

SAMS, LARKIN, HUFF & BALLI

A LIMITED LIABILITY PARTNERSHIP

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January 22, 2019

VIA HAND DELIVERY & EMAIL:

Ms. Tina Garver, AICP
Community Development Director
City of Powder Springs
4488 Pineview Drive
Powder Springs, 30127

COPY

Re: Application of Olympia Homes, Inc. for Concurrent Variances to Rezoning
Application No. 18-032 and Special Use Permit Application No. PZ 18-033

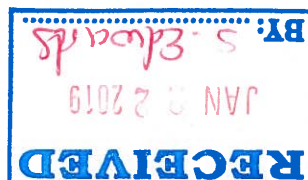
Dear Tina:

As you know, this firm represents Olympia Homes concerning the above-captioned Applications for Rezoning and Special Use Permit "SUP"). Presently, these Applications are scheduled to be heard and considered by the Planning Commission on February 25, 2019. Thereafter, the Applications will be heard by the Mayor and City Council for a final action on March 4, 2019.

During the pendency of the Rezoning and SUP Applications, Olympia Homes' submittal has been reviewed by Staff and pursuant to those discussions and to further clarify and refine the request, the Applicant is now submitting Variance requests based on those discussions, which include:

1. A reduction in the front setback from thirty-five (35') to six feet (6').
2. Waiving the side setback from ten feet (10') to 0 lot line for Attached Townhomes.

The Variance application is enclosed herein along with a check made payable to the City of Powder Springs for the application fee. Please include these documents in the official record for the Rezoning, SUP and Variance files. The Variance notification signs will be posted and the notification letters mailed out no later than February 7, 2019.



SAMS, LARKIN, HUFF & BALLI

A LIMITED LIABILITY PARTNERSHIP

VIA HAND DELIVERY & EMAIL :

Ms. Tina Garver, AICP
Community Development Director
City of Powder Springs
January 22, 2019
Page 2

Please do not hesitate to contact me should you or your Staff require additional information or documentation prior to the formulation of Staff's Analysis and Recommendations or prior to the Applications being heard and considered by the Planning Commission and the Mayor and City Council. With kind regards, I am

Very truly yours,

SAMS, LARKIN, HUFF & BALLI, LLP

Garvis L. Sams, Jr.
gsams@slhb-law.com

GLS, Jr./klk
Enclosures/Attachments

cc: Honorable Al Thurman, Mayor (via email w/attachments)
Members, Powder Springs City Council (via email w/attachments)
Members, Powder Springs Planning Commission (via email w/attachments)
Ms. Pam Conner, City Manager (via email w/attachments)
Ms. Kelly Axt, CMC, City Clerk (via email w/attachments)
Ms. Shauna Wilson-Edwards, Special Projects Coordinator for Zoning and Plan Review (via email w/attachments)
Mr. Alex Almodóvar, MPA, Permitting & Development Coordinator (via email w/attachments)
Mr. David Meyer, RLA (via email w/attachments)
Olympia Homes, Inc. (via email w/attachments)

Applicant: Olympia Homes, Inc. Telephone No.: 770-984-9990

Applicant's Address: 1705 Enterprise Way, Suite 100, Marietta, GA 30067

Property Location: On the west side of Hopkins Road, north of Powder Springs Road Land Lot No.: 869&870

Applicant is: Property Owner Other: Attorney for Property Owner (Attach Owner's Authorization)
 Other Representative of the Owner (Attach Owner's Authorization)

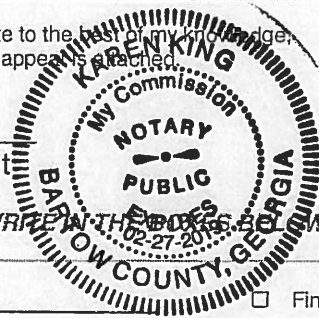
Current Zoning: MDR Requested
(No. 18-032)
Type of Appeal
 Hardship Variance
 Change in Stipulations of Approval

Attachments
 Application Fee Maps or Drawings (Not Required)
 Boundary Description Other: Statement of Intent & Written
 Review Checklist Justification

Description of Appeal Additional pages explaining the Appeal are attached.
To waive the front setback for the MDR zoning district from 35' to 6' and to waive the side setback from 10' to 0 lot line for Attached Townhomes

I attest that this Application and its attachments are accurate to the best of my knowledge, and that all written or reproducible evidence supporting my appeal is attached.

Garvis L. Sams, Jr. (Attorney for Applicant)



Sworn to and subscribed before me this 22 day of Jan, 20 19
Karen L. King
Notary Public

DRI Forms filed with ARC/DCA/GRTA on: _____ Final determination received on: _____

Application Received Date: _____
Scheduled for Public Hearing:
Planning Commission Date: _____
 Appealed to MCC Date: _____
Mayor & City Council Date: _____
 Signs Provided Date: _____
 Newspaper Ad Date: _____
 Affidavit Received Date: _____

Planning Commission
Public Hearing: Date: _____
Tabled Until: Date: _____
Action
 Approved
 Approved with Changes
 Denied
 Stipulations Attached

Mayor & Council
Public Hearing: Date: _____
Tabled Until: Date: _____
Returned to P.C. Date: _____
Final Action
 Approved
 Approved with Changes
 Denied
 Stipulations Attached



Application Withdrawn
 By Planning Director
 By P.C. or Mayor & Council

Date: _____
 Without time restriction
 With Restriction: Cannot be refiled for 12 months

Powder Springs

Review Checklist

HARDSHIP VARIANCE

Applicant: Olympia Homes, Inc. **Current Zoning:** MDR Requested

Property Location: On the west side of Hopkins Road, north of Powder Springs Road **Land Lot No.** 869 & 870

Standards for approval

A hardship variance may be granted in whole or in part, or with conditions, in such individual case of unnecessary hardship upon a finding that:

Standard	YES	NO	Comments
<p>EITHER...</p> <p>a. Are there extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography?</p> <p style="text-align: center;">OR...</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	See Attached
<p>b. Would the application of the Development Code to this particular piece of property create an unnecessary hardship?</p> <p style="text-align: center;">OR...</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	See Attached
<p>c. Are there conditions that are peculiar to the property involved that adversely affect its reasonable use or usability as currently zoned?</p> <p style="text-align: center;">AND...</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	See Attached
<p>d. Would relief, if granted, not cause substantial detriment to the public good or impair the purpose and intent of the Development Code or the Comprehensive Plan?</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	See Attached

Prepared...Date: _____, 20____ for _____ Applicant
 Date: _____, 20____ by _____ Powder Springs Staff
 Date: January 18, 2019, 2019 by Other: Representative

Powder Springs

OWNER'S AUTHORIZATION

This is to certify that (I am we are I am the Corporate Secretary of a Corporation that is) the owner of a majority interest in the property that is the subject of the attached application.

By execution of this form, this is to authorize the person named as "applicant" below, acting on behalf of the owner, to file for and pursue a request for approval of the following:

(Check each that applies and cross out each that does not apply)

- Rezoning
- Special Use
- Appeal from Administrative Decision
- Special Exception
- Hardship Variance
- Flood Protection Variance

Applicant: Olympia Homes, Inc.

Applicant's Address: 1705 Enterprise Way, Suite 100
Marietta, GA 30067

Date this Authorization becomes null and void: N/A, 20 . (Not applicable)

[Signature]
Signature of Owner

(Notarized) *Karen S. King*

Signature of Owner

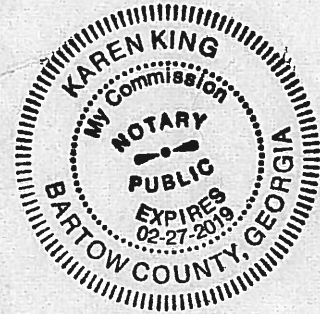
(Notarized)

Signature of Owner

(Notarized)

Signature of Owner

(Notarized)



Attach additional sheets as needed

Corporations – attach copy of corporate resolution approving authorization

State of Georgia

DURABLE POWER OF ATTORNEY

County of Cobb

KNOW ALL MEN BY THESE PRESENTS, that I Zarrin Dokht Hamidibroomand, of 4320 Paper Mill Rd. Marietta, GA. 30067 have made, constituted, and appointed, and by these presents do make, constitute, and appoint Sepideh Hamidi Fatemi, of 4320 Paper Mill Rd. Marietta, GA. 30067 and Massoud Fatemi, of 4320 Paper Mill Rd. Marietta, GA. 30067, my true and lawful attorneys-in-fact with full power of substitution, to act concurrently, independently of each other, for me and in my name, place, and stead and on my behalf, to do and perform for me anything of any character which I might do or perform for myself if personally present and acting.

Should my said attorneys-in-fact predecease me or otherwise be unable to perform all of the matters and things herein set out to be done and performed, then and in that event and thereafter I do hereby constitute and appoint Sougand Zarrabi my true and lawful attorney-in-fact with full power and authority to do and perform in my name and stead all matters and things herein authorized to be done and performed by the said attorney-in-fact with all of the power and authority herein given

Without in any way diminishing the broad powers just conferred, which are believed and intended to include all of the following, as well as other acts not mentioned, I do specifically authorized my attorneys-in-fact, in my name and on my behalf:

1- To make claim for, execute proofs of claim, and otherwise take all steps necessary to collect any insurance to which I am entitled, particularly and health, accident, disability, or hospital insurance, and in connection therewith to give receipts and, where deemed proper, to give releases and other acquittances.

2- To sell, transfer, or lease real state or personal property, tangible and intangible, including automobiles, stocks, bonds, or other evidences of ownership or debt in which I have or may hereafter have any interest whatever, and to transfer, endorse, sign, or assign stock certificates or bonds or other instruments in connection therewith.

3- To endorse negotiable instruments of any character made payable to me and to deposit the same to my account.

4- To make deposits to and to draw checks upon my checking account or savings account in any bank, savings and loan association, brokerage house, money market fund, or the like wherein I maintain an account, whether in my own name or jointly with another, and in general to deal with the said accounts to the same extent that I might do if personally present and acting.

5- To execute deeds, leases, deeds of trust, and other instruments conveying or encumbering real or personal property, and generally to deal with such property as fully as I might if personally present and acting.

6- To collect all sums due me from any source, particularly any sums which are now due or may become due from the Government of the United States or any branch thereof, and to execute such instruments, endorsements, or signature thereto in my name as may be required or proper to facilitate the collection thereof.

7- To be responsible for the make-up and filing of any income tax returns, intangible tax returns, or tax returns of any other character for any taxable year or taxable period from January 1-2011, to December 31 2070 and as my agent, to sign and affirm such returns, my attorneys-in-fact being fully informed as to all facts necessary to make such returns.

8- To enter any safe deposit box standing in my name or to which I have the right of access and to deal with the contents thereof at the discretion of my attorneys-in-fact.

9- To make contracts on my behalf with respect to any property owned by me and with respect to my care and upkeep, including the employment of a nurse or nurses, physicians, or any other person whose services should be needed for my care and upkeep.

10- To make any contracts with respect to my care and treatment at any hospital, nursing home, or institution whose services are needed, in the opinion of my said attorneys-in-fact, for my proper care, maintenance, and treatment.

11- To pay and settle any and all claims or debts which may be owing by me at any time.

12- To enter into leases on any property owned by me or for any property to be leased by me, including an apartment, rooming accommodations, or nursing home accommodations.

13- To borrow in my behalf and in my name any funds needed by me and to pledge for the payment thereof any stocks, bonds, or securities or other property owned by me.

14- To purchase medicine, clothes, food, and other supplies for my benefit.

15- To transfer and deliver to the Trustee of any trust created by me any or all of my property, of every kind and description, and wherever located, to be held, managed, and distributed pursuant to the terms of said trust.

16- To disclaim or renounce any gifts, inheritance and/or other property rights to which I may be entitled.

And in general, attorneys-in-fact are given full power and authority to do and to perform all and every act or thing whatsoever required or necessary to be done for my upkeep, care, and maintenance and for the management of any property owned by me, as fully to all intents and purposes as I might or could do if personally present, and I hereby ratify and confirm all that my said attorneys-in-fact shall lawfully do or cause to be done by virtue hereof, it being my intent and purpose to confer upon my said attorneys-in-fact for the broadest possible powers to be used and exercised in the discretion of my attorneys-in-fact for my use and benefit.

My attorneys-in-fact shall keep full and accurate records of all transactions for me as my agent and of all my property and the disposition thereof, and shall render to me, if competent, or to my nearest living relative if I shall be incompetent or incapacitated, at least annually, inventories and accounts of all transactions of my attorneys-in-fact done in my behalf; and to the extent that I am able to do so, I hereby relieve my attorneys-in-fact of the responsibility and duty of filing any inventory, account, or report with any court or posting bond. My attorneys-in-fact shall file with my Executor an inventory of the assets in his hands held at the time of my death.

I HEREBY REVOKE ALL PRIOR GENERAL AND DURABLE POWERS OF ATTORNEY THAT I MAY HAVE PREVIOUSLY EXECUTED.

THIS POWER OF ATTORNEY SHALL NOT BE REVOKED BY MY SUBSEQUENT INCAPACITY OR MENTAL INCOMPETENCE.

IN WITNESS WHEREOF, I have executed the foregoing Power of Attorney, this 31 day of July, 2018.

x Z. D. Hamidibroomand (SEAL)
Zarrin Dokht Hamidibroomand

Signed, sealed, and delivered this 31 day of July, 2018,
in the presence of:



SABER
Unofficial Witness

Chris A. Nicholson
Notary Public

STATEMENT INTENT & VARIANCE ANALYSIS

Variance Application of Olympia Homes, Inc.

(for concurrent review and hearings regarding Rezoning Application No. 18-032 and Special Use Permit Application No. PZ 18-033).

- (a) There are 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;

This property is limited by its size and shape and is constrained by its proximity to developed properties. The Subject Property is situated between commercially developed property to the south and residentially developed property to the north) and is surrounded by various zoning districts (MDR, CRC and R-20). There are developed residential zonings located to the east and north, and commercially zoned and utilized properties to the south.

- (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;

The literal enforcement of UDC provisions effectively disallows the development of Townhomes within MDR without Variances being granted.

Other property owners have been able to develop their properties in economically feasible situations (such as the MDR directly contiguous to the north, the developed CRC to the south and the potential development of the adjoining CRC fronting onto Powder Springs Road). Without the granting of the variances, the applicant will not be able to develop the property for the proposed residential use under MDR.

Additionally, the Subject Property is contiguous to an existing Neighborhood Activity Center ("NAC") on the City's Future Land Use Map and is denominated as a part of a "Redevelopment Area" as defined by the City's Comprehensive Plan which was adopted on October 16, 2017. This Redevelopment Area is located along the north side of Powder Springs Road, adjacent to the intersection of Powder Springs Road and Hopkins Road and is designed to potentially include, among other components, multi-family homes; townhomes; single-family residential homes; and, office/flex space and/or commercial buildings or a mixture/combination thereof.

- (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 has concurrently applied for zoning under the MDR category which is recommended as a permitted use in this area of the City and a SUP Application to allow a 7.74 unit per acre density for the proposed Townhome Community. The requested variances will be in harmony with the purpose and intent of the UDC and the Comprehensive Plan and will not be injurious to the neighborhood or to the general welfare of the public. Nor will the grant of the requested Variances impair the purpose and intent of the UDC or set an adverse precedent.

- (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;

As stated earlier, the Subject Property is contiguous to an existing Neighborhood Activity Center ("NAC") on the City's Future Land Use Map and is denominated as a part of a "Redevelopment Area" as defined by the City's Comprehensive Plan. Based on the site plan submitted, the proposed request is compatible with the surrounding area and will not create a public health or safety concern.

- (e) The special circumstances are not the result of the actions of the applicant;

The applicant has not done anything to create the conditions of its location adjacent to commercial and residential property and/or its Comprehensive Land Use Plan designation.

- (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; and/or

The Applicant has endeavored to maintain the required setbacks where possible while still making use of the narrowly configured site. The MDR zoning classification promotes "Village Center Residential" and allows for Townhomes. Although the Redevelopment Area Design guidelines promote buildings being brought up to the street, the front setbacks under the MDR Zoning District of 35 feet are the same for single-family homes as it is for Townhomes. Also, the side setbacks are prescribed for 10' but that is not feasible in that the Townhomes are attached structures.

- (g) The requested variances shall not permit a use of land, buildings or structures, which is not permitted by right in the zoning district or overlay district involved.

Residential uses (including the proposed attached Townhomes) are permitted in the MDR (Medium Density Residential) Zoning District and are promoted in the Comprehensive Plan and Redevelopment Area designations. Not granting the requested Variances constitutes a hardship upon the Applicant and the Property Owner.

Rezoning Plan for

Hopkins Road Community

Powder Springs, Georgia Land Lot 869, 870, 19th District, 2nd Section
 PIN: 19086900280 DB 15441 Pg 141

prepared for:
Olympia Homes

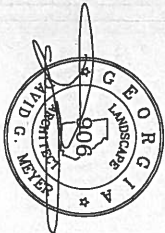


Scale: 1" = 50'
 January 16, 2019

DGM
 LAND PLANNING
 CONSULTANTS



975 Cobb Place
 Bldg. Suite 212
 KENNESAW
 GA 30144
 770 514-9006
 FAX 514-9491



Site Data

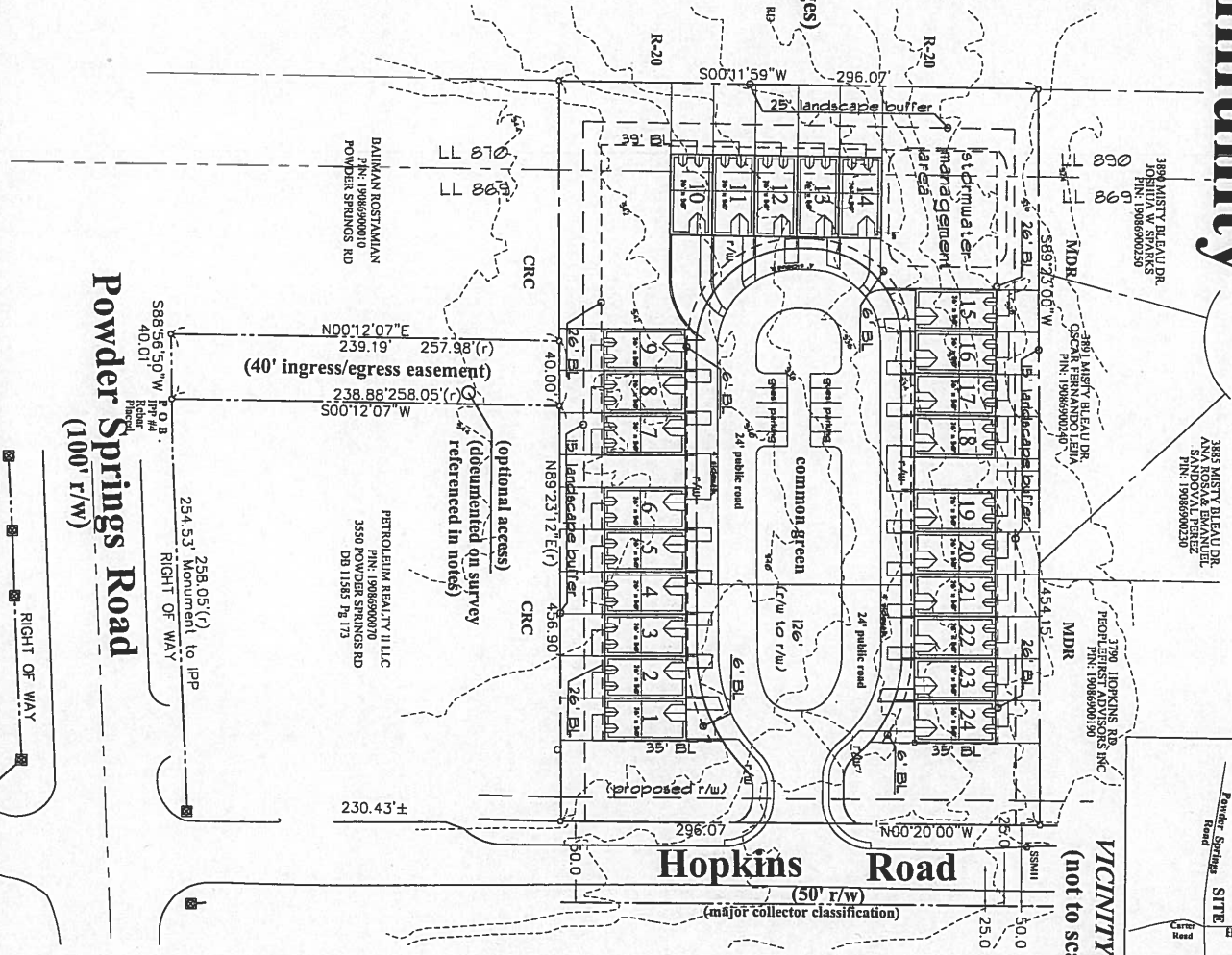
- Total Site Area: 3.1 AC
- Present Zoning: R-15
- Proposed Zoning: MDR
- Total Units Shown: 24
- (26' x 50' min., with 2 car front loaded garages)
- (10 guest parking spaces provided)
- Density: 7.74 UN/AC
- Maximum Building Height: 35'
- (2 story units)
- Total Impervious Surface: 43,248 SF
- (.99 AC) (32% of total site area)
- Total Open Space Shown: .85 AC
- (28% of total site area)
- Building Setbacks: (see below)

Variations Requested

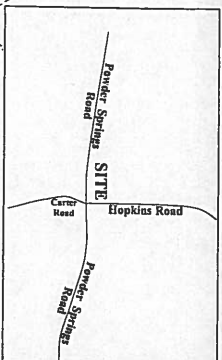
- *front setback: from 35' to 6'
- (rear setback on west end of property has been increased from 20' to 39' and rear setbacks on north and south sides of property have been increased from 20' to 26' to partially offset decrease in front setback)
- *side setback: from 10' to zero lot line

Notes:

- Boundary survey by J.A. Evans and Associates.
- Topographic information from Cobb County GIS.
- According to Flood Insurance Rate Map (FIRM) 1506100071S, December 16, 2006, no portion of this site contains floodplain.
- No cemeteries are known to exist on site.
- No streams or wetlands are known to exist on site.
- on site biological or architectural landmarks are known to exist.
- Utility easements exist on site and are shown on site plan.
- Stormwater management and water quality structures are conceptual in size and will be reviewed based on hydrologic study.



VICINITY MAP
 (not to scale)



Powder Springs Road

(100' R/W)

Hopkins Road

(50' R/W)
 (major collector classification)

TO THE MAYOR & CITY COUNCIL
POWDER SPRINGS, GEORGIA

CONSTITUTIONAL CHALLENGE

COMES NOW, OLYMPIA HOMES, INC., hereinafter referred to as the
"Applicant", and asserts the following, to wit:

1.

By application to which this exhibit relates, the Applicant has applied for a Rezoning, Special Use Permit and Variances of certain real property lying and being in Powder Springs, Georgia, a more particular description and delineation of the subject property, hereinafter referred to as the "Property", being set forth in said Application.

2.

The Application for Zoning of the property seeks a Rezoning from the existing category of R-15, as established by the governing authority of Powder Springs, Georgia to the zoning category of MDR as submitted.

3.

The current R-15 zoning classification of the property without Variances and all intervening classifications between same and MDR as submitted are unconstitutional in that they deprive the Applicant under and pursuant to Article 1, 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. This deprivation of property without due process violates constitutional prohibitions against the taking of private property without just compensation.

4.

The zoning classification of MDR and all intervening classifications between same and MDR as submitted without Variances as they presently exist violate the Applicant's right to the unfettered use of the property in that the existing zoning classification does not bear a substantial relation to the public health, safety, morality or general welfare and is, therefore, confiscatory and void. Further, said classifications are unconstitutional in that they are arbitrary and unreasonable, resulting in relatively little gain or benefit to the public, while inflicting serious injury and loss upon the Applicant.

5.

The Powder Springs Unified Development Code is further unconstitutional in that the procedures contained therein pertaining to the public hearing held in connection with zoning applications also violates the aforementioned constitutional provisions in that said procedures contain the lack of procedural and evidentiary safeguards, do not restrict evidence received to the issues at hand and are controlled wholly and solely by political considerations rather than the facts and considerations required by law.

Respectfully submitted, this the 22nd day of January, 2019.

SAMS, LARKIN, HUFF & BALLI, LLP

By: 

GARVIS L. SAMS, JR.
Attorney for Applicant
Ga. Bar No. 623950

SAMS, LARKIN, HUFF
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