## MEMORANDUM

## To: Mayor and City Council

From: Madalyn Smith, Senior Planner
Date: February 14, 2022
Subject: RZ 21-03 - 600 Ashwood Parkway, Parcel ID\# 1834901048

## REQUEST

Branch Ashwood Associates, L.P. seeks a major modification of zoning conditions at 600 Ashwood Parkway.

## APPLICANT AND PROPERTY OWNER

Petitioner: Branch Ashwood Associates, L.P.
Owner: Branch Ashwood Associates, L.P. (Dunwoody Development Authority)

## PLANNING COMMISSION 12.14.21 \& 1.11.22

Planning Commission held a public hearing regarding the case on December 14, 2021. There were no public comments in opposition to the application. Following discussions, the Planning Commission voted to defer the case to the January 11, 2022 meeting to allow staff and the applicant additional time to discuss the conditions related to the ATM location and required storefront entrances.

At the January 11, 2022 Planning Commission meeting, the Commission voted to recommend approval of RZ 21-03 subject to staff conditions.

## APPLICATION AMIENDMENT SUBMITTED 2.2.22

The applicant submitted an amendment on February 2, 2022. This amendment removed a drive-through ATM, in accordance with staff's recommendation. The conditions presented to the Planning Commission were updated to reflect this change to the applicant's site plan.

## MAYOR AND CITY COUNCIL, 2.14.22

City Council held a public hearing regarding the case on February 14, 2022. There were no public comments in support nor opposition to the application.

The applicant was asked to provide an updated landscape plan, additional bike parking, a lot coverage calculation, and information regarding sight distance at the proposed dumpster. Concerns were also raised regarding the activation of the proposed patio spaces.

In response, the applicant submitted additional materials for review and staff amended the proposed conditions.

## APPLICATION AMENDMIENT SUBMITTED 2.18.22

- Letter to the Mayor and City Council, dated February 18, 2022
- Site Plan, dated February 17, 2022

Shows 4 bike parking spaces at building F and additional parking between Building D \& C and location of stop sign and stop bar at the proposed dumpster location.

- Planting Plan, dated January 31, 2022

Updated planting plan reflects the current site layout.

## MAYOR AND CITY COUNCIL, 2.28.22

City Council reviewed the case on February 28, 2022. There were no public comments in support nor opposition to the application.

The applicant was asked to provide a plan to improve pedestrian circulation and concerns were raised regarding the entrances facing Ashwood Parkway.

In response, the applicant submitted additional materials and suggested conditions.

## APPLICATION AMENDMENT, SUBMITTED MARCH 4, 2022

- Proposed Amendments to the Conditions
- Proposed amendment to condition \#24 (proposed change underlined):

Building F on the Parcel Site Plan (see Exhibit A) shall have glass doors that face Ashwood Parkway for each tenant. The glass doors facing Ashwood Parkway for all eating and drinking establishments in Building $F$ shall be accessible to the general public and shall be open during the respective tenants' business hours.

- Condition \#27 to change to:

The corner patio spaces at Building F shall be activated with outdoor seating and accessible to the general public, unless reserved for exclusive use by an eating and drinking establishment

- New condition \#28 - no longer necessary as the new walkway is shown on the attached site plan
- Site Plan, dated March 4, 2022
- Shows new sidewalk connections to a crosswalk located on the subject site.

Staff has amended the condition 27 to reflect the language requested by the applicant and added condition 28 to formalize the proposed sidewalk connection and crosswalk. There are two options for condition \#24, which relates to the doors facing Ashford Dunwoody. The applicant suggests language (see above) that would only require entrances for eating and drinking establishments be open during business hours. The other option would be to require that all doors regardless of the tenant be open during business hours.

BACKGROUND \& PROPOSED DEVELOPMENT


The subject property is located at the northwest corner of the Ashford Dunwoody Road and Meadow Lane intersection. The 10.1 acre parcel and currently Perimeter Center Marketplace is under construction at the site, which includes a 25,440 square foot anchor supermarket, an 8-pump (16 fueling positions) gas station/convenience store, a 2,800 square foot medical/office/retail building, and 35,400 square feet of restaurant and retail space.

The site was initially rezoned in 1996, case CZ 96035, from Office-Institutional (O-I) District to Commercial Conditional (C-1c) District to allow a 28,900 SF retail development; this proposal was built out with three restaurants and large detention pond. In 2019, the applicant amended the zoning conditions, case MA 19-01, to allow the Perimeter Marketplace development described above. The site plan associated with MA 19-01 intentionally left a 1.5 acre tract blank, highlighted in yellow on Figure 1, with the understanding that the applicant would amend the conditions of zoning once a proposal was developed for the parcel. The applicant was also granted a variance, ZBA 19-11, to reduce the front yard setback from 50 feet to 0 feet. The applicant then further amended the zoning conditions, case MA 19-03, to replace a bank use on the property with a medical/office/retail use.


Figure 1. Site plan associated with MA 19-01
An applicant-initiated meeting was held on October 27, 2021 at 6 pm at 4505 Ashford Dunwoody Road. There were a total of five attendees. The applicant has provided a summary report, which is included within the rezoning application packet attached to this report.

## SITE PLAN ANALYSIS

The applicant proposes that a single-story, 8,400 SF building be constructed on the 1.5 acre tract that was previously left blank on the site plan for MA 19-01. There are no changes proposed outside of this tract, highlighted in yellow in Figure 2.


Figure 2. Area of proposed amendment highlighted in yellow
The 1.5 acre tract is located on the northern portion of the property, adjacent to Ashwood Parkway. Despite having a 0 foot setback, the building is setback approximately 25 feet from the northern property line due to the presence of several underground utilities. In addition to the building, the
applicant proposes 62 new parking spaces- 443 spaces overall for the development-a walk up ATM, and two outdoor patios (see Figure 3). The area under consideration is overparked at 62 spaces, the maximum for an $8,400 \mathrm{SF}$ building is 56 spaces, but the overall site does not exceed the parking requirements. Although the building is setback further from the road than the buildings B-D, there are two outdoor patios adjacent to Ashwood Parkway that activate the space.


Figure 3. Site Plan (Updated 3.4.22)
The building is designed in proximity to Ashwood Parkway, in line with the vision of a more urban form in the Perimeter Center. There will be customer entrances to tenant spaces on both the northern and southern façades. The submitted elevations indicate that the most prominent façade materials will be glass and brick (see Figure 4).


Figure 4. Submitted Elevations

## SURROUNDING LAND ANALYSIS

| Direction | Zoning | Use | Current Land Use |
| :---: | :---: | :---: | :---: |
| N | O-I and N-S | Shopping Center and <br> Office Building | Commercial/Office |
| S | OCR | Shopping Center and <br> Office Building | Commercial/Office |
| E | C-1 | Restaurants and <br> Shopping Center | Commercial |
| W | O-I | Office Building | Office |

## ZONING AMIENDMIENT REVIEW AND APPROVAL CRITERIA

Chapter 27, Section 27-335 identifies criteria for evaluating applications for zoning amendments. No application for an amendment shall be granted by the City Council unless satisfactory provisions and
arrangements have been made concerning each of the following factors, all of which are applicable to each application:
(1) Whether the zoning proposal is in conformity with the policy and intent of the comprehensive plan;
The scope of the request is limited to the referenced 1.5 acre tract. The proposed restaurant/retail building conforms to the character of the current development and conforms with the standards of the Perimeter Center Overlay.
(2) Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby properties;
An additional restaurant/retail building is in line with the Perimeter Marketplace development which includes a grocery store, restaurants, retail, and office. It is also compatible with the adjoining mix of office, retail, restaurants, and shopping centers nearby.
(3) Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned;
The area of the site in question was intentionally left blank in 2019 to give the applicants flexibility and time to determine the best economic use for the site. Granting changes to the conditions that support a restaurant/retail building would allow the applicant to meet today's market conditions.
(4) Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property;
The proposed change of use will not create any adverse impacts on adjoining land uses as adjacent and nearby properties have similar commercial and office operational characteristics.
(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 stated above, in 2019 the applicant did not propose a specific use for this $\mathbf{1 . 5}$ acre tract to allow them to respond to changing market demands.
(6) Whether the zoning proposal will adversely affect historic buildings, sites, districts, or archaeological resources; and
There are no historic, buildings, sites, districts, or archeological resources.
(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 proposed change is relatively small and will not significantly further the burden on streets, transportation facilities, utilities, or schools.

DEPARTMENT OF COMMUNITY DEVELOPMENT RECOMMENDATION
The proposal is recommended for approval based on the following exhibits and conditions. The previous conditions from cases MA 19-01 and MA 19-03 remain intact, but are updated to reflect requirements for Building F :

EXHIBIT A: Schematic Site Plan SP35, completed by Philips Partnership, dated May 29, 2019, as amended by Zoning Site Plan, dated November 4, 2019, and further amended by the Overall Site Plan and Parcel Site Plan SP-38.4, dated March 4, 2022.
EXHIBIT B: Streetscaping Sections, completed by Phillips Partnership, dated December 4, 2018 and Streetscape Section for Ashford Dunwoody Road dated January 14, 2019
EXHIBIT C: Rendering of Archway Sign and Grocer Free-standing Letters Sign, dated April 25, 2019
EXHIBIT D: Conceptual Gateway Plaza Plan, completed by AJC Design Group, dated April 24, 2019
EXHIBIT E: Left Turn Lane Concept, completed by A\&R Engineering, dated April 17, 2019
EXHIBIT F: Meadow Lane Intersection, completed by Philips Partnership, dated May 13, 2019
EXHIBIT G: Building F Planting Plan, completed by AJC Design Group, dated January 31, 2022
EXHIBIT H: Perimeter Marketplace - Bldg. F Colored Elevations, completed by Branch, dated January 31, 2022.

1. The owner shall develop the site in general conformity with "Exhibit A" with minor changes allowed as defined by Section 27-337(b) or necessary changes to meet conditions of zoning or land development requirements made necessary by actual field conditions at the time of development;
2. The property labeled "BLDG E" on the Zoning Site Plan dated November 4, 2019 in Exhibit A shall contain a street facing entrance that stays open during business hours. BLDG E may have a drive-through for a medical service office use only. Drive-throughs for retail, restaurant or other commercial uses are not allowed. If a new tenant were to occupy the building after a medical service office use vacates the building, the drivethrough window shall be removed and a 6-foot landscape strip shall replace a portion of the drive-through lane found immediately adjacent to the building prior to the the issuance of a Certificate of Occupancy;
3. The drive-thru shall be limited only to medical service office use;
4. The owner shall construct the streetscaping and commuter trail in general conformity with "Exhibit B". Any minor variations to the streetscapes made necessary by actual field conditions at the time of development shall be subject to approval by the Public Works and Community Development Department. If the width of the commuter trail is reduced by Public Works the location of the footprints of the buildings shall remain in the same vertical and horizontal location as shown on the Schematic Site Plan;
5. The owner shall construct a 12-foot wide pedestrian connection, including a 6-foot pedestrian sidewalk and two 3-foot wide landscape strips, from Ashford Dunwoody Road, between buildings C and D , to Building A as illustrated on Exhibit A. The landscape strips shall include overstory trees planted on each side at no more than 50 and no less than 25 feet;
6. Buildings shall be designed with 360-degree architecture with the exception of the rear of Building A and the anchor grocer, which shall be subject to reasonable landscape screening as approved by the City Arborist;
7. Major façade materials shall include brick, stone, hard coat stucco and glass, with other high-quality materials approved by the Community Development Director during the permit review process;
8. Synthetic stucco (EIFS) material shall be limited to accenting material; masonry brick or stone veneer materials are allowed; stamped brick and stone EIFS or imitation masonry veneer materials shall be prohibited;
9. All loading facilities and trash/recycling enclosure(s) must be screened from view of public rights-of-way by landscaping and a solid brick wall or opaque fence at least six feet in height or the height of the dumpster. The approach to the loading facilities and trash/recycling enclosures for the anchor grocer and Building A does not need to be screened from view of Ashwood Parkway;
10. All mechanical equipment (e.g., air conditioning, heating, cooling, ventilation, exhaust and similar equipment) shall be roof mounted and screened in all directions by walls or parapets or will be enclosed in opaque structures to hide the mechanical equipment from view from public right-of-way within 200 feet;
11. All utilities servicing the site shall be underground with the exception of required aboveground elements, such as transformers and cable boxes;
12. Any stormwater detention facility will be underground;
13. Within sixty days after the issuance of certificates of occupancy, the Owner will convey to the City right-of-way to incorporate the sidewalk and bicycle improvements, located along Ashford Dunwoody Road. The City will maintain the sidewalk and bicycle improvements. Such conveyance shall be via right of way deed. The exact legal description of the property to be conveyed shall be prepared by the Owner and agreed to by the City;
14. Within sixty days after the issuance of certificates of occupancy, the Owner will convey a permanent public access easement to the City for the new roadway and sidewalks to be constructed on the west side of the site. Owner may convey the new roadway and sidewalks via right of way deed at a future date at which point the City shall accept such conveyance. The exact legal description of the property to be conveyed shall be prepared by the Owner and agreed to by the City;
15. The development is entitled to a total of four monument signs, one on each road frontage. The allowed square footage of 144 square feet for the monument sign for Ashford Dunwoody Road may be divided into two structures as follows: 1) an archway connecting Building B and Building C in general conformity with the renderings in Exhibit C and; 2) freestanding letters indicating the name of the anchor grocer mounted on top of the Plaza wall up to a total maximum height of 5 feet in general conformity with the rendering in Exhibit D. In addition, the Archway sign may include a 42 square foot wayfinding sign labeled as "Sign A" as shown in Exhibit C. ;
16. The commuter trail, streetscaping, and new road connection, shall be developed concurrently with the grocery store and retail/restaurant buildings C and D , fronting Ashford Dunwoody Road;
17. The ground story restaurant/retail uses of buildings adjacent to Ashford Dunwoody Road shall be built within three feet of vertical elevation of the adjacent commuter trail and have entrances that face Ashford Dunwoody Road as follows: buildings containing one tenant shall have a minimum of one entrance; buildings containing two or more tenants shall have a minimum of two entrances;
18. The Gateway Plaza, located on the corner of Meadow Lane Road and Ashford Dunwoody Road will be in general conformity with the Conceptual Gateway Plaza Plan attached as Exhibit C. Within sixty days after the issuance of certificates of occupancy, the Plaza area general public access will be granted to the Plaza through a public access easement to the benefit of the City;
19. The owner shall be responsible for the maintenance of the Plaza;
20. In accordance with the recommendation of the traffic study, a westbound left turn lane shall be added on Ashwood Parkway at the easternmost driveway entrance to the development in general conformity with Exhibit E;
21. Based on projected queue length, an eastbound left turn lane shall be installed at Ashwood Parkway and Ashford Dunwoody Road using existing signal phasing and in general conformity with Exhibit E. Applicant will not be responsible for any signal work; and
22. A southbound right turn lane shall be added at the intersection of Perimeter Center Place and Meadow Lane Road using existing signal phasing and in general conformity with Exhibit F. Applicant will not be responsible for any signal work;
23. The owner will contribute up to thirty-three percent ( $33 \%$ ) of the funds needed to extend the northbound left turn lane from Ashford Dunwoody Road on to Meadow Lane Road. In no event shall the total of such contribution exceed $\$ 33,000$;
24. Building F on the Parcel Site Plan (see Exhibit A) shall have glass doors that face Ashwood Parkway for each tenant. These doors must be open and accessible to the general public during business hours;
25. On Building F, $100 \%$ of the required street-facing window pane surface area ( $15 \%$ window coverage is required per story on all street facing façades) must allow viewing into the tenant space for a minimum of 5 feet in depth. Windows must not be made opaque by nonoperable window treatments such as walls;
26. The development site is limited to two walk-up ATMs, located at the "Anchor Grocer" and the west façade of Building F (see Exhibit A). No drive-through ATMs are permitted;
27. The corner patio spaces at Building F shall be activated with outdoor seating and accessible to the general public, unless reserved for exclusive use by an eating and drinking establishment.
28. The development site for Building F shall include a north-south, direct pedestrian connection, including walkways and a crosswalk, as shown on the Parcel Site Plan SP-38.4 (Exhibit A).

## ATTACHMENTS

- EXHIBIT A: Schematic Site Plan SP35, completed by Philips Partnership, dated May 29, 2019, as amended by Zoning Site Plan, dated November 4, 2019, and further amended by the Overall Site Plan and Parcel Site Plan SP-38.4, dated March 4, 2022.
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- EXHIBIT H: Perimeter Marketplace - Bldg. F Colored Elevations, completed by Branch, dated January 31, 2022.
- RZ 21-03 Application
- RZ 21-03 Application Amendments Received February 2, 2022
- RZ 21-03 Application Amendments Received February 18, 2022
- RZ 21-03 Application Amendments Received March 4, 2022
- Ordinance


# AN ORDINANCE TO AMEND THE ZONING CONDITIONS OF LAND LOTS 352, AND 349, District 18 IN CONSIDERATION OF ZONING CASE RZ-21-03 (600 Ashwood Parkway). 

WHEREAS: Branch Ashwood Associates, L.P., owner of 600 Ashwood Parkway, Dunwoody, Georgia seeks a major modification to conditions of zoning; AND

WHEREAS: The properties, consisting of tax parcel number 18-349-01-048, contains 10.6 acres land located in the northwest corner of Ashford Dunwoody Road and Meadows Lane; and

WHEREAS: The site is currently conditioned to a site-specific plan from 2019 that restricts the use to a 25,440 square foot anchor supermarket, an 8pump (16 fueling positions) gas station/convenience store, a 2,800 square foot bank, and 35,400 square feet of restaurant and retail space (MA 19-01 \& MA 19-03). Through the application of a modification to conditions (Section 27-361), Branch Ashwood Associates, L.P. is requesting that the conditioned 2019 site plan be updated with the new plan; and

WHEREAS: The proposed amendment adds an additional 8,400 square feet of additional restaurant retail space and new parking; and

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; and

WHEREAS: A public hearing was held by the Mayor and City Council of the City of Dunwoody as required by the Zoning Procedures Act; and

WHEREAS: The Mayor and City Council find that the proposed use aligns with the Perimeter Center Character Area of the Dunwoody Comprehensive Plan, which calls for, among others, creative building and site design that encourages bikeable and walkable development which furthers the transportation goals of modality (other than by automobile) and connectivity of the Perimeter Center Neighborhood; and

NOW THEREFORE, The Mayor and City Council of the City of Dunwoody hereby ORDAIN AND APPROVE the modification of zoning conditions on tax parcel numbers and 18-349-01048 as follows:

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3. The drive-thru shall be limited only to medical service office use;
4. The owner shall construct the streetscaping and commuter trail in general conformity with "Exhibit B". Any minor variations to the streetscapes made necessary by actual field conditions at the time of development shall be subject to approval by the Public Works and Community Development Department. If the width of the commuter trail is reduced by Public Works the location of the footprints of the buildings shall remain in the same vertical and horizontal location as shown on the Schematic Site Plan;
5. The owner shall construct a 12 -foot wide pedestrian connection, including a 6 -foot pedestrian sidewalk and two 3 -foot wide landscape strips, from Ashford Dunwoody Road, between buildings C and D , to Building A as illustrated on Exhibit A. The landscape strips shall include overstory trees planted on each side at no more than 50 and no less than 25 feet;
6. Buildings shall be designed with 360 -degree architecture with the exception of the rear of Building A and the anchor grocer, which shall be subject to reasonable landscape screening as approved by the City Arborist;
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enclosures for the anchor grocer and Building A does not need to be screened from view of Ashwood Parkway;
10. All mechanical equipment (e.g., air conditioning, heating, cooling, ventilation, exhaust and similar equipment) shall be roof mounted and screened in all directions by walls or parapets or will be enclosed in opaque structures to hide the mechanical equipment from view from public right-of-way within 200 feet;
11. All utilities servicing the site shall be underground with the exception of required aboveground elements, such as transformers and cable boxes;
12. Any stormwater detention facility will be underground;
13. Within sixty days after the issuance of certificates of occupancy, the Owner will convey to the City right-of-way to incorporate the sidewalk and bicycle improvements, located along Ashford Dunwoody Road. The City will maintain the sidewalk and bicycle improvements. Such conveyance shall be via right of way deed. The exact legal description of the property to be conveyed shall be prepared by the Owner and agreed to by the City;
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19. The owner shall be responsible for the maintenance of the Plaza;
20. In accordance with the recommendation of the traffic study, a westbound left turn lane shall be added on Ashwood Parkway at the easternmost driveway entrance to the development in general conformity with Exhibit E;

## STATE OF GEORGIA <br> CITY OF DUNWOODY

## ORDINANCE 2022-_--

21. Based on projected queue length, an eastbound left turn lane shall be installed at Ashwood Parkway and Ashford Dunwoody Road using existing signal phasing and in general conformity with Exhibit E. Applicant will not be responsible for any signal work; and
22. A southbound right turn lane shall be added at the intersection of Perimeter Center Place and Meadow Lane Road using existing signal phasing and in general conformity with Exhibit F . Applicant will not be responsible for any signal work;
23. The owner will contribute up to thirty-three percent (33\%) of the funds needed to extend the northbound left turn lane from Ashford Dunwoody Road on to Meadow Lane Road. In no event shall the total of such contribution exceed $\$ 33,000$;
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27. The corner patio spaces at Building F shall be activated with outdoor seating and accessible to the general public, unless reserved for exclusive use by an eating and drinking establishment.
28. The development site for Building F shall include a north-south, direct pedestrian connection, including walkways and a crosswalk, as shown on the Parcel Site Plan SP-38.4 (Exhibit A).

SO ORDAINED AND EFFECTIVE, this the $\qquad$ day of $\qquad$ 2022.

Approved by:

Lynn P. Deutsch, Mayor
Approved as to Form and Content

City Attorney's Office

Attest:

Sharon Lowery, City Clerk
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## FIRST AMENDMENT

## APPLICATION FOR MAJOR AMENDMENT CITY OF DUNWOODY, GEORGIA

IN RE: RZ 21-02
Branch Ashwood Associates, L.P., Applicant,

For the Property located at:
600 Ashwood Parkway, Dunwoody
(Parcel No. 1834901 048)

COMES NOW the Applicant and respectfully requests that the above-referenced Application for Major Amendment be amended as follows:

By incorporating into the Application the enclosed Constitutional Objections, as if originally filed with the Application;

By incorporating into the Application the enclosed Site Plan dated November 8, 2021, in lieu of previously submitted site plans, as if originally filed with the Application;
(3)

By incorporating into the Application the enclosed Planting Plan dated November 8, 2021, as if originally filed with the Application;

By incorporating into the Application the enclosed Colored Elevations dated November 8 , 2021, in lieu of previously submitted elevations, as if originally filed with the Application;

By incorporating into the Application the enclosed Colored Site Plan dated November 8, 2021, as if originally filed with the Application.

WHEREFORE, the Applicant requests that the City of Dunwoody accept this First Amendment; that the Application be amended in accordance with this First Amendment; and that the Applicant have such other and further relief as is just and proper under the circumstances.


4062 Peachtree Road, Suite A 330
Atlanta, Georgia 30319
(404) 965-3681

CONSTITUTIONAL OBJECTIONS

## APPLICATION FOR MAJOR AMENDMENT OF ZONING CONDITIONS

## CITY OF DUNWOODY, GEORGIA

Georgia Law and the procedures of the City of Dunwoody require us to raise Federal and State Constitutional objections during the Major Amendment of Zoning Conditions application process. While the Owner/Applicant anticipates a smooth application process, failure to raise constitutional objections at this stage may mean that the Owner/Applicant will be barred from raising important legal claims later in the process. Accordingly, we are required to raise the following constitutional objections at this time:

The portions of the Zoning Ordinance of the City of Dunwoody, Georgia, as applied to the Property, that would result in a denial of the Major Amendment of Zoning Conditions as requested, are, or would be, unconstitutional in that they would destroy property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983 and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

Any application of the Code of the City of Dunwoody or the Dunwoody Zoning Ordinance to the Property which restricts its use to any use in a manner other than that requested is unconstitutional, illegal and null and void because such an application constitutes a taking of property in violation of the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States, Article I, Section I, Paragraph I, and Article I, Section III, Paragraph I, of the Constitution of the State of Georgia of 1983 and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States because such an application denies the Owner/Applicant an economically viable use of its land while not substantially advancing legitimate state interests.

A denial of this Application would also constitute an arbitrary and capricious act by the City Council of the City of Dunwoody without any rational basis therefore, thereby constituting an abuse of discretion in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983 and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

A refusal to grant the Major Amendment of Zoning Conditions as requested would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner between the Owner/Applicant and owners of similarly situated property in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Any approval of the Major Amendment of Zoning Conditions subject to conditions that are different from the conditions requested, to the extent such different conditions would have the effect of further restricting the utilization of the Property, would also constitute an arbitrary, capricious and
discriminatory act and would likewise violate each of the provisions of the State and Federal Constitutions set forth herein above.

In addition, this constitutes formal written notice to the City of Dunwoody, pursuant to O.C.G.A. § 36-33-5, that the Owner/Applicant plans to seek to recover all damages that it sustains or suffers as a result of the denial of this Application and/or the unconstitutional zoning of the Property by the City of Dunwoody. Such damages may include, but are not necessarily limited to, damages related to the diminution in the value of the Property, attorneys' fees and expenses of litigation.

Accordingly, the Owner/Applicant respectfully requests that the City Council of the City of Dunwoody grant the Major Amendment of Zoning Conditions as requested.


4062 Peachtree Road, Ste A330
Dunwoody, Georgia 30319
(404) 965-3680






## Amendment Application

The requirements of this application apply to comprehensive plan land use map amendments, zoning map amendments, zoning ordinance text amendments and major amendments to one or more conditions attached to previously approved zoning map amendments. If an applicant needs to further relax the dimensional standards of the Zoning/Land Development Ordinances for a specific property for the purpose of construction, they can request a variance to the text of the Zoning Ordinance. Such a request might seek to modify the strict terms of the height, area, placement, setback, yard, buffer, landscape strip, parking and loading or other regulations, but these applications will not occur concurrently, and the approval of one does not indemnify the approval of the other. The City Council, following recommendation by the Planning Commission, shall determine whether the proposed amendment meets the applicable requirements.

## Application Requirements:

| Item <br> $\#$ | Required Item | Number of Copies |
| :---: | :--- | :--- |
| 1 | Amendment Application (See Page 7) | 1 electronic copy |
| 2 | Property Owner(s) Notarized Certification (See <br> Page 8) | 1 electronic copy |
| 3 | Campaign Disclosure Statement (See Page 10- <br> $11)$ | 1 electronic copy |
| 4 | Traffic Impact Study (If necessary, see Page <br> 12) | 1 electronic copy |
| 5 | Development of Regional Impact (If necessary, <br> see Page 12) | 1 electronic copy |
| 6 | Environmental Impact Report (If necessary, <br> see Page 13) | 1 electronic copy |
| 7 | Summary Report (See Page 5) | 1 electronic copy |
| 8 | Site plan and elevations (See Page 5) <br> 9Written legal description/survey of the property <br> (See Page 5) | 1 electronic copy |
| 10 | Site photos (See Page 5) | 1 electronic copy |
| 11 | Letter of Intent (See Page 5) | 1 electronic copy |
| 12 | Overall Development Plan (For Planned <br> Developments) | 1 electronic copy |
| 13 | Payment | Pay with cash, check or credit card |

Please submit the entirety of your application electronically, saved as a single PDF.
The deadline to be placed on the next month's Planning Commission agenda is the first Tuesday of the month by 3 PM.

## Detailed Process and Instructions

```
Before the First Pre-Application Review Meeting
    - Review the application packet.
    - Consult the Dunwoody Zoning Ordinance at library.municode.com/ga/Dunwoody
    - Fill out the amendment application (page 7).
    - Prepare a preliminary site plan.
    - Contact a Planner to schedule a Pre-Application Review Meeting. Contact information is online at
        dunwoodyga.gov.
```


## AMENDMENT APPLICATION

Community Development
4800 Ashford Dunwoody Road | Dunwoody, GA 30338
Phone: (678) 382-6800 | Fax: (770) 396-4828

## Applicant Information:



## Owner Information: $\square$ Check here if same as applicant



## Property Information:

Property Address: 600 Ashwood Parkway, Dunwoody, GA 30338
Parcel ID: 1834901048
Current Zoning Classification: $\mathrm{C}-1 \mathrm{c}$
Requested Zoning Classification: C-1c

## Applicant Affidavit:

I hereby certify that to the best of my knowledge, this amendment 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: Branch Ashwood Associates, L.P., by Jack Haylett, its Partner
Applicant's Signature:


Notary:
Sworn to and subscribed before me this_28_Day of_ October, 2021 Notary Public: Rebecca OBrien
Signature:


My Commission Expires


# Property Owner(s) <br> Notarized Certification 

## Community Development

4800 Ashford Dunwoody Road | Dunwoody, GA 30338
Phone: (678) 382-6800 | Fax: (770) 396-4828
I hereby certify that to the best of my knowledge, this amendment form is correct and complete. If additional materials are determined to be necessary, I understand that I am responsible for filing additional materials as specified by the City of Dunwoody Zoning Ordinance. I certify that the applicant(s) (if different) are authorized to act on my behalf, pursuant to this application and associated actions.

## Property Owner (If Applicable):



Property Owner (If Applicable):
Owner Name:
Signature: _Date:
Address:
Phone: $\qquad$ Fax: $\qquad$ Email:
Sworn to and subscribed before me this $\qquad$ Day of 20
Notary Public:

## Property Owner (If Applicable):

| Owner Name: |  |  |
| :---: | :---: | :---: |
| Signature: | Date: |  |
| Address: |  |  |
| Phone: Fax: | Email: |  |
| Sworn to and subscribed before me this | Day of | 20 |
| Notary Public: |  |  |

# Campaign Disclosure Statement 

Community Development
4800 Ashford Dunwoody Road | Dunwoody, GA 30338
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?

Applicant / Owner: Branch Ashwood Associates, L.P., as Applicant

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

Date
Government Official
Official Position
Description
Amount

# Campaign Disclosure Statement 

## Community Development

4800 Ashford Dunwoody Road | Dunwoody, GA 30338 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

ㅁYES $\square$ NO


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

Date
Government Official
Official Position
Description
Amount

# Campaign Disclosure Statement 

# Dunwoody <br> Georgia 

## Community Development

4800 Ashford Dunwoody Road | Dunwoody, GA 30338 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?


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

Date
Government Official
Official Position
Description
Amount

## LETTER OF INTENT

## APPLICATION FOR FUTURE LAND USE PLAN AMENDMENT CLAYTON COUNTY, GEORGIA

Branch Ashwood Associates, L.P. (the "Applicant"), requests a Major Amendment of the zoning conditions applicable to the approximately 10.6 acres located at 600 Ashwood Parkway, Dunwoody (Parcel 1834901 048) (the "Property") to allow one commercial retail/restaurant building and associated parking in an area shown as an unassigned pad site on the previously approved site plan for the mixed-use development currently under construction. The Property is zoned to Dunwoody's C-1 Local Commercial district subject to conditions. See MA19-01, MA19-03. As shown on the enclosed Site Plan, the proposed retail/restaurant building would be located on the northern side of the Property and would measure approximately 7,800 square feet.

As documented below, the requested Major Amendment is consistent with the review and approval criteria enumerated at Section 27-335(b) of the Dunwoody Zoning Ordinance. Accordingly, the Applicant respectfully asks that the City Council of the City of Dunwoody approved this Major Amendment as requested.
(1) Whether the zoning proposal is in conformity with the policy and intent of the comprehensive plan;
The City of Dunwoody 2020-2040 Comprehensive Plan incorporates a Character Area Map that assigns the Property to the Perimeter Center character Area. Comprehensive Plan at Page 19. As described in the Comprehensive Plan, "Perimeter Center will be a visitor friendly "livable" regional center with first-class office, retail, entertainment, hotels, and high-end restaurants in a pedestrian and bicycle-oriented environment." Comprehensive Plan at Page 31. The proposed retail/restaurant use thus conforms with the policy and intent of the comprehensive plan as described for the Perimeter Center character area.
(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 Applicant is currently developing the Property for a mix of grocery, retail, and office uses. The proposed retail/restaurant building fits with this mix of uses and will be designed to match the development aesthetically. This mix of uses is also suitable in view of the use and
development of adjacent and nearby properties, which are similarly zoned and developed for retail, restaurant, and office uses.
(3) Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned;

As noted above, the City Council not long ago conditionally zoned the Property based on a site plan that reserved a pad site for future development. Although the pad site was at one time programmed for a hotel, prevailing market forces have directed the Applicant to the proposed retail/restaurant use for the site. While the Property as a whole has a reasonable economic use as currently zoned, the current zoning to $\mathrm{C}-1 \mathrm{c}$ assumed the pad site would be developed. Consequently, the pad site's development is a fundamental component of the Property's economic value.
(4) Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property;
The requested Major Amendment will not adversely affect the existing use or usability of adjacent or nearby properties. The larger area in which the Property is located is developed and used for a relatively dense mix of retail, restaurant, office, and other commercial uses. The proposed retail/restaurant building matches these uses and will be stylistically harmonious with the rest of the development on the Property.
(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;

Construction of the approved mixed-use commercial development on the Property has proceeded to the point that it is now important to also develop the last remaining pad site. Additionally, market signals indicate strong demand for the proposed building and uses. Together, these conditions provide supporting grounds for approval.
(6) Whether the zoning proposal will adversely affect historic buildings, sites, districts, or archaeological resources;

The Applicant is not aware of any historic buildings, sites, districts, or archaeological resources on the site.
(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 overall design of the development on the Property emphasizes pedestrian and cycling access. In addition, the Applicant has made significant contributions to ameliorating traffic congestion, including the construction of a private drive connecting Meadow Lane and Ashwood Parkway that will be available for public use. The Applicant has also coordinated sewer access with DeKalb County. Beyond sewers, adequate public services, facilities and utilities exist to serve the Property.

As documented above, the requested Major Amendment is consistent with the review and approval criteria enumerated at Section 27-335(b) of the Dunwoody Zoning Ordinance. Accordingly, the Applicant respectfully asks that the City Council of the City of Dunwoody approved this Major Amendment as requested.

Sincerely,

Jordan Edwards

4062 Peachtree Road, Suite A330
Atlanta, Georgia 30319

## SUMMARY REPORT

## APPLICATION FOR MAJOR AMENDMENT OF ZONING CONDITIONS CITY OF DUNWOODY, GEORGIA

Branch Ashwood Associates, L.P. (the "Applicant"), is requesting a Major Amendment of the zoning conditions applicable to the approximately 10.6 acres located at 600 Ashwood Parkway, Dunwoody (Parcel 1834901 048) (the "Property") to allow one retail/restaurant/ commercial building and associated parking in an area shown as an unassigned pad site on the previously approved site plan for the mixed-use development currently under construction. In accord with the City of Dunwoody's process for applicant-initiated meetings (Section 27-306 of the Dunwoody Zoning Ordinance), the Applicant provided notice as required (mailing 180 letters to nearby property owners identified by City staff and publishing an advertisement in the Dunwoody Crier) and hosted a meeting open to the public at 6:00 PM on October 27, 2021, at the Eclipse di Luna restaurant, located at 4505 Ashford Dunwoody Road, Dunwoody, Georgia.

A total of five people attended the meeting. See Exhibit A - Community Meeting Sign-In Sheet. The Applicant displayed relevant site plans and building elevations and provided information about the proposed retail/restaurant/commercial building, the zoning history of the Property, and why the requested Major Amendment is necessary. Other topics discussed included the opening date of the mixed-use development's grocery store and which restaurants would be leasing space at the mixed-use development. No one who attended the meeting expressed any concerns about the proposal or suggested any modifications.

Sincerely,


4062 Peachtree Road, Suite A330
Atlanta, Georgia 30319

## EXHIBIT A

## Community Meeting Sign-In Sheet

Community Meeting
Major Amendment - 600 Ashwood Parkway
October 27, 2021, 6:00 PM, at Eclipse di Luna, 4505 Ashford Dunwoody Road Applicant: Branch Ashwood Associates, L.P.

| Name and Organization | Address | Email Address |
| :---: | :---: | :---: |
| Carmen Siles | 173 Kenstone Walk Dun 30328 | Cgiles710@gmsil.com |
| SHAROA BYSSET | 1123 Hfocuy Anz. Duw. 303 星 | SNBMINICAT.NET. |
| Markmavial My/a Grizde | $1269 \mathrm{Vall}^{\text {a }}$ U View Rd | mark.maselegmall.com |
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 EXISTING BUILDINGS






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Dunwoody
uly 15,2019


RE: ZBA 19-11 - Variance Application for Ashwood Retail Center
To Whom It May Concern:



Shoutd you have any questions please contact me at (678) 382-6800.
Sincerely,
hous ghan
Ronnie Kurtz




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## THIRD AMENDMENT

## APPLICATION FOR MAJOR AMENDMENT

## CITY OF DUNWOODY, GEORGIA

Branch Ashwood Associates, L.P., Applicant,

For the Property located at:
600 Ashwood Parkway, Dunwoody
(Parcel No. 1834901 048)

RE: RZ 21-03
)

COMES NOW the Applicant and respectfully requests that the above-referenced Application for Major Amendment be amended by incorporating into the Application the following:

## (1)

The enclosed Site Plan dated March 4, 2022, in lieu of previously submitted site plans, as if originally filed with the Application.

WHEREFORE, the Applicant requests that the City of Dunwoody accept this Amendment; that the Application be amended in accordance with this Amendment; and that the Applicant have such other and further relief as is just and proper under the circumstances.

Respectfully submitted,
THE GALLOWAY LAW GROUP, LLC


Laurel David
Attorney for the Applicant


