

LETTER OF INTENT
and
IMPACT ANALYSIS

and

Other Material Required by
City of Johns Creek Zoning Ordinance
for the
Rezoning and Concurrent
Variance Application

of

BAIK PROPERTIES, LLC.

for

± 2.696 Acres of Land
located at 3730 Old Alabama Road
Land Lot 33, 1st District, 1st Section Fulton County, Georgia

From C-1 and O-I to C-1

Submitted for Applicant by:

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I. INTRODUCTION

This Application concerns a ± 2.696-acre tract of land located in northeastern quadrant of the intersection of Old Alabama Road and Jones Bridge Road in Land Lot 33, 1st District, 1st Section of Fulton County (“Subject Property”). The Subject Property is more particularly located at 3730 Old Alabama Road, Johns Creek, Georgia (Parcel ID: #11 007000330722 and 11 007000330730) and is currently undeveloped. The Applicant, Baik Properties, LLC, seeks to develop the Subject Property for a ±8,000 square foot dental office building with appurtenant site improvements (“Proposed Development”).

The Proposed Development is intended as the new home for Newpark Orthodontics, which is owned and operated by Dr. Nima Hajibaik.¹ Dr. Nima Hajibaik has been providing high-quality orthodontic work as a leading Johns Creek, Roswell, and Alpharetta Orthodontist from his practice, Newpark Orthodontics, since 2013. He has built a reputation for honest and effective work that continues to help adults and children correct their smiles and have their teeth properly aligned. Dr. Hajibaik’s current practice is located on Old Milton Parkway in Johns Creek, and he is excited to bring his practice to its new home on Old Alabama Road. The proposed building will have three tenant suites including a suite for Newpark Orthodontics, one already slated for a dentist office, and a third suite for a professional office tenant.

The Subject Property consists of two parcels, one (Parcel ID 11 007000330730) that is zoned Office-Institutional District (O-I) (“Eastern Parcel”) and the other (Parcel ID 11 007000330722) that is zoned Community Business District (C-1) (“Western Parcel”). It is important to note that the proposed dentist office is allowed in both the O-I district, and the C-1 district, however both parcels have existing zoning conditions that limit the Subject Property’s

¹ The Applicant, Baik Properties, LLC (“Baik” and/or “Applicant”) is Dr. Nima Hajibaik’s real estate and development entity.

development. The Eastern Parcel was rezoned in 1989, subject to the conditions of Rezoning Ordinance Z-89-153. Ordinance Z-89-153 envisioned the development of a 10,000 square foot, 2-story financial institution on a larger ±24.39-acre parcel. The intended financial building was never constructed, and the Eastern Parcel is now a separate, undeveloped remnant of the larger tract.² The Western Parcel was rezoned in 1987, subject to the conditions of Rezoning Ordinance Z-86-281. Ordinance Z-86-281 contemplated the development of the nearby Jones Bridge Promenade shopping center, on a ±17.83-acre property which originally included the Western Parcel. The Jones Bridge Promenade shopping center was subsequently developed; however, the Western Parcel was left as a vacant, subdivided remnant of the original ±17.83 acre parcel. It is important to note that both the Eastern and Western Parcels were subdivided from larger tracts and left vacant, despite their prominent location at a highly visible intersection. The lack of interest is likely due to several of the Subject Property's features that make development difficult, namely the presence of an onsite stream and significant topography. The proposed dentist office, however, works well within these confines and is an ideal use for the property.

The Proposed Development is also fitting given the existing development in the area. The Subject Property is bordered to the north by a vacant parcel, zoned O-I, and another parcel developed as a Sherwin-Williams paint store, zoned C-1. To the east the Subject Property borders an undeveloped, wooded parcel, zoned Community Unit Planned District (CUP), which is owned by the Autry Township Homeowners Association. Finally, to the south and east are the right-of-ways of Old Alabama Road and Jones Bridge Road, respectively. The proposed dentist's office is compatible with the existing mix of commercial and residential³ in the area.

² Parcel ID 11 007000330730 is the 1.42-acre remnant of the larger tract. The remainder of the original ±24.39-acre tract appears to have been developed as part of the Autry Township residential subdivision.

³ The CUP parcel to the east is part of a residential development, however it is not likely to be developed for residential or other uses given its odd shape.

The City of Johns Creek Comprehensive Plan 2018 (“Comp Plan”) depicts the Subject Property as being within the Newtown character area. The Comp Plan also notes the Subject Property’s future land use as “Mixed Use - Low Intensity”. The Comp Plan envisions the nearby Jones Bridge Promenade shopping center to transform into a small village-type mixed-use development.⁴ To further this vision, the Comp Plan designates the future land use for the properties around the Old Alabama Road and Jones Bridge Road intersection as Mixed Use - Low Intensity. The Mixed Use - Low Intensity is described in the Comp Plan as “a mix of residential, commercial retail and office uses” at a height of up to four stories.⁵ As noted in the paragraphs above the Subject Property is surrounded by commercial retail to the north (e.g. Sherwin Williams Store and the Jones Bridge Promenade shopping center) and residential to the east (e.g. the Autry Township residential subdivision). The proposed dental offices will provide the currently missing office component from the Comp Plan’s envisioned low intensity mixed use. In sum, the Proposed Development will provide a fitting use that not only is harmonious with existing development in the area, but also furthers the Comp Plan’s vision for the area.

This document is submitted as a Statement of Intent with regard to this Application, a preservation of the Applicant’s constitutional rights, and an impact analysis as required by the City of Johns Creek’s Zoning Ordinance § 28.4.2.

II. IMPACT ANALYSIS

1.

THE ZONING PROPOSAL WILL PERMIT A USE THAT IS SUITABLE IN VIEW OF THE USE AND DEVELOPMENT OF ADJACENT AND NEARBY PROPERTY

The Subject Property is surrounded by retail and residential uses which are compatible with the Proposed Development. The proposed dentist office is within walking distance of the

⁴ See Comp Plan pg. 100.

⁵ See Comp Plan pg. 50.

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Autry Township residences and to facilitate pedestrian access the Applicant will be continuing the 10-foot multi use trail along Old Alabama Road, thus reducing vehicular dependence. The Applicant has also given appropriate attention to scale, buffering, setbacks, and landscaping to ensure that the Proposed Development will fit within the existing community. Furthermore, the Proposed Development will incorporate open spaces and landscape strips along the adjacent property lines and the rights-of-way to buffer any potential impacts. Accordingly, the Proposed Development will be suitable in view of the use and development of the nearby properties.

2.

THE ZONING PROPOSAL WILL NOT ADVERSELY AFFECT THE EXISTING USE OR USABILITY OF ADJACENT OR NEARBY PROPERTY

The Proposed Development will not adversely affect the surrounding uses. As stated in previous paragraphs, the proposed dental offices are harmonious with the adjacent uses and will incorporate appropriate buffers to mitigate potential impacts, if any. The primary goal of land use planning is to eliminate or minimize the potential adverse effect of the dissimilar uses of adjacent tracts of land by establishing a harmonious transition between them. The traditional method of achieving this goal is through both “off-site” and “on-site” transition. Off-site transition consists of avoiding the placement of dissimilar uses next to each other by placing uses of intermediate density between them. On-site transition, which might either supplement or replace off-site transition, consists of measures imposed on a particular property to protect neighborhoods from adverse effects. To achieve the onsite transition, the proposed site design will incorporate landscape buffers along the eastern property line adjacent to Autry Township residential subdivision. The Applicant is also preserving open space to the rear of the property that will act as a buffer against the property to the north. The result is a development that is compatible and will exist harmoniously with the surrounding development.

3.

THE PROPERTY TO BE AFFECTED BY THE ZONING PROPOSAL DOES NOT HAVE A REASONABLE ECONOMIC USE AS CURRENTLY ZONED

The Subject Property is currently zoned C-1 and O-I, both of which allow the proposed dental office use. The Subject Property, however, is burdened by two disparate sets of zoning conditions that envisioned the development of the individual parcels as part of larger developments that either never materialized or were developed without incorporating the Subject Property. The Subject Property was subdivided from the other developments, creating remnants that have remained unimproved. The existing zoning conditions restrict the Subject Property's development to plans that have already materialized without including the Subject Property. As a result, any practical development of the Subject Property will require a modification of the existing conditions of zoning otherwise the Subject Property is likely to remain undeveloped.

4.

THE ZONING PROPOSAL WILL NOT RESULT IN A USE WHICH WILL OR COULD CAUSE AN EXCESSIVE BURDENSOME USE OF EXISTING STREETS, TRANSPORTATION FACILITIES, UTILITIES, OR SCHOOLS

The Applicant does not anticipate any significant impact to the vehicular traffic from the minor number of trips that the Proposed Development will generate. The Trip Generation Memorandum, prepared by A&R Engineering, Inc. and dated 11/5/2024, anticipates that the ±8,000 square foot dental office (ITE category 720 Medical-Dental Office Building)⁶ will generate ±236 total trips on a weekday, ±25 trips during the A.M. peak hour, and ±29 trips during the P.M. peak hour. The Proposed Development's vehicular trips are not anticipated to cause any significant detrimental impacts on the adjacent roadways. Old Alabama Road is classified as a Collector and Jones Bridge Road is classified as a Minor Arterial. *See Johns Creek Transportation Master Plan 2030 Recommended Functional Classification Map.* These

⁶ The trip generation estimates for the project were based on the rates and equations published in the 11th edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual.

types of roadways are intended for higher volumes of traffic, and they are anticipated to adequately serve the Proposed Development. Specifically, the Georgia Department of Transportation's (GDOT) traffic data shows $\pm 15,700$ trips per day on Jones Bridge Road and $\pm 15,300$ trips per day on Old Alabama Road.⁷ The Proposed Development's 236 anticipated total weekday trips will be less than 1.5% of the total traffic counts on either roadway.

The Proposed Development is non-residential and will have no impact on local schools. As for utilities, the Subject Property has access to water and sewer.

5.

THE ZONING PROPOSAL IS IN CONFORMITY WITH THE POLICIES AND INTENT OF THE LAND USE PLAN

As noted in the paragraphs above, the Comp Plan depicts the Subject Property as being within the Newtown character area and the future land use as "Mixed Use - Low Intensity". The Comp Plan defines the Mixed Use - Low Intensity land use as a "mix of residential, commercial retail and office uses."⁸ The node around the intersection of Old Alabama Road and Jones Bridge Road consists of a large amount of retail and restaurant uses, with existing residential located further away from the intersection. The proposed dental office will complement the existing commercial to add to the mix of uses in the area.

In addition, the Proposed Development meets the Comp Plan's stated policies for the Newtown area:

- The vision for the Newtown Community Area is to remain a premier residential community by enhancing the quality of the public infrastructure and roadways, and by rezoning existing shopping centers along Old Alabama Road (at both Haynes Bridge and Jones Bridge Roads) to mixed-use, to attract private

⁷ Trip data for Jones Bridge Road was gathered from GDOT Station 121-0867, located on Jones Bridge Road south of Meadow Run Trace. Trip data for Old Alabama Road was gathered from GDOT Station 121-0886, located on Old Alabama Road east of Spruill Road.

⁸ See the *Comp Plan*, pg. 50.

investment to transform this area into a traditional village with low-intensity mixed uses.⁹

- It is envisioned that the Newtown Community Area will become more pedestrian- and bike-friendly with the completion of missing sidewalks and trails to connect existing schools, shopping, subdivisions, religious institutions, and Newtown Park.¹⁰

In sum, the Proposed Development serves to implement specific goals, objectives and policies of the Johns Creek Comprehensive Plan. The project at issue represents a consistent use commensurate with other existing uses on adjacent and nearby properties. The proposed use, therefore, is suitable *vis-a-vis* the policies of the Comprehensive Plan.

6.

THERE ARE OTHER EXISTING OR CHANGING CONDITIONS AFFECTING THE USE AND DEVELOPMENT OF THE PROPERTY WHICH GIVE SUPPORTING GROUNDS FOR APPROVAL OF THE ZONING PROPOSAL

As noted in previous paragraphs, the property is currently zoned as a portion of the adjacent Jones Bridge Promenade shopping center and a 10,000 square foot financial building that was not constructed. The developments contemplated by the prior rezoning ordinances were either not developed or partially developed while excluding the Subject Property. The Subject Property has since been subdivided, leaving it as two remaining, undeveloped parcels with conditions that tie it to unrealized development. Consequently, any practical development of the Subject Property will require a rezoning to remove or modify the current conditions of zoning.

7.

THE ZONING PROPOSAL WILL PERMIT A USE WHICH WILL NOT BE CONSIDERED ENVIRONMENTALLY ADVERSE TO THE NATURAL RESOURCES, ENVIRONMENT AND CITIZENS OF THE CITY OF JOHNS CREEK

The existing tract is currently undeveloped and any construction on the Subject Property will inevitably require the removal of trees and other land disturbance activities. That being said,

⁹ See the Comp Plan, pg. 98.

¹⁰ *Id.*

there are no significant natural features on the Subject Property that require special protection, except for the stream to the north. The stream will be buffered as required by law, with a minimal encroachment into the impervious setback to allow the construction of a retaining wall and stormwater improvements. Further, the applicant will replant trees, grass, and other landscaping materials as part of its redevelopment of the site. In addition, the Applicant will provide stormwater management, including runoff reduction and/or water quality measures as required by the City of Johns Code of Ordinances.¹¹

III. CONCURRENT VARIANCE ANALYSIS

The Applicant is seeking one concurrent variance with its request to the following requirement of the Johns Creek Code of Ordinances:

A. JOHNS CREEK CODE OF ORDINANCES § 109-118(a)(2) TO ALLOW AN ENCROACHMENT INTO THE 75-FOOT STREAM IMPERVIOUS SETBACK.

The Applicant is requesting limited encroachment into the 75-foot impervious setback along the onsite stream to allow a ± 72 long section of the proposed retaining wall, wall footings, and the installation of a stormwater quality infiltration trench.¹² The encroachment will not affect the City of Johns Creek 50-foot undisturbed stream buffer nor the state 25-foot stream buffer. The retaining wall's encroachment into the buffer is necessary to allow an adequate shoulder along the internal drive aisle, which will increase the safety of the vehicular traffic within the Proposed Development. A strict enforcement of the impervious setback will require the wall to be placed just behind the curb, with a more than 10-foot vertical drop immediately next to the drive aisle. This is unnerving to drivers and can be potentially disastrous if vehicles were to back through the guard rail. Additionally, the site cannot be adjusted to locate the wall

¹¹ The stormwater design will be completed prior to issuance of the land disturbance permit.

¹² The Applicant maintains that the infiltration trench is not an impervious surface and should be allowed within the 75-foot impervious setback. However, the Applicant is including the infiltration trench in its request out of an abundance of caution.

outside of the impervious setback. The site is rectangular with the narrower portion being bounded by the stream buffers on one side and a 40' landscape buffer on the other. These shape and site conditions of the property restrict the buildable area to a narrow strip in the center. As a result, there is no option to locate the wall outside of the stream setback without impacting other buffers or setbacks elsewhere onsite.

Pursuant to the City of Johns Creek Zoning Ordinance §§ 27-1098 and § 109-118(b)(2), the criteria for granting a stream buffer variances are met. First, relief is in harmony with the general purpose and intent of the Zoning Ordinance. Second, the application of the 75-foot impervious stream to the Subject Property creates unnecessary hardship for the owner due to extraordinary and exceptional conditions because of its size, shape, or topography and would not cause any detriment to the public. Finally, unusual circumstances when strict adherence to the minimal stream buffer requirements would create extreme hardship.

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

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 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.

V. CONCLUSION

For the foregoing reasons, the Applicant respectfully requests that the proposed rezoning 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.

[Signature on Following Page]

This 5th day of November 2024.

Respectfully submitted,



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