

Letter of Intent Modification SLUP Condition #16 Ordinance O2021-10-22

**Chick-fil-A Tucker
4435 Hugh Howell Road
2239 Dillard Street
Tucker, GA 30084**

On behalf of Chick-fil-A, Inc. we are submitting the enclosed information for the modification of a condition associated with an approved Special Land Use Permit for the proposed Chick-fil-A restaurant to be located at 4435 Hugh Howell Road. The Special Land Use Permit with four concurrent variances was approved with 21 conditions and recorded in Ordinance O2021-10-22 on June 13th, 2022.

Ordinance O2021-10-22 allows Chick-fil-A to operate a drive-through in the DT-2 Downtown Corridor zoning district at 4435 Hugh Howell Road and 2239 Dillard Street.

Chick-fil-A is prepared to abide by the conditions set forth in Ordinance O2021-10-22, however is requesting a modification of Condition #16, which requires cooperation from an adjacent property owner.

Condition #16:

Owner/Developer shall construct a northbound right turn lane on Rosser Terrace at the intersection of Hugh Howell Road, subject to the approval of the City Engineer and the Georgia Department of Transportation. Additional right-of-way dedication from the back of curb of the right turn lane and the closure of the curb cut adjacent to the right turn lane shall be required.

On behalf of Chick-fil-A, we are working with City Engineer and Georgia Department of Transportation to design and construct the northbound right turn lane on Rosser Terrace. However, Chick-fil-A is unable to provide right-of-way dedication and closure of existing north curb cut on Rosser Terrace because these are located on the property at 4445 Hugh Howell Road, which is not owned by the Chick-fil-A.

The property at 4445 Hugh Howell Road is for sale. Since SLUP approval in June 2022, both Chick-fil-A and Bowman have reached out on multiple occasions to the property owner through the property owner's real estate representative to discuss acquisition of the necessary right-of-way and closure of the curb cut. The property owner is unwilling to do either of these. Instead, the property owner is requesting that Chick-fil-A purchase the entire property.

Removal of the condition to close the curb cut is the minimum request needed. Since Chick-fil-A is still providing a right turn lane, no special privilege is granted to Chick-fil-A. Removal of the condition to close

the curb cut is not injurious to other properties or improvements in the area. The adjacent property will still have full use of their curb cut. Literal and strict interpretation of the condition is an undue and unnecessary hardship because the right turn lane will function the same whether or not the curb cut is closed.

Chick-fil-A does not have the authority to force an independent property owner to cooperate with their requests and is requesting a modification to Condition #16 to remove the requirements to dedicate right-of-way and close the existing north curb cut on Rosser Terrace at 4445 Hugh Howell Road.

If you should have any questions or require additional information, please do not hesitate to contact me at our Atlanta office at (678) 606-5278. Thank you.

Sincerely,

Bridgette Ganter

Bridgette Ganter

bganter@bowman.com

678-606-5278

Bowman

NOT USED

Criteria in support of Chick-fil-A's request to modify Condition #16 to remove requirements for right-of-way dedication and closure of curb cut:

- a. *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 owner's real estate representative for 4445 Hugh Howell Road stated that right-of-way dedication and closure of the curb cut will de-value the property and that the property owner has right of refusal.

- b. *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.*

Request of this variance does not go beyond the minimum necessary to afford relief since the northbound right turn lane on Rosser Terrace will still be constructed in accordance with City Engineer recommendations and GDOT approval. City Engineer has stated that further right-of-way dedication is not needed at this time and that, while not optimum, the proposed right turn lane will still function as intended without closure of the curb cut.

- c. *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 of this modification will not be detrimental to public welfare since the proposed turn lane will still operate as intended. Granting of this modification will not be injurious to the property or improvements in this zoning district, however will substantially improve this area by removing congestion at this intersection. It will not be injurious to other property of improvements in this area because it will be wholly located in the public right-of-way.

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

Literal interpretation and strict application of the condition for Chick-fil-A to provide right-of-way and close a curb cut on property that belongs to another property is an undue and unnecessary hardship

because Chick-fil-A cannot control the cooperation of another property owner. Because the proposed right turn lane may be located wholly in the public right-of-way, the City Engineer no longer believes right-of-way dedication or closure of the curb cut are needed. Therefore, these are unnecessary hardships.

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

The requested modification is in the spirit and intent of Condition #16 in that a right turn lane will be provided for northbound Rosser Terrace vehicles.