

Rezoning & Special Land Use Permit:	LUP23-00011 & LUP23-00012
Public Participation Meeting Held:	August 02, 2023
Public Participation Report Submitted:	September 05, 2023
1st Planning Commission Public Hearing Date:	October 04, 2023
1st Mayor and City Council Public Hearing Date:	October 24, 2023
Council District:	4 - John Funny

Applicant: Land Hill, LLC. c/o Henry Bailey – Troutman Pepper

Property Location: 2751 Buford Highway

District/Land Lot: 18th District, Land Lot 155

Acreage: 4.042 acres

Existing Zoning District: M (Industrial)

Proposed Zoning District: O-I (Office Institution)

Character Area Designation: Buford Highway Corridor

Owner: Land Hill, LLC

Owner/Petitioner’s Intent: **Land Use Petition LUP23-00011**
 Rezone the subject property from M (Industrial) to O-I (Office-Institution) to allow an existing office building and construction of a multi (4+)-unit residential building.

Land Use Petition LUP23-00012-1
 Special Land Use Permit to allow Four+-Household Living.

Land Use Petition LUP23-00012-2
 Special Land Use Permit to increase building height.

Concurrent Variances

1. **CV23-00011-1** Variance from Section 27-385 to waive the streetscape requirements along Buford Highway.
2. **CV23-00011-2** Variance from Section 27-390(b) to reduce the open space ratio from 15% to 14.74% for Site 2.
3. **CV23-00011-3** Variance from Section 27-390(d) to allow an amenity space open space type.
4. **CV23-00011-4** Variance from Section 27-744 to reduce the motor vehicle parking ratio from 2.5 spaces per KSF (1,000 square feet of floor area) to 2.0 spaces per KSF.

Planning Commission Recommendation

Land Use Petitions

LUP23-00011	(Rezoning):	APPROVAL CONDITIONAL
LUP23-00012-1	(Special Land Use Permit – 4+-Unit):	APPROVAL CONDITIONAL
LUP23-00012-2	(Special Land Use Permit – Height):	APPROVAL CONDITIONAL

Concurrent Variances:

CV23-00011-1	(Waive Streetscape Requirements):	APPROVAL CONDITIONAL
CV23-00011-2	(Reduce Open Space Ratio):	APPROVAL CONDITIONAL
CV23-00011-3	(Allow Amenity Space Type):	APPROVAL CONDITIONAL
CV23-00011-4	(Reduce Parking Space Ratio):	APPROVAL CONDITIONAL

Community Development Department Recommendation

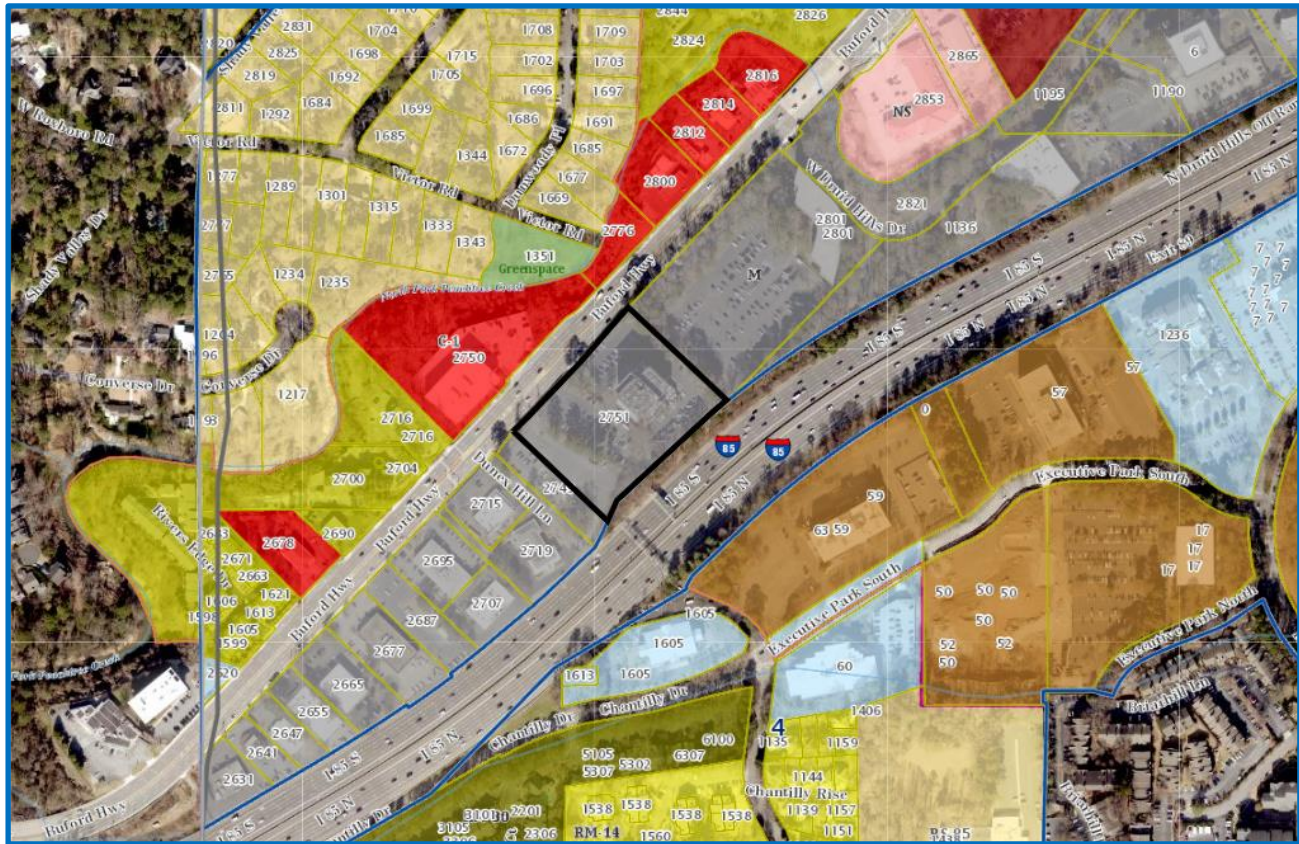
Land Use Petitions

LUP23-00011	(Rezoning):	APPROVAL CONDITIONAL
LUP23-00012-1	(Special Land Use Permit – 4+-Unit):	APPROVAL CONDITIONAL
LUP23-00012-2	(Special Land Use Permit – Height):	APPROVAL CONDITIONAL

Concurrent Variances:

CV23-00011-1	(Waive Streetscape Requirements):	APPROVAL CONDITIONAL
CV23-00011-2	(Reduce Open Space Ratio):	APPROVAL CONDITIONAL
CV23-00011-3	(Allow Amenity Space Type):	APPROVAL CONDITIONAL
CV23-00011-4	(Reduce Parking Space Ratio):	APPROVAL CONDITIONAL

Location & Zoning Map



Nearby/Surrounding Land Use Analysis

AREA	ZONING	LAND USE	ACRES	UNITS	DENSITY
Subject Property – Existing	M	Office Building	1.993	112,425-sf	56,410 sf/a
Subject Property – Proposed	O-I	Apartments	2.049	205	100.05 u/a
NW: Latin American Association	C-1	Community Center	3.96	69,600-sf	17,576 sf/a
NE: Druid Chase	M	Office Buildings, 209-room Hotel	15.97	488,508-sf	30,590 sf/a
W: Rio at Lenox	RM-18	Apartments	3.59	66	18.38 u/a
E: Emory at Executive Park	OCR, O-I	High Intensity Mixed Use Development	60.09	1.9m-sf	30,620 sf/a
E: Children’s Healthcare of Atlanta	M	Single-Dwelling Detached	76.70	1.5m-sf	19,557 sf/a
SW: Rush Lounge	M	Restaurant & Event Venue	0.70	9,521-sf	13,524 sf/a
SW: 2719 Buford Highway	M	Self-Storage (<i>In Permitting</i>)	1.43	100,000-sf	69,930 sf/a

BACKGROUND

The subject property consists of a 4.042-acre parcel with 480-feet of street frontage along Buford Highway. The subject property is currently zoned M (Industrial). The current development of the property consists of an 8-story 112,425 square-foot office building on the northeastern side of the lot (Site 2), and a 3.15-acre parking lot of approximately 469-spaces covering the remainder of the parcel.

The applicant proposes to rezone the property from M (Industrial) to O-I (Office-Institution) to allow a subdivision plat, and to construct a multi (4+)-unit residential development on the southwestern portion of the property (Site 1). This proposal requires two Special Land Use Permits (SLUP) to allow Four+-Household Living; and to exceed the maximum building heights of 5-stories and 70-feet. According to the site plan, the proposed development would consist of the following:

1. **Site 1 (2.049-acres):** A 205-unit apartment building consisting of 5 residential levels atop 2-levels of partially underground podium parking.
 - a. Designed to directly engage the Buford Highway streetscape frontage;
 - b. Includes removal of the massive retaining wall, south of the existing curb cut; and,
 - c. Includes a 10,200 square foot open space along the front of the residential building.
2. **Site 2 (1.993-acres):** Allow an existing 112,425 square foot office building, on a separate parcel.
 - a. Includes shorter tiered walls to replace the massive retaining wall north of the curb cut;
 - b. Includes 3-levels of tiered open space totaling 12,800 square feet, positioned between the office building and the Buford Highway streetscape frontage; and,
 - c. Includes a new underground stormwater detention system to serve both sites.

According to the revised design, the proposal requires 4 concurrent variances as follows:

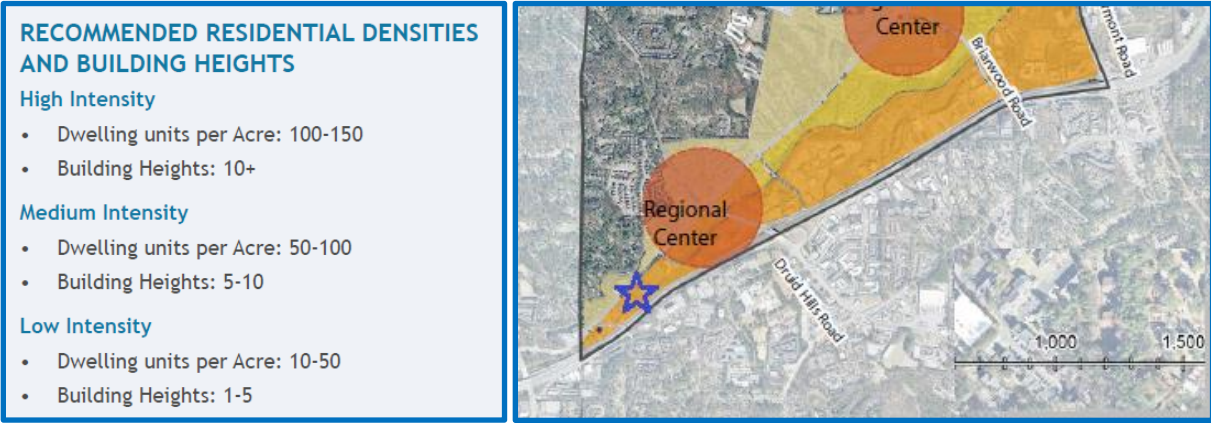
1. Variance from Section 27-385 to waive the streetscape requirements along Buford Highway;
2. Variance from Section 27-390(b) to reduce the open space ratio from 15% to 14.74% for Site 2;
3. Variance from Section 27-390(d) to allow an amenity space open space type; and,
4. Variance from Section 27-744 to reduce the motor vehicle parking ratio for office land use from 2.5 spaces per KSF to 2.0 spaces per KSF.

CRITERIA TO BE APPLIED – LAND USE PETITION (REZONING) - LUP22-00003-1

1. Whether the zoning proposal is in conformity with the policy and intent of the Comprehensive Plan?

The subject property is located within the Buford Highway Corridor Character Area. The vision of the Buford Highway Corridor Character Area is for it to transition from an auto-orientated suburban corridor into a denser, more walkable and bikeable corridor, that features compact pedestrian-friendly development, with specific focus to preserve and maintain affordable housing options and cultural diversity within the city (Brookhaven 2034 Comprehensive Plan 5-Year Update, page 71). The Comprehensive Plan calls for higher intensity land uses in the areas adjacent to Interstate 85.

“As redevelopment occurs in the Buford Highway Corridor [Character] Area, new growth should occur at varying intensities. High Intensity – Bounded by I-85 to the east [...] this area is poised for the highest intensity growth based on its close proximity to I-85, existing development, and depiction within the Atlanta Regional Commission’s Unified Growth Policy Map as part of the Region Core. (Brookhaven 2034 Comprehensive Plan, page 74)”



Brookhaven 2034 Comprehensive Plan

FIGURE 1: Recommended Densities & Building Heights (page 73)
FIGURE 2: Development Intensities Map (page 74)

Development intensity recommendations are explicitly defined for the Buford Highway Corridor Character Area, with the subject property designated within the High Intensity classification. The High Intensity classification calls for residential density of 100-150 units per acre and building height exceeding 10-stories. It should be noted that the high intensity band of the Buford Highway Corridor Character Area comprises only 1/3 square mile of land area within the City (~210-acres).

The 2021 Gateway South Character Area Study sets a general tone to allow Children’s Healthcare of Atlanta and Emory at Executive Park to buildout their existing master-planned developments. Although it references Section 27-388 of the Buford Highway Overlay District (which allows a maximum residential building height of 8-stories in certain zoning districts south of Interstate 85), no height or density recommendations are provided for the Briar-Hills Innovation District.

CHARACTER AREA	STORIES	UNITS PER ACRE
Perimeter Center	5 - 20+	50 - 150+
Buford Highway: High Intensity	10+	100 - 150
Buford Highway: Medium Intensity	5 - 10	50 - 100
Lenox Park	3 - 10	12 - 60
Peachtree Corridor Overlay District	3 - 8	12 - 120
Blackburn Park Neighborhood Center	3 - 8	12 - 60
Buford Highway: Low Intensity	1 - 5	10 - 50

Brookhaven 2034 Comprehensive Plan

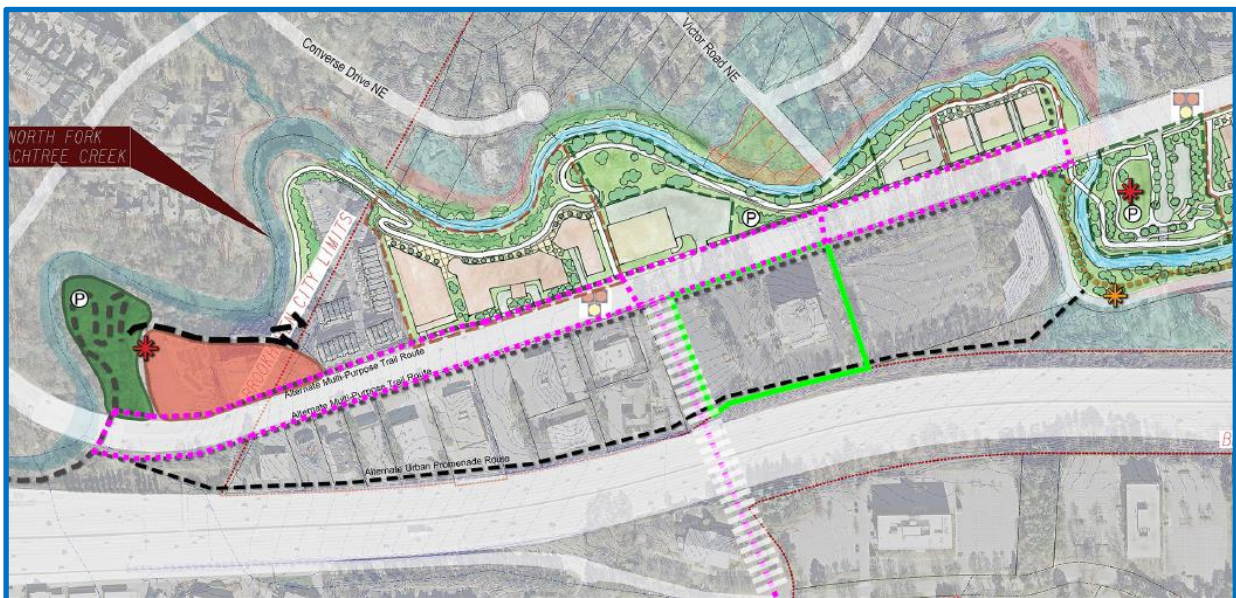
FIGURE 3: Recommended Building Height & Residential Density (pages 46-74)

Outside of Perimeter Center, which is nearing its full development potential, there is no other area within the City with comparable residential density and building height recommendations to that of the Buford Highway Corridor’s designated High Intensity area. Site 1 of this proposal to construct a 6-story residential building at a density of 100.05 units per acre partially conforms to the policy and intent of the Comprehensive Plan. The proposed building height would only rise to 60% of the minimum 10-story recommendation for the High Intensity area.

Implementation strategies identified for the Buford Highway Corridor Character Area include the following:

1. Pursue pedestrian and bicycle safety and connectivity with sidewalks, crosswalks, and bike paths (2016 Brookhaven Character Area Study, page 26).
2. Leveraging North Fork Peachtree Creek as an asset for public enjoyment by creating neighborhood access points and connecting paths to the Peachtree Creek Greenway (2016 Brookhaven Character Area Study, page 26).

The zoning proposal to allow a subdivision plat from an existing office building development, to construct a 205-unit residential housing project seeks concurrent variances to reduce the open space ratio from 15% to 14.74% for Site 2, and to waive the Buford Highway Overlay District streetscape requirements. Staff previously objected to variances from these code sections during review of a similar development proposal at the subject property. Since that time, staff have met with the applicant and challenged to reimagine if there is a way to engage the Buford Highway streetscape frontage, at this unprecedented, crucial location within the corridor.



Peachtree Creek Greenway – Conceptual Plan

FIGURE 4: Streetscapes Between Major Connection Points and Trailheads

As shown in Figure 4, Phase II of the Peachtree Creek Greenway (PCG) is planned to cross Buford Highway in two locations – approximately 2,000-feet south of the site in City of Atlanta, and approximately 700-feet north of the site at West Druid Hills Drive. The eastern portion of the site where the office building sits (Site 2) fronts an inflection point of the greenway at its closest non-crossing section to Buford Highway. On the west portion of the site where the multifamily building is proposed (Site 1), an access point is shown to connect the PCG to Buford Highway, and a proposed future Interstate 85 flyover bridge. With at least one trailhead planned across from the subject property, the site is positioned to be a focal point of the Peachtree Creek Greenway and Buford Highway corridor for cyclists and pedestrians traveling between the Briar-Hills Innovation District and the Atlanta Beltline.

The proposal to replace existing prison-like retaining walls along Buford Highway’s frontage with engaging, publicly-accessible open space amenities fully embodies the implementation strategy to increase pedestrian and bicycle safety and leveraging the PCG for public enjoyment.

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 current development of the property consists of an 8-story 112,425 square-foot office building on the northeastern side of the lot, and a 3.15-acre surface parking lot of approximately 469-spaces covering the remainder of the parcel.



Photo Credit: LoopNet.com

FIGURE 5: Proposed Development Site Includes an Existing 8-story Office Building

Surrounding the subject property to the northeast is a 16-acre office park consisting of 3 primary buildings ranging in height from 4-7 stories, totaling approximately 370,000 square feet of office space and a 9-story, 209-room Doubletree by Hilton hotel. Northwest of the subject property is the Latin American Association community center, housed in a 3-story building with approximately 69,600 square feet (based on staff measurement of an approximate 23,200 square-foot floor plate).

West of the subject property is a 66-unit apartment complex Rio at Lenox, consisting of two 3-story buildings constructed in 1966. A number of the units have been renovated to include contemporary appliances, fixtures and finishes. Southwest of the subject property is a nearly 10,000 square-foot restaurant and events venue, formerly known as Rush Lounge. A 4-story 101,900 square-foot self-storage building is proposed on the lot located between the former Rush Lounge and Interstate 85. A number of other uses surrounding the subject property include a commercial shopping center, restaurants, townhomes, government buildings, and retail stores.

Development intensity recommendations are explicitly defined for the Buford Highway Corridor Character Area, with the subject property designated within the High Intensity classification. The High Intensity classification calls for residential density of 100-150 units per acre and building height exceeding 10-stories. The proposal to rezone the subject property from M (Industrial) to O-I (Office-Institution) would be suitable in view of the use and development of adjacent and nearby properties with minimum density of 100 units per acre, and minimum height of 10-stories.

3. Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned?

The subject property has a reasonable economic use as currently zoned. However, the 3.15-acre surface parking lot provides an excessive number of spaces that could otherwise be adapted to meet the anticipated market demands expected from completion of Children’s Healthcare of Atlanta (CHOA) and Emory at Executive Park (EUEP).

4. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property?

The proposed land use would not adversely affect the existing use or usability of the adjacent or nearby properties. At 100.05 units per acre, the current proposal conforms to the minimum density recommendation for the High Intensity classification zone that comprises less than 2.7% of the City’s total land area. At 6-stories in height (as defined by the Zoning Ordinance), the proposed residential building fails to conform to the minimum height recommendation of 10-stories for the High Intensity classification zone.

The Zoning Ordinance requires all new developments throughout the entire City to restrict at least 10% of the dwelling units in a residential housing project as “workforce” housing. The Comprehensive Plan does not emphasize affordable housing preservation as part of the vision for every Character Area within the City. But affordable housing is emphasized as a key implementation strategy specifically for the Buford Highway Corridor Character Area. The emphasis added for affordable housing specifically within the Buford Highway Corridor Character Area informs zoning proposals to exceed the minimum requirements for development in the other character areas where affordable housing is not a stated priority.

Satisfying the minimum requirement throughout the entire city by reserving units affordable to one income bracket does not address the expressly emphasized vision item and implementation strategy for the Buford Highway Corridor Character Area to preserve and maintain affordable housing options. An impactful action to address middle-income housing affordability is to increase the supply of housing inventory by supporting high density housing developments where such intensities are recommended. For this site to comply with the development intensity recommendation of the Comprehensive Plan, it would need to provide 205-308 residential units per acre at a minimum height of 10-stories. The proposed development would provide 205 units, at a height of 6-stories.

5. Whether there are other existing or changing conditions affecting the use and development of the property which gives supporting grounds for either approval or disapproval of the zoning proposal?

East of the subject property across Interstate 85 are two major entities, Children’s Healthcare of Atlanta (CHOA) and Emory at Executive Park (EUEP), with phased development pipelines to deliver 3.5-million square feet of medical, office and mixed-use buildouts in the near term. In anticipation of an unprecedented demand increase for housing, support services, and multi-modal connectivity that the two Developments of Regional Impact will require, the City has purchased the adjacent 2749 Buford Highway lot south of the subject property and has earmarked planning, design, and engineering funding for construction of a 4-lane vehicular and pedestrian flyover bridge connecting Buford Highway across Interstate 85 to Chantilly Drive within the Emory at Executive Park campus.



Photo Credit: Google Streetview (September 2022)

FIGURE 6: Building Progress at Children’s Healthcare of Atlanta

Development intensity recommendations are explicitly defined for the Buford Highway Corridor Character Area, with the subject property designated within the High Intensity classification. The High Intensity classification calls for residential density of 100-150 units per acre and building height exceeding 10-stories. The proposal to rezone the subject property from M (Industrial) to O-I (Office-Institution) has a suitable density at 100.05 units per acre in view of the use and development of adjacent and nearby properties. The minimum suitable height recommendation is 10-stories, but the proposal only provides a building height of 6-stories.

6. Whether the zoning proposal will adversely affect historic buildings, sites, districts, or archaeological resources?

There are no such known historic buildings, sites, districts or archaeological resources identified by the applicant, or known by staff, to be on or near this property.

7. Whether the proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools?

It is estimated that the proposed 205-unit multi (4+)-unit residential building will increase seating demand for the DeKalb County school system by 6 students. A sewer capacity analysis must be submitted to the DeKalb County Department of Watershed Management prior to the land disturbance permit process.

A Traffic Study was submitted by the applicant predicting up to 85 PM peak hour trips generated from the midrise multifamily housing development, with a base assumption of 217-housing units. That model estimated 949 daily two-way trip generation after accounting for a 4% reduction due to the subject property’s proximity to transit bus stops along Buford Highway. A prediction for 214 right-turning vehicles per day triggers a deceleration lane requirement in accordance with Georgia Department of Transportation functional classification standard for Buford Highway. The submitted traffic study assumes that the City of Brookhaven will grant a special accommodation to the proposed development in design of the future Interstate 85 flyover bridge, although no such agreement has been made.

Fire Prevention and Protection Standards require a minimum of 2 fire safety apparatus ingress/egress access points to the site from Buford Highway. Currently the site plan only shows 1 permanent access point, with a second access point shown crossing the adjacent City-owned property that is exclusively reserved for construction of the future Interstate 85 flyover bridge. However, this secondary access point as currently shown can only be secured as temporary access in the near term. The site plan references a future access connection to the flyover bridge itself. Allowing miscellaneous curb cuts for adjacent property owners ultimately defeats the purpose of a limited-access flyover bridge, intended to prohibit nonessential vehicle-to-vehicle and pedestrian-to-vehicle conflict points. As such, future access to the City’s planned limited-access flyover bridge fails to satisfy the secondary fire-safety access requirements.



Concept: I-85 Vehicular Bridge (May 12, 2021)

FIGURE 7: I-85 Limited-Access Bridge Connecting Buford Highway to Chantilly Drive

8. 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 any Overlay District.

The proposal consists of a 5-story residential building atop a 2-story podium parking structure that is partially underground. The open side of the courtyard-style residential building has a southwest orientation, directly facing the future flyover bridge with a view of the Midtown and Downtown Atlanta skylines that would be partially concealed by the existing tree line. The building’s architectural design fails to meet the minimum building height recommendation for the subject property within the Buford Highway Corridor Character Area. Beyond the building height, there are currently no additional architectural design requirements for the subject property, or within the Buford Highway Overlay District.

CRITERIA TO BE APPLIED – (SPECIAL LAND USE PERMITS)

1. Whether the proposed use is consistent with the comprehensive plan and other adopted policies of the city;

The proposed four+-household living land use is consistent with the comprehensive plan if it complies with the residential density and building height recommendations for the Buford Highway Corridor Character Area’s High Intensity District where the subject property is located.

The residential density recommendation is 100–150 units-per-acre (upa). The multifamily component of the proposed development implements the minimum residential density recommendation at 100.05-upa.

The building height recommendation is 10+ stories. The proposed building height is 6-stories – consisting of 5-levels of residences atop 2-levels of structured podium parking. 1 level of the parking structure is considered a basement, which is not counted as a “story”. The proposed building height is only 60% of the minimum height recommendation for the subject property, with direct frontage on Interstate 85.

Section 27-388(b) of the Buford Highway Overlay states the following:

“To help implement the development intensities recommended in the Buford Highway Corridor Character Area of the comprehensive plan, buildings on properties within the BHO district may exceed the maximum applicable building height limit of the underlying zoning district if approved through the special land use permit procedures of article 10, division 3 of this chapter.”

The special land use permit to allow a building height of 6-stories fails to implement the minimum building height recommendation of 10+ stories in the Buford Highway Corridor Character Area of the Comprehensive Plan.

2. Whether the proposed use complies with the requirements of this zoning ordinance;

The proposed use seeks 4 variances from the Zoning Ordinance, all of which will help implement strategies identified in the Comprehensive Plan (1) to pursue pedestrian and bicycle safety and connectivity with sidewalks, crosswalks and bike paths, and (2) to leverage North Fork Peachtree Creek as an asset for public enjoyment by creating neighborhood access points and connecting paths to the Peachtree Creek Greenway.

3. Whether public services, public facilities and utilities are adequate to serve the proposed use;

Public services, facilities and utilities are expected to be adequate to serve the proposed use. A sewer capacity analysis must be submitted to the DeKalb County Department of Watershed Management prior to the land disturbance permit process.

It is unclear if this proposal can satisfy the Fire Prevention and Protection Ordinance as currently proposed because a minimum of 2 permanent fire safety apparatus ingress/egress access points to the site is required. The submitted site plan shows 2 potential access points, but only 1 currently exists as permanent access. The other access point is shown on the southwest portion of the site consisting of a temporary access easement that relies on a future hypothetical for the City to adjust a publicly-funded capital improvement project to grant a special accommodation for the site. With the information submitted in this proposal, it is unknown if the plans would pass a Fire Safety review for a Land Disturbance Permit.

4. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of:

a. Noise, smoke, odor, dust or vibration generated by the proposed use;

The proposed land use is not expected to create an adverse impact upon adjoining land uses by reason of noise, smoke, odor, dust or vibration.

b. Hours or manner of operation of the proposed use; and

The proposed land use is not expected to create an adverse impact upon adjoining land uses by reason of manner of operation.

c. Traffic volumes generated by the proposed use;

The proposed land use might create an adverse impact upon adjoining land uses by reason of traffic volumes generated by the proposed use if (1) a deceleration lane in compliance with GDOT standards and thresholds is not installed.

5. Whether the proposed use would result in an over-concentration of the subject use type within the area of the proposed use;

The current development of residential land use throughout the Buford Highway Corridor Character Area consists of low-rise, low-density apartments, including a number of communities exceeding 50-years old. The existing, historic residential development of the corridor does not match the intensity levels essential to address the present needs of the City. The proposal to construct a 6-story residential building at a density of 100.05 units per acre reaches closer to the intensity recommendations of the Comprehensive Plan for the subject property with direct frontage along Interstate 85.

6. 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; and

Beyond building height, there are currently no additional architectural design requirements for the subject property. The landscape design of the site prompts a variance to waive the Buford Highway Overlay streetscape requirements. However, staff views this request as an opportunity to enhance pedestrian access facilities by removing the existing prison-like retaining walls that currently separate the site from pedestrians and cyclists. The proposed landscape design is not only compatible with the vision of the Comprehensive Plan, but helps implement identified strategies to pursue pedestrian and bicycle safety and connectivity with sidewalks, crosswalks and bike paths, and to leverage the future Peachtree Creek Greenway as an asset for public enjoyment by creating neighborhood access points and connecting paths.

7. 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.

The proposed use based on consideration of its size, scale and massing is almost consistent with the recommendations of the Comprehensive Plan. The proposed height of the building at 6-stories is lacking when compared to the scale and massing of existing and new buildings visible alongside the Interstate 85 travel corridor. As visible in Figure 8, properties fronting along Interstate 85 include a number of buildings that would overpower the size, scale and massing of a 6-story residential apartment building, positioned alongside the City's most visible travel corridor.

Alternatively, new housing is essential to the region and locally as Childrens Healthcare of Atlanta nears completion. The proposed redesign of the street frontage will prove to be a catalyst in helping the Buford Highway Corridor reimagine itself as a pedestrian-friendly mobility asset.



Photo Credit: LoopNet.com

FIGURE 8: Eastward View of the I-85 Travel Corridor from the Subject Property

CRITERIA TO BE APPLIED – CONCURRENT VARIANCES

1. The grant of the variance will not be detrimental to the public health, safety or welfare or injurious to property or improvements;

Waiving the streetscape requirements of the Buford Highway Overlay would not be detrimental to the public health, safety and welfare only because the current plan proposes to remove the existing prison-like retaining walls to make the site more accessible and inviting to the public. Removal of the retaining walls along the high-speed, official State alternate to Interstate 85 will improve pedestrian safety by opening the site for access to alternative routing in matters of vehicular danger. The Buford Highway corridor has been notorious for pedestrian deaths, and the subject property fronts northbound travel lanes a mere 0.7-miles following their conversion from the limited-access Buford Highway Connector. Waiving the Buford Highway streetscaping requirements will allow placement of streetscape furniture, tree plantings, and landscaping features to be designed within the constraints of the site.

Reducing the open space ratio from 15% to 14.74% for Site 2 only would not be injurious to the property or improvements as it would allow replacement of existing prison-like retaining walls along Buford Highway’s frontage with engaging, publicly-accessible open space amenities. With at least one trailhead planned across from the subject property, the site is positioned to be a focal point of the Peachtree Creek Greenway and Buford Highway corridor for cyclists and pedestrians traveling between the Briar-Hills Innovation District and the Atlanta Beltline. As proposed, the publicly accessible open space design fully embodies the implementation strategy to increase pedestrian and bicycle safety and leveraging the PCG for public enjoyment.

The revised streetscaping and open space design cannot be facilitated without the variance requests to allow an amenity space open space type and to reduce the motor vehicle parking space ratio from 2.5-spaces to 2.0-spaces per 1,000 square feet of office space floor area. The reduction of required parking eliminates underutilized impervious coverage allowing it to be converted into useable public amenity greenspace.

- 2. The variance request is based on conditions that are: (a) Unique to the subject property; (b) Not generally applicable to other properties in the same zoning district; and, (c) Not the result of the subject property owner's or applicant's actions;**

The streetscape requirements are not unique and are applicable to all lots fronting Buford Highway. It is expected that improving the existing streetscaping along Buford Highway will require additional right-of-way dedication or access easements that will result in reduced dimensions for the development site area. However, staff acknowledges that there are constraints on the site and within the GDOT right-of-way. Consideration should be given to the intent of the streetscaping regulations, which includes increasing pedestrian and cyclist safety and to create an inviting, aesthetically pleasing site frontage.

Reducing the open space ratio from 15% to 14.74% for Site 2 is a reasonable request and is based on the established conditions of the property to support the office-institution land use. Previous iterations of this site design called for only 10% open space, but through discussions with staff, the applicant has redesigned the site to require additional variances to allow amenity space open space type and reduce parking. The requested variances result in an increase of open space, a considerable reduction of impervious coverage, elimination of underutilized parking, and creation of a new frontage to publicly engage the Buford Highway Corridor street frontage and Phase II of the Peachtree Creek Greenway connection to the Atlanta Beltline.

- 3. Because of the particular conditions, shape, size, orientation or topographic conditions, the strict application of the requirements of this zoning ordinance would deprive the property owner of rights and privileges enjoyed by other similarly situated property owners;**

It is difficult to ignore the exceptional topographic variations throughout the subject property. Removal and reconfiguration of the existing massive retaining wall along the subject property's frontage is justifiable tradeoff to allow the requested variances for a slight reduction of the open space percentage, allowance of the amenity open space type, reducing the streetscape requirements, and reduction of the parking space ratio. In turn, these requested variances will allow a more efficient use of the property while also reducing impervious coverage and stormwater runoff.

- 4. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other similarly situated properties;**

The requested variances are the minimum necessary to afford relief in such a way as to provide an engaging street frontage at a prominent location where the Buford Highway Corridor converges with multiple interaction points of the Peachtree Creek Greenway between the Briar-Hills Innovation District and the Atlanta Beltline. All the requests taken together, result in elimination of an overconcentration of surface-level parking, a significant reduction of impervious coverage and stormwater runoff in order to support an expansive publicly-accessible open space amenity that improve pedestrian and bicycle safety along the property frontage.

5. The literal interpretation and strict application of the applicable provisions or requirements of this zoning ordinance would cause undue hardship or practical difficulty, as distinguished from a mere inconvenience; and

The literal interpretation and strict application of the applicable provisions or requirements of this zoning ordinance cause practical difficulty. Although the proposed land use, a 6-story multifamily residential building at 100.05 units per acre can be built without variances, such a design would not result in elimination of the prison-like retaining walls, would not provide an accessible public amenity, and would not implement the strategies of the comprehensive plan by improving pedestrian and cyclist safety while providing connections to the Peachtree Creek Greenway. The requested variances allow the open space and streetscape configuration as shown in Figure 9. The parking space ratio reduction allows existing underutilized surface parking to be converted to greenspace, which increases the open space ratio to just shy of the zoning requirement, at 14.74% for Site 2 (office building). The proposed streetscape and open space configuration as shown in Figure 9 does not technically meet the streetscape requirements, but it meets the intent and vision of widening the existing publicly accessible pedestrian zone.



Photo Credit: Applicant Submitted Elevation Drawings

FIGURE 9: Proposed Site Development Engagement with the Buford Highway Street Frontage

6. The requested variance would be consistent with the spirit and purpose of this zoning ordinance and the comprehensive plan.

As shown in Figure 4, the Peachtree Creek Greenway (PCG) crosses Buford Highway in two locations – approximately 2,000-feet south of the site in City of Atlanta, and approximately 700-feet north of the site at West Druid Hills Drive. The eastern portion of the site where the office building sits (Site 2) fronts an inflection point of the greenway at its closest section to Buford Highway without crossing it. On the west portion of the site where the multifamily building is proposed (Site 1), an access point is proposed to connect the PCG to Buford Highway, and a proposed future Interstate 85 flyover bridge. With at least one trailhead planned across from the subject property, the site is positioned to be a focal point of the Peachtree Creek Greenway and Buford Highway corridor for cyclists and pedestrians traveling between the Briar-Hills Innovation District and the Atlanta Beltline.

The requested variances if conditioned as recommended by staff support a project that sets a substantially higher bar for future development within the Buford Highway Corridor Character Area, and addresses some of the needs identified by the Brookhaven 2034 Comprehensive Plan, the Buford Highway Corridor Character Area, the Buford Highway Improvement Plan and Economic Development Strategy, and the Buford Highway Overlay in the following ways:

1. Conforms to the residential density recommendation, at 205 units (100.05-up);
2. Supports safe connectivity for pedestrians and cyclists by expanding the width of the pedestrian zone via publicly accessible open spaces adjoining the Buford Highway frontage; and,
3. Leverages the North Fork Peachtree Creek as an asset for public enjoyment by creation of neighborhood access points and connecting paths along the Buford Highway streetscape to the Peachtree Creek Greenway.

DEPARTMENT COMMENTS

FIRE MARSHAL

DeKalb County Fire & Rescue approval for fire apparatus will be needed.

POLICE DEPARTMENT

Multi-unit buildings with surface or structured parking such as this creates a target-rich environment for entering autos and other crimes. BPD recommends the use of License Plate Reader (LPR) technology at each entrance and exit of the property that integrates into BPD systems and allows access for investigative purposes.

CITY ENGINEER

Review completed. No comments.

CITY ARBORIST

Review completed. No comments.

BUILDING DEPARTMENT

Review completed. No comments.

PUBLIC WORKS

No specific issue with potentially providing fire access onto the new bridge right-of-way. However, the bridge will not be in service for a number of years, so the City does not want to be married to a particular design concept.

DEKALB WATERSHED MANAGEMENT

This development requires an approved sewer capacity request. A DWM P&D review is also required for this development. DWM P&D approval required before permit issue (LDP) by Brookhaven.

DEKALB COUNTY SCHOOLS

When fully constructed, this development would be expected to generate 6 students: 2 at Woodward Elementary School, 1 at Sequoyah Middle School, 1 at Cross Keys High School, 1 at other DCSD schools, and 1 at private school. Enrollment at Sequoyah Middle and Cross Keys High is over-capacity, but the impact of this development is expected to be small.

CONCLUSION TO FINDINGS

According to the Brookhaven 2034 Comprehensive Plan, the vision of the Buford Highway Corridor Character Area is for it to transition from an auto-orientated suburban corridor into a [denser, more walkable and bikeable](#) corridor, that features [compact pedestrian-friendly](#) development, with specific focus to [preserve and maintain affordable housing options](#) and cultural diversity within the city. Implementation must focus on [pedestrian and bicycle safety and connectivity](#) with sidewalks, crosswalks and bike paths, and leveraging the North Fork Peachtree Creek as an asset for public enjoyment by [creating neighborhood access points and connecting paths](#) to the Peachtree Creek Greenway. Development intensity recommendations are explicitly defined for the Buford Highway Corridor Character Area, with the subject property designated within the [High Intensity classification](#). The High Intensity classification calls for [residential density of 100-150 units per acre](#) and [building height exceeding 10-stories](#). The High Intensity band of the Buford Highway Corridor Character Area comprises a 1/3 square mile (~210-acre) area – [less than 2.7% of the City's total land](#).

Based on the submitted planning documents, the proposed multi (4+)-unit residential development almost conforms to the minimum intensity recommendation of the Buford Highway Corridor Character Area's High Intensity zone, by meeting the minimum density recommendation at 100.05 units per acre, but failing to meet the minimum building height recommendation at 6-stories. The proposed development also helps implement the strategies identified in the Comprehensive Plan to increase pedestrian and bicycle safety and leveraging the Peachtree Creek Greenway for public enjoyment. Therefore, based on these reasons, staff recommends **APPROVAL CONDITIONAL** of land use petition **LUP23-00011** to rezone the subject property from M (Industrial) to O-I (Office Institution) to allow for a subdivision plat, and for construction of a multi (4+)-unit residential building with concurrent variances.

Based on the submitted planning documents, the special land use permit to allow four+-household living at a residential density of 100.05 units per acre conforms to the minimum residential density recommendation for the Buford Highway Corridor Character Area of 100-150 units per acre. Therefore, based on this reason, staff recommends **APPROVAL CONDITIONAL** of the special land use permit **LUP23-00012** to allow Four+-Household Living.

Based on the submitted planning documents, the special land use permit to increase the maximum building height to 6-stories fails to conform to the building height recommendation for the Buford Highway Corridor Character Area of 10+ stories. Therefore, based on this reason, staff recommends **APPROVAL** of the special land use permit **LUP22-00012** to increase building height **ONLY** if the existing retaining walls fronting Buford Highway along Site 1 and Site 2 shall be fully removed.

STAFF RECOMMENDED CONDITIONS

Should the Planning Commission recommend approval of the requested Land Use Petition (**LUP23-00011**) and Special Land Use Permits (**LUP23-00012-1** and **LUP23-00012-2**), with concurrent variances (**CV23-00011-1**, **CV23-00011-2**, **CV23-00011-3**, and **CV23-00011-4**), staff recommends the approval be subject to the following conditions; these conditions shall prevail unless otherwise stipulated by the Mayor and City Council:

1. To the owner's agreement to restrict the use of the subject property as follows:
 - a. Site 1, defined as the southwesternmost parcel of approximately 2.049 acres, shall be restricted to the following:
 - i. A multi (4+)-unit residential building consisting of at least 5-levels of residential use, above at least 2-levels of structured parking (at least 7-levels total), and a minimum count of 205 residential units;
 - ii. The residential development shall be constructed in general accordance with elevations received by the Department of Community Development dated September 26, 2023. Said elevations are conceptual only and subject to the approval of the Director of Community Development prior to issuance of a Certificate of Occupancy.
 - b. Site 2, defined as the northeasternmost parcel of approximately 1.993 acres, shall be restricted to the following:
 - i. An existing 8-story building, which shall be restricted to the following principal uses:
 - a. Office-Institution.
 - b. A future Multi (4+)-unit Household Living building conversion.
 - ii. A future multi (4+)-unit residential building consisting of at least 10-levels of combined residential use and structured parking, and a minimum count of 299 residential units. In addition to the workforce housing restriction outlined in Section 27-588, the building shall be required to restrict at least ten percent of the dwelling units as affordable to those middle-income households earning between 80% and 120% percent of the median household income for the Atlanta MSA, as determined by the current fiscal year HUD income limit table.
 - c. Reduce the streetscape requirements along Buford Highway (CV23-00011-1).
 - d. Reduce the open space ratio from 15% to 14.74% on Site 2 (CV23-00011-2).
 - e. Allow an amenity space open space type (CV23-00011-3).
 - f. Reduce the motor vehicle parking ratio from 2.5 spaces per KSF (1,000 square feet of floor area) to 2.0 spaces per KSF (CV23-00011-4).
2. To the owner's agreement to abide by the following:
 - a. A subdivision plat for 2751 Buford Highway shall be approved by the City of Brookhaven and shall be recorded by DeKalb County, prior to issuance of a building permit.
 - b. The existing retaining walls fronting Buford Highway along Site 1 and Site 2 shall be fully removed, prior to issuance of a building permit.
3. To the owner's agreement to provide the following development standards:
 - a. The required landscape zone along Site 1 shall be waived.
 - b. The required pedestrian zone along Site 1 shall maintain a minimum width of 10-feet as measured from back of street curb.
 - c. The required landscape zone along Site 2 shall maintain a minimum width of 5-feet as measured from back of street curb.
 - d. The required pedestrian zone along Site 2 shall maintain a minimum width of 10-feet as measured from back (inner edge) of landscape zone.
 - e. Any portions of the landscape and pedestrian zones that encroach into the property boundaries of Site 2 may count towards the publicly-accessible open space ratio for Site 2.

- f. The designated publicly-accessible open space adjoining the Buford Highway streetscape zone shall be developed in general accordance to the with elevations received by the Department of Community Development dated September 26, 2023. Said elevations are conceptual only and subject to the approval of the Director of Community Development prior to issuance of a Certificate of Occupancy.
- g. Owner/Developer shall submit a revised site plan conveying compliance to all applicable regulations of the City's Code of Ordinances, to be reviewed and approved by the Community Development Department, prior to issuance of a Land Disturbance Permit.
- h. Owner-Developer shall submit a revised site plan showing pedestrian circulation pathways along the temporary access easement drive connecting the subject property to Dunex Hill Lane, prior to issuance of a Land Disturbance Permit.
- i. Owner-Developer shall complete installation of a secondary permanent Fire Safety Apparatus access point before the future Interstate 85 flyover bridge construction commences, subject to the review and approval of the Brookhaven Fire Marshal and DeKalb County Fire and Rescue, unless secondary access is officially waived by DeKalb County Fire and Rescue.
- j. Owner-Developer shall install pedestrian and bicycle access to the future Interstate 85 flyover bridge within 6-months after the bridge is open to the public, subject to the approval of the Community Development Department.
- k. Owner/Developer agrees to install public art subject to the review of the Arts and Culture Commission.