

ROZEN & ROZEN, LLP

A LIMITED LIABILITY PARTNERSHIP

VIA EMAIL: [REDACTED]

Mr. Shaun Myers
Planning and Zoning Manager

June 24, 2022

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Please let me know if there is anything further that we can provide at this time or at any point throughout the application process.

Sincerely,

ROZEN AND ROZEN, LLP

/s/ Adam J. Rozen

Adam J. Rozen
[REDACTED]

Enclosures

cc: Tina Garver, Director of Community Development
Tiffany Miles, Permitting Coordinator
Richard W. Calhoun, Esq., City Attorney
Malamav Community & Human Services, Inc.



Variance Request Application Packet

Applicant's Public Notice Requirements

The Code requires public notice of your Rezoning request, Special Use and Variance requests. The Community Development Department will tell you when and where the Planning and Zoning Commission and the Mayor and Council meetings will be held.

Newspaper: The City will publish a legal notice in the newspaper regarding your application and announcing the time and place of the public hearing. At least 15 days before the Mayor and Council but no more than 45 days prior to the date of the public hearing.

Sign Posting, Public Hearing Notice & Affidavit

Sign Posting: The applicant shall be required to post and maintain signs supplied by the City on or near the right-of way of the nearest public street, so as to be visible from the street for at least 15 days and not more than 45 days immediately preceding the date for the governing body's public hearing on the rezoning or special use application. It is your responsibility to post the signs and to maintain the signs during the posting period. Failure to post and maintain the signs continuously may prohibit consideration of the application at any scheduled public hearing. In the event the signs are not posted continuously, the City, in its sole discretion, may require the reposting and re-advertising prior to any future public hearing, for which the applicant shall pay an additional re-advertising fee. The City may also in its sole discretion, continue, hold, approve, or dismiss the application. Any dismissal under the provisions of this paragraph shall be with prejudice unless specifically noted as being without prejudice by the City.

Public Hearing Notice: At least 15 days before the Planning & Zoning Commission's public hearing, you are to mail a notice to all persons owning property within 200 feet of the property that is the subject matter of the zoning change. The notice is to state the time, place and purpose of the hearings, and include a page size copy of the sketch plan submitted with the application.

Affidavit: Prior to the public hearing you must also submit an affidavit with a copy of the notice to the Community Development Director listing the property owners and certifying the date that the notices were mailed (form attached)

City Actions

The Community Development Department will date your application when it is received. The Community Development Department has five (5) working days in which to determine that your application is complete or to return it to you for additional information. The application will not be scheduled for public hearing until it is complete. The Planning Commission's public hearing will be held at the time advertised. At the public hearing, you will be allowed to speak first in order to present the application. Others in support of the application may then speak, followed by those in opposition to the application. You may then be allowed time for rebuttal if adequate time remains. Rebuttal must be limited to points or issues raised by opponents to the application at the hearing. After the Planning Commission has made their recommendation, the Mayor and City Council will consider approval or denial of the application at their own public hearing. You or a representative thereof with authority to make binding commitments to the City with respect to any stipulations that may be offered in connection with such application shall attend the meetings, and make a presentation following the same procedure as the Planning Commission hearing. The final action taken by the Mayor and City Council will be indicated on the application form, along with any stipulations that they impose on the property if approved, and a copy will be given to you as official notice of their final action.

Contact Information

The Community Development Dept.
4488 Pineview Drive
Powder Springs GA 30127.
commdev@cityofpowdersprings.org
770-943-1666

Zoning Administrator
Shauna Wilson-Edwards
Special Projects Coordinator for Zoning
sedwards@cityofpowdersprings.org
770-943-1666



Variance Request Application Checklist

Applicant Information

Name Malamav Community & Human Services, Inc. c/o Adam J. Rozen, Esq.

Phone [REDACTED]

Mailing Address 248 Roswell Street, Marietta, GA 30060

Email [REDACTED]

Application Checklist

The following information will be required:

1. Application
 2. Notice of Intent
 3. Applicant's Written Analysis
 4. Campaign Contribution Disclosure
 5. Owner's Authorization, if applicable.
 6. Legal Description and Survey Plat of the property
 7. Application Fee (summary of fees attached)
 8. Copy of the Deed that reflects the current owners name
 9. Vicinity Map outlining the parcel/s in relation to the surrounding area
 10. Site plan, plat or survey prepared by an architect, engineer. The following information **must** be included:
Specific use or uses proposed for the site. Acreage, bearing and distances, other dimensions, and location of the tract(s). Locations, sizes and setbacks of proposed structures, including the number of stories and total floor area, height, for residential number of units, Square footage of heated floor area. Detention/retention areas, and utility easements. Location of dumpsters. Public or private street(s) - right of way and roadway widths, approximate grades Location and size of parking area with proposed ingress and egress. Specific types and dimensions of protective measures, such as buffers. Landscaping. Wetlands, stream buffers, and 100 year floodplain.
 11. Sketch Plan/ Architectural Rendering, if applicable
 12. Traffic Study required for development with 500,000 sf of nonresidential floor area or 350 dwelling units or more.
- List additional attachments:

Note Carefully

If your application qualifies as a "Development of Regional Impact" (see Article 13) then you must follow additional procedures BEFORE your application can be considered. The Community Development Department will assist you with the DRI process, which is mandated by State and GRTA requirements.

Indicate the current zoning district of the property, and the zoning district you are requesting. File a separate application for each Rezoning request naming a different zoning district. A Special Use request, Variance request can be filed concurrently with a Rezoning request on the same property by separate application.



city of
powder springs

Variance Request

Application Form

Applicant Information

Name	Malamav Community & Human Services, Inc. c/o Adam J. Rozen, Esq.	Phone	[REDACTED]
Mailing Address	248 Roswell Street, Marietta, GA 30060	Email	[REDACTED]

Variance Request Property Information

Address	4045 Lindley Circle, Powder Springs, GA	Parcel ID / Lot#	19090500380
Acreage	6312	Present Zoning	
Variance Request	To allow more than one Day Care facility within 300ft of another Day Care - Sec 4-110 (e)		
Source of Water Supply	Cobb County	Source of Sewage Disposal	Powder Springs

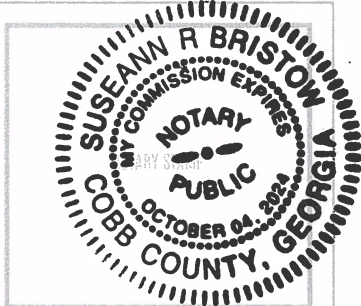
Additional Information, If Applicable

Elementary School and School's Capacity	N/A	Middle School and School's Capacity	
High School and School's Capacity		Peak Hours Trips Generated	

Notary Attestation

Executed in Marietta (City), GA (State).

Signature of Applicant	<u>REP</u>	Printed Name	<u>ADAM J. ROZEN</u>	Date	<u>6/24/22</u>
Subscribed and sworn before me this	<u>24</u>	day of	<u>June</u>	20 <u>22</u>	
Signature of Notary Public	<u>Suseann R. Bristow</u>	Name of Notary Public	<u>Suseann R. Bristow</u>	My Commission Expires	<u>10/14/2024</u>



For Official Use Only

PZ #	
Planning Commission Hearing	City Council Hearing
Withdrawal Date	Reason for Withdrawal



Variance Request

Notice of Intent

Applicant Information

Name	Malamav Community & Human Services, Inc. c/o Adam J. Rozen, Esq.	Phone	[REDACTED]
Mailing Address	248 Roswell Street, Marietta, GA 30060	Email	[REDACTED]

Notice of Intent

PART I. Please indicate the purpose of this application :

To allow the Applicant's Adult Day Training Center to be located within 300 feet of an existing children's Day Care facility.

PART II. Please list all requested variances:

Reduction in required 300 feet (Sec 4-110 (e))

Part III. Existing use of subject property:

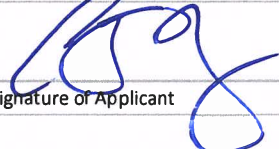
Medical and doctor office

Part IV. Proposed use of subject property:

Adult day care and training facility. The Applicant's business provides Georgia certified services to physically and mentally handicapped individuals to assist their daily life skills and training.

Part V. Other Pertinent Information (List or attach additional information if needed):

Applicant Signature / REP

	ADAM J. ROZEN	6/27/22
Signature of Applicant	Printed Name	Date



Variance Request

Applicant's Written Analysis

Applicant Information

Name	Malamav Community & Human Services, Inc. c/o Adam J. Rozen, Esq.	Phone	[REDACTED]
Mailing Address	248 Roswell Street, Marietta, GA 30060	Email	[REDACTED]

Written Analysis

In details please address these Variance Criteria:

- a. Are there extraordinary and exceptional conditions or practical difficulties pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district.
- b. A literal interpretation of the provisions of this development code would effectively deprive the applicant of rights commonly enjoyed by other properties of the district in which the property is located.
Strict or literal interpretation and application of the Ordinance deprives the Applicant the reasonable economical use of the property by not allowing a day care facility which is fundamentally a different operation for adults as opposed to the nearby children's facility.
- c. Granting the variance requested will not confer upon the property of the applicant any special privileges that are denied to other properties of the district in which the applicant's property is located
The Applicant will not be afforded special privileges above those provided to other properties in the district **by allowing an adult care facility to be in close proximity to a child care facility.**
- d. The requested variance will be in harmony with the purpose and intent of this development code and will not be injurious to the neighborhood or to the general welfare. **Allowing this adult care facility will not harm. The variance is in harmony with the purpose & intent of the code—the purpose is to disallow an unreasonable amount of care facilities in close proximity to another considering factors such as child care needs, transportation & school population.**
- e. The special circumstances are not the result of the actions of the applicant.
No, the child care facility is existing & is not in conflict or competition with the Applicant's use.
- f. The variance requested is the minimum variance that will make possible the proposed use of the land, building, or structure in the use district proposed. **The Applicant is complying with all other requirements of the code including removing the old sign & replacing with a new ground based monument sign & implementing new fire code measures & all other standards of a new development.**
- g. The variance shall not permit a use of land, building or structures, which is not permitted by right in the zoning district overlay district involved.
This use is otherwise permitted by right in the existing zoning district & is in appropriate use considering the location & will be an asset to the immediate area.

Applicant Signature / REP

Signature of Applicant	ADAM J. ROZEN	Date	6/27/22
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Variance Request

Campaign Contribution Disclosure

Applicant and Attorney Information

Applicant's Name Malamav Community & Human Services, Inc.

Applicant's Address 3942 Austell Powder Springs Road, Powder Springs, GA 30127

Applicant's Attorney Adam J. Rozen, Esq.

Attorney's Address 248 Roswell Street, Marietta, GA 30060

Campaign Contribution Disclosure

The following information is provided in accordance with the Georgia Conflict of Interest in Zoning Actions Act, O.C.G.A. 36-67A-1 et seq.

The property that is the subject of the attached application is owned by:

- Individual(s)
 Corporation
 Partnership
 Limited Partnership
 Joint Venture

All persons, corporations, partners, limited partners, or joint ventures party to ownership of the property that is the subject of the attached application are listed below:

Malamav Community & Human Services, Inc.

APPLICANT: Within the two years preceding the date of the attached application, the applicant has made campaign contributions or gifts aggregating \$250 or more to the Mayor, to members of the Powder Springs City Council, or to members of the Planning Commission, as follows:

Name of Official	Amount of Contribution or Gift	Date of Contribution or Gift

ATTORNEY: Within the two years preceding the date of the attached application, the attorney representing the applicant has made campaign contributions or gifts aggregating \$250 or more to the Mayor, to members of the Powder Springs City Council, or to members of the Planning Commission, as follows:

Name of Official	Amount of Contribution or Gift	Date of Contribution or Gift

ADDENDUM TO APPLICATION FOR VARIANCE

BEFORE THE CITY OF POWDER SPRINGS MAYOR AND CITY COUNCIL

CONSTITUTIONAL CHALLENGE

COMES NOW the Applicant, MALAMAV COMMUNITY & HUMAN SERVICES, INC., hereinafter referred to as the "Applicant" and asserts the following:

1.

By Application for Variance, the Applicant has applied for Variances as to requirements of the City of Powder Springs a Zoning Ordinance (hereinafter the Ordinance) which impose certain requirements as same apply to the property more particularly set forth in said Application (hereinafter referred to as the "Subject Property").

2.

The Applicant states that a literal interpretation and enforcement of Ordinance provisions creates a hardship.

3.

Enforcement of Ordinance requirements concerning the Subject Property creates an unnecessary and unreasonable hardship with no resulting substantial benefit to the public good. Particularly, the Ordinance provision that provides unfettered restriction on the proximity of the Applicant's Adult Day Services facility to other Day Care facilities is unnecessary and is an unreasonable hardship without substantial benefit to the public good. The purpose of the Ordinance is to minimize the number of Day Care facilities in close proximity to one another but in this instance doesn't account for the fact that the Applicant's facility is for adults and not for children as the nearby Day Care facility provides.

4.

The variances sought by the Applicant concerning the subject property will not impair the purpose, spirit and intent of the Ordinance and stand to provide an improvement to the subject property while causing no substantial detriment to the public good.

5.

Applicable Ordinance provisions concerning the required variances are unconstitutional as applied to the Subject Property in that same deprive the Applicant of property under and pursuant to Article I, Section I, Paragraphs I and II of the Georgia Constitution of 1983 and the Equal Protection and Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America. This deprivation of property without due process violates the constitutional prohibition against the taking of private property without just compensation.

6.

Applicable Ordinance provisions, as applied to the Subject Property, violate the Applicant's rights to the unfettered use and development of the Subject Property in conformity with the existing Ordinance in that the Ordinance creates an unreasonable hardship totally unrelated to public health, safety, morality, or general welfare and is therefore confiscatory and void. Further, same is unconstitutional in that it is arbitrary, unreasonable and injurious resulting in relatively little gain or benefit to the public while at the same time inflicting serious injury and loss upon the Applicant.

7.

The Ordinance is further unconstitutional in that the procedures contained therein pertaining to the public hearing held in connection with Applications for Variances also violate Article I, Section I, Paragraphs I, II and XII of the Georgia Constitution of 1983 in that said procedures impose unreasonable time restraints, contain the absence of rebuttal, contain the inability to confront witnesses, contain the lack of procedural and evidentiary safeguards, do not restrict evidence received to the issue at hand and are controlled wholly and solely by political considerations rather than the facts and considerations required by law. These procedures fail to comport with the due process requirements of the Constitution of the State of Georgia 1983 and the due process requirements of the Constitution of the United States of America.

This the 24th day of June, 2022.

ROZEN & ROZEN, LLP

By: 

ADAM J. ROZEN
Attorney for Applicant
Ga. Bar No. 161610