

ATTACHMENT TO APPLICATION FOR REZONING

Application No.: _____
Planning Commission Hearing: March 23, 2026
Mayor and City Council Hearing: April 6, 2026

**BEFORE THE PLANNING AND ZONING COMMISSION
AND THE MAYOR AND CITY COUNCIL
FOR THE CITY OF POWDER SPRINGS, GEORGIA**

**CONSTITUTIONAL CHALLENGE
ATTACHMENT TO APPLICATION FOR REZONING**

COME NOW, Applicant, SHAMROCK BUILDING SYSTEMS, INC. (hereinafter referred to as “Applicant”), and Property Owner, POWDER SPRINGS STORAGE, LLC (hereinafter referred to as “Owner” or “Property Owner”), and assert the following:

1.

By Application for Rezoning dated and filed February 24, 2026, Applicant and Property Owner applied for rezoning of certain real property located within incorporated City of Powder Springs, Georgia, a more particular description and delineation of the subject property being set forth in said Application (hereinafter referred to as the “Property” or “Subject Property”).

2.

The Application for Rezoning of the Property seeks rezoning from the existing zoning category of Community Retail Commercial (“CRC”), with stipulations, to the proposed zoning classification of Community Retail Commercial (“CRC”), with stipulations, as established by the governing authority of the City of Powder Springs, Georgia, under and pursuant to the Unified Development Code of Powder Springs Georgia, as amended, being hereinafter referred to as the “Unified Development Code of the City of Powder Springs.”

3.

With respect to the existing CRC, with stipulations, zoning classification, Applicant and Property Owner do contend the Unified Development Code of the City of Powder Springs, Georgia is unconstitutional as applied to the Property in that said Ordinance does not permit the Applicant and Property Owner to utilize the Property to the use set forth within the Application for Rezoning without the necessity of rezoning. However, Applicant and Property Owner do not contend the current zoning category of CRC, with stipulations, is unconstitutional, *per se*, only as applied. Thus, the Ordinance deprives Applicant and Property Owner of their Property under and pursuant to Art. I, § I, ¶¶ 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. The existing zoning category of CRC, with stipulations, together with any intervening zoning categories between the existing CRC, with stipulations, category and the requested CRC, with stipulations, category violate the Applicant's and Property Owner's rights to unfettered use of their Property, as stated above, in that said zoning classifications do not bear a substantial relation to the public health, safety, morality, or general welfare and are therefore confiscatory and void. Further, said Ordinance is unconstitutional in that it is arbitrary and unreasonable resulting in relatively little gain or benefit to the public, while inflicting serious injury and loss on the Applicant and Property Owner.

4.

To the extent the Unified Development Code of the City of Powder Springs, Georgia, allows or permits the Mayor and City Council to rezone the Subject Property to any category other than as requested, said Ordinance is further unconstitutional in that same violates Applicant's and Property Owner's constitutionally guaranteed rights to due process, both substantive and procedural. Furthermore, any such action by the Mayor and City Council, or as allowed by the Unified Development Code of the City of Powder Springs, is an unconstitutional use of the zoning power and would constitute an abuse of discretion with no justification or benefit flowing to the public welfare. Accordingly, said Ordinance or action would likewise represent a taking of private property rights without the payment of just and adequate compensation in violation of the Constitutions of the State of Georgia and the United States of America.

5.

The Ordinance is further unconstitutional in that the procedures contained therein pertaining to the public hearing held in connection with the Zoning Application also violate Art. I, § I, ¶¶ 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.

[Signature contained on page 4]

Respectfully submitted, this 24th day of February, 2026.

MOORE INGRAM JOHNSON & STEELE, LLP

BY: 

J. KEVINMOORE
Georgia Bar No. 519728
Attorneys for Applicant and Property Owner