



VARIANCE AND WAIVER APPLICATION

CHECK ALL THAT APPLY:

- Zoning Variance
- Sign Variance
- Stream Buffer Variance
- Waiver

Avia Lofts on Savoy

Name of Project

1901 Savoy Drive

Property Address

Conversion of existing Sonesta Suites to Multi-Family

Brief Description of Project

MU-BC

Zoning District

1

+/- 5.538 ac

+/- 12

+/- 27,195 sf (total)

Total # of Properties Involved

Total Project Acreage

Total Number of Buildings

Total sq. ft. of buildings

OWNER:

Avia Atl Savoy, LLC

Name and Company

180 N. University Ave. # 200

Provo, UT

84601

Mailing Address

City, State

Zip Code

801-673-3442

slyon@pegcompanies.com

Phone #

E-mail

APPLICANT: Check here if Applicant is also the Property Owner

Avia Atl Savoy, LLC c/o J. Alexander Brock Smith, Gambrell & Russell, LLP

Name and Company

1105 W. Peachtree St., NE, # 1000

Atlanta, GA

30309

Mailing Address

City, State

Zip Code

404-815-3603

jabrock@sgrlaw.com

Phone #

E-mail

Applicant Signature

Date

I hereby certify that all information provided herein is true and correct.

NOTARY:

Sworn to and subscribed before me this 25th day of October, 2022

Notary Public:



LETTER OF INTENT

FIRST AMENDED
LETTER OF INTENT

and

Other Materials Required by
The City of Chamblee's Zoning Ordinance
for the
Variance Application

by

Avia Atl Savoy, LLC

for

±5.538 Acres of Land
located in
Land Lot 345, 18th District, DeKalb County
Parcel ID No: 18 345 05 003
Street Address: 1901 Savoy Drive, Chamblee, Georgia 30341

Submitted for Applicant by:

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I. INTRODUCTION

This Application seeks approval of two Variances to the City of Chamblee’s Unified Development Ordinance (“UDO”) § 210-12 to not provide a minimum of two different uses in a vertically mixed-use development and to reduce the minimum number of required parking spaces per UDO § 250-2. The Subject Property is located along the southern right-of-way of Savoy Drive, approximately 1,075 feet east of its intersection with Chamblee Dunwoody Road and more particularly located at 1901 Savoy Drive (Parcel ID 18-345-05-003). The Subject Property is currently developed as a Sonesta Suites extended stay hotel with 144 rooms in eleven (11) different buildings plus an administrative office building. Avia Atl Savoy, LLC (“Applicant” and/or “Owner”) seeks to convert the existing extended stay suites into multifamily rental apartments. The Subject Property is zoned MU-BC (Mixed-Use Business Center District) which allows multifamily by right, however it also requires developments to contain a minimum of two different uses in a vertical mixed-use configuration. *See UDO § 210-12.*

The Applicant, Avia Atl Savoy, LLC, is a subsidiary of PEG Companies (“PEG”) which specializes in converting aging extended stay hotel properties into vibrant, modern multifamily communities. PEG currently has over 4,700 units in its portfolio nationwide, in addition to other hospitality properties that it owns and manages. PEG’s conversion strategy has many community benefits, including:

- providing multifamily units to address the nationwide housing shortage;
- providing market-rate housing that’s attainable to the average renter;
- Convert out-of-date hotel properties that have run their life cycle into a higher and better use contributing greater future value to their communities. This allows brands like Marriott and Hilton to build new properties in the same area;
- Prevent further physical and financial deterioration to the property that will occur under existing use due to “downflagging”;¹ and

¹ Downflagging is the process by which hotel chains divert resources away from maintaining and upgrading aging and less profitable properties.

- Improve use to one that contributes to the neighborhood feel and prevents a lower quality guest/tenant base that a downflagged hotel would bring.

The Applicant now seeks to bring these benefits to Chamblee with its proposed conversion of the Savoy Drive Sonesta Suites. To allow the conversion, however, a variance to the vertical mixed-use requirement is necessary.

The configuration of the existing extended stay hotel will not allow its practical conversion into a mixed-use development. The current hotel consists of twelve (12) individual two-story buildings with surface parking.² Each residential building contains one and two-floor residential units with entrances on the ground floor. If the requirement to put a non-residential use on the ground floor is strictly enforced, the buildings will need to be completely redesigned or likely redeveloped to allow a retail or other non-residential use on the ground floor. Additionally, any retrofitting of the building to include ground-floor non-residential use, would eliminate the two floor units. The two floor units are configured with a living room and kitchen on the first floor and the bedrooms on the second floor. If the first floor is eliminated for a non-residential use, the two floor units will need a substantial redesign or removed entirely.

The Applicant's proposal is more practical and will allow the transformation of a use that is generally undesirable into one that is beneficial and fitting for the area. Extended stay hotels across the country often reflect negatively on the surrounding community, particularly as the developments age. In particular, extended stay hotels have a reputation for higher crime and police calls due to crime and drug activity associated with these types of developments. The Subject Property is no exception. In the past five years there have been a total of 710 police calls to the Subject Property with an average of 16.5 police calls per month. Although the majority of the

² Eleven residential buildings and one administrative building.

calls to the Subject Property were for “business or house”³ and not for violent crimes, the high number of calls places a strain on the City’s resources. The conversion to a multifamily property is anticipated to reduce the callout rate for the Chamblee Police Department. The Applicant has certain vetting requirements for potential tenants, including background and credit checks. Currently the hotel is a more transient use, allowing for weekly rental of rooms with little to no background screening of the tenants. The Applicant will also have onsite management to address with tenant issues with the units. Once the property is converted to a multifamily property that is managed by the Applicant, it is expected that the “business or house” calls will decrease.

In addition, the grant of the variance will not impair the purposes or intent of the City of Chamblee’s Zoning Ordinance or its long term planning. The Subject Property is zoned MU-BC and the City of Chamblee’s One Chamblee Comprehensive Plan (“Comp Plan”) shows the Subject Property as being within the Savoy Drive Small Area Plan (“Savoy SAP”). The Savoy SAP envisions the Subject Property as being redeveloped for mixed-use consisting of residential, office, retail and restaurants. *See Comp Plan, pg. 172.* The Subject Property has attracted little interest for mixed-use development, which is due in large part to current development trends. Office use has taken a major downturn since the onset of the COVID-19 pandemic as more workers continue to work from home. Retail development has also experienced a slowdown as more consumers turn to online shopping. In addition, Savoy Drive is an access road along U.S. Interstate 285 (“I-285”) with relatively low traffic counts, which is unattractive to retail or restaurant development. In total, these factors make mixed use on the Subject Property impractical in the current market. This trend may change in the future, particularly with the anticipated development of the MARTA Bus Rapid Transit station on I-285. The Applicant’s proposal for a variance will allow the near-term

³ Business or house calls are likely disturbance calls.

conversion of the extended stay into multifamily residential, while preserving the MU-BC zoning and Mixed Use character area for future redevelopment of the Subject Property.⁴ As a result, the grant of the variance would not impair the purposes or intent of the City of Chamblee's zoning ordinance or Comp Plan.

The proposed multifamily development will also be compatible with the existing development in the area. The Subject Property abuts the existing Camden Creekstone Apartments to the east, existing single family residential lots to the south, and an existing Public Storage self-storage warehouse to the west, all of which are compatible with the proposed multifamily use. The Applicant's proposed conversion will not relocate any of the existing structures, but will maintain the same configuration that has existed in harmony with the surrounding developments for the past thirty-nine years.⁵ The Applicant will also maintain the existing vegetated buffers and setbacks along the property lines to mitigate any impacts on the surrounding developments. Additionally, the Applicant is proposing the installation of the City of Chamblee's standard streetscape and sidewalk along its frontage, which will help facilitate pedestrian movement along Savoy Drive. In sum, the grant of the requested variance will allow an attractive and fitting development. The City of Chamblee has also granted similar variances to remove the requirement for vertically integrated mixed-use for other similarly situated properties. In particular, the City Council approved the variance application PZ2022-968 to allow the construction of a medical office building at 2344 Perimeter Park Drive without a minimum of two different uses in a vertical mixed-use configuration. The Perimeter Park Drive property is zoned MU-BC and envisioned the redevelopment into medical office building. The odd shape of the property and the limited

⁴ The Applicant previously considered rezoning the Subject Property to a district that would allow the sole multifamily use. However, this would require an additional rezoning to allow a mixed-use district, if redeveloped in the future.

⁵ The DeKalb County Tax Assessor's property information notes the structures were built in 1983.

visibility from the right-of-way limited its use for incorporating retail or other uses into the office building. As noted in the paragraphs above, the Subject Property contains similar hardships that limit the practicality of incorporating other uses into the proposed multifamily.

The Applicant is also requesting a variance to reduce the minimum off-street parking for the multifamily use from the 1.5 spaces per unit, as required by UDO § 250-2, to ± 1.19 spaces per unit. As noted in the paragraphs above, the site is currently developed including existing surface parking, which is to remain. The Applicant will be restriping a portion of the spaces to add compact parking for a total of 171 proposed spaces for the 144 units in the development. It is important to note that the Applicant cannot add more parking without removing existing buildings or encroaching into existing buffers. Therefore, the Applicant is requesting a variance to reduce parking to match what can be reasonably located on the site versus asking for a variance to reduce buffers or remove existing structures. The grant of a parking variance will not be detrimental to the public, since the Applicant anticipates the 171 spaces will sufficiently serve the proposed multifamily units. PEG has transformed similar extended stay hotels into multifamily residences across the country and routinely runs into similar situations with parking. Since it is converting an existing hotel development, which typically has a lower required parking rate, into a multifamily, which typically has a higher parking rate, PEG often runs into the situation of the existing on-site parking being less than what is required for multifamily use. PEG's management and operation of the multifamily development has revealed that many of its occupants are single car households or residents that use mass transit. Additionally, the market for PEG's multifamily conversions typically contain a variety of residents that have differing work schedules and parking demands. It is anticipated that a number of residents will not be parking during peak demand hours, such as students or those with off-hour shifts, including those that work evenings or nights (e.g.

restaurant employees, nurses, etc.). Moreover, the Subject Property is a short distance from stops on MARTA bus route 103⁶ and the anticipated bus rapid transit station on I-285, providing quick access to mass transit. As a result, lower parking ratios are expected to sufficiently serve the converted multifamily units.

Pursuant to Chamblee UDO § 280-32, the criteria for each variance is met. First, there are extraordinary and exceptional conditions pertaining to the particular property in question because of its size, shape or topography. Second, the application of this UDO to the particular piece of property would create an unnecessary hardship. Third, such conditions are peculiar to the particular piece of property involved. Fourth, such conditions are not the result of any actions of the property owner. Finally, relief will not cause substantial detriment to the public good nor impair the purposes or intent of this zoning ordinance.

The Applicant submits this document as a Letter of Intent with regard to its Variance Application, a preservation of its constitutional rights, and a Written Justification for the Variance Application as required by the City of Chamblee's Zoning Ordinance, § 280-27, *et seq.*

I. NOTICE OF CONSTITUTIONAL CHALLENGE TO UNDERLYING ZONING AND PRESERVATION OF CONSTITUTIONAL RIGHTS

A refusal to grant the requested Variances would be unconstitutional for, among other reasons, it would constitute an unlawful, arbitrary, capricious, irrational and a manifest abuse of discretion; all in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia.

⁶ Bus stops are located approximately 0.3 miles from the Subject Property at N. Shallowford Road and Savoy Drive.

A refusal to grant the requested Variances would discriminate unfairly between the owner of the Subject Property and other property owners similarly situated, in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia.

A refusal to grant the requested Variances would amount to a taking of property, in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia.

A refusal to grant the requested Variances would be unjustified from a fact-based standpoint and instead would result only from constituent opposition, which would be an unlawful delegation of authority in violation of Article IX, Section II, Paragraph IV of the Georgia Constitution.

A refusal to grant the requested Variances would be invalid inasmuch as the Unified Development Ordinance of the City of Chamblee is unlawful, null and void because its adoption and map adoption/maintenance did not comply with the requirements of its predecessor ordinance and/or the Zoning Procedures Law, O.C.G.A. § 36-66-1, *et seq.*

The Unified Development Ordinance of the City of Chamblee lacks adequate standards for the Zoning Board of Appeals to exercise its power to review and vote on this Application. The standards are not sufficient to contain the discretion of the Board and to provide the Courts with a reasonable basis for judicial review. Because the stated standards (individually and collectively) are too vague and uncertain to provide reasonable guidance, the Zoning Ordinance is unlawful and violates, among other things, the Fifth Amendment and Fourteenth Amendment of the Constitution

of the United States and Article I, Section III, Paragraph I and Article I, Paragraphs I and II of the Constitution of State of Georgia.

Any limitation on the time for presentation of the issues before the Mayor and City Council is a violation of the guarantees of free speech under Article I, Section I, Paragraph V of the Constitution of the State of Georgia and the First Amendment of the Constitution of the United States. Further, said limitations are in violation of the right to petition and assemble, in violation of Article I, Section I, Paragraph IX of the Constitution of Georgia and the First Amendment of the Constitution of the United States, as well as the Due Process Clauses of the Constitution of Georgia and the Constitution of the United States.

In addition to the above, the Applicant raises the defenses of standing and failure to exhaust administrative remedies.

II. CONCLUSION

For the foregoing reasons, the Applicant respectfully requests that this Variance Application be approved. The Applicant also invites and welcomes any comments from City staff or other officials.

This 27th day of December, 2022.

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Respectfully submitted,


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