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REZONING APPLICATION

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

APPLICANT INFORMATION	PROPERTY OWNER INFORMATION*
NAME: <u>Mare Properties, LLC c/o Andersen, Tate & Carr, P.C.</u>	NAME: <u>Mare Properties, LLC</u>
ADDRESS: <u>1960 Satellite Blvd., Suite 4000</u>	ADDRESS: <u>5500 Oakbrook Pkwy, Ste 270</u>
CITY: <u>Duluth</u>	CITY: <u>Norcross</u>
STATE: <u>GA</u> ZIP: <u>30097</u>	STATE: <u>GA</u> ZIP: <u>30093</u>
PHONE: <u>770-822-0900</u>	PHONE: _____
EMAIL: <u>mglouton@atclawfirm.com</u>	EMAIL: _____
CONTACT PERSON: <u>Melody A. Glouton, Esq.</u> PHONE: <u>770-822-0900</u>	
CONTACT'S E-MAIL: <u>mglouton@atclawfirm.com</u>	
<p align="center">APPLICANT IS THE:</p> <p> <input type="checkbox"/> OWNER'S AGENT <input checked="" type="checkbox"/> PROPERTY OWNER <input type="checkbox"/> CONTRACT PURCHASER </p>	
PRESENT ZONING DISTRICTS(S): <u>RM</u> REQUESTED ZONING DISTRICT: <u>C-1</u>	
PARCEL NUMBER(S): <u>R6204 004</u> ACREAGE: <u>1.63</u>	
ADDRESS OF PROPERTY: <u>Sweetwater Rd. and Sweetwater Club Dr., Lawrenceville</u>	
PROPOSED DEVELOPMENT: <u>Convenience store with fuel pumps</u>	

RESIDENTIAL DEVELOPMENT	NON-RESIDENTIAL DEVELOPMENT
No. of Lots/Dwelling Units _____	No. of Buildings/Lots: <u>1</u>
Dwelling Unit Size (Sq. Ft.): _____	Total Building Sq. Ft. <u>7,500</u>
Gross Density: _____	Density: _____
Net Density: _____	

PLEASE ATTACH A LETTER OF INTENT EXPLAINING WHAT IS PROPOSED

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ANDERSEN | TATE | CARR

January 6, 2022

LETTER OF INTENT AND JUSTIFICATION FOR REZONING

**Rezoning Application
Gwinnett County, Georgia**

Applicant:
Mare Properties, LLC

Property:
Tax Parcel ID R6204 004
±1.63 Acres of Land
Located at Sweetwater Road and Sweetwater Club Drive, Lawrenceville, Georgia
From RM to C-1

Submitted for Applicant by:
Melody A. Glouton, Esq.
ANDERSEN TATE & CARR, P.C.
One Sugarloaf Centre
1960 Satellite Blvd.
Suite 4000
Duluth, Georgia 30097
770.822.0900
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I. INTRODUCTION

This Application for Rezoning is submitted for a 1.63-acre parcel of land located in Land Lot 204 of the 6th District of Gwinnett County, Georgia, Lawrenceville, and identified as Parcel ID R6204 004 (hereinafter the "Property"). The Property is located at the corner of Sweetwater Road and Sweetwater Club Drive, just east of Pleasant Hill Road.

The Property that is the subject of this rezoning application is shown on the survey prepared by Travis Pruitt & Associates, Inc. on November 20, 2020. The Property is owned by Applicant Mare Properties, LLC and further identified as shown below from the Gwinnett County GIS:



The Property is surrounded by multifamily residential and provides the opportunity to be a neighborhood serving commercial use in a heavily saturated residential area. The proposed development will be accessed by both Sweetwater Road and Sweetwater Club Drive. The Property also has access to a public water supply, public sanitary sewer, and convenient direct access to collector streets, major thoroughfares and state and interstate highways.

This document is submitted as the Letter of Intent, Response to Standard Governing the Exercise of Zoning Power, and other materials required by the Gwinnett County UDO.

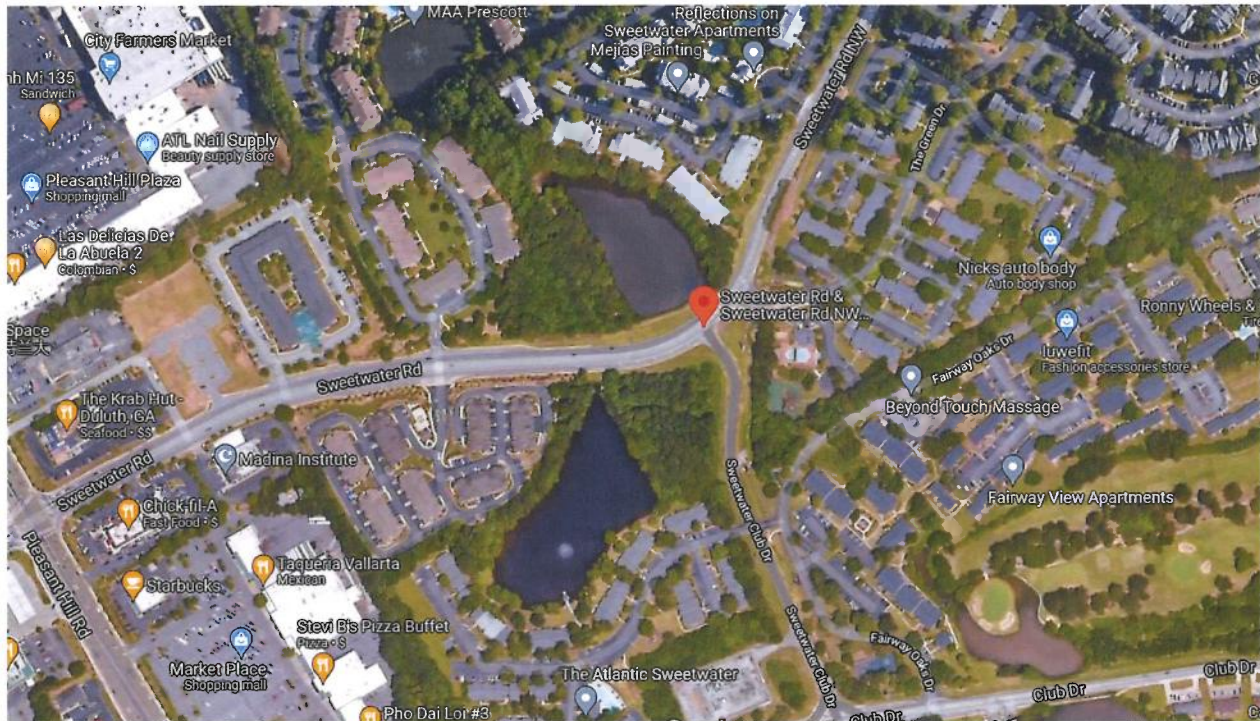
II. DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA

The Property is an irregular-shaped tract at the corner of Sweetwater Road and Sweetwater Club Drive in Lawrenceville, Georgia.

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The proposed development of the Property is compatible with the policies set forth in the Gwinnett County 2040 Unified Plan (the "2040 Plan"). According to the 2040 Future Development Map, the Property is located in the Regional Activity Center. As indicated, the adjacent parcels are improved with service and retail businesses, gas stations, hotels, fast food restaurants, apartments, grocery stores, and financial institutions. Below is an aerial map of the surrounding area and uses:



Pursuant to the Gwinnett County Unified Development Ordinance, the C-1 zoning classification is intended to provide for commercial uses of a convenience nature for nearby residential neighborhoods. These uses are intended to be facilities serving the everyday needs of these nearby neighborhoods rather than the larger community. Due to the size and layout of the Property, the Property is not suited for residential development. The Applicant submits that the current zoning classification of RM is inappropriate for this location, given the size and topography of the site. Instead, development of the site for a for commercial purposes would yield a more desirable development that provides services to the existing residential.

III. PROJECT SUMMARY

As shown on the overall site plan by Travis Pruitt & Associates, LLC, dated December 24, 2021, and filed with this Application (hereinafter the "Site Plan"), the Applicant proposes to develop the Property as a neighborhood serving convenience store with fuel pumps. The rezoning of the Property will activate a vacant site and allow for a quality commercial development that will service the surrounding community in accordance with the 2040 Comprehensive Plan. The proposed convenience store will consist of one three-tenant building totaling approximately 7,500 square feet with one space reserved for the convenience store. The

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proposal calls for a total of four (4) gas pumps located under a single canopy. The other two tenant spaces will be intended for use as restaurant and retail, both permitted uses within the C-1 zoning district. The Applicant is requesting a reduction in the rear buffer from 50-feet to 10-feet in order to accommodate the development of the site. The rear property line is adjacent to the existing detention for the adjacent multifamily developments and the buffer reduction would not have a negative impact on any of the surrounding properties.

IV. SITE IMPACT ANALYSIS

Pursuant to UDO § 270-20.6, entitled "Impact Analysis," the Applicant submits its written impact analysis which shows that rezoning to RM-24 and TND, satisfies UDO § 270-20.5, entitled "Standards Governing Exercise of the Zoning Power," as follows:

(A) WHETHER A PROPOSED REZONING WILL PERMIT A USE THAT IS SUITABLE IN VIEW OF THE USE AND DEVELOPMENT OF ADJACENT AND NEARBY PROPERTY:

Yes. The Property and development of a neighborhood-serving convenience store is consistent with, and will complement both the adjacent residential and nearby commercial properties. As the Pleasant Hill Road corridor is a heavily developed commercial area, the proposed rezoning is compatible with the adjacent properties.

(B) WHETHER A PROPOSED REZONING WILL ADVERSELY AFFECT THE EXISTING USE OR USEABILITY OF ADJACENT OR NEARBY PROPERTY:

No, this rezoning request proposes a neighborhood-use that is entirely compatible with the adjoining and nearby residential and commercial property, and will not adversely affect those properties. The proposed rezoning is consistent with the existing commercial corridor along Pleasant Hill Road and the property is surrounding by multifamily residential.

(C) WHETHER THE PROPERTY TO BE AFFECTED BY A PROPOSED REZONING HAS REASONABLE ECONOMIC USE AS CURRENTLY ZONED:

No. The subject property does not have any reasonable economic use. It was currently a vacant lot which is adjacent to the existing detention facility for an existing multifamily development. The proposed development would also front Sweetwater Club Drive and face the amenity area for another existing multifamily development. The development of the Property will create a neighborhood serving commercial use for residents in the community.

(D) WHETHER THE PROPOSED REZONING WILL RESULT IN A USE WHICH WILL OR COULD CAUSE AN EXCESSIVE OR BURDENSOME USE OF EXISTING STREETS, TRANSPORTATION FACILITIES, UTILITIES, OR SCHOOLS:

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No, the subject property is located in an area with public water and sewer availability, and convenient access to major thoroughfares and state highways. This rezoning is consistent with the existing uses, and this rezoning is for the development of a convenience store with gas pumps. The Property is currently zoned RM (Multi Family Residence District), which is an inactive zoning classification under the Gwinnett County Unified Development Ordinance. Due to the size and layout of the Property, it is not reasonable to develop the property for residential purposes. The rezoning will not cause excessive use of existing streets, transportation facilities or utilities, and will have no impact whatsoever on the schools.

(E) WHETHER THE PROPOSED REZONING IS IN CONFORMITY WITH THE POLICY AND INTENT OF THE LAND USE PLAN:

Yes. The 2040 Unified Plan identifies this Property as within the Regional Activity Center Character Area. This Area is intended for the development of intense commercial and office/employment activity. The development of the Property is also in compliance with Theme 2 of the 2040 Plan, which supports corner neighborhood-serving stores.

(F) WHETHER THERE ARE OTHER EXISTING OR CHANGING CONDITIONS AFFECTING THE USE AND DEVELOPMENT OF THE PROPERTY WHICH GIVE SUPPORTING GROUNDS FOR EITHER THE APPROVAL OR DISAPPROVAL OF THE ZONING PROPOSAL:

Yes, the Board of Commissioners' actions in permitting similar commercial and convenience store uses in the area clearly established the character of this area as a commercial activity center, making utilization of land that cannot be developed as residential to be developed as commercial property. The purpose and intent of the development is the creation of a more viable commercial parcel, which is entirely consistent with the goals for this area.

V. JUSTIFICATION FOR REZONING

The portions of the Gwinnett County Unified Development Ordinance, as amended, (the "UDO") which classify or may classify the Subject Property which is the subject of the rezoning application into any more or less intensive zoning classification, development and/or conditions other than as requested by the Applicant are, and 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 II of the Constitution of the State of Georgia of 1983, the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

The application of the UDO, as applied to the Subject Property, which restricts its use to the present zoning classification, is unconstitutional, illegal, null and void, constituting a taking of the Applicant's property in violation of the Just Compensation Clause of the Fifth Amendment and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, Article I, Section I, Paragraphs I and 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 denying the Applicant any economically viable use of the Subject Property while

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not substantially advancing legitimate state interests. Under *Lathrop v. Deal*, the application of the UDO in a way that constitutes a taking shall be deemed a waiver of sovereign immunity.¹

The Subject Property is presently suitable for development under the C-1 zoning classification as requested by the Applicant and is not economically suitable for development under its present RM zoning classification of Gwinnett County. A denial of the requested rezoning would constitute an arbitrary and capricious act by the Gwinnett County Board of Commissioners without any rational basis therefore, constituting an abuse of discretion in violation of Article I, Section I, Paragraphs I and II 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 rezone the Subject Property to C-1 zoning classification, with only such additional conditions as agreed to by the Applicant, so as to permit the only feasible economic use of the Subject Property, 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.

Any rezoning of the Subject Property to the C-1 classification, subject to conditions which are different from the requested conditions by which the Applicant may amend its application, 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 classification and would likewise violate each of the provisions of the State and Federal Constitutions as set forth hereinabove.

VI. CONCLUSION

For the foregoing reasons, the Applicant respectfully requests that this Applications to Rezone from RM to C-1 be approved. The Applicant welcomes the opportunity to meet with the Gwinnett County Planning Department staff to answer any questions or to address any concerns relating to this Letter of Intent or supporting materials.

Respectfully submitted this 6th day of January, 2022.

ANDERSEN, TATE & CARR, P.C.

Melody A. Glouton

Melody A. Glouton, Esq.

Enclosures
MAG/ag

¹ *Lathrop v. Deal*, 301 Ga 408, 880-881 S.E. 2d 867 (2017)

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DESCRIPTION OF PROPERTY

All that tract or parcel of land lying and being in Land Lot 204, 6th District, Gwinnett County, Georgia and being more particularly described as follows:

Beginning at a nail set at the intersection of the southerly right-of-way line of Sweetwater Road (80' wide) and the westerly right-of-way line of Sweetwater Club Drive (80' wide); Thence, along said westerly right-of-way line of Sweetwater Club Drive, South 37 degrees 40 minutes 40 seconds East 74.82 feet to an iron pin set at the beginning of a non-tangent curve concave southwesterly, said curve having a radius of 90.00 feet, the chord bearing and distance to said beginning of curve bears South 21 degrees 45 minutes 01 seconds East 49.40 feet; Thence, southeasterly along said curve and right-of-way line, an arc length of 50.04 feet to an iron pin set; Thence, continuing along said westerly right-of-way line, South 07 degrees 54 minutes 59 seconds West 14.97 feet to an iron pin set; Thence, continuing along said westerly right-of-way line, South 07 degrees 54 minutes 59 seconds West 87.34 feet to an iron pin set at the beginning of a non-tangent curve concave easterly and having a radius of 455.06 feet, the chord bearing and distance to said beginning of curve bears South 02 degrees 01 minute 37 seconds East 164.36 feet; Thence, southerly along said curve and westerly right-of-way line, an arc length of 165.27 feet to a point on said right-of-way; Thence leaving the westerly right-of-way line of Sweetwater Club Drive and proceeding South 63 degrees 36 minutes 00 seconds West 108.77 feet to a 1 1/2" open top pipe found; Thence North 28 degrees 50 minutes 48 seconds West 366.34 feet to an iron pin set; Thence, continuing along said easterly line, North 28 degrees 50 minutes 48 seconds West 29.16 feet to an iron pin set at said southerly right-of-way line of Sweetwater Road; Thence, along said southerly right-of-way line of Sweetwater Road, North 87 degrees 09 minutes 12 seconds East 6.90 feet to an iron pin set at the beginning of a non-tangent curve concave northerly and having a radius of 460.00 feet, the chord bearing and distance to said beginning of curve bears North 72 degrees 13 minutes 56 seconds East 236.89 feet; Thence, northeasterly along said curve and said southerly right-of-way line, an arc length of 239.59 feet to the **Point of Beginning**.

Containing a total area of 71,223 square feet or 1.635 acres, more or less.

The above described property is shown on a Boundary and Topographic Survey for MARE PROPERTIES, LLC and prepared by Travis Pruitt & Associates, Inc., dated September 3, 2020. (FN: 166-D-185)

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Gwinnett County Planning Division
Rezoning Application
Last Updated 5/2021

REZONING APPLICANT'S CERTIFICATION

THE UNDERSIGNED BELOW IS AUTHORIZED TO MAKE THIS APPLICATION. THE UNDERSIGNED IS AWARE THAT NO APPLICATION OR REAPPLICATION AFFECTING THE SAME LAND SHALL BE ACTED UPON WITHIN 12 MONTHS FROM THE DATE OF LAST ACTION BY THE BOARD OF COMMISSIONERS UNLESS WAIVED BY THE BOARD OF COMMISSIONERS. IN NO CASE SHALL AN APPLICATION OR REAPPLICATION BE ACTED UPON IN LESS THAN SIX (6) MONTHS FROM THE DATE OF LAST ACTION BY THE BOARD OF COMMISSIONERS.



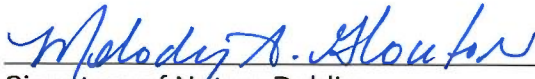
Signature of Applicant

12/01/2021

Date

Dawood Kapasi (Manager)

Type or Print Name and Title



Signature of Notary Public

12/1/21

Date



Notary Seal


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Gwinnett County Planning Division
Rezoning Application
Last Updated 5/2021

REZONING PROPERTY OWNER'S CERTIFICATION

THE UNDERSIGNED BELOW, OR AS ATTACHED, IS THE OWNER OF THE PROPERTY CONSIDERED IN THIS APPLICATION. THE UNDERSIGNED IS AWARE THAT NO APPLICATION OR REAPPLICATION AFFECTING THE SAME LAND SHALL BE ACTED UPON WITHIN 12 MONTHS FROM THE DATE OF LAST ACTION BY THE BOARD OF COMMISSIONERS UNLESS WAIVED BY THE BOARD OF COMMISSIONERS. IN NO CASE SHALL AN APPLICATION OR REAPPLICATION BE ACTED UPON IN LESS THAN SIX (6) MONTHS FROM THE DATE OF LAST ACTION BY THE BOARD OF COMMISSIONERS.



Signature of Property Owner

12/01/2021

Date

Dawood Kapasi (Manager)

Type or Print Name and Title



Signature of Notary Public

12/1/21

Date



Notary Seal

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Gwinnett County Planning Division
Rezoning Application
Last Updated 5/2021

CONFLICT OF INTEREST CERTIFICATION FOR REZONING

The undersigned below, making application for a Rezoning, has complied with the Official Code of Georgia Section 36-67A-1, et. seq, Conflict of Interest in Zoning Actions, and has submitted or attached the required information on the forms provided.



12/01/2021

Dawood Kapasi (Manager)

SIGNATURE OF APPLICANT

DATE

TYPE OR PRINT NAME AND TITLE

SIGNATURE OF APPLICANT'S
ATTORNEY OR REPRESENTATIVE

DATE

TYPE OR PRINT NAME AND TITLE



SIGNATURE OF NOTARY PUBLIC

DATE

NOTARY SEAL



DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

Have you, within the two years immediately preceding the filing of this application, made campaign contributions aggregating \$250.00 or more to a member of the Board of Commissioners or a member of the Gwinnett County Planning Commission?

☐

YES

☒

NO

Mare Properties, LLC

YOUR NAME

If the answer is yes, please complete the following section:

NAME AND OFFICIAL POSITION OF GOVERNMENT OFFICIAL	CONTRIBUTIONS (List all which aggregate to \$250 or More)	DATE CONTRIBUTION WAS MADE (Within last two years)

Attach additional sheets if necessary to disclose or describe all contributions.

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CONFLICT OF INTEREST CERTIFICATION FOR REZONING

The undersigned below, making application for a Rezoning, has complied with the Official Code of Georgia Section 36-67A-1, et. seq, Conflict of Interest in Zoning Actions, and has submitted or attached the required information on the forms provided.

SIGNATURE OF APPLICANT DATE TYPE OR PRINT NAME AND TITLE

Melody A. Glouton 1/6/22 Melody A. Glouton, Attorney for Applicant
SIGNATURE OF APPLICANT'S DATE TYPE OR PRINT NAME AND TITLE
ATTORNEY OR REPRESENTATIVE

Angela Gratz 1-6-22
SIGNATURE OF NOTARY PUBLIC DATE



DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

Have you, within the two years immediately preceding the filing of this application, made campaign contributions aggregating \$250.00 or more to a member of the Board of Commissioners or a member of the Gwinnett County Planning Commission?

☒ YES ☐ NO Andersen, Tate & Carr, P.C.
YOUR NAME

If the answer is yes, please complete the following section:

NAME AND OFFICAL POSITION OF GOVERNMENT OFFICIAL	CONTRIBUTIONS (List all which aggregate to \$250 or More)	DATE CONTRIBUTION WAS MADE (Within last two years)
Nicole Love Hendrickson - Chairwoman	\$1,000	9/30/2020
Kirkland Carden - Planning Commissioner	\$2,800	11/16/2021

Attach additional sheets if necessary to disclose or describe all contributions.

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VERIFICATION OF CURRENT PAID PROPERTY TAXES FOR REZONING

THE UNDERSIGNED BELOW IS AUTHORIZED TO MAKE THIS APPLICATION. THE UNDERSIGNED CERTIFIES THAT ALL GWINNETT COUNTY PROPERTY TAXES BILLED TO DATE FOR THE PARCEL LISTED BELOW HAVE BEEN PAID IN FULL TO THE TAX COMMISSIONER OF GWINNETT COUNTY, GEORGIA. IN NO CASE SHALL AN APPLICATION OR REAPPLICATION FOR REZONING BE PROCESSED WITHOUT SUCH PROPERTY VERIFICATION.

***Note: A SEPARATE VERIFICATION FORM MUST BE COMPLETED FOR EACH TAX PARCEL INCLUDED IN THE REZONING REQUEST.**

PARCEL I.D. NUMBER: R6 - 204 - 004
(Map Reference Number) District Land Lot Parcel

Melody A. Glouton 12/2/21
Signature of Applicant Date

Melody A. Glouton, Attorney for Applicant
Type or Print Name and Title

*****PLEASE TAKE THIS FORM TO THE TAX COMMISSIONERS OFFICE AT THE GWINNETT JUSTICE AND ADMINISTRATION CENTER, 75 LANGLEY DRIVE, FOR THEIR APPROVAL BELOW.*****

TAX COMMISSIONERS USE ONLY

(PAYMENT OF ALL PROPERTY TAXES BILLED TO DATE FOR THE ABOVE REFERENCED PARCEL HAVE BEEN VERIFIED AS PAID CURRENT AND CONFIRMED BY THE SIGNATURE BELOW)

V. Schoby TSA II
NAME TITLE
12/2/2021
DATE