

**P&Z 10-05-23**

**FIRST AMENDED**  
**LETTER OF INTENT**

and

Other Material Required by  
The City of Brookhaven Zoning Ordinance  
for the  
Major Modification and  
Special Land Use Permit  
Applications

of

**ASHFORD GREEN VENTURES, LLC**

for

± 14.24 Acres of Land  
located in  
Land Lot 329 of the 18<sup>th</sup> District, DeKalb County  
Addresses: 4170 Ashford Dunwoody Road

Submitted for Applicant by:

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**I. INTRODUCTION**

This Application seeks (a) a Major Modification to modify existing conditions of zoning; and (b) a Special Land Use Permit (“SLUP”) to allow for a proposed an active adult and senior independent living residential development on a ±14.29-acre property. Known as Ashford Green, the site is located in Land Lot 329 of the 18<sup>th</sup> District of DeKalb County, Georgia and more particularly at 4170 Ashford Dunwoody Road (the “Subject Property” and/or “Ashford Green”). The Subject Property is currently developed with a ±273,632 square foot office building, 634-space parking deck and associated surface parking, but is entitled for more development.

In 2015, the Subject Property was rezoned (Ordinance 2014-01-01) and granted two SLUPs (Ordinances 2014-01-02 and 2014-01-03) to allow for multi-unit residential in the Office-Institutional (O-I) district and a building height exceeding five-stories (“2015 Rezoning”). Approved subject to a site plan, the 2015 Rezoning authorized the development of a 300-unit multi-family high-rise with a wrapped, 486 stall parking deck, ±500,000 square feet of additional, future office space in two new buildings, a new parking deck and a future expansion of the existing office parking deck. The 2015 Rezoning contained 21 conditions<sup>1</sup>, including a master plan to regulate development of the Subject Property.

The Applicant seeks to modify the conditions as shown in Exhibit A, attached hereto, and incorporate a modified master plan. It should be noted that the property at issue in the 2015 Rezoning totaled ±18.12-acres<sup>2</sup>, including the ±14.29-acre Subject Property. After the approval of the 2015 Rezoning, a ±3.83-acre parcel was subdivided from the ±18.12-acres tract and

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<sup>1</sup> The conditions were repeated in each of the three Ordinances--2014-01-01, 2014-01-02 and 2014-01-03.

<sup>2</sup> The property areas were obtained from Brookhaven GIS data.

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developed as the LINC Brookhaven, a 300-unit multifamily housing development. The ±3.83-acre LINC Brookhaven parcel is not part of the instant Application.

The Applicant, Ashford Green Ventures, LLC, intends to develop ±201 units of age-restricted, active adult residences in a new five-story building (“Active Adult Living Building”). It also plans to convert the existing ±273,632 square foot office building into a continuing-care-type facility, including 138 independent senior living units, 41 assisted living units and 28 memory care units (“Senior Living Building”; the Active Adult Building and the Senior Living Building are collectively referred herein as the “Proposed Development”). The residences will be graduated in the level of care needed for the residents. The active adult units are for residents age 55-years and older who need no care services and can still drive. The independent living residents have certain care services provided (typically meals and limited medical support), but are still relatively active and some still drive. Assisted living residents are free to live an independent lifestyle, but receive regular support for a range of daily activities including cleaning and meal preparation. Assisted living residents typically do not drive, but have access to transportation for limited excursions. Memory care is designed to meet the needs of residents with Alzheimer’s or dementia. Memory care provides a secure environment with around the clock care and assistance with daily tasks. Memory care residents do not drive and do not independently leave the facility.

The senior housing units will consist of a mix of studio, one-bedroom and two bedroom units, with the majority being single occupancy units. The Applicant will provide 10% of the active adult and independent living units as workforce housing.<sup>3</sup> The residents will be able to enjoy a variety of indoor and outdoor amenities, including pools, pickleball courts, a fitness center, restaurants, a lounge, a rooftop terrace, a package room, a marketplace, flex office space, a yoga

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<sup>3</sup> To accommodate the workforce housing, the Applicant may increase the proposed active adult and independent living unit count by an additional 10%..

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room, game rooms, and a theatre room. It is important to note that the Applicant's proposal also leaves the future ±253,574 square foot office building and parking deck expansion in the master plan.

The proposed parking for the facility will be incorporated in a mix of garage, surface and deck parking. The Active Adult Building will have ±51 garage parking spaces within the building itself and an equal number of tandem surface spaces, along with additional surface parking around the building. The Proposed Development and future office will require a total of 1,000-spaces per Brookhaven Code of Ordinances, §27-744.<sup>4</sup> The total parking proposed is 1,503 spaces, including the spaces in the existing office parking deck and its future expansion,<sup>5</sup> which is above City requirements. It is important to note that senior residents do not drive as often or have as many cars as standard multifamily residents. The City of Brookhaven Code, however, does not differentiate between senior active adult or independent living and typical multi-family residential in its parking requirements. Hence, while meeting code, the parking provided should be more than necessary for the senior-oriented use. The senior resident's reduced automobile usage will also lessen the potential impacts on the surrounding roadways. The Applicant's engineer, Kimley-Horn & Associates, anticipates reduced impacts on the surrounding roadways from the conversion or elimination of over 500,000 square feet of office to senior residential.<sup>6</sup>

Senior residential housing is in demand in the area and a stated goal for the City's long-term growth. The City of Brookhaven 2034 Comprehensive Plan, 2019 5-Year Update ("Comp Plan"), specifically seeks development that will allow its residents to age in place:

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<sup>4</sup> The proposed parking does not account for the LINC Brookhaven, since this is not being considered in the current application.

<sup>5</sup> The parking totals do not include the 468 spaces in the existing LINC Brookhaven parking deck.

<sup>6</sup> Kimley Horn & Associates has produced a traffic memorandum detailing the anticipated traffic impacts, which was submitted with the Application..

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A vision has been set for Brookhaven to continue as a lifelong community. While there are some senior resources currently in the city, there is room for improvement. The City should support opportunities for residents to age in place. *See Comp Plan, Community Goals, pg. 43.*

Brookhaven is an attractive location for people of all ages and there is a strong desire for it to be supportive of the aging population. *See Comp Plan, Implementation Strategy, pg. 97.*

The Proposed Development meets this need. The residences will range from active adult residences, designed for seniors who are still dynamic and need little to no support, to long-term assisted living and memory care, for those who need help from a 24-hour nursing staff. The program will provide residents the opportunity to enjoy life in the active adult units and, once the need arises, to transition to elevated care in the same community, just as the Comp Plan hoped for. The Proposed Development's goal is to be a true age-in-place residence.

To allow for the Proposed Development, the Applicant requests the following:

1. A Major Modification to amend certain conditions of zoning in Ordinances 2014-01-01, 2014-01-02, 2014-01-03. The proposed amendments are attached hereto as Exhibit A; and
2. A Special Land Use Permit approval to allow multi-unit housing (active adult and senior independent living) in the O-I district as required by the City of Brookhaven Zoning Ordinance § 27-283, Table 4.2.

The Applicant submits this document as a Letter of Intent with regard to this Application, a preservation of the Applicant's constitutional rights, and an analysis of the Modification considerations listed in the City of Brookhaven Zoning Ordinance § 27-1029(c) along with an analysis of the approval criteria for the SLUP as outlined in the City of Brookhaven Zoning Ordinance § 27-1049. A site plan and survey have been filed with the original Application, along with other required materials.

**II. ZONING HISTORY**

The site was originally rezoned to O-I Conditional pursuant to CZ-78079 in DeKalb County, with several alterations to the plans and conditions later adopted through 1997. Prior to the 2015 Rezoning, the Subject Property was entitled (as approved by DeKalb County) for 715,000 square feet of total net usable office space, inclusive of an existing office building and an additional 500,000 square feet. The additional 500,000 square feet was to take the form of two new buildings, with one authorized at 18-stories with an 8-level parking deck. In 2015, the property was rezoned from O-I Conditional to O-I Conditional to modify certain conditions of the original zoning and granted two SLUPs to allow multi-unit residential and to allow building heights above 5-stories (Ordinances 2014-01-01, 2014-01-02 and 2014-01-03). Each of the three ordinances contained identical conditions, including reducing the height of the office building to 10-stories and adding a 300-unit multifamily residential component.

**III. ZONING MODIFICATION IMPACT ANALYSIS**

The following is an analysis of the factors to allow a modification of zoning conditions as outlined in the City of Brookhaven Zoning Ordinance § 27-1029(c):

**A. THERE ARE CLEAR AND COMPELLING REASONS, WHICH ARE NOT PURELY FINANCIAL, DEMONSTRATING THAT THE CONDITIONS OF ZONING CANNOT BE MET.**

The prevailing economic conditions and the development trends in the area support approval of this Application. In the time since the 2015 Rezoning was approved, the market has seen a dramatic decline in office demand. Since the COVID-19 pandemic, employers have moved away from the traditional office environment and towards more work-from-home opportunities. By contrast, the demand for senior housing is growing throughout the metro area, particularly with the aging Baby Boomer population exiting the workforce and entering retirement. As noted above,

Brookhaven's Comp Plan recognizes this trend and the need for aging-in-place housing. The requested zoning modification allows the Ashford Green development to pivot with the shifting market.

**B. THE MODIFICATION REQUESTED WOULD RESULT IN CONSISTENCY WITH THE ORIGINAL INTENT OF THE ZONING ACTION.**

The Ashford Green development was intended as a master planned development, providing uses that work symbiotically together. This intent will not change. The development will retain approximately 253,574 square feet of office space, but shift the remaining development from office to senior housing. The change to senior residential will add in a component that is missing from the development. Currently, there is traditional multi-family residential in the LINC Brookhaven apartments, which the Applicant will complement with age-restricted housing, thus, transforming Ashford Green into a true age-in-place community. The result is the continued cohesion of uses in the master development.

**C. THE MODIFICATION REQUESTED WOULD RESULT IN CONSISTENCY WITH THE GENERAL INTENT OF THE ZONING ORDINANCE, WITH THE COMPREHENSIVE PLAN POLICIES, AND WOULD NOT BE DETRIMENTAL TO THE PUBLIC HEALTH, SAFETY AND WELFARE.**

As noted in the paragraphs above, the proposed senior housing aligns with the goals of Brookhaven's Comp Plan by addressing the need for senior housing in the community. Additionally, senior housing typically has a much lower demand on public infrastructure, particularly traffic and schools, than other uses. The trip generation analysis by Kimley-Horn & Associates anticipates a decrease in traffic generated by the senior housing when compared to the currently approved office development. Similarly, since the proposal is for age-restricted housing, there will be no school-aged children and, hence, no negative impact on local schools. As a result, an approval of the proposed request will not be detrimental to the public health, safety, and welfare.

IV. SPECIAL LAND USE ANALYSIS

A. WHETHER THE ZONING PROPOSAL IS IN CONFORMITY WITH THE POLICY AND INTENT OF THE COMPREHENSIVE PLAN AND OTHER ADOPTED POLICIES OF THE CITY.

Yes. As noted in the paragraphs above, the proposed senior housing aligns with the goals of Brookhaven's Comp Plan to promote aging in-place.

B. WHETHER THE PROPOSED USE COMPLIES WITH THE REQUIREMENTS OF THIS ZONING ORDINANCE.

Yes. The Subject Property's O-I zoning allows multi-unit residential through a SLUP. The Brookhaven Code permits certain uses through the grant of SLUP to ensure that those uses, including multi-unit residential, fit with the surrounding development. The Subject Property is in an area that transitions from traditional single-family detached housing to the south along Ashford Dunwoody Road to the much more intense Perimeter Center area to the north. The transitional nature of this area supports multi-unit housing, as evidenced by the development of LINC Brookhaven. In addition, the senior housing will be less impactful than typical multi-unit housing. As noted in the paragraphs above, senior housing demands on the public infrastructure are lower than typical multi-family and less than the currently approved office use.

C. WHETHER PUBLIC SERVICES, PUBLIC FACILITIES AND UTILITIES ARE ADEQUATE TO SERVE THE PROPOSED USE.

Yes. As noted in the paragraphs above, the proposed senior housing will reduce traffic impacts over the office use that is currently approved for the property and will have no negative impacts on the school system. The property will have access to water and sewer and, concurrently with this application, the Applicant has submitted a request to DeKalb County to confirm sufficient sewer capacity.

D. WHETHER THE PROPOSED USE WILL CREATE ADVERSE IMPACTS UPON ANY ADJOINING LAND USE BY REASON OF NOISE, SMOKE, ODOR, DUST



**OR VIBRATION; OURS OR MANNER OF OPERATION; AND TRAFFIC VOLUMES GENERATED BY THE PROPOSED USE**

No. The proposed senior housing will not produce any significant noise, smoke, odor, dust or vibrations beyond what is typical for a residential development and, thus, will have no detrimental impact on adjacent uses. In addition, the assisted living will have staff on site 24-hours a day, but its operating and visiting hours will be commensurate with typical office and business uses in the area. As for traffic volumes, the proposed use will reduce vehicular trips over the office use that is currently approved for the property.

**E. WHETHER THE PROPOSED USE WOULD RESULT IN AN OVER-CONCENTRATION OF THE SUBJECT USE TYPE WITHIN THE AREA OF THE PROPOSED USE.**

No. The area currently has few senior housing options. It is the Applicant's intent to introduce upscale, quality housing into this underserved market.

**F. WHETHER THE AESTHETIC AND ARCHITECTURAL DESIGN OF THE SITE IS COMPATIBLE WITH THE INTENT AND REQUIREMENTS OF THE COMPREHENSIVE PLAN, THE CHARACTER AREA STUDY, AND ALL APPLICABLE ZONING ORDINANCE REGULATIONS.**

The proposed Active Adult Building will meet the architectural expectations of the City. While the Brookhaven Comp Plan does not detail any architectural requirements for the Perimeter Center character area, the Applicant intends for the building's architecture fit with the surrounding development. The exterior of the existing, re-purposed office building will remain largely the same.

**G. WHETHER THE PROPOSED USE IS COMPATIBLE WITH ADJACENT PROPERTIES AND LAND USES, BASED ON CONSIDERATION OF THE SIZE,**

**SCALE AND MASSING OF PROPOSED BUILDINGS AND THE OVERALL SITE DESIGN.**

Yes. The Applicant is converting an existing office building into senior housing and constructing a new building for senior active adult residents. The Senior Living Building was constructed in 1982 and its size, scale and massing are proportional to other building that have been built in the area since its construction. The proposed Active Adult Building will be within the height limits of the O-I district and comparable to other building sizes in the Ashford Green development. Additionally, the Active Adult Building will be significantly smaller than the 10-story office building that is in the current master plan.

**V. 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 City of Brookhaven Zoning Code, to the extent they prohibit the Proposed Development, as well as 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 of Brookhaven City Council's failure to approve the requested Major Modification and Special Land Use Permit 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 Major Modification and Special Land Use Permit in question would be unjustified from a fact-based standpoint and instead would result only from constituent opposition, which would be an unlawful delegation of authority in violation of Article IX, Section II, Paragraph IV of the Georgia Constitution.

A refusal to allow the Major Modification and Special Land Use Permit 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.

## **VI. CONCLUSION**


For the foregoing reasons, the Applicant respectfully requests that this Major Modification and Special Land Use Permit application be approved. The Applicant also invites and welcomes

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any comments from Staff or other officials of the City so that such recommendations or input may be incorporated as conditions of approval of this Application.

This 4th day of October, 2023.

Respectfully submitted,



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**EXHIBIT A**  
**PROPOSED CONDITIONS**

**PROPOSED EDITS TO CONDITIONS  
(ORDINANCES 2014-01-01, 2014-01-02, 2014-01-03)**

1. The subject property shall be limited to 253,574 gross square feet of office and institutional and accessory uses permitted in the O-I zoning district, but excluding the following: cemetery, columbarium, mausoleum, motel, funeral home or mortuary, child caring institution, late-night establishments and/or nightclubs.
2. The subject property shall be developed in substantial accordance with the plan prepared by Kimley Horn and Associates, Inc., and dated August 30, 2023. Any variances required, if authorized by the Zoning Board of Appeals, may result in altering the site plan to the degree necessary to incorporate revisions.
3. The height of nonresidential buildings shall be limited to 10 stories with accessory parking decks limited to the respective heights. The parking decks shall not exceed 70 feet in height.
4. The height of the proposed senior active adult building shall be limited to 5 stories, but not to exceed 70 feet in height.
5. Service and refuse facilities shall be located interior of the subject property and must be screened with opaque fencing or similar building material of buildings on the property.
6. All lighting associated with the development shall incorporate a cut-off design and be directed inward and downward, away from the direction of single-family residential dwellings and shall minimize light spillage into the right-of-way.
7. Signage at the tops of buildings shall be directed away from residential properties to the south (beyond Perimeter Summit Parkway). Internally illuminated signs shall not be installed as to be visible from residential properties to the south.
8. Owner/developer shall provide a traffic impact analysis, prior to issuance of a Land Disturbance Permit, that addresses the traffic impacts of the development at the following locations:
  - a. Ashford Dunwoody Road at Perimeter Summit Parkway/Oak Forrest Drive
  - b. Ashford Dunwoody Road at the two site driveways (one signalized, one unsignalized)
9. Owner/developer shall incorporate additional conditions that may result from review of the traffic impact analysis/study by the Public Works Director, prior to issuance of a Land Disturbance Permit.
10. Owner/developer shall provide sidewalks and streetscape along all property frontages in accordance with the Perimeter Community Improvement District design standards.
11. Owner/developer shall incorporate to the overall development, the recommendations from the Perimeter Community Improvement District as outlined in their letter ("PCID's 'Public Space Standards' Requirements"), dated February 20, 2014.
12. Owner/developer shall provide stormwater management in accordance with the City Code and a new stormwater maintenance agreement will be required. Provide any previously approved stormwater management plans for the site. All storm water including detention, water quality, channel protection and downstream analysis shall be addressed at time of Land Disturbance Permit.
13. Owner/developer is responsible for the future development to be compliant with the Georgia Stormwater Management Manual (GSSM) Stormwater Runoff Quality Standard (Water Quality) by providing measures that treat the required Water Quality Volume through evapotranspiration, infiltration and/or evaporation.

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## PROPOSED EDITS TO CONDITIONS (ORDINANCES 2014-01-01, 2014-01-02, 2014-01-03)

- ~~1. The subject property shall be limited to a maximum of 300 multi-family units (336,000 gross square feet) distributed over one multi-family building, at a maximum residential density of 16.37 units per acre (SLUP13-02).~~
1. The subject property shall be limited to ~~777,206-253,574~~ gross square feet of office and institutional and accessory uses permitted in the O-I zoning district, but excluding the following: cemetery, columbarium, mausoleum, motel, funeral home or mortuary, ~~personal care home~~ child caring institution, ~~hospice, nursing care facility~~ late-night establishments and/or nightclubs.
- ~~2.~~
- ~~3.2.~~ The subject property shall be developed in substantial accordance with the plan prepared by ~~The Preston Partnership, LLC~~ Kimley Horn and Associates, Inc., and ~~stamped received dated August 30, 2023~~ April 8, 2015. Any variances required, if authorized by the Zoning Board of Appeals, may result in altering the site plan to the degree necessary to incorporate revisions.
- ~~4.3.~~ The height of nonresidential buildings shall be limited to 10 stories with accessory parking decks limited to the respective heights. The parking decks shall not exceed 70 feet in height. ~~(SLUP13-01).~~
- ~~5.4.~~ The height of the ~~multi-family~~ proposed senior active adult independent living building shall be limited to 5 stories ~~and the associated parking deck shall be limited to 5.5 stories~~, but not to exceed 70 feet in height. ~~The parking deck shall not rise above the multi-family building (SLUP13-01).~~
- ~~6.~~ Exterior elevations of the multi-family and office buildings and associated parking decks shall be constructed primarily of a combination of natural stone masonry, brick, glass and stucco (synthetic stucco is prohibited). The balance may be of brick or wood accents, trim or decorations. All elevations shall be subject to review and approval of the Director of Community Development prior to issuance of a building permit.
- ~~7.~~ Parking facilities for the high-rise apartment shall be located at the interior of the subject property and be surrounded by the associated apartment building and landscaping materials so as to screen parking facilities from view of the right-of-way, except where left open for vehicular or pedestrian access.
- ~~8.5.~~ Service and refuse facilities shall be located interior of the subject property and must be screened with opaque fencing or similar building material of buildings on the property.
- ~~9.6.~~ All lighting associated with the development shall incorporate a cut-off design and be directed inward and downward, away from the direction of single-family residential dwellings and shall minimize light spillage into the right-of-way.
- ~~10.7.~~ Signage at the tops of buildings shall be directed away from residential properties to the south (beyond Perimeter Summit Parkway). Internally illuminated signs shall not be installed as to be visible from residential properties to the south.
- ~~11.~~ Owner/developer shall complete a combination plat prior to the issuance of a land disturbance permit.
- ~~12.~~ Owner/developer shall dedicate additional right-of-way along the total property frontages along Ashford Dunwoody Road, Perimeter Summit Parkway and Parkside Place for a minimum width of 12.5 feet from the back of curb for any new curb and gutter along these roads.
- ~~13.~~ Owner/developer shall dedicate additional right-of-way for a miter at the intersection of Ashford Dunwoody Road and Perimeter Summit Parkway. Said miter shall measure a minimum of 25 feet along each of the named roadways.

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- ~~14.8.~~ Owner/developer shall widen Ashford Dunwoody Road between the northernmost Site Driveway on Ashford Dunwoody and Perimeter Summit Parkway, such that the existing outside southbound lane on Ashford Dunwoody Road coming from I-285 connects continuously to the existing right turn lane at Perimeter Summit Parkway. Owner/developer shall provide a traffic impact analysis, prior to issuance of a Land Disturbance Permit, that addresses the traffic impacts of the development at the following locations:
- a. Ashford Dunwoody Road at Perimeter Summit Parkway/Oak Forrest Drive
  - b. Ashford Dunwoody Road at the two site driveways (one signalized, one unsignalized)
- ~~15.9.~~ Owner/developer shall incorporate additional conditions that may result from review of the traffic impact analysis/study by the Public Works Director, prior to issuance of a Land Disturbance Permit.
- ~~16.10.~~ Owner/developer shall provide sidewalks and streetscape along all property frontages in accordance with the Perimeter Community Improvement District design standards.
- ~~17.11.~~ Owner/developer shall incorporate to the overall development, the recommendations from the Perimeter Community Improvement District as outlined in their letter ("PCID's 'Public Space Standards' Requirements"), dated February 20, 2014.
- ~~18.12.~~ Owner/developer shall provide stormwater management in accordance with the City Code and a new stormwater maintenance agreement will be required. Provide any previously approved stormwater management plans for the site. All storm water including detention, water quality, channel protection and downstream analysis shall be addressed at time of Land Disturbance Permit.
- ~~19.~~ Owner/developer is responsible for the future development to be compliant with the Georgia Stormwater Management Manual (GSSM) Stormwater Runoff Quality Standard (Water Quality) by providing measures that treat the required Water Quality Volume through evapotranspiration, infiltration and/or evaporation.
- ~~20.13.~~ The proportion of multi-family residential units shall be limited to sixty percent (60%) studio and/or one (1) bedroom units and forty percent (40%) two (2) and/or three (3) bedroom units.