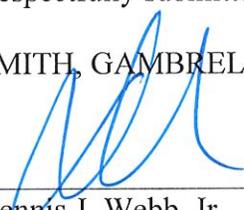
IV. CONCLUSION

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

This 5th day of July, 2017.

Respectfully submitted,

SMITH, GAMBRELL & RUSSELL, L.L.P.



Dennis J. Webb, Jr.
Vickie C. Rusek
Attorneys For Applicant

Promenade II, Suite 3100
1230 Peachtree Street, N.E.
Atlanta, Georgia 30309
404-815-3500

LAND DESCRIPTION FOR 121 Perimeter Center West:

ALL that tract or parcel of land lying and being in Land Lot 349 of the 18th District, DeKalb County, Georgia, and being more particularly described as follows:

BEGINNING at a brass disk lying at the intersection of the western margin of Perimeter Center Place (public right-of-way varies) and the northwestern margin of Perimeter Center West (public right-of-way varies) having State Plane Coordinates (Georgia West) of North 1428660.932 East 2243508.909, said point being THE TRUE POINT OF BEGINNING; Thence along the northwestern margin of Perimeter Center West, South 47 degrees 29 minutes 41 seconds West, 104.72 feet to a right-of-way monument found; Thence continuing along said margin, North 88 degrees 37 minutes 07 seconds West, 171.85 feet to a point; Thence continuing along said margin and following along the arc of a curve to the right 232.10 feet to a point, said curve having a radius of 522.09 feet and a chord bearing and distance of North 75 degrees 52 minutes 48 seconds West, 230.19 feet; Thence continuing along said margin, North 63 degrees 08 minutes 48 seconds West, 73.80 feet to a right-of-way monument found; Thence continuing along said margin, North 26 degrees 59 minutes 58 seconds East, 18.35 feet to a right-of-way monument found; Thence continuing along said margin, North 49 degrees 13 minutes 33 seconds West, 46.34 feet to a brass disk found at the intersection of the eastern margin of Olde Perimeter Way (private driveway) and Perimeter Center West (public right-of-way varies); Thence along the eastern margin of said private driveway, North 23 degrees 53 minutes 45 seconds East, 126.58 feet to an iron pin set with cap; Thence departing said private driveway, South 86 degrees 50 minutes 23 seconds East, 175.00 feet to an iron pin found (1/2" rebar); Thence North 03 degrees 05 minutes 41 seconds East, 237.00 feet to an iron pin set with cap; Thence South 86 degrees 50 minutes 25 seconds East, 382.11 feet to an iron pin found (5/8" rebar) on the western margin of Perimeter Center Place (public right-of-way varies); Thence along the western margin of Perimeter Center Place, following along the arc of a curve to the left 178.28 feet to a point, said curve having a radius of 954.93 and a chord bearing and distance of South 11 degrees 02 minutes 14 seconds West, 178.02 feet; Thence South 05 degrees 38 minutes 53 seconds West, 217.50 feet to a brass disk found, said disk being THE TRUE POINT OF BEGINNING.

Said tract or parcel of land contains 4.70 acres more or less.



SLUP ✓

Permit #2017166

Address		Payment Info	
Address	121 PERIMETER CTR W	Receipt #	105
City	DUNWOODY	Date	7/10/2017
State	GA	Paid By	PRADO PERIMETER CENTER LLC
Zip	30346	Description	SLUP REVIEW FEE
		Payment Type	CHECK 1129
		Accepted By	Tammy Hiler

Fees Paid

Fee	Fee Description	Factor	Total Fee Amount	Amount Paid
All Other Use Permits			0 500.00	500.00
			Total Payment: 500.00	



Permit #2017163

Address		Payment Info	
Address	121 PERIMETER CTR W	Receipt #	110
City	DUNWOODY	Date	7/10/2017
State	GA	Paid By	PRADO PERIMETER CENTER LLC
Zip	30346	Description	SIGN FEES FOR: 2 SLUPS SLUP17-04, 17-05 MA 17-02 SE 17-01 ZBA 17-14, 17-05
		Payment Type	CHECK 1129
		Accepted By	Tammy Hiler

Fees Paid

Fee	Fee Description	Factor	Total Fee Amount	Amount Paid
All Signs	Enter additional # of signs.		5 810.00	810.00
			Total Payment: 810.00	

6 Signs for all

\$135.00



Northwestern Mutual Real Estate

1100 Abernathy Road, Suite 895
 Atlanta, GA 30328
 770 395 2800 office
 770 395 2801 fax

Nov. 1, 2017

Via First Class Mail and by Email
 c/o John.Olson@DunwoodyGa.Gov

Mayor and Council

City of Dunwoody, Georgia

41 Perimeter Center East

Dunwoody, Georgia 30346

Re: Prado Perimeter Center, LLC – SLUP17-04; SLUP 17-04 A, B, and C
 and MA17-02 – Objection to the Proposed Special Land Use Permit, Modification of Zoning
 Conditions and Requested Variances for 121 Perimeter Center West, Dunwoody, Ga. 30346

Dear Mayor and Councilmembers:

We appreciate your hard work and leadership. We depend on your protection of the residents, voters and taxpayers of this city. We know you work hard to improve our city every day. Thank you for your service.

We write to ask for your help and to object to Prado Perimeter Center, LLC's proposed Special Land Use Permit and Modification of Zoning Conditions proposed in items MA17-02, SLUP17-04 and SLUP 17-04 A, B, and C at 121 Perimeter Center West, Dunwoody, Ga. 30346. Millbrook Apartment Associates, LLC and Northwestern Mutual Life Insurance Company request the Mayor and Council to protect the over 400 residents of the City of Dunwoody of District 1 living at 60 Perimeter Center Place (The Flats at Perimeter Place), the thousands of Dunwoody citizens that travel on Perimeter Center Parkway West every day and the over \$60 million dollars of property tax value of the complex being jeopardized by this proposed development.

The proposed project will damage the quality of life and peaceful enjoyment of the property rights of Dunwoody citizens based on the effects of this project. As the Mayor and Council know, our citizens and this upscale apartment complex constitute the bedrock community which anchors the live, work and play concept of Perimeter Place. Our 400 citizens of Dunwoody care about their quality of life very much. Once building begins, our residents, the complex, Dunwoody citizens that travel Perimeter Center Parkway each day

Northwestern Mutual is the marketing name for The Northwestern Mutual Life Insurance Company, Milwaukee, WI and its subsidiaries

and the surrounding neighbors will be shocked to find a seven (7) story hotel and a five (5) story parking deck being built which exceeds the present zoning allowances for the SunTrust Bank location. While people appreciate public participation opportunities, most citizens and residents do not realize that a development is underway until it is too late. Then, they get upset at leadership for allowing such impacts. The response that a citizen had their chance to voice concerns had they seen a very small publication in the city's designated legal organ is little solace to the citizens. As far as we know, no independent study of the proposed project in relation to our concerns has been completed. As a result, we are asking the Mayor and Council to protect the citizens from this development.

Our concerns are significant. First and foremost, we are concerned that this project will damage the quality of life and enjoyment of the homes of our 400 residents and thousands of Dunwoody citizens. The project adds three hundred fifty (350) parking spaces for vehicle traffic and one hundred fifty-seven (157) rooms for occupants on less than five (5) acres. The congestion surrounding Perimeter Center Parkway West and Perimeter Place is already bottlenecked at this particular development. The congestion will become dramatically worse for all citizens traveling this road. Residents' ability to get to their businesses and homes will be impaired substantially.

Second, each resident's right of enjoyment of their home will be impaired with regard to blocking their cityscape view and additional carbon monoxide emissions. As opposed to the city view that the citizens of this complex have enjoyed for over 10 years, residents will enjoy the view of a parking deck and the side of a hotel after construction. In addition, they will endure the fumes from cars starting when the temporary hotel occupants leave their 350 parking spaces and when cars idle while parking in those spaces. Based on the present zoning, our citizens would continue to enjoy the same cityscape view of our beautiful city and terrace amenities they have enjoyed for over a decade. We would ask you to preserve their property rights and the complex's property rights, and we specifically reserve our constitutional, common law and statutory rights to assert claims from any violation of the aforesaid or related rights related to the modification of zoning conditions and passage of the related special land use permit.

Third, the construction of this project for the time period involved will substantially affect the residents and visitors to Perimeter Place and the Flats during its construction. Construction noise, debris, and other nuisance effects will occur as a result which would be prevented if present zoning conditions were maintained. The present zoning conditions were supposed to prevent such long term impacts to the area and enhance the live, work and play residents of the City of Dunwoody, not push them out in favor of temporary hotel guests. Unfortunately, the zoning conditions are being vitiated by the proposed special use permit for the to the detriment of Dunwoody citizens.

Fourth, sewer capacity is a major concern to our complex, the citizens of Dunwoody and to DeKalb County businesses and residents. We are surprised that this project can go forward based on the present sewer capacity allowance within the county. We are uncertain if the project can maintain the sewer capacity allowance without producing subsequent overflows or capacity problems for other owners and residents.

Fifth, the proposed project will devalue the complex, which has been a major commercial taxpayer of the city for over a decade. This project was brought to the City based on the Perimeter Place concepts for a live, work and play community with certain amenities for residents of this upscale apartment community. The apartment complex would never have been centered in this location had the city expressed that it would allow for a seven (7) story hotel and five (5) story parking deck to block the view and easy access to the property for residents. The allowance for these modifications, variances and special land use permit deprives our complex of certain value, access, and enjoyment rights and constitutes a constitutional deprivation and taking of property

rights. We reserve our claims and constitutional rights and request that the city prevent the taking of our property rights and those of our residents and the devaluation of the complex. For over ten (10) years, this complex has been a major contributor and commercial taxpayer for the city and request that such contribution not have been made in vein to allow for the taking of our property rights. We would request that you protect our investment in the city and the tax base value of this property for the City.

Great concern exists with regard to the impacts of this project on residents, voters, businesses, and all citizens of Dunwoody who travel this area. The effects suffered by our business and by the residents and citizens already occupying and traveling through this area will be inordinate. We have contributed to the tax base and quality of life for the City of Dunwoody for a long period of time based on the project conditions presented several years ago. Our rights and enjoyment of the property should not be deprived to attract a new project at our expense and the expense of our residents and other Dunwoody citizens. We request that the City reject the special use permit and the modifications requested to the zoning conditions. We appreciate your consideration of our concerns and request your assistance and protection of our complex and the citizens of Dunwoody. Thank you.

With warmest regards, I am



Troy McMahan
Northwestern Mutual Life Insurance Company
Millwood Apartment Associates Limited

Enclosure: Reservation of Constitutional Rights and Property Rights

CONSTITUTIONAL NOTICE AND CHALLENGE
TO SPECIAL LAND USE PERMIT AND MODIFICATION OF
CERTAIN ZONING CONDITIONS

**OPPOSITION TO APPLICATION FOR SPECIAL LAND USE PERMIT AND
MODIFICATION OF CERTAIN ZONING CONDITIONS**

REZONING/SLUP OPPONENTS' NAME/ OWNER'S NAME: Northwestern Mutual Life Insurance Company / Millbrook Apartment Associates, LLC/Troy McMahan; 60 Perimeter Center Place, Dunwoody, Ga. 30346, hereinafter Opponent or Adjacent Property Owner

LOCATION OF PROPERTY: 121 Perimeter Center West, Dunwoody, Ga. 30346 ("Subject Properties"). Proposed Seven (7) Story Hotel and Five (5) Story Parking Deck Within 500 feet of Opponent's Apartment Complex, Hereinafter Petitioner or Hotel Developer

PROPOSED ACTION BY CITY: SLUP17-04; SLUP 17-04 A, B, and C and MA17-02 For Prado Perimeter Center, LLC ("Rezoning/Special Land Use Permit/Modification of Certain Zoning Conditions"), hereinafter "proposed action or actions"

Dear Mayor and City Council of the City of Dunwoody, Georgia:

This notice is being provided by Northwestern Mutual Life Insurance Company, Millbrook Apartment Associates, LLC and Troy McMahan, Director and Asset Manager for the Opponent (hereinafter all referred to as the "Opponent" or "Adjacent Property Owner") to comply with the mandate of the Georgia Supreme Court decisions which require the presentation of constitutional issues to the zoning authority as a condition precedent to seeking judicial relief in the event a zoning decision constitutes a violation of an aggrieved person's constitutional rights. Accordingly, the Opponent hereby preserves its rights to raise the following Constitutional issues before a court of competent jurisdiction, should any part of the above-referenced Rezoning, Special Land Use Permit, and Modification of Zoning Conditions be approved.

Approval of the subject Special Land Use Permit, the Modification of Zoning Conditions and Rezoning of the Subject Property as expressed in Items 17-04 A, B, and C and MA 17-02 would constitute an arbitrary and capricious abuse of the zoning power of the City of Dunwoody, Georgia. The Subject Properties have been in proper commercial use for many years and have coexisted peacefully with surrounding landowners and contributed to the local economy. The Adjacent Property has been a large contributor to the tax base of Dunwoody, Georgia for over a decade.

The Opponent respectfully submits that approval of the Rezoning Application Request would constitute an arbitrary, capricious, and unreasonable use of the City's zoning power because it would bear no substantial relationship to the public health, safety, morality or general welfare of the public. The proposed action would substantially harm and devalue the Opponent's property. The proposed action would restrict our ingress and egress rights. The proposed action would impair our residents' and our peaceful enjoyment rights including but not limited to the obstruction of view, freedom from loud noise, exposure to carbon monoxide fumes, and other

related rights. The proposed action will inhibit and impair our leasing, freedom of contract rights and alienability rights as protected by the Georgia and US Constitutions. The proposed action shall damage the ability to sell the subject property and will damage the ability to sublease for any tenants thus damaging their leasehold interests. The subject action constitutes Constitutional Deprivations including but not limited to a taking of the Opponent's private property rights without just compensation as well as a violation of their due process rights guaranteed by the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, Article I, Section III, Paragraph I and Article I, Section I, Paragraph I of the Constitution of the State of Georgia. Any such approval would also violate the Opponents' Equal Protection Rights guaranteed by the Constitutions of the United States and State of Georgia. In addition, the proposed action will vitiate those same rights for the 400 or so residents of the Flats which hold leasehold interests in the property and said Constitutional and legal rights and claims are hereby reserved for legal action also.

The proposed actions would prevent the opponent from realizing a fair and reasonable economic return on their investment and from making the highest and best use or reasonable use of its property. The opponent's property has been improved through the years in reliance upon the City's zoning and changing the aforesaid would deprive the adjacent property owner of its investment in these improvements and cause the opponent to incur a substantial loss in property value. In addition, the opponent remitted all appropriate property taxes to the City of Dunwoody at the prescribed tax rate for commercial properties.

The proposed action would create an unfair change in zoning and violate the Article IX, Section II, par. 4 of the Georgia Constitution. It would block our present property rights without justification under constitutional scrutiny standards.

Furthermore, the Opponent and its residents respectfully preserve their rights to raise any challenges based upon its procedural due process rights, resulting from any fundamental unfairness in the Rezoning, Special Land Use Permit and Modification of Zoning Conditions procedure set forth by the City of Dunwoody or any deviation therefrom or the Zoning Procedures Law in rendering a decision on the above referenced proposals. We appreciate your protection of these constitutional and other legal rights. Thank you.

With warmest regards, we are

HECHT WALKER, P.C.

Greg Hecht, Esq.
Georgia Bar No. 003860
Counsel for Opponents

Troy McMahan, Northwestern Mutual Life
Insurance Company and Millwood
Apartment Associates, LLC