

SPECIAL EXCEPTION APPLICATION

Planning & Zoning

2635 Talley Street
Decatur, GA 30030
Phone 404-377-6198
Fax 404-378-5054



Attach a survey of the property drawn to scale and showing the following information. Please provide one to-scale copy of all plans, as well as one copy of all plans in an 8½" x 11" format. If the applicant is not the current property owner, provide a notarized authorization for this application from the current property owner.

1. all property lines with dimensions
2. location of buildings and other structures, creeks and easements referenced to property lines
3. north arrow, scale, lot and block numbers and land lot
4. topographic and drainage information if pertinent
5. comprehensive site plan (if applicable)
6. building elevations (if applicable)

Address of property 1119, 1123 and 1121 Clairmont Road Decatur, GA 30030

Name of applicant Emory Heights, LLC c/o Anamaria Hazard Phone 404-527-4907

Address 303 Peachtree Street, Suite 5300 City/state/ZIP Alpharetta, GA 30005

Email anamaria.hazard@dentons.com

Name of property owner Emory Heights, LLC Phone 404-527-4907

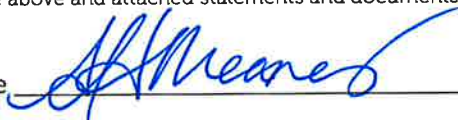
Address 3460 Preston Ridge Road, Suite 150 City/state/ZIP Alpharetta, GA 30005

Current zoning of property R-60 (Decatur), OI (DeKalb), R-75 (DeKalb)

Please answer all of the following questions on a separate sheet.

1. What is the special exception requested? What code requirement do you wish to vary from?
2. Explain how the proposed special exception will be suitable in view of the use and development of adjacent and nearby properties.
3. What impact will the proposed exception have on the existing use or usability of adjacent or nearby properties?
4. What impact will the proposed exception have on public safety, traffic on public streets, transportation facilities, utilities and other public services?
5. What impact will the proposed exception have on established property values and on the health, safety, comfort and general welfare of the residents of the City?

I hereby certify that the above and attached statements and documents are true to the best of my knowledge and belief.

Applicant signature  Date 4/18/2023

**SPECIAL EXCEPTION TO ALLOW PARKING BETWEEN SIDEWALK AND THE
FRONT OF THE BUILDING WITHIN 30 FEET OF A PUBLIC STREET**

for
±1.09 acres of land
known as

1119, 1123 and 1121 Clairmont Road

Land Lot 5 & 51, 18th District
DeKalb County, Georgia

Submitted on behalf of
EMORY HEIGHTS, LLC

by
Anamaria Hazard, Esq.
Dentons US LLP
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Atlanta, Georgia 30308
404.527.4907
anamaria.hazard@dentons.com

APPLICANT RESPONSE STATEMENT

The Applicant provides the following information in response to the required analysis:

1. What is the special exception requested? What code requirement do you wish to vary from?

The request is for a special exception from Section 8.2.3H to allow parking between the sidewalk and the front of the building, within thirty (30) feet of a public street.

2. Explain how would the proposed special exception will be suitable in view of the use and development of adjacent and nearby property?

The adjacent and nearby properties have office, industrial and medium density residential uses. The special exception fits well with the surrounding properties, some of which have parking between the sidewalk and front of the building as well. The existing buildings will not be expanded and the parking will be reconstructed to allow for better internal flow and accommodate more off street parking which will help with traffic flow and congestion. Additionally, the special exception will allow for the existing buildings to remain located where they currently are.

3. What impact will the proposed exception have on the existing use or usability of adjacent or nearby properties?

Ideally these properties are combined to create a campus where mental health and wellness practitioners can serve their clients. This will be of great value to the community, especially given the current focus on mental health and wellness. The special exception is needed to allow for adequate parking on the site while maintaining the general appearance and location of the existing buildings which will allow maintain continuity with the surrounding buildings and properties.

4. What impact will the proposed exception have on public safety, traffic on public streets, transportation facilities, utilities and other public services?

The proposed amendment will not cause an excessive or burdensome use of public safety resources, existing streets, transportation facilities, utilities, schools or other public services. There will be one point of ingress and one point of egress for the entire site which will help with internal traffic flow and avoid any issues on the surrounding streets. This use should not overflow the existing street capacity at all. 1123 is already being used as office space and the use across the street is used as a gym facility, so the existing streets and facilities will be able to support the proposed use since it less intensive or as intensive and many of the existing uses. There will be no residences so it should not affect schools.

5. What impact will the proposed exception have on established property values and on the health, safety, comfort and general welfare of the residents of the City?

Ideally these properties are combined to create a campus where mental health and wellness practitioners can serve their clients. This will be of great value to the community, especially given the current focus on mental health and wellness. This special exception will allow for all of the parcels to be combined and have a single ingress and egress with combined parking for both buildings. There will be no negative affect on property values and it is in the best interest of the health, safety, comfort and general welfare of the residents of the City.

CONSTITUTIONAL OBJECTIONS

The Applicant respectfully submits that the Unified Development Ordinance of the City of Decatur, Georgia, as amended from time to time and known as the “UDO” to the extent that it classifies the Property in any zoning district that would preclude development of a medical office, is unconstitutional as a taking of property, a denial of equal protection, an arbitrary and capricious act, and an unlawful delegation of authority under the specific constitutional provisions later set forth herein. Any existing inconsistent zoning of the Property pursuant to the UDO deprives the Applicant and Property owner of any alternative reasonable use and development of the Property. Additionally, all other zoning classifications, including ones intervening between the existing classification and that requested herein, would deprive the Applicant and Property owner of any reasonable use and development of the Property. Further, any attempt by the City Commission to impose greater restrictions upon the manner in which the Property will be developed than presently exist would be equally unlawful.

Accordingly, Applicant submits that the current zoning classifications and any other zoning of the Property save for what has been requested as established in the UDO constitute an arbitrary and unreasonable use of the zoning and police powers because they bear no substantial relationship to the public health, safety, morality or general welfare of the public and substantially harm the Applicant and Property owner. All inconsistent zoning classifications between the existing zoning and the zoning requested hereunder would constitute an arbitrary and unreasonable use of the zoning and police powers because they bear or would bear no substantial relationship to the public health, safety, morality or general welfare of the public and would substantially harm the Applicant and Property owner. Further, the existing inconsistent zoning classification constitutes, and all zoning and plan classifications intervening between the existing inconsistent zoning classification and that required to develop this Project would constitute, a taking of the owner’s private property without just compensation and without due process 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 and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States.

Further, the Applicant respectfully submits that failure to approve the requested zoning change would be unconstitutional and would discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and Property owner and owners of similarly situated property in violation of Article I, Section III, Paragraph I of the Constitution of the State of Georgia and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

Finally, the Applicant respectfully submits that the City Commission cannot lawfully impose more restrictive standards upon the development of the Property than presently exist, as to do so not only would constitute a taking of the Property as set forth above, but also would amount to an unlawful delegation of their authority, in response to neighborhood opposition, in violation of Article IX, Section IV, Paragraph II of the Georgia Constitution.

This Application meets favorably the prescribed test set out by the Georgia Supreme Court to be used in establishing the constitutional balance between private property rights and zoning and planning as an expression of the government's police power. See Guhl vs. Holcomb Bridge Road Corp., 238 Ga. 322 (1977).

