

Community Development  
 4119 Adrian Street  
 Tucker, GA 30084  
 Phone: 678-597-9040  
 Email: permits@tuckerga.gov  
 Website: www.tuckerga.gov

# Land Use Petition Application

Type of Application:  Rezoning    Comprehensive Plan Amendment    Special Land Use Permit    Concurrent Variance

| APPLICANT INFORMATION                                                                                                                                   |                                   |                           |
|---------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|---------------------------|
| Applicant is the: <input type="checkbox"/> Property Owner <input type="checkbox"/> Owner's Agent <input checked="" type="checkbox"/> Contract Purchaser |                                   |                           |
| Name: Branch Acquisition Company, LLC, c/o Laurel David,                                                                                                |                                   |                           |
| Address: The Galloway Law Group, LLC, 3500 Lenox Rd., Suite 760,                                                                                        |                                   |                           |
| City: Atlanta                                                                                                                                           | State: GA                         | Zip: 30326                |
| Contact Name: Laurel David, The Galloway Law group, LLC                                                                                                 |                                   |                           |
| Phone: 404-965-3680                                                                                                                                     | Email: laurel@glawgp.com          |                           |
| OWNER INFORMATION                                                                                                                                       |                                   |                           |
| Name: Habersham Partners, LLC                                                                                                                           |                                   |                           |
| Address: 5597 Buford Highway                                                                                                                            |                                   |                           |
| City: Alpharetta                                                                                                                                        | State: GA                         | Zip: 30004                |
| Contact Name: Laurel David, The Galloway Law group, LLC                                                                                                 |                                   |                           |
| Phone: 404-965-3680                                                                                                                                     | Email: laurel@glawgp.com          |                           |
| PROPERTY INFORMATION                                                                                                                                    |                                   |                           |
| Property Address: 4650 Hugh Howell Rd.                                                                                                                  |                                   |                           |
| Present Zoning District(s): M                                                                                                                           | Requested Zoning District(s): C-2 |                           |
| Present Land Use Category: LIND                                                                                                                         | Requested Land Use Category: none |                           |
| Land District: 18                                                                                                                                       | Land Lot(s): 215                  | Acreage: +/- 24           |
| Proposed Development: shopping center                                                                                                                   |                                   |                           |
| Concurrent Variance(s): see attached                                                                                                                    |                                   |                           |
| RESIDENTIAL DEVELOPMENT                                                                                                                                 |                                   |                           |
| No. of Lots/Dwelling Units:                                                                                                                             | Dwelling Unit Size (Sq. Ft.):     | Density:                  |
| NON-RESIDENTIAL DEVELOPMENT                                                                                                                             |                                   |                           |
| No. of Buildings/Lots: +/-10 buildings                                                                                                                  | Total Building Sq. Ft.: 154,000   | Density: +/- 6416 SF/acre |

RECEIVED  
 City of Tucker   *RZ-19-0006*  
 SEP 23 2019   *CV-19-0008*  
 Community Development   *CV-19-0009*  
 Department   *CV-19-0010*  
                                          *CV-19-0011*

**LETTER OF INTENT AND ANALYSIS OF STANDARDS  
APPLICATION FOR REZONING AND CONCURRENT VARIANCES  
CITY OF TUCKER, GEORGIA**

The Applicant, Branch Acquisition Company, LLC (“Branch”), requests a Rezoning and Concurrent Variances for approximately 23.77 acres of land located at 4650 Hugh Howell Road, Tucker, Georgia (Parcel Identification Number 18 215 01 002)(the “Property”). The Property is zoned M (Light Industrial). Branch proposes rezoning the Property to C-2 in order to redevelop and revitalize the Property with retail, commercial and restaurant uses, introduce patio seating, pedestrian walkways and gathering areas and improve and add streetscape elements in order to serve the nearby neighborhoods and employees of nearby businesses..

Concurrent with this application, Branch is also requesting a variance from Section 46-702 of the Zoning Ordinance of the City of Tucker to reduce the front setback requirement of fifty (50) feet on Mountain Industrial Boulevard to ten (10) feet and to reduce the front setback requirement of sixty (60) feet on Hugh Howell Road to thirty-five (35) feet; a variance from Section 46-1419(b)(2) requiring building facades not to exceed 40 feet in length without projections, recesses or other architectural features, to the extent that the designs of the buildings do not fulfill this requirement; a variance from Section 46-1419(i)(3) requiring centers over 100,00 square feet in size to “frame and enclose” a main street pedestrian or vehicular access corridor entering the site to the extent that the proposed site plan does not frame and enclose its main entrances on Hugh Howell Road; a variance from Section 46-1419(i)(3) requiring centers over 100,00 square feet in size to “frame and enclose” at least three sides of parking areas, public sites or amenities to the extent that the proposed site plan does not frame and enclose these features.

Branch will provide an activated streetscape on Hugh Howell Road and will construct a new multi-use trail, landscaping and patio seating areas. An additional landscaped greenspace will be provided on the corner of Hugh Howell Road and Mountain Industrial Boulevard for general public use and enjoyment. The requested zoning and variances would allow Branch to bring the buildings towards the street to activate the pedestrian streetscape, create attractive landscaping and outdoor dining and seating areas and to screen parking from view from the public right-of-way. The buildings’ massing will feel comfortable to both the pedestrian and

vehicle traveling public. Branch will also provide additional landscaping in front of the buildings to further improve the public realm.

## **REZONING**

The Applicant responds to the following criteria for the granting of rezoning requests:

**a. Whether the zoning proposal is in conformity with the policy and intent of the comprehensive plan;**

The requested zoning proposal is consistent with the spirit and text of the Tucker Tomorrow Comprehensive Plan (the “Comp Plan”). The property is designated as Light Industrial and C-2 is a compatible zoning district with that land use category. In addition, The Comp Plan emphasizes the importance of maintaining and supporting the light industrial corridor as a powerful economic and employment base for the City. However, current conditions are bringing new challenges to the industrial market that perhaps were not contemplated when the Comp Plan was approved over a year ago.

The rapid shift to online shopping is fueling the need for warehouse and distribution centers close to city centers. With the national unemployment rate hovering around 3.7%, businesses throughout the country are facing the challenge of hiring and retaining workers in the industrial sector. As a result, according to a recent report by JLL, attracting and retaining labor is currently one of the most influential factors in distribution site selection.

JLL interviewed corporate occupiers as well as leading industrial real estate investors, developers and builders to discover the latest trends and methods for retaining employees. Of the top trends, several focused on employee health and well-being. In particular, employers are providing on-site amenities to boost employee morale, such as: high-quality common areas, multiple break rooms or cafeterias, outdoor patios and grilling areas, gyms, locker facilities, walking paths and jogging tracks.

The Comp Plan acknowledges the need for a development strategy that includes: “Investing in modernizing and redeveloping the less competitive assets in the Mountain Industrial area to compete better in this market.” Comp Plan, p. 45. However, many of the buildings in the Mountain Industrial Boulevard corridor cannot be retrofitted to include these amenities and many companies may find total demolition and redevelopment is not economical. Therefore, the proposed development will help fulfill the need for such amenities by bringing a varied selection of retail, restaurant and commercial uses to the Corridor. It will also provide

patios and green space areas for the public to enjoy, and incorporate the Hugh Howell multi-use trail along its road frontage, bringing this highly valued amenity to the industrial corridor. The proposed development will have a functional relationship with the nearby industrial uses by conveniently locating amenities so that nearby employees or members of the public can enjoy lunch on a patio or in a restaurant, walk or bike on the multi-use trail, or shop on the way to or from work. As such, it fulfills the Comp Plan's stated objective of "Supporting the redevelopment or establishment of new compatible commercial land uses within these character areas so that they grow as both local and regional generators of jobs." Comp Plan, p. 53.

The proposed rezoning will allow Branch to fulfill other goals of the Comp Plan, such as: "continuing the implementation of corridor improvements to enhance the visual appeal of the industrial areas"; "installing landscaping and other design measures to soften or shield views of buildings and parking lots, and loading docks"; and "incorporate multi-use paths that connect to nearby networks of greenspace or trails". Comp Plan, p. 53. The proposed development will contain thriving businesses that will provide jobs and tax revenue to the City. The proposed use is appropriate in relation to both the size of the Property and to the size, scale and massing of adjacent and nearby properties in the area, which contain approved commercial, retail, and industrial uses.

**b. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property or properties;**

As discussed above, granting the rezoning and variances as requested by Branch will permit a use that is suitable in view of the uses and development of adjacent and nearby properties. The requested rezoning is in keeping with the purpose and intent of the Mountain Industrial Boulevard Overlay, which is "To preserve and enhance the long-term economic viability of the Mountain Industrial Boulevard corridor by encouraging investment that increases the tax base and provides employment opportunities to the citizens of the city; to improve the visual appearance and increase property values within the corridor; to allow flexibility in development standards in order to encourage the design of innovative development projects that set high standards for landscaping, green space, urban design, and public amenities; and to promote uniform and visually aesthetic architectural features which serve to unify the distinctive visual quality of the corridor."

The proposed development will provide thriving businesses that will provide dining and

retail amenities for employees of nearby and adjacent businesses, provide amenities for nearby residential neighborhoods, will complement existing nearby commercial uses, be beneficial to the economy of the surrounding area, increase the tax base and provide employment opportunities. The existing dilapidated building will be replaced with a development with a high standard for landscaping, green space, urban design and public amenities. Support of the request will allow Branch to construct buildings closer to the streetscape and improve the public realm and conveniently locate amenities and public gathering spaces.

**c. Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned;**

The Property is zoned M (Industrial) and has been vacant for some time. The design of the building limits its attractiveness for most light industrial uses in today's market. The existing building is in dire need of repair and the water body/stormwater detention is in need of water quality upgrades consistent with current code requirements. This severely limits the economic value of the Property. In addition, the Property is encumbered by stream buffers that make a portion of it undevelopable. Being a corner lot, the two road frontages also encumber the Property with front yard setbacks that affect how the lot can be developed. The requested rezoning and variances will allow Branch to bring the proposed buildings towards the street, activating the pedestrian streetscape and screening the parking facilities from view from the public right-of-way. The rezoning and variances are necessary because the development of the Property for an economically viable use is otherwise difficult, if not impossible.

**d. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property or properties;**

The proposed use is appropriate in relation to the uses and usability of adjacent and nearby lots in the area. The proposed development will contain thriving businesses that will complement existing nearby industrial, commercial, retail and residential uses, be beneficial to the economy of the surrounding area, provide dining and retail amenities to nearby and adjacent businesses, and provide employment opportunities.

**e. Whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the zoning proposal;**

Since its inception, the City has developed zoning districts and overlays that encourage

the construction and location of buildings closer to the street, activating and improving streetscapes and screening parking from view of the traveling public. The City's intent through these provisions is to ameliorate the lasting effects that outdated notions of large front yard setbacks have had on the City's streetscapes. The City's regulations also emphasize attention to the public realm, such as outdoor dining, streetscape improvements, and pedestrian plaza areas, such as those found in Branch's proposed development.

The proposed development will support the light industrial corridor as a powerful economic and employment base for the City in an era of low unemployment when hiring and retaining workers in the industrial sector is becoming increasingly challenging. The proposed development will also help fulfill the need for amenities for employees of nearby businesses by bringing a varied selection of retail, restaurant and commercial uses to the Corridor. A change from a distribution facility to retail, restaurant and commercial uses keeps essential job productivity and the provision of amenities to nearby workers will enhance the employment center identity.

**f. Whether the zoning proposal will adversely affect historic buildings, sites, districts, or archaeological resources; and**

The Applicant is not aware of any historic buildings, sites, districts, or archaeological resources on the site.

**g. Whether the zoning proposal will result in a use that will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.**

The design of the redevelopment of the Property emphasizes pedestrian and cycling access. Branch has engaged a traffic engineer to review the traffic effects of the proposal and will discuss its findings with the City and GDOT. Branch will provide inter-parcel access to the adjacent property to the east as shown on the conceptual zoning plan. The proposed development will not add any students to the school system. Branch has also begun coordinating sewer access with DeKalb County and is confident that sewer accommodations will be finalized by the time the building requires a Certificate of Occupancy. With the acceptance of sewer capacity, adequate public services, facilities and utilities exist to serve the Property.

**h. Whether the zoning proposal adversely impacts the environment or surrounding natural resources.**

Branch is not proposing to disturb the City or State stream buffers. As a result, old

growth forest in the northeastern area of the Property will be preserved. Once complete, the development will include updated stormwater water quality controls that should have a beneficial effect on the surrounding natural resources.

## VARIANCES

Pursuant to Section 46-1640 of the Zoning Ordinance, the Mayor and City Council may consider concurrent variances as part of a rezoning request based on the rezoning conceptual plan and may grant variances by applying the criteria contained in Section 46-1633. Branch responds to the criteria for each of its variance requests as follows:

**A. Request for variance from Section 46-702 to reduce the front setback requirement of fifty (50) feet on Mountain Industrial Boulevard to ten (10) feet and to reduce the front setback requirement of sixty (60) feet on Hugh Howell Road thirty-five (35) feet**

- 1. By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic and other site conditions (such as, but not limited to, floodplain, major stand of trees, steep slope), which were not created by the owner or applicant, the strict application of the requirements of this division would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district;*

The Property is a corner lot with two road frontages, which require a front yard setback that is either a 50-foot or 60-foot deep. There are two branches of an unnamed tributary located on the northern and eastern edges of the project with associated wetlands and undisturbed stream buffers. There are also existing slopes at the perimeter of these creeks in the northeastern part of the property that appear to exceed 25% in some areas. The proposed development does not impact these areas. As a result, the value of that land as developable property has been lost. In addition, Branch will provide inter-parcel access to the property to the east, which will affect the vehicular circulation of the site and the overall placement of buildings within the development.

The requested variances will allow Branch to bring the proposed buildings towards the street, activating the pedestrian streetscape and screening the parking facilities from view from the public right-of-way. The variance is necessary as the configuration of the Property relative to the street makes the development of the Property for an economically viable commercial use otherwise difficult, if not impossible. Consequently, strict application of the setback requirements to the Property would deprive Branch of rights and privileges enjoyed by other property owners in the same area and zoning district as the Property.

2. *The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located.;*

Granting the variance requested by Branch will not be detrimental to the public welfare or injurious to other property in the area or zoning district in which the Property is located. On the contrary, support of the requested variance will allow Branch to construct buildings closer to the streetscape and improve the public realm. The variance to reduce the setbacks will benefit the public by enabling the streetscape improvements, including the construction of a multi-use trail along its Hugh Howell Road frontage. The variance will allow Branch to bring the buildings towards the street to activate the pedestrian streetscape, create attractive landscaping and outdoor dining and seating areas and to screen parking from view from the public right-of-way. Branch will also provide additional landscaping that will complement building and hardscape designs to further improve the public realm.

The proposed development will contain thriving businesses that will be beneficial to the economy of the surrounding area, provide patios, terraces and dining and retail amenities to nearby and adjacent businesses and residential areas, and provide employment opportunities.

3. *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 properties in the zoning district in which the subject property is located.;*

Branch is requesting that the Board allow a reduction in the setbacks to allow the construction of additional streetscape improvements, including a multi-use trail along Hugh Howell Road, patios, terraces, outdoor seating, internal walkways and other publicly accessible amenity areas and to bring the buildings closer to the street in keeping with the City's design guidelines. Since its inception, the City has developed zoning districts and overlays that encourage the location of buildings closer to the street and the screening of parking from view of the traveling public. The City's intent through these provisions is to ameliorate the lasting effects that outdated notions of large front yard setbacks have had on the City's streetscapes. Therefore, the requested variance does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privilege to Branch inconsistent with the limitations upon other properties in the area and zoning district in which the Property is located.



4. *The literal interpretation and strict application of the applicable provisions or requirements of this division would cause undue and unnecessary hardship.; and*

A literal interpretation and strict application of the applicable provisions and requirements of the Zoning Ordinance to the Property would cause undue and unnecessary hardship for Branch. A strict interpretation and application of the requirements in the current ordinance would make development of the Property for the proposed commercial use difficult if not impossible given the unique characteristics of the Property described above.

5. *The requested variance would be consistent with the spirit and purpose of this division and the comprehensive plan text.*

The requested zoning proposal is consistent with the spirit and text of the Tucker Tomorrow Comprehensive Plan (the “Comp Plan”). The property is designated as Light Industrial and C-2 is a compatible zoning district. In addition, the Comp Plan emphasizes the importance of maintaining and supporting the light industrial corridor as a powerful economic and employment base for the City. As a result of current low employment rates and difficulty retaining employees in the industrial market, warehouse and distribution owners and developers are making these jobs more attractive by placing more emphasis on employee health and well-being, specifically by providing on-site amenities, such as high-quality common areas, multiple break rooms or cafeterias, outdoor patios and grilling areas, gyms, locker facilities, walking paths and jogging tracks. Unfortunately, many of the buildings in the Mountain Industrial Boulevard corridor cannot be retrofitted to include these amenities and many companies may find total demolition and redevelopment is not economical.

The proposed development will have a functional relationship with the nearby industrial uses by conveniently locating amenities by bringing a varied selection of retail, restaurant and commercial uses to the Corridor. It will also provide patios and green space areas for the public to enjoy, and incorporate the Hugh Howell multi-use trail along its road frontage, bringing this valued amenity to the industrial corridor. All of these amenities will be conveniently located so that nearby employees or members of the public can enjoy lunch on a patio or in a restaurant, walk or bike on the multi-use trail, or shop on the way to or from work. As such it fulfills the Comp Plan’s stated objective of “Supporting the redevelopment or establishment of new compatible commercial land uses within these character areas so that they grow as both local and regional generators of jobs.” Comp Plan, p. 53.

The proposed variances will allow Branch to fulfill other goals of the Comp Plan, such as: “continuing the implementation of corridor improvements to enhance the visual appeal of the industrial areas”; “installing landscaping and other design measures to soften or shield views of buildings and parking lots, and loading docks”; and “incorporate multi-use paths that connect to nearby networks of greenspace or trails”. Comp Plan, p. 53. The proposed development will contain thriving businesses that will provide jobs and tax revenue to the City. The proposed use is appropriate in relation to both the size of the Property and to the size, scale and massing of adjacent and nearby properties in the area, which contain approved commercial, retail, and industrial uses.

**B. A variance from Section 46-1419(b)(2) requiring building facades not to exceed 40 feet in length without projections, recesses or other architectural features**

Branch is proposing a new development of high quality design and materials. There will be a variety of materials used that conform to the Mountain Industrial Overlay. Facades of the larger buildings will have articulation through recesses or projections that may be approximately 4” or less. Other architectural variations may include canopies, awnings, and a mix of materials or colors or patterns of materials. All of this will combine to break-up long wall expanses and reduce the visual mass. However, it is unclear whether these designs meet the ordinance requirement, although it appears they meet the ordinance intent. The Zoning Code does not indicate if projections or recesses need to be a certain depth or height nor are “architectural features” defined.

In the abundance of caution, Branch is requesting a variance to allow the façade of the Anchor Building to have building facades up to 100 feet in length with projections or recesses of approximately 4 inches or less and architectural features, such as, canopies, awnings, or a mix of materials or colors or patterns of materials. Similarly, Branch is requesting a variance to allow the building facades on Buildings 200, 600 and 800 to have building facades up to 60 feet in length with the projections, recesses, or architectural features as described above.

- 1. By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic and other site conditions (such as, but not limited to, floodplain, major stand of trees, steep slope), which were not created by the owner or applicant, the strict application of the requirements of this division would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district;*

The Property is a corner lot with two road frontages. There are two branches of an

unnamed tributary located on the northern and eastern edges of the project with associated wetlands and undisturbed stream buffers. There are also existing slopes at the perimeter of these creeks in the northeastern part of the property that appear to exceed 25% in some areas. The proposed development does not impact these areas. As a result, the value of that land as developable property has been lost. In addition, Branch will provide inter-parcel access to the property to the east which will affect the vehicular circulation of the site and the overall placement of buildings within the development. These factors and the shape of the Property have dictated the placement and shape of the buildings, resulting in some buildings having long facades. The variance is necessary as the configuration of the Property relative to the street make the development of the Property for an economically viable commercial use otherwise difficult, if not impossible. Consequently, strict application of the requirements to the Property would deprive Branch of rights and privileges enjoyed by other property owners in the same area and zoning district as the Property.

2. *The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located.;*

Granting the variances requested by Branch will not be detrimental to the public welfare or injurious to other property in the area or zoning district in which the Property is located. On the contrary, support of the requested variance will allow Branch to construct quality buildings and improve the public realm. The variance will benefit the public by enabling articulation and a reduction in visual mass of the facades of the building, while still maintaining its structural integrity and efficient internal flow. The variance will allow Branch to line the rear of the development with buildings (as viewed from Hugh Howell), but enclose the parking field with buildings and landscaped greenspace areas adjacent to the public right-of-way. By bringing buildings towards the street, it can activate the pedestrian streetscape, create attractive landscaping and outdoor dining and seating areas and to screen parking from view from the public right-of-way. Branch will also provide additional landscaping in front of the buildings to further improve the public realm.

The proposed development will contain thriving businesses that will be beneficial to the economy of the surrounding area, provide patios, terraces and dining and retail amenities to nearby and adjacent businesses and residential areas, and provide employment opportunities.

3. *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 properties in the zoning district in which the subject property is located.;*

The requested variance does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privilege to Branch inconsistent with the limitations upon other properties in the area and zoning district in which the Property is located. Branch is requesting that Mayor and City Council allow projections or recesses of approximately 4 inches or less and architectural features, such as, canopies, awnings, or a mix of materials or colors or patterns of materials to the extent that these architectural articulations do not meet the Overlay requirements. Allowing this flexibility will allow Branch to bring buildings closer to the street, construct a multi-use trail along Hugh Howell Road, patios, terraces, outdoor seating, internal walkways and other publicly accessible amenity areas and to bring the buildings closer to the street in keeping with the City's design guidelines.

4. *The literal interpretation and strict application of the applicable provisions or requirements of this division would cause undue and unnecessary hardship.;* and

A literal interpretation and strict application of the applicable provisions and requirements of the Zoning Ordinance to the Property would cause undue and unnecessary hardship for Branch. A strict interpretation and application of the requirements in the current ordinance would make development of the Property for the proposed commercial use difficult if not impossible given the unique characteristics of the Property described above.

5. *The requested variance would be consistent with the spirit and purpose of this division and the comprehensive plan text.*

The requested zoning proposal is consistent with the spirit and text of the Tucker Tomorrow Comprehensive Plan (the "Comp Plan"). The property is designated as Light Industrial and C-2 is a compatible zoning district. In addition, the Comp Plan emphasizes the importance of maintaining and supporting the light industrial corridor as a powerful economic and employment base for the City. However, current low employment rates have made attracting and retaining employees to the industrial market a challenge without the provision of additional amenities at or near the workplace. The proposed development will have a functional relationship with the nearby industrial uses by conveniently locating amenities by bringing a varied selection of retail, restaurant and commercial uses to the Corridor, without the need for

costly renovations or redevelopment on the part of individual business owners. The new development will also provide patios and green space areas for the public to enjoy and brings the Hugh Howell multi-use trail along its road frontage into the industrial corridor. All of these amenities will be conveniently located so that nearby employees or members of the public can enjoy lunch on a patio or in a restaurant, walk or bike on the multi-use trail, or shop on the way to or from work. As such it fulfills the Comp Plan's stated objective of "Supporting the redevelopment or establishment of new compatible commercial land uses within these character areas so that they grow as both local and regional generators of jobs." Comp Plan, p. 53.

The proposed variance will allow Branch to fulfill other goals of the Comp Plan, such as: "continuing the implementation of corridor improvements to enhance the visual appeal of the industrial areas". Comp Plan, p. 53. As discussed above, Branch intends to include recesses, projections and architectural features in its design, but as these terms are not defined, it is including variances here in the abundance of caution. Branch will also fulfill the additional goals of "installing landscaping and other design measures to soften or shield views of buildings and parking lots, and loading docks"; and "incorporate multi-use paths that connect to nearby networks of greenspace or trails". Comp Plan, p. 53. The proposed development will contain thriving businesses that will provide jobs and tax revenue to the City. The proposed use is appropriate in relation to both the size of the Property and to the size, scale and massing of adjacent and nearby properties in the area, which contain approved commercial, retail, and industrial uses.

**C. A variance from Section 46-1419(i)(3) requiring centers over 100,00 square feet in size to "frame and enclose" a main street pedestrian or vehicular access corridor entering the site to the extent that the proposed site plan does not frame and enclose its main entrances on Hugh Howell Road;**

Branch will provide an activated streetscape on Hugh Howell Road and will construct a new multi-use trail and landscaping and patio seating areas. An additional landscaped public gathering space will be provided on the corner of Hugh Howell Road and Mountain Industrial Boulevard for general public use and enjoyment. Branch proposes to bring the buildings towards the street to activate the pedestrian streetscape, create attractive landscaping and outdoor dining and seating areas and to screen parking from view from the public right-of-way. The buildings' massing will feel comfortable to both the pedestrian and vehicle traveling public. Branch will

also provide additional landscaping which complements building and hardscape designs to further improve the public realm.

There will be two main street pedestrian access points into the site from Hugh Howell Road. These two pedestrian corridors will be framed by buildings and public gathering spaces in the form of patios and greenspace areas. It appears that these entrances meet the requirement that they be “framed and enclosed.” However, this term is not defined and it is unclear that the requirements are met. In addition, the main street vehicular access from Hugh Howell Road will only have a building on one side of the entrance with greenspace and landscaping on the other side. It is unclear, whether a building and greenspace and landscaping can qualify as framing and enclosing the entrance. Branch is requesting a variance to the extent that the requirements of Section 46-1419(i)(3) are not met.

- 1. By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic and other site conditions (such as, but not limited to, floodplain, major stand of trees, steep slope), which were not created by the owner or applicant, the strict application of the requirements of this division would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district;*

The Property is a corner lot with two road frontages. There are two branches of an unnamed tributary located on the northern and eastern edges of the project with associated wetlands and undisturbed stream buffers. There are also existing slopes at the perimeter of these creeks in the northeastern part of the property that appear to exceed 25% in some areas. The proposed development does not impact these areas. As a result, the value of that land as developable property has been lost. In addition, Branch will provide inter-parcel access to the property to the east which will affect the vehicular circulation of the site and the overall placement of buildings within the development. These factors and the shape of the Property have dictated the placement and shape of the buildings. The variance is necessary as the configuration of the Property relative to the street make the development of the Property for an economically viable commercial use otherwise difficult, if not impossible. Consequently, strict application of the requirements to the Property would deprive Branch of rights and privileges enjoyed by other property owners in the same area and zoning district as the Property.

- 2. The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located.;*

Granting the variances requested by Branch will not be detrimental to the public welfare or injurious to other property in the area or zoning district in which the Property is located. On the contrary, support of the requested variance will allow Branch to construct quality buildings and improve the public realm. The variance will benefit the public by enabling to place buildings closer to the street, provide pedestrian and vehicular access corridors, while still maintaining its structural integrity and efficient internal flow. The variance will allow Branch to line the rear of the development with buildings (as viewed from Hugh Howell), but enclose the parking field with buildings adjacent to the public right-of-way. By bringing buildings towards the street, it can activate the pedestrian streetscape, include public gathering spaces in the form of outdoor dining and seating areas and screen parking from view from the public right-of-way. Branch will also provide additional landscaping which complements building and hardscape designs to further improve the public realm.

The proposed development will contain thriving businesses that will be beneficial to the economy of the surrounding area, provide patios, terraces and dining and retail amenities to nearby and adjacent businesses and residential areas, and provide employment opportunities.

3. *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 properties in the zoning district in which the subject property is located.;*

The requested variance does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privilege to Branch inconsistent with the limitations upon other properties in the area and zoning district in which the Property is located. Branch is requesting that Mayor and City Council allow the parking field to be framed and enclosed by buildings, landscaping and public gathering spaces to the extent that this configuration does not meet the requirements of Section 46-1419(i)(3). Allowing this flexibility will allow Branch to bring buildings closer to the street, construct a multi-use trail along Hugh Howell Road, patios, terraces, outdoor seating, internal walkways and other publicly accessible amenity areas and to bring the buildings closer to the street in keeping with the City's design guidelines.

4. *The literal interpretation and strict application of the applicable provisions or requirements of this division would cause undue and unnecessary hardship.;* and

A literal interpretation and strict application of the applicable provisions and requirements of the Zoning Ordinance to the Property would cause undue and unnecessary

hardship for Branch. A strict interpretation and application of the requirements in the current ordinance would make development of the Property for the proposed commercial use difficult if not impossible given the unique characteristics of the Property described above.

5. *The requested variance would be consistent with the spirit and purpose of this division and the comprehensive plan text.*

The requested zoning proposal is consistent with the spirit and text of the Tucker Tomorrow Comprehensive Plan (the “Comp Plan”). The property is designated as Light Industrial and C-2 is a compatible zoning district. In addition, the Comp Plan emphasizes the importance of maintaining and supporting the light industrial corridor as a powerful economic and employment base for the City. However, current low employment rates have made attracting and retaining employees to the industrial market a challenge without the provision of additional amenities at or near the workplace. The proposed development will have a functional relationship with the nearby industrial uses by conveniently locating amenities by bringing a varied selection of retail, restaurant and commercial uses to the Corridor, without the need for costly renovations or redevelopment on the part of individual business owners. The new development will also provide patios and green space areas for the public to enjoy and brings the Hugh Howell multi-use trail along its road frontage into the industrial corridor. All of these amenities will be conveniently located so that nearby employees or members of the public can enjoy lunch on a patio or in a restaurant, walk or bike on the multi-use trail, or shop on the way to or from work. As such it fulfills the Comp Plan’s stated objective of “Supporting the redevelopment or establishment of new compatible commercial land uses within these character areas so that they grow as both local and regional generators of jobs.” Comp Plan, p. 53.

The proposed variance will allow Branch to fulfill other goals of the Comp Plan, such as: “continuing the implementation of corridor improvements to enhance the visual appeal of the industrial areas”. Comp Plan, p. 53. As discussed above, Branch intends to frame and enclose the parking area with buildings and landscaped greenspace areas, but as the term frame and enclose is not defined, it is included as a variance request here in the abundance of caution. Branch will also fulfill the additional goals of “installing landscaping and other design measures to soften or shield views of buildings and parking lots, and loading docks”; and “incorporate multi-use paths that connect to nearby networks of greenspace or trails”. Comp Plan, p. 53. The proposed development will contain thriving businesses that will provide jobs and tax revenue to the City. The proposed use is appropriate in relation to both the size of the Property and to the size, scale



and massing of adjacent and nearby properties in the area, which contain approved commercial, retail, and industrial uses.

**D. A variance from Section 46-1419(i)(3) requiring centers over 100,00 square feet in size to “frame and enclose” at least three sides of parking areas, public sites or amenities to the extent that the proposed site plan does not frame and enclose these features.**

Branch proposes to bring the buildings towards the street to activate the pedestrian streetscape, create attractive landscaping and public gathering spaces, such as outdoor dining and seating areas to screen parking from view from the public right-of-way. The buildings’ massing will feel comfortable to both the pedestrian and vehicle traveling public. The parking area is framed and enclosed along the rear of the Property by a row of buildings. Branch will provide an activated streetscape on Hugh Howell Road and will construct a new multi-use trail and landscaping and patio seating areas. An additional landscaped greenspace will be provided at the corner of Hugh Howell Road and Mountain Industrial Boulevard for general public use and enjoyment. The Mountain Industrial Boulevard and Hugh Howell Road frontages are framed and enclosed by buildings and landscaped greenspace and public gathering areas.

It appears that the buildings and landscaped greenspaces frame and enclose the Mountain Industrial Boulevard and Hugh Howell Road sides of the parking area. However, the term “frame and enclose” is not defined and it is unclear that the requirements are met. It is unclear, whether a building, greenspace, landscaping and public gathering spaces can qualify as framing and enclosing. Branch is requesting a variance to the extent that the requirements of Section 46-1419(i)(3) are not met.

- 1. By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic and other site conditions (such as, but not limited to, floodplain, major stand of trees, steep slope), which were not created by the owner or applicant, the strict application of the requirements of this division would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district;*

The Property is a corner lot with two road frontages. There are two branches of an unnamed tributary located on the northern and eastern edges of the project with associated wetlands and undisturbed stream buffers. There are also existing slopes at the perimeter of these creeks in the northeastern part of the property that appear to exceed 25% in some areas. The proposed development does not impact these areas. As a result, the value of that land as

developable property has been lost. In addition, Branch will provide inter-parcel access to the property to the east which will affect the vehicular circulation of the site and the overall placement of buildings within the development. These factors and the shape of the Property have dictated the placement and shape of the buildings. The variance is necessary as the configuration of the Property relative to the street make the development of the Property for an economically viable commercial use otherwise difficult, if not impossible. Consequently, strict application of the requirements to the Property would deprive Branch of rights and privileges enjoyed by other property owners in the same area and zoning district as the Property.

2. *The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located.;*

Granting the variances requested by Branch will not be detrimental to the public welfare or injurious to other property in the area or zoning district in which the Property is located. On the contrary, support of the requested variance will allow Branch to construct quality buildings and improve the public realm. The variance will benefit the public by enabling to place buildings closer to the street, provide pedestrian and vehicular access corridors, while still maintaining its structural integrity and efficient internal flow. The variance will allow Branch to line the rear of the development with buildings (as viewed from Hugh Howell), but enclose the parking field with buildings, landscaped greenspace areas and public gathering spaces adjacent to the public right-of-way. By bringing buildings towards the street, it can activate the pedestrian streetscape, create attractive landscaping and outdoor dining and seating areas and to screen parking from view from the public right-of-way. Branch will also provide additional landscaping which complements building and hardscape designs to further improve the public realm.

The proposed development will contain thriving businesses that will be beneficial to the economy of the surrounding area, provide patios, terraces and dining and retail amenities to nearby and adjacent businesses and residential areas, and provide employment opportunities.

3. *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 properties in the zoning district in which the subject property is located.;*

The requested variance does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privilege to Branch inconsistent with the limitations upon other properties in the area and zoning district in which the Property is located. Branch is

requesting that Mayor and City Council allow the parking area to be framed and enclosed by a buildings and landscaped greenspace to the extent that this configuration does not meet the requirements of Section 46-1419(i)(3). Allowing this flexibility will allow Branch to bring buildings closer to the street, construct a multi-use trail along Hugh Howell Road, patios, terraces, outdoor seating, public gathering spaces, internal walkways and other publicly accessible amenity areas and to bring the buildings closer to the street in keeping with the City's design guidelines.

4. *The literal interpretation and strict application of the applicable provisions or requirements of this division would cause undue and unnecessary hardship.; and*

A literal interpretation and strict application of the applicable provisions and requirements of the Zoning Ordinance to the Property would cause undue and unnecessary hardship for Branch. A strict interpretation and application of the requirements in the current ordinance would make development of the Property for the proposed commercial use difficult if not impossible given the unique characteristics of the Property described above.

5. *The requested variance would be consistent with the spirit and purpose of this division and the comprehensive plan text.*

The requested zoning proposal is consistent with the spirit and text of the Tucker Tomorrow Comprehensive Plan (the "Comp Plan"). The property is designated as Light Industrial and C-2 is a compatible zoning district. In addition, the Comp Plan emphasizes the importance of maintaining and supporting the light industrial corridor as a powerful economic and employment base for the City. However, current low employment rates have made attracting and retaining employees to the industrial market a challenge without the provision of additional amenities at or near the workplace. The proposed development will have a functional relationship with the nearby industrial uses by conveniently locating amenities by bringing a varied selection of retail, restaurant and commercial uses to the Corridor, without the need for costly renovations or redevelopment on the part of individual business owners. The new development will also provide patios and green space areas for the public to enjoy and brings the Hugh Howell multi-use trail along its road frontage into the industrial corridor. All of these amenities will be conveniently located so that nearby employees or members of the public can enjoy lunch on a patio or in a restaurant, walk or bike on the multi-use trail, or shop on the way to or from work. As such it fulfills the Comp Plan's stated objective of "Supporting the

redevelopment or establishment of new compatible commercial land uses within these character areas so that they grow as both local and regional generators of jobs.” Comp Plan, p. 53.

The proposed variance will allow Branch to fulfill other goals of the Comp Plan, such as: “continuing the implementation of corridor improvements to enhance the visual appeal of the industrial areas”. Comp Plan, p. 53. As discussed above, Branch intends to frame and enclose the parking area with buildings, landscaped greenspace areas, and public gathering spaces, but as the term frame and enclose is not defined, it is included as a variance request here in the abundance of caution. Branch will also fulfill the additional goals of “installing landscaping and other design measures to soften or shield views of buildings and parking lots, and loading docks”; and “incorporate multi-use paths that connect to nearby networks of greenspace or trails”. Comp Plan, p. 53. The proposed development will contain thriving businesses that will provide jobs and tax revenue to the City. The proposed use is appropriate in relation to both the size of the Property and to the size, scale and massing of adjacent and nearby properties in the area, which contain approved commercial, retail, and industrial uses.

Because this rezoning and concurrent variance request is consistent with the foregoing standards, Branch respectfully asks that the Mayor and City Council of the City of Tucker grant this application as requested.

THE GALLOWAY LAW GROUP

By: Laurel David

Laurel A. David  
Attorney for Applicant

3500 Lenox Road NE, Suite 760  
Atlanta, Georgia 30326  
(404) 965-3680

**FIRST AMENDMENT**  
**APPLICATION FOR REZONING AND CONCURRENT VARIANCES**  
**CITY OF TUCKER, GEORGIA**

IN RE: )  
 )  
Branch Acquisition Company, LLC, )  
 )  
Applicant, )  
 )  
For the property located at )  
 )  
4650 Hugh Howell Road )

COMES NOW the Applicant and respectfully requests that the above-referenced Application be amended by incorporating the following, as if originally filed with the above-referenced Application:

1.

The revised Owner's Authorization to correct a scrivener's error.

2.

The Application replacement pages #1 and #6 for the Letter of Intent to include the correct setback requirements.

WHEREFORE, the Applicant respectfully requests that the City of Tucker accept this First Amendment; that the Application be amended in accordance with this First Amendment; and that the Applicant have such other and further relief as is just and proper under the circumstances.

Accordingly, the Applicant respectfully requests that the City Council of the City of Tucker approve the Rezoning Modification as requested.

**RECEIVED**  
City of Tucker  
**SEP 26 2019**  
Community Development  
Department

**LETTER OF INTENT AND ANALYSIS OF STANDARDS**  
**APPLICATION FOR REZONING AND CONCURRENT VARIANCES**  
**CITY OF TUCKER, GEORGIA**

The Applicant, Branch Acquisition Company, LLC (“Branch”), requests a Rezoning and Concurrent Variances for approximately 23.77 acres of land located at 4650 Hugh Howell Road, Tucker, Georgia (Parcel Identification Number 18 215 01 002)(the “Property”). The Property is zoned M (Light Industrial). Branch proposes rezoning the Property to C-2 in order to redevelop and revitalize the Property with retail, commercial and restaurant uses, introduce patio seating, pedestrian walkways and gathering areas and improve and add streetscape elements in order to serve the nearby neighborhoods and employees of nearby businesses..

Concurrent with this application, Branch is also requesting a variance from Section 46-702 of the Zoning Ordinance of the City of Tucker to reduce the front setback requirement of sixty (60) feet on Mountain Industrial Boulevard to ten (10) feet and to reduce the front setback requirement of fifty (50) feet on Hugh Howell Road to thirty-five (35) feet; a variance from Section 46-1419(b)(2) requiring building facades not to exceed 40 feet in length without projections, recesses or other architectural features, to the extent that the designs of the buildings do not fulfill this requirement; a variance from Section 46-1419(i)(3) requiring centers over 100,00 square feet in size to “frame and enclose” a main street pedestrian or vehicular access corridor entering the site to the extent that the proposed site plan does not frame and enclose its main entrances on Hugh Howell Road; a variance from Section 46-1419(i)(3) requiring centers over 100,00 square feet in size to “frame and enclose” at least three sides of parking areas, public sites or amenities to the extent that the proposed site plan does not frame and enclose these features.

Branch will provide an activated streetscape on Hugh Howell Road and will construct a new multi-use trail, landscaping and patio seating areas. An additional landscaped greenspace will be provided on the corner of Hugh Howell Road and Mountain Industrial Boulevard for general public use and enjoyment. The requested zoning and variances would allow Branch to bring the buildings towards the street to activate the pedestrian streetscape, create attractive landscaping and outdoor dining and seating areas and to screen parking from view from the public right-of-way. The buildings’ massing will feel comfortable to both the pedestrian and

growth forest in the northeastern area of the Property will be preserved. Once complete, the development will include updated stormwater water quality controls that should have a beneficial effect on the surrounding natural resources.

## VARIANCES

Pursuant to Section 46-1640 of the Zoning Ordinance, the Mayor and City Council may consider concurrent variances as part of a rezoning request based on the rezoning conceptual plan and may grant variances by applying the criteria contained in Section 46-1633. Branch responds to the criteria for each of its variance requests as follows:

**A. Request for variance from Section 46-702 to reduce the front setback requirement of sixty (60) feet on Mountain Industrial Boulevard to ten (10) feet and to reduce the front setback requirement of fifty (50) feet on Hugh Howell Road thirty-five (35) feet**

1. *By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic and other site conditions (such as, but not limited to, floodplain, major stand of trees, steep slope), which were not created by the owner or applicant, the strict application of the requirements of this division would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district;*

The Property is a corner lot with two road frontages, which require a front yard setback that is either a 50-foot or 60-foot deep. There are two branches of an unnamed tributary located on the northern and eastern edges of the project with associated wetlands and undisturbed stream buffers. There are also existing slopes at the perimeter of these creeks in the northeastern part of the property that appear to exceed 25% in some areas. The proposed development does not impact these areas. As a result, the value of that land as developable property has been lost. In addition, Branch will provide inter-parcel access to the property to the east, which will affect the vehicular circulation of the site and the overall placement of buildings within the development.

The requested variances will allow Branch to bring the proposed buildings towards the street, activating the pedestrian streetscape and screening the parking facilities from view from the public right-of-way. The variance is necessary as the configuration of the Property relative to the street makes the development of the Property for an economically viable commercial use otherwise difficult, if not impossible. Consequently, strict application of the setback requirements to the Property would deprive Branch of rights and privileges enjoyed by other property owners in the same area and zoning district as the Property.



RECEIVED  
City of Tucker

SFP 23 2019

Community Development  
Department

## Environmental Site Analysis (ESA) Form

### 1. Conformance with the Comprehensive Plan:

The property is designated as Light Industrial in the Tucker Tomorrow Comprehensive Plan (the "Comp Plan"). The Comp Plan emphasizes the importance of maintaining and supporting the light industrial corridor as a powerful economic and employment base for the City. However, current conditions are bringing new challenges to the industrial market that perhaps were not contemplated when the Comp Plan was approved over a year ago.

The rapid shift to online shopping is fueling the need for warehouse and distribution centers close to city centers. With the national unemployment rate hovering around 3.7%, businesses throughout the country are facing the challenge of hiring and retaining workers in the industrial sector. As a result, according to a recent report by JLL, attracting and retaining labor is currently one of the most influential factors in distribution site selection.

JLL interviewed corporate occupiers as well as leading industrial real estate investors, developers and builders to discover the latest trends and methods for retaining employees. Of the top trends, several focused on employee health and well-being. In particular, employers are providing on-site amenities to boost employee morale, such as: high-quality common areas, multiple break rooms or cafeterias, outdoor patios and grilling areas, gyms, locker facilities, walking paths and jogging tracks.

The Comp Plan acknowledges the need for a development strategy that includes: "Investing in modernizing and redeveloping the less competitive assets in the Mountain Industrial area to compete better in this market." However, many of the buildings in the Mountain Industrial Boulevard corridor cannot be retrofitted to include these amenities and many companies may find total demolition and redevelopment is not economical. Therefore, the proposed development will help fulfill the need for these amenities by bringing a varied selection of retail, restaurant and commercial uses to the Corridor. It will also provide patios and green space areas for patrons to enjoy. And the Hugh Howell multi-use trail will be brought to the industrial corridor along its road frontage. All of these amenities will be conveniently located so that nearby employees or members of the public can enjoy lunch on a patio or in a restaurant, walk or bike on the multi-use trail, or shop on the way to or from work. As such it fulfills the Comp Plan's stated objective of "Supporting the redevelopment or establishment of new compatible commercial land uses within these character areas so that they grow as both local and regional generators of jobs."

### 2. Environmental Impacts of the Proposed Project:

The proposed development site has been developed for many years. The current warehouse building was built in approximately 1968 and the auto repair/tire facility was added in approximately 1972. Further warehouse building expansions and additions have been completed as recently as 1993. The warehouse has not had a tenant since 2005 and since then has been used only for special events such as movie production. The auto repair National Tire & Battery store has not had a tenant since 2017. Both buildings are currently vacant. Site visit field observations have been conducted, a Phase I Environmental Site Assessments has been completed in draft format, a Phase II Environmental Assessment was conducted by others in 2017, and a new mapping of the on-site wetlands has been performed.





The site is found to have environmentally sensitive jurisdictional features on the property, as itemized below:

- a. Wetlands:  
Wetlands have been located by an environmental soils scientist, flagged, located via GPS equipment and shown on the site plans and survey, in association with two branches of an unnamed tributary located on the northern and eastern edges of the project, feeding to Camp Creek approximately ¼ mile to the north.
  - b. Floodplain:  
The proposed site location does NOT lie within the 100 year flood hazard zone as defined by the F.E.M.A Flood Insurance Rate Map (FIRM) of DeKalb County, Georgia, panel numbers 13089C0077L, effective date of August 15, 2019.
  - c. Streams / Stream buffers:  
Known streams have been located by an environmental soils scientist, the limit point of wrested vegetation flagged, located via GPS equipment and shown on the site plans and survey, for the two branches of an unnamed tributary located on the northern and eastern edges of the project, feeding to Camp Creek approximately ¼ mile to the north.
  - d. Slopes exceeding 25% over a 10ft rise in elevation:  
There are existing slopes at the perimeter of the creek in the northeastern part of the property that appear to exceed 25% at some areas, as shown on the survey. The proposed redevelopment plan does not impact these slope grading areas.
  - e. Vegetation:  
The existing property is approximately 85% impervious with the majority of all vegetation occurring within the existing stream buffers to the streams at the north and northeastern part of the property. The proposed redevelopment does NOT impact either the 25-foot State or 50-foot City stream buffers. There are other trees sparsely located in parking areas on the site which are proposed to be removed as part of the redevelopment.
  - f. Wildlife Species (including fish and endangered species):  
Given the developed condition of the proposed development area, there are no wildlife species on the existing site.
  - g. Archeological / Historic Sites:  
The site does not have any known archeological or historical areas.
3. Project Implementation Measures:

The following measures will be enforced during implementation of the proposed development program:

- a. Protection of environmentally sensitive areas:  
Stream and wetland buffers will be maintained and undisturbed per all regulatory agency requirements. Existing steep slopes along the stream will be maintained and undisturbed.
- b. Protection of water quality:  
Compliance with current State & City stormwater code requirements and NPDES requirements during construction and redevelopment of the site will greatly improve the water quality of stormwater discharge flows from the project area.



- c. Minimization of negative impacts on existing infrastructure:  
Off-site infrastructure will be protected during the redevelopment of the site. Potential traffic impacts will be identified and discussed with GDOT and the City. Inter-parcel connectivity to the property to the east will be provided.
- d. Minimization on archeological/historically significant areas:  
There are no archeological or historically significant areas in the proposed development area.
- e. Minimization of negative impacts on environmentally stressed communities:  
There are no environmentally stressed communities within the proposed development area.
- f. Creation and preservation of green space and open space:  
The redevelopment program will comply with City green space and open space requirements, including creating a new green space area at the primary intersection corner.
- g. Protection of citizens from the negative impacts of noise and lighting:  
The majority of uses in close proximity to the development program are retail, warehouse, and/or office uses. There are no residential uses within 500-ft of the project site.
- h. Protection of parks and recreational green space:  
Existing parks and recreational green space areas will not be impacted by the proposed redevelopment program.
- i. Minimization of impacts to wildlife habitats:  
Although no wildlife habitats were identified as part of this project site, the protection of vegetation within the 75-ft City and State required undisturbed buffer limits on the streams will help create possible future habitats.

Sincerely,

Ron T. Crump, PE  
Principal

Date: 09/20/2019

Re: Environmental Site Analysis Zoning Letter  
Site Location: 4650 Hugh Howell Road, Tucker, GA 30084  
Contineo Group proj. #: 19-142

**CONSTITUTIONAL OBJECTIONS**  
**APPLICATION FOR REZONING AND CONCURRENT VARIANCES**  
**CITY OF TUCKER, GEORGIA**

Georgia Law and the procedures of the City of Tucker require us to raise Federal and State Constitutional objections during the Rezoning and Concurrent Variance application process (the "Application"). While the Owner/Applicant anticipates a smooth application process, failure to raise constitutional objections at this stage may mean that the Owner/Applicant will be barred from raising important legal claims later in the process. Accordingly, we are required to raise the following constitutional objections at this time:

The portions of the Zoning Ordinance of the City of Tucker, Georgia, as applied to the Property, that would result in a denial of the Application as requested by the Owner/Applicant, are, or would be, unconstitutional in that they would destroy the Owner/Applicant's property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983 and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

Any application of the Code of the City of Tucker or the City of Tucker Zoning Ordinance to the Property which restricts its use to any use in a manner other than that requested by the Owner/Applicant is unconstitutional, illegal and null and void because such an application constitutes a taking of the Owner/Applicant's property in violation of the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States, Article I, Section I, Paragraph I, and Article I, Section III, Paragraph I, of the Constitution of the State of Georgia of 1983 and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States because such an application denies the Owner/Applicant an economically viable use of its land while not substantially advancing legitimate state interests.

A denial of this Application would constitute an arbitrary and capricious act by the City Council of the City of Tucker without any rational basis therefore, thereby constituting an abuse of discretion in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983 and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

A refusal to grant the Application as requested by the Owner/Applicant would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner between the Owner/Applicant and owners of similarly situated property in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Any approval of the Application subject to conditions that are different from the conditions requested by the Owner/Applicant, to the extent such different conditions would have the effect of further restricting the Owner/Applicant's utilization of the Property, would also constitute an arbitrary,

RECEIVED  
City of Tucker

SEP 23 2019

Community Development  
Department

capricious and discriminatory act and would likewise violate each of the provisions of the State and Federal Constitutions set forth herein above.

In addition, this constitutes formal written notice to the City of Tucker, pursuant to O.C.G.A. § 36-33-5, that the Owner/Applicant plans to seek to recover all damages that it sustains or suffers as a result of the denial of this Application and/or the unconstitutional zoning of the Property by the City of Tucker. Such damages may include, but are not necessarily limited to, damages related to the diminution in the value of the Property, attorneys' fees and expenses of litigation.

Accordingly, the Applicant respectfully requests that the City Council of the City of Tucker grant the Application requested by the Applicant.

THE GALLOWAY LAW GROUP, LLC



Laurel David

Attorney for Applicant

3500 Lenox Road NE, Suite 760  
Atlanta, Georgia 30326  
(404) 965-3680

L E G A L   D E S C R I P T I O N

TRACT 2

All that tract or parcel of Land, lying and being in Land lot 215 of the 18 th District, DeKalb County, State of Georgia, being more particularly described as follows.

To find the True Point of Beginning, commence at a point formed by the intersection of the North 100 ft. Right-of-Way of Hugh Howell Road (also known as State Route 236) and the East 100 ft. Right-of-Way of Mountain Industrial Boulevard, thence North 00 degrees 05 minutes 41 seconds East for a distance of 25.14 ft. to an Iron Pin Set at the Northerly Limit of a Mitered Right-of-Way, aforementioned Iron Pin set being the True Point of Beginning,

THENCE continuing along the East 100 ft. Right-of-Way of Mountain Industrial Boulevard, North 00 degrees 05 minutes 41 seconds East for a distance of 882.36 feet to a 1/2" re-bar set;

THENCE leaving the East 100 ft. Right-of-Way of Mountain Industrial Boulevard, South 89 degrees 42 minutes 58 seconds East for a distance of 196.84 feet to a point;

THENCE South 00 degrees 40 minutes 37 seconds East for a distance of 42.05 feet to a point;

THENCE South 89 degrees 49 minutes 29 seconds East for a distance of 16.39 feet to a point;

THENCE South 00 degrees 31 minutes 32 seconds West for a distance of 50.93 feet to a point;

THENCE South 89 degrees 25 minutes 34 seconds East for a distance of 146.19 feet to a point;

THENCE North 00 degrees 56 minutes 16 seconds East for a distance of 2.09 feet to a point;

THENCE South 89 degrees 29 minutes 51 seconds East for a distance of 189.16 feet to a point;

Thence North 00 degrees 30 minutes 52 seconds East for a distance of 92.31 feet to a point;

THENCE South 89 degrees 42 minutes 58 seconds East for a distance of 619.36 feet to a 1/2" re-bar found;

THENCE South 00 degrees 34 minutes 04 seconds West for a distance of 903.75 feet to a 1/2" re-bar set on the North 100 ft. Right-of-way of Hugh Howell Road (also known as Georgia State Route 236 ;

THENCE continuing along the North 100 ft. Right-of-way of Hugh Howell Road along a curve to the right having a radius of 4666.74 feet and an arc length of 441.81 feet, being subtended by a chord of South 89 degrees 29 minutes 02 seconds West for a distance of 441.65 feet to a calculated point;

THENCE continuing along the North 100 ft. Right-of-way of Hugh Howell Road, North 89 degrees 32 minutes 08 seconds West for a distance of 724.25 feet to a 1/2" re-bar set at the start of a mitered Right-of-Way;

THENCE along the Mitered Right-of-Way, North 27 degrees 53 minutes 57 seconds West for a distance of 28.57 feet to a 1/2" re-bar set ,the True Point of Beginning.

Said property contains 23.774 acres.

RECEIVED  
City of Tucker

SEP 23 2019

Community Development  
Department

**PROPERTY OWNER'S CERTIFICATION**

I do solemnly swear and attest, subject to criminal penalties for false swearing, that I am the legal owner, as reflected in the records of DeKalb County, Georgia, of the property identified below, which is the subject of the attached Land Use Petition before the City of Tucker, Georgia. As the legal owner of record of the subject property, I hereby authorize the individual named below to act as the applicant in the pursuit of the Application for Rezoning (RZ), Comprehensive Plan Amendment (CA), Special Land Use Permit (SLUP), & Concurrent Variance (CV) in request of the items indicated below.

I, Habersham Partners LLC, authorize, Branch Acquisition Company, LLC,  
(Property Owner) (Applicant)

to file for RZ and Concurrent Variances, at 4650 Hugh Howell Rd.  
(RZ, CA, SLUP, CV) (Address)

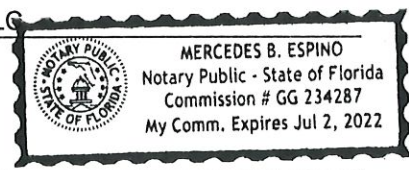
on this date September 23, 2019  
(Month) (Day)

- I understand that if a rezoning is denied or assigned a zoning classification other than the classification requested in the application, then no portion of the same property may again be considered for rezoning for a period of twenty-four (24) months from the date of the mayor and city councils' final decision.
- I understand that if an application for a special land use permit affecting all or a portion of the same property for which an application for the same special land use was denied shall not be submitted before twenty-four (24) months have passed from the date of final decision by the mayor and city council on the previous special land use permit.
- I understand that failure to supply all required information (per the relevant Applicant Checklists and requirements of the Tucker Zoning Ordinance) will result in REJECTION OF THE APPLICATION.
- I understand that preliminary approval of my design plan does not authorize final approval of my zoning or signage request. I agree to arrange additional permitting separately, after approval is obtained.
- I understand that representation associated with this application on behalf of the property owner, project coordinator, potential property owner, agent or such other representative shall be binding.

[Signature] 9/24/19  
Signature of Property Owner Date

SHIRIN BANJEE Manager  
Type or Print Name and Title for Habersham Partners LLC

[Signature] 9/25/19  
Signature of Notary Public Date



RECEIVED  
City of Tucker  
SEP 26 2019  
Community Development  
Department









