

Gwinnett County Planning Division
 Special Use Permit Application
 Last Updated 8.2008

SPECIAL USE PERMIT APPLICATION

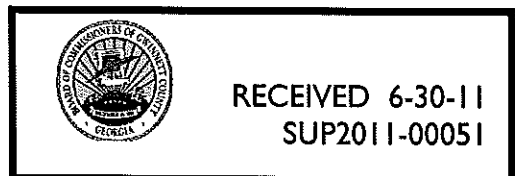
AN APPLICATION TO AMEND THE OFFICIAL ZONING MAP OF GWINNETT COUNTY, GA.

| APPLICANT INFORMATION | OWNER INFORMATION* |
|--|--|
| NAME: <u>Progressive Recycling, LLC</u> <u>c/o Laurel David, Esq.</u> ADDRESS: <u>Dillard & Galloway, LLC</u> <u>3500 Lenox Road, NE, Suite 760</u> CITY: <u>Atlanta</u> STATE: <u>GA</u> ZIP: <u>30326</u> PHONE: <u>404-965-3669</u> | NAME: <u>Progressive Recycling, LLC</u> <u>c/o Laurel David, Esq.</u> ADDRESS: <u>Dillard & Galloway, LLC</u> <u>3500 Lenox Road, NE, Suite 760</u> CITY: <u>Atlanta</u> STATE: <u>GA</u> ZIP: <u>30326</u> PHONE: <u>404-965-3669</u> |
| CONTACT PERSON: <u>Laurel David</u> PHONE: <u>404-965-3669</u> CONTACT'S E-MAIL: <u>laurel@dandglaw.com</u> | |

*Include any person having a property interest and any person having a financial interest in any business entity having property interest (use additional sheets if necessary).

| APPLICANT IS THE: |
|---|
| <input type="checkbox"/> OWNER'S AGENT <input checked="" type="checkbox"/> PROPERTY OWNER <input type="checkbox"/> CONTRACT PURCHASER |
| EXISTING/PROPOSED ZONING: <u>M-2</u> BUILDING/LEASED SQUARE FEET: <u>6,000</u> |
| LAND DISTRICT(S): <u>6</u> LAND LOT(S): <u>258</u> ACREAGE: <u>±1.01 acres</u> |
| ADDRESS OF PROPERTY: <u>2752 Simpson Circle</u> |
| SPECIAL USE REQUESTED: <u>Metal Salvage business (renewal)</u> |

PLEASE ATTACH A LETTER OF INTENT EXPLAINING WHAT IS PROPOSED



DILLARD & GALLOWAY, LLC

ATTORNEYS AT LAW

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JUNE 23, 2011

Letter of Intent for Special Use Permit Progressive Recycling, LLC

The Applicant and Owner, Progressive Recycling, LLC (the "Applicant"), submits this application for final approval of a permanent Special Use Permit (SUP) for approximately 1.01 acres of land located at 2752 Simpson Circle, Norcross, Gwinnett County, Georgia (the "Subject Property"). On September 22, 2009, the Board of Commissioners approved a SUP on the Property for a term of two (2) years. The Applicant is requesting the renewal of an existing SUP in order to continue to operate a recycling business focusing on copper, aluminum, stainless steel, brass and light steel such as rebar. The Property is located in an area zoned predominantly M-1 or M-2 with residential uses to south, buffered by an undisturbed buffer. Progressive Recycling is a thriving business and has operated in a manner that is compatible with the industrial uses in the area. The Applicant requests that the SUP be renewed and be made permanent.

Georgia Law requires us to raise Federal and State Constitutional objections during the application process. While the Applicant anticipates a smooth application process, failure to raise constitutional objections at this stage may mean that the Applicant will be barred from raising important legal claims later in the process. Accordingly, we are required to raise the following constitutional objections at this time:

The portions of the Gwinnett County Zoning Resolution that classify, or that may classify the Property, into any land use category other than M-2 modified with a SUP as requested by the Applicant, are or would be unconstitutional in that they would destroy the Applicant's property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983 and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

Any application of the Gwinnett County Zoning Resolution to the Property that restricts its use to any land use category other than M-2 modified with a SUP as requested by the Applicant is unconstitutional, illegal, null and void because such an application constitutes a taking of the



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Applicant's property in violation of the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States, Article I, Section I, Paragraph I, and Article I, Section III, Paragraph I, of the Constitution of the State of Georgia of 1983 and of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States, because such an application denies the Applicant an economically viable use of its land while not substantially advancing legitimate state interests.

A denial of this Application would constitute an arbitrary and capricious act by the Gwinnett County Board of Commissioners without any rational basis, thereby constituting an abuse of discretion in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983 and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

A refusal by the Gwinnett County Board of Commissioners to amend the Official Zoning Map, as it relates to the Property, to the M-2 modified with a SUP as proposed by the Applicant, would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and owners of similarly situated property in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Any change in the designation of the Property by the Gwinnett County Zoning Resolution or 2030 Unified Plan that subjects the Property to conditions that are different from the conditions requested by the Applicant, to the extent such different conditions would have the effect of further restricting the Applicant's utilization of the Subject Property, would also constitute an arbitrary, capricious and discriminatory act in zoning the Subject Property to an unconstitutional category and would likewise violate each of the provisions of the State and Federal Constitutions set forth herein above.

You are hereby notified pursuant to O.C.G.A. §36-11-1 of Applicant's intention to seek damages, including diminution of the value of the property and attorney's fees and costs and expenses of litigation from Gwinnett County incurred as a result of the unconstitutional zoning on the property.

Accordingly, the Applicant respectfully requests that the Application for the SUP be granted.

Sincerely

DILLARD & GALLOWAY, LLC



Laurel A. David



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