

**ATTACHMENT TO APPLICATION FOR REZONING**

**Application No.:** \_\_\_\_\_  
**Hearing Dates:** **April 12, 2021**  
**May 17, 2021**

**BEFORE THE PLANNING AND ZONING COMMISSION  
AND THE MAYOR AND CITY COUNCIL FOR THE  
CITY OF SMYRNA, GEORGIA**

**CONSTITUTIONAL CHALLENGE  
ATTACHMENT TO APPLICATION FOR REZONING**

COME NOW, Applicant, MORGAN CAPITAL AND DEVELOPMENT, LLC (hereinafter referred to as “Applicant”), and Titleholder, JANE ADAMS MacKENNA, AS TRUSTEE OF THE TRUST CREATED UNDER ITEM SEVEN OF THE LAST WILL AND TESTAMENT OF WILLIAM JAY MacKENNA (hereinafter referred to as “Titleholder”), and assert the following:

1.

By Application for Rezoning dated and filed March 12, 2021, Applicant and Titleholder applied for rezoning of certain real property, being approximately 2.034 acres, more or less, lying and being located within the City of Smyrna, Cobb County, Georgia, a more particular description and delineation of the subject property being set forth in said Application (hereinafter referred to as the “Property” or the “Subject Property”).

2.

The Application for Rezoning of the Property seeks rezoning from the existing zoning category of Neighborhood Shopping (“NS”) to the proposed zoning category of RM-12, as established by the governing authority of the City of Smyrna, Georgia, under and pursuant to the Zoning and Planning Ordinance of the City of Smyrna, Georgia.

3.

With respect to the current NS zoning classification for the Subject Property, Applicant and Titleholder do contend the Zoning and Planning Ordinance of the City of Smyrna is unconstitutional as applied to the Subject Property in that said Ordinance does not permit the Applicant and Titleholder to utilize the Property to the highest and best use set forth within the Application for Rezoning without the necessity of rezoning. However, Applicant and Titleholder do not contend the current zoning category of NS is unconstitutional, per se, only as applied. Thus, the Zoning and Planning Ordinance of the City of Smyrna deprives Applicant and Titleholder of their Property under and pursuant to Art. I, § I, ¶¶ I and II of the Georgia Constitution of 1983, and the Equal Protection and Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America. This deprivation of Property without due process violates the constitutional prohibition against the taking of private property without just compensation. Also violated are the Applicant's and Titleholder's rights to unfettered use of their Property, as stated above, in that said zoning classifications do not bear a substantial relation to the public health, safety, morality, or general welfare and are, therefore, confiscatory and void. Further, said Ordinance is unconstitutional in that it is arbitrary and unreasonable resulting in relatively little gain or benefit to the public, while inflicting serious injury and loss on the Applicant and Titleholder.

4.

To the extent the Zoning and Planning Ordinance of the City of Smyrna allows or permits the Mayor and City Council to rezone the Subject Property to any category other than as requested, said Ordinance is further unconstitutional in that same violates the Applicant's and Titleholder's constitutionally guaranteed rights to due process, both

substantive and procedural. Furthermore, any such action by the Mayor and City Council, or as allowed by the Zoning and Planning Ordinance of the City of Smyrna, is an unconstitutional use of the zoning power and would constitute an abuse of discretion with no justification or benefit flowing to the public welfare. Accordingly, said Ordinance or action would likewise represent a taking of private property rights without the payment of just and adequate compensation in violation of the Constitutions of the State of Georgia and the United States of America.

5.

The Zoning and Planning Ordinance of the City of Smyrna is further unconstitutional in that the procedures contained therein pertaining to the public hearing held in connection with the Zoning Application also violate Art. I, § I, ¶¶ I, II, and XII of the Georgia Constitution of 1983 in that said procedures impose unreasonable time restraints, contain the absence of rebuttal, contain the inability to confront witnesses, contain the lack of procedural and evidentiary safeguards, do not restrict evidence received to the issue at hand and are controlled wholly and solely by political considerations rather than the facts and considerations required by law. These procedures fail to comport with the due process requirements of the Constitution of the State of Georgia 1983 and the due process requirements of the Constitution of the United States of America.

Respectfully submitted, this 12<sup>th</sup> day of March, 2021.

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Attorneys for Applicant and Titleholder

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