



BOARD OF ZONING APPEALS DECEMBER 16, 2021

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

- I. CALL TO ORDER**
- II. ROLL CALL**
- III. PLEDGE TO THE FLAG**
- IV. APPROVAL OF MEETING MINUTES**
- V. ITEMS FROM BOARD MEMBERS**
- VI. ITEMS FROM STAFF**
- VII. PUBLIC HEARING**

- A. V-21-14 3730 Shiraz Lane Stream Buffer Variance**

Consideration of a variance request to reduce the impervious setback associated with a perennial stream buffer from 50' to 24' to allow a swimming pool on a single-family detached lot. The property is located at 3730 Shiraz Lane and is legally described as being in Land Lot 10, 1st District, 1st Section, Fulton County, Georgia.

- VIII. APPEAL**
 - A. Lamar Advertising Company - Notice of Appeal**
- IX. ADJOURNMENT**



Board of Zoning Appeals Meeting
November 18, 2021
Department of Community Development
ALPHARETTA CITY HALL | 2 PARK PLAZA
8:30 AM

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 the Board of Zoning Appeals, but not quoted or paraphrased. This document includes limited presentation by the Board of Zoning Appeals and invited speakers in summary form. The public is advised that the tapes recorded at said meeting are a matter of public record and are available upon request.

I. CALL TO ORDER

- Chairman Gelber called the meeting to order at 5:30 p.m.

II. ROLL CALL

- Board of Zoning Appeals Members present:
 - Marc Gelber, Chair
 - Mike Perry
 - Anne Holcombe
 - Sara Harrison
 - Michael Gordy
 - Mike Fowler
 - Cliff Cobb, Alternate
- Board of Zoning Appeals Members absent:
 - Michael Simmons
 - Scott Wharton, Alternate
- Staff present:
 - Michael Woodman, Senior Planner
 - Ben Kern, GIS Specialist/Planner
 - Alexandra Callum, Planning + Zoning Coordinator

III. PLEDGE TO THE FLAG

IV. APPROVAL OF MEETING MINUTES

- A. Approval of Board of Zoning Appeals meeting minutes from October 21, 2021.
- Board Member Fowler offered a motion to approve the meeting minutes.
 - ❖ Board Member Cobb seconded the motion.
 - ❖ The motion was approved unanimously 7-0.

V. ITEMS FROM BOARD MEMBERS

VI. ITEMS FROM STAFF

VII. PUBLIC HEARING

A. V-21-14 / 3730 Shiraz Lane Stream Buffer Variance

DEFERRED: This item has been deferred by the applicant and will not be heard until December 16, 2021. The item will not be heard or discussed during this evening's meeting.

Consideration of a variance request to reduce the impervious setback associated with a perennial stream buffer from 50' to 24' to allow a swimming pool on a single-family detached lot. The property is located at 3730 Shiraz Lane and is legally described as being in Land Lot 10, 1st District, 1st Section, Fulton County, Georgia.

B. V-21-27 Falconio / 1240 Wellington Place Setback Variance

- Senior Planner Woodman came forward to present this item.
 - Staff is recommending to approve V-21-27 Falconio/1240 Wellington Place Pool Setback Variance, subject to the following conditions:
 1. Swimming pool shall be permitted as depicted on the plans prepared by Georgia Classic Pools, dated 9/1/21 and with an 11' rear setback
 2. Property owner shall install evergreens and 6' privacy fence as depicted on the plans prepared by Georgia Classic Pools, dated 9/1/21.
 - The applicant, Ashley Barton, is requesting consideration of a variance to reduce the rear setback for a pool from twenty-feet (20') to eleven-feet (11'). The subject property is located at 1240 Wellington Place in the Ruth's Farm Subdivision.
 - The site plan depicts a 901 square foot swimming pool at the rear of the existing home. An eleven-foot (11') rear setback is proposed for the pool. The swimming pool has a long narrow shape in order to minimize further impact with the rear setback. There are no specimen trees impacted by the pool. Smaller trees to be removed with the installation of the pool are proposed to be replaced with five (5) 4" Arborvitae. A six-foot (6') wood privacy fence is proposed along the rear and side property lines to screen the pool for neighboring parties.
 - Staff has reviewed the applicant's proposal and generally supports the rear setback variance for the swimming pool.
- The applicant, Ashley Barton from GA Classic Pools, came forward to speak on behalf of this application
- The Board of Zoning Appeals discussed the following:
 - Will it contain consistent eleven-foot setbacks? The applicant confirmed yes.
 - Is there any wording about runoff? We implement drainage and ensure it is taken care of.
 - Are there any water features that will be on the backside? No.

Public Comment:

- There were no public comments for this item.
 - ❖ Board Member Gordy offered a motion to approve the item with the conditions set forth by staff.
 - Board Member Holcombe seconded the motion.
 - The motion was approved 7-0.

VIII. ADJOURNMENT

- Chairman Gelber adjourned the meeting at 5:38 p.m.

Respectfully submitted,

Alexandra Callum

Alexandra Callum, Planning + Zoning Coordinator



BOARD OF ZONING APPEALS MEETING STAFF REPORT

SUBMITTING DEPARTMENT: COMMUNITY DEVELOPMENT

SUBMITTED BY: KATHI COOK

DRAFTED BY: MICHAEL WOODMAN

I. AGENDA ITEM TITLE: V-21-14 REDDY/3730 SHIRAZ LANE

BOARD OF ZONING APPEALS: DECEMBER 16, 2021

II. RECOMMENDATION:

Deny V-21-14 Reddy/3730 Shiraz Lane request for stream buffer variance.

If approval is considered, the following conditions are recommended:

1. Stream buffer encroachment shall be limited to site plan prepared by ACR Engineering, Inc., revised 9/1/2021, except for modifications required to comply with the conditions below.
2. To mitigate the stream buffer encroachment, applicant shall provide and implement the submitted mitigation plan, prepared by Courtland Landscape Architecture and Construction, Inc, revised 12/7/21.

III. REPORT IN BRIEF:

The applicant, Praveen Reddy, is requesting consideration of a variance to allow an encroachment into the 50' impervious setback associated with a perennial stream buffer on a single-family detached lot. The applicant requests a reduction from 150' to 124' to allow for the construction of a swimming pool on a 0.31-acre lot. The subject property is located at 3730 Shiraz Lane in the Waters Chase subdivision.

DISCUSSION

The submitted request, if approved, would allow for an encroachment into the 50' impervious setback associated with a perennial stream buffer on a single-family detached lot. The applicant requests a reduction from 150' to 124' to allow for the construction of a swimming pool on a 0.31-acre lot. The subject property is located at 3730 Shiraz Lane in the Waters Chase subdivision.

The 0.31-acre (13,700 square feet) property is zoned R-12 (Dwelling, 'For-Sale', Residential) and is developed with a 2-story, 4,343 square foot single-family detached home. Long Indian Creek, a perennial stream, runs along the rear of the subject property. Surrounding properties are zoned R-12, except the property to the north is zoned AG (Agriculture). Single-family detached lots in the Waters Chase subdivision are located to the east and west, an unplatted residential lot is located to the north and Waters Chase common area accommodating the Long Indian Creek stream buffer is located to the south.

A variance is requested from Unified Development Code (UDC) Subsection 3.3.6(C)(1)(b) Stream Buffer Protection, Land Development Requirements to allow a 26' encroachment into the 50' impervious setback associated with a perennial stream buffer. The buffer encroachment would accommodate a swimming pool.

An administrative variance was approved on the property in 2017 to reduce the impervious setback from 50' to 40' to allow the home to be setback further from Shiraz Lane. The neighboring property, 3740 Shiraz Lane, was also granted an administrative variance to allow an encroachment into the impervious setback for a deck.

SITE PLAN

The rear 40' of the single-family lot is encumbered by an impervious setback associated with a perennial stream buffer for Long Indian Creek. The applicant's proposed site plan depicts a swimming pool encroaching approximately fourteen-feet (14') into the previously reduced 140' impervious setback. A note on the site plan states that the proposed swimming pool would result in 582 square feet of impervious area within the impervious setback.

The applicant's mitigation plan proposes a rain garden and vegetative compensation plantings. The plan identifies an impervious setback encroachment of 582 square feet, of which the applicant proposes a vegetative re-planting area in the rear yard of two-times (2x) the encroachment area, or 1,164 square feet. In addition, a 69 square foot rain garden is proposed in the rear yard, which is nearly double the City's treatment volume to offset the encroachment.

The City's Stormwater Engineer has reviewed the applicant's variance request and proposed mitigation plan. The applicant's proposal is just over 5.5 miles from the Roswell Water Supply Intake. Perennial streams within a seven (7) mile radius of the Roswell Water Supply Intake are required by the City's Unified Development Code (UDC) to have the larger stream buffers and impervious setbacks in order to protect this water supply.

VARIANCE REVIEW CRITERIA

The City of Alpharetta Unified Development Code Article IV, Section 4.5.3 outlines the criteria set forth for granting a variance. The ordinance specifically states..."a variance 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 its size, shape or topography; or

Response: The large home footprint on a smaller lot encumbered by a 50' impervious setback necessitates the variance request. The 50' impervious setback is depicted on each of the four (4) lots on the subdivision plat for Waters Chase, which was in effect at the time each property was purchased from the developer. If the request is approved, it could set a precedent for neighboring properties to request a similar variance to allow a swimming pool. In addition, the City's UDC requires larger stream buffers and impervious setbacks on perennial streams within seven (7) miles of the Roswell Water Supply Intake to protect this water supply. The applicant's property is within approximately 5.5 miles of the Roswell Water Supply Intake.

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

Response: Application of the ordinance would not create an unnecessary hardship. An administrative variance was approved in 2017 to reduce the impervious setback associated with the stream from 50' to 40' to allow for the home to be setback further from the road.

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

Response: The large home footprint on a smaller lot encumbered by a 50' impervious setback necessitates the variance request. The 50' impervious setback is depicted on each of the four (4) lots on the subdivision plat for Waters Chase, which was in effect at the time each property was purchased from the developer. If the request is approved, it could set a precedent for neighboring properties to request a similar variance to allow a swimming pool. In addition, the City's UDC requires larger stream buffers and impervious setbacks on perennial streams within seven (7) miles of the Roswell Water Supply Intake to protect this water supply. The applicant's property is within approximately 5.5 miles of the Roswell Water Supply Intake.

(4) Relief, if granted, would not cause substantial detriment to the public good or impair the purpose and intent of the City of Alpharetta ordinances.

Response: Approval of the variance would cause a substantial detriment to the public good. If the request is approved, it could set a precedent for neighboring properties to request a similar variance to allow a swimming pool. In addition, the City's UDC requires larger stream buffers and impervious setbacks on perennial streams within seven (7) miles of the Roswell Water Supply Intake to protect this water supply. The applicant's property is within approximately 5.5 miles of the Roswell Water Supply Intake.

CONCURRENCES

Staff has reviewed the proposal and finds that the variance request conflicts with the established criteria. The large home footprint on a small lot encumbered by a 50' impervious setback necessitates the variance request. In addition, the 50' impervious setback is depicted on each of the four (4) lots on the subdivision plat for Waters Chase, which was in effect at the time each property was purchased from the developer. If the request is approved, it could set a precedent for neighboring properties to request a similar variance to allow a swimming pool. Also, the applicant's property is within approximately 5.5 miles of the Roswell Water Supply Intake and could have negative impacts on that water supply.

CITIZEN PARTICIPATION PLAN

The applicant's Citizen Participation form indicates that property owners within 500' were notified of the variance request and intent for the property. The applicant provided letters of support from the two (2) adjacent properties to the east and west.

IV. ATTACHMENTS:

- Site Plan



Aerial Map
Stream Buffer Variance
3730 Shiraz Lane

V-21-14
D/LL: 1/1/0011
BZA Date: 10/21/21

Location Map Provided by:
Community Development - GIS



TREE CALCULATIONS:

NO TREES ARE TO BE REMOVED FROM THE SITE DUE TO CONSTRUCTION. SITE DENSITY CALCULATIONS ARE MET WITH INITIAL CONSTRUCTION OF RESIDENTIAL SITE.

BUFFER ENCROACHMENT CALCULATIONS:

582 SQ. FT OF IMPERVIOUS AREA IN THE IMPERVIOUS SETBACK CITY HAS ASKED FOR 2 X THE DISTURBED AREA TO BE REPLANTED

582 SQ. FT. X 2 = 1,164 SQ. FEET TO BE REPLANTED.
REAR YARD PLANTING = 1,164 SQ. FEET

RAIN GARDEN CALCULATIONS:

CALCULATIONS AS PER CITY OF ALPHARETTA STORMWATER POLICY HANDBOOK UPDATED DECEMBER 2020.

AT 18" DEPTH OF AMENDED SOILS 1000 S.F. OF CONTRIBUTING DRAINAGE AREA REQUIRE A RAIN GARDEN TO BE 65 S.F. IN SIZE.

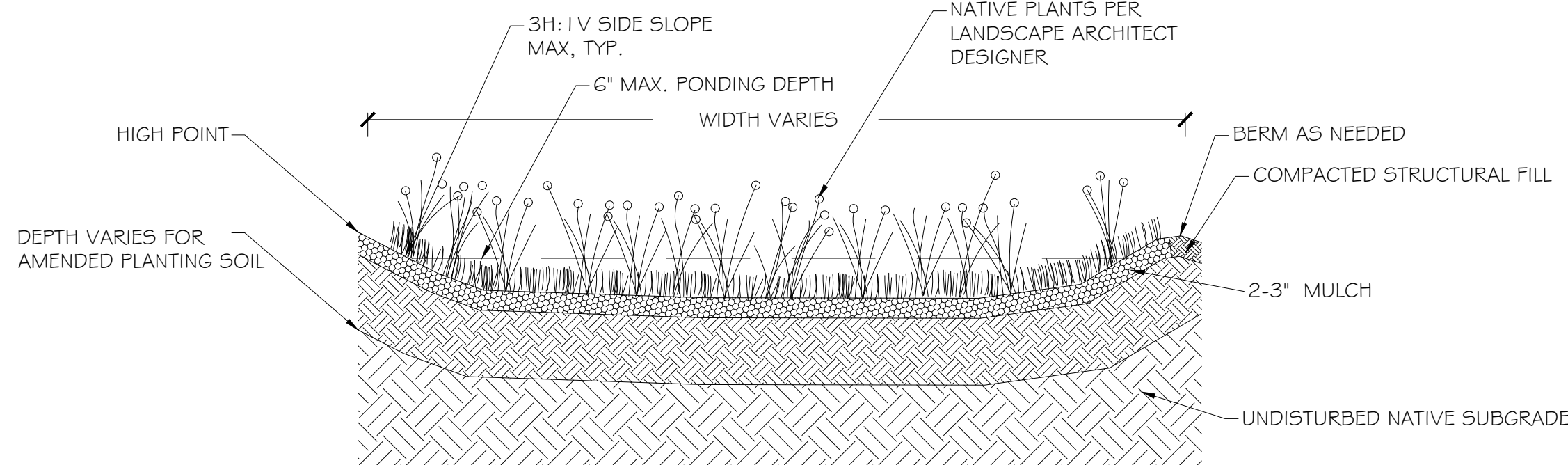
65 S.F. / 1000 S.F. = .065

1050 S.F. OF CONTRIBUTING DRAINAGE AREA AT X .065 =

68.25 S.F. OF RAIN GARDEN TO BE REQUIRED ON SITE.

69 S.F. OF RAIN GARDEN PROVIDED ON SITE.

RAIN GARDEN DETAIL



CONSTRUCTION STEPS:

1. Locate rain garden(s) where downspouts or driveway runoff can enter garden flowing away from the home. Locate at least 10 feet from foundations, not within the public right of way, away from utility lines, not over septic fields, and not near a steep bluff edge.
2. Measure the area draining to the planned garden and determine required rain garden surface area from the table on the next page and your planned excavation depth.
3. Optionally, perform infiltration test according to Appendix A. If the rate is less than 0.25 in/hr an underdrain will be necessary. If the rate is more than 0.50 in/hr the size of the garden may be decreased 10% for every 0.50 in/hr infiltration rate increase above 0.50 in/hr.
4. Measure elevations and stake out the garden to the required dimensions insuring positive flow into garden, the overflow elevation allows for six inches of ponding, and the perimeter of the garden is higher than the overflow point. If the garden is on a gentle slope a berm at least two feet wide can be constructed on the downhill side and/or the garden can be dug into the hillside taking greater care for erosion control at the garden inlet(s).
5. Remove turf or other vegetation in the area of the rain garden. Excavate garden being careful not to compact soils in the bottom of the garden. Level bottom of garden as much as possible to maximize infiltration area.
6. Mix compost, topsoil, and some of the excavated subsoil together to make the 'amended soil'. The soil mix should be 1/3 compost, 2/3 native soil (topsoil and subsoil combined).
7. Fill rain garden with the amended soil, leaving the surface eight inches below your highest surrounding surface. Eight inches allows for 6 inches ponding and 2" of mulch. The surface of the rain garden should be as close to level as possible.
8. Build a berm at the downhill edge and sides of the rain garden with the remaining subsoil. The top of the berm needs to be level, and set at the maximum ponding elevation.
9. Plant the rain garden using a selection of plants from elsewhere in this manual.
10. Mulch the surface of the rain garden with two to three inches of non-floating organic mulch. The best choice is finely shredded hardwood mulch. Pinestraw is also an option.
11. Water all plants thoroughly. As in any new garden or flower bed, regular watering will likely be needed to establish plants during the first growing season.
12. During construction build the inlet feature as a pipe directly connected to a downspout or use a rock lined swale with a gentle slope. Use of an impermeable liner under the rocks at the end of the swale near the house is recommended to keep water from soaking in at that point. Test the drainage of water from the source to the garden prior to finishing.
13. Create an overflow at least 10 feet from your property edge and insure it is protected from erosion.

PLANT SCHEDULE

QUANTITY	COMMON NAME	BOTANICAL NAME	SIZE	SPACED O.C.
TREES				
1	RED MAPLE*	ACER RUBRUM	2" CAL.	PLANT AS SHOWN
2	EASTERN REDBUD*	CERCIS CANADENSIS	2" CAL.	PLANT AS SHOWN
2	DOGWOOD*	CORNUS FLORIDA	2" CAL.	PLANT AS SHOWN

SHRUBS

3	AMERICAN BEAUTY BERRY*	CALICARPA AMERICANA	3 GAL.	4'-5'
4	FLORIDA ANISE*	ILICUM FLORIDANUM	3 GAL.	5'-6'
8	OAKLEAF HYDRANGEA*	HYDRANGEA QUERCIFOLIA	3 GAL.	4'-5'

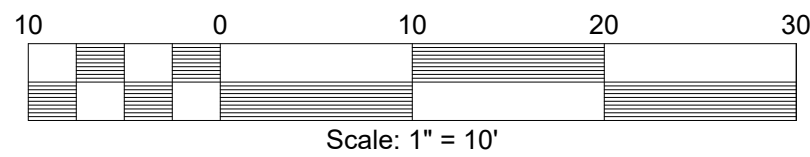
GROUNDCOVERS / PERENNIALS

37	BLACK EYED SUSAN*	RUDEBECKIA HIRTA	1 GAL.	12"-18"
16	JOE PYE WEED*	EUPATORIUM FISTULOSUM	1 GAL.	3'
18	CINNAMON FERN*	OSMUNDA CINNAMOMEA	1 GAL.	2'
14	CHRISTMAS FERN*	POLYSTICHUM ACROSTICHOIDES	1 GAL.	2'-2.5'
35	SPIDERWORT*	TRADESCANTIA VIRGINIANA	1 GAL.	12"-18"

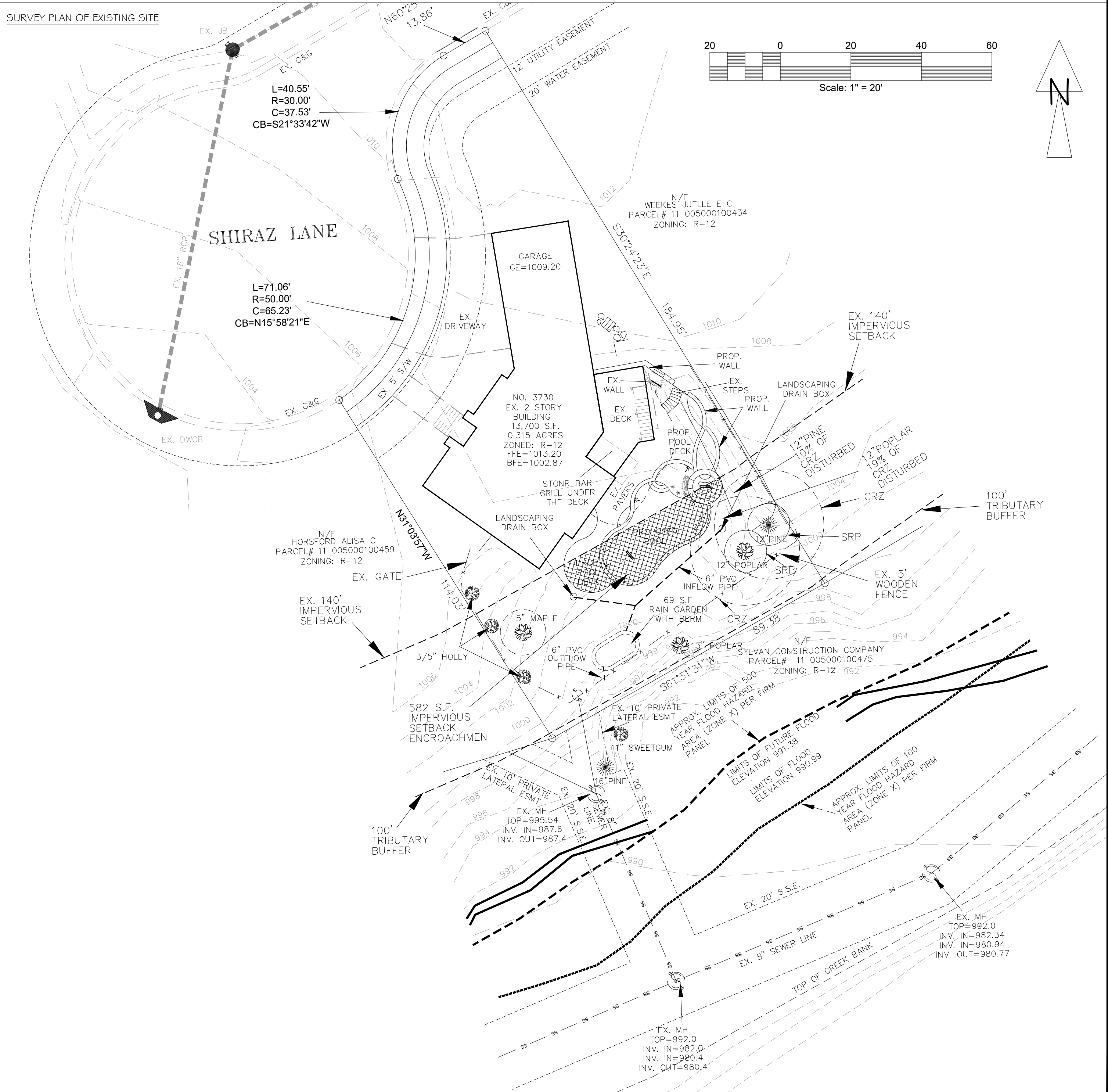
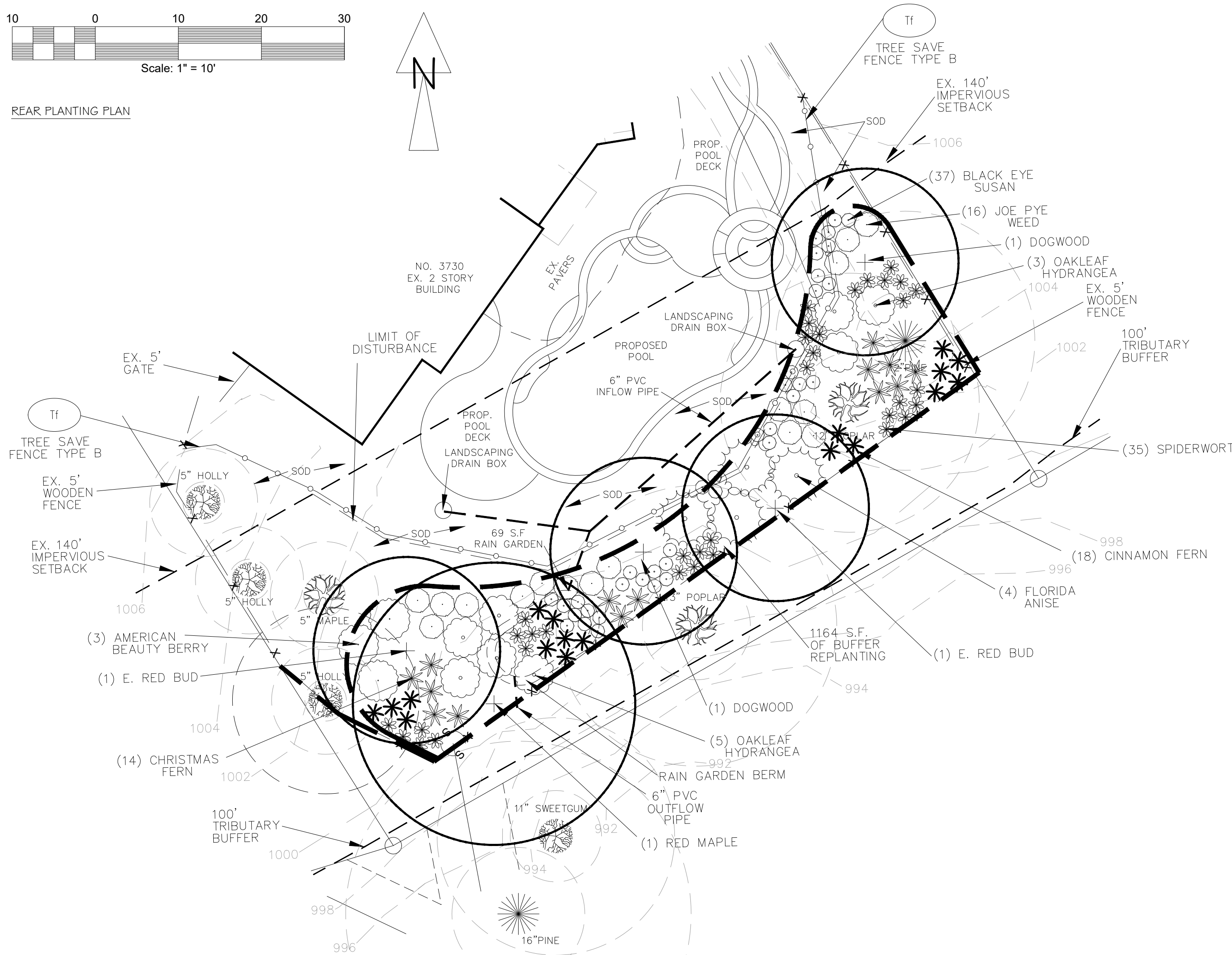
* = NATIVE PLANT

PLANTING SITE NOTES:

- ENTIRE BUFFER PLANTING AREA TO BE AFTER INSTALLATION OF TREES AND SHRUBS WITH ' ROUNDSTONE SEED COMPANY RIPARIAN BUFFERS SEED MIX ' AT A RATE AS RECOMMENDED BY MANUFACTURER.
- HOME OWNER WILL REMOVE DOWNED TREES AND INVASIVE PLANT SPECIES ON THE PROPERTY.
- 3" OF PINE STRAW MULCH SHALL COVER ALL PLANTING AREA.
- OPTIMAL PLANTING TIME FROM NOVEMBER 1ST THRU MARCH 31ST.



REAR PLANTING PLAN



Client

Praveen Reddy
3730 Shiraz Lane
Alpharetta, Ga. 30022

Contact: Praveen Reddy
678-983-9197

NO.	BY	APPROVED	DATE
1	LM	CLIENT SUBMITTAL	09-24-21
2	LM	REV 1	10-15-21
3	LM	REV 2	11-03-21
4	LM	REV 3	11-22-21
5	LM	REV 4	12-7-21

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Project Title

Reddy Residence

Project Location

3730 Shiraz Lane
Alpharetta, GA 30022

Project No.

21-045-SFD

Drawn By:

LANCE MULLER, R.L.A.

Date:

09.16.2021

Sheet Title

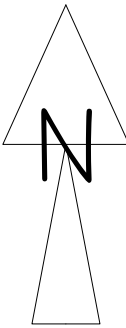
Buffer / Mitigation Plan

Sheet Number

ADDITIONAL BUFFER MITIGATION PERCENTAGE CALCULATIONS

ORIGINAL BUFFER REPLANTING AREA = 1164 SQ. FT.

ADDITIONAL MITIGATION PLANTING AREA = 410 SQ. FT. = 35%



Contact: Praveen Reddy
678-983-9197

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Sheet Number



RED MAPLE



BLACK EYED SUSAN



EASTERN RED BUD



SHASTA DAISY



DOGWOOD



OAKLEAF HYDRANGEA



CHRISTMAS FERN



SPIDERWORT



AMERICAN BEAUTY BERRY



FLORIDA ANISE



CINNAMON FERN



JOE PYE WEED



LIMELIGHT HYDRANGEA

UTILITY NOTE:

1. ALL TREES MUST BE PLANTED OUTSIDE OF ANY UTILITY EASEMENTS UNLESS APPROVED BY THE CITY ARBORIST OR UTILITY PROVIDER.

GENERAL CONTRACT NOTES:

1. SURVEY/ BASE/ TREE SURVEY: THIS DRAWING IS TO CONVEY INFORMATION RELATIVE TO PLANTING ONLY. FOR ALL OTHER INFORMATION RELATIVE TO SURVEY, GRADING, HYDROLOGY, EROSION CONTROL, LIGHTING ARCHITECTURE ECT. REFER TO THE APPROPRIATE CONSULTANT DRAWINGS.
2. WETLANDS, FLOOD PLANES, STREAMS, AND ASSOCIATED BUFFERS: THIS SITE INCLUDES PROTECTED WATERS OF THE STATE. THE CONTRACTOR SHALL IN NO MANNER DISTURB ANY AREA OUTSIDE OF THE PERMITTED LIMITS OF WORK / TREE PROTECTION FENCE. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY AND ALL FINES OR PENALTIES ASSOCIATED WITH THE DISTURBANCE OF ANY OF THESE AREAS OUTSIDE OF THE PERMITTED. THE CONTRACTOR SHALL NOTIFY THE GENERAL CONTRACTOR, OWNER, AND LANDSCAPE ARCHITECT IMMEDIATELY IF THERE ARE ANY CONFLICT.
3. LIMITS TO WORK / PERMIT: THE WORK SHALL ONLY COMMENCE WITH THE ISSUANCE OF A PERMIT FROM THE CITY OF ALPHARETTA. THE CONTRACTOR SHALL STAY WITHIN THE PERMITTED LIMITS OF WORK. FAILURE TO STAY WITHIN THE LIMITS MAY RESULT IN A STOP WORK ORDER.
4. CALL BEFORE YOU DIG - 811- UTILITY LOCATION: IT IS THE CONTRACTORS RESPONSIBILITY TO HAVE ALL UTILITIES LOCATED PRIOR TO ANY DIGGING / PRIOR TO CONSTRUCTION THE CONTRACTOR IS RESPONSIBLE FOR CONTACTING THE UTILITIES PROTECTION CENTER IN GEORGIA @ 811, 72 HOURS BEFORE DIGGING (EXCLUDING HOLIDAYS AND WEEKENDS) AS SPECIFIED IN THE 'CALL-BEFORE-YOU-DIG' LAW.
5. SUBSTITUTIONS: NO TREE SPECIES OR SIZE SUBSTITUTION WILL BE CONSIDERED UNLESS A SUBSTITUTION HAS BEEN SUBMITTED IN WRITING TO THE MUNICIPALITY AND APPROVED BY THE MUNICIPALITY.
6. THE DESIGNER SHALL NOT BE RESPONSIBLE FOR CONSTRUCTION, MEANS, METHODS, TECHNIQUES, OR PROCEDURES UTILIZED BY ANY CONTRACTOR, NOR FOR THE SAFETY OF PUBLIC OR ANY OF THE CONTRACTORS EMPLOYEES, OR FOR THE FAILURE OF ANY CONTRACTOR CARRY OUT THE WORK IN ACCORDANCE WITH THE CONTRACT DOCUMENTS. NO DISCREPANCY IN CONSTRUCTION DRAWINGS OR SPECIFICATIONS SHALL CAUSE DEFECTIVE OR INAPPROPRIATE MATERIAL TO BE USED OR POOR WORKMANSHIP TO BE ALLOWED/ACCEPTED. THE DESIGNER SHALL NOT BE LIABLE FOR SAFETY RELATED ISSUES RELATIVE TO TREE PLANTINGS REQUIRED BY ANY MUNICIPALITY TO BE WITHIN THE ROW.
7. SITE SAFETY: IT IS SOLELY THE CONTRACTOR'S RESPONSIBILITY TO INSURE THAT THE CONTRACTOR'S WORK SITE BE KEPT IN A SAFE CONDITION FOR WORKERS AND THE PUBLIC DURING THE COURSE OF THE CONSTRUCTION AND LEAVE THE SITE IN A SAFE CONDITION AT THE END OF EACH WORK DAY.
8. UTILITY LOCATION: IT IS THE CONTRACTOR'S RESPONSIBILITY TO HAVE ALL UTILITIES LOCATED PRIOR TO CONSTRUCTION. THE CONTRACTOR IS RESPONSIBLE FOR CONTACTING THE UTILITY PROTECTION CENTER @ 811. ANY UTILITIES SHOWN ON THE DRAWINGS MAY HAVE CHANGED OR OTHER UTILITIES MAY NOT BE SHOWN ON THIS DRAWING.
9. TREE MEASUREMENTS: SPECIFIC TO MUNICIPAL REQUIREMENTS ALL DECIDUOUS AND EVERGREEN TREES SHALL FIRST MEET THE CONDITIONS OF CALIPER AND THEN HEIGHT CALIPER MEASUREMENTS ARE TAKEN AT 6" ABOVE THE GROUND FOR TREES 4" CAL. OR LESS AND 12" ABOVE THE GROUND FOR TREES OVER 4" CALIPER. SHRUBS SHALL MEET THE REQUIREMENTS FOR HEIGHT AND CONTAINER / B&B SIZE.
10. CLEANING: THE CONTRACTOR SHALL BE RESPONSIBLE TO CLEAN AND REMOVE/DISPOSE , IN A LEGAL MANNER FROM THE SITE ALL DEBRIS THAT IS PART OF THE CONTRACTOR'S OPERATION.
11. PLANTING CONDITIONS: IT IS THE LANDSCAPE CONTRACTORS RESPONSIBILITY TO COORDINATE WITH THE GENERAL CONTRACTOR AND ACCEPT PLANTING / GRADED / SITE CONDITIONS. PLANT MATERIAL SHALL NOT BE INSTALLED IN AREAS WHICH HAVE NOT BEEN BROUGHT TO FINISHED GRADE OR IN AREAS WHERE BUILDING MATERIAL HAVE BEEN BURIED OR NOT PROPERLY REMOVED FROM THE SITE. THE LANDSCAPE CONTRACTOR IS RESPONSIBLE TO "FINE GRADE" THE SITE. THE CONTRACTOR SHALL BRING TO ATTENTION OF THE LANDSCAPE ARCHITECT ANY SITE CONDITIONS WHICH WILL ADVERSELY EFFECT THE GROWTH OF THE PLANT MATERIAL.

GENERAL CONTRACT NOTES CONTINUED:

12. ORGANIC MULCH: SHALL BE PINE STRAW. ALL PLANTED AREAS SHALL BE MULCHED WITH 3" FRESH MULCH CURRENT CROP 'SETTLED'. TREES IN AREA SHALL BE MULCHED WITH A 6" DIAMETER CIRCLE TO A DEPTH OF 3" SETTLED.
13. TOPSOIL: 2" OF NEW OR STOCKPILED TOPSOIL SHALL BE ADDED TO ALL AREAS TO BE SEEDED OR PLANTED WITH ANNUALS / GROUND COVER. TOPSOIL SHALL BE ADDED TO TREES AND SHRUB BEDS AT A RATIO OF 1/3 TOPSOIL TO 2/3 SITE SOIL. TOPSOIL SHALL BE NATURAL, FRIABLE, FERTILE, FINE LOAMY SOIL.
14. MAINTENANCE DURING CONSTRUCTION AND AFTER FINAL ACCEPTANCE: IT IS THE CONTRACTORS RESPONSIBILITY TO MAINTAIN THE LANDSCAPE INSTALLATION AS PER PERMITTED ARBORIST'S MAINTENANCE AGREEMENT.
15. PLANT GUARANTEE AND WARRANTY: ALL PLANT MATERIAL SHALL BE GUARANTEED FOR A PERIOD OF TWO YEARS AT BEGINNING OF FINAL ACCEPTANCE.

GENERAL NOTES:

1. IF THERE ARE INCONSISTENCIES BETWEEN ANY ITEMS ON THESE PLANS THE MORE STRICT INTERPRETATION OF THOSE REQUIREMENTS SHALL BE FOLLOWED, PLEASE CONTACT THE CITY ARBORIST FOR ANY INSPECTIONS.
2. PRIOR TO TREE SAVE FENCE INSPECTION PROVIDE THE CITY ARBORIST WITH PROOF OF PRE-PAYMENT OF THE REQUIRED TREE CARE PLAN TO A REPUTABLE TREE CARE COMPANY.
3. TREE SAVE FENCE AND SIGNAGE FOR THE ENTIRE SITE MUST BE INSTALLED, INSPECTED AND APPROVED PRIOR TO INSTALLATION OF EROSION CONTROL MEASURES. NO LAND DISTURBANCE OR DEMOLITION IS ALLOWED BEFORE THIS INSPECTION AND APPROVAL HAS OCCURRED.
4. THE CRZ OF SPECIMEN TREES PLUS ALL BUFFERS SHALL BE PROTECTED BY WIRE-BACK TREE SAVE FENCING WITH METAL SUPPORT POSTS OR CHAIN LINK AND TREE SAVE SIGNAGE
5. INSTALLATION OF TREE SAVE FENCE WILL INVOLVE NO TRENCHING
6. ALL EXISTING TREES IDENTIFIED FOR PRESERVATION OR FOUND WITHIN TREE SAVE AREA MUST BE FULLY PROTECTED DURING ALL PHASES OF THIS PROJECT.
7. ADDITIONAL TREES DEEMED STRUCTURALLY UNSAFE BY THE CITY ARBORIST OR THE PROJECT ARBORIST MAY BE REQUIRED TO BE REMOVED PRIOR TO CO.
8. ALL ROOTS ENCOUNTERED 1/2" OR GREATER DURING GRADING OR EXCAVATING OPERATIONS SHALL BE CLEAN CUT UNDER THE DIRECTION OF AN ISA CERTIFIED ARBORIST.
9. ANY LIMBS OVERHANGING THE LOD THAT MAY BE RIPPED, TORN, OR DAMAGED DURING CONSTRUCTION SHALL BE PROPERLY PRUNED UNDER THE DIRECTION OF AN ISA CERTIFIED ARBORIST.
10. IT IS THE OWNERS RESPONSIBILITY TO MAINTAIN THE VEGETATION AND REMOVE TRASH AND DEBRIS AROUND THE PERIMETER OF THE PROJECT, EVEN IF WITHIN THE PUBLIC ROW, IN ACCORDANCE WITH THE CITY OF ALPHARETTA PROPERTY MAINTENANCE CODE.
11. ALL APPROVED REVISIONS TO THE LOCATION OF THE TREE SAVE FENCE NEED TO BE COORDINATED WITH THE LAND DISTURBANCE INSPECTION PRIOR TO RELOCATION.

LANDSCAPE NOTES:

1. THE CITY ARBORIST MUST INSPECT THE SITE BEFORE INSTALLATION OF EROSION CONTROL MEASURES. LAND DISTURBANCE WITHOUT A SITE INSPECTION AND APPROVAL BY THE CITY ARBORIST WILL RESULT IN A "STOP WORK ORDER" AND FINES
2. IF TREE SURVEY INACCURACIES ARE FOUND ON-SITE, A STOP WORK ORDER WILL BE ISSUED UNTIL REVISED PLANS ARE APPROVED AND PROCESSED BASED ON ACCURATE INFORMATION.
3. DESIGN LANDSCAPE ARCHITECT OR PROJECT ARBORIST WILL INSPECT, VERIFY, AND APPROVE THE LANDSCAPE HAS BEEN PLANTED PER THE APPROVED PLANS AND CITY STANDARDS PRIOR TO CONTACTING THE CITY ARBORIST FOR A GO INSPECTION.
4. TREES AGREED UPON TO BE SAVED ARE THE RESPONSIBILITY OF THE OWNER.
5. A 4" LAYER OF MULCH IS REQUIRED FOR THE CRZ OF SPECIMEN TREES, TREES OF QUALITY AND TREE GROUPINGS. MULCH MUST BE APPLIED PRIOR TO START OF CONSTRUCTION AND SHALL NOT TOUCH THE TRUNKS OF THE TREE(S).
6. A MINIMUM 2" LAYER OF MULCH IS REQUIRED FOR ALL EXISTING, NON-SPECIMEN, LANDSCAPE TREE, INCLUDING STREET AND PARKING LOT TREES.
7. ALL MULCH MUST BE ORGANIC MULCH CONSISTING OR WOOD CHIPS, SHREDDED BARK, PINE NEEDLES, OR SIMILAR. SYNTHETIC MULCH OR ROCKS ARE NOT APPROVED FOR USE IN THE CITY OF ALPHARETTA.
8. ALL NEWLY PLANTED TREES SHALL HAVE VISIBLE ROOT FLARES AR FINISHED GRADE. NO CIRCLING ROOTS SHALL BE ALLOWED ON PLANTED TREES. THE UPPER TWO RINGS OF THE WIRE BASKET, ALL BURLAP, AND STRAPPING MUST BE CUT AND REMOVED PRIOR TO BACKFILLING.
9. PLANT SIZES(CALIPER AND HEIGHT) MUST MATCH THE SIZE SHOWN ON PLANS. PLANTS THAT DO NOT MEET THE MINIMUMS WILL NOT BE ACCEPTED. E.G. 3 INCH CALIPER TREES MUST BE 3 INCHES OR LARGER. PLANT HEIGHT MEASUREMENT IS TAKEN FROM THE TOP OF THE MAIN BODY AND NOT AT THE TIP OF THE TOPMOST GROWTH.
10. ALL NEWLY PLANTED TREES SHALL BE EQUIVALENT IN QUALITY TO FLORIDA #1 GRADE OR BETTER. ALL TREES OF LESSER QUALITY SHALL BE REJECTED BY THE CITY ARBORIST.
11. WATER BAGS OR A DRIP IRRIGATION SYSTEM MUST BE PROVIDE FOR ALL TREES IMMEDIATELY AFTER PLANTING AND REMAIN THROUGH ESTABLISHMENT.
12. WHEN WATERING BAGS ARE USED MANUFACTURES RECOMMENDATIONS MUST BE FOLLOWED FOR PROPER SIZING AND WATERING SCHEDULES. BAGS WILL BE FILLED WEEKLY AND DURING DROUGHTS FOR A MINIMUM OF 18 MONTHS AFTER INSTALLATION.
13. NO TRENCHING ALLOWED IN TREE SAVE AREA INCLUDING IRRIGATION.
14. TREE PIT DRAINAGE TESTING IS REQUIRED WHEN TREES ARE PLANTED IN PARKING LOT ISLANDS, SIDEWALK TREE PITS, ROADWAY MEDIANS, OR SIMILAR LOCATIONS. PLEASE REFER TO CITY DETAILS REGARDING PLANTING PIT OR LANDSCAPE ISLAND CONSTRUCTION. FILL EACH PIT WITH WATER. IF PERCOLATION IS LESS THAN 100% WITHIN 12 HOUR PERIOD , USE AN AUGER TO DRILL A 1 INCH HOLE TO A DEPTH OF FOUR FEET BELOW THE BOTTOM OF THE PIT. FILL HOLE WITH DRAINAGE GRAVEL AND COVER WITH A SOIL SEPARATOR. RETEST PIT. IF DRAINAGE IS STILL UNSATISFACTORY, CITY ARBORIST AND PROJECT ARBORIST MUST BE NOTIFIED IN WRITING OF LOCATIONS WITH POOR DRAINAGE TO PROVIDE A SOLUTION BEFORE PLANTING. TESTING RESULTS MUST BE PROVIDED TO THE CITY ARBORIST.
15. ALL BUFFER SHALL BE PLANTED WHERE SPARSE AND CODE REQUIRED SCREENING SHALL BE INSTALLED IN ORDER TO CREATE A YEAR ROUND OPAQUE SCREEN WITHIN 2 YEARS OF CONSTRUCTION OR AS DIRECTED BY THE CITY OF ALPHARETTA. DURING CONSTRUCTION OR AT THE TIME OF CO THE CITY MAY REQUIRE ADDITIONAL PLANTING TO MEET THESE REQUIREMENTS ABOVE WHAT IS SHOWN ON THE APPROVED LANDSCAPE PLAN.
16. ALL TREE ANCHORING DEVICES SHALL BE REMOVED FROM THE TREE AFTER ONE COMPLETE GROWING SEASON OR ONE YEAR AFTER PLANTING WHICHEVER IS GREATER.
17. PROPERTY OWNER SHALL BE RESPONSIBLE FOR THE CARE AND MAINTENANCE OF THE TREES AND LANDSCAPING THAT FRONT THEIR PROPERTY WITHIN THE ROW.
18. LANDSCAPE CONTRACTORS ARE REQUIRED TO ATTEND THE CITY OF ALPHARETTA PRE-CONSTRUCTION CLASS PRIOR TO BEGINNING ANY WORK ON ANY PROJECT. PLEASE CALL (678)-297-6070 FOR INFORMATION AND TO RESERVE A SPOT.
19. NO TREE SHALL BE PLANTED ON ANY AREA OF EARTHEN DAM OR EMBANKMENT.
20. ALL TREES MUST BE PLANTED OUTSIDE OF ANY UTILITY EASEMENTS, UNLESS APPROVED BY THE CITY ARBORIST OR UTILITY PROVIDER.

Client

Praveen Reddy
3730 Shiraz Lane
Alpharetta, Ga. 30022

Contact: Praveen Reddy
678-983-9197

NO.	BY	APPROVED	DATE
1	LM	CLIENT SUBMITTAL	09-24-21
2	LM	REV 1	10-15-21
3	LM	REV 2	11-03-21
4	LM	REV 3	11-22-21
5	LM	REV 4	12-7-21

This drawing and their reproductions are the property of the landscape architect and may not be reproduced, published, or used in whole or in part without the written permission of the landscape architect. The survey provided is for informational purposes only and the Landscape Architect and/or Courtland Landscape Architecture & Construction, Inc. shall not be held liable for any inaccuracies.



Project Title

Reddy Residence

Project Location

3730 Shiraz Lane
Alpharetta, GA 30022

Project No.

Drawn By: 21-045-SFD

LANCE MULLER, R.L.A.

Date: 09.16.2021

Sheet Title

Detail Plan

Sheet Number

CITY OF ALPHARETTA

PUBLIC HEARING APPLICATION

FOR OFFICE USE ONLY

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: Miles Hansford & Tallant, LLC Telephone: 770-781-4100

Address: 202 Tribble Gap Road Suite: 200

City Cumming State: GA Zip: 30040 Fax: 770-781-9191

Mobile Tel: N/A Email: eunderwood@mhtlegal.com / tfisher@mhtlegal.com

Subject Property Information:

Address: 3730 Shiraz Lane Current Zoning: R-12

District: 1 Section: 2 Land Lot: 10 Parcel ID: 11 005000100442

Proposed Zoning: R-12 Current Use: Single Family Dwelling

This Application For (Check All That Apply):

- | | | |
|---|---|------------------------------------|
| ☐ Conditional Use | ☐ Master Plan Amendment | ☐ Exception |
| ☐ Rezoning | ☐ Master Plan Review | |
| ☒ Variance | ☐ Public Hearing | |
| ☐ Comprehensive Plan Amendment | ☐ Other (Specify): _____ | |

APPLICANT REQUEST AND INTENT

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

A single family residence currently exists on the Subject Property. The Applicant owns and occupies this residence and now seeks to build a pool deck and in-ground pool in the rear yard of the Subject Property.

Applicant's Request (Please itemize the proposal):

Applicant requests to reduce the impervious setback from 150-feet to 124-feet.

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

The requested reduction of the impervious setback from 150' to 124' would facilitate the Applicant's intention to build a pool deck and in ground pool in the rear yard of the Subject Property.

PROPERTY OWNER AUTHORIZATION

Property Owner Information:

Contact Name: Pravenn Reddy

Telephone: 678-983-9197

Address: 3730 Shiraz Lane

Suite: _____

City Alpharetta

State: GA

Zip: 30022

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: Praveen Reddy

Telephone: 678-983-9197

Address: 3730 Shiraz Lane

Suite: _____

City Alpharetta

State: GA

Zip: 30022

So Sworn and Attested:

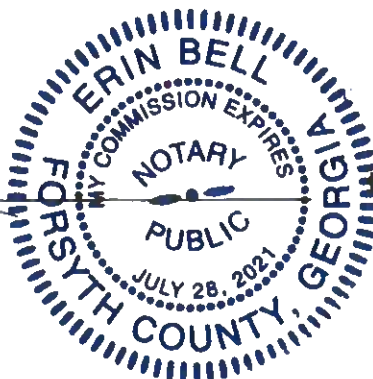
Owner Signature: _____

Date: _____

3/31/2021

Notary: _____

Notary Signature: _____



Date: _____

03/31/2021

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: **Praveen Reddy**

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: **N/A** Position: _____

Description of Contribution: _____ Value: _____

Description of Contribution: _____ Value: _____

Description of Contribution: _____ Value: _____

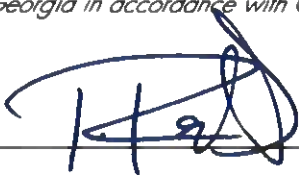
Description of Contribution: _____ Value: _____

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: _____

3/31/2021

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.

The subject property is located along a corridor of a perennial stream which is within a seven-mile radius upstream of the Roswell water supply intake. In addition, the shape, size, and topography of the Subject Property require that the property be developed as proposed by the Applicant. The buffers and setbacks required along the stream substantially limit the buildable area of the Subject Property given the location of the stream. Without the proposed variance, the rear yard of the Subject Property is rendered completely unbuildable.

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

Yes, the buffers and setbacks required along the stream substantially limit the buildable area of the Subject Property given the location of the stream. Without the proposed variance, the back portion of the Subject Property is rendered completely unusable.

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

The variance is being requested because of the location of the Subject Property along a corridor of a perennial stream which is within a seven-mile radius upstream of the Roswell water supply intake. The location of the stream creates a unique condition on the Subject Property that is not generally applicable to other properties.

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.

The proposed impervious setback encroachment will not cause substantial detriment to the public safety, health, or welfare of the public, nor will it injure other property, as downstream water quality will be preserved or improved by water quality improvements and flood control measures, all in accordance with the UDC and applicable State regulations. The stormwater management facilities for the project will be designed to maintain or improve water quality conditions downstream of the development.

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.

CITIZEN PARTICIPATION FORM - PART A

This form must be completed and submitted with the applicant's completed Public Hearing Application. Applications submitted to the City of Alpharetta without a completed Citizen Participation Form - Part A will not be accepted.

Public Hearing or Project Name: _____

Contact Name: Miles Hansford & Tallant, LLC. - J. Ethan Underwood Telephone: 770-781-4100

The following people will be notified of this application and provided information describing the subject proposal. Please note that ALL adjoining property owners MUST be notified. Use additional pages as needed.

Owners of properties located within 500 ft. of the Subject Property

City officials

Affected government departments

Interested parties noted on any list provided by the City

Method by which these individuals will be contacted. Please mark all that apply. *If you select "Other," please provide a description of the method of contact that will be used.*

- | | |
|--|--|
| ☒ Letter | ☐ Personal Visits |
| ☐ Telephone | ☐ Group Meeting |
| ☐ Email | ☒ Other (Please Specify) CZIM |

Please describe the method(s) by which these individuals will have the opportunity to respond or contact the applicant with questions or concerns about the proposal.

Individuals can contact Ethan Underwood via telephone at 770-781-4100 or via email eunderwood@mhtlegal.com as well as during the public participation process.



**Miles Hansford
& Tallant, LLC**
ATTORNEYS AT LAW

202 Tribble Gap Road | Suite 200 | Cumming, Georgia 30040

178 S Main Street | Suite 310 | Alpharetta, Georgia 30009

770-781-4100 | www.mhtlegal.com

J. Ethan Underwood
eunderwood@mhtlegal.com

April 1, 2021

CAMPAIGN DISCLOSURE

Applicant:	Praveen Reddy
Subject Property:	3730 Shiraz Lane, Alpharetta, GA 30022, Designated as Fulton County Parcel ID No. 11 005000100442
Proposed Action:	Variance to allow reduction of 150-foot Impervious Surface Setback to be 124 feet
Current Zoning:	R-12
Proposed Zoning:	R-12 (same as current zoning)
Proposed Use:	Single Family Dwelling (same as current use)
ROW Access:	Shiraz Lane

To Whom It May Concern:

Pursuant to Section 36-67A-3 of the Official Code of Georgia Annotated, adopted by the Georgia General Assembly, effective July 1, 1986, please be advised that as of the date of this letter, Miles, Hansford & Tallant, LLC has made the following campaign contributions to local officials of Oakwood:

NONE

This letter constitutes the disclosure of campaign contributions with respect to the above-referenced application.

Sincerely,

Ethan Underwood
Attorney for Applicant

J. Ethan Underwood
underwood@mhtlegal.com

RESERVATION OF CONSTITUTIONAL AND OTHER LEGAL RIGHTS

Applicant:	Praveen Reddy
Subject Property:	3730 Shiraz Lane, Alpharetta, GA 30022, Designated as Fulton County Parcel ID No. 11 005000100442
Proposed Action:	Variance to allow reduction of 150-foot Impervious Surface Setback to be 124 feet
Current Zoning:	R-12
Proposed Zoning:	R-12 (same as current zoning)
Proposed Use:	Single Family Dwelling (same as current use)
ROW Access:	Shiraz Lane

This Reservation of Constitutional and Other Legal Rights ("the Reservation") is intended to supplement and form a part of the land use application (the "Application") of the Applicant and the owners of the Subject Property and to put the City of Alpharetta on notice of the Applicant's assertion of its constitutional and legal rights.

The Applicant has filed a timely application, has provided all required information and has submitted the appropriate application fees. The Application meets all judicial and statutory requirements for approval.

The Applicant asserts the statements contained in the application package submitted herewith, incorporated herein by reference, and as may be amended (the "Application") describing justification for the Application, as if such were fully stated herein. The Applicant incorporates all statements made in the Public Hearing Application submitted concurrently herewith as its letter of intent required by the City of Alpharetta.

A refusal by the City of Alpharetta to approve the Application, as requested by the Applicant, will impose a disproportionate hardship on the Applicant and owners of the Subject Property without benefiting any surrounding property owners. There is no reasonable use of the Subject Property except for the continued use as proposed by the Applicant.

A refusal by the City of Alpharetta to approve the Application, as requested by the Applicant, will be unconstitutional in that it will constitute a taking of the Applicant's and owner's property rights without first paying fair, adequate, and just compensation for such rights in violation of Article I, Section III, Paragraph I of the Georgia Constitution of 1983, as amended, and the Fifth and Fourteenth Amendments to the Constitution of the United States.

A denial of the Application, as requested by the Applicant, will constitute an arbitrary and capricious act by the City of Alpharetta without any basis for such, and will constitute an abuse of discretion in violation

of Article I, Section I, Paragraph I of the Georgia Constitution of 1983, as amended and the Due Process Clause of the Fifth and Fourteenth Amendments to the Constitution of the United States.

A refusal by the City of Alpharetta to approve the Application, as requested by the Applicant, will prohibit the only viable economic use of the Subject Property, will be unconstitutional and will discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and owner and the owners of similarly situated properties in violation of Article I, Section I, Paragraph II of the Georgia Constitution of 1983, as amended and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

The City of Alpharetta cannot lawfully impose more restrictive standards on the Subject Property's development than are presently set forth in the UDC. To do so will constitute a taking of the Subject Property as set forth above, and also amount to an unlawful delegation of the Board's authority in response to neighborhood opposition, in violation of Article IX, Section II, Paragraph IV of the Georgia Constitution of 1983, as amended. Any zoning conditions or other restrictions imposed on the Subject Property without the consent of the Applicant and property owner that do not serve to ameliorate the negative impacts of the development are invalid and void. As such, the Applicant and owner reserve the right to challenge any such zoning conditions and other restrictions. The Applicant and owner also reserve the right to challenge any unlawful exactions, whether they are in the form of illegal impact fees or otherwise.

Furthermore, this Reservation also constitutes an Ante Litem Notice pursuant to O.C.G.A. § 36-33-5, which places the City of Alpharetta and all other agents of the City on notice of the Applicant's and owner's intent to seek monetary damages and attorney's fees against the City of Alpharetta for any rezoning action, zoning condition, illegal impact fee and any other unlawful restrictions and exactions that are imposed on the Subject Property, the Applicant and the owner.

Finally, the Applicant and owner assert that the UDC, Future Development Map and Comprehensive Plan were not adopted in compliance with the laws or constitutions of the State of Georgia or of the United States, and a denial of the Applicant's request based upon provisions illegally adopted will deprive the Applicant and owner of due process under the law.

By filing this Reservation, the Applicant reserves all rights and remedies available to it under the United States Constitution, the Georgia Constitution, all applicable federal, state, and local laws and ordinances, and in equity.

The Applicant and owner respectfully request that this Application be approved as requested by the Applicant and in the manner shown on the Application, which is incorporated herein by reference. This Reservation forms an integral part of the Application, and we ask that the City of Alpharetta include this Reservation with the Applicant's other application documents. The Applicant and owner reserve the right to amend and supplement this Reservation at any time.



J. Ethan Underwood
underwood@mhtlegal.com

LETTER OF INTENT

Applicant:	Praveen Reddy
Subject Property:	3730 Shiraz Lane, Alpharetta, GA 30022, Designated as Fulton County Parcel ID No. 11 005000100442
Proposed Action:	Variance to allow reduction of 150-foot Impervious Surface Setback to be 124 feet
Current Zoning:	R-12
Proposed Zoning:	R-12 (same as current zoning)
Proposed Use:	Single Family Dwelling (same as current use)
ROW Access:	Shiraz Lane

This Letter of Intent is intended to comply with the application procedures established by The City of Alpharetta, GA for submittal of land use applications, as required by the City of Alpharetta Unified Development Code (the "UDC"), City of Alpharetta Public Hearing Application Requirements, and other City of Alpharetta Ordinances and Standards.

The Applicant has submitted contemporaneously with this Letter of Intent the Public Hearing Application package for a variance, as may be amended (the "Application"). With regard to any zoning, conditional use permit, and variances requested in the Application (as applicable), the Applicant incorporates all statements made in the Public Hearing Application as part of this Letter of Intent.

ZONING CATEGORY AND USE WILL REMAIN THE SAME

The Applicant intends to maintain the same zoning category, R-12, and the same use, Single Family Dwelling, as is currently in effect.

REQUESTED VARIANCE TO THE IMPERVIOUS SETBACK REQUIREMENT

The Applicant requests a variance to allow a 124-foot impervious surface setback instead of a 150-foot impervious surface setback along the rear boundary of the Subject Property. (See City of Alpharetta UDC § 3.3.12(C)(1)(b)).

The Southern portion of the Subject Property is located within an impervious surface setback. Further, the impervious setback is 150-foot due to the fact that the Subject Property is located within a seven-mile radius upstream of the Roswell water supply intake. This configuration of the Subject Property creates a unique condition that is not generally applicable to other properties. If the impervious setback is reduced to 124 feet, then the Applicant will be able to utilize his backyard to build a pool deck and in ground pool.

The Subject Property's narrow size and shape contribute to the extraordinary and exceptional conditions necessitating the requested variance. The rear yard of the Subject Property is rendered unbuildable by the current 150-foot impervious setback. Without the requested variance, the Applicant will be unable to use the Subject Property in a lawful manner.

The application of the UDC standards as they relate to the Subject Property would create an unnecessary hardship because a 150' impervious setback would deprive the Applicant of an economically viable use of the Subject Property by preventing the Applicant from using the entirety of the back portion of the Subject Property.

Reducing the 150-foot impervious setback to 124 feet will not cause a substantial detriment to the public good. Further, this reduction would not impair the purpose and intent of the UDC because the Applicant is planning to mitigate the reduction of the pervious surface on the Subject Property and will maintain any landscaping as required by the UDC. Also, the Applicant intends to enhance the aesthetic appeal of the Subject Property.

As shown above, the requested variance is necessary because the impervious setback requirement will result in a hardship 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.

CONCLUSION

Because the Applicant's Proposal complies with all criteria appropriate for consideration for the Application, the Applicant respectfully requests that this Application, which is incorporated herein by reference, be approved as requested. The Applicant and owner reserve the right to amend and supplement this Letter of Intent at any time.

Sincerely,



Ethan Underwood
Attorney for Applicant



J. Ethan Underwood
eunderwood@mhtlegal.com

IMPERVIOUS SETBACK VARIANCE APPLICATION MATERIALS

Applicant:	Praveen Reddy
Subject Property:	3730 Shiraz Lane, Alpharetta, GA 30022, Designated as Fulton County Parcel ID No. 11 005000100442
Proposed Action:	Variance to allow reduction of 150-foot Impervious Surface Setback to be 124 feet
Current Zoning:	R-12
Proposed Zoning:	R-12 (same as current zoning)
Proposed Use:	Single Family Dwelling (same as current use)
ROW Access:	Shiraz Lane

A) DESCRIPTION OF ENCROACHMENT

Praveen Reddy (the "Applicant") proposes area of intrusion into the impervious surface setback area of 0.10 acres, or 4,469 sf, to include a pool deck and in ground pool.

The intrusion length along the stream is 89.38 ft. The 150-foot Impervious setback intrusion is 4,469 sf or 0.10 acres.

B) STORMWATER MANAGMENT PLAN

The storm water for the site will be collected in storm drains and flows into a detention/water quality pond. For the sake of water quality, the water will be routed to the proper Best Management Practice (BMP) as set forth in the Georgia Stormwater Management Manual. Then once treated, the water will be released at flow rates required by the Forsyth County.

C) STATEMENT OF EXTRAORDINARY HARDSHIP AND EXPLANATION OF WHY AN ALTERNATIVE PLAN IS NOT FEASIBLE

The Applicant respectfully requests that impervious surface setback variance be granted as described in the attached variance application (the "Application"), incorporated herein by this reference.

The Applicant seeks to construct a pool deck and in ground pool on the back portion of the Subject Property. The Subject Property borders residentially-zoned property. As such, the Subject Property is encumbered with substantial buffers and setbacks from adjoining properties and state waters, which substantially limit the amount of buildable area.

The Applicant seeks to construct a pool deck and in ground pool on the back portion of the Subject Property and to do so requires variances to the UDC's provisions requiring an impervious surface setback requirement. The area subject to the impervious surface setback is wooded.

No alternative plan showing the project without the variances is feasible because the Subject Property is otherwise too narrow to facilitate adequate construction for the project.

For the sake of water quality, stormwater from the site will be routed to the proper Best Management Practices (BMPs) as set forth in the Georgia Stormwater Management Manual and as required by the City of Alpharetta. These measures will preserve downstream water quality from stormwater runoff.

With regard to preserving stream peak flow rates and downstream water quality, the existing lake will be preserved, and continue to protect downstream water quality by filtering runoff. As downstream peak flow rates and water quality will be protected, the city's interest in facilitating the Applicant's rights to use its property outweighs any interest in maintaining the impervious surface setback.

D) DESCRIPTION OF SIZE, SHAPE, TOPOGRAPHY, SLOPE, SOILS, VEGETATION, AND OTHER PHYSICAL CHARACTERISTICS

The Subject Property is approximately 0.315 acres, located at the end of Shiraz Lane. The property is semi-rectangular in shape with a stream traversing the back portion of the property.

The Subject Property is partially wooded with a single-family residence already located on the property. The topography is gently sloping from the exterior of the property, and then more sharply slopes toward the stream.

The area subject to the impervious surface setback is currently wooded, with trees or wild vegetation.

The soils of the subject property are composed of organic matter and are typical of those found in Northeast Georgia woodlands.

E) BUFFER MITIGATION PLAN

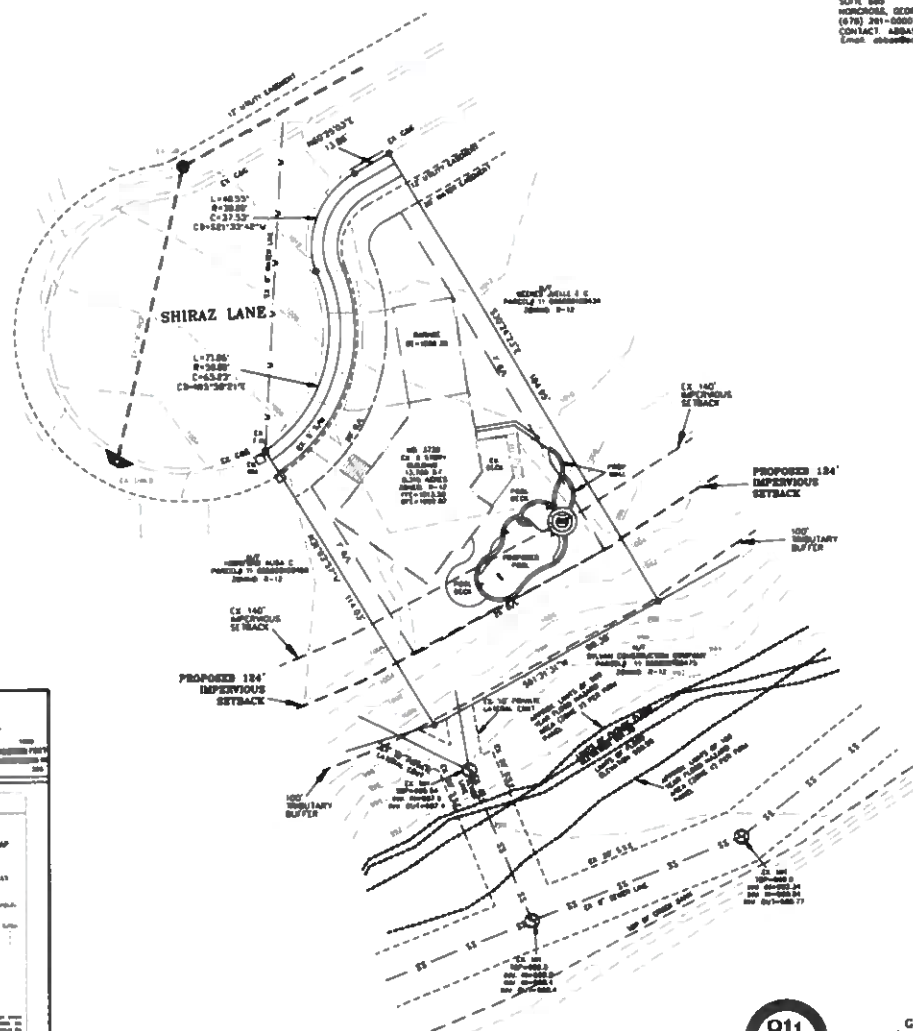
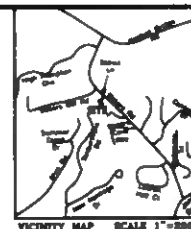
The Applicant intends to leave undisturbed the 100-foot stream buffer along the the stream.

The Applicant will utilize mitigation measures as required by applicable law. Such measures may include revegetation, protection, and maintenance or improvement of stream buffer functioning on the Subject Property or, if required, offsite.

3. HIGH VOLTAGE CONSTRUCTION EQUIPMENT ON SUPPLIES SHALL BE PLACED ON STOPS WITHIN A CRITICAL PATH ZONE.

REFERENCE
FINAL PLAN FOR WATERS CHASE SUBDIVISION PREPARED BY LCI
CHICAGO, ILL. MAY 22, 1912

NOTE:
NO PORTION OF THIS PROPERTY LIES WITHIN A DESIGNATED FLOOD PRONE AREA AS PER FIRM COMMUNITY
BANK NO. 13321C00037, FLATON COUNTY, GEORGIA. EFFECTIVE DATE SEPTEMBER 18, 2013.



IF YOU'RE OUTGROWING
CALL US FIRST!
UTILITY PROTECTION CENTER
IT'S THE LAW

GRAPHIC SCALE

34 HOUR EMERGENCY
CONTACT:
PRAVEEN XEROX
(878) 862-9197

ACR Engineering, inc.
A PLANT CONSTRUCTION & REPAIRING COMPANY
10000 W. 10TH AVE. SUITE 100
MINNEAPOLIS, MN 55427
TEL: (612) 391-0000
FAX: (612) 391-0000

STREAM DEPOSITIONS EXTRACT VARIANCE PLAN
FOR
3750 SHERAZ LANE
CITY OF ALPHARETTA
FULTON COUNTY, GEORGIA

[illegible]

DATE	10/10/10	TIME	10:00
NAME	JOHN DOE	AGE	35
ADDRESS	123 MAIN ST	CITY	ANYTOWN
STATE	CA	ZIP	90210
PHONE	555-1234	EMAIL	JOHN.DOE@EXAMPLE.COM
REMARKS	ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED		
	DATE 10/10/10 BY SP-1234		

NAME	Page
DATE	1
CLASS	
SEC	
GRADE	2

Legal Description

All that tract or parcel of land lying and being in Land Lot 10 of the 1st Land District of the 2nd Section, Fulton County, Georgia, containing approximately 0.315 acres, more or less, being designated Lot 3, according to a plat of survey dated May 6, 2016, prepared for Waters Chase Subdivision by LCE Engineers, Inc., certified by Lovick C. Evans, Georgia Registered Land Surveyor No. 2660 recorded May 25, 2016 in Plat Book 390, pages 45-49, Fulton County, Georgia Records. Said property is more fully described according to the above-referenced plat, which is incorporated herein by this reference.

to find the True Point of Beginning, commence from a fire hydrant located at the northwest intersection of the common boundary line of Lots 4 and 3, which is the True Point of Beginning; run

thence, with a curve to the left having a radius of 50.00 feet, an arc length of 71.06 feet, and a chord bearing of North 15 degrees 58 minutes 21 seconds East a distance of 65.23 feet to a point; run

thence, with a curve to the right having a radius of 30.00 feet, an arc length of 40.55 feet, and a chord bearing of North 21 degrees 33 minutes 42 seconds East a distance of 37.53 feet to a point; run

thence North 60 degrees 25 minutes 03 seconds East a distance of 13.86 feet to a point; run

thence South 30 degrees 24 minutes 23 seconds East a distance of 184.95 feet to a point; run

thence South 61 degrees 31 minutes 31 seconds West a distance of 89.38 feet to a point; run

thence North 31 degrees 03 minutes 57 seconds West a distance of 114.03 feet to a point, which is the True Point of Beginning.

Said property is more fully described according to the above-referenced plat, which is incorporated herein by this reference.

This legal description is prepared solely for the purpose of facilitating a land use application and should not be relied upon for any other purpose.

QU BENHE & CHEN YAN
3569 WATERS RUN DR
ALPHARETTA GA 30022

JAVANMARD MEHDI JAVANMARD MOHAMMAD
A
160 STANFORD RIDGE
DULUTH GA 30097

JASWANI ANIL & JASWANI SARIKA
3465 WATERS GLEN WAY
ALPHARETTA GA 30022

CAPITAL DESIGN GROUP INC
10633 WATERS RUN DR
ALPHARETTA GA 30022

BARNES ALEXANDER & BARNES CAROLINE
10605 TIMBERSTONE RD
ALPHARETTA GA 30022

SCOTT CLARKE & JENNIFER L
3475 WATERS GLEN WAY
ALPHARETTA GA 30022

CAPITAL DESIGN GROUP INC
10633 WATERS RUN DR
ALPHARETTA GA 30022

HEINZ DEAN S & CORALEE
10625 TIMBERSTON RD
JOHNS CREEK GA 30022

NIU XIAOYUAN & ZENG BING
3512 WATERS RUN DR
ALPHARETTA GA 30022

LENGYEL CRAIG & MEGAN
3455 WATERS GLEN WAY
ALPHARETTA GA 30022

DROEGE ANDREAS & DAGMAR
115 WATERS MILL CT
ALPHARETTA GA 30022-4482

GURRAM GOUTHAMI & MANYAM NAGAVARDH
AN
3549 WATERS RUN DR
ALPHARETTA GA 30022

SUN LINLIN ZHAO NAN
3559 WATERS RUN
ALPHARETTA GA 30022

DAY PATRICK T & KATHLEEN L
110 WATERS MILL CT
ALPHARETTA GA 30022

KIM SUNG HWAN
11 PERIMETER CTR E #2306
ATLANTA GA 30346

HAZLETT BARRY W
3520 WATERS GLEN WAY
ALPHARETTA GA 30022

FERGUSON SHARON L
3455 WATERS MILL DR
ALPHARETTA GA 30022-4481

CAPITAL DESIGN GROUP INC
10633 WATERS RUN DR
ALPHARETTA GA 30022

RHOADS P MICHAEL & KIMBERLY D
3480 WATERS GLEN WAY
ALPHARETTA GA 30022

CHAPMAN STEPHEN RAYMOND & STACEY A
LLEN
10640 WATERS RD
ALPHARETTA GA 30022

CLARK TED T & REBECCA M
3460 WATERS GLEN WAY
ALPHARETTA GA 30022-5819

JENTZ JOHN F & ADRIENNE
3470 WATERS GLEN WAY
ALPHARETTA GA 30022-5819

SYLVAN CONSTRUCTION COMPANY
5302 WATERS RUN
ALPHARETTA GA 30022

GOTTFRIED MARC S DEKONING JESSICA A
3450 WATERS GLEN WAY
ALPHARETTA GA 30022

NAEEM FAISAL
3500 WATERS GLEN WAY
ALPHARETTA GA 30022

SYLVAN CONSTRUCTION COMPANY
5302 WATERS RUN
ALPHARETTA GA 30022

DEWAN SUNIL G & RAKHEE C
3490 WATERS GLEN WAY
ALPHARETTA GA 30022

KAPOOR SUDHIR K & MADHU
380 FAIRLEAF CT
ALPHARETTA GA 30022-4783

BARI ASIF & MAHWISH
3502 WATERS RUN DR
ALPHARETTA GA 30022

CORBETT EDGAR D & LINDA W
10540 WATERS RIDGE DR
ALPHARETTA GA 30022-4987

SMITH MELVIN C JR & BECKWITH TRACY
J
3510 WATERS GLEN WAY
ALPHARETTA GA 30022

LATTA ROGER E JR
3450 WATERS MILL DR
ALPHARETTA GA 30022

BARRON PETER A & KENNEDY BARRON JA
CQUELYN
10530 WATERS RIDGE DR
ALPHARETTA GA 30022-4987

SOLLOT MICHAEL P & JEAN T
3440 WATERS MILL DR
ALPHARETTA GA 30022

WEINSTEIN EREZ & SHIRLY
10595 TIMBERSTONE RD
ALPHARETTA GA 30022

SYLVAN CONSTRUCTION COMPANY
5302 WATERS RUN
ALPHARETTA GA 30022

FRIEDMAN LEE & BRENDA
10615 TIMBERSTONE RD
ALPHARETTA GA 30022

SYLVAN CONSTRUCTION COMPANY
5302 WATERS RUN
ALPHARETTA GA 30022

DIANA ROBERT P & KAREN A
10635 TIMBERSTONE RD
ALPHARETTA GA 30022-7519

MNB HOMES INC
105 THREE BRANCHES DR
WOODSTOCK GA 30188

FLEMING ROBERT
10630 TIMBERSTONE RD
ALPHARETTA GA 30022-7518

SYLVAN CONSTRUCTION COMPANY
5302 WATERS RUN
ALPHARETTA GA 30022

GUNETA VIJAY & GUNETA MONIKA
3430 WATERS MILL DR
ALPHARETTA GA 30022

HARRIGAN GEORGE G
3435 WATERS MILL DR
ALPHARETTA GA 30022

SUGANO HIROKAZU & DANG HUYNH A
3425 WATERS MILL DR
ALPHARETTA GA 30022

WATERS MILL HOMEOWNERS ASSN INC
P.O. BOX 4404
ALPHARETTA GA 30023

City of Alpharetta
Community Development Department
2 Park Plaza
Alpharetta, Georgia 30009

RE: V-21-14 - Praveen Reddy

The undersigned is the owner of property that adjoins the property subject to Variance Application No. V-21-14. I am supportive of V-21-14, which requests the following variances be approved in order for the Reddys to construct a swimming pool on their property:

1) Variance to allow a 124-foot impervious surface setback instead of a 150-foot impervious surface setback along the rear boundary of the Subject Property.

Name: Juelle Weekes

Address: 3720 Shiraz Lane
Alpharetta, GA 30022

Signature: Juelle Weekes

Date: 9/9/21

City of Alpharetta
Community Development Department
2 Park Plaza
Alpharetta, Georgia 30009

RE: V-21-14 - Praveen Reddy

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- 1) *Variance to allow a 124-foot impervious surface setback instead of a 150-foot impervious surface setback along the rear boundary of the Subject Property.*

Name: Alisa Horsford

Address: 3740 Shiraz Ln
Alpharetta, GA 30022

Signature: Alisa Horsford

Date: 9/8/21



BOARD OF ZONING APPEALS MEETING STAFF REPORT

SUBMITTING DEPARTMENT: COMMUNITY DEVELOPMENT
SUBMITTED BY: KATHI COOK

I. AGENDA ITEM TITLE: LAMAR ADVERTISING COMPANY APPEAL

BOARD OF ZONING APPEALS: DECEMBER 16, 2021

II. REPORT IN BRIEF:

Lamar Advertising Company (Applicant) is appealing the issuance of a Cease and Desist issued exclusively with respect to the conversion of a billboard sign to LED technology. The sign is located near the interchange of Georgia 400 and Mansell Road, and the permit was issued to allow the sign to be relocated nearby, as a result of GDOT acquiring the land on which the sign was previously located.

DISCUSSION

In 2002, the City entered into a settlement agreement with *Applicant's* predecessor-in-interest (the "2002 Agreement") (Applicant's Exhibit G). Pursuant to the terms of the 2002 Agreement, a permit was issued in 2003 to construct a 48-foot long, 14-foot high sign near the Georgia 400 Mansell Road interchange (the "Sign"). As originally constructed, the Sign was static on one side and trivision (which includes columns of mechanically spinnable triangular faces that allow the display of up to three messages) on the other. The City did not originally permit or approve the Sign to include LED technology. The 2002 Agreement likewise did not provide any LED Conversion Rights, instead expressly providing that "[t]he [S]ign shall not contain any flashing, intermittent or moving light or lights, including multiple message signs." (Applicant Ex. G).

In 2012, the City entered into a separate settlement agreement not involving Applicant or its predecessor-in-interest (the "2012 Agreement"). As part of the 2012 Agreement, an entity that is not the Applicant was permitted the exclusive right to convert the Sign to an electronic sign utilizing LED technology. The entity granted the LED Conversion Rights under the 2012 Agreement (the "LED Rights Holder") does not own either the Sign or the land on which the sign was located, and the LED Rights Holder can only act upon those LED Conversion Rights if it acquired rights to the Sign itself. Applicant was not a party to the 2012 Agreement, and Applicant did not obtain any LED Conversion Rights or other rights under the 2012 Agreement. Applicant therefore can only convert the Sign to LED if it acquires the LED Rights Holder's LED Conversion Rights to the Sign.

In 2021, GDOT acquired the land on which the Sign was located and notified Applicant that, as a consequence of the acquisition, the Sign would need to be taken down. Applicant has a right to relocate its Sign under the 2002 Agreement and O.C.G.A. § 32-3-3.1, although Applicant's rights in the relocated Sign are only as great as its rights in the Sign prior to relocation (meaning that Applicant does not acquire LED Conversion Rights simply by the fact of the relocation).

Pursuant to O.C.G.A. § 32-3-3.1, the Applicant submitted a permit application to relocate and reconstruct the Sign. The permit application was approved pursuant to conditions which included, but were not limited to, the following:

- "The signage is being permitted to comply with state law (O.C.G.A. § 32-3-3.1) and would not otherwise be allowed under City ordinances."
- "The relocated and reconstructed sign and sign structure following completion shall have the same size and height configuration as it currently has."
- "It can be converted to LED technology on both sides." (Emphasis added.)
- "The Settlement Agreement(s) applicable to the sign and sign structure, which included advertising and other restrictions, shall remain in effect."

Applicant's Application for a Sign Permit to GDOT was also approved.

The application for the permit provided, in part, that the Applicant swears and attests "the placement, design and installation of the signage and equipment described in this application has been reviewed and approved by ... all other persons or entities with legal or financial interest in the property described herein ..." (Emphasis added.)

After construction began on the relocated Sign, on October 22, 2021, this Department received sworn information from the LED Rights Holder that it had neither conveyed to Applicant the LED Conversion Rights, nor had Applicant obtained the LED Rights Holder's approval to convert the Sign to LED. (Attachment 1).

Upon learning of this sworn information, the Director deliberately did not either revoke or suspend the permit. This was because Applicant had the right to relocate the Sign under O.C.G.A. § 32-3-3.1. Instead, on October 26, written notice of a Cease and Desist (the "C&D"), exclusively as it relates to LED conversion, was issued.

The C&D expressly noted that it did not apply to or prohibit the relocation of the Sign, nor prohibit the construction of a static/trivision display header that was consistent with the Sign's pre-location configuration. Nor did the C&D fully and finally prohibit conversion of the Sign to LED, assuming that the Applicant could demonstrate that it had acquired the LED Conversion Rights and/or received the consent of the LED Rights Holder. Specifically, the C&D stated: "[d]evelopment and construction activity may be resumed upon the satisfactory representation to the City of Alpharetta that all financial or legally interested persons or parties have reviewed and approved of the conversion of the billboard sign to LED/digital display, or satisfactory representation that there are no other financially or legally interested persons or parties, and submission of a sign application consistent with the same." (Applicant's Exhibit A). The C&D was then posted on October 27, 2021.

Under the UDC and City ordinances, absent a settlement agreement to the contrary, no LED sign is permitted at the relocated location pursuant to Applicant's application for a number of reasons:

- Under UDC § 2.6.3, an LED sign is a programmable sign that provides changing information, and therefore falls within the definition of a "variable message board." UDC § 2.6.8 (6) prohibits variable message boards for other than traffic management.
- The 2002 Agreement between the Applicant's predecessor in interest and the City provided that the Sign shall not contain any flashing, intermittent moving light or lights, including multiple message signs.
- UDC § 2.6.8(26) prohibits signs in excess of 10 feet in height from the ground.
- Under UDC § 2.6.5(6), a variance cannot be granted to violate more than one section of the ordinance.
- Under UDC § 2.6.5(7), no variance can issue if in violation of any paragraph of UDC § 2.6.8.
- Under Code of Ordinances §§ 36-67 and 36-68, Applicant would need a certificate of design approval change the relocated sign to LED. No such Design Review Board approval was sought, discussed, nor was a certificate of design approval allowing the conversion to LED issued by the Design Review Board.

It is undisputed that Applicant has not acquired the LED Conversion Rights granted under the 2012 Agreement. Additionally, and contrary to Applicant's contentions, neither the City's approval of Applicant's application and/or the permit issued as a result of that approval (including the associated permit conditions) granted to Applicant LED Conversion Rights independent of those in the 2012 Agreement, and the Director lacked (and lacks) legal authority to unilaterally grant such LED Conversion Rights.

The permit allowing Applicant to relocate and construct the Sign was subject to terms of the 2002 and 2012 Agreements and granted Applicant no rights beyond that which it had pre-relocation. The express notation on the permit that the Sign "could" be converted to LED is a true statement—an entity with the rights to both the Sign itself and the LED Conversion Rights (which Applicant currently lacks) can convert the Sign to LED. But, like the permit itself, this statement does not grant to Applicant broader rights than it had pre-relocation. This Department therefore strongly disagrees with the Applicant's contention that it had any right to construct an LED Sign.

Furthermore, no property right of the Applicant has been altered, changed or affected because the City has allowed the Sign to be relocated in the same configuration and with the same characteristics, consistent with the 2002 Agreement and O.C.G.A. § 32-3-3.1.

The only way Applicant is able to own and operate the Sign is pursuant to the 2002 Agreement. The only way Applicant is able to relocate the Sign is pursuant to O.C.G.A. § 32-3-3.1. The only way any entity has the ability to convert the Sign to LED is pursuant to the 2012 Agreement with an entity other than Applicant. From the evidence in the record, the Applicant did not and does not have the LED Conversion Rights. Until the Applicant obtains the LED conversion rights from the LED Rights Holder, or the LED Rights Holder obtains the rights to the Sign from the landowner or Applicant, no conversion to LED can take place.

III. ATTACHMENTS:

- Affidavit (Attachment 1)

Attachment 1

STATE OF GEORGIA

COUNTY OF Lawson

AFFIDAVIT OF STEVE A. GALBERAITH

Personally appeared before the undersigned officer, duly authorized to administer oaths, STEVE A. GALBERAITH, who disposes and states under oath as follows:

1.

My name is Steve A. Galberaith. I am over the age of twenty-one (21), am suffering from no legal disabilities, and am competent to testify to the matters stated herein. The testimony set forth in this affidavit is based upon my own personal knowledge and the documents attached hereto.

2.

I have both individually, and by virtue of my ownership and position with various entities, been a principal of Action Outdoor Advertising JV, LLC, a Georgia Limited Liability Company, since the entity was created in 1998. I currently serve as a co-manager of Action Outdoor by virtue of my position as a Co-Trustee of the Chrystal Management Trust dated December 10, 2009.

3.

Action Outdoor, along with KH Outdoor, LLC, and Granite State Outdoor Advertising, Inc. entered into that certain settlement agreement with the City of Alpharetta, Georgia, dated March 1, 2011 (the "Alpharetta Settlement Agreement") following years of litigation related to the Fulton County Sign Ordinance (the "Fulton County Litigation"). A

true and correct copy of the Alpharetta Settlement Agreement is attached hereto as Exhibit “A”. I executed the Alpharetta Settlement Agreement as a member of Action Outdoor.

4.

Pursuant to Paragraph 4(b) of the Alpharetta Settlement Agreement, the “Advertisers,” as that term is defined therein, were granted the exclusive right to convert the existing static billboard sign located on the property of Compass Lender, LLC, on the east side of Georgia 400 South of Mansell Road (having an address of 0 Wooten Road and as more particularly shown on Exhibit “B”) to an “electronic sign utilizing LED technology on both sides.” The sign (the “GA 400/Mansell Sign”) referenced in this provision was at that time, and is presently, owned by Lamar Outdoor Advertising.

5.

Pursuant to an Asset Division Agreement by and between Action Outdoor, KH Outdoor, LLC, and Granite State Outdoor Advertising, Inc., dated June 13, 2013, the parties thereto allocated and divided the interests which they had under various settlement agreements reached following the Fulton County Litigation, including the Alpharetta Settlement Agreement. A redacted version of the Asset Division Agreement is attached hereto as Exhibit “B”.

6.

Pursuant to the Asset Division Agreement, Granite State Outdoor Advertising, Inc., transferred and assigned to Action Outdoor and KH Outdoor, LLC, all of Granite’s interests in various assets, including all interests under the Alpharetta Settlement Agreement. I have personal knowledge of the fact that all conditions set forth in the Asset Division Agreement

have been satisfied and that the transfer of such assets by Granite State Outdoor Advertising, Inc., was completed.

7.

Following the execution of the Asset Division Agreement, Action Outdoor transferred its interests under the Asset Division Agreement, including those interests under the Alpharetta Settlement Agreement, directly to its three members at that time: Galberaith Holdings, LLC; Hartrampf Holdings, LLC; and McCurdy Holdings, LLC.

8.

Effective as of December 13, 2013, Action Outdoor, Granite State Outdoor Advertising, Inc., Galberaith Holdings, LLC, Hartrampf Holdings, LLC, and McCurdy Holdings, LLC, formed and created North Fulton Outdoor, LLC (“North Fulton Outdoor”). Pursuant to the Operating Agreement of North Fulton Outdoor, Galberaith Holdings, LLC, Hartrampf Holdings, LLC, and McCurdy Holdings, LLC, each as successors to Action Outdoor, along with KH Outdoor, LLC, contributed all of their assets as set forth in the Asset Division Agreement, including, but not limited to, all rights under the Alpharetta Settlement Agreement to North Fulton Outdoor. North Fulton Outdoor is the owner of all rights of the “Advertisers” under the Alpharetta Settlement Agreement. Relevant excerpts of the Operating Agreement of North Fulton Outdoor are attached hereto as Exhibit “C”.

9.

While, in the past, North Fulton Outdoor (and its predecessors in interest under the Alpharetta Settlement Agreement) have negotiated with Lamar Outdoor Advertising regarding the potential transfer of the rights to upgrade the 400/Mansell sign to Lamar, no

agreement to transfer such rights has ever been reached. As such, Lamar has acquired no rights under the Alpharetta Settlement Agreement, including, but not limited to, any rights related to the 400/Mansell sign.

10.

To the extent that Lamar Outdoor Advertising has represented to the City of Alpharetta that it acquired any rights under the Alpharetta Settlement Agreement to convert the 400/Mansell sign to an LED sign, any such representations are false. Lamar Outdoor Advertising has acquired no rights from North Fulton Outdoor under the Alpharetta Settlement Agreement.

11.

To the best of my knowledge, Lamar Outdoor Advertising and its local representatives are fully aware that they have acquired no rights under the Alpharetta Settlement Agreement to convert the 400/Mansell sign to an LED sign from North Fulton Outdoor (or any of its predecessors in interest) under the Alpharetta Settlement Agreement.

12.

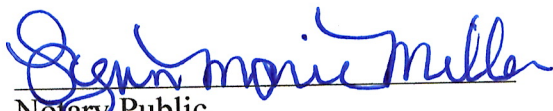
I understand that this affidavit may be relied upon by the City of Alpharetta in evaluating certain permit applications of Lamar Outdoor Advertising related to the 400/Mansell sign. This affidavit relates solely to the rights to convert the 400/Mansell sign to LED displays, and does not relate in any way to any rights Lamar may have to the sign structure in its previous configuration of a static face on one side and a tri-vision face on the other side.

FURTHER AFFIANT SAYETH NOT.



STEVE A. GALBERAITH

Sworn and subscribed before me,
this the 22nd day of October, 2021



Notary Public

My commission expires Lynn Marie Miller

NOTARY PUBLIC

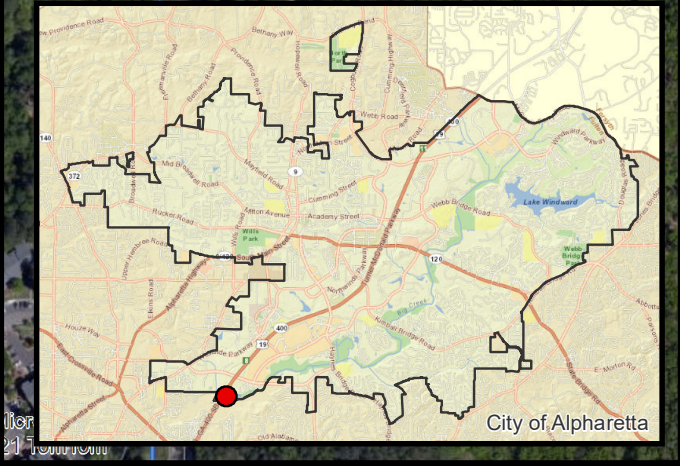
K:\2605\510\Maharetta - Lamar\Affidavit of Steve Galberaith.docx
Dawson County, GEORGIA

My Commission Expires 04/15/2025



LEGEND

- Case Number
- Land Lots
- Tax Parcels



Location Map
Lamar Advertising Company - Appeal
PIN - 12 239006090095

D/LL: 1/2/609
BZA Date: 12/16/21

Location Map Provided by:
Community Development - GIS



MICHAEL D. STACY
DIRECT: 678.338.3983
mstacy@boviskyle.com

ATTORNEYS AT LAW
200 ASHFORD CENTER NORTH
SUITE 500
ATLANTA, GEORGIA 30338-2680

TEL 770.391.9100
FAX 770.668.0878

December 10, 2021

VIA E-MAIL: acallum@alpharetta.ga.us

Ms. Alexandra Callum
Planning & Zoning Coordinator
Community Development Department
Alpharetta City Hall
Two Park Plaza
Alpharetta, GA 30009

RE: Lamar Advertising – Notice of Appeal

Dear Ms. Callum:

This letter serves as the response of the Office of the City Attorney of the City of Alpharetta, Georgia (“the City”) to the Notice of Appeal of Lamar Advertising Company (“Applicant”) filed November 10, 2021, by and through its counsel. This letter is being directed to your attention as the Clerk of the Board of Zoning Appeals (“BZA”), with respect to this appeal. A copy is also being provided to Applicant’s counsel, as well as counsel for the Board.

The factual background of this appeal and reason the Director’s decision should be affirmed is detailed in the Staff Report (the “Staff Report”), of the City’s Community Development Department’s staff (the “Department”), attached hereto as Exhibit A, and incorporated herein by this reference (and all capitalized terms have the meaning used in the Staff Report, except as may be otherwise noted herein). The City Attorney’s office stands behind and adopts the Staff Report in response to the Notice of Appeal. However, this letter also seeks to correct legal misconceptions that may result based upon the arguments set forth in the Notice of Appeal.

The Cease & Desist was Procedurally Proper

Under UDC § 5.9.1 (which Applicant acknowledges was the basis for issuing the C&D (Lamar’s Notice of Appeal, p. 1), the Community Development Director (the “Director”) is required to enforce the provisions of the UDC (referred to in the UDC as the “Ordinance”). If the Director finds provisions of the Ordinance are being violated, she “shall notify in writing the person responsible for such violations, including the nature of the violations and ordering action necessary to correct it.” Under § 5.9.1(B), “Director shall undertake any other action authorized by this ordinance to ensure compliance with or to prevent violation of its provisions.” And, under

§ 5.9.1(E)(2), the Director:

may also provide a written cease and desist notice to any property owner or agent with respect to any development that is proceeding contrary to the provisions of this ordinance. The notice shall also state the conditions upon which development may be resumed. When an emergency exists, they shall not be required to give written notice prior to stopping the work.

In the subject case, written notice of a limited C&D was provided to Applicant on October 26, 2021, prior to the notice being posted at the location on October 27, 2021. That C&D only prevented the Applicant from converting the Sign to LED.

Quite simply, when such an LED conversion is violative of many sections of the ordinance and no variance can issue, and when the proper procedures for issuance of a permit have not been followed, the only way the Sign “can be converted to LED technology” is if that right exists pursuant to a settlement agreement. When the Applicant represented to the Director that all persons with a financial interest had approved both the relocation and conversion to LED, and information was provided to the Director, under oath, that this representation was not correct, the Director was proper in issuing a limited C&D exclusively as it relates to the LED conversion. Similarly, as LED conversion was part of the approval to GDOT, the Director appropriately provided a copy of the C&D to GDOT, noting that: “[t]he City has received information that the Applicant has not secured the rights to locate an LED sign at this location.”

Applicant Improperly Seeks Relief Outside the Board’s Scope and Authority

The BZA, along with its other responsibilities, sits in review of the decisions and determinations of the Director, UDC § 5.6.3(A), which in this case is simply whether the Director’s decision to issue a limited C&D was proper under the Director’s authority.

A holding by this Board that the C&D and limited notification to GDOT were improper would require this Board to first determine that the entity provided the exclusive right to convert the sign to LED in the 2012 Agreement no longer has that right because the 2012 Agreement is unenforceable or inapplicable, without that entity being a party to this appeal and having an opportunity to be heard. Respectfully, that is not this Board’s role, and is well outside the Board’s authority. Such a holding would also then further require this Board determine that, though contrary to multiple City ordinances and obtained without proper design review approval, the language in the permit that the sign can be converted to LED technology conveyed the right to Applicant when Applicant had no such right under the ordinance. That, too is outside this Board’s authority. Such a holding would also then further require that this Board determine the condition in the permit that the Settlement Agreements shall remain in effect, is to be disregarded and is of no force and effect. Such a nonsensical holding by this Board, which not only usurps the powers of the courts but forces this Board to unlawfully decide legal matters and interpret contracts involving parties not before the Board, would respectfully be not only improper, but outside this court’s jurisdiction and not a proper subject of appeal.

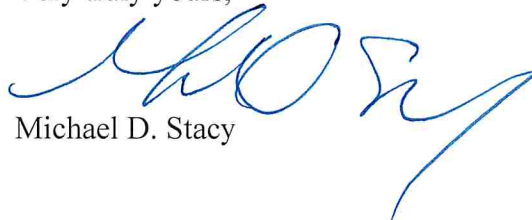
This Board’s powers and duties are set forth in Section 5.6.3 and relate to the decision of

the Director in the enforcement of the Ordinance. The question for the Board is simply whether or not the C&D was appropriate under the facts and circumstances where: 1) it was issued in strict compliance and consistent with UDC § 5.9.1; 2) it was limited exclusively with respect to the ability of Applicant to convert its relocated sign to LED; 3) it did not, in any way, suspend or revoke the permit; and 4) the Applicant had not obtained the LED Conversion Rights or approval from the LED Rights Holder, but stated oath that it had permission from all entities with a financial interest.

The decision of the Director in issuing the C&D, notifying GDOT of the reason, and the withdrawal of its approval exclusively with respect to LED conversion, until there is a resolution of ownership of that right, is and was proper and should be affirmed.

With kind regards,

Very truly yours,



Michael D. Stacy

MDS/mwb

cc: Joe Reynolds

Scott Busby

Exhibit A



BOARD OF ZONING APPEALS MEETING STAFF REPORT

SUBMITTING DEPARTMENT: COMMUNITY DEVELOPMENT
SUBMITTED BY: KATHI COOK

I. AGENDA ITEM TITLE: LAMAR ADVERTISING COMPANY APPEAL

BOARD OF ZONING APPEALS: DECEMBER 16, 2021

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Lamar Advertising Company (Applicant) is appealing the issuance of a Cease and Desist issued exclusively with respect to the conversion of a billboard sign to LED technology. The sign is located near the interchange of Georgia 400 and Mansell Road, and the permit was issued to allow the sign to be relocated nearby, as a result of GDOT acquiring the land on which the sign was previously located.

DISCUSSION

In 2002, the City entered into a settlement agreement with *Applicant's* predecessor-in-interest (the "2002 Agreement") (Applicant's Exhibit G). Pursuant to the terms of the 2002 Agreement, a permit was issued in 2003 to construct a 48-foot long, 14-foot high sign near the Georgia 400 Mansell Road interchange (the "Sign"). As originally constructed, the Sign was static on one side and trivision (which includes columns of mechanically spinnable triangular faces that allow the display of up to three messages) on the other. The City did not originally permit or approve the Sign to include LED technology. The 2002 Agreement likewise did not provide any LED Conversion Rights, instead expressly providing that "[t]he [S]ign shall not contain any flashing, intermittent or moving light or lights, including multiple message signs." (Applicant Ex. G).

In 2012, the City entered into a separate settlement agreement not involving Applicant or its predecessor-in-interest (the "2012 Agreement"). As part of the 2012 Agreement, an entity that is not the Applicant was permitted the exclusive right to convert the Sign to an electronic sign utilizing LED technology. The entity granted the LED Conversion Rights under the 2012 Agreement (the "LED Rights Holder") does not own either the Sign or the land on which the sign was located, and the LED Rights Holder can only act upon those LED Conversion Rights if it acquired rights to the Sign itself. Applicant was not a party to the 2012 Agreement, and Applicant did not obtain any LED Conversion Rights or other rights under the 2012 Agreement. Applicant therefore can only convert the Sign to LED if it acquires the LED Rights Holder's LED Conversion Rights to the Sign.

In 2021, GDOT acquired the land on which the Sign was located and notified Applicant that, as a consequence of the acquisition, the Sign would need to be taken down. Applicant has a right to relocate its Sign under the 2002 Agreement and O.C.G.A. § 32-3-3.1, although Applicant's rights in the relocated Sign are only as great as its rights in the Sign prior to relocation (meaning that Applicant does not acquire LED Conversion Rights simply by the fact of the relocation).

Pursuant to O.C.G.A. § 32-3-3.1, the Applicant submitted a permit application to relocate and reconstruct the Sign. The permit application was approved pursuant to conditions which included, but were not limited to, the following:

- "The signage is being permitted to comply with state law (O.C.G.A. § 32-3-3.1) and would not otherwise be allowed under City ordinances."
- "The relocated and reconstructed sign and sign structure following completion shall have the same size and height configuration as it currently has."
- "It can be converted to LED technology on both sides." (Emphasis added.)
- "The Settlement Agreement(s) applicable to the sign and sign structure, which included advertising and other restrictions, shall remain in effect."

Applicant's Application for a Sign Permit to GDOT was also approved.

The application for the permit provided, in part, that the Applicant swears and attests "the placement, design and installation of the signage and equipment described in this application has been reviewed and approved by ... all other persons or entities with legal or financial interest in the property described herein ..." (Emphasis added.)

After construction began on the relocated Sign, on October 22, 2021, this Department received sworn information from the LED Rights Holder that it had neither conveyed to Applicant the LED Conversion Rights, nor had Applicant obtained the LED Rights Holder's approval to convert the Sign to LED. (Attachment 1).

Upon learning of this sworn information, the Director deliberately did not either revoke or suspend the permit. This was because Applicant had the right to relocate the Sign under O.C.G.A. § 32-3-3.1. Instead, on October 26, written notice of a Cease and Desist (the "C&D"), exclusively as it relates to LED conversion, was issued.

The C&D expressly noted that it did not apply to or prohibit the relocation of the Sign, nor prohibit the construction of a static/trivision display header that was consistent with the Sign's pre-location configuration. Nor did the C&D fully and finally prohibit conversion of the Sign to LED, assuming that the Applicant could demonstrate that it had acquired the LED Conversion Rights and/or received the consent of the LED Rights Holder. Specifically, the C&D stated: "[d]evelopment and construction activity may be resumed upon the satisfactory representation to the City of Alpharetta that all financial or legally interested persons or parties have reviewed and approved of the conversion of the billboard sign to LED/digital display, or satisfactory representation that there are no other financially or legally interested persons or parties, and submission of a sign application consistent with the same." (Applicant's Exhibit A). The C&D was then posted on October 27, 2021.

Under the UDC and City ordinances, absent a settlement agreement to the contrary, no LED sign is permitted at the relocated location pursuant to Applicant's application for a number of reasons:

- Under UDC § 2.6.3, an LED sign is a programmable sign that provides changing information, and therefore falls within the definition of a "variable message board." UDC § 2.6.8 (6) prohibits variable message boards for other than traffic management.
- The 2002 Agreement between the Applicant's predecessor in interest and the City provided that the Sign shall not contain any flashing, intermittent moving light or lights, including multiple message signs.
- UDC § 2.6.8(26) prohibits signs in excess of 10 feet in height from the ground.
- Under UDC § 2.6.5(6), a variance cannot be granted to violate more than one section of the ordinance.
- Under UDC § 2.6.5(7), no variance can issue if in violation of any paragraph of UDC § 2.6.8.
- Under Code of Ordinances §§ 36-67 and 36-68, Applicant would need a certificate of design approval change the relocated sign to LED. No such Design Review Board approval was sought, discussed, nor was a certificate of design approval allowing the conversion to LED issued by the Design Review Board.

It is undisputed that Applicant has not acquired the LED Conversion Rights granted under the 2012 Agreement. Additionally, and contrary to Applicant's contentions, neither the City's approval of Applicant's application and/or the permit issued as a result of that approval (including the associated permit conditions) granted to Applicant LED Conversion Rights independent of those in the 2012 Agreement, and the Director lacked (and lacks) legal authority to unilaterally grant such LED Conversion Rights.

The permit allowing Applicant to relocate and construct the Sign was subject to terms of the 2002 and 2012 Agreements and granted Applicant no rights beyond that which it had pre-relocation. The express notation on the permit that the Sign "could" be converted to LED is a true statement—an entity with the rights to both the Sign itself and the LED Conversion Rights (which Applicant currently lacks) can convert the Sign to LED. But, like the permit itself, this statement does not grant to Applicant broader rights than it had pre-relocation. This Department therefore strongly disagrees with the Applicant's contention that it had any right to construct an LED Sign.

Furthermore, no property right of the Applicant has been altered, changed or affected because the City has allowed the Sign to be relocated in the same configuration and with the same characteristics, consistent with the 2002 Agreement and O.C.G.A. § 32-3-3.1.

The only way Applicant is able to own and operate the Sign is pursuant to the 2002 Agreement. The only way Applicant is able to relocate the Sign is pursuant to O.C.G.A. § 32-3-3.1. The only way any entity has the ability to convert the Sign to LED is pursuant to the 2012 Agreement with an entity other than Applicant. From the evidence in the record, the Applicant did not and does not have the LED Conversion Rights. Until the Applicant obtains the LED conversion rights from the LED Rights Holder, or the LED Rights Holder obtains the rights to the Sign from the landowner or Applicant, no conversion to LED can take place.

III. ATTACHMENTS:

- Affidavit (Attachment 1)

Attachment 1

STATE OF GEORGIA

COUNTY OF Lawson

AFFIDAVIT OF STEVE A. GALBERAITH

Personally appeared before the undersigned officer, duly authorized to administer oaths, STEVE A. GALBERAITH, who disposes and states under oath as follows:

1.

My name is Steve A. Galberaith. I am over the age of twenty-one (21), am suffering from no legal disabilities, and am competent to testify to the matters stated herein. The testimony set forth in this affidavit is based upon my own personal knowledge and the documents attached hereto.

2.

I have both individually, and by virtue of my ownership and position with various entities, been a principal of Action Outdoor Advertising JV, LLC, a Georgia Limited Liability Company, since the entity was created in 1998. I currently serve as a co-manager of Action Outdoor by virtue of my position as a Co-Trustee of the Chrystal Management Trust dated December 10, 2009.

3.

Action Outdoor, along with KH Outdoor, LLC, and Granite State Outdoor Advertising, Inc. entered into that certain settlement agreement with the City of Alpharetta, Georgia, dated March 1, 2011 (the "Alpharetta Settlement Agreement") following years of litigation related to the Fulton County Sign Ordinance (the "Fulton County Litigation"). A

true and correct copy of the Alpharetta Settlement Agreement is attached hereto as Exhibit “A”. I executed the Alpharetta Settlement Agreement as a member of Action Outdoor.

4.

Pursuant to Paragraph 4(b) of the Alpharetta Settlement Agreement, the “Advertisers,” as that term is defined therein, were granted the exclusive right to convert the existing static billboard sign located on the property of Compass Lender, LLC, on the east side of Georgia 400 South of Mansell Road (having an address of 0 Wooten Road and as more particularly shown on Exhibit “B”) to an “electronic sign utilizing LED technology on both sides.” The sign (the “GA 400/Mansell Sign”) referenced in this provision was at that time, and is presently, owned by Lamar Outdoor Advertising.

5.

Pursuant to an Asset Division Agreement by and between Action Outdoor, KH Outdoor, LLC, and Granite State Outdoor Advertising, Inc., dated June 13, 2013, the parties thereto allocated and divided the interests which they had under various settlement agreements reached following the Fulton County Litigation, including the Alpharetta Settlement Agreement. A redacted version of the Asset Division Agreement is attached hereto as Exhibit “B”.

6.

Pursuant to the Asset Division Agreement, Granite State Outdoor Advertising, Inc., transferred and assigned to Action Outdoor and KH Outdoor, LLC, all of Granite’s interests in various assets, including all interests under the Alpharetta Settlement Agreement. I have personal knowledge of the fact that all conditions set forth in the Asset Division Agreement

have been satisfied and that the transfer of such assets by Granite State Outdoor Advertising, Inc., was completed.

7.

Following the execution of the Asset Division Agreement, Action Outdoor transferred its interests under the Asset Division Agreement, including those interests under the Alpharetta Settlement Agreement, directly to its three members at that time: Galberaith Holdings, LLC; Hartrampf Holdings, LLC; and McCurdy Holdings, LLC.

8.

Effective as of December 13, 2013, Action Outdoor, Granite State Outdoor Advertising, Inc., Galberaith Holdings, LLC, Hartrampf Holdings, LLC, and McCurdy Holdings, LLC, formed and created North Fulton Outdoor, LLC (“North Fulton Outdoor”). Pursuant to the Operating Agreement of North Fulton Outdoor, Galberaith Holdings, LLC, Hartrampf Holdings, LLC, and McCurdy Holdings, LLC, each as successors to Action Outdoor, along with KH Outdoor, LLC, contributed all of their assets as set forth in the Asset Division Agreement, including, but not limited to, all rights under the Alpharetta Settlement Agreement to North Fulton Outdoor. North Fulton Outdoor is the owner of all rights of the “Advertisers” under the Alpharetta Settlement Agreement. Relevant excerpts of the Operating Agreement of North Fulton Outdoor are attached hereto as Exhibit “C”.

9.

While, in the past, North Fulton Outdoor (and its predecessors in interest under the Alpharetta Settlement Agreement) have negotiated with Lamar Outdoor Advertising regarding the potential transfer of the rights to upgrade the 400/Mansell sign to Lamar, no

agreement to transfer such rights has ever been reached. As such, Lamar has acquired no rights under the Alpharetta Settlement Agreement, including, but not limited to, any rights related to the 400/Mansell sign.

10.

To the extent that Lamar Outdoor Advertising has represented to the City of Alpharetta that it acquired any rights under the Alpharetta Settlement Agreement to convert the 400/Mansell sign to an LED sign, any such representations are false. Lamar Outdoor Advertising has acquired no rights from North Fulton Outdoor under the Alpharetta Settlement Agreement.

11.

To the best of my knowledge, Lamar Outdoor Advertising and its local representatives are fully aware that they have acquired no rights under the Alpharetta Settlement Agreement to convert the 400/Mansell sign to an LED sign from North Fulton Outdoor (or any of its predecessors in interest) under the Alpharetta Settlement Agreement.

12.

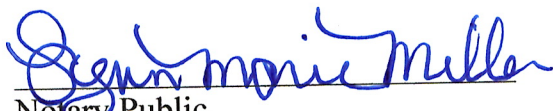
I understand that this affidavit may be relied upon by the City of Alpharetta in evaluating certain permit applications of Lamar Outdoor Advertising related to the 400/Mansell sign. This affidavit relates solely to the rights to convert the 400/Mansell sign to LED displays, and does not relate in any way to any rights Lamar may have to the sign structure in its previous configuration of a static face on one side and a tri-vision face on the other side.

FURTHER AFFIANT SAYETH NOT.



STEVE A. GALBERAITH

Sworn and subscribed before me,
this the 22nd day of October, 2021



Notary Public

My commission expires Lynn Marie Miller

NOTARY PUBLIC

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Dawson County, GEORGIA

My Commission Expires 04/15/2025

November 10, 2021

Ms. Kathi Cook
Community Development Director
Alpharetta City Hall
2 Park Plaza
Alpharetta, GA 30009
(VIA HAND DELIVERY AND EMAIL *kcook@alpharetta.ga.us*)

Board of Appeals
Alpharetta City Hall
2 Park Plaza
Alpharetta, GA 30009
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Bret Schroeder
Code Enforcement Manager - Design Review Board
Alpharetta City Hall
2 Park Plaza
Alpharetta, GA 30009
(VIA HAND DELIVERY AND EMAIL *bschroeder@alpharetta.ga.us*)

LAMAR'S NOTICE OF APPEAL

Pursuant to UDC § 4.5.1, and to the extent applicable, pursuant to UDC § 2.6.4(C), Lamar Advertising Company ("Lamar"), by and through undersigned counsel, hereby submits to the Director for transmission to the Board of Appeals its appeal of the following decisions of the Director¹:

- (1) the issuance of a "Cease and Desist" under UDC § 5.9.1(E)(2), dated October 26, 2021 (**Exhibit A**);
- (2) the "withdrawal" of a certification to Lamar's Application for Multiple Message Sign Permit to the Georgia Department of Transportation (GDOT), dated October 26, 2021 ("GDOT Withdrawal") (**Exhibit B**); and
- (3) the execution, enforcement, and reliance upon that certain "Settlement Agreement" dated March 1, 2012, by and among the City of Alpharetta and Action Outdoor Advertising JV, LLC, KH Outdoor, LLC, and Granite State Outdoor Advertising, Inc. (the "2012 Settlement Agreement") (**Exhibit C**).²

¹ Lamar believes the decisions appealed are directly appealable to the Board of Appeals pursuant to the UDC Sections cited herein. If the City determines these decisions, however, are appealable to the Director before submission to the Board of Appeals, please consider this Notice of Appeal to the Director.

² Lamar has been unable to locate any required forms or fees for this appeal. Based on a conversation on November 9, 2021 with the Director, Lamar understands that there are no required

BACKGROUND

A. The City issued a valid permit to Lamar in July 2021.

This appeal involves an outdoor advertising sign owned and operated by Lamar alongside State Route 400. As part of a road widening project, GDOT notified Lamar that its sign would need to be taken down. GDOT would normally be required to pay just and adequate compensation for such a taking, but O.C.G.A. § 32-3-3.1, a recently enacted statute, shifts that burden to the “local governing authority” – here, the City of Alpharetta – if the sign may be relocated and reconstructed under the statute “but such new location would result in a conflict with local ordinances in the city or county of applicable jurisdiction and no variance or other exception is granted to allow relocation as requested by the owner of the outdoor advertising sign.” O.C.G.A. § 32-3-3.1.

In the course of its negotiations with GDOT, Lamar submitted a permit application to the City to relocate and reconstruct a new sign pursuant to O.C.G.A. § 32-3-3.1. By letter dated July 8, 2021, Bret Schroeder, Code Enforcement Manager, City of Alpharetta (the “Manager”),³ wrote to Lamar that its application for the “new billboard” had been approved by the City with a number of “conditions.” Accordingly, the City issued a valid sign permit to Lamar. Sign Permit No. S210156 and the July 8, 2021 letter setting forth its “conditions” (collectively, the “Permit”) are attached as **Exhibit D**.

Among other conditions, the July 8, 2021 letter provides, “(1) The sign is being permitted to comply with State law (O.C.G.A. § 32-3-3.1) and would not otherwise be allowed under city ordinances.” It also provides, “(2) The relocated and reconstructed sign and sign structure following completion shall have the same size and height configuration as it currently has. It can be converted to LED technology on both sides.” (Exhibit D). Thus, the Manager acknowledged Lamar’s right to convert the new sign to LED technology.

Likewise, on July 23, 2021, the Manager certified on Lamar’s application to GDOT for a multiple message sign permit that the City agreed to allow the reconstruction of the new sign with two electronic faces “pursuant to a legally binding settlement agreement between the City of Alpharetta and the applicant and OCGA § 32-3-3.1.” (**Exhibit E**). Again, the City provided express approval for Lamar’s construction of the new sign.

forms or fees. Lamar’s counsel sought confirmation in writing of that understanding via email to the Director on November 9, 2021, but as of the time of this filing the Director has not responded to that email.

³ The Cease and Desist was issued pursuant to UDC § 5.9.1(E)(2), and such authority is limited to “the Director and the City Engineer.” Despite Mr. Schroeder having the title of Code Enforcement Manager, Lamar understands he issued the Cease and Desist under the authority of the Director. To the extent this is not the case, then Lamar further appeals the Cease and Desist and GDOT Withdrawal on these grounds and for violation of all of the state and federal constitutional rights discussed below.

As permitted, the newly authorized sign was consistent with the City's goal of "encourag[ing] that all signs within the city be brought into compliance with the terms and requirements of this Ordinance," UDC § 2.6.6, because it resulted in a reduction in non-conformity by changing the sign from an expressly prohibited 'animated sign' to an 'electronic sign' which is not expressly prohibited by the Code.⁴ See UDC § 2.6.8(4) (prohibiting "Animated signs," as defined in UDC § 2.6.3 to include tri-vision signs).

B. Lamar relies on the Permit and express approvals by the City to begin construction, meanwhile Lamar's competitor makes an apparent demand from Lamar based on the invalid 2012 Settlement Agreement.

Based upon the City's issuance of the Permit, and in substantial reliance on the City's express approvals, Lamar negotiated a release agreement with GDOT, purchased two electronic faces for reconstructing the sign at the cost of approximately \$250,000, and began reconstruction. Lamar thus incurred significant expenses and changed its position in reliance on the Permit and the City's approvals.

Then, on October 21, 2021, Lamar was contacted by counsel for one of Lamar's competitors, North Fulton Outdoor, LLC ("North Fulton"). North Fulton, through counsel, seemingly demanded that Lamar buy the "exclusive right" to resume construction of the new sign with two electronic faces for an unreasonable sum – and, "to the extent we are unable to reach an agreement," North Fulton told Lamar that "we intend to seek to have Alpharetta revoke Lamar's permit to the extent it authorizes the conversion of the sign to LED."

As authority for making such an apparent demand, North Fulton provided Lamar with a copy of the 2012 Settlement Agreement, under which the City purportedly gave North Fulton's predecessors the "exclusive right" to convert *Lamar's* then-existing sign to a sign with two electronic faces.⁵ North Fulton has no property right with respect to Lamar's sign, so it could not have validly entered into any agreement with the City giving it rights to Lamar's sign. The 2012 Settlement Agreement is blatantly unconstitutional, illegal, and cannot possibly bind Lamar, its personal property, or the real property of its lessor.

C. The Manager issues a Cease and Desist at North Fulton's request.

On October 25, 2021, North Fulton informed Lamar, through counsel, "We are going to ask the City to issue the stop work order." The next day, on October 26, the Manager issued the

⁴ The Sign Ordinance was rewritten in 2015, and the current version was adopted on February 22, 2016. While the Sign Ordinance has been amended several times since, the definitions have stayed the same since February 22, 2016. Thus, the City adopted these definitions and regulations with full knowledge of the 2012 Settlement Agreement and chose to issue the Permit allowing the two electronic faces without the 2012 Settlement Agreement. Indeed, the City never communicated to Lamar that the issuance of the Permit was based or conditioned upon the 2012 Settlement Agreement.

⁵ At the time of the 2012 Settlement Agreement, Lamar was already operating what is presently considered an "electronic sign" on one of the two faces. UDC § 2.6.3.

Cease and Desist and GDOT Withdrawal.

The Cease and Desist directs Lamar to “cease and desist all construction activities that relate to, or are in furtherance of, the conversion of the billboard sign located adjacent to Georgia 400 south of Mansell Road to LED/digital display because such construction activities are in violation of the City of Alpharetta sign ordinance.” (Exhibit A). It further provides, “To the extent the construction activities include a conversion of the billboard sign to an LED/digital display, the application misrepresented that you had received the review and approval of all persons or parties with legal or financial interest.” (*Id.*). Finally, it invites Lamar to submit information regarding whether there are any other “financially or legally interested persons or parties.” (*Id.*). Accordingly, the Cease and Desist stopped construction of the sign notwithstanding Lamar’s rights under the Permit.

Also on October 26, the Manager wrote an email to GDOT stating that the “certification to the Application for Multiple Message Sign Permit, GDOT Permit Number D187, referenced a settlement agreement, but the City has received information that the applicant has not secured the rights to locate an LED/digital sign at this location.” (Exhibit B). The email says, “The City of Alpharetta withdraws the certification to the Application for Multiple Message Sign Permit to the extent that it suggests that the applicant has rights pursuant to the referenced settlement agreement, where such rights are now being challenged.” (*Id.*). Such a “withdrawal” effectively revoked the City’s authorization upon which Lamar and GDOT relied during the permitting process and negotiation of the release agreement, and will have a staggering impact unless it is withdrawn.

D. Lamar submits extensive information to the Manager demonstrating the validity of the Permit and illegality of the application of the 2012 Settlement Agreement to Lamar.

Following receipt of the Cease and Desist and GDOT Withdrawal, Lamar provided extensive information validating its legal rights to the Permit, construction of the sign, and the unenforceability of the 2012 Settlement Agreement. Lamar sought clarification on the allegation in the Cease and Desist that Lamar’s “application misrepresented that [it] had received the review and approval of all persons or parties with legal or financial interest” and also provided the Manager, through the City’s counsel, with information regarding whether there are any other “financially or legally interested persons or parties.” (**Exhibit F**).

In particular, Lamar informed the City that the sign was originally allowed to be constructed on the property as part of a 2002 settlement agreement between the City and Advantage Advertising, L.L.C. (“Advantage”) (the “2002 Settlement Agreement”). The 2002 Settlement Agreement is signed by then-City Attorney Sam Thomas, the same City Attorney who approved the form of the 2012 Settlement Agreement. Lamar purchased the sign from Advantage in 2004, giving it rights to the sign and the 2002 Settlement Agreement. (**Exhibit G**).

Lamar also informed the City that while the Cease and Desist and GDOT Withdrawal appear to suggest the City relied upon the 2012 Settlement Agreement in issuing the Permit, this could not have been the case, since Lamar is not a party to the 2012 Settlement Agreement. What’s more, Lamar presented evidence that it told the Manager, on June 9, 2021, a month before the City

issued the Permit, that “Action Outdoor” – not Lamar – “holds a digital permit issued by Alpharetta years ago in a settlement.” (Exhibit F).

North Fulton provided Lamar a copy of a July 8, 2021 memorandum written by then-City Attorney Sam Thomas, who informed the Manager that “State law allows billboard relocation in this situation,” citing O.C.G.A. § 32-3-3.1. Mr. Thomas, who was involved with the 2002 Settlement Agreement and the 2012 Settlement Agreement, clearly had knowledge and information about the matter at hand, further underscoring that the City validly issued the Permit to Lamar.

In light of the foregoing, Lamar requested that the City notify Lamar of any information it had indicating that Lamar’s application contained “misrepresentations,” as the Cease and Desist alleged.

E. The City relies on unsubstantiated contentions by North Fulton that it has rights to Lamar’s sign.

On November 1, 2021, the Manager responded to Lamar’s request. (Exhibit H). In particular, the Manager identified the following “representations” in Lamar’s permit application as being “incorrect”:

I, as applicant and authorized agent, do hereby swear and attest to the following: All information provided in this application is, to my best knowledge, true and accurate; and the placement, design, and installation of the signage and equipment described in this application has been reviewed and approved by the property owner(s) and all other persons or parties with legal or financial interest in the property described herein and defined by the address indicated as SIGN LOCATION above and the sign and equipment described herein shall be constructed and installed in full accordance with all manufacturers’ specifications and in compliance with all applicable federal, state and local codes, ordinances, and design standards.

(Exhibit H) (emphasis in original). The Manager also wrote, “[f]ollowing our issuance of the permit and approval to GDOT, we learned that another entity **contended** it had the exclusive right to convert the sign to LED.” *Id.* (emphasis added). Accordingly, the City issued the Cease and Desist and GDOT Withdrawal, suspending Lamar’s validly issued Permit, due to unproven allegations of its competitor.

The next day, on November 2, Lamar sent additional correspondence and documentation to the Manager explaining in detail why North Fulton does not have any “legal or financial interest” in the new sign Lamar is constructing pursuant to O.C.G.A. § 32-3-3.1. (Exhibit G). In particular, even assuming the validity of the facially unconstitutional 2012 Settlement Agreement, it applies only to “the existing static billboard sign” and expressly provides that any LED sign under the agreement “shall remain at the same location.” 2012 Settlement Agreement, ¶ 4(b) (emphasis added). It also makes clear that “any sign converted shall remain in its current location and not increase the height or overall size of the sign and the sign structure.” *Id.* ¶ 4(d) (emphasis added).

As a result, even assuming the 2012 Settlement Agreement were valid (which it is not), any “property rights,” see ¶ 14, afforded to North Fulton regarding Lamar’s sign were narrowly afforded to the sign “existing” at the time in its “same” and “current location.” *Id.* ¶¶ 4(b), (d). Because the new sign has been relocated and reconstructed, the 2012 Settlement Agreement does not apply.

F. The City refuses to withdraw the Cease and Desist and GDOT Withdrawal.

On November 3, counsel for Lamar met with counsel for the City and again provided additional information further demonstrating Lamar’s legal rights to the Permit and construction of the sign. Lamar requested to hear from the City regarding the Cease and Desist by the end of the day on November 5, in light of the impending appeal deadline and the fact that Lamar approximates its loss is **\$2,000 every day**. Lamar did not hear back from the City until November 5, at 5:53 P.M., and was told that the City’s counsel would “not have a chance to discuss this matter until next week.”

On November 8, Lamar sent additional correspondence to the Manager, requesting that the City withdraw the Cease and Desist and GDOT Withdrawal, and to the extent necessary, follow the procedures set forth in the Sign Ordinance. (**Exhibit I**). The City refused to do so.

GROUND FOR APPEAL

A. The Cease and Desist and GDOT Withdrawal should be reversed.

1. The Cease and Desist and GDOT Withdrawal were procedurally improper.

The Cease and Desist was issued pursuant to UDC § 5.9.1(E)(2), without written notice prior to stopping the work, which is only authorized “when an emergency exists.” No emergency existed here. A bare threat of litigation and mere “contention” by one of Lamar’s competitors does not qualify as an “emergency.” And the Manager cannot claim “emergency” based upon information of which the City was indisputably aware at the time it validly issued the Permit.

Moreover, the City should have followed the Sign Ordinance giving Lamar notice and opportunity to be heard before issuing the Cease and Desist and GDOT Withdrawal. The Cease and Desist and GDOT Withdrawal facially suspended the Permit and effectively revoked it by forcing Lamar to submit a new permit application. To suspend or revoke a permit under the Sign Ordinance, the City must prove a “false” and “material” statement or omission, only after a public hearing, on at least 15 days’ notice, and disclosure of a “statement of reasons for the suspension or revocation of the permit.” UDC § 2.6.4(C)(2), (7) (“No permit shall be suspended or revoked until after the permittee is granted a public hearing before the Board of Appeals.”).

Instead of following the Sign Ordinance, the Manager, without giving Lamar notice and a right to be heard, suspended and revoked the Permit for an indeterminate amount of time, subject to restoration only after submission of a new permit application and upon a showing, to the subjective “satisfaction” of the City, there are no other “financially or legally interested persons

or parties.” The Manager did this at the legally baseless request of one of Lamar’s competitors, based upon information the City was aware of prior to issuing the Permit.

As of the date of this filing, the Manager has failed to provide Lamar a copy of the information North Fulton submitted to the City in connection with its request “to have Alpharetta revoke Lamar’s permit to the extent it authorizes the conversion of the sign to LED.” Lamar has repeatedly asked for this information, but the Manager has not provided it, despite the fact that the City has provided Lamar’s submissions to North Fulton.

The City cannot rely upon UDC § 5.9.1(E)(2) to suspend and revoke a permit. To suspend or revoke a permit, the City must travel under the Sign Ordinance, UDC § 2.6, which is specifically applicable to this situation.

The Manager either intentionally refused to comply with provisions of the Sign Ordinance or misinterpreted the Code’s requirements for suspending and revoking a permit. Either way, the Cease and Desist and GDOT Withdrawal violate the Code, including the Sign Ordinance, and must be set aside immediately.

2. The Cease and Desist and GDOT Withdrawal are substantively defective and violate Lamar’s Constitutional Rights.

There is no basis for the Manager to accuse Lamar of making a “misrepresentation” or “incorrect” representation in its sign permit application. Lamar is the undisputed owner of the sign at issue, was validly issued the Permit under the law, based on the current facts which the City was well aware of before issuing the Permit. North Fulton has no legal right to convert *Lamar’s property* to an LED sign, much less an *exclusive right*, and therefore it was not a misrepresentation for Lamar’s application to state that it had been reviewed and approved by all other persons or parties with legal or financial interest in the property. Moreover, the 2012 Settlement Agreement does not even apply to Lamar’s new sign. Accordingly, the Cease and Desist and GDOT Withdrawal are invalid. Despite Lamar providing documentation and information establishing that its Permit is valid and the 2012 Settlement Agreement is illegal and inapplicable to Lamar’s new sign, the Manager has failed to reverse, revoke, or withdraw the Cease and Desist and GDOT Withdrawal.

The Cease and Desist and GDOT Withdrawal violate Lamar’s clear and unequivocal vested rights in the Permit and construction of the sign. The City validly issued the permit under O.C.G.A. § 32-3-3.1, and Lamar has vested rights under Georgia law to construct the new sign in accordance with the Permit. *See, e.g., WMM Props., Inc. v. Cobb Cnty.*, 255 Ga. 436, 438, 339 S.E.2d 252, 254 (1986) (finding a property owner has vested rights to rely on a building and other permits once issued, reasoning that “[o]nce a building permit has issued, a landowner has a right to develop the property pursuant to that permit”). Moreover, Lamar has expended significant expenses and changed its position in reliance on the Permit and the City’s assurances through its efforts to reconstruct the sign, further securing Lamar’s vested rights. *See WMM Props., Inc.*, 255 Ga. at 439, 339 S.E.2d at 256 (“Secondly, WMM’s right to develop vested because of its substantial expenditures plus official assurances that future permits would probably issue for the development.”).

The City properly issued the permit in accordance with the Sign Ordinance. An “electronic sign” means a “sign such as a tri-vision sign, LCD sign or LED sign,” whereas an “animated sign” includes a tri-vision sign but not an LED sign, at least not the way Lamar operates its LED signs. UDC § 2.6.3. Whereas animated signs are prohibited, electronic signs are not prohibited – and, in fact, are not regulated at all. *Id.* § 2.6.8(4). Additionally, because one of the prior faces on Lamar’s sign was a tri-vision, replacing it with an LED reduces nonconformity and properly replaces a prohibited, animated electronic sign with a non-prohibited, non-animated electronic sign.

UDC § 2.6.2(B) further provides that “[p]rotected non-commercial speech shall be permitted in any place commercial speech is permitted under this Ordinance,” and “[t]o the extent any conflict arises between this provision and any other language found in this Ordinance, this provision shall control.” Because LED is the only sign technology that allows certain non-commercial messages to be effectively displayed (such as amber alerts and other emergency non-commercial messages), allowing LED is the only way to allow these non-commercial messages in compliance with this provision.

Beyond being factually baseless, the Cease and Desist and GDOT Withdrawal violates Lamar’s state and federal constitutional rights.

The Cease and Desist and GDOT Withdrawal, and the failure to withdraw the same, does and would violate Lamar’s rights under the First Amendment of the Constitution of the United States and Article I, Section I, Paragraph V of the Georgia Constitution.

The Cease and Desist and GDOT Withdrawal, and the failure to withdraw the same, does and would unreasonably impair and destroy Lamar’s property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, Article I, 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 Cease and Desist and GDOT Withdrawal, and the failure to withdraw the same, are and would be unconstitutional, illegal, null and void, constituting a taking of Lamar’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 Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983.

The Cease and Desist and GDOT Withdrawal, and the failure to withdraw the same, does and would violate the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States, by denying Lamar economically viable use of its property while not substantially advancing legitimate state interests.

The Cease and Desist and GDOT Withdrawal, and the failure to withdraw the same, does and would unconstitutionally discriminate, in an arbitrary, capricious, and unreasonable manner, between Lamar and others similarly situated 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.

The Cease and Desist and GDOT Withdrawal, and the failure to withdraw the same, does and would constitute an unreasonable and extreme hardship upon Lamar without remotely advancing the public health, safety and welfare and does and would constitute an arbitrary and capricious act without any rational basis therefore, constituting an abuse of discretion in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, Article I, 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 Cease and Desist and GDOT Withdrawal, and the failure to withdraw the same, does and would constitute a violation of Article I, Section I, Paragraph X of the Constitution of the State of Georgia of 1983, as retroactive deprivations of Lamar's vested rights.

The Cease and Desist and GDOT Withdrawal, and the failure to withdraw same, does and would constitute a violation of Lamar's procedural due process rights under Article I, Section I, 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.

II. The City of Alpharetta's execution, enforcement, and reliance upon the 2012 Settlement Agreement violates Lamar's state and federal constitutional rights.

The 2012 Settlement Agreement is highly irregular, to say the least. The City purportedly provided one of Lamar's competitors the "exclusive right" to "convert" Lamar's then-existing sign – and did so, wittingly or unwittingly, without Lamar's consent and cloaked in secrecy under a confidentiality provision, which plainly violates the Georgia Open Records Act.

On its face, the 2012 Settlement Agreement violates Lamar's state and federal constitutional rights, including by:

(1) infringing upon Lamar's rights under the First Amendment of the Constitution of the United States and Article I, Section I, Paragraph V of the Georgia Constitution;

(2) unreasonably impairing and destroying Lamar's property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, Article I, 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;

(3) constituting a taking of Lamar'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 Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983;

(4) violating the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States, by denying Lamar economically viable use of its property while not substantially advancing legitimate state interests;

(5) discriminating, in an arbitrary, capricious, and unreasonable manner, between Lamar and others similarly situated 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;

(6) constituting an unreasonable and extreme hardship upon Lamar without remotely advancing the public health, safety and welfare and an arbitrary and capricious act without any rational basis therefore, in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, Article I, 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; and,

(7) violating Article I, Section I, Paragraph X of the Constitution of the State of Georgia of 1983, as retroactive deprivations of Lamar's vested rights.

In sum, the suspicious nature of the 2012 Settlement Agreement warrants an investigation into its negotiation and formation. There is absolutely no basis under the law or the City's Code permitting it to grant any entity exclusive rights to a permit. There is certainly no basis under the law or the City's Code permitting the City to grant exclusive rights to a permit to an entity that does not even own the sign or the real property at issue, and then attempt to enforce those purported exclusive rights against the entity that *actually owns* the sign and has obtained a valid permit to build the sign. It is clear the City's conduct in enforcing the 2012 Settlement Agreement is illegal, invalid, and must be immediately reversed.

DAMAGES

The Cease and Desist and GDOT Withdrawal, and the City's conduct regarding the 2012 Settlement Agreement, has caused and will cause Lamar to suffer significant monetary damages, including Lamar's lost profits, and Lamar will seek such damages and attorney's fees from the City, including under 42 U.S.C. § 1988. Lamar approximates its damages to consist of at least \$2,000 per day until the Cease and Desist and GDOT Withdrawal are reversed.

Please set this appeal for the first available hearing. UDC § 4.5.2.

Respectfully submitted, this November 10, 2021.

KILPATRICK TOWNSEND
& STOCKTON LLP

/s/ Joe P. Reynolds
Thomas M. Clyde
Georgia Bar No. 170955
Joe P. Reynolds
Georgia Bar No. 358795
1100 Peachtree Street, NE, Suite 2800

BLOOM PARHAM, LLP

/s/ Andrea J. Pearson
Andrea J. Pearson
Georgia Bar No. 409604
977 Ponce de Leon Ave., NE
Atlanta, Georgia 30306
Telephone (404) 577-7710

Atlanta, Georgia 30309
Telephone (404) 815-6500
Facsimile (404) 815-6555
tclyde@kilpatricktownsend.com
jreynolds@kilpatricktownsend.com

Facsimile (404) 577-7715
apearson@bloom-law.com

cc: James E. Singer (via email jesboviskyle.com)
Michael D. Stacy (via email mstacy@boviskyle.com)
Wes Skinner (via email jws@boviskyle.com)
Lauren Shapiro, City Clerk (via email lshapiro@alpharetta.ga.us)
Robert J. Regus, City Administrator (via email bregus@alpharetta.ga.us)

EXHIBIT A



2 PARK PLAZA
ALPHARETTA, GA 30009
PHONE: 678.297.6000
WWW.ALPHARETTA.GA.US

10/26/2021

Lamar Advertising
Tim Adrien
tadrien@lamar.com

Dear Lamar Advertising:

Cease and Desist

Pursuant to UDC § 5.9.1(E)(2), you are hereby directed to cease and desist all construction activities that relate to, or are in furtherance of, the conversion of the billboard sign located adjacent to Georgia 400 south of Mansell Road to LED/digital display because such construction activities are in violation of the City of Alpharetta sign ordinance. To the extent the construction activities include a conversion of the billboard sign to an LED/digital display, the application misrepresented that you had received the review and approval of all persons or parties with legal or financial interest. This cease and desist does not apply to, or prohibit, the relocation of the sign, nor does it prohibit you from the construction of a static/trivision display header that is consistent with (in all applicable respects other than location) the characteristics of the billboard sign prior to relocation activities commencing.

Development and construction activities may be resumed upon satisfactory representation to the City of Alpharetta that all financially or legally interested persons or parties have reviewed and approved of the conversion of the billboard sign to LED/digital display, or satisfactory representation that there are no other financially or legally interested persons or parties, and submission of a sign application consistent with the same.

Respectfully,

Bret Schroeder
Code Enforcement Manager
City of Alpharetta

MAYOR
JIM GILVIN

MAYOR PRO TEM
DONALD F. MITCHELL

COUNCIL MEMBERS
JASON BINDER
BEN BURNETT
JOHN HIPES
DAN MERKEL
KAREN RICHARD

CITY ADMINISTRATOR
ROBERT J. REGUS

EXHIBIT B

From: "Schroeder, Bret" <bschroeder@alpharetta.ga.us>
Date: October 26, 2021 at 2:14:00 PM EDT
To: wsanders@dot.ga.gov
Subject: Lamar Cease and Desist from Alpharetta

Attached is a copy of a cease and desist today issued to Lamar Outdoor Advertising-Atlanta regarding certain construction activities related to the billboard located at latitude 34.0348653 and longitude 84.3140453 (S.R. 400 south of Mansell Road in Alpharetta, Georgia).

The certification to the Application for Multiple Message Sign Permit, GDOT Permit Number D187, referenced a settlement agreement, but the City has received information that the applicant has not secured the rights to locate an LED/digital sign at this location.

The City of Alpharetta withdraws the certification to the Application for Multiple Message Sign Permit to the extent that it suggests that the applicant has rights pursuant to the referenced settlement agreement, where such rights are now being challenged.

Let me know if you have any questions.

Bret Schroeder
Code Enforcement Manager
City of Alpharetta
2 Park Plaza
Alpharetta, Ga 30009
678-297-6088
bschroeder@alpharetta.ga.us

EXHIBIT C

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into effective as of this 1st day of March, 2012, by and among Action Outdoor Advertising JV, LLC ("Action"); KH Outdoor, LLC; and Granite State Outdoor Advertising, Inc. and their principals, members, employees, affiliates, successors, subsidiaries and assignees, and any entity owned or controlled by them (collectively referred to as "Advertisers") and the City of Alpharetta, Georgia ("City"). Collectively these entities are referred to herein as "Parties," and in the singular as a "Party."

WHEREAS, Advertisers filed outdoor advertising sign permit applications with Fulton County, Georgia during 2005 and 2006 for three locations which were then in unincorporated Fulton County but since have been annexed into the City; and

WHEREAS, litigation (to which all Parties hereto are parties) arose regarding these applications styled Action Outdoor Advertising, LLC et al. v. Fulton County, et al. in Fulton County, Georgia Superior Court (Case Nos: 2005CV10977, 2005CV107555, 2005CV109918, 2006CV114781 and 2006CV117063) (hereinafter the "Lawsuit") resulting in an order entered by the Superior Court of Fulton County on May 27, 2010 ruling that Advertisers have certain vested rights under their applications with respect to the signs described therein and further ruling that those rights continue notwithstanding the subsequent annexation of the three locations into the City; and

WHEREAS, the aforesaid order was affirmed by the Supreme Court of Georgia on June 13, 2011 in Case Nos. S11A0023 and S11A0101; and

WHEREAS, certain other disputes have arisen or might arise in the future between the Parties regarding the matters contended in the Lawsuit and because the Parties wish to settle any and all disputes or claims between them in their entirety, they enter into this Agreement.

THEREFORE, in light of the foregoing and based upon the exchange of valuable consideration by and among the Parties to this Agreement – including the City's agreement with respect to the signs referenced herein and the waiver of certain legal claims by Advertisers as set forth below – the Parties to this Agreement hereby agree to a mutual release of any and all claims, future or current, arising from or otherwise related to the Lawsuit, as follows:

1.

Each of the respective Parties to this Agreement hereby mutually releases and forever discharges each of the other Parties to this Agreement and Advertisers hereby release and forever discharge the City; Arthur Letchas, as an individual and in his capacity as Mayor of the City; Mike Kennedy, as an individual and in his capacity as a council member of the City; Chris Owens, as an individual and in his capacity as a council member of the City; Cheryl Oakes, as an individual and in her capacity as a council member of the City; Jim Paine, as an individual and in his capacity as a council member of the City; and D. C. Aiken, as an individual and in his capacity as a council member of the City, and all of such parties' successors, assigns, agents, affiliates, officers, directors, employees, representatives, insurers, and attorneys from any and all claims, debts, liabilities, demands, obligations, damages, costs, expenses, attorneys' fees,

actions and causes of action, of every nature, character and description known or unknown, which any of the respective Parties to this Agreement, now own or hold or may have any time heretofore owned or held, or may at any time own or hold against any other Party to this Agreement, excepting enforcing this Agreement.

2.

Subject to the terms hereof, by signing this Agreement the Advertisers withdraw and abandon any and all pending and prior sign permit applications they previously submitted to Fulton County for locations which are now within the limits of the City, except for the sign proposed in the triangle at Kimball Bridge Road and Ga. Hwy. 120, which is discussed below.

3.

Advertisers further agree to the following:

- Advertisers waive all attorneys fees, expenses and damages claims against the City relating to any and all issues and claims presented in the Lawsuit; and
- Advertisers agree that no sign constructed, converted, or rebuilt pursuant to this Agreement will be utilized to post messages advertising (1) adult entertainment establishments, strip clubs, exotic massage parlors, adult video or book stores, or similar businesses; (2) the sale of tobacco products; (3) abortion services, pregnancy testing, paternity testing (including DNA testing) or the testing and treatment of sexually transmitted diseases; (4) any activity or product that is illegal under Georgia or federal law; (5) any material which is obscene as such term is

defined in O.C.G.A. § 16-12-80; and (6) messages regarding the City's policies or elected or appointed officials of the City.

4.

The City will allow construction, modification, repair, replacement and rebuilding of the following signs on the following conditions:

(a) The City hereby provides Advertisers the right to erect one sign on the property referred to as the Shell or Georgia Medical tracts in the area referred to as the triangle at Kimball Bridge Road and Ga. Hwy. 120, as more particularly shown on Exhibit "A." This sign may be a LED multi-message sign subject to the limitations set forth herein and shall have a maximum of two faces. The sign pole shall be set back a minimum of 10 feet from the right-of-way and no part of the sign structure shall extend across any part of the right-of-way. There shall be no time limit on the date by which this sign must be constructed in order to be in compliance with this Agreement. In the event the sign is constructed as a double faced sign, the sign may be a "V" shaped sign as that term is commonly understood in the outdoor advertising industry and the angle of the "V" shall not exceed 45 degrees. The height of the sign shall not exceed the greater of 50 feet or the height of the highest billboard-type sign currently existing within City limits.

(b) The City hereby provides Advertisers the exclusive right to convert the existing static billboard sign located on the property of Compass Lender, LLC on the east side of Georgia 400 south of Mansell Road (having an address of 0 Wooten Road and as

more particularly shown on Exhibit "B") to an electronic sign utilizing LED technology on both sides. If necessary, as determined in the sole discretion of Advertisers, they may rebuild the existing structure if needed to provide the necessary structural support for an LED sign. Following these improvements, this sign shall remain at the same location and shall have the same size and height configuration as it presently has. Nothing in this Agreement shall be deemed to waive or otherwise alter any City zoning conditions applicable to this property location.

(c) The City hereby authorizes and provides to Action the exclusive right to convert the existing tri-vision billboard sign located at 1015 Mansell Road to an electronic sign utilizing LED technology on both sides. Following conversion, this sign shall remain at the same height and location and shall have the same size and configuration as it presently has.

(d) All LED multiple-message signs shall comply with all applicable requirements of the Official Code of Georgia Annotated (including, but not limited to the Control of Outdoor Advertising Act, O.C.G.A. § 32-6-72, et seq.) and any applicable regulations promulgated by the Georgia Department of Transportation; provided, however, in the event of any conflict between applicable state laws and regulations and the provisions of this Agreement, the more restrictive provisions shall control. LED multiple-message signs shall have a maximum of two faces with maximum advertising space on each side not to exceed 14 feet by 48 feet or current advertising space if an existing sign, whichever is less. If the sign is a "V" type sign, the angle shall not exceed 45

degrees. There shall be no motion, flashing or animation other than the change and transition of the message. There shall be no sound or video streaming. The brightness of light emanating from each LED sign shall not exceed the minimum necessary to meet industry standards. Any sign converted shall remain in its current location and not increase the height or overall size of the sign and the sign structure.

(e) To the extent that Advertisers are required to obtain permits from the Georgia Department of Transportation (GDOT) for the construction and alteration of these signs and the signs referred to in subparagraph (i) below, the City shall have no responsibility with respect thereto other than signing the GDOT standard application forms for outdoor advertising structures and (if applicable) electronic multi-message structures within ten business days of the City's receipt thereof, accompanying each form with a statement substantially similar to the following: "The posting of the outdoor advertising sign is permitted pursuant to the terms of a legal settlement agreement between the City of Alpharetta and the applicant."

(f) No construction, modification, replacement, rebuilding or conversion activity allowed hereby shall commence earlier than March 1, 2012; provided, however, the City's execution and delivery of GDOT approvals required hereby shall commence in accordance with the terms hereof and shall not be delayed by this limitation on the date of commencement of construction or conversion activity. In addition,

Advertisers shall provide the City Administrator and the City Attorney 10 days' prior written notice of the commencement of any such activity.

(g) Prior to the initial posting of any paid advertising on the signs (including, but not limited to, the signs referred to in subparagraph (i) below) following the construction and modifications allowed hereby and within 10 days following the construction or conversion of each sign, Advertisers shall provide the City a certificate from a licensed structural engineer certifying the safety of the sign and sign structure. Footing inspections may be performed by a licensed engineer in lieu of a City inspector.

(h) Advertisers shall permit the City to post public service messages on the LED signs which are the subject of this Agreement at no charge. These messages may be posted on a space available basis only (i.e. if no advertising has been sold for the requested space at the requested time), provided, however, if the City requests the Advertisers to post a temporary "Amber Alert" (missing or abducted child) or a "Mattie's Call" (missing disabled adult) message, the Advertisers will do so regardless of space availability.

(i) With respect to the existing outdoor advertising signs presently owned by others located at 1710 Alpharetta Highway and 421 South Main Street, upon Action's request or upon removal of those structures, Action is hereby granted the exclusive right to replace each existing structure with a new static (non-LED and non-trivision) structure of the same height and size and on the same lot; provided, however, the location on each lot of each sign may be altered with each landowner's permission upon its reconstruction as necessary to reduce safety hazards; provided, however, that no portion of the sign or structure shall be located closer to the right of way. The terms of this paragraph shall prevail over any conflicting City codes, City laws or City ordinances which may otherwise prohibit the replacement of nonconforming sign structures.

5.

Advertisers, including their principals, or their successors, affiliates or assigns, whether individually or as a principal in an entity governed hereby, shall, for a period of five years from the date of this Agreement, not file any actions challenging the City's sign ordinance or any provision thereof, or file an application for a sign not specifically permitted thereunder or hereunder, or construct any signs on any property along State Highway 9 between Highway 9's intersections with Vaughn Drive and Cogburn Road (including, but not limited to, the property at 632 N. Main Street/Hwy. 9). Nothing in this section shall be deemed to prevent a Party from filing an action to enforce this Agreement.

6.

All Parties agree that the existence and terms of this Agreement will be kept confidential to the fullest extent permitted by law.

7.

This Agreement sets forth all, and is intended to be an integration of all, of the covenants, promises, agreements, warranties and representations among the Parties hereto, and, other than as expressly set forth herein, there are no covenants, promises, agreements, warranties, representations or other understandings, oral or written, express or implied, among the Parties relating to any and all disputes that exist or might exist between the Parties. This Agreement constitutes the entire Agreement between them. This Agreement may only be amended by a written instrument executed by all parties.

8.

This Agreement represents the compromise of doubtful claims and is not an admission of liability by any Party.

9.

This instrument may be executed in separate counterparts and shall become effective when such separate counterparts have been exchanged among the Parties.

10.

No presumption against or in favor of any Party or person shall apply due to the drafting of this documents.

11.

This Agreement shall be governed by the substantive and procedural laws of the State of Georgia. Any suit brought to enforce any provisions of this Agreement must be brought in the courts of Fulton County, Georgia.

12.

Each of the Parties hereby warrants to the other Parties that the undersigned have the authority to execute this Agreement and to bind the respective Parties to this Agreement.

13.

Advertisers may assign their rights hereunder, provided the assignee(s) agree to be subject to all of the duties and obligations of the Advertisers under this Agreement and sign an agreement agreeing to be bound by those duties and obligations.

14.

The rights of Advertisers established herein are vested property rights and are not affected by conflicting laws or ordinances or laws or ordinances enacted after the date hereof.

The undersigned (by and through all members or shareholders, as indicated below)
have hereunto set their hands and seals as of the date set forth above.

ACTION OUTDOOR ADVERTISING JV, LLC

By: Steve A. Galberaith (SEAL)
Steve A. Galberaith, Member

By: John "Jack" Hartrampf (SEAL)
John "Jack" Hartrampf, Member

By: Lawrence T. McCurdy (SEAL)
Lawrence T. McCurdy, Member

KH OUTDOOR, LLC

By: Morgan Hudgens (SEAL)
Morgan Hudgens, Member

By: Daniel B. Cowart (SEAL)
Daniel B. Cowart, Member

By: Krisina T. Cowart (SEAL)
Krisina T. Cowart, Member

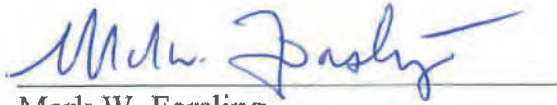
By: Heather Hudgens (SEAL)
Heather Hudgens

GRANITE STATE OUTDOOR ADVERTISING, INC.

By: Wayne Charles
Wayne Charles, Shareholder

By: Jim Waid
Jim Waid, Shareholder

Approved as to form:



Mark W. Forsling
Attorney for Advertisers

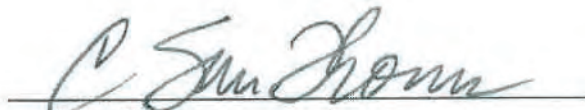
CITY OF ALPHARETTA, GEORGIA

By: 
DAVID C. BELLE ISLE, Mayor

Attest:


City Clerk

Approved as to form:



C. Sam Thomas, City Attorney



k:\2605\55\Settlement Agreement (Alpharetta).doc

EXHIBIT A



Google earth

feet
meters

100

500



SIGN LOCATION
(NEW)

11378 STATE BRIDGE ROAD

EXHIBIT "D"



Google earth

feet
meters

2000
600



EXISTING
LAMAR SIGN
(TO CONVERT TO LED'S)

'D' WOOTEN ROAD

PROPERTY ADDRESS: _____

PARCEL #: _____

Local Government Certification for Outdoor Advertising

To be completed by Applicant:

Name of Applicant or Company: _____

Sign is: ☐ existing ☒ proposed

County: _____ Municipality (if applicable): _____

State Route Name & Number: _____

Parcel Number: _____

To be completed by appropriate Zoning Official:

Part 1.

I hereby certify that the (City of) (County of) _____

(Check all that apply):

- ☒ Has a zoning plan and ordinance. Original adoption date: _____
- ☒ Date of last amendment (revision) to zoning plan: _____
- ☐ Does not have a zoning plan and ordinances.
- ☐ Has other land use controls or ordinance. Please specify _____
- ☒ Has a sign ordinance dated _____ separate from any zoning or land use plan.
- ☐ Has a sign ordinance which requires sign spacing of more than 500', size or height limits, or includes the "I-95 plan". Please specify _____
- ☐ Has no sign controls of any kind.

Part 2.

Current zoning of the parcel where the sign is to be located: _____

Approved uses for this zoning type: THE POSTING OF THIS OUTDOOR ADVERTISING SIGN IS PERMITTED
IN ACCORDANCE WITH THE TERMS OF A LEGALLY BINDING SETTLEMENT
AGREEMENT BETWEEN THE CITY OF _____ AND THE APPLICANT.

Date of MOST RECENT zoning of this parcel: _____

Previous zoning of this parcel: _____

I, _____, a duly qualified official of the City/County of _____, do hereby certify that I have reviewed the location and description of the outdoor advertising structure described on the attached application and find the sign is to be located in an area appropriate for such structures and is in compliance with all local laws, ordinances or regulations. I further understand that in evaluating any application for an Outdoor Advertising permit GDOT does not review for compliance with local ordinances and that any such permit issued by GDOT is not a building permit.

This the _____ day of _____, 20____

WITH THE TERMS OF A LEGALLY BINDING
SETTLEMENT AGREEMENT BETWEEN THE CITY
OF _____ AND THE APPLICANT.

Authorized Official Signature _____

Printed Name and Title _____

Phone #: _____ Email: _____

EXHIBIT "C"

PROPERTY Address: _____

APPLICATION FOR MULTIPLE MESSAGE SIGN

GEORGIA DEPARTMENT OF TRANSPORTATION

One Georgia Center
600 West Peachtree Street N.W., 10th Floor
Atlanta, Georgia 30308

TYPE OR PRINT LEGIBLY (Please sign original in blue ink- All Sections Must Be Completed)

Date of Application _____

GDOT Permit Number _____

"Multiple Message" sign means, a sign, display, or device, which changes the message or copy of the sign electronically or mechanically by movement or rotation of panels or slats. (O.C.G.A §32-6-71)

Applicant Information

Property Owner Information

Corporate Name _____

Corporate Name _____

Name of Applicant (agent) _____

Corporate Title _____

Name of Landowner _____

Corporate Title _____

Address _____

Address _____

City _____

State _____

Zip _____

City _____

State _____

Zip _____

Phone # _____

Phone # _____

Email _____

Email _____

F.E.I.# or Social Security # (Whichever applicable) _____

Sign Location Information

County: _____ City: _____ State Route #: _____ on the ☐ N ☐ E ☐ S ☐ W side
of the roadway and _____ feet ☐ N ☐ E ☐ S ☐ W of milepost number _____

Latitude: _____ Longitude: _____ (i.e. decimal degrees)

Sign Description

Is this application to change the multi-message type for an already permitted multiple message sign? ☐ Yes ☒ No

Multiple Message Sign (MMS) Type: ☐ Mechanical ☒ Electronic

Number of existing faces: Two (2)

Number of faces to be Multiple Message: Two (2)

Length: 1 Height: _____ Area: _____ Sq. Ft. Viewed from ☐ N ☐ E ☐ S ☐ W Direction ☐ MMS

Length: _____ Height: _____ Area: _____ Sq. Ft. Viewed from ☐ N ☐ E ☐ S ☐ W Direction ☐ MMS

Length: _____ Height: _____ Area: _____ Sq. Ft. Viewed from ☐ N ☐ E ☐ S ☐ W Direction ☐ MMS

Length: _____ Height: _____ Area: _____ Sq. Ft. Viewed from ☐ N ☐ E ☐ S ☐ W Direction ☐ MMS

Type of Construction (circle all that apply): ☐ Single Face ☐ Back-to-Back ☐ Double Face ☐ Type - V

Local Government Approval [FOR CITY OR COUNTY USE ONLY]

I hereby certify that the (City or County of) _____ allows the type of multiple message sign (mechanical or electronic), provided all zoning requirements are met at the time application for building permit is submitted. PURSUANT TO THE TERMS OF A LEGALLY BINDING SETTLEMENT AGREEMENT BETWEEN THE CITY OF _____ AND THE APPLICANT.

Authorized Official Name (print) _____

Title _____

Authorized Official Signature _____

City of _____ County of N/A

Date: _____

EXHIBIT "C"

EXHIBIT D



SIGN PERMIT

Date: 07/21/2021

Permit No: S210156

SITE INFORMATION

Sign Address: 0 WOOTEN RD
Business Name: Lamar Billboard

Suite #:

PEOPLE INFORMATION

Sign Owner: COMPASS LENDER LLC
Street Address: 402 ADAMSON SQ CARROLLTON GA 30117

Contact No:

Contractor:
Street Address:

Contact No:

SIGN INFORMATION

Location: 0 Wooten Rd
Sign Type: Sign Permit-Monument
If Sign Is Illuminated - URL #:
Current Value of Sign: \$1.00

Green City Initiative? N

RESPONSIBILITY / LIABILITY STATEMENT

I, as applicant and authorized agent, do hereby swear and attest to the following:

All information provided in this application is, to my best knowledge, true and accurate; and the placement, design, and installation of the signage and equipment described in this application has been reviewed and approved by the property owner(s) and all other persons or parties with legal or financial interest in the property described herein and defined by the address indicated as SIGN LOCATION above and the sign and equipment described herein shall be constructed and installed in full accordance with all manufacturers' specifications and in compliance with all applicable federal, state and local codes, ordinances, and design standards. I understand that by signing this document I agree to accept full responsibility and liability for the work and products described herein and that the City of Alpharetta shall be held harmless from any and all resulting claims and damages.

Applicant: _____

Permit Fee: \$400.00

Issued by:  _____

Penalty Info:
Waived Info:
Status: ISSUED
Date Issued: 07/21/2021

Penalty Fee:
Fees Waived:

TOTAL PERMIT FEES: \$400.00

**NOTE: Installation must be completed within (90) days or sign permit becomes invalid.
Separate Permit is required for Electrical Work.**

COMMUNITY DEVELOPMENT DEPARTMENT
CODES ENFORCEMENT DIVISION
2 PARK PLAZA, GROUND FLOOR, ALPHARETTA, GA 30009
TEL (678) 297-6080 FAX (678) 297-6081



City of Alpharetta
2 Park Plaza
Alpharetta, GA 30009
Phone: 678-297-6000
<http://www.alpharetta.ga.us>

Receipt#: 34464

Date: 7/21/2021

Payment Receipt

Invoice #	Case / Type	Case Number	Sub Type
	S-MONUMENT	S210156	

Tender Type / Description	Amount
VISA- Visa	400.00
Sub Total:	400.00

Fees:

Fee Codes / Description	Amount
S-MONUMENT- Sign Permit-Monument	400.00
Sub Total:	400.00

Total Amount Due:

400.00

Total Payment:

400.00

ALPHARETTA COM DEV
2 PARK PLZ
ALPHARETTA, GA 30009368

07/21/2021 13:16:03

CREDIT CARD

VISA SALE

Card # XXXXXXXXXXXXX9226
Network: VISA
SEQ #: 3
Batch #: 1084
INVOICE 3
Approval Code: 09644C
Entry Method: Manual
Mode: Online
Ars Code: NY2

SALE AMOUNT \$400.00

CUSTOMER COPY



2 PARK PLAZA
ALPHARETTA, GA 30009
PHONE: 678.297.6000
WWW.ALPHARETTA.GA.US

7-08-2021

Lamar Advertising
112 Wooten Rd
Alpharetta, Ga 30009

Tim Adrien:

The application for the new billboard at the above referenced location in the City of Alpharetta has been approved with the following conditions:

- (1) The sign is being permitted to comply with State law (O.C.G.A. § 32-3-3.1) and would not otherwise be allowed under city ordinances;
- (2) The relocated and reconstructed sign and sign structure following completion shall have the same size and height configuration as it currently has. It can be converted to LED technology on both sides;
- (3) The settlement agreement(s) applicable to the sign and sign structure, which include advertising and, other restrictions shall remain in effect;
- (4) The issuance of the permit shall not be deemed to waive or otherwise offer any City zoning conditions applicable to the property;
- (5) All LED signs shall comply with all applicable O.C.G.A. requirements, including the Outdoor Advertising Act, and any applicable regulations promulgated by GDOT; and
- (6) The applicant shall provide the City with ten (10) days advanced written notice before commencing relocation and reconstruction activities on the property.

MAYOR
JIM GILVIN

MAYOR PRO TEM
DONALD F. MITCHELL

COUNCIL MEMBERS
JASON BINDER
BEN BURNETT
JOHN HIPES
DAN MERKEL
KAREN RICHARD

CITY ADMINISTRATOR
ROBERT J. REGUS

Respectfully,

Bret Schroeder
Code Enforcement Manager, City of Alpharetta

EXHIBIT E

APPLICATION FOR MULTIPLE MESSAGE SIGN PERMIT

GEORGIA DEPARTMENT OF TRANSPORTATION

One Georgia Center
600 West Peachtree Street N.W., 10th Floor
Atlanta, Georgia 30308

TYPE OR PRINT LEGIBLY (Please sign original in blue ink- All Sections Must Be Completed)

7/22/2021

Date of Application

D1874

GDOT Permit Number

"Multiple Message" sign means, a sign, display, or device, which changes the message or copy of the sign electronically or mechanically by movement or rotation of panels or slats. (O.C.G.A §32-6-71)

Applicant Information

Lamar Outdoor Advertising- Atlanta

Corporate Name

Nick Brown

VP/GM

Name of Applicant (agent)

Corporate Title

6597 Peachtree Industrial Blvd

Address

Peachtree Corners

Ga

30092

City

State

Zip

470-599-7221

Phone #

nbrown@lamar.com

Email

Property Owner Information

Compass Lender, LLC

Corporate Name

Jason Kauffman

Owner

Name of Landowner

Corporate Title

402 Adamson Square

Address

Carrollton

Ga

30117

City

State

Zip

770 836-1178 ext 28

Phone #

jason.kauffman@hotmail.com

Email

Sign Location Information

County: Fulton City: Alpharetta State Route #: 040000 on the ☐ N ☒ E ☐ S ☐ W side
of the roadway and 119 feet ☐ N ☐ E ☐ S ☐ W of milepost number _____.

Latitude: 34.0348653

Longitude: -84.3140453 (i.e. decimal degrees)

Sign Description

Is this application to change the multi-message type for an already permitted multiple message sign? ☒ Yes ☐ No

Multiple Message Sign (MMS) Type: ☐ Mechanical ☒ Electronic

Number of existing faces: 2

Number of faces to be Multiple Message: 2

Length: 14 Height: 48 Area: 672 Sq. Ft. Viewed from ☒ N ☐ E ☐ S ☐ W Direction ☒ MMS

Length: 14 Height: 48 Area: 672 Sq. Ft. Viewed from ☐ N ☐ E ☒ S ☐ W Direction ☒ MMS

Length: _____ Height: _____ Area: _____ Sq. Ft. Viewed from ☐ N ☐ E ☐ S ☐ W Direction ☐ MMS

Length: _____ Height: _____ Area: _____ Sq. Ft. Viewed from ☐ N ☐ E ☐ S ☐ W Direction ☐ MMS

Type of Construction (circle all that apply): ☐ Single Face ☐ Back-to-Back ☐ Double Face ☒ Type - V

Local Government Approval [FOR CITY OR COUNTY USE ONLY]

I hereby certify that the (City or County of) Alpharetta, allows the type of multiple message sign (mechanical or electronic), provided all zoning requirements are met at the time application for building permit is submitted, pursuant to a legally binding settlement agreement between the City of Alpharetta and the applicant and OCGA §32-3-3.1.

Bret Schroeder Code Enforcement Manager
Authorized Official Name (print) Title

City of Alpharetta, County of Fulton, Date: 7-23-21

Name: Nick Brown Phone #: 470-599-7221 Email: nbrown@lamar.com

Note: This is not a building permit. Nothing in this permit shall be construed to abrogate or affect any lawful ordinance, regulation or resolution which is more restrictive than State Law as it pertains to the structure permitted. (O.C.G.A §32-6-97) In the event this multiple message application is approved, all work must be completed within twelve (12) months from the date of approval, and the underlying outdoor advertising permit must also be kept in good standing during the entire twelve (12) month period.

Effective Date: _____ Permit #: _____

Outdoor Advertising Control Manager State Maintenance Engineer

- a. A Copy of your W-9 Form.
- b. A detailed Shop Drawing of the sign indicating the plan, elevation, and side views of the sign.
- c. For corporate entities or Trusts who are the Applicant and/or Landowner: A signed statement from a corporate officer or executor, on company letterhead, authorizing the Agent(s) to sign this application on their behalf.
- d. A photograph of the existing sign or proposed sign site showing the location markings. A photograph showing the permit identification tag and where it is affixed to the structure.
- e. The correct permit fee. (fee amounts are available on the Outdoor Advertising webpage)

The permit holder shall provide notice of completion to the Department within ten (10) days of completion of construction of Multiple Message revision to the sign. The notice shall include an electronic photograph of the sign as viewed from the main travelled way of the roadway from which the sign is permitted.

Submit the application and all required attachments to the Georgia Department of Transportation, One Georgia Center, 600 West Peachtree Street N.W., 10th Floor, Atlanta, Georgia 30308, Attn: Outdoor Advertising Office

Multiple Message Application Instructions

Applications must be typed or filled out in ink. Only completed applications will be reviewed. Incomplete applications will be returned to the applicant.

GDOT Permit Number

1. **Current Number:** Provide the current GDOT permit number for which you are requesting to revise to a multiple message status. Please leave this space blank if you are submitting a multi-message application concurrent with the outdoor advertising application.

Applicant / Property Owner Information

2. **Name of Applicant or Company:** Person, corporate entity, or Trust in whose name the permit is listed. The person or corporate entity name and F.E.I.# / Social Security # you provide on the application should match the name and F.E.I.# / Social Security # on the copy of the W-9 Form you provide.
3. **Name of Landowner:** Person, corporate entity, or Trust in whose name the Landowner is listed. This will be the name used by the Department for all correspondence to the landowner.

Sign Location Information

4. **County and Road Information:** Indicate the county and city (if applicable) in which the sign is or will be located. Indicate the state route number of the roadway the sign will be adjacent to. Some roads have two state route number designations. The Department uses the lower route number.
5. **Milepost Information:** Provide the distance in feet to the lower number milepost (not necessarily the closest milepost).
6. **Latitude / Longitude:** Provide the latitude/longitude coordinates of your proposed or existing sign location in decimal degrees. If you use *Google Earth* and it shows coordinates in degrees, minutes, seconds, you can change it to read in decimal degrees by clicking on "Tools" and choosing "Options". In the "Options" box you will see a "show Lat/long" section that allows you to select "decimal degrees".

Sign Description Information

7. **Mechanical or Electronic:** Indicate which type, mechanical or electronic (LED), of multiple message sign for which you are applying.
8. **Face Length, Width, and Area:** These measurements are taken to the nearest whole foot. The Area is the total square feet (length times the height). The area of a face cannot exceed 1,200 square feet. Indicate which faces will be multiple message (MMS).
9. **Types of Construction:** Select the configuration that best describes your sign.

Local Government Approval

10. **Local Government Certification:** An authorized official from the appropriate city or county signs the local government approval section certifying that their government entity allows the type of multiple message sign that the applicant is requesting to build at that designated location.

After Hours Contact

11. **Contact Name:** Provide the name and contact information of the person the Department should contact if there is a sign issue that needs immediate attention.

Applicant Signature

12. Provide Signature and corporate title.

EXHIBIT F



KILPATRICK TOWNSEND & STOCKTON LLP
www.kilpatricktownsend.com

Suite 2800, 1100 Peachtree Street NE
Atlanta, GA 30309-4528
t 404 815 6500 f 404 815 6555

October 28, 2021

direct dial 404 815 5912
direct fax 404 541 4618
jreynolds@kilpatricktownsend.com

Bret Schroeder
Code Enforcement Manager
City of Alpharetta
c/o Michael D. Stacy, Esq.
Bovis, Kyle, Burch & Medlin
mstacy@boviskyle.com

Re: Sign Permit No. S210156 (the "Permit")
Letter dated October 26, 2021 (the "Cease and Desist Letter")

Dear Officer Schroeder:

This firm represents Lamar Advertising ("Lamar") in connection with the above-referenced Permit.

We are in receipt of the Cease and Desist Letter, pursuant to which you direct Lamar to "cease and desist all construction activities that relate to, or are in furtherance of, the conversion of the billboard sign located adjacent to Georgia 400 south of Mansell Road to LED/digital display because such construction activities are in violation of the City of Alpharetta sign ordinance." The Cease and Desist Letter further provides, "To the extent the construction activities include a conversion of the billboard sign to an LED/digital display, the application misrepresented that you had received the review and approval of all persons or parties with legal or financial interest."

The Cease and Desist Letter was issued pursuant to UDC § 5.9.1(E)(2) without written notice prior to stopping the work, which is only authorized "when an emergency exists." We understand that the Cease and Desist Letter was issued only after counsel for one of Lamar's competitors, North Fulton Outdoor, LLC ("North Fulton"), threatened to sue the City of Alpharetta if it did not do so. The Cease and Desist Letter invites Lamar to submit information regarding whether there are any other "financially or legally interested persons or parties" involved with the Permit.

We write to seek clarification on the Cease and Desist Letter's allegation that Lamar's "application misrepresented that [it] had received the review and approval of all persons or parties with legal or financial interest" and to provide information regarding whether there are any other "financially or legally interested persons or parties" involved with the Permit.

By way of background, the sign was originally allowed to be constructed on the property as part of a 2002 settlement agreement. See July 8, 2021 Ltr. from C. Sam Thomas, Esq. to B. Schroeder (“As you know, the billboard is a non-conforming sign, but was allowed to be constructed on the property as part of a settlement agreement with the property owner/advertisers.”). Lamar applied to relocate and reconstruct the sign on another spot on the property as a result of the Georgia Department of Transportation (GDOT) taking the property on which the sign is located as part of improvements to Georgia 400.

On July 8, 2021, then-City Attorney Sam Thomas informed you that “State law allows billboard relocation in this situation,” citing O.C.G.A. § 32-3-3.1. That same day, you informed Lamar by letter that the City of Alpharetta approved its application with a number of conditions, including that (1) “the sign is being permitted to comply with State law (O.C.G.A. § 32-3-3.1) and would not otherwise be allowed under city ordinances” and that (2) “it can be converted to LED technology on both sides.” And, on July 23, 2021, you certified on Lamar’s application to GDOT for a multiple message sign permit that the City of Alpharetta agreed to allow the reconstruction of the sign with two electronic faces “pursuant to a legally binding settlement agreement between the City of Alpharetta and the applicant and OCGA § 32-3-3.1” (the “GDOT Application”).

As we understand it, three months after the City of Alpharetta issued the Permit, North Fulton threatened to sue the City of Alpharetta on the basis of a 2012 settlement agreement by and among the City of Alpharetta, Action Outdoor Advertising JV, LLC, KH Outdoor, LLC, and Granite State Outdoor Advertising, Inc. Following these threats from North Fulton, you issued the Cease and Desist Letter and then wrote an email to GDOT dated October 26, 2021 (the “GDOT Email”). In part, the GDOT Email states that the “certification to the Application for Multiple Message Sign Permit, GDOT Permit Number D187, referenced a settlement agreement, but the City has received information that the applicant has not secured the rights to locate an LED/digital sign at this location.” The GDOT Email also states, “The City of Alpharetta withdraws the certification to the Application for Multiple Message Sign Permit to the extent that it suggests that the applicant has rights pursuant to the referenced settlement agreement, where such rights are now being challenged.”

In light of the foregoing, your position on what Lamar’s application “misrepresented” is unclear. After reviewing Lamar’s application, the City Attorney recommended that the City of Alpharetta approve Lamar’s application on the grounds that O.C.G.A. § 32-3-3.1 allows relocation and reconstruction “in this situation” – i.e., in the context of a taking. The City of Alpharetta informed Lamar that “the sign is being permitted to comply with State law (O.C.G.A. § 32-3-3.1) and would not otherwise be allowed under city ordinances.” And, you certified to GDOT that the City of Alpharetta agreed to allow the reconstruction of the sign with two electronic faces “pursuant to a legally binding settlement agreement between the City of Alpharetta and the applicant and O.C.G.A. § 32-3-3.1.”

Lamar’s competitor, North Fulton, plainly has no interest in the property, the sign, Lamar’s right to relocate and reconstruct the sign under O.C.G.A. § 32-3-3.1, or the Permit. While the Cease and Desist Letter and GDOT Email appear to suggest that the “settlement agreement”

referenced by you in the GDOT Application was the 2012 settlement agreement, we do not understand how that could be the case. The 2012 settlement agreement is not “between the City of Alpharetta and the applicant,” i.e., Lamar, a fact the City of Alpharetta would know since it was a party to the 2012 settlement agreement. Indeed, then-City Attorney Sam Thomas signed the 2012 settlement agreement. What’s more, Lamar expressly told you on June 9, 2021 – a month before the City of Alpharetta issued the Permit – that “Action Outdoor holds a digital permit issued by Alpharetta years ago in a settlement.” Notwithstanding the 2012 settlement agreement, after advice from then-City Attorney Sam Thomas, the City of Alpharetta recognized Lamar’s right to relocate and reconstruct the sign under O.C.G.A. § 32-3-3.1 and validly issued the Permit.

At no time did Lamar expressly or implicitly represent or suggest it had rights to the 2012 settlement agreement or that it was submitting its application to relocate and reconstruct the sign pursuant to the 2012 settlement agreement. On the contrary, the record is clear that Lamar sought, and the City approved, the Permit based upon O.C.G.A. § 32-3-3.1. Should you have any information to the contrary, including information that Lamar’s application contained any “misrepresentations,” please let us know as soon as possible.

In the meantime, Lamar will comply with the Cease and Desist Letter, but please be advised that Lamar has already incurred significant expense in reliance upon the Permit (including the purchase of two LED panels) and will incur significant loss so long as the Cease and Desist Letter remains in effect. While we appreciate that Sam Thomas is now deceased, and there is a new City Attorney, and one of Lamar’s competitors threatened to file suit against the City of Alpharetta, we do not see any basis for accusing Lamar of making misrepresentations in its permit application or for the City of Alpharetta to no longer stand by the Permit it validly issued at the advice of Sam Thomas, who clearly had knowledge and information about the matter at hand.

Given that the Cease and Desist Letter was issued on the basis that “an emergency exists,” we wanted to provide you with this information as soon as possible. Please let us know if you would like to receive additional information about any of the issues raised herein or would like to arrange for a meeting. We would ask to hear from you by Friday, October 29, 2021.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joe P. Reynolds". The signature is stylized with a large, looped "J" and "R".

Joe P. Reynolds

EXHIBIT G

Suite 2800, 1100 Peachtree Street NE
Atlanta, GA 30309-4528
t 404 815 6500 f 404 815 6555

November 2, 2021

direct dial 404 815 5912
direct fax 404 541 4618
jreynolds@kilpatricktownsend.com

Bret Schroeder
Code Enforcement Manager
City of Alpharetta
c/o Michael D. Stacy, Esq.
Bovis, Kyle, Burch & Medlin
mstacy@boviskyle.com

Re: Sign Permit No. S210156 (the "Permit")
Letters dated October 26 (the "Cease and Desist Letter") and November 1, 2021

Dear Officer Schroeder:

We are in receipt of your letter dated November 1, 2021, in which you request that Lamar Advertising ("Lamar") confirm or clarify your understanding of certain facts. Please find below and attached additional documentation and information that establishes North Fulton Outdoor, LLC ("North Fulton") does not have any "legal or financial interest" in the new sign Lamar is constructing pursuant to O.C.G.A. § 32-3-3.1.

1. The sign was originally allowed to be constructed under a 2002 agreement.

In November 2002, the City of Alpharetta (the "City") entered into a settlement agreement with Advantage Advertising, L.L.C. ("Advantage"), pursuant to which the City authorized Advantage to erect a sign on the southeast quadrant of Mansell Road and Georgia 400. The agreement authorized Advantage to post one tri-vision sign on one of the sign's two sides. The agreement was signed by the City's then-Mayor and approved as to form by its then-City Attorney, Sam Thomas. For your reference, the 2002 settlement agreement is attached as **Exhibit A**.

In June 2003, Advantage submitted an application for a multiple message sign with GDOT for the tri-vision sign, given that "multiple message sign" is defined to mean any "sign, display, or device which changes the message or copy on the sign electronically by movement or rotation of panels or slates." O.C.G.A. § 32-6-71(11.1). Pursuant to the 2002 settlement agreement, the City certified on the GDOT application that the "sign is permitted pursuant to a legal settlement agreement between the City of Alpharetta and the applicant." Lamar subsequently purchased the sign from Advantage in 2004.

For your reference, the 2003 permit application and documents evidencing Lamar's purchase of the sign is attached as **Exhibit B**.

2. Lamar's competitors enter into a 2012 agreement with the City.

We understand that one of Lamar's competitors, North Fulton, contends that it has the "exclusive right" to convert Lamar's sign to LED by virtue of a 2012 settlement agreement with the City. We further understand that North Fulton's contention is the sole basis for the issuance of the Cease and Desist Letter. See November 1 letter, p. 1 ("The cease and desist was issued because information came to the City's attention that indicated the representations in the application were incorrect ...").

The 2012 settlement agreement is between the City of Alpharetta, on the one hand, and Action Outdoor Advertising JV, LLC, KH Outdoor, LLC, and Granite State Outdoor Advertising, Inc. (collectively referred to as "North Fulton"), on the other hand. The agreement was signed by the City's then-Mayor and approved as to form by its then-City Attorney, Sam Thomas. For your reference, the 2012 settlement agreement is attached as **Exhibit C**.

Even though Lamar is not a party to the 2012 settlement agreement, the agreement provides as follows with respect to an "existing Lamar sign":

The City hereby provides Advertisers the exclusive right to convert the existing static billboard sign located on the property of Compass Lender, LLC on the east side of Georgia 400 south of Mansell Road (having an address of 0 Wooten Road and as more particularly shown on Exhibit 'B') to an electronic sign utilizing LED technology on both sides. If necessary, as determined in the sole discretion of Advertisers, they may rebuild the existing structure if needed to provide the necessary structural support for an LED sign. Following these improvements, this sign shall remain at the same location and shall have the same size and height configuration as it presently has.

2012 settlement agreement, ¶ 4(b) & Ex. B (emphasis added).

We are currently investigating how the City and North Fulton could lawfully enter into an agreement that encumbered Lamar's sign (and do so under the cloak of "confidentiality," see ¶ 6). See Ga. Const. of 1983, Art. I, Sec. III, Par. I(a) ("private property shall not be taken or damaged for public purposes without just and adequate compensation being first paid"). We note that the City may have been operating under the assumption that Lamar had consented to the agreement, since elsewhere the agreement refers to "existing outdoor advertising signs presently owned by others," see ¶ 4(i), and we understand that North Fulton has represented Lamar knew about and consented to the agreement prior to its inception. However, we have been presented with no evidence of Lamar's knowledge and consent, despite our repeated requests to North Fulton to provide the same.

In any event, as discussed below, determining the legality of the 2012 settlement agreement is not necessary to resolving the issue of whether North Fulton has any "legal or financial interest" in the new sign Lamar is constructing pursuant to O.C.G.A. § 32-3-3.1.

3. The 2012 agreement does not give North Fulton any “legal or financial interest” in the new sign Lamar is constructing pursuant to O.C.G.A. § 32-3-3.1.

Your letter notes that the Cease and Desist Letter “was issued because information came to the City’s attention that indicated the representations in the application were incorrect, and the certification to GDOT was therefore ‘not valid.’” November 1 letter, p. 1. In particular, you note that Lamar’s application made the following representation in its application to the City:

I, as applicant and authorized agent, do hereby swear and attest to the following: All information provided in this application is, to my best knowledge, true and accurate; and the placement, design, and installation of the signage and equipment described in this application has been reviewed and approved by the property owner(s) and all other persons or parties with legal or financial interest in the property described herein and defined by the address indicated as SIGN LOCATION above and the sign and equipment described herein shall be constructed and installed in full accordance with all manufacturers’ specifications and in compliance with all applicable federal, state and local codes, ordinances, and design standards.

November 1 letter, p. 1 (emphasis in original). Your letter also notes that “[f]ollowing our issuance of the permit and approval to GDOT, we learned that another entity contended it had the exclusive right to convert the sign to LED.” *Id.*

Assuming for sake of argument that the 2012 settlement agreement were valid, the terms of the agreement establish that North Fulton does not have any “legal or financial interest” in the new sign Lamar is constructing pursuant to O.C.G.A. § 32-3-3.1. By its terms, the 2012 settlement agreement applies only to “the existing static billboard sign” and expressly provides that any LED sign under the agreement “shall remain at the same location.” 2012 settlement agreement, ¶ 4(b) (emphasis added). The agreement also makes clear that “any sign converted shall remain in its current location and not increase the height or overall size of the sign and the sign structure.” *Id.* ¶ 4(d) (emphasis added). As a result, even assuming the 2012 settlement agreement were valid, any “property rights,” see ¶ 14, afforded to North Fulton regarding Lamar’s sign were narrowly afforded to the sign “existing” at the time in its “same” and “current location.” *Id.* ¶¶ 4(b), (d).

By contrast, Lamar’s sign at the time of the 2012 settlement agreement no longer exists. Rather, pursuant to O.C.G.A. § 32-3-3.1, Lamar applied to relocate and reconstruct a new sign at a new location because of the taking by the Georgia Department of Transportation. As a result, the City approved Lamar’s application on the condition that “the sign is being permitted to comply with State law (O.C.G.A. § 32-3-3.1) and would not otherwise be allowed under city ordinances.” See also July 23, 2021 GDOT application (certifying the City allowed the reconstruction of a new sign with two electronic faces “pursuant to a legally binding settlement agreement between the City of Alpharetta and the applicant and OCGA § 32-3-3.1”). The record is clear that Lamar sought, and the City approved, the Permit based upon O.C.G.A. § 32-3-3.1.

Any “property rights” North Fulton might have had under the 2012 settlement agreement regarding Lamar’s “existing static billboard sign” in its “same” and “current location” does not give North Fulton any *additional* “legal or financial interest” in the *new* sign Lamar is constructing at a *new* location under O.C.G.A. § 32-3-3.1. Such an interpretation of the 2012 settlement agreement would be unreasonable and vastly expand the property rights taken from Lamar and provided to one of Lamar’s competitors. See Ga. Const. of 1983, Art. I, Sec. III, Par. I(a) (“private property shall not be taken or damaged for public purposes without just and adequate compensation being first paid”). Of course, any suit filed by North Fulton against the City taking such an unreasonable position would be without merit and likely prompt intervention by Lamar, which would vigorously defend its property rights from interference by a competitor.

Finally, your letter notes that Lamar’s application for a multiple message sign permit with GDOT asked to “change the multi-message type for an already permitted multiple message sign.” As discussed above, and evidenced by the documentation set forth in **Exhibit B**, Advantage submitted an application in 2003 for a multiple message sign with GDOT for the tri-vision sign because “multiple message sign” is defined to mean any “sign, display, or device which changes the message or copy on the sign electronically by movement or rotation of panels or slates.” O.C.G.A. § 32-6-71(11.1). Exhibit B, p. 3. For that reason, when Lamar submitted the GDOT application in July 2021, Lamar appropriately noted that its application was “to change the multi-message type for an already permitted multiple message sign.”

4. July 8, 2021 correspondence from then-City Attorney Sam Thomas

Your letter notes that our letter dated October 28, 2021 referenced a July 8, 2021 letter from then-City Attorney Sam Thomas. This letter was provided to Lamar by North Fulton’s counsel on October 21, 2021. We do not know how North Fulton’s counsel received this letter. We acknowledge the City’s request to immediately return or destroy such communication and will promptly follow up with the City Attorney to address the details of such request.

* * *

In sum, the record demonstrates that the City appropriately issued the Permit, Lamar did not make any incorrect representations in its applications to the City or GDOT, and North Fulton does not have any “legal or financial interest” in the new sign Lamar is constructing pursuant to O.C.G.A. § 32-3-3.1. Therefore, Lamar respectfully requests that development and construction activities be permitted to resume immediately. We would like to reiterate the time sensitivity of this matter, as Lamar will incur significant loss every day the Cease and Desist Letter remains in effect.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joe P. Reynolds". The signature is stylized with a large "J" and "R".

Joe P. Reynolds

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into by and between ADvantage Advertising, L.L.C. and each of its owners, shareholders, including, but not limited to, Dennis DuPont and Donald Danysh, principals, employees, and affiliates, successors, subsidiaries and assignees, and any entity owned or controlled by them, (collectively referred to as "ADVANTAGE") and the City of Alpharetta, Georgia ("City"). Collectively these entities are referred to herein as "Parties," and in the singular as a "Party."

WHEREAS, ADVANTAGE has filed a lawsuit challenging the City's regulations restricting the posting of signs and billboards (Civil Action Number 2000-CV-23466, Superior Court of Fulton County) ("Lawsuit");

WHEREAS, cross-motions for summary judgment are still pending in the Lawsuit; and

WHEREAS, certain other disputes have arisen or might arise in the future between the Parties regarding the matters contended in ADVANTAGE'S Lawsuit, and because the Parties wish to settle any and all disputes or claims between them in their entirety, they enter into this Agreement.

THEREFORE, in light of the foregoing and based upon the exchange of valuable consideration by and between the parties to this Agreement – including the City's agreement to allow ADVANTAGE to construct one sign as described below and the waiver of certain legal claims by ADVANTAGE as set forth below – the Parties to this Agreement hereby agree to a mutual release of any and all claims, future or current, arising from or otherwise related to ADVANTAGE'S Lawsuit, as follows:

Each of the respective Parties to this Agreement hereby mutually releases and forever discharges each of the other Parties to this Agreement, and Chuck Martin, as an individual and in his capacity as former Mayor of the City, Robert Regus, as an individual and in his capacity as City Administrator, and Diana Wheeler, as an individual and in her capacity as Director of Community Development for the City, and all of such Parties' successors, assigns, agents,

affiliates, officers, directors, employees, representatives, insurers, and attorneys and each of them of and from any and all claims, debts, liabilities, demands, obligations, damages, costs, expenses, attorneys' fees, actions and causes of action, of every nature, character and description, known or unknown, which any of the respective Parties to this Agreement, now own or hold or may have at any time heretofore owned or held, or may at any time own or hold against any other Party to this Agreement with respect to the Lawsuit, excepting enforcing this agreement.

Furthermore, ADVANTAGE and each of its owners, shareholders, including, but not limited to, Dennis DuPont and Donald Danysh, principals, employees, and affiliates, and any entity owned or controlled by them, agree not to file any legal action challenging the City's ordinances or regulations for a period of twenty years from the date of the signing of this Agreement and agree not to seek to post any additional outdoor advertising sign in the City unless the sign is specifically permitted by a City ordinance, and then only in compliance with the provisions of such ordinance. This restriction does not restrict ADVANTAGE, or any assignee of ADVANTAGE, from enforcing this agreement or asserting the right to build, maintain, and operate the sign allowed pursuant to this Agreement. Further, this Agreement does not restrict the Defendants, their assignees, or successors in office from utilizing the courts to enforce this Agreement.

The Parties further agree that this Agreement is conditioned upon the filing of a Motion for Dismissal With Prejudice, or other document dismissing the Lawsuit, to be filed by ADVANTAGE within five business days of the City's signing of this Agreement. By signing this Agreement ADVANTAGE withdraws any and all pending sign permit applications that it has previously submitted to the City.

ADVANTAGE further agrees to the following:

- ADVANTAGE will agree to compensate E. Adam Webb, Esq. for purposes of providing any reasonable assistance that the City may desire in perfecting the City's sign regulations and in developing strategy to prevent other signs from being posted in the City. ADVANTAGE's expenditures in this regard will be limited to \$5000.00;

- ADVANTAGE waives all attorneys fees, expenses, and damages claims; and
- ADVANTAGE will agree that no sign built pursuant to this Agreement will be utilized to post messages advertising: (1) adult entertainment establishments, strip clubs, exotic massage parlors, adult video or book stores, or similar businesses; (2) the sale of alcohol or tobacco products; (3) abortion services, pregnancy testing, paternity testing (including DNA testing), or the testing or treatment for sexually transmitted diseases; (4) any activity or product that is illegal under Georgia or federal laws; (5) any material which is obscene as such term is defined in O.C.G.A. § 16-12-80; and (6) Messages regarding the City's policies or elected or appointed officials of the City.

The City will allow construction of the following sign on the following conditions:

- The City will permit ADVANTAGE to erect one sign on the property of J.T. Ridings or his successors or assigns on the southeast quadrant of Mansell Road and Georgia 400 at the approximate location shown on the attached aerial diagram. Construction or erection of this sign shall begin no sooner than January 1, 2003.
- The sign will be a "V" shaped sign as that term is commonly understood, but the "V" shall not exceed forty-five degrees;
- ADvantage agrees that it will install the most tightly focused lighting fixtures currently in use in the outdoor advertising industry. ADvantage agrees that such lighting will be installed in such a manner as to reduce, to the greatest extent possible while still having a fully lit sign, spillover of light into the night sky. The sign shall not contain any flashing, intermittent or moving light or lights, including multiple message signs;
- The sign will have faces on two sides and the advertising area of the faces on each side shall be limited to fourteen feet by forty-eight feet. Temporary extensions of up to 75 square feet are allowed on the non-trivision side of the sign;
- The height of the sign and sign structure shall not exceed fifty feet;
- The sign shall be set back a minimum of one foot from the right-of-way, and no part of the sign or the sign structure shall extend across this one-foot setback line;
- Except as provided in this paragraph, the sign shall not rotate or otherwise move or have any moving or animated part. A "trivision" sign may be posted on one of the sign's two sides, provided, however, that the trivision sign shall not be permitted to rotate until February 1, 2003;
- To the extent applicable, the sign and sign structures shall comply with all of the requirements of the Official Code of Georgia Annotated and the Department of Transportation pertaining to outdoor advertising signs; provided, however, in the event of any conflict between these state law provisions and the terms of this Agreement, the more restrictive provision shall control;

- To the extent that ADVANTAGE is required to obtain a permit from the Georgia Department of Transportation for the posting of the sign and sign structure, the City shall have no responsibility with respect thereto other than signing the standard application forms to be accompanied by the following statement: "The posting of the outdoor advertising sign is permitted pursuant to the terms of a legal settlement agreement between the City of Alpharetta and applicant."
- Prior to the initial posting of any paid advertising on the sign, ADVANTAGE shall provide to the City a certificate from a structural engineer certifying the safety of the sign and sign structure.

All Parties further agree that the terms of this Agreement and the existence of this Agreement will be kept confidential to fullest extent permitted by law.

This Agreement sets forth all, and is intended to be an integration of all, of the covenants, promises, agreements, warranties, and representations among the Parties hereto, and, other than as expressly set forth herein, there are no covenants, promises, agreement, warranties, representations, or other understandings, oral or written, express or implied, among them relating to any and all disputes that exist or might exist between the parties. This agreement constitutes the entire agreement between the Parties.

This Agreement represents the compromise of doubtful claims and is not an admission of liability by any Party.

This instrument may be executed in separate counterparts and shall become effective when such separate counterparts have been exchanged among the parties.

No presumption against or in favor of any person or party shall apply due to the drafting of this document.

This Agreement shall be governed by the substantive and procedural laws of the State of Georgia. Any suit brought to enforce any provisions of this Agreement must be brought in the courts of the State of Georgia.

Each of the Parties and each of the undersigned individuals hereby warrant to the other Parties that the undersigned have the authority to execute this Agreement and to bind the respective Parties to this Agreement.

DATED: November 26, 2002.

REVIEWED, APPROVED, AND ACCEPTED BY:

By: DCD Managing Member
On Behalf of ADVANTAGE
ADVERTISING, L.L.C. and
"ADVANTAGE" as defined herein.

Its: MANAGING MEMBER

Sworn to and subscribed
before me this 26 day
of November 2002

[Signature]
NOTARY PUBLIC

NOTARY PUBLIC, DEKALB COUNTY, GEORGIA
My Commission Expires March 4, 2005

My Commission Expires: _____

[Signature]
Dennis DuPont, Member

DCD [Signature]
Donald Danysh, Member

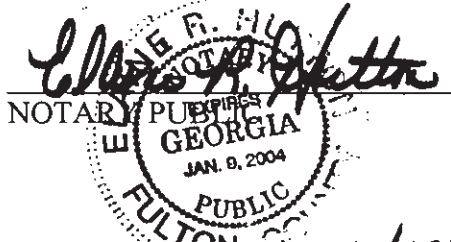
DATED: November __, 2002.

REVIEWED, APPROVED, AND ACCEPTED BY:

By: _____
On Behalf of ADVANTAGE
ADVERTISING, L.L.C. and
"ADVANTAGE" as defined herein.

Its: _____

Sworn to and subscribed
before me this 2nd day
of December, 2002



My Commission Expires: 01/09/04


Dennis DuPont, Member

Donald Danysh, Member

DATED: November __, 2002.

REVIEWED, APPROVED, AND ACCEPTED BY:

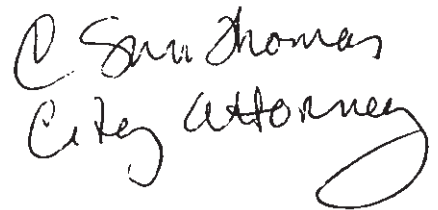
By: 
On Behalf of the City of Alpharetta, Georgia

Its: MAYOR

Sworn to and subscribed
before me this 9th day
of JAN., 2003


NOTARY PUBLIC

My Commission Expires: Notary Public, Fulton County, Georgia
My Commission Expires Oct. 5, 2003

Approved AS TO
FORM:

City Attorney

DEPARTMENT OF TRANSPORTATION HIGHWAY DIVISION
NO. 2 CAPITAL SQUARE
ATLANTA, GEORGIA 30334-1002
APPLICATION AND PERMIT FOR AN OUTDOOR ADVERTISING SIGN
TYPE OR PRINT LEGIBLY

DOT 594

Rev. Aug. 1990

Date of Application 4/14/03

Name of Applicant ADVANTAGE ADVERTISING, LLC

Address 1096 MANNINGS Farm CT

City ATLANTA, GA State GA Zip Code 30338

Phone 770.913.0415 / 770.242.5848

F.E.I.# 58-258-6736 or S.S.#

Sign location: State Route No. 400 in FULTON County, ONE feet from the nearest edge of right-of-way on the EAST side of the roadway, and 0 feet E of milepost number 16.0 (NESW)

Sign Description: Delineate size desired of each face to be permitted. Number of faces TWO

Length 48' Height 14' Area *672 Sq. Ft. Viewed from the NORTH Direction

Length 48' Height 14' Area *672 Sq. Ft. Viewed from the SOUTH Direction

Length 48' Height 14' Area *672 Sq. Ft. Viewed from the WEST Direction

Length 48' Height 14' Area *672 Sq. Ft. Viewed from the EAST Direction

Type of Construction: Single Face ☐ Back-to-Back ☐ Double Face ☒ V-Type ☒ Stacked ☐ Illuminated ☒

Height Limitations: The total height of the sign may not exceed 70 feet above the level of the surface of the pavement of the nearest lane of the main traveled way or 70 feet from the ground at the base of the sign to the tallest part of the structure, including the display or face and its trim, whichever is greater.

Does this sign meet the above Height Limitations? Yes ☐ No ☒ Is this sign in place? Yes ☐ No ☒ If yes, date sign erected

Is sign located within the Corporate Limits of a Municipality? Yes ☒ No ☐ If yes, name ALPHARETTA, GA

Is sign to be located in a zoned area? Yes ☒ No ☐ If no, how far is it to the nearest commercial or industrial activity in feet? ()

Name of Activity

Residence Owner: Written consent of the owners of all residences within 300 feet (If different from the owner of the land on which the sign is to be located) must be provided (Unzoned areas only)

I hereby give my consent for the sign described on this application to be erected within 300 feet of my residence.

Residence Owner

Date

APPLICANT - LANDOWNER AFFIDAVIT

State of Georgia County of FULTON

I, JAMES T. Ridings, SR. and I, ADVANTAGE ADVERTISING, LLC by Dennis Dubois who being duly sworn,

do hereby depose and say that the information given herein is true to the best of their knowledge and belief that we will comply with Georgia Code Sections 32-6-70 through 32-6-97 and the Rules and Regulations of the Georgia Department of Transportation covering the granting, renewal and revocation of permits for Outdoor Advertising and that the Agent for the applicant attests that he has the authority to contract in this matter, and that the landowner does hereby acknowledge that the applicant has my consent to erect and maintain said advertising sign and that both applicant, landowner and their assigns herein grant to the DOT the right to enter the property in question for the purpose of inspecting said sign or to carry out a lawful order to remove said sign. In lieu of the landowner's acknowledgment, attach a lease or dated statement signed by the landowner (identify sign location by State Route, County, side of roadway and distance to milepost). Should the landowner be represented by an Agent in this matter, documentation of said Agent's authority which is satisfactory to the Department is required. A dated statement or lease must include a right of entry in favor of and acceptable to the Department for the purpose of inspecting said sign site or to carry out lawful order to remove said sign.

Signed, sealed and delivered this 16 day of April 19 2003

Notary Public, DEKALB COUNTY, GEORGIA

My Commission Expires March 4, 2005

Applicant/Agent James T. Ridings Landowner/Agent James T. Ridings

FOR COUNTY OR CITY USE ONLY

Type of Qualifying Area: (Mark Appropriate Section and Complete)

I hereby certify that the City of (County of) ALPHARETTA has a zoning plan and ordinances, a sign ordinance, no sign controls and no form of zoning plan or ordinances, and that the location of the outdoor advertising sign stated above is an area appropriate for such construction under local laws, ordinances or regulations and it is zoned to be located in an area which is zoned

This the 22nd day of April 2003

agreement between the City of Alpharetta and the applicant.

Authorized Official John A. Letts Title Mayor of Alpharetta

Approval Recommended James T. Ridings Outdoor Advertising Regional Coordinator

FOR DOT USE ONLY

This Permit is granted to erect and/or maintain the above described sign adjacent to state route 30th in Fulton County, Georgia for a period of one year.

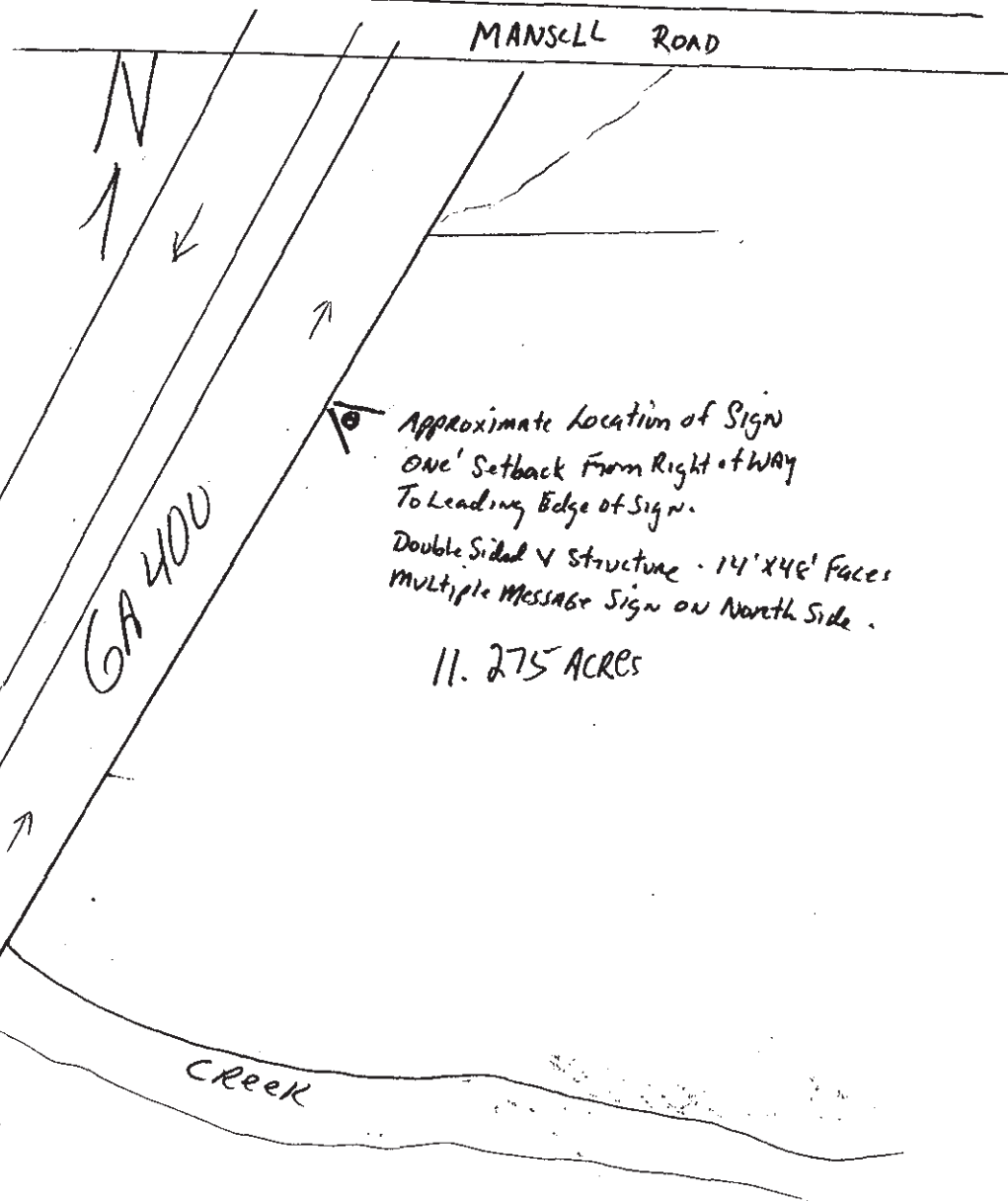
This 30th day of May 19 2003

State Highway Engineer Tony McCallister

Permit Number 71874

GENERAL RULES AND REGULATIONS

- (1) Only one permit will be issued per location.
- (2) No more than four sign faces or displays are allowed per location, two in each direction.
- (3) The sign faces or displays may not exceed 60 feet in length or 30 feet in height nor may the total area of the face, faces or displays both inclusive, exceed 1200 square feet in either direction of travel, as measured from one extremity of the structure to the other.
- (4) Signs must be built as permitted based on the linear dimensions indicated on this permit. Cut-outs or embellishments are not allowed unless they are specifically provided for in this permit and can be accomplished within the dimensional requirement previously stated. A plan for such construction must be submitted with this application.
- (5) Nothing contained herein shall be construed to abrogate or affect any lawful ordinance, regulation, or resolution which is more restrictive.
- (6) The permit identification tag must be attached to the first sign support and must be visible from the main traveled roadway.
- (7) All signs or proposed locations for sign under application must be clearly staked or flagged before being inspected by the Department of Transportation.
- (8) All outdoor advertising signs, displays, or devices shall be removed by the permittee within 30 days after the date of expiration or revocation of the permit for same.
- (9) All signatures on yellow copy must be in ink. They must also be original signatures, stamped signatures are not acceptable.
- (10) Sign must be erected within the first twelve (12) months after the date of issuance of the permit. If the sign is not completely erected within twelve (12) months, the permit is void by operation of Law (§32-6-74(a)).
- (11) Only State Route Numbers may be used on this form.
- (12) "Submit an original and (2) two copies of the application form. Photocopies are acceptable providing that both sides of the original are copies onto a single sheet of paper. Include (3) Three Copies Each of All Attachments to This Application. One Copy of each attachment must be assembled and stapled to each copy of the Application Form."
- (13) Applications for permits shall be made to the General Office of the Department of Transportation in Atlanta. Each initial application must be accompanied by a permit fee of \$50.00 made payable to the Department of Transportation. Permits shall be issued for one year and must be renewed annually by payment of \$25.00 renewal fee and formal request for renewal by letter, not more than 90 nor less than 60 days prior to the expiration date of the permit.
- (14) A sketch must be drawn below, depicting the area of the sign location, including the following information: route numbers, all signs in the area, commercial or industrial activities in the area, residences within 300 feet of the sign or its proposed location.



GEORGIA DEPARTMENT OF TRANSPORTATION
APPLICATION FOR MULTIPLE MESSAGE SIGN

"Multiple message sign" means a sign, display, or device which changes the message or copy on the sign electronically by movement or rotation of panels or slats". O.C.G.A. §32-6-71(11.1).

Applicant Data:

Name of Applicant: ADVANTAGE ADVERTISING LLC Name of Landowner: JAMES T. RIDINGS, SR.
Address: P.O. Box 888918 Address: 465 HAMMOND DR.
ATLANTA, GA 30356 ATLANTA, GA 30328
Phone: 770/913-0415 Phone: 404/252-4300

Signature of Applicant or Agent: D.C. DANESH, Managing Member

Is this application submitted for a new location? YES ☒ NO ☐
[If submitted for new location, this form must accompany a DOT Form 594]

Is this application submitted to revise an existing sign? YES ☐ NO ☒
Existing DOT Permit to be revised: N/A

Sign Description:

Number of faces: 2 Size of Faces: 14' x 48'
Sign Configuration: Single Face ☐ Back-to-Back ☐
Double-Face (Side-by-Side) ☐ Stacked ☐
V-Type ☒

Will this sign be illuminated? YES ☒ NO ☐

Number of Faces to be Multiple-Message: 1

Direction(s) Multiple-Message Signs will be viewed from: NORTH, FOR SOUTHBOUND TRAFFIC

Sign Location: State Route 400/19, on the E side of the roadway, at Milepost 16.0, in the City of ALPHARETTA, County of FULTON, Georgia.

Local Government Approval:

[FOR CITY OR COUNTY USE ONLY]

I hereby certify that the (City of)(County of) Alpharetta has reviewed the application for the sign(s) described herein, and that the local government hereby approves that these signs be permitted as multiple-message signs. I further certify that this approval does not conflict with any applicable local laws or ordinances. The sign is permitted pursuant to a legal settlement agreement between the City of Alpharetta and the applicant
Name of Authorized Official: Patricia G. Letcher
Signature of Authorized Official: [Signature]
Title of Authorized Official: Mayor
City of Alpharetta, County of Fulton

NOTE: In the event this multiple-message application is approved, all work must be completed within twelve (12) months from the date of approval, and the underlying outdoor advertising permit must also be kept in force during the entire 12 month period.

Department Approval:

[DEPARTMENT USE ONLY]

Approval for Multiple-Message Sign(s) Recommended:

Effective Date: Jan 19, 2003

[Signature]
State Rights of Way Engineer

[Signature]
Outdoor Advertising Control Manager

OUTDOOR ADVERTISING PERMIT TRANSFERPermit Number D0940, D0957, D0958, D0956, D0890, D1334, D14731. Date Sign was purchased by new owner: January 1, 2004

2. Date Property was purchased by new owner: _____

22471

We, the undersigned agree to the terms and conditions of the original permit OR permit as properly amended at the time of signing of this document:

Please list additional permits below

D1605
D1606
D1714
D1715
D1717
D1718
D1716
D1874

DCD Managing Member
Mr. Don Danysh 1/9/2004
Seller Advantage Advertising, LLC Date
Individual or Company 1/9/2004
Lamar Outdoor Advertising Company
Buyer David Bernigan, Vice-President Date
Individual or Company General Manager
Buyer's Address:
Lamar Outdoor Advertising Company
6597 Peachtree Industrial Blvd.
Norcross, Georgia 30092
72-1462298
F.E.I., or SS# 770-447-8610
Phone Number

Sworn before me this 9 day of January
2004
Marie Bernigan 9-1-05
Notary Public

I, _____, do hereby certify that I am the current property owner of the land upon which the above named sign is located, that I am aware of such transfer of ownership of said sign and agree to said transfer and that the Department of Transportation is herein granted the right to enter my land for the purpose of inspecting or removing said sign described under the above-mentioned permit.

This _____ day of _____, 20____.

Sworn before me this _____ day of _____, 20____.

Notary Public_____
Property Owner's Signature



22471

Department of Transportation

HAROLD E. LINNENKOHL
COMMISSIONER
(404) 656-5206

PAUL V. MULLINS
CHIEF ENGINEER
(404) 656-5277

State of Georgia
#2 Capitol Square, S.W.
Atlanta, Georgia 30334-1002

LARRY E. DENT
DEPUTY COMMISSIONER
(404) 656-5212

EARL L. MAHFUZ
TREASURER
(404) 656-5224

May 13, 2004

Transferor

Advantage Advertising, L.L.C.
1096 Mannings Farm Ct.
Atlanta, GA 30338

Transferee

Lamar Advertising Company
6597 Peachtree Industrial Blvd.
Norcross, GA 30092

RE: PERMIT TRANSFERS

By copy of this letter, you are hereby notified that the below referenced permit, located on the east side of State Route 400, at or about milepost 16 in the City of Alpharetta, Fulton County, has been transferred from Advantage Advertising to Lamar Advertising. Also, please be advised that Lamar Advertising will now be responsible for submitting the annual renewal fee(s) of \$25.00 during the renewal period.

<u>Permit Number</u>	<u>County</u>	<u>State Route</u>	<u>Renewal Due Date</u>
D1874 ✓	Fulton	400	March 1 – March 31

This permit has been transferred in good faith by the Department of Transportation, with the understanding that all sign structures are erected and maintained in accordance with O.C.G.A. §32-6-70 et seq. as well as the Compilation of Rules and Regulations of the State of Georgia §672-6 & 672-7.

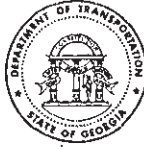
Should you have any further questions or need assistance in this matter, please contact Sue Peterman, Outdoor Advertising Regional Coordinator at (404) 675-1457.

Sincerely,

Jim A. Aube
Outdoor Advertising Manager

JAA/RSP/mb

cc: Sue Peterman, Outdoor Advertising Regional Coordinator
Tonia Hinton, Outdoor Advertising Agent, Metro
My Bracy, Accounting, Forest Park
✓ Lamar Advertising Company



Department of Transportation

J. TOM COLEMAN, JR.
COMMISSIONER
(404) 656-5206

FRANK L. DANCHETZ
CHIEF ENGINEER
(404) 656-5277

State of Georgia
#2 Capitol Square, S.W.
Atlanta, Georgia 30334-1002

HAROLD E. LINNENKOHL
DEPUTY COMMISSIONER
(404) 656-5212

EARL L. MAHFUZ
TREASURER
(404) 656-5224

June 19, 2003

Advantage Outdoor Advertising
P.O. Box 888918
Atlanta, GA 30356

RE: MULTI-MESSAGE APPLICATION FOR REVISION

This letter is in response to your request to revise an outdoor advertising sign being maintained under DOT permit number D1874.

Enclosed, please find your approved application for revision. The approved revision will be valid for twelve (12) months from the effective date of June 19, 2003. This revision is subject to and made conditional upon the granting of any required local building permits or compliance with more restrictive local zoning, ordinance, or regulations, if any, at time said revisions are in fact made.

All revisions must be completed prior to the expiration date. In the event the revisions are not completed within the time allotted, the permit will revert back to the original sign configuration prior to the approved revision.

Further, all revisions must be completed prior to the anniversary/expiration date of the original permit should there not be an existing sign structure at the location. The revision of the above referenced permit is not an extension of the 12-month time allotted to erect a sign under the original permit.

Should you have any questions concerning this matter, contact Mr. James R. Harrison, Outdoor Advertising Regional Coordinator at 404-651-9217.

Sincerely,


Terry McColister
State Right of Way Administrator

TMc/JRH/mm

cc: James R. Harrison, Outdoor Advertising Regional Coordinator
Sue Peterman, Outdoor Advertising Agent, G.O.
Tonia Hinton, Accounting, G.O.



Department of Transportation

J. TOM COLEMAN, JR.
COMMISSIONER
(404) 656-5206

FRANK L. DANCHETZ
CHIEF ENGINEER
(404) 656-5277

State of Georgia
#2 Capitol Square, S.W.
Atlanta, Georgia 30334-1002

June 3, 2003

HAROLD E. LINNENKOHL
DEPUTY COMMISSIONER
(404) 656-5212

EARL L. MAHFUZ
TREASURER
(404) 656-5224

Advantage Advertising, LLC
1096 Mannings Farm Court
Atlanta, GA 30338

Gentlemen:

Attached is a copy of conforming permit(s) issued to: Advantage Advertising, LLC

PERMIT NUMBER
D1874

WORKING NUMBER
51626

Also, enclosed please find identification tag(s) which must be attached to the first sign support for each sign structure, so as to be visible from the roadway. All outdoor advertising signs must meet the minimum spacing requirements between structures, catwalks and lights included.

The permit will be valid for one year from the effective date of May 30, 2003. The permit is issued and shall be valid only if the sign is erected and maintained in accordance with this part during the twelve month period following the effective date in accordance with the provisions set forth in the Georgia Law (O.C.G.A. 32-6-74[A]). Thus the renewal period for the above signs is between March 1 to March 31 of each year following the effective date.

The above dates for permit renewal are the only periods under Georgia Laws whereby renewal can be accepted. Since this will be your only official notification regarding the renewal periods for these permits, it is respectfully suggested that this information be maintained in your appropriate suspense file. If there are any questions please contact Mrs. Tonia Hinton of this office, at (404) 651-9217.

Yours very truly,

A handwritten signature in black ink, reading "Terry McCollister".

Terry McCollister
State Right of Way Administrator

TMc/th

C: Sue Peterman, Outdoor Advertising Agent, Atlanta

A faint, circular stamp or seal, possibly a date stamp, located at the bottom center of the page.

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into effective as of this 1st day of March, 2012, by and among Action Outdoor Advertising JV, LLC ("Action"); KH Outdoor, LLC; and Granite State Outdoor Advertising, Inc. and their principals, members, employees, affiliates, successors, subsidiaries and assignees, and any entity owned or controlled by them (collectively referred to as "Advertisers") and the City of Alpharetta, Georgia ("City"). Collectively these entities are referred to herein as "Parties," and in the singular as a "Party."

WHEREAS, Advertisers filed outdoor advertising sign permit applications with Fulton County, Georgia during 2005 and 2006 for three locations which were then in unincorporated Fulton County but since have been annexed into the City; and

WHEREAS, litigation (to which all Parties hereto are parties) arose regarding these applications styled Action Outdoor Advertising, LLC et al. v. Fulton County, et al. in Fulton County, Georgia Superior Court (Case Nos: 2005CV10977, 2005CV107555, 2005CV109918, 2006CV114781 and 2006CV117063) (hereinafter the "Lawsuit") resulting in an order entered by the Superior Court of Fulton County on May 27, 2010 ruling that Advertisers have certain vested rights under their applications with respect to the signs described therein and further ruling that those rights continue notwithstanding the subsequent annexation of the three locations into the City; and

WHEREAS, the aforesaid order was affirmed by the Supreme Court of Georgia on June 13, 2011 in Case Nos. S11A0023 and S11A0101; and

WHEREAS, certain other disputes have arisen or might arise in the future between the Parties regarding the matters contended in the Lawsuit and because the Parties wish to settle any and all disputes or claims between them in their entirety, they enter into this Agreement.

THEREFORE, in light of the foregoing and based upon the exchange of valuable consideration by and among the Parties to this Agreement – including the City's agreement with respect to the signs referenced herein and the waiver of certain legal claims by Advertisers as set forth below – the Parties to this Agreement hereby agree to a mutual release of any and all claims, future or current, arising from or otherwise related to the Lawsuit, as follows:

1.

Each of the respective Parties to this Agreement hereby mutually releases and forever discharges each of the other Parties to this Agreement and Advertisers hereby release and forever discharge the City; Arthur Letchas, as an individual and in his capacity as Mayor of the City; Mike Kennedy, as an individual and in his capacity as a council member of the City; Chris Owens, as an individual and in his capacity as a council member of the City; Cheryl Oakes, as an individual and in her capacity as a council member of the City; Jim Paine, as an individual and in his capacity as a council member of the City; and D. C. Aiken, as an individual and in his capacity as a council member of the City, and all of such parties' successors, assigns, agents, affiliates, officers, directors, employees, representatives, insurers, and attorneys from any and all claims, debts, liabilities, demands, obligations, damages, costs, expenses, attorneys' fees,

actions and causes of action, of every nature, character and description known or unknown, which any of the respective Parties to this Agreement, now own or hold or may have any time heretofore owned or held, or may at any time own or hold against any other Party to this Agreement, excepting enforcing this Agreement.

2.

Subject to the terms hereof, by signing this Agreement the Advertisers withdraw and abandon any and all pending and prior sign permit applications they previously submitted to Fulton County for locations which are now within the limits of the City, except for the sign proposed in the triangle at Kimball Bridge Road and Ga. Hwy. 120, which is discussed below.

3.

Advertisers further agree to the following:

- Advertisers waive all attorneys fees, expenses and damages claims against the City relating to any and all issues and claims presented in the Lawsuit; and
- Advertisers agree that no sign constructed, converted, or rebuilt pursuant to this Agreement will be utilized to post messages advertising (1) adult entertainment establishments, strip clubs, exotic massage parlors, adult video or book stores, or similar businesses; (2) the sale of tobacco products; (3) abortion services, pregnancy testing, paternity testing (including DNA testing) or the testing and treatment of sexually transmitted diseases; (4) any activity or product that is illegal under Georgia or federal law; (5) any material which is obscene as such term is

defined in O.C.G.A. § 16-12-80; and (6) messages regarding the City's policies or elected or appointed officials of the City.

4.

The City will allow construction, modification, repair, replacement and rebuilding of the following signs on the following conditions:

(a) The City hereby provides Advertisers the right to erect one sign on the property referred to as the Shell or Georgia Medical tracts in the area referred to as the triangle at Kimball Bridge Road and Ga. Hwy. 120, as more particularly shown on Exhibit "A." This sign may be a LED multi-message sign subject to the limitations set forth herein and shall have a maximum of two faces. The sign pole shall be set back a minimum of 10 feet from the right-of-way and no part of the sign structure shall extend across any part of the right-of-way. There shall be no time limit on the date by which this sign must be constructed in order to be in compliance with this Agreement. In the event the sign is constructed as a double faced sign, the sign may be a "V" shaped sign as that term is commonly understood in the outdoor advertising industry and the angle of the "V" shall not exceed 45 degrees. The height of the sign shall not exceed the greater of 50 feet or the height of the highest billboard-type sign currently existing within City limits.

(b) The City hereby provides Advertisers the exclusive right to convert the existing static billboard sign located on the property of Compass Lender, LLC on the east side of Georgia 400 south of Mansell Road (having an address of 0 Wooten Road and as

more particularly shown on Exhibit "B") to an electronic sign utilizing LED technology on both sides. If necessary, as determined in the sole discretion of Advertisers, they may rebuild the existing structure if needed to provide the necessary structural support for an LED sign. Following these improvements, this sign shall remain at the same location and shall have the same size and height configuration as it presently has. Nothing in this Agreement shall be deemed to waive or otherwise alter any City zoning conditions applicable to this property location.

(c) The City hereby authorizes and provides to Action the exclusive right to convert the existing tri-vision billboard sign located at 1015 Mansell Road to an electronic sign utilizing LED technology on both sides. Following conversion, this sign shall remain at the same height and location and shall have the same size and configuration as it presently has.

(d) All LED multiple-message signs shall comply with all applicable requirements of the Official Code of Georgia Annotated (including, but not limited to the Control of Outdoor Advertising Act, O.C.G.A. § 32-6-72, et seq.) and any applicable regulations promulgated by the Georgia Department of Transportation; provided, however, in the event of any conflict between applicable state laws and regulations and the provisions of this Agreement, the more restrictive provisions shall control. LED multiple-message signs shall have a maximum of two faces with maximum advertising space on each side not to exceed 14 feet by 48 feet or current advertising space if an existing sign, whichever is less. If the sign is a "V" type sign, the angle shall not exceed 45

degrees. There shall be no motion, flashing or animation other than the change and transition of the message. There shall be no sound or video streaming. The brightness of light emanating from each LED sign shall not exceed the minimum necessary to meet industry standards. Any sign converted shall remain in its current location and not increase the height or overall size of the sign and the sign structure.

(e) To the extent that Advertisers are required to obtain permits from the Georgia Department of Transportation (GDOT) for the construction and alteration of these signs and the signs referred to in subparagraph (i) below, the City shall have no responsibility with respect thereto other than signing the GDOT standard application forms for outdoor advertising structures and (if applicable) electronic multi-message structures within ten business days of the City's receipt thereof, accompanying each form with a statement substantially similar to the following: "The posting of the outdoor advertising sign is permitted pursuant to the terms of a legal settlement agreement between the City of Alpharetta and the applicant."

(f) No construction, modification, replacement, rebuilding or conversion activity allowed hereby shall commence earlier than March 1, 2012; provided, however, the City's execution and delivery of GDOT approvals required hereby shall commence in accordance with the terms hereof and shall not be delayed by this limitation on the date of commencement of construction or conversion activity. In addition,

Advertisers shall provide the City Administrator and the City Attorney 10 days' prior written notice of the commencement of any such activity.

(g) Prior to the initial posting of any paid advertising on the signs (including, but not limited to, the signs referred to in subparagraph (i) below) following the construction and modifications allowed hereby and within 10 days following the construction or conversion of each sign, Advertisers shall provide the City a certificate from a licensed structural engineer certifying the safety of the sign and sign structure. Footing inspections may be performed by a licensed engineer in lieu of a City inspector.

(h) Advertisers shall permit the City to post public service messages on the LED signs which are the subject of this Agreement at no charge. These messages may be posted on a space available basis only (i.e. if no advertising has been sold for the requested space at the requested time), provided, however, if the City requests the Advertisers to post a temporary "Amber Alert" (missing or abducted child) or a "Mattie's Call" (missing disabled adult) message, the Advertisers will do so regardless of space availability.

(i) With respect to the existing outdoor advertising signs presently owned by others located at 1710 Alpharetta Highway and 421 South Main Street, upon Action's request or upon removal of those structures, Action is hereby granted the exclusive right to replace each existing structure with a new static (non-LED and non-trivision) structure of the same height and size and on the same lot; provided, however, the location on each lot of each sign may be altered with each landowner's permission upon its reconstruction as necessary to reduce safety hazards; provided, however, that no portion of the sign or structure shall be located closer to the right of way. The terms of this paragraph shall prevail over any conflicting City codes, City laws or City ordinances which may otherwise prohibit the replacement of nonconforming sign structures.

5.

Advertisers, including their principals, or their successors, affiliates or assigns, whether individually or as a principal in an entity governed hereby, shall, for a period of five years from the date of this Agreement, not file any actions challenging the City's sign ordinance or any provision thereof, or file an application for a sign not specifically permitted thereunder or hereunder, or construct any signs on any property along State Highway 9 between Highway 9's intersections with Vaughn Drive and Cogburn Road (including, but not limited to, the property at 632 N. Main Street/Hwy. 9). Nothing in this section shall be deemed to prevent a Party from filing an action to enforce this Agreement.

6.

All Parties agree that the existence and terms of this Agreement will be kept confidential to the fullest extent permitted by law.

7.

This Agreement sets forth all, and is intended to be an integration of all, of the covenants, promises, agreements, warranties and representations among the Parties hereto, and, other than as expressly set forth herein, there are no covenants, promises, agreements, warranties, representations or other understandings, oral or written, express or implied, among the Parties relating to any and all disputes that exist or might exist between the Parties. This Agreement constitutes the entire Agreement between them. This Agreement may only be amended by a written instrument executed by all parties.

8.

This Agreement represents the compromise of doubtful claims and is not an admission of liability by any Party.

9.

This instrument may be executed in separate counterparts and shall become effective when such separate counterparts have been exchanged among the Parties.

10.

No presumption against or in favor of any Party or person shall apply due to the drafting of this documents.

11.

This Agreement shall be governed by the substantive and procedural laws of the State of Georgia. Any suit brought to enforce any provisions of this Agreement must be brought in the courts of Fulton County, Georgia.

12.

Each of the Parties hereby warrants to the other Parties that the undersigned have the authority to execute this Agreement and to bind the respective Parties to this Agreement.

13.

Advertisers may assign their rights hereunder, provided the assignee(s) agree to be subject to all of the duties and obligations of the Advertisers under this Agreement and sign an agreement agreeing to be bound by those duties and obligations.

14.

The rights of Advertisers established herein are vested property rights and are not affected by conflicting laws or ordinances or laws or ordinances enacted after the date hereof.

The undersigned (by and through all members or shareholders, as indicated below)
have hereunto set their hands and seals as of the date set forth above.

ACTION OUTDOOR ADVERTISING JV, LLC

By: Steve A. Galberaith (SEAL)
Steve A. Galberaith, Member

By: John "Jack" Hartrampf (SEAL)
John "Jack" Hartrampf, Member

By: Lawrence T. McCurdy (SEAL)
Lawrence T. McCurdy, Member

KH OUTDOOR, LLC

By: Morgan Hudgens (SEAL)
Morgan Hudgens, Member

By: Daniel B. Cowart (SEAL)
Daniel B. Cowart, Member

By: Krisina T. Cowart (SEAL)
Krisina T. Cowart, Member

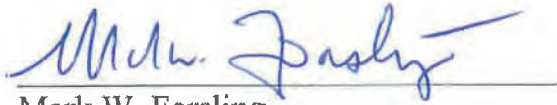
By: Heather Hudgens (SEAL)
Heather Hudgens

GRANITE STATE OUTDOOR ADVERTISING, INC.

By: Wayne Charles
Wayne Charles, Shareholder

By: Jim Waid
Jim Waid, Shareholder

Approved as to form:



Mark W. Forsling
Attorney for Advertisers

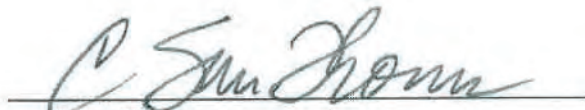
CITY OF ALPHARETTA, GEORGIA

By: 
DAVID C. BELLE ISLE, Mayor

Attest:


City Clerk

Approved as to form:



C. Sam Thomas, City Attorney



k:\2605\55\Settlement Agreement (Alpharetta).doc

EXHIBIT A



Google earth

feet
meters

100

500



SIGN LOCATION
(NEW)

11378 STATE BRIDGE ROAD

EXHIBIT "D"



Google earth

feet
meters

2000
600



EXISTING
LAMAR SIGN
(TO CONVERT TO LED'S)

'D' WOOTEN ROAD

PROPERTY ADDRESS: _____

PARCEL #: _____

Local Government Certification for Outdoor Advertising

To be completed by Applicant:

Name of Applicant or Company: _____

Sign is: ☐ existing ☒ proposed

County: _____ Municipality (if applicable): _____

State Route Name & Number: _____

Parcel Number: _____

To be completed by appropriate Zoning Official:

Part 1.

I hereby certify that the (City of) (County of) _____

(Check all that apply):

- ☒ Has a zoning plan and ordinance. Original adoption date: _____
- ☒ Date of last amendment (revision) to zoning plan: _____
- ☐ Does not have a zoning plan and ordinances.
- ☐ Has other land use controls or ordinance. Please specify _____
- ☒ Has a sign ordinance dated _____ separate from any zoning or land use plan.
- ☐ Has a sign ordinance which requires sign spacing of more than 500', size or height limits, or includes the "I-95 plan". Please specify _____
- ☐ Has no sign controls of any kind.

Part 2.

Current zoning of the parcel where the sign is to be located: _____

Approved uses for this zoning type: THE POSTING OF THIS OUTDOOR ADVERTISING SIGN IS PERMITTED
IN ACCORDANCE WITH THE TERMS OF A LEGALLY BINDING SETTLEMENT
AGREEMENT BETWEEN THE CITY OF _____ AND THE APPLICANT.

Date of MOST RECENT zoning of this parcel: _____

Previous zoning of this parcel: _____

I, _____, a duly qualified official of the City/County of _____, do hereby certify that I have reviewed the location and description of the outdoor advertising structure described on the attached application and find the sign is to be located in an area appropriate for such structures and is in compliance with all local laws, ordinances or regulations. I further understand that in evaluating any application for an Outdoor Advertising permit GDOT does not review for compliance with local ordinances and that any such permit issued by GDOT is not a building permit.

This the _____ day of _____, 20____

WITH THE TERMS OF A LEGALLY BINDING
SETTLEMENT AGREEMENT BETWEEN THE CITY
OF _____ AND THE APPLICANT.

Authorized Official Signature _____

Printed Name and Title _____

Phone #: _____ Email: _____

EXHIBIT "C"

PROPERTY Address: _____

APPLICATION FOR MULTIPLE MESSAGE SIGN

GEORGIA DEPARTMENT OF TRANSPORTATION

One Georgia Center
600 West Peachtree Street N.W., 10th Floor
Atlanta, Georgia 30308

TYPE OR PRINT LEGIBLY (Please sign original in blue ink- All Sections Must Be Completed)

Date of Application _____

GDOT Permit Number _____

"Multiple Message" sign means, a sign, display, or device, which changes the message or copy of the sign electronically or mechanically by movement or rotation of panels or slats. (O.C.G.A §32-6-71)

Applicant Information

Property Owner Information

Corporate Name _____

Corporate Name _____

Name of Applicant (agent) _____

Corporate Title _____

Name of Landowner _____

Corporate Title _____

Address _____

Address _____

City _____

State _____

Zip _____

City _____

State _____

Zip _____

Phone # _____

Phone # _____

Email _____

Email _____

F.E.I.# or Social Security # (Whichever applicable) _____

Sign Location Information

County: _____ City: _____ State Route #: _____ on the ☐ N ☐ E ☐ S ☐ W side
of the roadway and _____ feet ☐ N ☐ E ☐ S ☐ W of milepost number _____

Latitude: _____ Longitude: _____ (i.e. decimal degrees)

Sign Description

Is this application to change the multi-message type for an already permitted multiple message sign? ☐ Yes ☒ No

Multiple Message Sign (MMS) Type: ☐ Mechanical ☒ Electronic

Number of existing faces: Two (2)

Number of faces to be Multiple Message: Two (2)

Length: 1 Height: _____ Area: _____ Sq. Ft. Viewed from ☐ N ☐ E ☐ S ☐ W Direction ☐ MMS

Length: _____ Height: _____ Area: _____ Sq. Ft. Viewed from ☐ N ☐ E ☐ S ☐ W Direction ☐ MMS

Length: _____ Height: _____ Area: _____ Sq. Ft. Viewed from ☐ N ☐ E ☐ S ☐ W Direction ☐ MMS

Length: _____ Height: _____ Area: _____ Sq. Ft. Viewed from ☐ N ☐ E ☐ S ☐ W Direction ☐ MMS

Type of Construction (circle all that apply): ☐ Single Face ☐ Back-to-Back ☐ Double Face ☐ Type - V

Local Government Approval [FOR CITY OR COUNTY USE ONLY]

I hereby certify that the (City or County of) _____ allows the type of multiple message sign (mechanical or electronic), provided all zoning requirements are met at the time application for building permit is submitted. PURSUANT TO THE TERMS OF A LEGALLY BINDING SETTLEMENT AGREEMENT BETWEEN THE CITY OF _____ AND THE APPLICANT.

Authorized Official Name (print) _____

Title _____

Authorized Official Signature _____

City of _____ County of N/A

Date: _____

EXHIBIT "C"

EXHIBIT H



2 PARK PLAZA
ALPHARETTA, GA 30009
PHONE: 678.297.6000
WWW.ALPHARETTA.GA.U
S

November 1, 2021

Joe P. Reynolds, Esq.
Kilpatrick Townsend
Suite 2800, 1100 Peachtree St., N.E.
Atlanta, GA 30309
JReynolds@kilpatricktownsend.com

**Re: LAMAR ADVERTISING, CEASE & DESIST NOTIFICATION,
10/26/21**

Dear Mr. Reynolds:

I have received your letter referencing my Cease and Desist notification of October 26. The cease and desist was issued because information came to the City's attention that indicated the representations in the application were incorrect, and the certification to GDOT was therefore "not valid." Set forth below is my understanding of the facts, and I request that you either confirm, or clarify that understanding.

1. Your client's application represented to the City that the "placement, design and installation of the signage and equipment described in this application had been reviewed and approved by the property owner(s) and all other persons or parties with legal or financial interest in the property." Your client also filed a multiple message sign permit with GDOT that the application was to change the multi-message type to "an already permitted multi-message sign," which was electronic.
2. Following our issuance of the permit and approval to GDOT, we learned that another entity contended it had the exclusive right to convert the sign to LED.

If you have any documentation or information that indicates any of the above is incorrect, please notify me. Your position is also that the sign was allowed initially as part of a 2002 settlement agreement. Please provide a copy of the 2002 settlement agreement you reference.

MAYOR
JIM GILVIN

MAYOR PRO TEM
DONALD F. MITCHELL

COUNCIL MEMBERS
JASON BINDER
BEN BURNETT
JOHN HIPES
DAN MERKEL
KAREN RICHARD

CITY
ADMINISTRATOR
ROBERT J. REGUS

Finally, in your letter you reference an attorney-client communication from the former City Attorney. I am not sure how you obtained such a communication, but it is my understanding that attorney-client communications are confidential. The City does not waive the attorney-client privilege and requests the immediate return or destruction of all attorney-client communications and copies you have inadvertently or mistakenly received. I will not comment or respond with regard to any communications between myself and other representatives of the City and our attorney.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Schroeder', with a long horizontal flourish extending to the right.

Bret Schroeder
Code Enforcement Manager
City of Alpharetta

EXHIBIT I

Suite 2800, 1100 Peachtree Street NE
Atlanta, GA 30309-4528
t 404 815 6500 f 404 815 6555

November 8, 2021

direct dial 404 815 5912
direct fax 404 541 4618
jreynolds@kilpatricktownsend.com

Bret Schroeder
Code Enforcement Manager
City of Alpharetta
c/o Michael D. Stacy, Esq.
Bovis, Kyle, Burch & Medlin
mstacy@boviskyle.com

Re: Sign Permit No. S210156 (the “Permit”)

Dear Officer Schroeder:

We write as a follow up to your letters dated October 26 (the “Cease and Desist Letter”) and November 1, 2021, and our letters dated October 28 and November 2, 2021.

Since the issuance of the Cease and Desist Letter, Lamar has worked diligently to provide the City with the information it requested establishing that Lamar did not make any misrepresentation in its permit application and North Fulton Outdoor, LLC, one of Lamar’s competitors, does not have any “legal or financial interest” in the new sign Lamar is constructing under O.C.G.A. § 32-3-3.1. Lamar has repeatedly expressed the time sensitivity of this matter, given that Lamar can expect to lose \$2,000 every day the Cease and Desist Letter remains in effect.

The process by which the City initiated all of this is highly irregular. The City did not follow the protections in the Sign Ordinance normally afforded to a holder of a permit subject to suspension or revocation by the City. See UDC § 2.6.4(C) (“No permit shall be suspended or revoked until after the permittee is granted a public hearing before the Board of Appeals,” such hearing being held no less than 15 days after “written notice of the time, place, and purpose of the hearing, with a statement of the reason(s) for the suspension or revocation of such permit”). Instead, the City issued the Cease and Desist Letter without written prior notice on the grounds that “an emergency exists” – namely, a threat of litigation by one of Lamar’s competitors.

Because the Cease and Desist Letter purports to revoke one of the “conditions” set forth in the July 8, 2021 letter approving Lamar’s “application for the new billboard” – i.e., that the sign “can be converted to LED technology on both sides” – Lamar intends to appeal the Cease and Desist Letter and October 26 DOT communication within the fifteen (15) day appeal deadline set forth in the Sign Ordinance. While Lamar remains willing to engage in further discussions, the highly irregular process followed by the City so far has created the unnecessary complication of forcing Lamar to appeal so as to avoid any argument it approves of the City’s conduct.

To maintain the status quo, Lamar requests that the City immediately withdraw the Cease and Desist Letter and October 26, 2021 GDOT communication. If the City believes it has grounds to revoke the permit it validly issued to Lamar, which Lamar disputes, then the City should follow the procedures set forth in the Sign Ordinance. This is especially true given that (i) the City knew about the 2012 settlement agreement at the time it issued the permit and (ii) Lamar independently told the City about it during the permitting process. A bare threat of litigation by Lamar's competitor should not have prompted the City to issue the Cease and Desist Letter in the first place, let alone prompt the City to diverge from the procedural protections afforded to Lamar.

Withdrawing the Cease and Desist Letter and October 26, 2021 GDOT communication will also allow Lamar and the City to continue its ongoing discussions, should that be necessary, without any complications posed by the filing of an appeal. Nevertheless, should the City insist on Lamar filing an appeal, Lamar intends to raise the following non-exhaustive list of issues:

- The City validly issued the permit to Lamar under O.C.G.A. § 32-3-3.1 and in accordance with the Code. Three months later, the City's Cease and Desist Letter and October 26, 2021 GDOT communication – issued at the request of Lamar's competitor – deprived Lamar of its rights and constitute an unconstitutional taking without compensation. The City's conduct likewise infringes upon Lamar's first amendment right to operate the sign with LED faces.
- The City failed to follow the strictures of the Code, including by issuing the Cease and Desist Letter without there being an actual "emergency," seeking to suspend or revoke a permit without following the protections set forth in the Code, and seeking to suspend or revoke a permit without a valid basis to do so under the Code. The City's failure to follow the strictures of the Code also violates Lamar's due process rights.
- The City violated Lamar's constitutional rights by entering into and seeking to enforce the 2012 settlement agreement. The 2012 settlement agreement is highly irregular, and its suspicious nature warrants discovery into its negotiation and formation. On its face, such an agreement infringes upon Lamar's right to unfettered use of its property and constitutes an unconstitutional taking without compensation. Targeting Lamar in the 2012 settlement agreement likewise violates Lamar's rights under the equal protection clause, since there is no rational basis for the City's difference in treatment to others similarly situated.
- The City's conduct has caused and will cause Lamar to suffer significant monetary damages, as measured by Lamar's lost profits, and Lamar will seek such damages and attorney's fees from the City, including under 42 U.S.C. § 1988. Lamar approximates its damages to consist of at least \$2,000 per day until reinstatement of the permit.

* * *

We are available today to discuss any of these matters. If we do not hear from you by noon tomorrow, Tuesday, November 9, 2021, we will assume the City has no intention of

Bret Schroeder
November 8, 2021
Page 3

withdrawing the Cease and Desist Letter and October 26, 2021 GDOT communication, and Lamar will be forced to proceed with the appeal.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joe P. Reynolds". The signature is stylized with a large "J" and "R" and a smaller "P" in the middle.

Joe P. Reynolds