
APPLICANT RESPONSE STATEMENT ANNEXATIONS AND REZONINGS

1) Explain the intent of the requested zoning.

The Applicant seeks rezone the subject property to develop a neighborhood with 128 single-family detached homes.

2) Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property.

The proposed development is consistent with the development of similar community. There are many similar communities along Neese Road and Trickum Road.

3) Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property.

The zoning proposal will not adversely affect the existing use or usability of adjacent or nearby property. The residential use is anticipated by the county's and city's land use plans and is consistent with recent developments in the area.

4) Whether the property to be affected by a proposed zoning has a reasonable economic use as currently zoned.

The Subject Property does not have any reasonable economic use as currently zoned. The existing zoning categories of GC, R-40 and AG do not permit an economically viable development of the property.

5) Whether the proposed zoning will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools.

The intensity of the proposed development is consistent with similar developments and will not create an excessive burden on existing infrastructure including roads. The proposed development will have access provided by Gunin Road. The applicant will make appropriate improvements to Gunnin Road that relate to the proposed development.

6) Whether the proposed zoning is in conformity with the policy and interest of the land use plan.

The land use plan/Future Development Map designates the Subject Property as T-4 Neighborhood Living. The Applicant's proposal to rezone the Subject Property

to the R3-A zoning classification complies with the proposed uses in the Neighborhood Living Character Area.

7) Whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approved or disapproval of the proposed zoning.

The developmental trend in the area toward more compact forms of single-family residential development and the proposal's conformity to the Comprehensive Plan and Future Development Map support approval of the Application at the density requested.

Rezoning the Subject Property to any classification other than the requested R3-A classification or at a density less than the requested will impose a disproportionate hardship on the Applicant and owners of the Subject Property without benefiting any surrounding properties.

Any provisions in the Code which classify, or may classify, the Subject Property into any of the non-requested zoning classifications, including the R3-A zoning classification at a density less than that requested by the Applicant are unconstitutional in that they constitute a taking of the Applicant's and owners' 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.

The Subject Property is presently suitable for development under the R3-A zoning classification as requested by the Applicant and it is not suitable for development under any other zoning classification, or at a density less than requested by the Applicant. A denial of the Applicant's rezoning request will constitute an arbitrary and capricious 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 Council to rezone the Subject Property to the R3-A zoning classification at the density 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 owners 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.

Furthermore, the City Council cannot lawfully impose more restrictive standards on the Subject Property's development than are presently set forth in the

Code. To do so not only will constitute a taking of the Subject Property as set forth above, but it will also continue as unlawful delegation of the Council's authority in response to neighborhood opposition, in violation of Article IX, Section II, Paragraph IV of the Georgia Constitution, as amended. Any zoning conditions or other restrictions imposed on the Subject Property without the consent of the Applicant and property owners that do not serve to ameliorate the negative impacts of the development as such are defined under Georgia law are invalid and void. The Applicant and owners reserve the right to challenge any such zoning conditions and other restrictions. The Applicant and owners also reserve the right to challenge any unlawful exactions, whether they are in the form of illegal impact fees or otherwise.

Furthermore, the Reservation also constitutes an Ante Litem Notice pursuant to O.C.G.A. § 36-11-1, which places the City Council and all other agents of the City on notice of the Applicant's and owners' intent to seek monetary damages and attorney's fees against the City 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 owners.

Finally, the Applicant and owners assert that the Code, 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 revisions illegally adopted will deprive the Applicant and owners of due process under the law.