

# **LETTER OF INTENT**

City of Johns Creek

Rezoning/Change in Conditions Application with  
Concurrent Variance to Reduce Parking

## **Applicant:**

Brew1129 LLC

## **Property:**

5805 State Bridge Road  
Johns Creek, GA 30097

Parcel ID Number:

11 094003300217

## **Submitted for Applicant by:**

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RZ-22-0006 & VC-22-0013

JUN 14 2022

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## **I. INTRODUCTION**

Applicant, Brew 1129 LLC, submits this request for a change in conditions and concurrent rezoning to reduce parking for the property located at 5805 State Bridge Road, Johns Creek (tax parcel 11 094003300217) (“Property”). The Property is approximately 15.26 acres and consists of surface parking and a shopping center known as Medlock Corners. This request seeks approval to modify the existing conditions to develop a Scooter’s Coffee as an outparcel on approximately .61 acres. With the approval of this application, enhanced pedestrian access will be created to provide sidewalks from the frontage of State Bridge Road to the main shopping center. To achieve the pedestrian connectivity and the development, Applicant concurrently requests a variance to reduce the number of parking required from 591 to 577 or a reduction of 2.5% (14 spaces).

The Property is zoned C-1-C and has a future land use designation of Commercial-Retail/Shopping Centers. The surrounding properties are zoned C-1 and the use in the area is commercial/retail. As such, this request is consistent with the City’s current zoning and long-term planning for the future. As demonstrated in the attached elevations, the development approval is requested for a 664 sq ft building to serve drive-through and walk-up customers. The building is one story and complies with the City’s design guidelines. The site plan reflects creating usable open space on the Property and improving the pedestrian opportunities to access the Property with the addition of new sidewalks, seating and tables.

Between the development of the Scooter’s Coffee outparcel and the installation of new sidewalks to serve the shopping center, the parking is slightly reduced. The small reduction in parking will benefit the City and residents by helping transform the existing shopping center into a more pedestrian friendly development.

## **II. CONCURRENT VARIANCE CONSIDERATIONS**

As set forth above, the Medlock Corners shopping center, as with most shopping centers, has a large surface parking which creates underutilize space. The variance requested is a minor reduction from 591 spaces to 577 or 14 spaces less than the Code required.

### **A. Relief, if granted, would be in harmony with, or could be made to be in harmony with, the general purpose and intent of the Zoning Ordinance; or**

The general intent of the Zoning Ordinance is to promote and regulate development in a manner consistent with the City’s future development goals and in relationship to the surrounding development. This request is consistent with the purpose and intent. The shopping center parking is sufficient for the uses, the addition of new development closer to State Bridge Road,

and the addition of new sidewalks and usable open space are consistent with the City's goals. The slight reduction of the parking will benefit the public by allowing for the new pedestrian connectivity.

**B. The application of the particular provision of the Zoning Ordinance to a particular piece of property, due to extraordinary and exceptional conditions pertaining to that property because of its size, shape or topography, would create an unnecessary hardship for the owner while causing no detriment to the public; or**

The extraordinary and exceptional conditions present for this Property include the shape and current configuration. To add additional pedestrian connectivity and usable open space as desired goals in the City's planning documents, some parking will be eliminated. Here, the site plan was designed to maximize the pedestrian experience and minimize the loss of parking spaces. The 2.5% reduction is significantly less than the 10% administrative variance allowance in the Code.

**C. Variance to Article 33 shall be in accordance with the standards enumerated therein.**

Not applicable to this request.

**III. REQUIRED CONSTITUTIONAL AND ANTE LITEM NOTICE**

Failure to approve the requested zoning and variance would be unconstitutional. Georgia law and the procedures of the City of Johns Creek require the Applicant to raise Federal and State constitutional objections during the application process. While the Applicant anticipates a smooth application process, failure to raise constitutional objections at this stage may mean that the Applicant will be barred from raising important legal claims later in the process. Accordingly, the following constitutional objections are stated:

The portions of the City of Johns Creek Zoning Ordinance, facially and as applied to the Property, which restrict the Property to any uses, conditions, land use designations, development standards, or to any zoning district 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 Ordinance, facially and as applied to the Property, which restricts the Property to any uses, conditions, land use designations, development standards, or to any zoning district other than in accordance with the application as 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 be unconstitutional under the Takings Clause of the Fifth Amendment to the Constitution of the United States and the Just Compensation Clause of Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983. A refusal by the City of Johns Creek to grant the application as requested would constitute a taking of the Applicant's property. Because of this unconstitutional taking, the City of Johns Creek would be required to pay just compensation to the Applicant.

A denial of this application would constitute an arbitrary and capricious act by the City of Johns Creek 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 City of Johns Creek to approve this rezoning and variance for the Property in accordance with the criteria as requested by the Applicant and required by the City 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 approval of the requests subject to conditions 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 in zoning the Property to a unconstitutional classification and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove.

#### IV. CONCLUSION

For the foregoing reasons, the Applicant respectfully requests that this application be granted as requested by the Applicant. If there are any questions about this request, you may contact me at 404-665-1242 or [jsellers@dillard sellers.com](mailto:jsellers@dillard sellers.com).

Sincerely,  
DILLARD SELLERS, LLC



Julie L. Sellers

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