

CHANGE IN CONDITIONS APPLICATION

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

APPLICANT INFORMATION	OWNER INFORMATION*
NAME: <u>Bernstein-Perwein Properties</u> ADDRESS: <u>1960 Satellite Blvd., Suite 4000</u> CITY: <u>Duluth</u> STATE: <u>Georgia</u> ZIP: <u>30097</u> PHONE: <u>(770) 822-0900</u>	NAME: <u>Bernstein-Perwein Properties</u> ADDRESS: <u>14521 Old Katy Road, Ste 200</u> CITY: <u>Houston</u> STATE: <u>Texas</u> ZIP: <u>77079</u> PHONE: <u>(713) 464-7411</u>
CONTACT PERSON: <u>Marian C. Adeimy, Esq.</u> PHONE: <u>(770) 822-0900</u> CONTACT'S E-MAIL: <u>madeimy@atclawfirm.com</u>	

APPLICANT IS THE:

OWNER'S AGENT
 PROPERTY OWNER
 CONTRACT PURCHASER

ZONING DISTRICTS(S): C-2 PRIOR ZONING CASE: RZ-107-89 (10/24/1989)

LAND DISTRICT(S): 6th LAND LOT(S): 216 ACREAGE: 2.4

ADDRESS OF PROPERTY: 6218 Dawson Blvd., Norcross, Georgia

PROPOSED CHANGE IN CONDITIONS: To remove limited uses in Condition 1A in RZ-107-89.

RESIDENTIAL DEVELOPMENT:	NON-RESIDENTIAL DEVELOPMENT:
NO. OF LOTS/DWELLING UNITS: _____	NO. OF BUILDINGS/LOTS: <u>1</u>
DWELLING UNIT SIZE (Sq. Ft.): _____	TOTAL GROSS SQUARE FEET: <u>Approx. 40,000</u>
GROSS DENSITY: _____	DENSITY: _____
NET DENSITY: _____	

PLEASE ATTACH A LETTER OF INTENT EXPLAINING WHAT IS PROPOSED
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Land Lot 216 of the 6th District of Gwinnett County, Georgia, being more particularly described as follows:

BEGINNING at a point on the south right-of-way line of Interstate Highway #85 (northeast Expressway) 1,097 feet westerly, as measured along the south right-of-way line of said Interstate Highway #85 from the point of intersection of the south right-of-way line of said Interstate Highway #85 with the westerly right-of-way line of Norcross-Tucker Road;

THENCE running south 16 degrees 20 minutes east 206.8 feet to an iron pin;

THENCE running south 58 degrees 45 minutes west 385.5 feet to a point;

THENCE running north 7 degrees 55 minutes west 355 feet to an iron pin on the south right-of-way line of said Interstate Highway #85;

THENCE running north 82 degrees 05 minutes east along the south right-of-way line of said Interstate Highway #85 325 feet to an iron pin at the point of beginning;

all as per plat or survey of property of Charles W. Eason and Frank J. Miller dated April 30, 1965, by W. L. Bishop, Registered Land Surveyor.

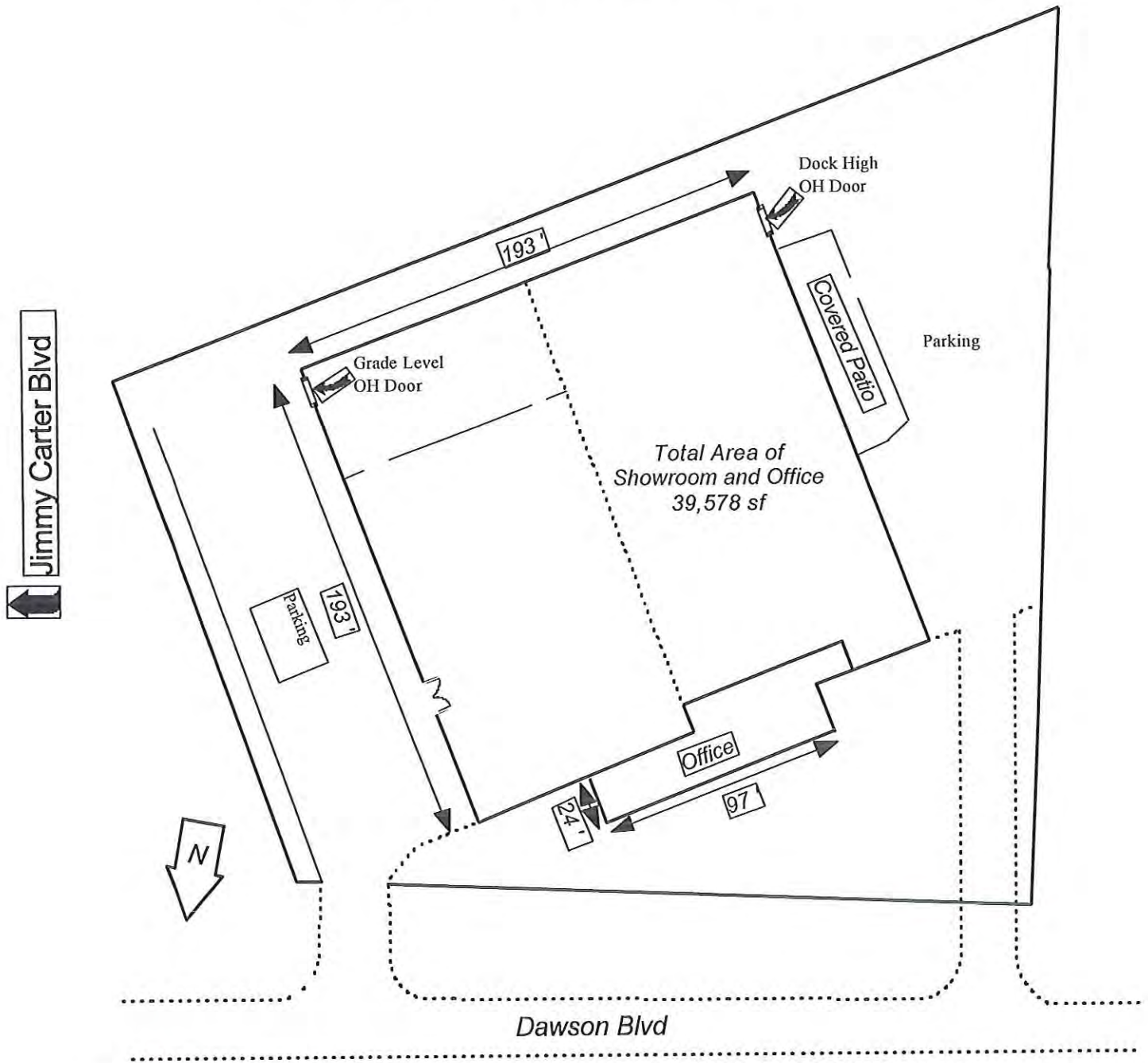
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6218 Dawson Blvd



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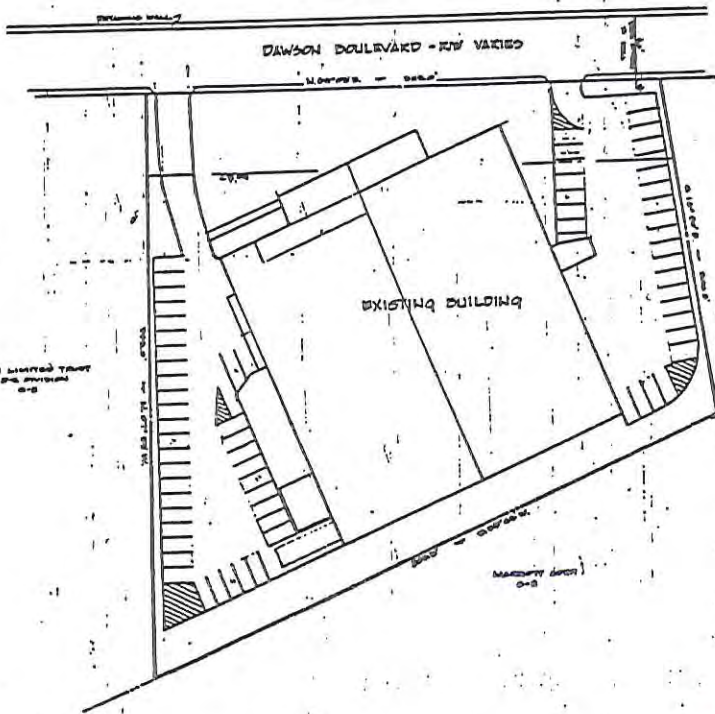
I-85

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INTERSTATE 95

DAWSON BOULEVARD - RW VARIED



1. OWNER: D.R. & J. W. WILSON
 2. PREPARED BY: A.R. WEEKS & ASSOC., INC.
 3. DATE: AUGUST 3, 1988
 4. SCALE: 1" = 30'

DRAWN BY: A.R. WEEKS & ASSOC., INC.
 DATE: AUGUST 3, 1988

REZONING PLAN
 for

A.R. WEEKS & ASSOC., INC.
 LAND LOT 210, 6th DISTRICT, DAVENPORT COUNTY, GA.
 SCALE: 1" = 30'
 AUGUST 3, 1988

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CHANGE IN CONDITIONS APPLICANT'S RESPONSE
STANDARDS GOVERNING THE EXERCISE OF THE ZONING POWER

PURSUANT TO SECTION 1702 OF THE 1985 ZONING RESOLUTION, THE BOARD OF COMMISSIONERS FINDS THAT THE FOLLOWING STANDARDS ARE RELEVANT IN BALANCING THE INTEREST IN PROMOTING THE PUBLIC HEALTH, SAFETY, MORALITY OR GENERAL WELFARE AGAINST THE RIGHT TO THE UNRESTRICTED USE OF PROPERTY AND SHALL GOVERN THE EXERCISE OF THE ZONING POWER.

PLEASE RESPOND TO THE FOLLOWING STANDARDS IN THE SPACE PROVIDED OR USE AN ATTACHMENT AS NECESSARY:

- (A) WHETHER A PROPOSED CHANGE IN CONDITIONS WILL PERMIT A USE THAT IS SUITABLE IN VIEW OF THE USE AND DEVELOPMENT OF ADJACENT AND NEARBY PROPERTY:
See Exhibit "B".

- (B) WHETHER A PROPOSED CHANGE IN CONDITIONS WILL ADVERSELY AFFECT THE EXISTING USE OR USABILITY OF ADJACENT OR NEARBY PROPERTY:
See Exhibit "B".

- (C) WHETHER THE PROPERTY TO BE AFFECTED BY A PROPOSED CHANGE IN CONDITIONS HAS REASONABLE ECONOMIC USE AS CURRENTLY ZONED:
See Exhibit "B".

- (D) WHETHER THE PROPOSED CHANGE IN CONDITIONS WILL RESULT IN A USE WHICH WILL OR COULD CAUSE AN EXCESSIVE OR BURDENSOME USE OF EXISTING STREETS, TRANSPORTATION FACILITIES, UTILITIES, OR SCHOOLS:
See Exhibit "B".

- (E) WHETHER THE PROPOSED CHANGE IN CONDITIONS IS IN CONFORMITY WITH THE POLICY AND INTENT OF THE LAND USE PLAN:
See Exhibit "B".

- (F) WHETHER THERE ARE OTHER EXISTING OR CHANGING CONDITIONS AFFECTING THE USE AND DEVELOPMENT OF THE PROPERTY WHICH GIVE SUPPORTING GROUNDS FOR EITHER APPROVAL OR DISAPPROVAL OF THE PROPOSED CHANGE IN CONDITIONS:
See Exhibit "B".

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Exhibit "B"
APPLICANT'S RESPONSE IN SUPPORT OF
CHANGE IN CONDITIONS APPLICATION

- A) WHETHER A PROPOSED REZONING / SPECIAL USE PERMIT / CHANGE IN CONDITIONS WILL PERMIT A USE THAT IS SUITABLE IN VIEW OF THE USE AND DEVELOPMENT OF ADJACENT AND NEARBY PROPERTY:

Yes. The property is currently zoned for similar commercial uses and the proposed uses and change in conditions will have little to no impact on the similarly zoned adjacent and nearby property.

- B) WHETHER THE PROPOSED REZONING / SPECIAL USE PERMIT / CHANGE IN CONDITIONS WILL ADVERSELY AFFECT THE EXISTING USE OR USEABILITY OF ADJACENT OR NEARBY PROPERTY:

No, the proposed use and change in conditions will not adversely affect adjacent or nearby property. The removal of conditions for uses under the current zoning is consistent with the commercial business on nearby property. Moreover, the subject property is located within one of the most significant concentrations of industrial and heavy commercial zoned property anywhere in Gwinnett County, and other businesses with the more intense uses located within the general vicinity of the subject property, indicate both the appropriateness of the revised conditions and suitability with the area.

- C) WHETHER THE PROPERTY TO BE AFFECTED BY THE PROPOSED REZONING / SPECIAL USE PERMIT/CHANGE IN CONDITIONS HAS A REASONABLE ECONOMIC USE AS CURRENTLY ZONED:

No. The limited zoning conditions leave the property with no reasonable economic use.

- D) WHETHER THE PROPOSED REZONING / SPECIAL USE PERMIT / CHANGE IN CONDITIONS WILL RESULT IN A USE WHICH WILL OR COULD CAUSE AN EXCESSIVE OR BURDENSOME USE OF EXISTING STREETS, TRANSPORTATION FACILITIES, UTILITIES, OR SCHOOLS:

No. The continued commercial and retail use would not cause any excessive or burdensome use of existing streets, transportation facilities or utilities. There would be no impact on the schools.

- E) WHETHER THE PROPOSED REZONING / SPECIAL USE PERMIT / CHANGE IN CONDITIONS IS IN CONFORMITY WITH THE POLICY AND INTENT OF THE LAND USE PLAN:

Yes. The property, proposed use and all uses permitted under the C-2 zoning district, and location is consistent with the Gwinnett 2030 Unified Plan and guidelines for this area and consistent with the uses along Dawson Blvd. and Jimmy Carter Blvd. near major intersections and on frontage roads along Highway I-85.

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- 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 PROPOSED REZONING / SPECIAL USE PERMIT/CHANGE IN CONDITIONS.

Yes. The area surrounding the subject property is zoned industrial and heavy commercial, with limited residential, and the proposed use is entirely appropriate in light of existing development patterns and land uses in the surrounding area, as well as Board of Commissioners' precedent in approving uses on similarly situated property in the immediate vicinity.

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ANDERSEN | TATE | CARR

ANDERSEN, TATE & CARR, P.C.
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FACSIMILE: (770) 236-9702
www.atclawfirm.com

MARIAN C. ADEIMY
Direct: (678) 518-6855

E-mail: madeimy@atclawfirm.com

May 2, 2014

VIA HAND-DELIVERY

Gwinnett County Department of Planning and Development
Attn: Bryan Lackey, Director
446 West Crogan Street
Lawrenceville, Georgia 30046

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LETTER OF INTENT APPLICATION FOR CHANGE IN CONDITIONS

The property owner and applicant, Bernstein-Perwien Properties (hereinafter the "Applicant") submits this application request for a Change in Conditions pursuant to the Gwinnett County Unified Development Ordinance to allow for a retail fabric store and all other uses permitted under the current C-2 zoning, subject to reasonable conditions consistent with the existing building and similar industrial and commercial developments along Dawson Boulevard. The subject property is located at 6218 Dawson Blvd., Norcross, Georgia, in unincorporated Gwinnett County (hereinafter the "Property").

As reflected in the site plans and surveys submitted herewith, the Property includes approximately 2.4 acres, a 40,000 square foot building with 2 loading docks, a quality brick building, and ample parking. The Property was rezoned in October of 1989 from M-1 to C-2 without objection, subject to certain conditions, pursuant to the zoning resolution, RZ-107-89 (the "Rezoning"). The Applicant seeks to remove and change Condition 1(A) of that Rezoning, which currently limits use of the Property to a "tire store and warehouse facility and/or retail furniture sales and/or showroom". That limited condition unconstitutionally restricts the Property and leaves the Property without economic use. The Applicant requests the deletion of Condition 1(A) under that Rezoning, to allow for all reasonable and permitted uses under the C-2 zoning district, in accordance with the Gwinnett County Unified Development Code.

The subject property is located in a high-density commercial and industrial strip which parallels I-85 and connects to Jimmy Carter Boulevard. The requested Change in Conditions would be entirely consistent with the current zoning and development patterns, the 2030 Unified Plan, and Board of Commissioners' precedent for this and surrounding property.

The area is known for similar retail fabric, furniture, and home décor uses, and the proposed tenant is currently located down the street, further evidencing the consistency of the proposed, unconditioned C-2 uses. As reflected in the attached survey and site plan, submitted herewith, the existing building, parking and landscaping

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would remain. Under the current C-2 zoning, retail stores, office/showroom facilities, and home building supply showrooms and sales centers are all permitted. The subject property is an appropriate location for the proposed commercial use as a retail fabric store and other permitted uses under the current C-2 zoning district, and the potential uses would have little to no impact on any surrounding properties.

The Applicant and its representatives welcome the opportunity to meet with the staff of the Gwinnett County Department of Planning and Development, Planning Commissioners, and the Board of Commissioners to answer any questions or to address any concerns. The Applicant respectfully requests your approval of its Application for Change in Conditions.

This 2nd day of May, 2014.

Respectfully submitted,

ANDERSEN, TATE & CARR, P.C.



Marian C. Adeimy
Attorney for the Applicant

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JUSTIFICATION FOR REZONING / CONSTITUTIONAL OBJECTIONS

The portions of the Gwinnett County Zoning Resolution and/or zoning conditions which presently restrict the property which is the subject of Bernstein-Perwien Properties' (the "Applicant") Application for the property located at 6218 Dawson Boulevard (the "Property") to its current zoning and conditioned uses 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 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.

The application of the Gwinnett County Zoning Resolution and/or zoning conditions which presently restrict the property to its current zoning and conditioned uses is unconstitutional, illegal, null and void, constituting a taking of the Applicant's and the Owner'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, Paragraph I, and 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 denying the Applicant an economically viable use of its land while not substantially advancing legitimate state interests.

The Property is presently suitable for the proposed uses, as requested by the Applicant, and is not economically suitable for development with only the current, conditioned uses. A denial of this Application would constitute an arbitrary and capricious act by the Gwinnett County Board of Commissioners without any rational basis therefore and contrary to other recent Board of Commissioners actions, constituting an abuse of discretion in violation of Article I, Section I, Paragraph I and Article I, Section I, Paragraph 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 allow the requested change in conditions, so as to permit the only feasible economic use of the 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 of the United States. Any rezoning to some other classification or approval of conditions which are different from the 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 and Owner's utilization of the subject Property, would also constitute an arbitrary, capricious and discriminatory act in zoning the Property to an unconstitutional classification and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove.

Accordingly, the Applicant respectfully requests that its Application for Change in Conditions for the Property be approved as requested therein.

Respectfully submitted this 2nd day of May,



Marian C. Adeimy
Attorney for Applicant

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CHANGE IN CONDITIONS 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

5-1-14

Date

Marian C. Adeimy, Attorney for Applicant

Type or Print Name and Title



Signature of Notary Public

Date



5-1-14

Notary Seal

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CHANGE IN CONDITIONS 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.

[Handwritten Signature]

5-1-14

Signature of Property Owner

Date

Marian C. Adeimy, Attorney for Property Owner

Type or Print Name and Title

[Handwritten Signature: Ginger Conroy]

5-1-14

Signature of Notary Public

Date



Notary Seal

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CONFLICT OF INTEREST CERTIFICATION FOR CHANGE IN CONDITIONS

The undersigned below, making application for a change in conditions, 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.

[Handwritten Signature] 5-1-14 Marian C. Adeamy, attorney

 Signature of Applicant Date Type of Print Name and Title

[Handwritten Signature] 5-1-14 Marian C. Adeamy, attorney

 Signature of Applicant's Date Type or Print Name and Title
 Attorney or Representative

[Handwritten Signature: Ginger Conroy] 5-1-14

 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)
See Exhibit "C"		

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

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EXHIBIT "C"
DISCLOSURE OF CAMPAIGN CONTRIBUTIONS BY ANDERSEN, TATE & CARR, P.C.

NAME AND OFFICIAL POSITION OF GOVERNMENT OFFICIAL	CONTRIBUTIONS	DATE CONTRIBUTION WAS MADE
Charlotte Nash, Chairman	\$1,000 \$1,000 \$500 \$500	February 22, 2011 November 16, 2011 February 20, 2013 February 22, 2013
Jace Brooks, District 1 Commissioner	\$500 \$500 \$1,500	March 15, 2012 December 20, 2012 November 12, 2013
Lynette Howard, District 2 Commissioner	\$1,000 \$1,000 \$1,000	May 25, 2010 October 27, 2011 March 20, 2014
Tommy Hunter, District 3 Commissioner	\$1,500 \$500 \$1,500	October 1, 2012 December 28, 2012 August 22, 2013
John Heard, District 4 Commissioner	\$1,000 \$1,000 \$200	August 25, 2011 January 9, 2014 March 26, 2014

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**VERIFICATION OF CURRENT PAID PROPERTY TAXES
FOR CHANGE IN CONDITIONS**

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: 6 - 216 - 001B
(Map Reference Number) District Land Lot Parcel

Marian C. Adeimy
Signature of Applicant

5-1-14
Date

Marian C. Adeimy, Attorney for Applicant

Type or Print Name and Title

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)

Kenneth D. Martin
NAME

**GWINNETT COUNTY
TAX COMMISSIONER**
TITLE

5-2-2014
DATE

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