

**LETTER OF INTENT**

City of Johns Creek

Change in Conditions Application, Concurrent Variance to Reduce Parking, Concurrent Variance to Reduce Outparcel Frontage, Concurrent Variance to Encroach in Building Setback, and Concurrent Variance to Eliminate Internal Landscape Strip

Applicant:

Willow Capital Partners, LLC

Property:

5805 State Bridge Road  
Johns Creek, GA 30097

Parcel ID Number:

11-094003300191

Date: 10.07.2021

**RECEIVED**  
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City of Johns Creek  
Community Development

## I. INTRODUCTION

Applicant, Willow Capital Partners, LLC, submits this request for a change in conditions, concurrent variances to reduce parking, reduce outparcel frontage, encroach in the 40' building setback line and eliminate 10' landscape strip adjacent to non-residential uses for the property located at 5805 State Bridge Road, Johns Creek, Georgia 30097 (tax parcel id 11-094003300191) ("Property"). The Property is approximately 2.3 acres. The request seeks approval to modify existing conditions to develop a ~6,200 retail and restaurant multi-tenant building as an outparcel of ~0.77 acres to be subdivided from the larger parcel in accordance with the proposed site plan.

The Property is zoned C-1-Conditional to allow for a convenience store with fuel sales and has a future land use designation of Commercial – Retail/Shopping Center. The surrounding properties are zoned C-1 and A and the use in this area is commercial/retail and apartments. As such, this request is consistent with the City's current zoning and long-term planning for the future (Medlock Comprehensive Plan). Specifically, the Property is part of the Medlock Corners shopping center that includes multiple commercial buildings and businesses. The Property currently includes a commercial building with an oversized surface parking area between the existing building and State Bridge Road. There is a recorded Declaration of Reciprocal Easements and Covenants Agreement that sets forth shared parking and access agreements for the Medlock Corners shopping center. Additionally, there is a recorded Access Easement Agreement that provides for access, ingress and egress, to the Property from the private street known as Camden Way.

As demonstrated in the attached elevations and site plan, the development is requested for a ~6,200 square foot building for retail and restaurant users. The building is one story and is consistent with the surrounding buildings. This requested change in conditions is consistent with commercial/retail use in the area and will provide an additional service(s) for the residents in the community. As set forth in more detail in the Environmental Site Analysis, one benefit is that approximately 10% of the development site will be converted from impervious to pervious.

The development for the new building will utilize existing access and utilities for the Property. The development will remove parking spaces from the Property. However, the overall parking immediately available to the Property well exceeds the City's Code and the removal of the parking spaces allowed for the addition of an approximately 1,920 square foot pocket park to be installed within the existing parking area adjacent to the proposed new building. The Applicant, therefore, requests a concurrent variance to reduce the required parking from 108 spaces to approximately 105 spaces as show on the proposed site plan.

The development of the new building has a cohesive site design that utilizes existing parking and access drives. The development will be a separate out parcel and reduce the frontage of the parent parcel, which is considered an out parcel. Outparcels require 200' of frontage on a public right-of-way. The Property's frontage including Camden Way and State Bridge Rd. is approximately 610', which wells exceeds the minimum of 400' of frontage that would be

required for two out parcels. The frontage that is considered public right of way is approximately 356'. Due to cohesive design of the development, Camden Way being a private street, and the existence of the recorded easements for access and parking within the Property and to the Property from Camden Way, the Applicant requests a concurrent variance to reduce the required frontage of the parent parcel from 200' to approximately 156' as shown on the proposed site plan. The newly created out parcel will maintain a 200' frontage. Additionally, this reduction well exceeds the City's Code for lot frontage in C-1 which requires 35' of street frontage.

As stated above, the Applicant is proposing to develop the newly created outparcel in a cohesive design consistent with the comprehensive plan. As such, providing a 10' landscape strip between the new outparcel and parent parcel is not feasible due to the requirement for parking that serves both the new building and existing building. Installing a 10' landscape strip at all interior property lines is not necessary due the existing parking and access easements and would negatively impact the public's ability to access and park within the Property. Therefore, the Applicant request a variance the eliminate the 10' landscape strip along the interior property lines as indicated on the site plan.

The approved site plan associated with the current zoning indicates a new right in / right out entrance along State Bridge Road would have been required for that proposed development. The trip generation memo provided with this application did not trigger a Traffic Impact Study due to the small amount of peak hour trips generated by the proposed building and the proposed development is a different use entirely (convenience store with fuel sales vs. shopping center). However, the Applicant's traffic engineer did perform a limited analysis based on the Traffic Impact Study provided with the previous re-zoning of the property. Based on that analysis, the proposed project does not require the new entrance along state bridge road, but the Applicant is proposing to install it at the request of Public Works. The installation of the new entrance requires the Applicant to grant additional ROW to the City which results in extending the 40' building setback line into the proposed building limits. The variance request to encroach in the 40' building setback would not be otherwise required.

## **II. CONCURRENT VARIANCE CONSIDERATIONS**

As set forth above, the Medlock Corners shopping center, as with most shopping centers, has a recorded agreement(s) in place for the easements related to access and parking. Given the Property and proposed number of parking spaces (~105), this Application satisfies the standards for a variance approval to reduce the parking on the Property by ~3 spaces. This application also meets the standards for a variance approval to reduce the frontage from 200' to ~156' for the parcel, eliminate the 10' landscape strip along the interior property lines and encroachment into the 40' building setback line.

- a. **Relief, if granted, would be in harmony with, or could be made to be in harmony with, the general purpose and intent of the Zoning Ordinance; or**

The general intent of the Zoning Ordinance is to promote and regulate development in line with the City's future development goals and in relationship to the surrounding development. This request is consistent with the purpose and intent. The shopping center parking, lot frontage, building setback and landscape strip is sufficient and the addition of a new development closer to State Bridge Road is also consistent with the City's goals. The reduction in parking, frontage, building setback and landscape strip is more than sufficient for the public's use.

- b. **The application of the particular provision of the Zoning Ordinance to a particular piece of property, due to extraordinary and exceptional conditions pertaining to that property because of its size, shape, or topography, would create an unnecessary hardships for the owner while cause no detriment to the public;**

The extraordinary and exceptional conditions present for this Property include the parking easement, the number of spaces at the shopping center, the access agreement to Camden Way and the new entrance at State Bridge Road. Because of the ability for customers to park in locations immediately adjacent and connected to the Property, the need to provide parking at 1 space for 250 square feet of the Property is unnecessary. The customers' ability to access the Property is not hindered due to the access agreement and the cohesive design of the development. Furthermore, the parking was reduced on the site plan, at the request of City staff, to permit the development of additional green space and two pocket parks and could otherwise be provided at the required ratio. There is no detriment to the public in the approval of this parking, frontage, building setback and landscape strip reduction. The additional benefit is more open/pervious space on the site and traffic flow improvements because of this new development.

- c. **Variance to Article 33 shall be in accordance with the standards enumerated there.**

Not applicable to this request.

### III. **REQUIRED CONSTITUTIONAL AND ANTE LITEM NOTICE**

Failure to approve the requested variances would be unconstitutional. Georgia law and the procedures of the City of Johns Creek require the applicant to raise Federal and State constitutional objections during the application process. While the Applicant anticipates a smooth application process, failure to raise constitutional objections at this

stage may mean that the applicant will be barred from raising important legal claims later in the process. Accordingly, the following constitutional objections are stated:

The portions of the City of Johns Creek Unified Development Code, facially and as applied to the Property, which restrict the property to any uses, conditions, land use designations, development standards, or to any zoning district other than that proposed by the Applicant are unconstitutional in that they would destroy the applicants property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section I, Paragraph I and Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Due Process clause of the 14th amendment to the Constitution of the United States.

The application of the City of Johns Creek Unified Development Code, facially and as applied to the Property, which restricts the Property to any uses, conditions, land use designations, development standards, or to any zoning district other than in accordance with the application as proposed by the Applicant is unconstitutional, illegal, null and void, constitution a taking of the Applicant's 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 Section III, Paragraph I of the Fourteenth Amendment to the Constitution of the United State denying the Applicant an economically viable use of its land while not substantially advancing legitimate state interests.

A denial of this application would be unconstitutional under the Takings Clause of the Fifth Amendment to the constitution of the United States and the Just Compensation Clause of article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983. A refusal by the City of Johns Creek to grant the application as requested would constitute a taking of the applicant's property. Because of this unconstitutional taking, the City of Johns Creek would be required to pay just compensation to the applicant.

A denial of this application would constitute an arbitrary and capricious act by the City of Johns Creek without any rational basis therefore constituting an abuse of discretion in violation of Article I, Section I, Paragraph I and Section III, Paragraph I of the Constitution of the state of Georgia of 1983, and the Due Process Clause of the 14th Amendment to the Constitution of the United States.

A refusal by the City of Johns Creek to approve this rezoning and conditional use permit for the property in accordance with the criteria as requested by the Applicant and required by the City would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and owners of the 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 14th amendment to the Constitution of the United states. Any approval of this request subject to conditions which are different from the conditions requested by the Applicant, to the extent such

different conditions would have the effect of further restricting Applicant's utilization of the Property, would also constitute an arbitrary, capricious and discriminatory act in zoning the Property to a unconstitutional classification and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove.

IV. **CONCLUSION**

For the foregoing reasons, the Applicant respectfully requests that this application be granted as requested by the Applicant. If there any questions about this request, you may contact me at 404-227-3786 or [tm@willowcapitalpartners.com](mailto:tm@willowcapitalpartners.com).

Sincerely,

WILLOW CAPITAL PARTNERS, LLC



Tyler Morris, Authorized Agent

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