

TO THE MAYOR AND CITY COUNCIL  
CITY OF SMYRNA, GEORGIA

**CONSTITUTIONAL CHALLENGE**

COMES NOW, MARTINELLO GROUP, LLC, hereinafter referred to as the "Applicant" for Rezoning and asserts the following, to wit:

1.

By application to which this exhibit relates, the Applicant has applied for a rezoning of certain real property lying and being in the City of Smyrna, Cobb County, Georgia, a more particular description and delineation of the subject property, hereinafter referred to as the "Property", being set forth in said Application.

2.

The Application for Zoning of the property seeks a rezoning from the existing categories of RM-10 and R-15, as established by the governing authority of the City of Smyrna, Georgia to the zoning category of Conditional RAD for the purposes of a 14-lot, detached residential subdivision.

3.

The current RM-10 and R-15 zoning classifications of the property and all intervening classifications between same and Conditional RAD are unconstitutional in that they deprive the Applicant under and pursuant to Article 1, Section I, Paragraphs 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. This deprivation of property without due process violates constitutional prohibitions against the taking of private property without just compensation.

4.

The zoning classifications of RM-10 and R-15 and all intervening classifications between same and Conditional RAD as they presently exist violate the Applicant's rights to the unfettered use of the property in that the existing zoning classification does not bear a substantial relation to the public health, safety, morality or general welfare and is, therefore, confiscatory and void. Further, said classification 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 upon the Applicant.

5.

The City of Smyrna Zoning Ordinance is further unconstitutional in that the procedures contained therein pertaining to the public hearing held in connection with zoning applications also violates the aforementioned constitutional provisions in that said procedures contain the lack of procedural and evidentiary safeguards, do not restrict evidence received to the issues at hand, and are in many instances controlled by political considerations rather than the facts and considerations required by law.

Respectfully submitted, this the 14<sup>th</sup> day of February, 2020.

SAMS, LARKIN & HUFF, LLP

By: 

GARVIS L. SAMS, JR.

Attorney for Applicant

Ga. Bar No. 623950