



City of Cumming Planning & Development

100 Main Street
Cumming, Georgia 30040
Phone: (770) 781-2024
Email: s.morgan@cityofcumming.net
Website: www.cityofcumming.net

Annexation Petition
into the
City of Cumming, GA

RECEIVED

MAY 10 2024

CITY OF CUMMING

Annexation# 2024127

Please Print Clearly

Applicant's Name: E-15, LLC

Applicant's Mailing Address: 202 Tribble Gap Road, Suite 200

City: Cumming State: GA Zip: 30041

Applicant's Telephone Number(s): 770-781-4100

Address of Property to be Annexed: Turner Road

County Zoning Classification: Office and Institutional District (O&I)

Requested City Zoning Classification: Office Professional District (OP)

Tax Map # C36 Parcel # 005 Land Lot # 1256, 1265

District # 3 Size of Property in Acres: 2.00

Current Use of Property: Vacant / Undeveloped

Petition **MUST** include a completed application with signatures and **ALL** attachments.

- An 8 ½ x 11 copy of the current **RECORDED BOUNDARY SURVEY** of said property showing the contiguity of said property to the existing corporate limits of the City of Cumming, Georgia (**Attached hereto as Exhibit "A"**).
- A copy of the current metes and bounds **LEGAL DESCRIPTION** that matches the boundary survey of the property being annexed (**Attached hereto as Exhibit "B"**).
- Survey must be signed and sealed by a Registered Land Surveyor.
- If property is to be rezoned upon annexation, you must file a separate Re-Zoning Application along with this petition.

Please answer the following questions to meet and comply with the United States Department of Justice, Civil Rights Division, Voting Section, Section 5 of the Voting Rights Act.

1. Intended Use of Land: Residential Commercial
Existing Structure(s) Vacant
Other (specify) _____

2. Number of persons currently residing on the property: N/A ;
 Number 18 years or older: N/A ; Number registered to vote: N/A

3. The number of all residents occupying the property:

N/A _____ American Indian _____	N/A _____ Alaskan Native _____
N/A _____ Asian _____	N/A _____ Pacific Islander _____
N/A _____ Black, not of Hispanic Origin _____	N/A _____ Hispanic _____
N/A _____ White, not of Hispanic Origin _____	

4. The U.S. Department of Commerce requires certain information for the purpose of Population Estimates. Please complete the attached **Exhibit "C"**.

5. Please briefly describe your reason for seeking annexation: See attached Letter of Intent.

I/We the undersigned, being the owner(s) of real property of the territory described herein, understanding that the City of Cumming has not sought this annexation but that the undersigned files this petition voluntarily of its own free will and volition, respectfully request that the Mayor and City Council of the City of Cumming, Georgia annex this property into the City and extend the City boundaries to include the same.

Upon signature of this document, I/We the undersigned certify that all the information provided is true and accurate to the best of our knowledge.

[Signature] 4-29-2024
Property Owner's Signature Date

M400 Hamilton II, LLC - Daniel Garabadian
Property Owner's Printed Name

[Signature] 4.29.2024
Applicant's Signature Date

E-15, LLC - Phil Christian
Applicant's Printed Name

204 Marietta Street, Alpharetta, Georgia 30009
Applicant's Address

770-781-4100
Applicant's Telephone Number

Annexation Application Checklist: Date Rec'd _____		Completed Application with Signatures
Rec'd _____		Exhibit "A" – Current Boundary Survey
Rec'd _____		Exhibit "B" – Legal Description
Rec'd _____		Exhibit "C" – Population Estimate Information
Date of Planning Commission Meeting (if rezone): _____		
Dates Advertised: _____		
Date of City Council Reading: _____		Approved: YES NO
Certified Mail: _____	County Board of Commissioner Chairman _____	County Manager _____ County Attorney _____

Exhibit "C" – Population Estimate Information

A. Number of existing housing units

N/A

B. List of Addresses for each housing unit in the annexed area at the time of the annexation

N/A

C. Disposition of existing structures (e.g. to be demolished, moved or converted)

N/A

D. Names of affected Subdivision

N/A

E. Name of affected Multi-Family Complex

N/A

F. Names of Group Quarters (dormitories, nursing homes, jails, etc.)

N/A

G. Names of affected Duplexes

N/A

H. Names of Mobile Home Parks

N/A



Miles Hansford, LLC

ATTORNEYS AT LAW

202 Tribble Gap Road · Suite 200 · Cumming, GA 30040
178 S Main Street · Suite 310 · Alpharetta, GA 30009
Phone 770.781.4100

MilesHansford.com

J. Ethan Underwood
eunderwood@MilesHansford.com

February 12, 2023

CAMPAIGN DISCLOSURE

Applicant:	E-15, LLC
Subject Property:	2.00 Acres Designated as Forsyth County Tax Parcel(s): C36-005
Current Zoning:	O&I – Office and Institutional District (Forsyth County)
Proposed Zoning:	OP – Office Professional District
Proposed Use:	Office
Application:	Petition for Annexation
ROW Access:	Turner Road
Governing Jurisdiction:	City of Cumming

Pursuant to O.C.G.A § 36-67A-1, *et seq.* and Chapter 8 of the Forsyth County Unified Development Code, please be advised that Miles Hansford, LLC, has not given campaign contributions to any City of Cumming government officials.

This letter constitutes the disclosure of campaign contributions with respect to the above-referenced application and is forms a part of such application.

Sincerely,

Ethan Underwood
Attorney for Applicant



Miles Hansford, LLC

ATTORNEYS AT LAW

202 Tribble Gap Road · Suite 200 · Cumming, GA 30040

178 S Main Street · Suite 310 · Alpharetta, GA 30009

Phone 770.781.4100

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J. Ethan Underwood

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RESERVATION OF CONSTITUTIONAL AND OTHER LEGAL RIGHTS

Applicant:	E-15, LLC
Subject Property:	2.00 Acres Designated as Forsyth County Tax Parcel(s): C36-005
Current Zoning:	O&I – Office and Institutional District (Forsyth County)
Proposed Zoning:	OP – Office Professional District
Proposed Use:	Office
Application:	Petition for Annexation
ROW Access:	Turner Road
Governing Jurisdiction:	City of Cumming

This Reservation of Constitutional and Other Legal Rights (“the Reservation”) is intended to supplement and form a part of the land use application (including any request for zoning, conditional use permit, site plan approval, and variances) (collectively, the “Application”) of the Applicant and the owners of the Subject Property (collectively, the “Owner”) and to put the Governing Jurisdiction on notice of the Applicant’s assertion of its constitutional and legal rights.

The Applicant has filed a timely application, has provided all required information and has submitted the appropriate application fees. The Application meets all judicial and statutory requirements for approval.

The Applicant objects to the standing of any opponents who are not owners of land adjoining the Subject Property and to the consideration by the Governing Jurisdiction of testimony or evidence presented by any party without standing in making its decision regarding the Application. The Applicant also objects to the consideration of testimony or evidence that is hearsay, violates any applicable rules of procedure or evidence, or that is presented by any party who fails to comply with notice and campaign disclosure requirements.

The Current Zoning (and/or zoning conditions) of the Subject Property is unconstitutional and deprives the Subject Property and all viable economic use thereof. The Proposed Use is the only viable economic use of the Subject Property, and the Governing Jurisdiction has deemed this Application necessary to allow the Proposed Use. As such, the Applicant and Owner file this Application for the purpose of changing the Current Zoning (and/or zoning conditions and requesting variances) to facilitate the Proposed Use, and to exhaust administrative remedies in the event the Application is denied. As such, the filing of this application is not an admission of the need for any such approval of the Applicant’s right to develop the property. The Applicant and Owner reserve the right to challenge the Current Zoning and any zoning conditions and other restrictions affecting the Subject Property.

Denial of the Application or approval of the Application in any form that is different than as requested by the Applicant will impose a disproportionate hardship on the Applicant and Owner of the Subject Property without benefiting any surrounding property owners. There is no reasonable use of the Subject Property

other than as proposed by the Application and no resulting benefit to the public from denial of or modification to the Application.

Any provisions in the applicable land use, subdivision, and /or zoning ordinances (collectively the "Zoning Ordinance") that classify, or may classify, the Subject Property into any of the non-requested zoning or use classifications, including the Proposed Zoning District and Proposed Use at a density or intensity less than that requested by the Applicant, are unconstitutional in that they constitute a taking of the Applicant's and Owner's 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 suitable for development as proposed in the Application and it is not suitable for development under any other zoning classification, use, or at a density or intensity less than that requested by the Applicant. Failure to approve the Application as requested by the Applicant would be an unreasonable application of local land use authority, which bears no relationship to the public health, safety, morality or general welfare of the public and would 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 Governing Jurisdiction to approve the Application as 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 Owner 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.

A refusal by the Governing Jurisdiction to approve the Application as requested by the Applicant without the consent of persons elected to the governing body of the Governing Jurisdiction will amount to an unlawful delegation of the Governing Jurisdiction's authority, in violation of Article IX, Section II, Paragraph IV of the Georgia Constitution of 1983, as amended.

Furthermore, the Governing Jurisdiction cannot lawfully impose more restrictive standards on the Subject Property's development than are presently set forth in the Zoning Ordinance. Any conditions or other restrictions imposed on the Subject Property without the consent of the Applicant and Owner that do not serve to reasonably ameliorate the negative impacts of the development are invalid and void. The imposition of improvements or design requirements unnecessary to facilitate the proposed development constitute an illegal impact fee, an unconstitutional condemnation, or both. As such, the Applicant and Owner reserve the right to challenge any such conditions, restrictions, or design requirements.

The Applicant and Owner assert that each has expended substantial sums and significantly changed its economic position in reliance upon versions of the Zoning Ordinance that allow the development of the Subject Property as proposed by the Applicant. As such, the Applicant has acquired vested rights to develop the property and the filing of this Application shall not constitute a waiver of those vested rights.

Finally, the Applicant and Owner assert that the current Zoning Ordinance, Character Area Map, 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 provisions illegally adopted will deprive the Applicant and Owner of due process under the law.

This Reservation constitutes an Ante Litem Notice pursuant to O.C.G.A. § 36-11-1, which places the Governing Jurisdiction and all other agents of the Governing Jurisdiction, in their official and individual capacities, on notice of the Applicant's and Owner's intent to seek monetary damages and attorney's fees against the Governing Jurisdiction for any rezoning action, zoning condition, illegal impact fee, and any other unlawful restrictions and exactions that are imposed upon the Subject Property, the Applicant, or the Owner.

By filing this Reservation, the Applicant reserves all rights and remedies available to it under the United States Constitution, the Georgia Constitution, all applicable federal, state, and local laws and ordinances, and in equity.

The Applicant and Owner respectfully request that the Application be approved as requested by the Applicant and in the manner shown on the Application, which is incorporated herein by reference. This Reservation forms an integral part of the Application, and we ask that this Reservation be included with the Applicant's other Application materials. The Applicant and Owner reserve the right to amend and supplement this Reservation at any time.

Sincerely,



Ethan Underwood
Attorney for Applicant



LETTER OF INTENT REGARDING LAND USE APPLICATION

Applicant:	E-15, LLC
Subject Property:	2.00 Acres Designated as Forsyth County Tax Parcel(s): C36-005
Current Zoning:	O&I – Office and Institutional District (Forsyth County)
Proposed Zoning:	OP – Office Professional District
Proposed Use:	Office
Application:	Petition for Annexation
ROW Access:	Turner Road
Governing Jurisdiction:	City of Cumming

This statement is intended to comply with the application procedures established by the Zoning Ordinance of the City of Cumming (the “Zoning Ordinance”), the City of Cumming Annexation Petition, and other City of Cumming Ordinances and Standards. The Applicant incorporates all statements made in the Annexation for Public Hearing by the Applicant (the “Application”) as its letter of intent required by the City of Milton.

The Subject Property is approximately 2.00 acres located along Turner Road.

Specifically, the Applicant requests the following:

- a) Annex the Subject Property into the City of Cumming.**
- b) Rezone the Subject Property from Office and Institutional District (O&I) (County) to Office Professional District (OP) (City).**

The Subject Property is currently vacant and undeveloped.

REASON FOR ANNEXATION

The Applicant is seeking annexation into the City of Cumming to facilitate the development of the Proposed Use.

ZONING CRITERIA

1. The Existing Land Use Pattern

The Subject Property is adjacent to Planned Unit Development District (PUD) (City) and Institutional District (INST) (City) to the South and West. It is also adjacent to Commercial Business District (CBD)

(County) to the North and Lake Residential (LR) (County) to the East. The surrounding area is heavily used for retail and office space with residential apartments to the South within the Westshore Development.

The existing land use pattern in this area is for commercial uses such as office. As such, the Proposed Use is a suitable use for the area and provides a complimentary use to the nearby institutional and residential uses.

2. The possible creation of an isolated district unrelated to adjacent and nearby districts.

The Subject Property is adjacent to Planned Unit Development District (PUD) (City) and Institutional District (INST) (City) to the South and West. It is also adjacent to Commercial Business District (CBD) (County) to the North and Lake Residential (LR) (County) to the East. The surrounding area is heavily used for retail and office space with residential apartments to the South within the Westshore Development.

The Proposed Use and Proposed Zoning will not adversely affect the existing use or usability of adjacent or nearby property, nor will they create an isolated district unrelated to adjacent and nearby districts.

3. The population density pattern and possible increase or overtaxing of public safety or the load on public facilities including, but not limited to schools, utilities and streets.

The Applicant does not project the Proposed Use will result in any increase in the population. The Proposed Use will not result in a use that will cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools. The projected impact on utilities and other facilities will be in keeping with projected growth, and any applicable impact fees and/or taxes from the development will fund necessary infrastructure improvements.

4. The cost of the local government in providing, improving, increasing or maintaining public utilities, schools, streets and public safety measures

The Proposed Use will not result in a use that will cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools. The projected impact on utilities and other facilities will be in keeping with projected growth, and any applicable impact fees and/or taxes from the development will fund necessary infrastructure improvements.

5. Impact on the environment, including, but not limited to, drainage, soil erosion and sedimentation, flooding, air quality and water quality and quantity.

The Proposed Use will not result in an adverse impact on the environment.

6. Whether the proposed change will be a deterrent to the value or improvement of development of adjacent property in accordance with existing regulations.

The Proposed Use is consistent with the developing trend in the area and provides a complementary use to the adjacent and nearby residential and commercial uses.

7. Whether there are substantial reasons why the property cannot be used in accordance with existing zoning.

The Subject Property is currently zoned Office and Institutional (O&I) (County). The Applicant requests the Subject Property be annexed into the City of Cumming with an Office Profession District (OP) zoning to facilitate the Proposed Use.

8. The aesthetic effect of existing and future use of the property as it relates to the surrounding area.

The Proposed Use will enhance surrounding property values and is consistent with the developing trend in the area by providing a complementary use to the adjacent and nearby residential and commercial uses.

9. The extent to which the zoning decision is consistent with the Comprehensive Plan of the City.

The Subject Property is consistent with the Comprehensive Plan. The Subject Property is not currently depicted on the City's Future Land Use Map; however, it is contiguous to the City's boundary and will provide a complementary use to the nearby residential and institutional uses.

10. Any other factors relevant to the balancing interest in promoting the public health, safety, morality, or general welfare against a right to unrestricted use of property.

Approval of the Application will not cause a safety hazard or noxious condition.

CONCLUSION

The Applicant respectfully requests that the Application, as requested by the Applicant, be approved. The Applicant also reserves the right to amend this Letter of Intent and the Application by supplementing further responses and documents.

Sincerely,



Ethan Underwood

Ethan Underwood
Attorney for Applicant

Legal Description

All that tract or parcel of land lying and being in Land Lots 1256 and 1265 of the 3rd District, 1st Section Forsyth County, Georgia being identified as Tract 4, containing approximately 2.00 acres, more or less, according to a plat of survey dated April 9, 2008, prepared for M400 Hamilton, LLC, United Community Bank, and Chicago Title Insurance Company by Carmichael Land Surveying, Inc. certified by Robert S. Carmichael, Georgia Registered Land Surveyor No. 2962 and, according to such plat of survey, being more particularly described as follows:

To find the True Point of Beginning, commence from an iron pin found (1" OTP) located at the intersection of common boundary line of Land Lots 1256, 1257, 1264, and 1265, which is the True Point of Beginning; run

Thence South 00 degrees 02 minutes 42 seconds East a distance of 346.31 feet to an iron pin found (CTP); run

Thence North 61 degrees 29 minutes 52 seconds West a distance of 232.81 feet to a right-of-way monument found; run

Thence North 36 degrees 41 minutes 21 seconds West a distance of 271.16 feet to a right-of-way monument found; run

Thence with a curve to the right have a radius of 690.02 feet; an arc length of 62.47, and a chord bearing of North 27 degrees 21 minutes 08 seconds West a distance of 62.44 feet to an iron pin found (rebar); run

Thence South 84 degrees 32 minutes 59 seconds East a distance of 396.82 feet to an iron pin found (1" OTP), which is the True Point of Beginning.

Said property is more fully described according to the above referenced plat, which is incorporated herein by this reference.

This legal description is prepared solely for the purpose of facilitating a land use application and should not be relied upon for any other purpose.

