

STATEMENT OF OPPOSITION and
IMPACT ANALYSIS

And

Other Material in Opposition of
Text Amendment To Amend Chapter 27 of the City of Dunwoody Village Zoning Ordinance to
Adopt New Dunwoody Village District Regulations:

Sections

27-107A-27-107E

Unless The Planning Commission's Recommended
"Buffer Option 3"

Mirroring the existing buffers between the residential neighborhoods
to the West and North of Dunwoody Village is utilized

Filed on behalf of:

Dunwoody Homeowner's Association, Inc.,

John and Joan Weiss, Members/Owners

5116 Hidden Branches Circle

Craig Wolpert, Member/Owners

5084 Hidden Branches Circle

Felicia Maltese Voloschin Member/Owner

1205 Hidden Ridge Lane

Scott and Aimee Doyne Members/Owners

5065 Trailridge Way

Carrie Hancock Member/Owner

1206 Hidden Ridge Lane

Bob and Jane Leavey Members/Owners

5108 Hidden Branches Circle

Sharon Frank Member/Owner

5049 Trailridge Way

Sarah McBride Member/Owner

5148 Hidden Branches Circle

(collectively hereinafter described as **"Opponents"**)

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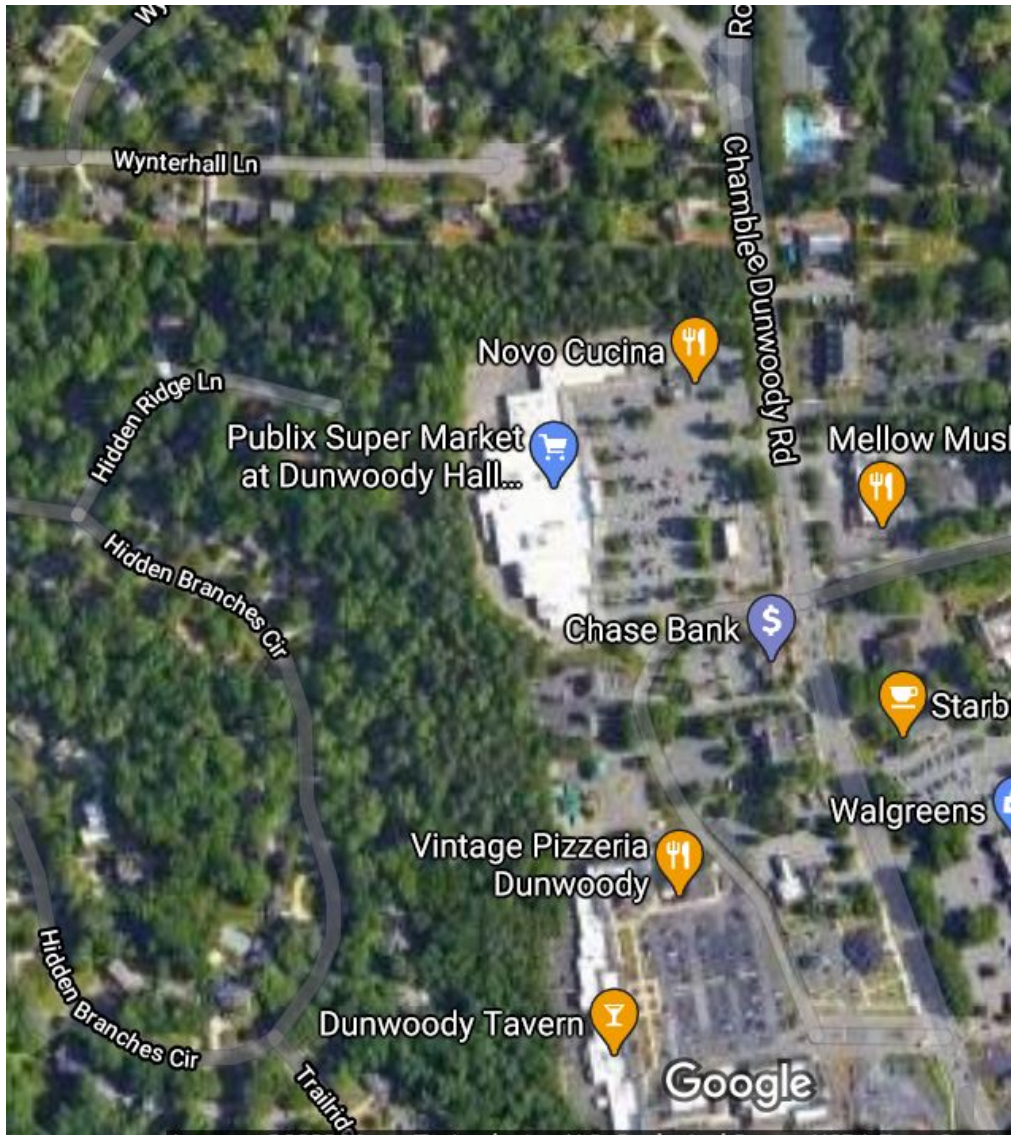
I. INTRODUCTION

This Statement of Opposition and Impact Analysis is submitted in OPPOSITION to the proposed text amendment to Chapter 27 of the City of Dunwoody Zoning Ordinance to Adopt New Dunwoody Village District Regulations, Sections 27-107A through 27-107E *unless* it is adopted with Buffer Option 3. It and all of the statements, exhibits and other material referenced or incorporated herein are for inclusion in the Record of this Matter. The Opponents want to be clear – it is not the concept of a redesign of Dunwoody Village, contemplated by the text amendment, about which they have concerns, it is the specific implementation of the buffer provisions *unless* measures are approved and implemented which preserve and protect the existing undisturbed, mature wooded buffers which presently shield them from the existing commercial development, *particularly where*, as here, the contemplated *re*-development of that commercial area is at a significantly *higher* density. These buffers were negotiated and fought for when the Subject Property was developed *and memorialized* in private written agreements with the developer, including Regency, copies of which are attached hereto as **Exhibit A** and **Exhibit B**. Thus, opponents have an interest in the Subject Property which the City is not privileged to take absent the payment of just compensation.

The Planning Commission, in reviewing the text amendment proposal, in the last, actual “normal” and meaningful public hearing process, heard and understood the concerns of nearly a hundred residents, in some of the most heavily attended hearings, who attended to make their concerns known. Based on those concerns, the Planning Commission recommended what is described, now, for the Mayor and Council, as “**Buffer Option 3.**” As shown herein, Buffer Option 1 and 2, each reducing or eliminating the mature, wooded buffers which provide shielding from a significantly dissimilar uses, will adversely affect the neighboring subdivision and homeowners whose investment-backed expectations were, when they purchased their homes, that the private agreements and zoning conditions imposing the undisturbed buffers would remain and would not be taken by the City.

The Opponents have substantial interests via their ownership of real property lying immediately adjacent to Dunwoody Village (the “Subject Property”) and the agreements to maintain the existing buffers, for which the City is presently contemplating a text amendment.

The proposed amendment suggests that the various owners of Dunwoody Village to re-develop the Subject Property, at a higher density would, without permission or right, thereafter be authorized by the City to destroy buffers they contractually agreed to preserve – buffers that the Planning Commission recommended protecting.. Currently, the Opponents enjoy a mature, wooded undisturbed buffer imposed on the commercial users, as zoning conditions and via private agreements, over the past 40 years.



The Opponents include:

Dunwoody Homeowners’ Association, Inc., a member organization that has, for more than 50-years, covered and overseen development in the area East of GA-400, North of I-285,

West of Peachtree Industrial Blvd, and North to the Chattahoochee or Gwinnett county with a primary goal of protecting residential neighborhoods. In 2008 the DeKalb portion of that coverage area was used for the border lines within DeKalb when the City of Dunwoody was approved by 85% of the voters in the affected locality. DHA presently has more than 800 individual members, including the Members/Owners listed above. It is organized to advance the cause of and to protect those neighborhoods from development and re-development which is inconsistent with the established neighborhoods within the City.

The Individual Opponents are all homeowners owning homes located immediately or closely adjacent to these buffers, many of whom have been residents for thirty-plus years. They are the intended beneficiaries of the Letter Agreement attached hereto as **Ex. B** and the 1977 Covenants attached as **Ex. A**. (**Note:** Following the 1977 rezoning of part of the Subject Property, the developer of the property selected Option 2(a)(4) and retained ownership of the buffers thereby triggering the continuing and automatically renewing nature of the Covenant. Similarly, Regency, in 1999, when it sought rezoning, entered into a private agreement which binds Regency today. Regency's campaign to reduce these buffers is a anticipatory breach of there written agreement and the City's participation in the matter a takings of the Opponents actual interest in and to these buffers on the Subject Properties.

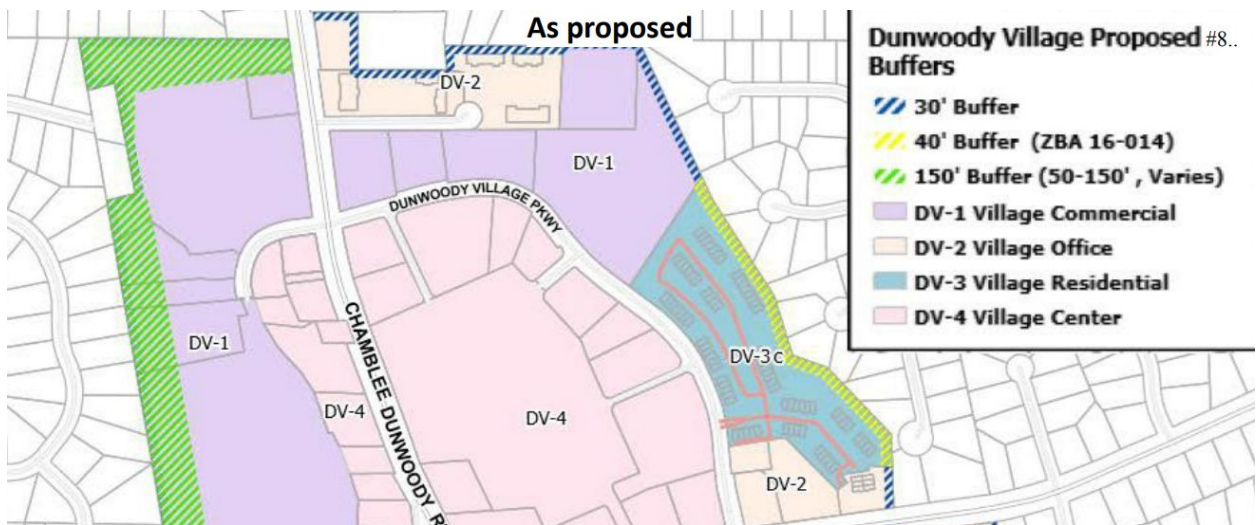
These Individual Opponents each *joined* DHA specifically to aid and further DHA's goals of preserving the buffers to protect the integrity and privacy of their back yards which back directly up to the buffers that were specifically negotiated for these properties. Carrie Hancock and Felicia Voloschin are respective homeowners of the two parcels actually notched into these buffers who are most at risk of any reduction of the buffers but each of these Individual Opponents will be immediately and adversely impacted in a manner different than other general residences in the City of Dunwoody. Bob Fiscella, one of the top 15 individual agents with Keller Williams, opined that depriving these homes of the current buffer could devalue the specific homes by at much as ten-percent and that, additionally, the homes would spend significantly more time on the market compared to other residents not so impacted. The Individual Opponents' ownership and that adverse impact grants them standing under the two-part "substantial interest/specially aggrieved" test for same. Their membership in the above

organization, itself devoted to advancing the interest of its members in protecting residential neighborhoods gives the Associations standing under Georgia’s test for same.

These neighborhoods each were specifically protected by DeKalb County when it approved the rezonings for the land making up the Subject Properties. The buffers vary in width from 75 to 200-feet based on the proximity of the new commercial development to the existing residences. Thus, as shown on the following chart: the mature, wooded, undisturbed buffers specifically are:

Tax Parcel	Depth of Existing Buffer
18 366 01 001	150’ to the west
18 366 01 005	150’ to the west; 50’ to 1205, 1206 Hidden Ridge Ln
18 366 01 009	75’ to the north
18 366 01 010	150’ to the west
18 366 01 022	150’ to the west
18 366 01 026	150’ to the west

The above chart (or its information) should be incorporated into the text amendment to provide the specifics which Buffer Option 3 does not appear to memorialize. Presently that Option depicts:



But the legend does not recite (and it would be questionably vague as presently written) “existing undisturbed buffers remain.” There is no language within the text of the amendment that provides more specificity and the legend, depicted above, recites “150’ Buffer (50-150’, Varies). A quantified table, as provided above, would make the provision more enforceable and enhance the certainty that the neighborhoods could enjoy.

II. IMPACT ANALYSIS

Pursuant to the Dunwoody Zoning Ordinance § 27-355(b) mandates, that in considering map amendments (which the current proposal includes), the City is charged with reviewing and ensuring the map amendment satisfies the following:

(2) Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby properties;

Clearly, the uses contemplated by both the existing zoning and that which is contemplated by the proposed text amendment and the neighboring property owners are dissimilar. That dissimilarity was significant enough that when these properties were granted their zoning, DeKalb County imposed significant undisturbed buffers to protect the adjacent neighborhoods. Their current owners bought with an investment backed expectation that their homes would continue to be protected by the buffers their predecessors in title had fought for and secured. While it is understood that there are opportunities for the owners of the Subject Property to re-develop their property at higher densities to make the properties more valuable and more profitable, the City cannot, for the benefit of one property owner, significantly and adversely affect another – doing so is the definition of an unconstitutional taking and an act of inverse condemnation. If the City believes it’s wise to redevelop the Village at a higher density it owes, at a minimum, *at least the same protection* to these neighborhoods as they enjoyed opposite *lower density* development – *not less*. Unless the City adopts the Planning Commission’s Buffer Option 3 with the clarity provided by the table above, it will have failed this requirement.

(3) Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned;

The City does not owe the owners of the Subject Property the right or opportunity to secure the most money possible or to procure even a higher rate of return. The properties are presently developed, for commercial use and those uses have thrived over the past 40-years in a symbiotic relationship where the higher density property shielded the lower density property. This is no abandoned or decrepit shopping center, these commercial properties are actively operating and generating a “reasonable economic” return as they presently are configured. Opponents do not begrudge these owners the opportunity to make more with their property, they simply require them to not do so at the Opponents’ expense particularly where, as here, protecting both interests are possible.

(4) Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property;

As evidenced by the statements of the individual opponents and a broker, stripping the existing, mature, wooded buffers away or reducing them substantially to allow development to move closer to the boundaries of the Subject Properties *will* adversely affect the value of the neighboring homes as well as damage, significantly, their use and enjoyment, privacy, and auditory sanctity of their homes. Thus, it cannot fairly be debated that the proposed text amendment does not satisfy this condition *unless, at a minimum*, the Planning Commission’s recommendations are followed with Buffer Option 3 clarified as provided for above.

Given the policies and goals of the existing Comprehensive Plan, this requirement is of critical import. In no less than ten places, the Comprehensive Plan calls for protection and preservation of “Suburban Residential” character areas. For example, under the heading “Preserve Our Neighborhoods,” the Comprehensive Plan states: “**Protect properties located on borders of Suburban Residential Neighborhoods Character Area with compatible height, building placement, densities, massing and scale, buffers, tree protection and other associated site development and building regulations.**” (2015 Comprehensive Plan at p. 9). The Comprehensive Plan expressly calls for protection of suburban neighborhoods adjoining the Dunwoody Village: “**The periphery of the [Dunwoody Village] character area will include a large transitional area to adequately protect single-family residential and other residential homes in the area.**” (*Id.* at p. 18 (emphasis added)).

(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;

As provided for above, there are existing conditions – residential neighborhoods presently shielded and protected from the noise, light and visual intrusion of commercial development. The contemplated text amendment allows densities on that commercial property to be increase significantly and, of critical import *taller buildings*. No “planted” landscaping can shield the existing homes from buildings in excess of 55-feet in height located a mere 30-feet from a new building if the lesser Buffer Options are approved nor can any of it protect those homes from the noise intrusion.

Under section 27-355(c)Zoning ordinance text amendments, the City is tasked with reviewing for compliance on the following conditions. The first, “[w]hether the zoning proposal is in conformity with the policy and intent of the comprehensive plan,” is addressed above and the second, “[w]hether the proposed zoning ordinance text amendment corrects an error or inconsistency in the zoning ordinance, meets the challenge of a changing condition or is necessary to implement established policy,” is inapplicable

III. CONSTITUTIONAL AND LEGAL OBJECTIONS

The Opponents’ property will be directly and adversely affected and harmed by the proposed rezoning. Accordingly, on behalf of the Opponents, it is submitted that the Dunwoody Zoning Ordinance and the mandatory Dunwoody Comprehensive Plan, to the extent it is ignored or interpreted to permit a text amendment which causes a significant detriment to the homeowners adjacent to the Subject Property is unconstitutional as a taking of private property, a denial of equal protection, an arbitrary and capricious act, and an unlawful delegation of authority under the specific constitutional provisions later set forth herein. A recommendation or vote of approval in violation of these mandates will constitutes an arbitrary and unreasonable use of the zoning and police powers of the City of Dunwoody because they bear no substantial relationship to the public health, safety, morality or general welfare of the public and substantially harm the Opponents. An approval of the Text Amendment would constitute a

taking of the Opponents' private property without just compensation and without due process in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia and the Due Process Clause of the Fourteenth Amendment of the United States Constitution and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

Failure to adopt Buffer Option 3 as the basis upon which the Text Amendment is predicated would be unconstitutional and would discriminate in an arbitrary, capricious and unreasonable manner between the Opponents and owners of similarly situated property in violation of Article I, Section III, Paragraph I of the Constitution of the State of Georgia and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States

Finally, Opponents object to the process under which review of this Text Amendment has been accomplished as a denial of procedural due process and a violation of the Zoning Procedures Law in that the "public hearings" have not been held in accordance with the ZPL nor in compliance with Dunwoody's own codified procedures, do not afford concerned residents a meaningful opportunity to appear in opposition during the extraordinary times of the Covid-19 pandemic. There is no substitute for a face-to-face public hearing where voices may be heard *simply by their presence* and where elected officials have to look their constituents in the eye. Being reduced to a postage-stamp "video" image via a Zoom conference wherein all opponents cannot be visually seen simultaneously deprives the residents of a meaningful opportunity to be heard. Upon information and belief, no new procedures were adopted by the City, in compliance with the ZPL and their own procedures, to change the mechanism for holding a public hearing and the entire process is flawed until such hearings can be held.

IV. CONCLUSION

For the foregoing reasons, the Opponents respectfully requests that Dunwoody either adopt Buffer Option 3 (with the clarification above) or deny this Text Amendment.

Respectfully submitted,

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