

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

SLUP-19-0068

Land Use Petition Application

SLUP FOR FUEL PUMPS

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

APPLICANT INFORMATION

Applicant is the: Property Owner Owner's Agent Contract Purchaser

Name: Tarek Real Estate, LLC c/o Lisa S. Morchower - Berman, Fink, Van Horn, P.C.

Address: 3475 Piedmont Road, N.E., Suite 1100

City: Atlanta State: GA Zip: 30305

Contact Name: Lisa S. Morchower, Esq.

Phone: (404) 261-771 (office) / (770) 826-4441 (cell) Email: lmorchower@bfvlaw.com

OWNER INFORMATION

Name: Tarek Real Estate, LLC

Address: 4095 Adrian Street

City: Tucker State: GA Zip: 30084

Contact Name: Mohammed Tarek

Phone: (404) 808-0128 Email: tarekm@bellsouth.net

PROPERTY INFORMATION

Property Address: 4246 Lavista Road

Present Zoning District(s): NL-1 (Northlake High - Intensity Commercial) Requested Zoning District(s): No Change

Present Land Use Category: RAC (Regional Activity Center) Requested Land Use Category: No Change

Land District: 18th Land Lot(s): 210 Proposed: Approx. 44,332 Sq. Feet or Acreage: Approx. 1.02 Acres

Proposed Development: Redevelopment of convenience store and mixed commercial uses; Applicant is seeking a SLUP for the sale of gasoline via fuel pumps; Applicant currently sells gasoline via fuel pumps (nonconforming). NO CONCURRENT VARIANCES ARE NEEDED. Concurrent Variance(s):

RESIDENTIAL DEVELOPMENT

No. of Lots/Dwelling Units: N/A Dwelling Unit Size (Sq. Ft.): N/A Density: N/A

NON-RESIDENTIAL DEVELOPMENT

Existing: 1 / Proposed: 2 Existing: approx. 1,700 / Proposed: 8,000 Existing FAR: 0.04 / Proposed FAR: 0.18
 No. of Buildings/Lots: Total Building Sq. Ft.: Density:

RECEIVED
 City of Tucker
 AUG 01 2018

REVISION
 LAND USE PETITION APPLICATION

Community Development
 Department

2

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, Tarek Real Estate, LLC, authorize, Mohammed Tarek c/o Lisa S. Morchower, Esq.
(Property Owner) (Applicant)

to file for SLUP at 4246 Lavista Road, Tucker, GA 30084
(RZ, CA, SLUP, CV) (Address)

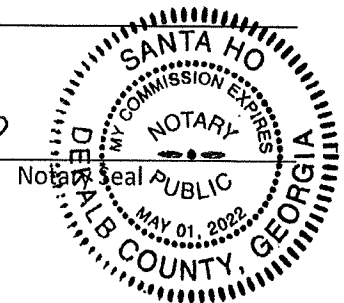
on this date July 23, 2019
(Month) (Day)

- 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.

Mohammed Tarek July 23, 2019
Signature of Property Owner Date

Mohammed Tarek, President of Tarek Real Estate, LLC
Type or Print Name and Title

Santa Ho July 23, 2019
Signature of Notary Public Date
signed in Tucker, Georgia



APPLICANT'S CERTIFICATION

THE UNDERSIGNED BELOW STATES UNDER OATH THAT THEY ARE AUTHORIZED TO MAKE THIS APPLICATION. THE UNDERSIGNED IS AWARE THAT NO APPLICATION OR REAPPLICATION AFFECTING THE SAME LAND SHALL BE ACTED UPON WITHIN 24 MONTHS FROM THE DATE OF LAST ACTION BY THE MAYOR AND CITY COUNCIL.

Mohammed Tarek July 23, 2019

Signature of Applicant Date

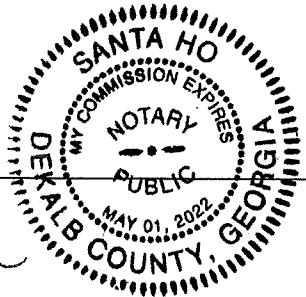
Tarek Real Estate, LLC - Mohammed Tarek c/o
Lisa S. Morchower, Attorney for Tarek Real Estate, LLC

Type or Print Name and Title

Santa Ho July 23RD, 2019

Signature of Notary Public Date Notary Seal

signed in Tucker, Georgia



DISCLOSURE REPORT FORM

WITHIN THE (2) YEARS IMMEDIATELY PRECEDING THE FILING OF THIS ZONING PETITION HAVE YOU, AS THE APPLICANT OR OPPONENT FOR THE REZONING PETITION, OR AN ATTORNEY OR AGENT OF THE APPLICANT OR OPPONENT FOR THE REZONING PETITION, MADE ANY CAMPAIGN CONTRIBUTIONS AGGREGATING \$250.00 OR MORE OR MADE GIFTS HAVING AN AGGREGATE VALUE OF \$250.00 TO THE MAYOR OR ANY MEMBER OF THE CITY COUNCIL.

CIRCLE ONE: YES (if YES, complete points 1 through 4); **NO** (if NO, complete only point 4)

1. CIRCLE ONE: **Party to Petition** (If party to petition, complete sections 2, 3 and 4 below)

In Opposition to Petition (If in opposition, proceed to sections 3 and 4 below)

2. List all individuals or business entities which have an ownership interest in the property which is the subject of this rezoning petition:

1. Mohammed Tarek	5.
2. Tarek Real Estate, LLC	6.
3.	7.
4.	8.

3. CAMPAIGN CONTRIBUTIONS: NONE

Name of Government Official	Total Dollar Amount	Date of Contribution	Enumeration and Description of Gift Valued at \$250.00 or more

4. The undersigned acknowledges that this disclosure is made in accordance with the Official Code of Georgia, Section 36-67A-1 et. seq. Conflict of interest in zoning actions, and that the information set forth herein is true to the undersigned's best knowledge, information and belief.

Name (print) Mohammed Tarek, President of Tarek Real Estate, LLC

Signature:  Date: July 23, 2019

**APPLICATION FOR SPECIAL LAND USE PERMIT
SUBMITTED BY TAREK REAL ESTATE, LLC
TO ALLOW THE SALE OF GASOLINE AT FUEL PUMPS
AT 4246 LAVISTA ROAD, TUCKER, GA 30084**

I. STATEMENT OF INTENT

Tarek Real Estate, LLC (“Tarek” or “Applicant”), owns a tract of land that is approximately 1.09 acres in size and is located at 4246 Lavista Road, Tucker, GA 30084 (the “Property”). The Property currently contains two buildings, a convenience store and a car wash, which together comprise approximately 1,664 square feet. The convenience store was built sometime in or around the year 1984 and has been operated as a retail store selling typical convenience store type products to the general public since it opened. The items which are currently being offered for sale include packaged beer and wine beverages which are sold for off-premises consumption. Applicant believes that packaged beer and wine have been sold in the store since it first began operations in or around 1984. When Tarek purchased the store in 2007, the store had licenses from both the City of Tucker and the State of Georgia to sell beer and wine by the package. These alcohol licenses have continued to be issued each year since Tarek has owned the Property. The store is currently authorized to sell beer and wine by the package via City and State alcohol licenses issued for the Year 2019.

In addition to selling products such as food items, toiletries, beer and wine and other sundries inside the store, the store also operates as a gasoline station. There are four fuel pump stations located on the Property through which customers can purchase gas for their cars. The store is currently branded as a “Chevron” store.

The buildings on the Property were built approximately 35 years ago. At that time, the trend was to build convenience stores in the center of the property and the fuel pumps were placed on both sides of the store. The trend today is to build the convenience store closer to the street while keeping the pumps in one main area, rather than placing them all around the store. Although Applicant’s store, car wash, fuel pumps and existing Property are in working condition and Applicant has a very strong, loyal customer base, Tarek desires to completely update the Property to keep up with the improvements which are being made all around the Northlake Overlay District. The improvement which will have the most impact on Applicant’s Property is the new senior living residential building (“Senior Facility”) which is being constructed immediately adjacent to the

north side of the Applicant's Property. This development will provide a new customer base for Applicant comprised of the residents of the Senior Facility. Applicant desires to offer this segment of the community retail options which provide many of the items that the community uses on a daily basis. Applicant intends to offer fresh food options and other products which will be determined based on the needs of the community. The Property is in walking distance to the new Senior Facility, and Tarek wants to enhance the shopping experience for its residents and all of the other members of the community through renovation of the Property.

In addition, to the Senior Facility, there has been a lot of development all around the intersection where the Property is located. There are new stores in close proximity to the Property, including a Dick's Sporting Goods and a Hobby Lobby. In order to complement these new developments and to offer state of the art services and items to its customer base, Tarek's plan is to completely renovate the Property by tearing down the existing buildings and constructing two new buildings and new fuel pumps. This construction will adhere to the new design standards and other regulations set forth in the recent Amendments to the City of Tucker Overlay District Code of Ordinances. The renovation of the Property will most likely take more than six (6) months to complete. The convenience store and gas pumps will most likely be closed during some or all of the renovation period.

The proposed site plan ("Site Plan") for Applicant's redevelopment is being submitted simultaneously with this SLUP Application. As is shown on the Site Plan, once the Property is redeveloped, it will consist of approximately 1.02 acres in size. This small reduction in size is due to a right of way dedication that will be part of the redevelopment plan. Pursuant to the proposed redevelopment Site Plan for the Property, the existing buildings will be demolished, and two new buildings will be built. One building will be 3,000 square feet in size and will replace the existing convenience store. The other building will be 5,000 square feet in size and will be comprised of at least two retail commercial uses. In order to comply with the new Overlay District Code of Ordinances, there must be at least 16 but not more than 45 parking spaces on site. Pursuant to the Site Plan there will be a total of 32 parking spaces on site. Therefore, there is more than enough parking to meet the needs of the new Code provisions.

The redevelopment Site Plan shows that the four (4) existing fuel pumps will be replaced with the exact same number of fuel pumps, but they will be relocated on the Property to adhere to the new design. In addition, the existing convenience store currently has City and State alcohol

licenses to sell beer and wine by the package for off-premises consumption. Applicant intends to continue to sell beer and wine by the package on the Property and to offer gasoline via fuel pumps to its customers in its newly constructed convenience store.

The existing sales of alcoholic beverages and gasoline via fuel pumps are considered “nonconforming” uses on Applicant’s Property. When Tarek bought the Property, these uses were already authorized, and he did not have to take any action to continue such uses other than to apply for and obtain the appropriate licenses for such sales. However, City of Tucker Code Section 46-1735(2) provides that in regard to nonconforming uses the “vacancy or non-use of a building for six continuous months, regardless of the intent of the owner or tenant, shall constitute discontinuance or abandonment.” Therefore, if the property is under construction for longer than six (6) months, and the store is unable to be operated during that entire time or for a period longer than six (6) months, then the nonconforming uses of the Property and building for alcohol and gasoline sales are deemed abandoned and they cannot be re-established without certain action. In this case, the renovation buildout will most likely take longer than six (6) months, and sales of both alcohol and gas will cease during the construction phase. The cessation of the nonconforming use status means that alcoholic beverages and gas sales would have to cease. The City of Tucker Zoning Ordinances, Table 4.1 of Section 46-1124, provide that both the sale of packaged beer and wine and the operation of fuel pumps in the Northlake Overlay District are authorized only through the issuance of a Special Land Use Permit (“SLUP”) for each respective use. Therefore, in order to continue selling beer and wine and/or gasoline through fuel pumps once the renovation is complete, Applicant must obtain a separate SLUP for each such use. Accordingly, Applicant is seeking a separate SLUP for each such use so that each use can be continued on the Property once the convenience store is constructed and reopens. Applicant will still have to apply for and obtain any City or State licenses which are required for such uses on a yearly basis.

II. ANALYSIS OF CRITERIA TO BE CONSIDERED IN EVALUATION OF A SLUP APPLICATION

(1) Adequacy of the size of the site for the use contemplated and whether or not adequate land area is available for the proposed use including provision of all required yards, open space, off-street parking, and all other applicable requirements of the zoning district in which the use is proposed to be located. (Continued on Next Page).

This property is of ample size for the use contemplated. The lot is approximately 1.0177 acres in size and the existing building will be torn down and two new buildings will be located on the property. Under the proposed redevelopment plan, all requirements regarding yards, open space, off-street parking and other applicable requirements of the zoning district will be met.

(2) Compatibility of the proposed use with adjacent properties and land uses and with other properties and land uses in the district. (on next page).

The Property sits on a corner lot at the intersection of Lavista Road, which borders the south portion of the Property, and Northlake Parkway, which borders the east side of the Property. To the direct north of the Property there is a senior living facility, and on the direct west side of the Property, there is a car rental business. The Property is also very close to Interstate 285. The intersection is heavily traveled and has commercial uses all around it, including retail stores and drive-through restaurants. Currently, there is an operating convenience store and car wash on the Property. There is an active beer and wine license for the Property, and beer and wine are currently sold by the package on the Property. In addition, gasoline has been sold on the Property for many years and still is being sold there today. The Property has full-access driveways on Lavista Road and on Northlake Parkway. Since the proposed redevelopment will not change the existing use of the Property as a convenience store selling beer and wine by the package and gasoline, the proposed use is compatible with the uses of adjacent properties and land uses and with other properties and land uses in the district.

(3) Adequacy of public services, public facilities, and utilities to serve the proposed use.

The proposed redevelopment plan encompasses the same uses that have existed on the Property for many years. The public services, public facilities, and utilities which currently serve the Property are adequate to serve the Property under the proposed redevelopment plan.

(4) Adequacy of the public street on which the use is proposed to be located and whether or not there is sufficient traffic-carrying capacity for the use proposed so as not to unduly increase traffic and create congestion in the area.

The proposed redevelopment plan encompasses the same uses that have existed on the Property for many years. The Property sits on a corner lot at the intersection of Lavista Road, which borders the south portion of the Property, and Northlake Parkway, which borders the east side of the Property. Each of these streets is adequate for the uses to be located on the Property as proposed by the redevelopment plan. These streets sufficiently carry traffic and

neither street will be overburdened by the proposed uses. The proposed uses will not unduly increase traffic or create congestion in the area.

(5) Whether or not existing land uses located along access routes to the site will be adversely affected by the character of the vehicles or the volume of traffic generated by the proposed use.

There will be no impact on the existing land uses located along the access routes to the site which will be adversely affected by the character of the vehicles or the volume of traffic generated by the proposed use. The traffic along Lavista Road and Northlake Parkway is comprised of both personal and commercial vehicles. Since the proposed redevelopment encompasses the same use already existing on the Property the impact to nearby uses and properties and along the access route to the Property will not be adversely affected.

(6) Adequacy of ingress and egress to the subject property and to all proposed buildings, structures, and uses thereon, with particular reference to pedestrian and automotive safety and convenience, traffic flow and control, and access in the event of fire or other emergency.

The attached plans show that there is adequate ingress and egress into the Property. The flow of traffic on the Property to the two buildings and to parking spaces thereon has been designed with reference to pedestrian and automotive safety and convenience and includes sufficient access for emergency response vehicles in the event of a fire or other emergency.

(7) Whether or not the proposed use will create adverse impacts upon any adjoining land use by reason of noise, smoke, odor, dust, or vibration generated by the proposed use.

The proposed uses on the Property will not have any adverse impacts upon any adjoining land use by generating noise, smoke, odor, dust or vibration.

(8) Whether or not the proposed use will create adverse impacts upon any adjoining land use by reason of the hours of operation of the proposed use.

The hours of operation for the proposed uses will not create any adverse impact upon the adjoining land.

(9) Whether or not the proposed use will create adverse impacts upon any adjoining land use by reason of the manner of operation of the proposed use.

The manner of operation for the proposed uses will not create any adverse impact upon the adjoining land.

(10) Whether or not the proposed use is otherwise consistent with the requirements of the zoning district classification in which the use is proposed to be located.

The proposed uses are consistent with the uses authorized in the C-1 Zoning District Regulations and the Tier 1 Northlake Overlay District Regulations.

(11) Whether or not the proposed use is consistent with the policies of the comprehensive plan.

The City of Tucker Future Comprehensive Plan states that the Property is in the Regional Activity Center classification. The Plan defines this classification as follows:

Most of the area located within the Northlake area of Tucker is shown in dark red. Regional activity centers typically include a higher-density mix of retail, office, housing, and services, and employment to serve a regional market area. Because it is readily accessible from the highway and is already more developed, future development here is considered both desirable and appropriate.

The proposed uses for the Property are consistent with these policies.

(12) Whether or not the proposed use provides for all required buffer zones and transitional buffer zones where required by the regulations of the zoning district in which the use is proposed to be located.

The proposed redevelopment plan contemplates and complies with all required buffer zones and transitional buffer zones contained in the regulations for C-1 / Northlake Overlay District Tier 1 and any other supplemental regulations which are required for the proposed uses.

(13) Whether or not there is adequate provision of refuse and service areas.

The proposed redevelopment plan contemplates and makes adequate provision for refuse and service areas on the Property.

(14) Whether the length of time for which the special land use permit is granted should be limited in duration.

The owner of the Property is spending an extensive amount of time and money to redevelop the Property and intends to use the Property as proposed in the redevelopment site plan for a very long time. Accordingly, the Special Land Use Permit should not be limited in duration.

(15) Whether or not the size, scale and massing of proposed buildings are appropriate in relation to the size of the subject property and in relation to the size, scale and massing of adjacent and nearby lots and buildings.

The Property is just over 1 acre in size. There will only be two buildings on it, and they will meet all height requirements and will be small enough in size to allow for enough open

space, parking, buffers and compliance with other regulations related to the Property. The buildings will be in line with neighboring buildings and in some cases will be smaller than adjacent buildings, such as the building housing the senior assisted living facility which is adjacent to the north side of the Property.

(16) Whether the proposed use will adversely affect historic buildings, sites, districts, or archaeological resources.

The Property does is not located within a historic district and the Applicant is not aware of any historic buildings, sites, districts or archaeological resources on the site or near the Property. Therefore, the proposed redevelopment and uses will not adversely affect any historic building, site, district or archaeological resource.

(17) Whether the proposed use satisfies the requirements contained within the supplemental regulations for such special land use permit.

The proposed redevelopment Site Plan satisfies the requirements contained within the supplemental regulations for the Special Land Use Permit for “fuel pumps” which are found in the City of Tucker Code of Ordinances Section 46-1171. Such regulations are as follows:

Fuel pumps as accessory uses shall comply with the following standards:

- (1) The primary building (i.e., convenience store or automobile service station) shall conform to all primary building setbacks. *The Application will comply with this requirement.*
- (2) Canopies covering gasoline dispensers shall be set back not less than 15 feet from all street rights-of-way. *The Application will comply with this requirement.*
- (3) The canopy shall not exceed the height of the principal building, but in no case shall exceed 20 feet in height. *The Application will comply with this requirement.*
- (4) The canopy and its columns shall be complementary to the overall color scheme and building materials scheme of the building facade to which the canopy is accessory. *The Application will comply with this requirement.*
- (5) Canopy lighting shall not extend beyond the area beneath the canopy and all fixtures shall be recessed, including any fixture or lens. Lighting shall project inward and downward, shall not have any spillover to adjacent properties, and shall cut off no later than 30 minutes after closure of the facility. *The Application will comply with this requirement.*
- (6) Automobile service stations with gas sales shall have a capacity to store one car per bay (car area in front of a pump), so as not to interfere with driveway ingress and egress traffic flow. *The Application will comply with this requirement.*
- (7) A minimum of 30 feet is required between a property line and the nearest gasoline pump. *The Application will comply with this requirement.*

(18) Whether or not the proposed use will create a negative shadow impact on any adjoining lot or building as a result of the proposed building height.

The buildings on the proposed redevelopment plan will comply with the regulations regarding height for C-1 / Northlake Overlay District Tier 1 and will not create a negative shadow impact on any adjoining lot or building.

(19) Whether the proposed use would result in a disproportionate proliferation of that or similar uses in the subject character area.

The Property has been used as a convenience store with sales of beer and wine by the package, sales of gas in gas pumps, and a car wash for many years. The SLUP for which Applicant has applied requests authorization to continue the sale of beer and wine by the package and to allow gas pumps at the Property.

(20) Whether the proposed use would be consistent with the needs of the neighborhood or the community as a whole, be compatible with the neighborhood, and would not be in conflict with the overall objective of the comprehensive plan.

The Property is already being used in the way that is being proposed and the use is consistent with the needs of the neighborhood and the community as a whole. The Property is located at a very heavily traveled intersection and it is an ideal location for a convenience store with gas pumps to be located. Gasoline and beer and wine in the package are already being sold at the existing convenience store and such sales are consistent with the overall objective of the City's comprehensive plan designating the Property to be in the Regional Activity Center classification.

III. ENVIRONMENTAL SITE ANALYSIS

1. Conformance with the comprehensive plan

The current site is a self-service gas station with full-access driveways on Lavista Road and Northlake Parkway and contains two buildings, one of which is a car wash. Site is bordered to the north by a senior living facility, to the east by Northlake Parkway, to the south by Lavista Road, and to the west by a car rental business. The proposed site will replace the existing buildings with two new buildings, a convenience/food store and a 5,000 SF retail building. The proposed development conforms to the Comprehensive Land Use Plan for the City of Tucker.

2. Environmental Impacts of the proposed project

- a. **Wetlands:** None, per U.S. Fish and Wildlife Services National Wetlands Inventory online map
- b. **Floodplain:** Zone X – Area of Minimal Flood Hazard, per Panel 13089C0076J
- c. **Streams/stream buffers:** None

- d. **Slopes exceeding 25% over a 10-foot rise in elevation:** None
- e. **Vegetation:** See survey
- f. **Wildlife Species:** None known
- g. **Archaeological/Historical Sites:** None known on site

3. Project Implementation Measures

- a. **Protection of environmentally sensitive areas, i.e. floodplain, slopes exceeding 25%, river corridors:** Not applicable; none onsite.
- b. **Protection of water quality:** Development will conform with water quality regulations.
- c. **Minimization of negative impacts on existing infrastructure:** Proposed site plan includes enhancements for traffic safety along existing traffic corridors.
- d. **Minimization on archeological/historically significant areas:** None observed onsite.
- e. **Minimization of negative impacts on environmentally stressed communities where environmentally stressed communities are defined as communities exposed to a minimum of two environmentally adverse conditions resulting from public and private municipal (e.g., solid waste and waste water treatment facilities, utilities, airports, and railroads) and industrial (e.g., landfills, quarries, and manufacturing facilities) uses:** Not applicable; None.
- f. **Creation and preservation of green space and open space:** Development will meet open space requirements. See included site plans.
- g. **Protection of citizens from the negative impacts of noise and lighting:** Existing use is commercial and proposed use is also commercial. No additional impacts from noise or lighting are expected from the completed development.
- h. **Protection of parks and recreational green spaces:** Not applicable; No existing parks onsite.
- i. **Minimization of impacts to wildlife habitats:** Not applicable; no sensitive wildlife habitats observed on-site.

IV. PRESERVATION OF CONSTITUTIONAL RIGHTS AND OBJECTIONS

In order to preserve its right to assert violations of either the Georgia or Federal Constitutions should the Special Land Use Permit Application ("SLUP Application") it has filed with the City of Tucker for a specific use on its Property be partially or completely denied, Applicant/Owner ("Applicant") asserts the following Constitutional Objections:

The provisions of the City of Tucker Zoning Ordinance which require that the Property adhere to a zoning category, classification, district, or use other than the use proposed by the Applicant in the SLUP Application, are unconstitutional as they would violate the Applicant's property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section I, Paragraphs I and II 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 City of Tucker Zoning Ordinance, either facially or as applied, to the subject Property, which requires that the Property, or the use thereon, adhere to a zoning category, classification, district, or use other than the use proposed by Applicant in the SLUP Application, is unconstitutional, illegal, null and void, constitutes a taking of the Applicant's property 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; the Fifth Amendment to the Constitution of the United States; and the Equal Protection and Due Process Clauses of the Fourteenth Amendment of the Constitution of the United States because such action denies the Applicant an economically viable use of its land without substantially advancing a legitimate state interest.

A denial of the SLUP Application would be an arbitrary, capricious and unreasonable act without any rational basis, 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 I, Paragraph II 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 denial of the SLUP Application would amount to arbitrary, capricious and unreasonable discriminatory action in a manner which treats the owners of similarly situated property differently than Applicant and would be 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. In the event that the City of Tucker Mayor and City Council grant a SLUP that is subject to conditions which are different from the conditions requested by Applicant, to the extent such different conditions imposed on Applicant would have the effect of further restricting Applicant's use of the Property, then such actions of approval by the City of Tucker Mayor and City Council are arbitrary, capricious, discriminatory, unreasonable, and result in the zoning of Applicant's Property to an unconstitutional classification in violation of each of the provisions of the State and Federal Constitutions as set forth in the preceding paragraphs.

Applicant hereby further provides notice, pursuant to O.C.G.A. Section 36-33-5, that it intends to bring a lawsuit against the City of Tucker to recover any and all damages it sustains or incurs as a result of any action by the City of Tucker to deny the SLUP Application, place conditions on the issuance of a SLUP which impact Applicant's ability to use the Property as requested in the SLUP Application or unconstitutionally zone the Property. Such damages included but are not limited to damages related to the diminution of the value of the Property, attorney's fees and costs and expenses of litigation.

Accordingly, the Applicant respectfully requests that the SLUP Application submitted by Applicant be granted as requested by Applicant.

(Signature on Next Page)

SLUP Application for Fuel Pumps
Submitted by Tarek Real Estate, LLC

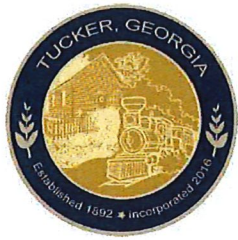
Respectfully submitted this 23rd day of July, 2019.

BERMAN FINK VAN HORN, P.C.

A handwritten signature in black ink that reads "Lisa S. Morchower". The signature is written in a cursive style with a large initial "L" and "M".

Lisa S. Morchower
Attorney for Applicant

3475 Piedmont Rd., N.E.
Suite 1100
Atlanta, GA 30305
(404) 261-7711 (office) / (770) 826-4441 (cell)
lmorchower@bfvlaw.com



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 4119 Adrian Street
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SLUP-19-0009

Land Use Petition Application

SLUP FOR ALCOHOL (BEER AND WINE) SALES

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

APPLICANT INFORMATION		
Applicant is the: <input checked="" type="checkbox"/> Property Owner <input type="checkbox"/> Owner's Agent <input type="checkbox"/> Contract Purchaser		
Name: Tarek Real Estate, LLC c/o Lisa S. Morchower - Berman, Fink, Van Horn, P.C.		
Address: 3475 Piedmont Road, N.E., Suite 1100		
City: Atlanta	State: GA	Zip: 30305
Contact Name: Lisa S. Morchower, Esq.		
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PROPERTY INFORMATION		
Property Address: 4246 Lavista Road		
Present Zoning District(s): NL-1 (Northlake High - Intensity Commercial)	Requested Zoning District(s): No Change	
Present Land Use Category: RAC (Regional Activity Center)	Requested Land Use Category: No Change	
Land District: 18th	Land Lot(s): 210	Proposed: Approx. 44,332 Sq. Feet or Acreage: Approx. 1.02 Acres
Proposed Development: Redevelopment of convenience store and mixed commercial uses; Applicant is seeking a SLUP for the sale of beer and wine by the package for consumption off premises; Applicant currently sells beer and wine by the package (nonconforming). NO Concurrent Variance(s):		
RESIDENTIAL DEVELOPMENT		
No. of Lots/Dwelling Units: N/A	Dwelling Unit Size (Sq. Ft.): N/A	Density: N/A
NON-RESIDENTIAL DEVELOPMENT		
Existing: 1 / Proposed: 2 No. of Buildings/Lots:	Existing: approx. 1,700 / Proposed: 8,000 Total Building Sq. Ft.:	Existing FAR: 0.04/ Proposed FAR: 0.18 Density:

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 City of Tucker
 AUG 01 2018

REVISION

Community Development
 Department

LAND USE PETITION APPLICATION

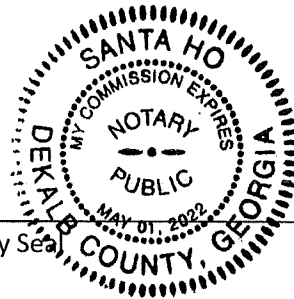
APPLICANT'S CERTIFICATION

THE UNDERSIGNED BELOW STATES UNDER OATH THAT THEY ARE AUTHORIZED TO MAKE THIS APPLICATION. THE UNDERSIGNED IS AWARE THAT NO APPLICATION OR REAPPLICATION AFFECTING THE SAME LAND SHALL BE ACTED UPON WITHIN 24 MONTHS FROM THE DATE OF LAST ACTION BY THE MAYOR AND CITY COUNCIL.

Mohammed Tarek July 23, 2019
Signature of Applicant Date

Tarek Real Estate, LLC - Mohammed Tarek c/o
Lisa S. Morchower, Attorney for Tarek Real Estate, LLC
Type or Print Name and Title

Santa Ho July 23, 2019
Signature of Notary Public Date Notary Seal



Signed in Tucker, Georgia

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, Tarek Real Estate, LLC, authorize, Mohammed Tarek c/o Lisa S. Morchower, Esq.
(Property Owner) (Applicant)

to file for SLUP, at 4246 Lavista Road, Tucker, GA 30084
(RZ, CA, SLUP, CV) (Address)

on this date July, 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.

Mohammed Tarek
Signature of Property Owner

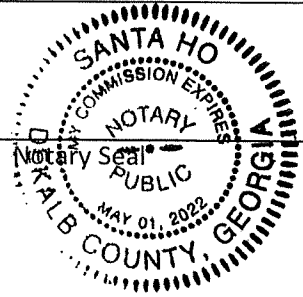
July 23, 2019
Date

Mohammed Tarek, President of Tarek Real Estate, LLC
Type or Print Name and Title

Santa Ho
Signature of Notary Public

July 23, 2019
Date

signed in Tucker, Georgia



DISCLOSURE REPORT FORM

WITHIN THE (2) YEARS IMMEDIATELY PRECEDING THE FILING OF THIS ZONING PETITION HAVE YOU, AS THE APPLICANT OR OPPONENT FOR THE REZONING PETITION, OR AN ATTORNEY OR AGENT OF THE APPLICANT OR OPPONENT FOR THE REZONING PETITION, MADE ANY CAMPAIGN CONTRIBUTIONS AGGREGATING \$250.00 OR MORE OR MADE GIFTS HAVING AN AGGREGATE VALUE OF \$250.00 TO THE MAYOR OR ANY MEMBER OF THE CITY COUNCIL.

CIRCLE ONE: YES (if YES, complete points 1 through 4); NO (if NO, complete only point 4)

1. CIRCLE ONE: Attorney for Applicant
Party to Petition (If party to petition, complete sections 2, 3 and 4 below)

In Opposition to Petition (If in opposition, proceed to sections 3 and 4 below)

2. List all individuals or business entities which have an ownership interest in the property which is the subject of this rezoning petition:

- | | |
|---------------------------|----|
| 1. Mohammed Tarek | 5. |
| 2. Tarek Real Estate, LLC | 6. |
| 3. | 7. |
| 4. | 8. |

3. CAMPAIGN CONTRIBUTIONS: NONE

Name of Government Official	Total Dollar Amount	Date of Contribution	Enumeration and Description of Gift Valued at \$250.00 or more

4. The undersigned acknowledges that this disclosure is made in accordance with the Official Code of Georgia, Section 36-67A-1 et. seq. Conflict of interest in zoning actions, and that the information set forth herein is true to the undersigned's best knowledge, information and belief.

Name (print) Lisa S. Morchower, Attorney for Tarek Real Estate, LLC

Signature: *Lisa S. Morchower* Date: 7/23/19

**APPLICATION FOR SPECIAL LAND USE PERMIT
SUBMITTED BY TAREK REAL ESTATE, LLC
TO ALLOW THE SALE OF BEER AND WINE BY THE PACKAGE
AT 4246 LAVISTA ROAD, TUCKER, GA 30084**

I. STATEMENT OF INTENT

Tarek Real Estate, LLC (“Tarek” or “Applicant”), owns a tract of land that is approximately 1.09 acres in size and is located at 4246 Lavista Road, Tucker, GA 30084 (the “Property”). The Property currently contains two buildings, a convenience store and a car wash, which together comprise approximately 1,664 square feet. The convenience store was built sometime in or around the year 1984 and has been operated as a retail store selling typical convenience store type products to the general public since it opened. The items which are currently being offered for sale include packaged beer and wine beverages which are sold for off-premises consumption. Applicant believes that packaged beer and wine have been sold in the store since it first began operations in or around 1984. When Tarek purchased the store in 2007, the store had licenses from both the City of Tucker and the State of Georgia to sell beer and wine by the package. These alcohol licenses have continued to be issued each year since Tarek has owned the Property. The store is currently authorized to sell beer and wine by the package via City and State alcohol licenses issued for the Year 2019.

In addition to selling products such as food items, toiletries, beer and wine and other sundries inside the store, the store also operates as a gasoline station. There are four fuel pump stations located on the Property through which customers can purchase gas for their cars. The store is currently branded as a “Chevron” store.

The buildings on the Property were built approximately 35 years ago. At that time, the trend was to build convenience stores in the center of the property and the fuel pumps were placed on both sides of the store. The trend today is to build the convenience store closer to the street while keeping the pumps in one main area, rather than placing them all around the store. Although Applicant’s store, car wash, fuel pumps and existing Property are in working condition and Applicant has a very strong, loyal customer base, Tarek desires to completely update the Property to keep up with the improvements which are being made all around the Northlake Overlay District. The improvement which will have the most impact on Applicant’s Property is the new senior living residential building (“Senior Facility”) which is being constructed immediately adjacent to the

north side of the Applicant's Property. This development will provide a new customer base for Applicant comprised of the residents of the Senior Facility. Applicant desires to offer this segment of the community retail options which provide many of the items that the community uses on a daily basis. Applicant intends to offer fresh food options and other products which will be determined based on the needs of the community. The Property is in walking distance to the new Senior Facility, and Tarek wants to enhance the shopping experience for its residents and all of the other members of the community through renovation of the Property.

In addition, to the Senior Facility, there has been a lot of development all around the intersection where the Property is located. There are new stores in close proximity to the Property, including a Dick's Sporting Goods and a Hobby Lobby. In order to complement these new developments and to offer state of the art services and items to its customer base, Tarek's plan is to completely renovate the Property by tearing down the existing buildings and constructing two new buildings and new fuel pumps. This construction will adhere to the new design standards and other regulations set forth in the recent Amendments to the City of Tucker Overlay District Code of Ordinances. The renovation of the Property will most likely take more than six (6) months to complete. The convenience store and gas pumps will most likely be closed during some or all of the renovation period.

The proposed site plan ("Site Plan") for Applicant's redevelopment is being submitted simultaneously with this SLUP Application. As is shown on the Site Plan, once the Property is redeveloped, it will consist of approximately 1.02 acres in size. This small reduction in size is due to a right of way dedication that will be part of the redevelopment plan. Pursuant to the proposed redevelopment Site Plan for the Property, the existing buildings will be demolished, and two new buildings will be built. One building will be 3,000 square feet in size and will replace the existing convenience store. The other building will be 5,000 square feet in size and will be comprised of at least two retail commercial uses. In order to comply with the new Overlay District Code of Ordinances, there must be at least 16 but not more than 45 parking spaces on site. Pursuant to the Site Plan there will be a total of 32 parking spaces on site. Therefore, there is more than enough parking to meet the needs of the new Code provisions.

The redevelopment Site Plan shows that the four (4) existing fuel pumps will be replaced with the exact same number of fuel pumps, but they will be relocated on the Property to adhere to the new design. In addition, the existing convenience store currently has City and State alcohol

licenses to sell beer and wine by the package for off-premises consumption. Applicant intends to continue to sell beer and wine by the package on the Property and to offer gasoline via fuel pumps to its customers in its newly constructed convenience store.

The existing sales of alcoholic beverages and gasoline via fuel pumps are considered “nonconforming” uses on Applicant’s Property. When Tarek bought the Property, these uses were already authorized, and he did not have to take any action to continue such uses other than to apply for and obtain the appropriate licenses for such sales. However, City of Tucker Code Section 46-1735(2) provides that in regard to nonconforming uses the “vacancy or non-use of a building for six continuous months, regardless of the intent of the owner or tenant, shall constitute discontinuance or abandonment.” Therefore, if the property is under construction for longer than six (6) months, and the store is unable to be operated during that entire time or for a period longer than six (6) months, then the nonconforming uses of the Property and building for alcohol and gasoline sales are deemed abandoned and they cannot be re-established without certain action. In this case, the renovation buildout will most likely take longer than six (6) months, and sales of both alcohol and gas will cease during the construction phase. The cessation of the nonconforming use status means that alcoholic beverages and gas sales would have to cease. The City of Tucker Zoning Ordinances, Table 4.1 of Section 46-1124, provide that both the sale of packaged beer and wine and the operation of fuel pumps in the Northlake Overlay District are authorized only through the issuance of a Special Land Use Permit (“SLUP”) for each respective use. Therefore, in order to continue selling beer and wine and/or gasoline through fuel pumps once the renovation is complete, Applicant must obtain a separate SLUP for each such use. Accordingly, Applicant is seeking a separate SLUP for each such use so that each use can be continued on the Property once the convenience store is constructed and reopens. Applicant will still have to apply for and obtain any City or State licenses which are required for such uses on a yearly basis.

II. ANALYSIS OF CRITERIA TO BE CONSIDERED IN EVALUATION OF A SLUP APPLICATION

(1) Adequacy of the size of the site for the use contemplated and whether or not adequate land area is available for the proposed use including provision of all required yards, open space, off-street parking, and all other applicable requirements of the zoning district in which the use is proposed to be located. (Continued on next page).

This property is of ample size for the use contemplated. The lot is approximately 1.0177 acres in size and the existing building will be torn down and two new buildings will be located on the property. Under the proposed redevelopment plan, all requirements regarding yards, open space, off-street parking and other applicable requirements of the zoning district will be met. The site is sufficient for the sale of alcoholic beverages and for the use of fuel pumps to sell gasoline.

(2) Compatibility of the proposed use with adjacent properties and land uses and with other properties and land uses in the district.

The Property sits on a corner lot at the intersection of Lavista Road, which borders the south portion of the Property, and Northlake Parkway, which borders the east side of the Property. To the direct north of the Property there is a senior living facility, and on the direct west side of the Property, there is a car rental business. The Property is also very close to Interstate 285. The intersection is heavily traveled and has commercial uses all around it, including retail stores and drive-through restaurants. Currently, there is an operating convenience store and car wash on the Property. There is an active beer and wine license for the Property, and beer and wine are currently sold by the package on the Property. In addition, gasoline has been sold on the Property for many years and still is being sold there today. The Property has full-access driveways on Lavista Road and on Northlake Parkway. Since the proposed redevelopment will not change the existing use of the Property as a convenience store selling beer and wine by the package and gasoline, the proposed use is compatible with the uses of adjacent properties and land uses and with other properties and land uses in the district.

(3) Adequacy of public services, public facilities, and utilities to serve the proposed use.

The proposed redevelopment plan encompasses the same uses that have existed on the Property for many years, including the sale of alcohol and gasoline. The public services, public facilities, and utilities which currently serve the Property are adequate to serve the Property under the proposed redevelopment plan.

(4) Adequacy of the public street on which the use is proposed to be located and whether or not there is sufficient traffic-carrying capacity for the use proposed so as not to unduly increase traffic and create congestion in the area.

The proposed redevelopment plan encompasses the same uses that have existed on the Property for many years. The Property sits on a corner lot at the intersection of Lavista Road,

which borders the south portion of the Property, and Northlake Parkway, which borders the east side of the Property. Each of these streets is adequate for the uses to be located on the Property as proposed by the redevelopment plan. These streets sufficiently carry traffic and neither street will be overburdened by the proposed uses. The proposed uses will not unduly increase traffic or create congestion in the area.

(5) Whether or not existing land uses located along access routes to the site will be adversely affected by the character of the vehicles or the volume of traffic generated by the proposed use.

There will be no impact on the existing land uses located along the access routes to the site which will be adversely affected by the character of the vehicles or the volume of traffic generated by the proposed use. The traffic along Lavista Road and Northlake Parkway is comprised of both personal and commercial vehicles. Since the proposed redevelopment encompasses the same use already existing on the Property the impact to nearby uses and properties and along the access route to the Property will not be adversely affected.

(6) Adequacy of ingress and egress to the subject property and to all proposed buildings, structures, and uses thereon, with particular reference to pedestrian and automotive safety and convenience, traffic flow and control, and access in the event of fire or other emergency.

The attached plans show that there is adequate ingress and egress into the Property. The flow of traffic on the Property to the two buildings and to parking spaces thereon has been designed with reference to pedestrian and automotive safety and convenience and includes sufficient access for emergency response vehicles in the event of a fire or other emergency.

(7) Whether or not the proposed use will create adverse impacts upon any adjoining land use by reason of noise, smoke, odor, dust, or vibration generated by the proposed use.

The proposed uses on the Property will not have any adverse impacts upon any adjoining land use by generating noise, smoke, odor, dust or vibration.

(8) Whether or not the proposed use will create adverse impacts upon any adjoining land use by reason of the hours of operation of the proposed use.

The hours of operation for the proposed uses will not create any adverse impact upon the adjoining land.

(9) Whether or not the proposed use will create adverse impacts upon any adjoining land use by reason of the manner of operation of the proposed use.

The manner of operation for the proposed uses will not create any adverse impact upon the adjoining land.

(10) Whether or not the proposed use is otherwise consistent with the requirements of the zoning district classification in which the use is proposed to be located.

The proposed uses are consistent with the uses authorized in the C-1 Zoning District Regulations and the Tier 1 Northlake Overlay District Regulations.

(11) Whether or not the proposed use is consistent with the policies of the comprehensive plan.

The City of Tucker Future Comprehensive Plan states that the Property is in the Regional Activity Center classification. The Plan defines this classification as follows:

Most of the area located within the Northlake area of Tucker is shown in dark red. Regional activity centers typically include a higher-density mix of retail, office, housing, and services, and employment to serve a regional market area. Because it is readily accessible from the highway and is already more developed, future development here is considered both desirable and appropriate.

The proposed uses for the Property are consistent with these policies.

(12) Whether or not the proposed use provides for all required buffer zones and transitional buffer zones where required by the regulations of the zoning district in which the use is proposed to be located.

The proposed redevelopment plan contemplates and complies with all required buffer zones and transitional buffer zones contained in the regulations for C-1 / Northlake Overlay District Tier 1 and any other supplemental regulations which are required for the proposed uses.

(13) Whether or not there is adequate provision of refuse and service areas.

The proposed redevelopment plan contemplates and makes adequate provision for refuse and service areas on the Property.

(14) Whether the length of time for which the special land use permit is granted should be limited in duration.

The owner of the Property is spending an extensive amount of time and money to redevelop the Property and intends to use the Property as proposed in the redevelopment site plan for a very long time. Accordingly, the Special Land Use Permit should not be limited in duration.

(15) Whether or not the size, scale and massing of proposed buildings are appropriate in relation to the size of the subject property and in relation to the size, scale and massing of adjacent and nearby lots and buildings.

The Property is just over 1 acre in size. There will only be two buildings on it, and they will meet all height requirements and will be small enough in size to allow for enough open

space, parking, buffers and compliance with other regulations related to the Property. The buildings will be in line with neighboring buildings and in some cases will be smaller than adjacent buildings, such as the building housing the senior assisted living facility which is adjacent to the north side of the Property.

(16) Whether the proposed use will adversely affect historic buildings, sites, districts, or archaeological resources.

The Property does is not located within a historic district and the Applicant is not aware of any historic buildings, sites, districts or archaeological resources on the site or near the Property. Therefore, the proposed redevelopment and uses will not adversely affect any historic building, site, district or archaeological resource.

(17) Whether the proposed use satisfies the requirements contained within the supplemental regulations for such special land use permit.

The proposed redevelopment plan satisfies the requirements contained within the supplemental regulations for the Special Land Use Permit. The supplemental regulations which pertain to alcohol sales at "alcohol outlets," are found in City Code Section 46-1151 and in the City's Alcoholic Beverages Code of Ordinances. The use on Applicant's Property will comply with all such regulations.

(18) Whether or not the proposed use will create a negative shadow impact on any adjoining lot or building as a result of the proposed building height.

The buildings on the proposed redevelopment plan will comply with the regulations regarding height for C-1 / Northlake Overlay District Tier 1 and will not create a negative shadow impact on any adjoining lot or building.

(19) Whether the proposed use would result in a disproportionate proliferation of that or similar uses in the subject character area.

The Property has been used as a convenience store with sales of beer and wine by the package, sales of gas in gas pumps, and a car wash for many years. The SLUP for which Applicant has applied requests authorization to continue the sale of beer and wine by the package and to allow gas pumps at the Property.

(20) Whether the proposed use would be consistent with the needs of the neighborhood or the community as a whole, be compatible with the neighborhood, and would not be in conflict with the overall objective of the comprehensive plan.

The Property is already being used in the way that is being proposed and the use is consistent with the needs of the neighborhood and the community as a whole. The Property is located at a very heavily traveled intersection and it is an ideal location for a convenience store with gas pumps

to be located. Gasoline and beer and wine in the package are already being sold at the existing convenience store and such sales are consistent with the overall objective of the City's comprehensive plan designating the Property to be in the Regional Activity Center classification.

III. ENVIRONMENTAL SITE ANALYSIS

1. Conformance with the comprehensive plan

The current site is a self-service gas station with full-access driveways on Lavista Road and Northlake Parkway and contains two buildings, one of which is a car wash. Site is bordered to the north by a senior living facility, to the east by Northlake Parkway, to the south by Lavista Road, and to the west by a car rental business. The proposed site will replace the existing buildings with two new buildings, a convenience/food store and a 5,000 SF retail building. The proposed development conforms to the Comprehensive Land Use Plan for the City of Tucker.

2. Environmental Impacts of the proposed project

- a. **Wetlands:** None, per U.S. Fish and Wildlife Services National Wetlands Inventory online map
- b. **Floodplain:** Zone X – Area of Minimal Flood Hazard, per Panel 13089C0076J
- c. **Streams/stream buffers:** None
- d. **Slopes exceeding 25% over a 10-foot rise in elevation:** None
- e. **Vegetation:** See survey
- f. **Wildlife Species:** None known
- g. **Archaeological/Historical Sites:** None known on site

3. Project Implementation Measures

- a. **Protection of environmentally sensitive areas, i.e. floodplain, slopes exceeding 25%, river corridors:** Not applicable; none onsite.
- b. **Protection of water quality:** Development will conform with water quality regulations.
- c. **Minimization of negative impacts on existing infrastructure:** Proposed site plan includes enhancements for traffic safety along existing traffic corridors.
- d. **Minimization on archeological/historically significant areas:** None observed onsite.
- e. **Minimization of negative impacts on environmentally stressed communities where environmentally stressed communities are defined as communities exposed to a minimum of two environmentally adverse conditions resulting from public and private municipal (e.g., solid waste and waste water treatment facilities, utilities, airports, and railroads) and industrial (e.g., landfills, quarries, and manufacturing facilities) uses:** Not applicable; None.

- f. **Creation and preservation of green space and open space:** Development will meet open space requirements. See included site plans.
- g. **Protection of citizens from the negative impacts of noise and lighting:** Existing use is commercial and proposed use is also commercial. No additional impacts from noise or lighting are expected from the completed development.
- h. **Protection of parks and recreational green spaces:** Not applicable; No existing parks onsite.
- i. **Minimization of impacts to wildlife habitats:** Not applicable; no sensitive wildlife habitats observed on-site.

IV. PRESERVATION OF CONSTITUTIONAL RIGHTS AND OBJECTIONS

In order to preserve its right to assert violations of either the Georgia or Federal Constitutions should the Special Land Use Permit Application ("SLUP Application") it has filed with the City of Tucker for a specific use on its Property be partially or completely denied, Applicant/Owner ("Applicant") asserts the following Constitutional Objections:

The provisions of the City of Tucker Zoning Ordinance which require that the Property adhere to a zoning category, classification, district, or use other than the use proposed by the Applicant in the SLUP Application, are unconstitutional as they would violate the Applicant's property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section I, Paragraphs I and II 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 City of Tucker Zoning Ordinance, either facially or as applied, to the subject Property, which requires that the Property, or the use thereon, adhere to a zoning category, classification, district, or use other than the use proposed by Applicant in the SLUP Application, is unconstitutional, illegal, null and void, constitutes a taking of the Applicant's property 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; the Fifth Amendment to the Constitution of the United States; and the Equal Protection and Due Process Clauses of the Fourteenth Amendment of the Constitution of the United States because such action denies the Applicant an economically viable use of its land without substantially advancing a legitimate state interest.

A denial of the SLUP Application would be an arbitrary, capricious and unreasonable act without any rational basis, 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 I, Paragraph II 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 denial of the SLUP Application would amount to arbitrary, capricious and unreasonable discriminatory action in a manner which treats the owners of similarly situated property differently than Applicant and would be 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. In the event that the City of Tucker Mayor and City Council grant a SLUP that is subject to conditions which are different from the conditions requested by Applicant, to the extent such different conditions imposed on Applicant would have the effect of further restricting Applicant's use of the Property, then such actions of approval by the City of Tucker Mayor and City Council are arbitrary, capricious, discriminatory, unreasonable, and result in the zoning of Applicant's Property to an unconstitutional classification in violation of each of the provisions of the State and Federal Constitutions as set forth in the preceding paragraphs.

Applicant hereby further provides notice, pursuant to O.C.G.A. Section 36-33-5, that it intends to bring a lawsuit against the City of Tucker to recover any and all damages it sustains or incurs as a result of any action by the City of Tucker to deny the SLUP Application, place conditions on the issuance of a SLUP which impact Applicant's ability to use the Property as requested in the SLUP Application or unconstitutionally zone the Property. Such damages included but are not limited to damages related to the diminution of the value of the Property, attorney's fees and costs and expenses of litigation.

Accordingly, the Applicant respectfully requests that the SLUP Application submitted by Applicant be granted as requested by Applicant.

Respectfully Submitted this 23rd day of July, 2019.

BERMAN FINK VAN HORN, P.C.



Lisa S. Morchower
Attorney for Applicant

3475 Piedmont Rd., N.E.
Suite 1100
Atlanta, GA 30305
(404) 261-7711 (office) / (770) 826-4441 (cell)
lmorchower@bfvlaw.com

LVP-19-0008

STATE OF GEORGIA ANNUAL UNDERGROUND STORAGE TANK REGISTRATION FORM

PART 1

- Have you had any Underground Storage Tanks (USTs) or Lines (Piping installed/replaced on or after April 7, 2008)
Are the new/replaced USTs/piping doubled walled?
Have you had any Underground Storage Tanks (USTs) dispenser installed/replaced on or after April 07, 2008?
Do the new/replaced dispensers have under dispenser containment?
Is spill prevention operationally functional?
Is overfill prevention operationally functional?
Is Every Bare Steel tank(s) and/or Pipe(s) provided with Corrosion Protection?
Is corrosion protection operationally functional?

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City of Tucker
JUL 25 2019

Community Development
Department

PART 2: Ownership of Tanks

Facility/Property: MZZZ COM INC. Original ID: 150638
Facility/Property Address 1: 4246 LAVISTA RD & I-285 Address 2:
County: DeKalb City: TUCKER State: GA Zip Code: 30084
Latitude: 33.8496 Longitude: -84.2107

PART 3: Operator of Tanks - Class A Certified

Table with 10 columns: Tarek Real Estate, Mohammed Tarek, 2455 Robert Nash Court, Tucker, GA, 30084, tarekm@bellsouth.net, 404-808-0128, 02/07/2012

PART 4: Operator of Tanks - Class B Certified

Table with 10 columns: Tarek Real Estate, Mohammed Tarek, 2455 Robert Nash Court, Tucker, GA, 30084, tarekm@bellsouth.net, 404-808-0128, 02/07/2012

PART 5: Location of Tanks

Location Identifier: 4440496
Address: 4246 LAVISTA RD & I-285
City: TUCKER State: GA Zip Code: 30084

PART 6: Financial Responsibility

I do I do not Meet the financial responsibility requirements of 12-13-9 Official Code of Georgia Annotated by providing or participating in one of the following financial assurance mechanisms.

Primary (\$1,000,000) Financial Responsibility Mechanism:
GUST Trust Fund Insurance Surety Bond Guarantee Risk Retention Group Self Insured
Letter of Credit Trust Fund (other than Gust) Other Method other method:
Name: Address:
Mechanism/Policy Anniversary Date: Mechanism/Policy ID Number:

If a Primary Financial Responsibility Mechanism is GUST Trust Fund is indicate below the Mechanism for the \$10,000 deductible.
Deductible (\$10,000) Financial Responsibility Mechanism:

Insurance Surety Bond Guarantee Letter of Credit Risk Retention Group Self Insured
Trust Fund (other than Gust) Other Method other method:

PART 7: PRODUCT HISTORY

Table with 8 columns: Olympic Oil, 476 Moreno St, Gainesville, GA, 30503, 7705362334, kwatersoly@bellsouth.net

PART 8: Equipment Details

Identifier 4440496-T1

Tanks Status

Install Date: 04/21/1984 Tank Age: _____ Tank Capacity: 10000
Tank Status: Currently in Use Date Last Used: _____ Filled with Inert Material: _____
Intent To Close Form(GUST_29) Received Date: _____

Substance Stored in Tank

Substance Stored in Tank Regular

Hazardous Substance Stored in Tank

Hazardous ID: _____ Hazardous Name: _____ Cas Name: _____
Cercla Name: _____

Material of Construction

Steel-Pressed Current (Install Date): _____ Steel-Galvanic (Install Date): _____
Material of Construction: Fiberglass

Spill and Overfill

Overfill Type: Flapper Valve Overfill Install Date: 05/08/1993 Overfill Exempt
Spill Install Date: 05/08/1993 Spill Exempt

Release Detection

Tank Release Detection: Automatic Tank Gauge Interstitial Monitoring/Secondary Containment SIR (Statistical Inventory Reconciliation)
 Inventory Control/Tank Tightness Testing Manual Tank Gauging (Only valid for tanks less than 2000 gals) Exempt

Identifier 4440496-T2

Tanks Status

Install Date: 04/21/1984 Tank Age: _____ Tank Capacity: 10000
Tank Status: Currently in Use Date Last Used: _____ Filled with Inert Material: _____
Intent To Close Form(GUST_29) Received Date: 04/02/1993

Substance Stored in Tank

Substance Stored in Tank Premium

Hazardous Substance Stored in Tank

Hazardous ID: _____ Hazardous Name: _____ Cas Name: _____
Cercla Name: _____

Material of Construction

Steel-Pressed Current (Install Date): _____ Steel-Galvanic (Install Date): _____
Material of Construction: Fiberglass

Spill and Overfill

Overfill Type: Ball Float Overfill Install Date: 05/08/1993 Overfill Exempt
Spill Install Date: 05/08/1993 Spill Exempt

Release Detection

Tank Release Detection: Automatic Tank Gauge Interstitial Monitoring/Secondary Containment SIR (Statistical Inventory Reconciliation)
 Inventory Control/Tank Tightness Testing Manual Tank Gauging (Only valid for tanks less than 2000 gals) Exempt

Identifier 4440496-T3

Tanks Status

Install Date: 04/21/1984 Tank Age: _____ Tank Capacity: 10000
Tank Status: Currently in Use Date Last Used: _____ Filled with Inert Material: _____
Intent To Close Form(GUST_29) Received Date: _____

Substance Stored in Tank

Substance Stored in Tank Gas (Historical Use)

Hazardous Substance Stored in Tank

Hazardous ID: _____ Hazardous Name: _____ Cas Name: _____
Cercla Name: _____

Material of Construction

Steel-Imprinted Current (Install Date): _____ Steel-Galvanic (Install Date): _____
Material of Construction: Fiberglass

Spill and Overfill

Overfill Type: Flapper Valve Overfill Install Date: 05/08/1993 Overfill Exempt
Spill Install Date: 05/08/1993 Spill Exempt

Release Detection

Tank Release Detection: Automatic Tank Gauge Interstitial Monitoring/Secondary Containment SIR (Statistical Inventory Reconciliation)
 Inventory Control/Tank Tightness Testing Manual Tank Gauging (Only valid for tanks less than 2000 gals) Exempt

Identifier 4440496-T4

Tanks Status

Install Date: 04/22/1971 Tank Age: _____ Tank Capacity: 1000
Tank Status: Removed from Ground Date Last Used: _____ Filled with Inert Material: _____
Intent To Close Form(GUST_29) Received Date: _____

Substance Stored in Tank

Substance Stored in Tank Used Oil

Hazardous Substance Stored in Tank

Hazardous ID: _____ Hazardous Name: _____ Cas Name: _____
Cercla Name: _____

Material of Construction

Steel-Imprinted Current (Install Date): _____ Steel-Galvanic (Install Date): _____
Material of Construction: Bare Steel

Spill and Overfill

Overfill Type: _____ Overfill Install Date: _____ Overfill Exempt
Spill Install Date: _____ Spill Exempt

Release Detection

Tank Release Detection: Automatic Tank Gauge Interstitial Monitoring/Secondary Containment SIR (Statistical Inventory Reconciliation)
 Inventory Control/Tank Tightness Testing Manual Tank Gauging (Only valid for tanks less than 2000 gals) Exempt

Identifier 4440496-
P1

Piping Status

Install Date: 05/08/1993

Piping Status: Installed Date Last Used: _____ Filled with Inert Material: _____

Intent To Close Form(GUST_29) Received Date: _____

Piping Material

Material of Construction: Double-Walled Fiberglass

Piping Type

Piping Type: Pressurized

Release Detection

Piping Release Detection:

- Mechanical Line Leak Detector Electronic Line Leak Detector Line Tightness Testing
- Interstitial Monitoring/Secondary Containment SIR (Statistical Inventory Reconciliation)
- Exempt

Identifier 4440496-
P2

Piping Status

Install Date: 05/08/1993

Piping Status: Installed Date Last Used: _____ Filled with Inert Material: _____

Intent To Close Form(GUST_29) Received Date: _____

Piping Material

Material of Construction: Double-Walled Fiberglass

Piping Type

Piping Type: Pressurized

Release Detection

Piping Release Detection:

- Mechanical Line Leak Detector Electronic Line Leak Detector Line Tightness Testing
- Interstitial Monitoring/Secondary Containment SIR (Statistical Inventory Reconciliation)
- Exempt

Identifier 4440496-
P3

Piping Status

Install Date: 04/21/1984

Piping Status: Installed Date Last Used: _____ Filled with Inert Material: _____

Intent To Close Form(GUST_29) Received Date: _____

Piping Material

Material of Construction: Double-Walled Fiberglass

Piping Type

Piping Type: Pressurized

Release Detection

Piping Release Detection:

- Mechanical Line Leak Detector Electronic Line Leak Detector Line Tightness Testing
- Interstitial Monitoring/Secondary Containment SIR (Statistical Inventory Reconciliation)
- Exempt

Identifier 4440496-
P4

Piping Status

Install Date: _____

Piping Status: Installed

Date Last Used: _____

Filled with Inert Material: _____

Intent To Close Form(GUST_29) Received Date: _____

Piping Material

Material of Construction: Galvanized Steel

Piping Type

Piping Type: Gravity Fed

Release Detection

Piping Release Detection:

- Mechanical Line Leak Detector
- Electronic Line Leak Detector
- Line Tightness Testing
- Interstitial Monitoring/Secondary Containment
- SIR (Statistical Inventory Reconciliation)
- Exempt

JUL 25 2019

Community Development
Department

Lot 1

ALL THAT TRACT OR PARCEL OF LAND lying in and being located in Land Lot 210 of the 18th district, Dekalb County, Georgia, and being more particularly described as follows:

Commencing at a 5/8 inch capped rebar set on the mitered intersection of the southwesterly right of way of Northlake Parkway (having a publicly dedicated variable right of way) and the northwesterly right of way of Lavista Road (also known as Highway 236)(having a publicly dedicated variable right of way), said capped rebar being the TRUE POINT OF BEGINNING.

Thence leaving said right of way of Northlake Parkway and continuing along said mitered intersection South 36 degrees 26 minutes 12 seconds West a distance of 43.45 feet to a 5/8 inch capped rebar set on said right of way of Lavista Road; Thence continuing along said right of way of Lavista Road South 73 degrees 42 minutes 10 seconds West a distance of 204.28 feet to a 5/8 inch capped rebar set; Thence leaving said right of way of Lavista Road North 00 degrees 11 minutes 28 seconds East a distance of 199.95 feet to a 1/2 inch rebar found; Thence North 00 degrees 28 minutes 56 seconds East a distance of 34.10 feet to a 5/8 inch capped rebar set; Thence North 73 degrees 41 minutes 10 seconds East a distance of 233.17 feet to a 5/8 inch capped rebar set on said westerly right of way of Northlake Parkway; Thence continuing along said right of way of Northlake Parkway the following courses and distances: South 07 degrees 49 minutes 07 seconds West a distance of 11.32 feet to a nail found; South 00 degrees 44 minutes 47 seconds West a distance of 23.36 feet to a 1/2 inch rebar found; South 00 degrees 20 minutes 09 seconds West a distance of 172.70 feet to a 5/8 inch capped rebar set, said capped rebar being the TRUE POINT OF BEGINNING.

Said tract of land contains 1.184 Acres (51,566 square feet).

Lot 2

ALL THAT TRACT OR PARCEL OF LAND lying in and being located in Land Lot 210 of the 18th district, Dekalb County, Georgia, and being more particularly described as follows:

Commencing at a 5/8 inch capped rebar set on the mitered intersection of the southwesterly right of way of Northlake Parkway (having a publicly dedicated variable right of way) and the northwesterly right of way of Lavista Road (also known as Highway 236)(having a publicly dedicated variable right of way); Thence leaving said right of way of Lavista Road and continuing along said right of way of Northlake Parkway the following courses and distances: North 00 degrees 20 minutes 09 seconds West a distance of 172.70 feet; North 00 degrees 44 minutes 47 seconds East to a nail found; North 07 degrees 49 minutes 07 seconds East to a 5/8 inch capped rebar set, said capped rebar being the TRUE POINT OF BEGINNING.

Thence leaving said right of way of Northlake Parkway South 73 degrees 41 minutes 10 seconds West a distance of 233.17 feet to a 5/8 inch capped rebar set; Thence South 00 degrees 28 minutes 56 seconds West a distance of 34.10 feet to a 1/2 inch rebar found; Thence South 78 degrees 46 minutes 31 seconds West a distance of 189.07 feet to a 2 inch open top pipe found; Thence North 13 degrees 11 minutes 03 seconds West a distance of 144.61 feet to a 1/2 inch rebar found; Thence North 72 degrees 54 minutes 12 seconds East a distance of 229.94 feet to a 1/2 inch rebar found; Thence North 00 degrees 13 minutes 17 seconds West a distance of 39.89 feet to a 1/2 inch rebar found; Thence South 89 degrees 38 minutes 01 seconds East a distance of 238.04 feet to a 1/2 inch rebar found on said right of way of

Northlake Parkway; Thence continuing along said right of way of Northlake Parkway South 07 degrees 49 minutes 07 seconds West a distance of 111.40 feet to a 5/8 inch capped rebar set, said capped rebar being the TRUE POINT OF BEGINNING.

Said tract of land contains 1.502 Acres (65,408 square feet).

ALL THAT TRACT OR PARCEL OF LAND lying in and being located in Land Lot 210 of the 18th district, Dekalb County, Georgia, and being more particularly described as follows:

Commencing at a 5/8 inch capped rebar set on the mitered intersection of the southwesterly right of way of Northlake Parkway (having a publicly dedicated variable right of way) and the northwesterly right of way of Lavista Road (also known as Highway 236)(having a publicly dedicated variable right of way), said capped rebar being the TRUE POINT OF BEGINNING.

Thence South 78 degrees 46 minutes 31 seconds West a distance of 189.07 feet to a 2 inch open top pipe found on said right of way of Rockwood Road (having a variable right of way); Thence continuing along said right of way of Rockwood Road North 13 degrees 11 minutes 03 seconds West a distance of 144.61 feet to a 1/2 inch rebar found; Thence North 72 degrees 54 minutes 12 seconds East a distance of 229.94 feet to a 1/2 inch rebar found; Thence North 00 degrees 13 minutes 17 seconds West a distance of 39.89 feet to a 1/2 inch rebar found; Thence South 89 degrees 38 minutes 01 seconds East a distance of 238.04 feet to a 1/2 inch rebar found on said right of way of Northlake Parkway; Thence continuing along said right of way of Northlake Parkway South 07 degrees 49 minutes 07 seconds West a distance of 111.40 feet to a point; South 07 degrees 49 minutes 07 seconds West a distance of 11.32 feet to a nail found; South 00 degrees 44 minutes 47 seconds West a distance of 23.36 feet to a 1/2 inch rebar found; South 00 degrees 20 minutes 09 seconds West a distance of 172.70 feet to a 5/8 inch capped rebar set, said capped rebar being the TRUE POINT OF BEGINNING.

Said tract of land contains 2.685 Acres (116,974 square feet).

LOT 1 LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND LYING IN AND BEING LOCATED IN LAND LOT 210 OF THE 18TH DISTRICT, DEKALB COUNTY, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A 5/8 INCH CAPPED REBAR SET ON THE MITERED INTERSECTION OF THE SOUTHWESTERLY RIGHT OF WAY OF NORTHLAKE PARKWAY (HAVING A PUBLICLY DEDICATED VARIABLE RIGHT OF WAY) AND THE NORTHWESTERLY RIGHT OF WAY OF LAVISTA ROAD (ALSO KNOWN AS HIGHWAY 236)(HAVING A PUBLICLY DEDICATED VARIABLE RIGHT OF WAY), SAID CAPPED REBAR BEING THE TRUE POINT OF BEGINNING.

THENCE LEAVING SAID RIGHT OF WAY OF NORTHLAKE PARKWAY AND CONTINUING ALONG SAID MITERED INTERSECTION SOUTH 36 DEGREES 26 MINUTES 12 SECONDS WEST A DISTANCE OF 43.45 FEET TO A 5/8 INCH CAPPED REBAR SET ON SAID RIGHT OF WAY OF LAVISTA ROAD; THENCE CONTINUING ALONG SAID RIGHT OF WAY OF LAVISTA ROAD SOUTH 73 DEGREES 42 MINUTES 10 SECONDS WEST A DISTANCE OF 204.28 FEET TO A 5/8 INCH CAPPED REBAR SET; THENCE LEAVING SAID RIGHT OF WAY OF LAVISTA ROAD NORTH 00 DEGREES 11 MINUTES 28 SECONDS EAST A DISTANCE OF 199.95 FEET TO A 1/2 INCH REBAR FOUND; THENCE NORTH 00 DEGREES 28 MINUTES 56 SECONDS EAST A DISTANCE OF 34.10 FEET TO A 5/8 INCH CAPPED REBAR SET; THENCE NORTH 73 DEGREES 41 MINUTES 10 SECONDS EAST A DISTANCE OF 233.17 FEET TO A 5/8 INCH CAPPED REBAR SET ON SAID WESTERLY RIGHT OF WAY OF NORTHLAKE PARKWAY; THENCE CONTINUING ALONG SAID RIGHT OF WAY OF NORTHLAKE PARKWAY THE FOLLOWING COURSES AND DISTANCES: SOUTH 07 DEGREES 49 MINUTES 07 SECONDS WEST A DISTANCE OF 11.32 FEET TO A NAIL FOUND; SOUTH 00 DEGREES 44 MINUTES 47 SECONDS WEST A DISTANCE OF 23.36 FEET TO A 1/2 INCH REBAR FOUND; SOUTH 00 DEGREES 20 MINUTES 09 SECONDS WEST A DISTANCE OF 172.70 FEET TO A 5/8 INCH CAPPED REBAR SET, SAID CAPPED REBAR BEING THE TRUE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS 1.184 ACRES (51,566 SQUARE FEET).

My Map

4246 Lavista Rd.



Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA | Esri, HERE, Garmin, INCREMENT P, METI/NASA, USGS, EPA, NPS, US Census Bureau, USI