

JUN 02 2015

City of Johns Creek
Planning & Zoning

Letter of Intent

**Land Use Permit for additional parking for a Church
5055 and 5000 Morton Road, Johns Creek, Georgia**

The Applicant, Atlanta Chinese Christian Church North, LLC (“ACCCN”) is the property owner of property located at 5055 Morton Road, Johns Creek, Georgia. The zoning of the property is AG-1 (Agricultural District). Section 19.4.10 of the City’s Zoning Code allows for churches, temples, and other places of worship with a land use permit within the AG-1 zoning district. In 2001, Fulton County approved a use permit for the church and accessory uses. The use permit authorizes 44,200 square feet building and 500 fixed seats in the sanctuary. After approval of the use permit, ACCCN constructed the existing church building (28,220 square feet) and 250 parking spaces. In the last ten years, the Church has become an active part of Johns Creek. Local Boy Scout troops have used the church as well as other Bible study groups in the community. The members of the Church enjoy the ability to worship close to their homes.

The adjacent property located at 5000 Morton Road is approximately 4 acres of vacant land that previously included a single family home. After nearly ten years of operation, ACCCN requests approval to use the adjacent property for additional parking to serve the Church and its members. The attached site plan reflects the proposed use of the property and parking layout. The Applicant anticipates constructing a family life center and educational building to provide additional space for its members to congregate and worship. Approximately 450 of the ACCCN members are residents of Johns Creek. The proposed additional building is consistent with the land use permit issued by Fulton County in 2001. However, the Applicant seeks additional parking to alieve current parking congestion by adding 150 parking spaces to the 250 existing spaces.

We respectfully request that John Creek City Council approve the land use permit as requested by the Applicant.

Free Exercise and the Religious Land Use and Institutionalized Persons Act (RLUIPA)

The Free Exercise Clause of the First Amendment¹ protects religious freedom. In addition to this constitutional provision, the U.S. Congress enacted the Religious Land Use and Institutionalized Persons Act (RLUIPA) in 2000 to specifically protect places of religious worship against discrimination by government officials in the land use and zoning context. RLUIPA is a civil rights law that protects individuals and religious institutions from discriminatory and overly burdensome land use regulations. Specifically, RLUIPA prohibits the implementation of a land use regulation (such as zoning or permitting requirements) in a manner "that imposes a substantial burden on the religious exercise of a person, including a religious assembly, unless the government demonstrates that it is in furtherance of a compelling governmental interest and is the least restrictive means of doing so. The law also prohibits governments from imposing land use regulations in a manner that treats a religious assembly or institution on less than equal terms with

¹ The Free Exercise clause of the First Amendment provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . or abridging the freedom of speech...” U.S. Const., amend. I.

a nonreligious assembly or institution, or in a discriminatory manner. Under RLUIPA, "religious exercise" includes the "use, building, or conversion of real property for the purpose of religious exercise...." 42 U.S.C. § 2000cc5(7)(B). Here, the denial of a land use permit would substantially burden the Applicant's religious exercise and a denial would discriminate in a manner prohibited by RLUIPA.

The Applicant satisfies all of the zoning and land use criteria as set forth in the City of Johns Creek Zoning Ordinance.

The hereinafter constitutional notice is now required by Georgia law:

The portions of the City of Johns Creek Zoning Code, facially and as applied to the Property, which restrict the Property to any uses other than that proposed by the Applicant are unconstitutional in that they would destroy the Applicant's property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section I, Paragraph I and 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.

The application of the City of Johns Creek Zoning Code, facially and as applied to the Property, which restricts the Property to any uses other than the uses proposed by the Applicant is unconstitutional, illegal, null and void, constituting a taking of Applicant's Property in violation of the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States; Article I, Section I, Paragraph I, and Section III, Paragraph I of the Constitution of the State of Georgia of 1983; and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States denying the Applicant an economically viable use of its land while not substantially advancing legitimate state interests.

A denial of this Application would constitute an arbitrary and capricious act by the Johns Creek City Council without any rational basis therefore constituting an abuse of discretion in violation of Article I, Section I, Paragraph I and 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 refusal by the Johns Creek City Council to grant the land use permit in accordance with the requirements as requested by the Applicant would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and owners of the similarly situated property 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. Any use restrictions placed on the Property which are different from the conditions requested by the Applicant, to the extent such different conditions would have the effect of further restricting Applicant's utilization of the Property, would also constitute an arbitrary, capricious and discriminatory act and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove.

The existing zoning and land use restrictions which prohibit the Applicant's use of the property without a land use permit are unconstitutional. This notice is being given to comply with

the provisions of O.C.G.A. § 36-33-5 to afford the City an opportunity to grant the land use permit. If action is not taken by the City to rectify this unconstitutional zoning classification within a reasonable time, a claim will be filed in the Superior Court of Fulton County demanding just and adequate compensation under Georgia law for the taking of the Property, diminution of value of the Property, attorney's fees and not less than One Million Dollars (\$1,000,000.00) in other damages arising out of the unlawful deprivation of the Applicant's property rights.

Accordingly, your Applicant respectfully requests that this Application be granted as requested by the Applicant.

If there are any questions about this land use permit request, you may contact me at 404-665-1242 or at jsellers@pftlegal.com.

Sincerely,

PURSLEY, FRIESE, TORGRIMSON, P.C.



G. Douglas Dillard
Julie Sellers
Attorneys for Applicant

Promenade, Suite 1200
1230 Peachtree Street NE
Atlanta, Georgia 30309
(404) 876-4880 (Telephone)
(404) 876-4757 (Facsimile)

RECEIVED

JUN 02 2015

City of Johns Creek
Planning & Zoning

SU P. 15 001