

# Earth Design Engineering, LLC

February 15, 2022

Ben Song, Community Development Director  
City of Johns Creek  
Department of Community Development  
11360 Lakefield Drive  
Johns Creek, Georgia 30097

**RECEIVED**

**FEB 15 2023**

**RZ-22-0010**

**PLANNING & ZONING**

Letter of intent

RE: Application for Rezoning  
Abid Khutliwala  
0.84 acres, 10805 State Bridge Road (the "Property")

Dear Mr. Song,

Please be advised that Abid Khutliwala the contracted purchaser of the Property is asking for a rezoning of the Property. The Property consists of approximately 0.84 acres and has been cleared and is currently undeveloped, except for an access drive and some drainage improvements. The Property was part of a 2015 rezoning by the City of Johns Creek (RZ15-006). The lot currently being rezoned was designated as Lot 2-B in the 2015 rezoning.

## **Rezoning Request**

Mr. Khutliwala is seeking a rezoning for the Property from the C-1 Zoning District to the C-1 Zoning District. The purpose of the rezoning request is to change one condition associated with the current zoning for the Property; to substitute a new site plan. The RZ15-006 rezoning site plan proposed a 4,800 sq.ft. building with retail and/or service purposes consistent with the C-1 Zoning District. A new site plan showing the proposed development has been included in the rezoning package. The proposed development will consist of a 888 sq.ft. building with a service purpose consistent with the C-1 Zoning District.

The proposed development is a drive-thru coffee shop, so trip generation analysis and on-site vehicular stacking are important parts of the site design process. According to the Trip Generation Memo, included in this submittal package, the proposed stacking capacity should be able to accommodate the peak trip volumes without overflow stacking onto Abberley Lane. This is an important part of the site design process and has been carefully reviewed and evaluated.

## **Required Constitutional and Ante Litem Notice**

The Applicant respectfully submits that the current zoning classification of the Subject Property and any proposed intervening district is unconstitutional and that rules relative to the Subject Property owner's right to use the Property established in the John Creek Zoning Ordinance, to the extent they prohibit this use, constitute an arbitrary, irrational abuse of discretion and

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unreasonable use of the zoning power because they bear no substantial relationship to the public health, safety, morality or general welfare of the public and substantially harm the Applicant in violation of the due process and equal protection rights guaranteed by the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia. Further, the failure to allow this use would constitute a taking of 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 would be in violation of the Commerce Clause, Article I, Section 8, Clause 3 of the Constitution of the United States. The Applicant respectfully submits that the City Council's failure to approve the requested rezoning 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 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 invalid inasmuch as it would be denied pursuant to an ordinance which is not in compliance with the Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq., due to the manner in which the Ordinance as a whole and its map(s) have been adopted. Opponents to this request, if any, lack standing; have failed to exhaust administrative remedies; and have waived their rights to appeal by failing to assert legal and constitutional objections.

## Conclusion

The proposed rezoning is consistent with the City of Johns-Creek's Comprehensive plan and Zoning Ordinance. The rezoning will reduce the proposed building footprint size and potential impervious area on-site. We ask for your support concerning this application and thank you for your time.

Respectfully submitted,



Earth Design Engineering, LCC  
Nicholas J. Griffiths, PE  
Principal Engineer

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