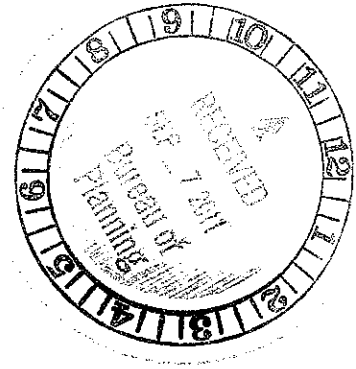


**Notice To Applicant**  
City of Atlanta - Bureau of Planning



APPLICATION NUMBER: **V-11-137**

City Council District: **6** Neighborhood Planning Unit (NPU): **F**

Address of Property: **1002 North Highland Ave., N.E.**

Board of Zoning Adjustment (BZA) Hearing Date:  
**Thursday, November 3, 2011 at 12:00 p.m.**  
Council Chambers, 2nd Floor, City Hall  
55 Trinity Avenue, S.W.

The contact person for NPU F is:

**Charlie Nalbone**  
**404-626-1354**  
**atlanta.npuf.zoning@gmail.com**

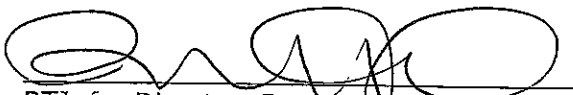
Contact info for adjacent NPUs is provided below if necessary:

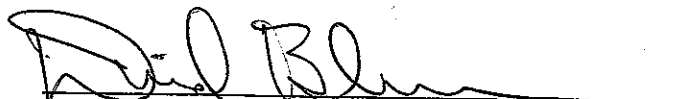
The contact person for NPU is:

Please contact the person(s) listed above within two days to find out which meetings you will be required to attend before the next NPU meeting. If you are unable to reach the contact person, please call the city's NPU Coordinator at 404-330-6145.

**Sign Posting** - The property owner is required to post a sign or signs in a conspicuous place on the property at least 15 days before the hearing date shown above. One sign shall be placed every 600 feet along each street the property abuts. A sign posting affidavit must be returned to the Bureau of Planning to confirm posting.

Signed,

  
RTJ, for Director, Bureau of Planning

  
David Blum, Applicant

APPLICATION FOR SPECIAL EXCEPTION  
City of Atlanta



Date Filed \_\_\_\_\_

Application Number V-11-137

Name of Applicant DAVID D. BLUM Daytime Phone (404) 455-8909

Company Name ATTORNEY AT LAW email ddblumlaw@gmail.com

Address 361 19<sup>TH</sup> ST, NW, #1522, ATLANTA, GA 30363  
street city state zip code

Name of Property Owner PAULINE KAPLAN Phone (404) 467-9228

Address 650 PHIPPS BLVD, #6108, ATLANTA, GA 30326  
street city state zip code

Description of Property

Address of Property 1002 N. HIGHLAND, ATLANTA, GA 30326 OR

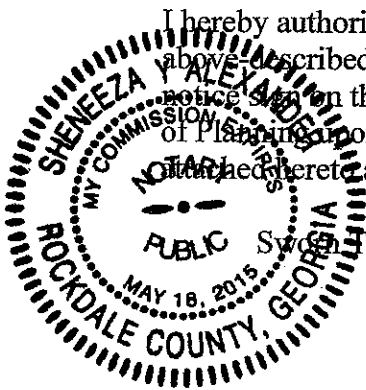
The subject property fronts \_\_\_\_\_ feet on the \_\_\_\_\_ side of  
\_\_\_\_\_ beginning \_\_\_\_\_ feet from the  
\_\_\_\_\_ corner of \_\_\_\_\_

Depth: \_\_\_\_\_ Area: \_\_\_\_\_ Land Lot: \_\_\_\_\_ District: \_\_\_\_\_, \_\_\_\_\_ County, GA.

Property is zoned: NC-1 Council District: \_\_\_\_\_, Neighborhood Planning Unit: \_\_\_\_\_

TO THE BOARD OF ADJUSTMENT: Applicant, having received an adverse order or requirement from the administrative officer in seeking a building permit or certificate of occupancy, hereby requests that the Board of Zoning Adjustment grant a Special Exception.

I hereby authorize the staff of the Office of Planning to inspect the premises of the above-described property. I understand that it is my responsibility to post a public notice sign on the property according to the instructions given to me by the Office of Planning upon filing this application. I swear that all statements herein and attached hereto are true and correct to the best of my knowledge and belief.

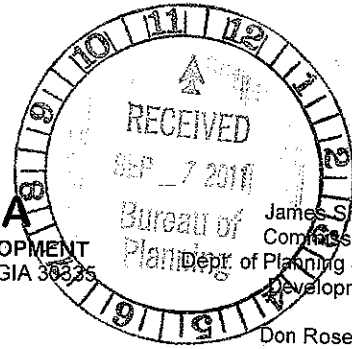


Notary Public Sworn to And Subscribed Before Me This 7<sup>th</sup> Day Of SEP, 2011.

David D. Blum  
Owner or Agent for Owner (Applicant)

DAVID D. BLUM  
NAME OF APPLICANT IN PRINTED LETTERS

Sheneza Y. Alexander  
NOTARY PUBLIC



# CITY OF ATLANTA

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT  
55 TRINITY AVENUE, S.W. SUITE 3900 - ATLANTA, GEORGIA 30335  
404-330-6175 - FAX: 404-658-6979  
Internet Home Page: www.atlantaga.gov

Kasim Reed  
MAYOR

James Shelby  
Commissioner  
Dept. of Planning & Community  
Development

Don Rosenthal  
Director  
Bureau of Building

Ann Heard  
Chief  
Zoning Division

## REFERRAL CERTIFICATE

COUNCIL DISTRICT \_\_\_\_\_ APPLICATION NUMBER V-11-137

NPU \_\_\_\_\_ DATE FILED \_\_\_\_\_

1. David D. Blum

Name of Applicant

### BUILDING PERMIT AUTHORIZING Special Exception

at 1002 N. Highland Avenue, NE 17<sup>TH</sup>/1  
Street Address Quadrant District & Land Lot

to be used for \_\_\_\_\_ eating / drinking \_\_\_\_\_ purposes

The property is zoned NC-11 District

2. The Building Permit Was Denied For The Following Reasons:

Applicant seeks a special exception from zoning regulations to reduce the required on-site parking from 16 spaces to 9 on-site parking spaces to allow for the conversion of an existing retail establishment to an eating / drinking establishment. Applicant seeks no other variances at this time.

### 1982 ZONING ORDINANCE, AS AMENDED

Chapter 32 Section 16-32.023 Paragraph (h)  
Chapter \_\_\_\_\_ Section \_\_\_\_\_ Paragraph \_\_\_\_\_  
Chapter \_\_\_\_\_ Section \_\_\_\_\_ Paragraph \_\_\_\_\_

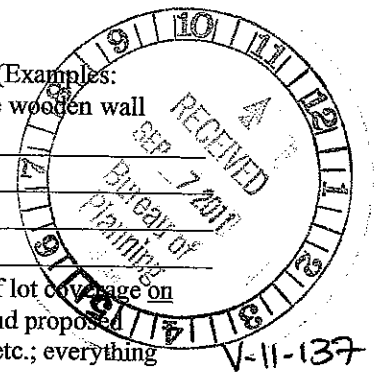
9/7/11  
*[Handwritten signature]*

Department of Planning and Development  
Bureau of Buildings  
Don Rosenthal, Director  
Ann Heard, Chief Zoning Division

9/7/11  
*[Handwritten signature]*

Summary of proposed construction changes to buildings or site. (Examples:

"Convert a 100' x 200' retail space into a restaurant." "Install a 6-foot high opaque wooden wall ('privacy fence' with 6-foot high opaque wall gates.)"



Proposed Lot Coverage (After Construction) Calculate total amount of lot coverage on entire property, after proposed construction would be finished, including existing and proposed buildings and other structures; sidewalks, driveways, parking pads, patios, gravel, etc.; everything except natural planted or undisturbed areas.

\_\_\_\_\_ covered square feet / \_\_\_\_\_ total lot square feet = \_\_\_\_\_ % proposed lot coverage

\_\_\_\_\_ % maximum allowed lot coverage

(For Parking Special Exceptions Only) List the maximum number of employees who will park on the site at any given time: \_\_\_\_\_ AND

List the maximum estimated number of customers, clients, visitors, or similar persons who will require automobile parking in connection with the facility on the site at any given time: \_\_\_\_\_

If you propose to provide off-site parking, see the attached Standards for Off-site Parking Agreements (p. 8).

Special Exception Procedures

Special exception applications are heard and decided at a regularly-scheduled public hearing by the five-member City of Atlanta Board of Zoning Adjustment ("BZA"). The Office of Planning serves as staff to the BZA. Approximately one week after each closing date, a planner is assigned to review your application. All inquires regarding your application should be directed to this office at (404) 330-6145. The rules of the BZA prevent BZA members from discussing the merits of any case except during the public hearing for that case.

Schedule. There are two closing dates and two public hearings per month. The schedule allows time for neighborhood and NPU meetings to occur throughout the City prior to each public hearing. The schedule of closing and public hearing dates is attached.

Neighborhood and NPU Recommendations. The City is divided into 24 Neighborhood Planning Units (NPUs), each of which has a volunteer citizen advisory committee that makes a recommendation to the BZA on special exceptions. When you file your application, you will be notified of the NPU contact person and that you must schedule a meeting with that NPU in order to explain what you wish to do. You may be requested to attend additional neighborhood meetings; inquire about the time and place of those meetings. The applicant is expected to contact the NPU as soon as possible after the application is filed. The Office of Planning will send a copy of your application to the appropriate NPU during the week after the closing date for your application.

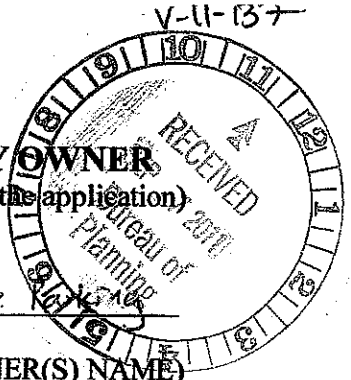
Public Notice. When you file your application, it will be scheduled for a public hearing. The Office of Planning will initiate posting of public notice ("an advertisement", "a legal ad") for this public hearing so that the public is informed at least 15 days before the date of the public hearing:

by sending written notice of your application to all property owners whose property is within 300 feet of the subject property, and

by causing public notice to be placed in the newspaper.

*You are responsible for obtaining a public notice sign when you file your application with the Office of Planning, and for posting it in a visible location on your property, at least 15 days prior to your public hearing. Failure to properly post the sign will make it necessary for the BZA to defer your case to another public hearing. The BZA may defer the case to a hearing that has been scheduled 30 or more days after the original hearing.*

V-11-137



**NOTARIZED AUTHORIZATION BY PROPERTY OWNER**  
(Required only if applicant is not the owner of the property subject to the application)

TYPE OF APPLICATION Special Exception to reduce  
I, Pauline C. Kaplan (OWNER(S) NAME)

SWEAR THAT I AM THE OWNER OF THE PROPERTY LOCATED AT \_\_\_\_\_  
1102 N Highland Ave NE, Atlanta, GA 30306 (PROPERTY ADDRESS).

AS SHOWN IN THE RECORDS OF Fulton COUNTY, GEORGIA WHICH  
IS THE SUBJECT MATTER OF THE ATTACHED APPLICATION. I  
AUTHORIZE THE PERSON NAMED BELOW TO ACT AS THE APPLICANT  
IN THE PURSUIT OF THIS APPLICATION.

NAME OF APPLICANT David D. Blum, Attorney at Law  
ADDRESS 361 17<sup>th</sup> Street NW, Ste 1522  
Atlanta, GA 30363  
TELEPHONE NUMBER 404-455-8909

Pauline C. Kaplan  
Signature of Owner

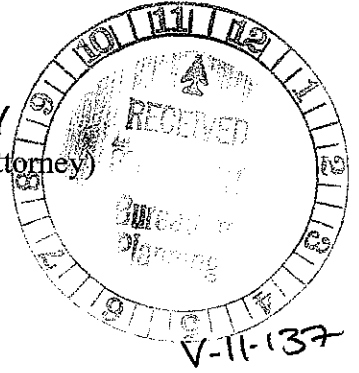
Personally Appeared  
Before Me  
Faizah Punjwani

**FAIZAH SOHANI PUNJWANI**  
NOTARY PUBLIC  
DeKalb County - State of Georgia  
My Comm. Expires Nov. 8, 2014

Who Swears That The  
Information Contained  
In This Authorization  
Is True and Correct To  
The Best of His or Her  
Knowledge and Belief  
Faizah Punjwani  
Notary Public  
Date 09/02/11

GAD 11428  
11/23/11 exp

**AUTHORIZATION OF ATTORNEY**  
(Required Only if the Owner is Represented by an Attorney)



DAVID D. BLUM  
NAME

361 17TH ST, NW  
ADDRESS

SUITE 1522

ATLANTA  
CITY

GA  
STATE

30363  
ZIP CODE

(404) 455-8909  
TELEPHONE NUMBER

I SWEAR, AS AN ATTORNEY AT LAW, THAT I HAVE BEEN AUTHORIZED BY THE OWNER TO FILE THE ATTACHED APPLICATION.

David D. Blum

SIGNATURE OF ATTORNEY

## JUSTIFICATION

This is an application for a Special Exception to reduce the parking requirements because the use of the building is such as to make unnecessary the full provisions of parking. This request is authorized by Section 16-26.006 of the City of Atlanta Land Development Code.



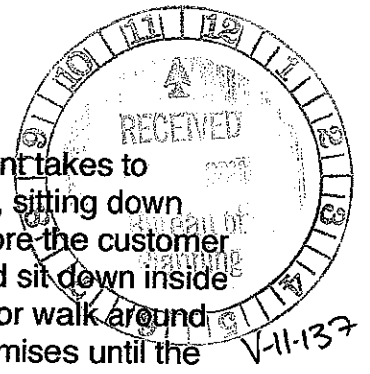
Yogli Mogli is a self-serve frozen yogurt business located at 1002 North Highland Avenue in the Virginia-Highlands Neighborhood and is zoned NC-11. It is currently licensed as a retail take-out establishment. This classification does not allow for the consumption of food or drink on the premises and, therefore, tables and chairs for seating are prohibited. This means that the customer is supposed to exit the premises and consume their frozen yogurt on benches outside in the extreme heat of summer and the bitter cold of winter. The required on-site parking for retail is seven spaces. Nine on-site spaces are provided at this location. In addition, eight spaces in back are shared with the neighboring Urban Cottage and Aurora Coffee, both of which are closed for several of the peak evening hours when Yogi Mogli is still open.

Yogli Mogli wishes to provide four tables for its customers, many of whom complain of having to consume their yogurt without the convenience of seating. To do this, the classification of its business must be changed from retail take-out to that of an eating and drinking establishment. This new classification requires 16 on-site parking spaces rather than the nine that are provided. NC-11 is a very small zoning district and there is no possibility of providing additional off-site parking within the district pursuant to Section 32K.002(8)(a). Accordingly, this request for a Special Exception is being filed to reduce the required on-site parking from 16 spaces to nine spaces.

As justification for this request, the applicant shows that the use of the building is such as to make unnecessary the required 16 spaces. The typical eating and drinking establishment serves meals and/or drinks to be consumed on the premises. Usually a customer parks their car, goes in to be seated at a table, looks over a menu, places an order with a server, waits for their meal to be prepared, possibly has a drink while waiting, consumes the meal, gets the check, pays and then leaves. This is a process that averages an hour or longer. When drinking at the bar and watching sports on a big screen television, even longer times are spent in an eating and drinking establishment.

Yogli Mogli is far different from the typical eating and drinking establishment. Its customer enters, obtains a cup and fills it with the desired amount and kind of frozen yogurt. They then continue to the counter where it is weighed and payment is made. The frozen yogurt is then immediately consumed within a matter of a few minutes either on or near the premises. The frozen yogurt must be consumed immediately since the nature of the product itself is such that it begins to melt upon being dispensed from the machines that keep it frozen. Based upon careful observation by the owner, his product is consumed within 10 to 15 minutes. He has taken a survey during business hours for an entire week which shows that the average time for a vehicle to remain parked at his business is less than 13 minutes. This is far less time than the typical

hour or more that a customer of a true eating and drinking establishment takes to consume food and drink. Whether consumed while standing up inside, sitting down outside or walking around outside, the yogurt is usually consumed before the customer gets in their car and leaves. Regardless of whether the customer could sit down inside as requested by this application or must continue to stand inside or sit or walk around outside as currently required, their car would remain parked on the premises until the frozen yogurt is consumed. Thus, prohibiting the customer from sitting in a chair inside has no effect on the length of time his car is parked at the business.



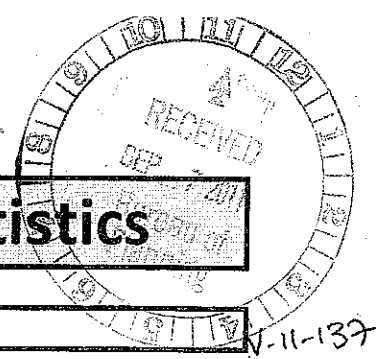
In addition, at least half of the customers walk up rather than drive up. This is as a result of patrons coming for desert either after consuming a meal at a nearby restaurant or for a snack while walking in the neighborhood or shopping at other neighborhood businesses. Further, approximately 50% of customers are children who come with their parents, all in one car with a group of four on average. These too also result in less parking needs than a traditional eating and drinking establishment. This is all based on observations by the owner of actual business patterns since he has been open.

To assure that there are no unintended consequences or undesired precedence as a result of this Special Exception being granted, it is requested that an unequivocal condition of this Special Exception be that self-serve frozen yogurt be the only food that is provided on these premises. Thus, if Yogli Mogli were to leave this location, a true eating and drinking establishment could not move in and take advantage of the reduced parking permitted by this Special Exception.

The applicant has spoken with city representatives and is aware that there are concerns about enforcement of a condition that allows only self-serve frozen yogurt to be provided on the premises. It is understood that it would be difficult for the city to monitor what kind of food is being sold at this location but this is no different than the city monitoring any of the other myriad conditions imposed by the Board of Zoning Adjustment, for instance, when a business gets a Special Exception to replace on-site parking with off-site parking. First, the owner assures that he has no intention of serving any food product other than frozen yogurt. Further, if food other than frozen yogurt were served, it is likely that a concerned citizen would report that to Zoning Enforcement, just as the placement of tables and chairs would be reported. Accordingly, this proposed condition would not be any more difficult to enforce than many other provisions of the zoning code.

This request is reasonable and provides the relief anticipated by the code for the reduction of the required parking where the parking that is normally required is not needed because of the nature of the business. As shown above, the amount of parking that the code anticipates as normally needed for an eating and drinking establishment is not necessary for a business that sells only frozen yogurt. Accordingly, the applicant request that this Special Exception be granted reducing the required on-site parking from 16 to nine spaces conditioned on only frozen yogurt being sold on the premises.





# Yogli Mogli V Highland Parking statistics

Nine Parking spaces Occupancy Chart 8/1-8/31, 2011

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
11:00 AM	2 of 9	2 of 9	3 of 9	2 of 9	3 of 9	3 of 9	4 of 9
12:00 PM	2 of 9	3 of 9	2 of 9	4 of 9	4 of 9	4 of 9	4 of 9
1:00 PM	2 of 9	3 of 9	2 of 9	4 of 9	4 of 9	4 of 9	4 of 9
2:00 PM	2 of 9	3 of 9	2 of 9	4 of 9	4 of 9	4 of 9	4 of 9
3:00 PM	4 of 9	4 of 9	5 of 9	4 of 9	6 of 9	7 of 9	7 of 9
4:00 PM	7 of 9	8 of 9	6 of 9	7 of 9	9 of 9	9 of 9	9 of 9
5:00 PM	6 of 9	8 of 9	9 of 9	8 of 9	9 of 9	9 of 9	9 of 9
6:00 PM	6 of 9	7 of 9	7 of 9	7 of 9	9 of 9	9 of 9	9 of 9
7:00 PM	7 of 9	7 of 9	7 of 9	7 of 9	8 of 9	8 of 9	9 of 9
8:00 PM	7 of 9	7 of 9	7 of 9	7 of 9	8 of 9	9 of 9	9 of 9
9:00 PM	9 of 9	9 of 9	9 of 9	9 of 9	9 of 9	9 of 9	9 of 9
10:00 PM	9 of 9	9 of 9	9 of 9	9 of 9	9 of 9	9 of 9	9 of 9
11:00 PM							

Average Duration of parked vehicles 8/1-8/31, 2011

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
11:00 AM	10 minutes	22 minutes	10 minutes	22 minutes	10 minutes	19 minutes	19 minutes
12:00 PM	10 minutes	17 minutes	19 minutes	8 minutes	22 minutes	17 minutes	10 minutes
1:00 PM	10 minutes	20 minutes	10 minutes	20 minutes	20 minutes	10 minutes	10 minutes
2:00 PM	10 minutes	10 minutes	20 minutes	10 minutes	17 minutes	22 minutes	17 minutes
3:00 PM	20 minutes	10 minutes	17 minutes	10 minutes	10 minutes	10 minutes	10 minutes
4:00 PM	10 minutes	10 minutes	10 minutes	10 minutes	10 minutes	10 minutes	10 minutes
5:00 PM	6 minutes	6 minutes	6 minutes	6 minutes	6 minutes	6 minutes	6 minutes
6:00 PM	8 minutes	8 minutes	10 minutes	10 minutes	10 minutes	10 minutes	10 minutes
7:00 PM	10 minutes	10 minutes	10 minutes	8 minutes	10 minutes	10 minutes	10 minutes
8:00 PM	20 minutes	13 minutes	19 minutes	22 minutes	22 minutes	21 minutes	24 minutes
9:00 PM	17 minutes	15 minutes	15 minutes	10 minutes	15 minutes	17 minutes	15 minutes
10:00 PM	10 minutes	10 minutes	15 minutes	17 minutes	10 minutes	10 minutes	10 minutes
11:00 PM							

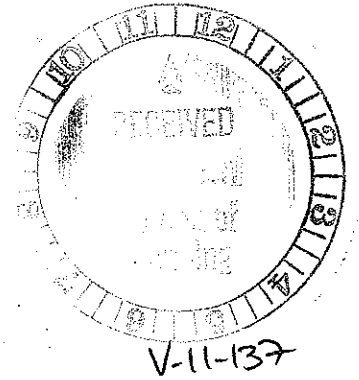


EXHIBIT "A"

All that tract or parcel of land lying and being in the City of Atlanta, in Land Lot 1 of the 17<sup>th</sup> District of Fulton County, Georgia, being known as Lot 4, Block "A" of Adair Park Subdivision, and being more particularly described as follows:

COMMENCE at the point of intersection where the westerly right-of-way line of North Highland Avenue (variable right-of-way) and the northerly right-of-way line of Adair Road intersect; thence leave said intersection and run along and coincident with the southerly right-of-way line of said North Highland Avenue (variable right-of-way) in a northwesterly direction a distance of six hundred fifteen (615.0) feet to a point located on the line which divides Lots 4 and 5, said block and subdivision, said point also being the POINT OF BEGINNING; thence continue to run along and coincident with the southerly right-of-way line of North Highland Avenue (variable right-of-way) in a northwesterly direction a distance of fifty (50) feet to a point located on the line which divides Lots 3 and 4, said block and subdivision; thence leave the southerly right-of-way line of North Highland Avenue (variable right-of-way) and run in a southwesterly direction along the line which divides said Lots 3 and 4, one hundred thirty one and two-tenths (131.2) feet to a point located on a ten (10) foot alley; thence run along and coincident with the ten (10) foot alley in a southeasterly direction a distance of twenty three and two-tenths (23.2) feet to a point located on the line which divides said Lots 4 and 5, said block and subdivision; thence leave said ten (10) foot alley and run in a northeasterly direction along the line dividing said Lots 4 and 5, one hundred twenty nine (129.0) feet to the southerly right-of-way of North Highland Avenue (variable right-of-way) and the POINT OF BEGINNING; being improved property known as 1002 North Highland Avenue, N.E., according to the present system of numbering houses in the City of Atlanta, Georgia.

As shown on the Property Survey for Marvin Kaplin, prepared by Henry Chesnut & Associates, Georgia Registered Surveyor No. 1017, dated May, 1960.



RECEIPT

CITY OF ATLANTA  
ATLANTATEST  
55 TRINITY AVE SW

**Application:** V-11-137  
**Application Type:** Planning/BZA/Special Exception/NA  
**Address:** 1002 NORTH HIGHLAND AVE , ATLANTA, GA 30306  
**Owner Name:** KAPLAN MARVIN DR  
**Owner Address:**  
**Application Name:**

---

Receipt No.	Ref Number	Amount Paid	Payment Date	Cashier ID	Received	Comments
269219	1079	\$625.00	09/07/2011	OFELIX		

**Owner Info.:** KAPLAN MARVIN DR

**Work Description:** Special exception to reduce onsite parking from 16 to 9 spaces.

PAID  
CITY OF ATLANTA  
SEP 07 2011  
EX OFFICIO MUNICIPAL  
REVENUE COLLECTOR