



BOARD OF ZONING APPEALS JUNE 21, 2018

ALPHARETTA CITY HALL
COUNCIL CHAMBERS
2 PARK PLAZA
5:30 PM

- I. CALL TO ORDER**
 - A. Election of Vice-Chair for 2018**
- II. ROLL CALL**
- III. APPROVAL OF MEETING MINUTES**
 - A. January 18, 2018 Meeting Minutes**
- IV. PUBLIC HEARING**
 - A. E-18-02 City Center/Sign Exception**
Consideration of a sign exception to allow for wall/canopy and perpendicular signage area to be aggregated for the purpose of providing flexibility to encourage unique sign design.
- V. ITEMS FROM BOARD MEMBERS**
- VI. ITEMS FROM STAFF**
 - A. Ethics Ordinance**
 - B. Section 4.5 Appeals Unified Development Code and Section 5.6 Board of Appeals City Code of Alpharetta**
- VII. ADJOURNMENT**



BOARD OF ZONING APPEALS MEETING SUMMARY

JANUARY 18, 2018

ALPHARETTA CITY HALL

COUNCIL

CHAMBERS

2 PARK PLAZA

5:30 PM

*This summary is provided as a convenience and service to the public, media and staff. It is not the intent to record proceedings verbatim. Any reproduction of this summary must include this notice. Public comments are noted as heard by Board of Zoning Appeals, but not quoted or paraphrased. This document includes limited presentation by Board of Zoning Appeals and invited speakers in **summary** form. **This is not an official record** of the Alpharetta City Board of Zoning Appeals Meeting proceedings. Official Minutes are recorded and available for review.*

I. CALL TO ORDER

A. Election of Officers 2018

- ❖ Board Member John Monson nominated Mike Webber as Chairman for 2018.
 - The nomination received a second from Board Member Lewis
 - The nomination was approved by vote (6-0)
 -
- ❖ Board Member Gelber nominated John Monson as Vice-Chairman for 2018.
 - The nomination received a second from Board Member Lewis
 - The nomination was approved by vote (6-0)

II. ROLL CALL

Board Members Present:

- o Mike Webber, Chairman
- o John Monson, Vice Chairman
- o Hunter Beach
- o Marc Gelber
- o Dick Jones
- o Kyle Lewis

Board Members Absent:

- o Eamon Keegan

Staff Present:

- o Michael Woodman, Senior Planner

- o Elle Taylor, Planning and Zoning Coordinator

III. APPROVAL OF MEETING MINUTES

A. September 21, 2017

- ❖ Vice-Chairman Monson made a motion to approve the meeting minutes of September 21, 2017
 - The motion received a second from Board Member Gelber
 - The motion was approved by vote (6-0)

IV. PUBLIC HEARING

A. V-17-38 Academy Street Setback Variance

Michael Woodman, Senior Planner, presented consideration of a setback variance to allow a covered porch to encroach five (5) feet into the ten (10) foot perimeter side setback in a residential subdivision. The subject property is located at 70 Academy Street (Lot 6) in the East of Main subdivision

After presentation from the Applicant and discussion from the Board:

- ❖ Board member Gelber made a motion to approve with Staff Conditions
 - The motion received a second from Board Member Jones
 - The motion was approved by vote (6-0)

V. ITEMS FROM BOARD MEMBERS

There was discussion about the mission of the Board of Zoning Appeals.

VI. ITEMS FROM STAFF

VII. ADJOURNMENT



BOARD OF ZONING APPEALS MEETING STAFF REPORT

SUBMITTING DEPARTMENT: COMMUNITY DEVELOPMENT

SUBMITTED BY: KATHI COOK

DRAFTED BY: MICHAEL WOODMAN

I. AGENDA ITEM TITLE: E-18-02 CITY CENTER/SIGN EXCEPTION

BOARD OF ZONING APPEALS: JUNE 21, 2018

II. RECOMMENDATION:

Approve E-18-02 City Center/Sign Exception, subject to the following conditions:

1. Each tenant allowable sign area for wall and perpendicular signage shall be permitted to be aggregated and distributed to wall and perpendicular signs, as approved by Staff. Aggregated sign area shall be calculated based on max. permitted sign area per max. permitted number of wall and perpendicular signs.
2. Wall and perpendicular signage shall be restricted to no more than three (3) total signs for each tenant/business, except that tenant/business backing onto a parking lot, alley, park or other public space may have one (1) additional wall sign on the rear of the building.

III. REPORT IN BRIEF:

The applicant, Cheri Morris, requests consideration of a sign exception to allow for wall/canopy and perpendicular signage area to be aggregated for the purpose of providing flexibility to encourage unique sign design. The subject property is located at the southeast corner of South Main Street and Academy Street in the City Center mixed-use development.

DISCUSSION

The submitted request, if approved, would allow for permitted wall/canopy and perpendicular sign area to be aggregated for the purpose of providing flexibility to encourage interesting and unique sign design. The subject property is located at the southeast corner of South Main Street and Academy Street in the City Center mixed-use development.

The Unified Development Code (UDC) permits the following wall and perpendicular signage within the City Center development:

Wall/Canopy Sign: One (1) wall/canopy sign per road frontage for each tenant space, no greater than 1 SF of sign area per 1 linear foot of tenant space frontage; however, no more than two (2) wall signs shall be allowed for a tenant space. Corner tenants are permitted an additional wall sign. In addition, tenant/business located within the first two (2) floors of a building that backs onto a parking lot, alley, park or other public space may have an additional wall sign up to twenty-four (24) square feet in size.

Perpendicular Sign: One (1) perpendicular sign for each tenant space, not exceeding eight (8) SF in size and shall be placed at least eight (8) feet, but no more than twelve (12) feet above the sidewalk.

The applicant provided a few examples of how total permitted sign area could be aggregated and distributed among the wall/canopy and perpendicular signage. Below are two (2) examples:

Core 57 will be a corner tenant in the building closest to the parking deck and facing City Hall. The tenant has 73' of frontage on Park Plaza and 22' of frontage on Commerce Street. Therefore, a 73 SF wall/canopy sign is permitted along Park Plaza and a 22 SF wall/canopy sign is permitted along Commerce Street. An 8 SF perpendicular sign is also permitted. The applicant requests to aggregate the allow wall/canopy and perpendicular signage (103 SF) and distribute it over one (1), 30 SF wall sign and two (2), 16.75 SF perpendicular signs for a total of 63.5 SF of sign area.

Core 57	Allowed Number	Requested Number	Allowed Sign Area	Requested Sign Area
Wall/Canopy	2	1	95 SF	30 SF
Perpendicular	1	2	8 SF	33.5 SF (2 @ 16.75 SF)
TOTAL	3	3	103 SF	63.5 SF

Chiringa, which is located in one of the jewel box buildings flanking the Town Green, has three (3) road frontages and backs onto a public park. An aggregate of 98 SF (24 SF + 74 SF) of wall/canopy sign area would be permitted, since the UDC restricts wall/canopy signs to no more than two (2) per tenant space. One (1) – 8 SF perpendicular sign is also permitted, bringing the total aggregate sign area to 106 SF. The applicant is requesting a 32 SF wall sign facing South Main Street and two (2) – 16 SF wall signs facing the Town Green and South Broad Street for a total of 64 SF of sign area.

Chiringa	Allowed Number	Requested Number	Allowed Sign Area	Requested Sign Area
Wall/Canopy	2	3	98 SF	64 SF (1@32 SF, 2@16 SF)
Perpendicular	1	0	8 SF	0
TOTAL	3	3	106 SF	64 SF

The City Center Sign Package was approved by the Design Review Board (DRB) on March 16, 2018. The intent of the Signage Design Criteria is to encourage City Center tenants to explore ambitious, unique signage. DRB approval of the City Center sign package allows for Staff approval of tenant signage, except that requests for rooftop signs are required to go back to DRB.

EXCEPTION REQUIREMENTS

The City of Alpharetta Unified Development Code Article II, Section 4.5.4. outlines the criteria set forth for granting an exception to the sign regulations. The ordinance specifically states..."an exception may be granted upon a finding that":

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of size, shape or topography; or

Response: City Center is a mixed-use development located in the City's Downtown. Most tenant signage will be visible from the interior of the site and geared toward the pedestrian.

2. The application of the Ordinance to this particular piece of property would create an unnecessary hardship; or

Response: The applicant is asking to aggregate allow sign area and to distribute that sign area over perpendicular and wall signage. Overall sign area would not exceed the maximum allowed by the City's Sign Code. Also, the subject property is also a mixed-use development with most signage geared toward pedestrian visibility.

3. There are conditions that are peculiar to the property which adversely affect its reasonable use or usability as currently zoned; or

Response: Granting the applicant's sign exception would not grant the applicant significant privileges denied to others, since the overall sign area would not exceed the maximum allowed by the Sign Code.

4. Relief, if granted, would not cause substantial detriment to the public good or impair the purpose and intent of the Ordinance.

Response: The sign exception would not cause substantial detriment to the public good as most signs will not be visible from the public right-of-way. The subject property is also a mixed-use development with most signage geared toward pedestrian visibility.

CONCURRENCES

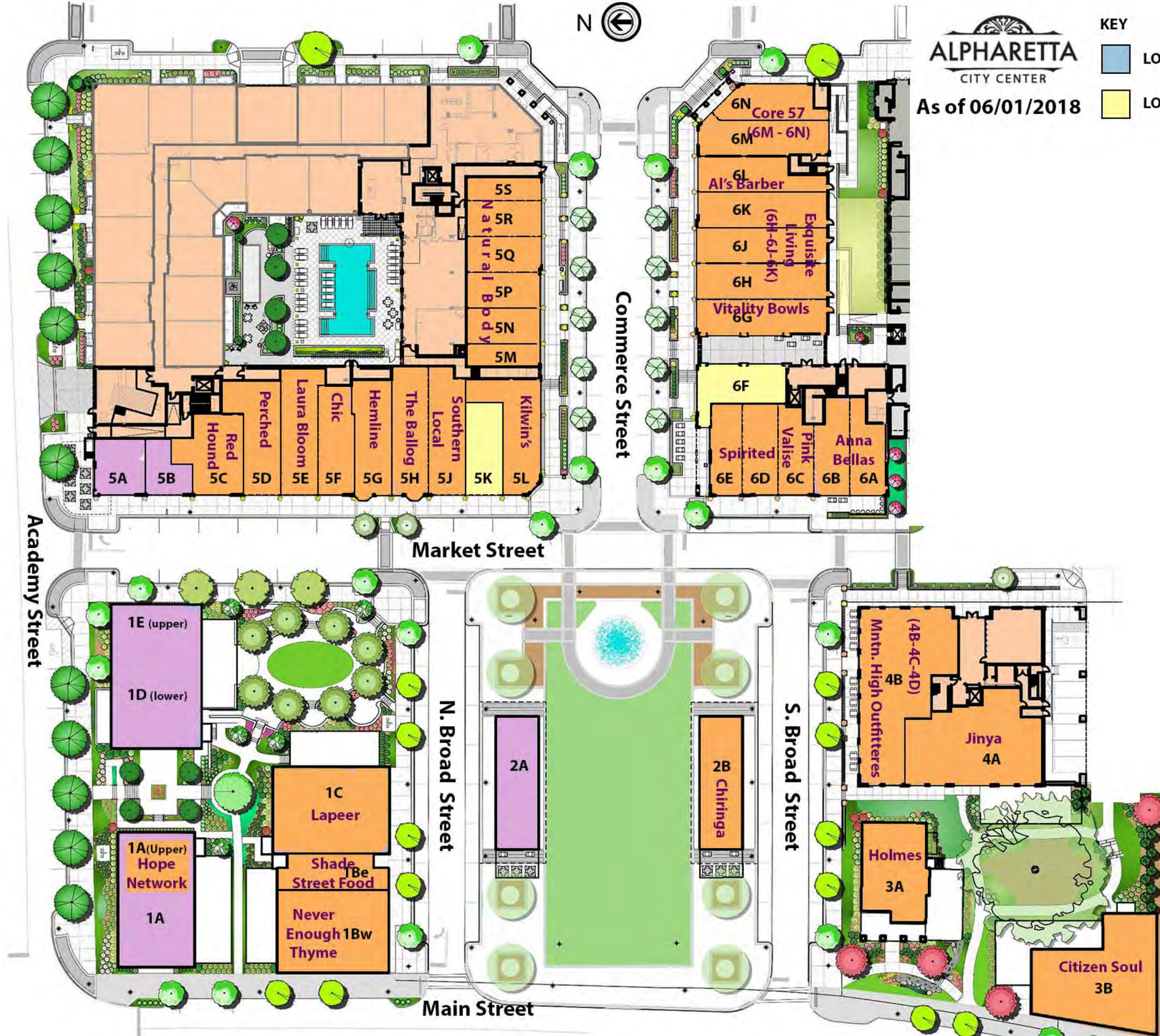
Staff has reviewed the application and is in general agreement with the requested sign exception to allow for wall/canopy and perpendicular signage to be aggregated. City Center is a mixed-use development, which will have signs generally oriented to the pedestrian as opposed to automobiles. In addition, most signage will only be visible from the interior of City Center and will not be seen from Main Street or Academy Street. The requested sign exception would provide the applicant and Staff with the flexibility needed to achieve interesting and unique signage design. If approved, conditions are recommended limiting the total number of signs permitted for each tenant space.

CITIZEN PARTICIPATION PLAN

The applicant notified adjacent property owners of the sign variance request and intent for the property. The citizen participation report states that no comments were received.

IV. ATTACHMENTS:

- Site Plan
- Example Sign Renderings





Alpharetta City Center retail spans 5 city blocks and incorporates parks, sidestreets, and varying types of vehicular and pedestrian areas.



Following are examples of conditions that call for alternative applications of signs





Example of signs on 3 facades, as the entrance is on a corner, thus not visible from either street face. The awning sign on Market Street is 24 SF, the width of the façade. Note that Commerce Street façade is allowed 64 SF – too large for this building. Instead we are requesting a 24 SF awning sign and a 31 SF sign on the corner for a total of 55 SF on Commerce Street and corner. Total SF allows is 88, total requested is 79.



**Example of perpendicular sign larger than 8 SF.
At 16.75 SF it is small in context of the storefront.
This is needed for the store to be seen from the active areas of the property.**



Example of 30 SF sign over door plus two 16.75 SF perpendicular signs for visibility from active areas of the property. Note that the eastern street-facing façade, Park Plaza, would be allowed 73 SF - unnecessarily large. Total SF allowed is 103 SF. Total SF of requested signage is 63.50 SF.



Example of 32 SF wall sign on 24 foot wide facade.
Note that the southern street-facing façade, S. Broad Street,
would be allowed 74 SF which is too large for the building.



Signs over side entrances, shown here at 20 SF, are needed instead of a 74 SF wall sign.
Allowable wall signage on all facades is 98 SF.
Requested wall signage on all facades is 72 SF.

Citizen Part B Adjoining Property Owners

33 SOUTH MAIN LLC

Or Current Property Owner

1905 EVERGREEN LN

ALPHARETTA GA 30009

FIRST BAPTIST CHURCH OF ALPHARETTA INC

Or Current Property Owner

44 ACADEMY ST

ALPHARETTA GA 30004

GEORGIA FED SAV & LOAN ASSN

Or Current Property Owner

P.O. BOX 2609

CARLSBAD CA 92018-2609

KELL BUILDING PARTNERS LLC

Or Current Property Owner

131 ROSWELL ST SUITE B201

ALPHARETTA GA 30009

LOCKWOOD JOSEPH K

Or Current Property Owner

369 DORRIS RD

ALPHARETTA GA 30004

ONE SOUTH MAIN LLC

Or Current Property Owner

710 COOPER SANDY CV

ALPHARETTA GA 30004

PARSONS JAMES J

Or Current Property Owner

10465 STONEFIELD LNDG

DULUTH GA 30097-5951

PUBLIX SUPER MARKETS INC

Or Current Property Owner

P.O. BOX 32025

LAKELAND FL 33802

BLALOCK ESTATE HOLDINGS LLC

Or Current Property Owner

7215 DONCASTER CT

CUMMING GA 30040-7662

BUR ROG INC

Or Current Property Owner

72 MARIETTA ST

ALPHARETTA GA 30009

HEIGHT EQUITIES INC

Or Current Property Owner

16 BROAD ST

RED BANK NJ 07701

PALMER FAMILY INVESTMENTS LLC

Or Current Property Owner

11460 ALPHARETTA HWY

ROSWELL GA 30076-3801

FULTON COUNTY GEORGIA

Or Current Property Owner

141 PRYOR ST

ATLANTA GA 30303

6/1/2018

CITY OF ALPHARETTA

PUBLIC HEARING APPLICATION

City Center/ Tenant Sign Exception
FOR OFFICE USE ONLY

E-18-02

Case #: _____

☐ Fee Paid Initial: _____

COMMUNITY DEVELOPMENT DEPARTMENT

2 PARK PLAZA

ALPHARETTA, GA 30009

1. This page should be the first page in each of your completed application packets.
2. It is preferred that all responses be typed. Illegible applications will not be accepted.
3. Prior to signing and submitting your application, please check all information supplied on the following pages to ensure that all responses are complete and accurate. Incomplete applications will not be accepted.
4. Payment of all applicable fees must be made at the time of application. Payment may be made via cash, credit card (American Express, Master Card or Visa), or check made payable to "City of Alpharetta."
5. Applications will be accepted only on the designated submittal dates between the hours of 8:30 AM and 3:30 PM.
6. If you have any questions regarding this form, please contact the Community Development Department by calling 678-297-6070.

Contact Information:

Contact Name: _____ Telephone: _____

Address: _____ Suite: _____

City _____ State: _____ Zip: _____ Fax: _____

Mobile Tel: _____ Email: _____

Subject Property Information:

Address: _____ Current Zoning: _____

District: _____ Section: _____ Land Lot: _____ Parcel ID: _____

Proposed Zoning: _____ Current Use: _____

This Application For (Check All That Apply):

☐ Conditional Use

☐ Master Plan Amendment

☐ Rezoning

☐ Master Plan Review

☐ Variance

☐ Public Hearing

☐ Comprehensive Plan Amendment

☐ Other (Specify): _____

6/1/2018

APPLICANT REQUEST AND INTENT

City Center/ Tenant Sign Exception

What is the proposed use(s) of the property?

Applicant's Request (Please itemize the proposal):

Applicant's Intent *(Please describe what the proposal would facilitate):*

6/1/2018

PROPERTY OWNER AUTHORIZATION

City Center/ Tenant Sign Exception

Property Owner Information:

Contact Name: _____ Telephone: _____

Address: _____ Suite: _____

City _____ State: _____ Zip: _____ - _____

Authorization:

I do solemnly swear and attest, subject to criminal penalties for false swearing, that I am the legal owner, as reflected in the records of Fulton County, Georgia, of the property identified below, which is the subject of the attached Application for Public Hearing before the City of Alpharetta, Georgia.

As the legal owner of record of the subject property, I hereby authorize the individual named below to act as the applicant in the pursuit of the Application for Public Hearing in request of the items indicated below.

- | | |
|---|--|
| ☐ Annexation | ☐ Special Use |
| ☐ Rezoning | ☐ Conditional Use |
| ☐ Variance | ☐ Master Plan |
| ☐ Land Use Application | ☐ Other _____ |

Identify Authorized Applicant:

Name of Authorized Applicant: _____ Telephone: _____

Address: _____ Suite: _____

City _____ State: _____ Zip: _____ - _____

So Sworn and Attested:

Owner Signature: _____ Date: _____

Notary:

Notary Signature: _____ Date: _____

6/1/2018

City Center/ Tenant Sign Exception DISCLOSURE FORM

The Official Code of Georgia Annotated requires disclosure of campaign contributions to government officials by an applicant or opponent of a rezoning or public hearing petition (O.C.G.A. 36-67 A-1).

Applicants must file this form with the City of Alpharetta Community Development Department within ten (10) days after filing for rezoning or public hearing. Opponents to a rezoning or public hearing petition must file this form five (5) days prior to the Planning Commission meeting at which the subject rezoning or public hearing petition is scheduled to be heard.

Name of Applicant or Opponent: _____

Subject Public Hearing Case: _____

Campaign Contribution Information:

Please provide the requested information for each contribution with a dollar amount or value of \$250 or more made within the past two (2) years to an Alpharetta Official by the individual identified above. Please use a separate form for each Alpharetta Official to whom such a contribution as been made.

If the individual identified above has made no such contributions to an Alpharetta Official within the past two (2) years, please indicate this by entering "N/A" on the appropriate lines below.

Name of Official: _____ Position: _____

Description of Contribution: _____ Value: _____

Description of Contribution: _____ Value: _____

Description of Contribution: _____ Value: _____

Description of Contribution: _____ Value: _____

Description of Contribution: _____ Value: _____

Campaign Contribution Information:

I do solemnly swear and attest, subject to criminal penalties for false swearing, that the information provided in this Disclosure Form is true and accurate and that I have disclosed herein any and all campaign contributions made to an Official of the City of Alpharetta, Georgia in accordance with O.C.G.A. 36-67 A-1.

Signature: _____

Date: _____

6/1/2018

City Center/ Tenant Sign Exception

BOARD OF ZONING APPEALS REVIEW CRITERIA

Please respond to the following ONLY if you are applying for a zoning variance.

Are there extraordinary and exceptional conditions pertaining to the subject property because of its size, shape, or topography? Please describe them.

Would the application of the Zoning Code standards as they relate to the subject property create an unnecessary hardship? Please explain.

Are there conditions that are peculiar to the subject property? Please describe them in detail.

Would relief, if granted, cause substantial detriment to the public good or impair the purpose and intent of the Zoning Code? Please defend your response.

On a separate sheet or sheets, please provide any information or evidence that supports your request and the statements that you have provided in this application.

6/1/2018

SIGN VARIANCE REVIEW CRITERIA

City Center/ Tenant Sign Exception

Are there exceptional conditions pertaining to the property where the sign is to be located as a result of the property size, shape, or topography which are not applicable to other lands or structures in the area? If "yes," please explain.

☐ Yes☐ No

Would the applicant be deprived of rights that are commonly enjoyed by others similarly situated? If "yes," please explain.

☐ Yes☐ No

Would granting the variance confer on the applicant any significant privileges which are denied to others similarly situated? If "yes," please explain.

☐ Yes☐ No

Are the exceptional circumstances the result of actions of the applicant or the applicant's representatives? If "yes," please explain.

☐ Yes☐ No

Is the requested variance the minimum necessary to allow the applicant to enjoy rights commonly enjoyed by others similarly situated? If "no," please explain.

☐ Yes☐ No

Would granting of the variance violate more than one standard of the Unified Development Code? If "yes," please explain.

☐ Yes☐ No

Would granting the variance result in allowing a sign that interferes with road or highway visibility or obstruct or otherwise interfere with the safe and orderly movement of traffic? On a separate sheet or sheets, please defend your response.

☐ Yes☐ No



Following are examples of conditions that call for alternative applications of signs



Example of signs on 3 facades, as the entrance is on a corner, thus not visible from either street face. Note that Commerce Street façade is allowed 64 SF – too large for this building. Instead we are requesting a 24 SF sign and a 31 SF sign on the corner for a total of 55 SF.



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At 16.75 SF it is in scale with the storefront.

This is needed for the store to be seen from the active areas of the property.



Example of 30 SF sign over door plus two 16.75 SF perpendicular signs for visibility from active areas of the property. Note that eastern street-facing façade, Park Plaza, would be allowed 73 SF - unnecessarily large. Total SF allowed is 103 SF. Total SF of requested signage is 63.50 SF.



**Example of 32 SF wall sign on 24 foot wide facade.
Note that southern street-facing façade, S. Broad Street,
would be allowed 74 SF which is too large for the building.
Allowable wall signage is 98 SF. Requested wall signage is 32 SF.**

SECTION 4.5 - APPEALS

4.5.1 Initiation.

- A. All requests for relief from the imposition of the regulations and requirements of this Ordinance on a property or development activity, or from an interpretation of the meaning of words or the boundaries of zoning districts, or from an administrative decision of the Director, shall be taken as an appeal to the Board of Appeals, except as otherwise provided in this Section.
- B. Appeals to the Board of Appeals may be initiated by any person aggrieved or by an officer, department, board or bureau of the City. Such appeal shall be initiated within 15 days of the action or decision appealed from by filing with the Director notice of said appeal specifying the grounds thereof. The Director shall transmit to the Board of Appeals any papers constituting the record of the action or decision from which the appeal was taken.
- C. An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is made certifies to the Board of Appeals, after the notice of appeal shall have been filed with them, that by reason of facts stated in the certificate a stay would, in the Director's opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by a court of competent jurisdiction.
- D. Notice of the meeting shall state the time, place and purpose of the hearing by the Board of Appeals. The written notice shall be posted at City Hall.

4.5.2 Public hearing.

- A. The Director shall submit the appeal to the Board of Appeals, together with any Staff Report. The Board of Appeals shall review and take action upon each appeal after holding a public hearing. In making a decision on the appeal, the Board of Appeals shall follow the standards set forth under this Section. No member of the Board of Appeals shall rule on a matter in which he or she has a financial interest, directly or indirectly.
- B. In taking on an appeal, the Board of Appeals by majority of those voting may approve, approve with conditions, or deny the appeal, or the Board of Appeals may table the matter for consideration at its next regular meeting.

4.5.3. Hardship variances.

A. General.

- 1. Relief from the application of the provisions of this Ordinance may be granted by the board of Appeals upon a finding that compliance with such provision will result in a hardship to the property or owner that is substantially unwarranted by the protection of the public health, safety or general welfare and the need for consistency among all properties similarly zoned.
 - 2. Such relief may be granted only to the extent necessary to alleviate such unnecessary hardship and not as a convenience to the applicant nor to gain any advantage or interest over similarly zoned properties.
- B. *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 by the Board of Appeals that:
- 1. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography; or
 - 2. The application of the Ordinance to this particular piece of property would create an unnecessary hardship; or
 - 3. There are conditions that are peculiar to the property which adversely affect its reasonable use or usability as currently zoned.

- C. *Limitation.* In no case shall a hardship variance be granted from the conditions of approval imposed on a property through a zoning change granted by the City Council, nor may any use of land or buildings or structures be granted that is not permitted by the zoning district that is applicable to the property.

4.5.4 Exceptions.

A. General.

1. An exception requested as part of a rezoning or conditional use application shall be heard by the Planning Commission and decided by the City Council as part of the public hearing process related to the rezoning or conditional use application. All other exceptions (which do not exceed 50% of the stipulated requirement) shall be heard and acted upon by the Board of Appeals, unless approved administratively by the Director as provided herein.
2. Exceptions shall be limited to relief from the following requirements of this Ordinance:
 - a. Minimum building setbacks;
 - b. Maximum building height;
 - c. Buffers and screening;
 - d. Signage in accordance with a coordinated signage plan;
 - e. Minimum street frontage;
 - f. Parking and loading requirements;
 - g. Tree preservation;
 - h. Signage height and copy area; and
 - i. Minimum street frontage;
 - j. Minimum building size;
 - k. Maximum impervious area

B. Standards for Approval.

1. An exception may be granted upon a finding that:
 - a. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of size, shape or topography; or
 - b. The application of the Ordinance to this particular piece of property would create an unnecessary hardship; or
 - c. There are conditions that are peculiar to the property which adversely affect its reasonable use or usability as currently zoned; or
 - d. Relief, if granted, would not cause substantial detriment to the public good or impair the purpose and intent of the Ordinance.
2. An exception may be granted from the requirements of this Ordinance regarding tree preservation. The factors to be taken into consideration include the following:
 - a. The ease with which the applicant can alter or revise the proposed development or improvement to accommodate existing trees.
 - b. The economic hardship that would be imposed upon the applicant were the exception denied.
 - c. The heightened desirability of preserving tree cover in densely developed or densely populated areas.

- d. The need for visual screening in transitional zones or relief from glare, blight, commercial or industrial ugliness or any other visual affront.
 - e. Whether the continued presence of the tree or trees is likely to cause danger to a person or property.
 - f. Whether the topography of the area in which the tree is located is such a nature to be damaging or injurious to trees.
 - g. Whether the removal of trees is for the purpose of thinning a heavily wooded area where some trees will remain.
 - h. Whether tree removal would have an adverse impact upon existing biological and ecological systems.
 - i. Whether tree removal would affect noise pollution by increasing source noise levels to such a degree that a public nuisance may be anticipated or a violation of the noise control ordinance will occur.
- C. *Limitations.* In no case shall an exception be granted from the conditions of approval imposed on a property through a zoning change granted by the City Council, nor may a minimum lot size required by a zoning district be reduced, nor may any use of land or buildings or structures be granted that will result in an increase in housing units or nonresidential building density or is not permitted by the zoning district that is applicable to the property.

4.5.5 Interpretations.

- A. The Board of Appeals, upon appeal of an aggrieved party or at the request of the Director, shall interpret the use of words or phrases within the context of the intent of this Ordinance, the boundaries of the various zoning districts where uncertainty exists, and such other provisions of this Ordinance as may require clarification or extension. The Board of Appeals shall also hear and decide appeals from any order, determination, decision or other action by the Director where a misinterpretation of the requirements or other provisions of this Ordinance is alleged.
- B. An interpretation by the Board of Appeals shall be final, unless an appeal of their action is taken to Superior Court within 30 days of the Board's action.

SECTION 5.6 - BOARD OF APPEALS

5.6.1 Establishment.

A Board of Appeals is hereby created. The Mayor and each Council Member shall each appoint one (1) member who shall serve at the pleasure of the Mayor or Council Member making the appointment. Members may be reimbursed for any authorized travel expenses incurred while representing the Board.

5.6.2 Proceedings of the board of appeals.

- A. The Board of Appeals shall elect a Chairperson and a Vice Chairperson from its members who shall serve for one year or until re-elected or until their successors are elected. The Board of Appeals shall meet in public hearing in accordance with a schedule of hearings established by the Director. Other meetings of the Board of Appeals shall be held at the call of the chairperson and at such other times as the Board of Appeals may determine. All meetings of the Board of Appeals shall be open to the public.
- B. A majority of the entire Board of Appeals shall constitute a quorum. The vote of the majority of the Board of Appeals members present and voting at a meeting which a quorum is present shall be necessary to affirm any order, requirement, decision or other determination of the Director, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance or to effect any variation of this Ordinance.
- C. The Director shall serve as secretary to the Board. The secretary shall keep minutes of its proceedings, showing the vote of each member on each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be of public record. On all appeals, applications and matters brought before the Board of Appeals, the Secretary shall inform in writing all of the parties in interest of its decision.

5.6.3 Powers and duties of the board of appeals.

The Board of Appeals shall have the following duties:

- A. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Director in the enforcement of this Ordinance.
- B. To authorize, a hardship variance or an exception from the terms of this Ordinance, where such variance or exception does not constitute more than 50% of the stipulated code requirement and as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the Ordinance will in an individual case, result in unnecessary hardship, or will provide no benefit to the public, so that the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done.
- C. To decide on other matters where a decision of the Board of Appeals may be specifically required by the provisions of this Ordinance.
- D. The Board, in the execution of duties for which appointed, may subpoena witnesses and in case of contempt may certify such fact to the Superior Court.
- E. The actions of The Board of Appeals shall be final unless appealed to Superior Court within 30 days of Board action.