

REZONING APPLICATION

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

APPLICANT INFORMATION	OWNER INFORMATION*
NAME: <u>Jessica Lane</u>	NAME: <u>Jessica Lane</u>
ADDRESS: <u>1960 Satellite Blvd., Suite 4000</u>	ADDRESS: <u>1960 Satellite Blvd., Suite 4000</u>
CITY: <u>Duluth</u>	CITY: <u>Duluth</u>
STATE: <u>Georgia</u> ZIP: <u>30097</u>	STATE: <u>Georgia</u> ZIP: <u>30097</u>
PHONE: <u>(770) 822-0900</u>	PHONE: <u>(770) 822-0900</u>
CONTACT PERSON: <u>Marian C. Adeimy</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

PRESENT ZONING DISTRICT(S): NS REQUESTED ZONING DISTRICT: O&I

LAND DISTRICT(S): 6th LAND LOT(S): 95 - 019 & 293 ACREAGE: 1.697

ADDRESS OF PROPERTY: 1180 Old Tucker Road, Stone Mountain, Georgia

PROPOSED DEVELOPMENT: Office and Adult Day Care

RESIDENTIAL DEVELOPMENT	NON-RESIDENTIAL DEVELOPMENT
No. of Lots/Dwelling Units _____	No. of Buildings/Lots: <u>2</u> <input type="text"/>
Dwelling Unit Size (Sq. Ft.): _____	Total Building Sq. Ft. <u>Approx. 3,000</u>
Gross Density: _____	Density: <u>3,000</u> / 73,921 total square feet
Net Density: _____	

PLEASE ATTACH A LETTER OF INTENT EXPLAINING WHAT IS PROPOSED

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LEGAL DESCRIPTION

All that tract or parcel of land lying and being in Land Lot 95 of the 6th District of Gwinnett County, State of Georgia, being more particularly described as follows:

To arrive at the **TRUE POINT OF BEGINNING** begin at a point located at the northwesterly right-of-way intersection of Rockbridge Road and Old Tucker Road (having a variable right-of-way) said point being the **POINT OF BEGINNING**, thence proceeding in a southwesterly direction along the northwesterly right-of-way of Old Tucker Road a distance of 653.89 feet to a 3/8 inch rebar found, thence continuing along said right-of-way South 60 degrees 24 minutes 19 seconds West a distance of 149.70 feet to capped rebar set, said point being the **TRUE POINT OF BEGINNING**, thence continuing along said right-of-way South 60 degrees 22 minutes 44 seconds West a distance of 31.52 feet to a point, thence continuing along said right-of-way an arc distance of 111.97 feet, having a radius of 150.00 feet, being subtended by a chord bearing and distance of South 81 degrees 45 minutes 51 seconds West a distance of 109.39 feet to a point, thence continuing along said right-of-way North 48 degrees 35 minutes 25 seconds West a distance of 118.63 feet to a point, thence continuing along said right-of-way North 42 degrees 32 minutes 16 seconds West a distance of 98.14 feet to a 1 inch open top pipe, thence leaving said right-of-way North 60 degrees 04 minutes 23 seconds East a distance of 177.54 feet to capped rebar set, thence South 33 degrees 23 minutes 21 seconds East a distance of 249.21 feet to a capped rebar set along the northwesterly right-of-way of Old Tucker Road (having a variable right-of-way), said point being the **TRUE POINT OF BEGINNING**.

Said tract or parcel of land containing 0.89 acres more or less, and being more particularly described on a plat of survey for Jessica Lane, dated October 30, 2013, prepared by SCI Development Services.

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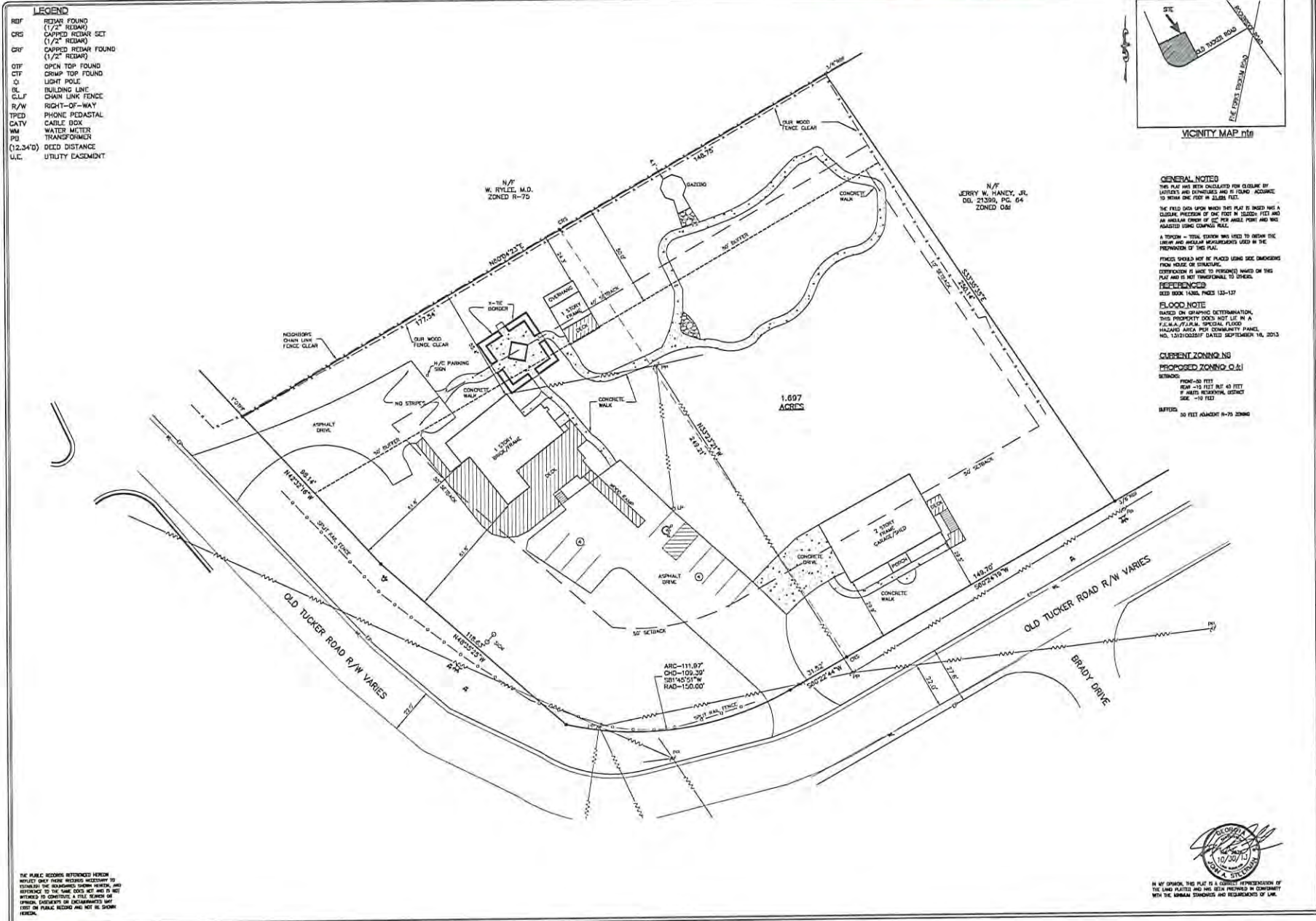
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NO.	DATE	BY	DESCRIPTION

SCI Development Services
 ENGINEERS - ARCHITECTS - LAND PLANNERS
 3655 HENRY COUNTY - SUITE E - SHILLVILLE, GEORGIA 30033
 (770) 738-7866 FAX (770) 738-6933
 MAIL@SCIENGINEERS.COM

JESSICA LANE
 LAND LOT 85 6th DISTRICT
 GWINNETT COUNTY, GEORGIA

REZONING EXHIBIT

PROJECT NUMBER
 51332
R-1
 DEVELOPER/OWNER

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

PLEASE SEE EXHIBIT "B" ATTACHED HERETO

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

PLEASE SEE EXHIBIT "B" ATTACHED HERETO

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

PLEASE SEE EXHIBIT "B" ATTACHED HERETO

- (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:

PLEASE SEE EXHIBIT "B" ATTACHED HERETO

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

PLEASE SEE EXHIBIT "B" ATTACHED HERETO

- (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 REZONING:

PLEASE SEE EXHIBIT "B" ATTACHED HERETO

EXHIBIT "B"
REZONING/SPECIAL USE PERMIT APPLICANT'S RESPONSE
1180 OLD TUCKER ROAD, STONE MOUNTAIN, GEORGIA

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

Yes. The subject property is located near the intersection of Rockbridge Road and Five Forks Trickum Road, across from a Kroger shopping center, zoned C2, and adjacent to property zoned O&I, providing an appropriate transition from commercial to O&I zoning near this major commercial intersection. The property is already zoned for neighborhood business uses, and in conformity with the proposed Unified and Comprehensive Plans, the NS zoning district will no longer exist.

The proposed rezoning to O&I is consistent, if not less intense than the current NS zoning district, and the proposed office use and/or Special Use Permit requested for day care use is consistent with the similar neighborhood business and office uses permitted under the O&I zoning district. The subject property is located across from a contractor business and next door to a similar office use. The proposed office and/or adult day care uses will have little to no effect on the suitability of the use vis-à-vis adjacent and nearby residential and commercial property. The proposed special use permit would allow a high quality adult day care facility to be operated within the existing building, that would serve the needs of the senior and adult residents of the surrounding neighborhoods, therefore this request proposes a use that is ideally suited to and consistent with adjacent and nearby property.

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

No. This rezoning and special use permit request proposes a use that entirely compatible with the character of this commercial intersection and commercial to residential transition zone. The proposed office and/or day care use is designed to serve the families and adult residents of the surrounding communities and which would be open only during the day, having little if any impact on surrounding properties during nights and weekends when nearby property owners would most likely be enjoying the usability of their homes.

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

No. The existing, limited NS zoning district differs from all of the adjacent and nearby zoning districts, limits the business and office uses, and does not permit the compatible, requested day care use. It would be impossible to use and develop the property with its current zoning conditions.

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:

No. This property is located in an area with public water and sewer availability, and convenient access to major thoroughfares. This rezoning will not cause excessive use of existing streets, transportation facilities, utilities, will have no impact on the schools and will actually reduce car trips for residents of the surrounding subdivisions who are currently driving farther away to take their family members to other adult day care facilities, and or provide a convenient professional office location to the surrounding neighborhoods.

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

Almost every other parcel at the Rockbridge Road and Five Forks Tricum intersection is zoned C-2, and with the C-2 zoning district located directly across the street from the subject property, off Old Tucker Road, and within the appropriate O&I transitional zoning district currently reflected along Old Tucker Road. The Land Use Plan clearly identifies this area as an emerging commercial node, with several parcels designated for Office/Institutional use. The rezoning and special use permit requests propose an office and day care use that would be in conformance with the policy and intent of the Land Use Plan as well as the current zoning of the subject Property and adjacent O&I and nearby commercial/C-2 property.

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.

Yes. To impose additional conditions on this small parcel and proposed uses, located within an appropriate commercial and O&I node would be inappropriate and would make use of the Property extremely difficult, if not economically impossible.

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LETTER OF INTENT (O-I with SUP for Day Care)
1180 Old Tucker Road

The Applicant, Jessica Lane (hereafter, "Applicant"), submits this Rezoning Application and Special Use Permit Application for the purpose of rezoning from the current NS zoning district, already allowing for neighborhood business uses, to the O-I zoning classification with a special use permit for an adult daycare facility in the existing building on a 1.697 acre tract (hereinafter, the "Property") located near the intersection of Rockbridge Road, Old Tucker Road, and Five Forks Trickum Road. The subject property covered by this Application is currently zoned NS.

As stated in the Application, the Applicant intends to lease and use the property as (1) an adult day care facility intended to serve the families of the surrounding neighborhoods and (2) a potential professional office designed to serve residents from the surrounding neighborhoods who are self-employed or currently leasing office space in other areas. In Gwinnett County, day care uses and office uses are frequently located at signalized intersections on major arterial roads in predominantly residential areas, especially where the nearby and adjacent properties appropriately transition from C-1 to O&I zoning, and this request is consistent with prior Board of Commissioners precedent in prior day care/office rezonings on similarly situated properties throughout Gwinnett County.

This site is also consistent with other O-I zonings in the area. The subject Property is adjacent to property zoned O&I and currently being used for office purposes, across from a commercial contractor, and almost directly across from the Kroger shopping center. The adjacent and nearby uses are consistent with the proposed office and day care uses. The property is only a few parcels away from the major Retail and Commercial node identified on the Gwinnett 2020 Land Use Plan Map and located at the Rockbridge Road and Five Forks Trickum Road intersection. The existing commercial to office transitional zoning districts from Rockbridge Road down Old Tucker Road, located adjacent to and further past the subject property and adjacent to residential neighborhoods, makes arguments suggesting that this request would result in "spot zoning" extremely difficult to support.

The proposed use and requested rezoning is consistent with the intent of the Zoning Ordinance for O-I office and day care uses specifically. The property has access to a public water supply, public sanitary sewer, and "convenient access to collector streets, major thoroughfares or state or interstate highways."

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Most importantly, the subject property has absolutely no reasonable economic use as currently zoned NS. It would be all but impossible to develop and/or market the property for any neighborhood business uses due to (1) the property's relatively small size and configuration, (2) the narrow, limited uses permitted under the current zoning district, and (2) the Property's location at the busy signalized intersection of three major roads.

The development of the property as a day care facility and small office use is appropriate to the subject tract and is entirely consistent with the residential character and uses of the adjacent and surrounding property. In fact, it is hard to imagine anything other than a day care and office uses that would be more appropriate to the subject tract in light of all of the foregoing factors.

CONCLUSION


This proposed zoning and requested special use permit would result in a high quality, adult day care facility and/or office that will serve the residents of the surrounding area. Applicant and its representatives welcome the opportunity to meet with the staff of the Gwinnett County Department of Planning and Development to answer any questions or to address any concerns. Applicant respectfully requests your approval of this Application.

This 1st day of November, 2013.

One Sugarloaf Centre
1960 Satellite Blvd., Suite 4000
Duluth, Georgia 30097
(770) 822-0900

Respectfully submitted,

ANDERSEN, TATE & CARR, P.C.



Marian C. Adeimy
Attorneys for Applicant

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RZC '14 003

ANDERSEN | TATE | CARR

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SUITE 4000
DULUTH, GEORGIA 30097
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FACSIMILE: (770) 236-9702
www.atclawfirm.com

MARIAN C. ADEIMY
Attorney at Law

E-mail: madeimy@atclawfirm.com

JUSTIFICATION FOR REZONING AND SPECIAL USE PERMIT

The Applicant, Jessica Lane, (hereinafter the "Applicant") hereby states that the portions of the Gwinnett County Zoning Resolution and/or zoning conditions which presently restrict the property which is the subject of this Application, being 1180 Old Tucker Rd., Stone Mountain, Georgia (hereinafter the "Property") are unconstitutional in that they 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 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 use under the requested O&I zoning classification as property for office use, located adjacent to and across from property zoned O&I, C-1, and C-2, and is suitable for the requested special use permit for day care use, and for all other uses and conditions as requested by the Applicant, and is not economically suitable for development under the present zoning classification and conditions. 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 change the requested zoning and grant the requested special use permit, 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.

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Any rezoning of the subject Property to the requested zoning classification, use, or some other classification, subject to 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 the 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 the Rezoning and Special Use Permit applications submitted by the Applicant relative to the Property, as amended, be granted, and that the Property be rezoned to the zoning classification, uses, and conditions requested therein.

This 1st day of November, 2013.

Respectfully submitted,

ANDERSEN, TATE & CARR, P.C.



Marian C. Adeimy
Attorney for Owner/Applicant

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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.

Mary

11-1-13

Signature of Applicant

Date

Marian C. Adeimy, Attorney for Owner/Applicant

Type or Print Name and Title

Ginger Conroy

11-1-13

Signature of Notary Public

Date



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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.

[Handwritten Signature]

11-1-13

Signature of Property Owner

Date

Marian C. Adeimy, Attorney for Owner/Applicant

Type or Print Name and Title

[Handwritten Signature: Ginger Conroy]

11-1-13

Signature of Notary Public

Date



Notary Seal

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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.

<i>Mary</i>	11-1-13	Marian C. Adeimy, Attorney for Applicant/Owner
SIGNATURE OF APPLICANT	DATE	TYPE OR PRINT NAME AND TITLE
<i>Mary</i>	11-1-13	Marian C. Adeimy, Attorney for Applicant
SIGNATURE OF APPLICANT'S ATTORNEY OR REPRESENTATIVE	DATE	TYPE OR PRINT NAME AND TITLE
<i>Ginger Conroy</i>	11-1-13	
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	February 22, 2011 November 16, 2011 February 20, 2013
Jace Brooks, District 1 Commissioner	\$500 \$500	March 15, 2012 December 20, 2012
Lynette Howard, District 2 Commissioner	\$1,000 \$1,000	May 25, 2010 October 27, 2011
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	February 16, 2010 August 25, 2011

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SPECIAL USE PERMIT APPLICATION

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

APPLICANT INFORMATION	OWNER INFORMATION*
NAME: <u>Jessica Lane</u>	NAME: <u>Jessica Lane</u>
ADDRESS: <u>1960 Satellite Blvd., Suite 4000</u>	ADDRESS: <u>1960 Satellite Blvd., Suite 4000</u>
CITY: <u>Duluth</u>	CITY: <u>Duluth</u>
STATE: <u>Georgia</u> ZIP: <u>30097</u>	STATE: <u>Georgia</u> ZIP: <u>30097</u>
PHONE: <u>(770) 822-0900</u>	PHONE: <u>(770) 822-0900</u>
CONTACT PERSON: <u>Marian C. Adeimy, Esq.</u> PHONE: <u>(770) 822-0900</u>	
CONTACT'S E-MAIL: <u>madeimy@atclawfirm.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 type="checkbox"/> PROPERTY OWNER <input checked="" type="checkbox"/> CONTRACT PURCHASER
EXISTING/PROPOSED ZONING: <u>NS/O&I</u>	BUILDING/LEASED SQUARE FEET: <u>Approx. 12,972</u>
LAND DISTRICT(S): <u>6th</u>	LAND LOT(S): <u>95</u> ACREAGE: <u>Approx. 1.697</u>
ADDRESS OF PROPERTY: <u>1180 Old Tucker Road, Stone Mountain, Georgia</u>	
SPECIAL USE REQUESTED: <u>Day care facility under the requested O&I zoning for an adult day care.</u>	

PLEASE ATTACH A LETTER OF INTENT EXPLAINING WHAT IS PROPOSED

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SUP '14 004

LEGAL DESCRIPTION

All that tract or parcel of land lying and being in Land Lot 95 of the 6th District of Gwinnett County, State of Georgia, being more particularly described as follows:

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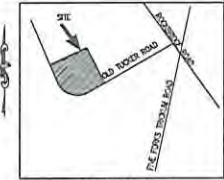
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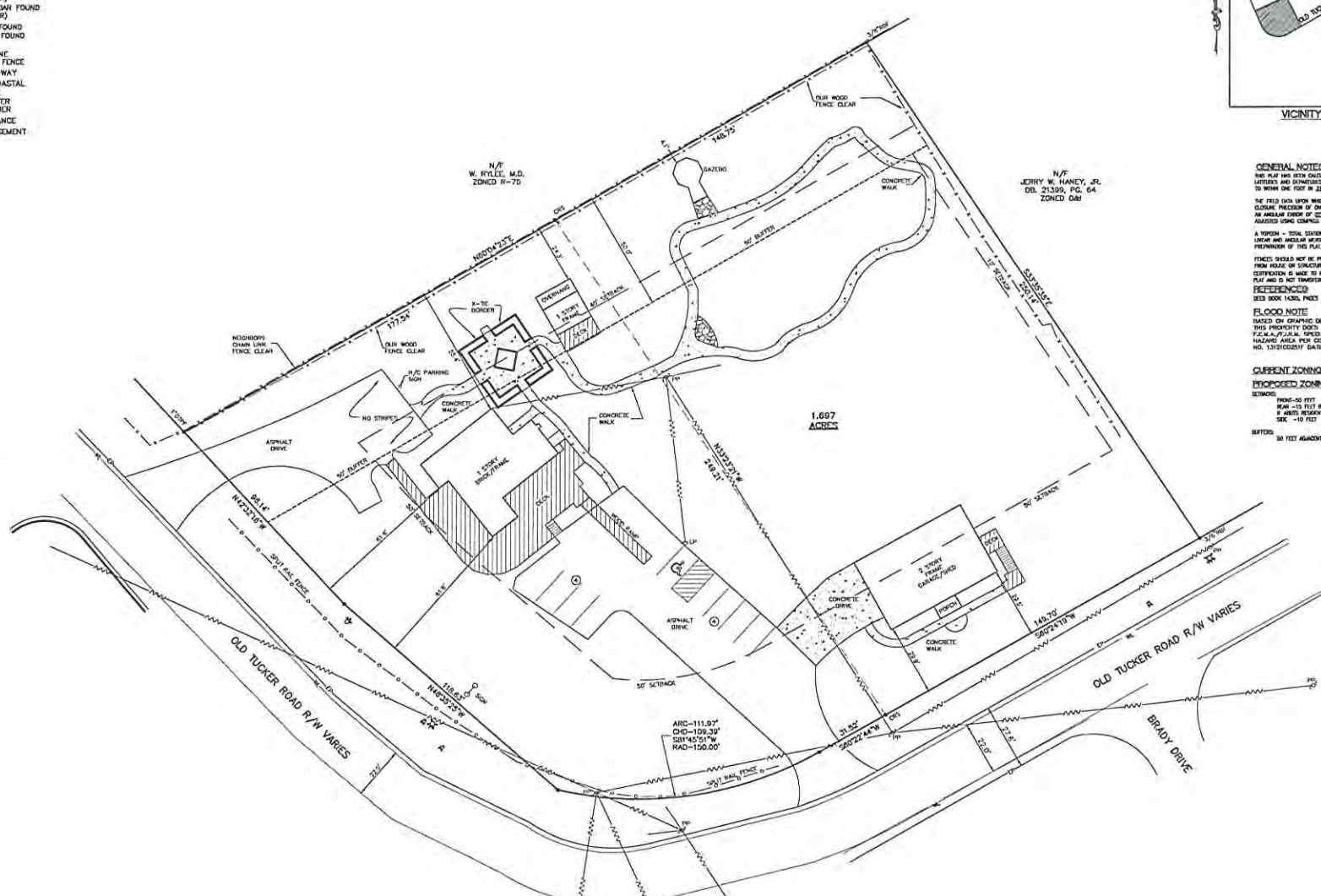
SUP '14 004

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- LEGEND**
- RF# REBAR FOUND (1/2" REBAR)
 - CRS CAPPED REBAR SCT (1/2" REBAR)
 - CRF CAPPED REBAR FOUND (1/2" REBAR)
 - OT# OPEN TOP FOUND
 - OTF CRIMP TOP FOUND
 - Q LIGHT POLE
 - BL BUILDING LINE
 - C.L.F. CHAIN LINK FENCE
 - R/W RIGHT-OF-WAY
 - TPED PHONE PEDASTAL
 - CATV CABLE BOX
 - WM WATER METER
 - TRF TRANSFORMER
 - PD (12.34') DEED DISTANCE
 - U.E. UTILITY EASEMENT



NO.	DATE	BY	DESCRIPTION



GENERAL NOTES

THIS PLAN HAS BEEN PREPARED FOR CLOSURE OF LUTHERS AND CONCRETE AND IS TO BE ACCORDING TO WITHIN ONE FOOT IN 25.00 FEET.

THE FIELD DATA WERE MADE THIS PLAN BY BEING INTO A CLASSICAL POSITION OF ONE FOOT IN 25.00 FEET AND AN ANGULAR ERROR OF 02 PPT ANGLE POINT AND TWO ADJUSTED LONG CONCRETE BULL.

A TOPOM - TOTAL STATION WAS USED TO OBTAIN THE BEARING AND ANGLE MEASUREMENTS USED IN THE PREPARATION OF THIS PLAN.

MARKERS SHOULD NOT BE PLACED USING SIZE DIMENSIONS FROM VALUE OF STRUCTURE. CERTIFICATION IS MADE TO PERSONS MARKED ON THIS PLAN AND IS NOT TRANSFERABLE TO OTHERS.

REFERENCES

SECS BOOK 1436, PAGES 133-137

FLOOD NOTE

BASED ON GRAPHIC DETERMINATION, THIS PROPERTY DOES NOT LIE IN A FLOOD HAZARD AREA. SPECIAL FLOOD HAZARD AREA FROM COMMUNITY PANEL NO. 13181005H DATED SEPTEMBER 14, 2013.

CURRENT ZONING IS

PROPOSED ZONING O.G.I

REMARKS

FINISH-45 FEET
 SEW -15 FEET BUT AS FEET
 IF ANY RESIDENTIAL SCHED
 SEE -10 FEET

BUFFERS

50 FEET AROUND R-75 ZONING

SCI Development Services
 ENGINEERS - SURVEYORS - LAND PLANNERS
 3030 HERMIT COURT - SUITE E - SUDBURY, GEORGIA 30033
 (770) 486-0000
 WWW.SCI-CONCEPTS.NET

JESSICA LANE
 LAND LOT 95
 6th DISTRICT
 GWINNETT COUNTY, GEORGIA

DATE: 10/01/13
 DRAWN BY: JAS
 CHECKED BY: JAS
 APPROVED BY: JAS

REZONING EXHIBIT

PROJECT NUMBER: 13-332

R-1

CONTROLLING NUMBER

THE PUBLIC RECORDS REFERENCED HEREIN REFLECT ONLY THOSE RECORDS NECESSARY TO OBTAIN THE INFORMATION SHOWN HEREON, AND REFERENCED TO THE SAME DATE AND TO HIS EXTENT TO CONSTITUTE A TRUE SEARCH OF OFFICIAL RECORDS OR DOCUMENTS AND NOT ON PUBLIC RECORDS AND NOT BE SHOWN HEREON.

IN WITNESS WHEREOF, I HAVE HEREON SET MY HAND AND SEAL OF OFFICE, AND CAUSED THIS PLAN TO BE RECORDED IN CONFORMITY WITH THE STATUTES AND REGULATIONS OF LAW.

SPECIAL USE PERMIT 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 SPECIAL USE PERMIT 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 SPECIAL USE PERMIT 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 SPECIAL USE PERMIT HAS REASONABLE ECONOMIC USE AS CURRENTLY ZONED:

See Exhibit "B".

- (D) WHETHER THE PROPOSED SPECIAL USE PERMIT 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 SPECIAL USE PERMIT 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 SPECIAL USE PERMIT:

See Exhibit "B".

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EXHIBIT "B"
REZONING/SPECIAL USE PERMIT APPLICANT'S RESPONSE
1180 OLD TUCKER ROAD, STONE MOUNTAIN, GEORGIA

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

Yes. The subject property is located near the intersection of Rockbridge Road and Five Forks Trickum Road, across from a Kroger shopping center, zoned C2, and adjacent to property zoned O&I, providing an appropriate transition from commercial to O&I zoning near this major commercial intersection. The property is already zoned for neighborhood business uses, and in conformity with the proposed Unified and Comprehensive Plans, the NS zoning district will no longer exist.

The proposed rezoning to O&I is consistent, if not less intense than the current NS zoning district, and the proposed office use and/or Special Use Permit requested for day care use is consistent with the similar neighborhood business and office uses permitted under the O&I zoning district. The subject property is located across from a contractor business and next door to a similar office use. The proposed office and/or adult day care uses will have little to no effect on the suitability of the use vis-à-vis adjacent and nearby residential and commercial property. The proposed special use permit would allow a high quality adult day care facility to be operated within the existing building, that would serve the needs of the senior and adult residents of the surrounding neighborhoods, therefore this request proposes a use that is ideally suited to and consistent with adjacent and nearby property.

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

No. This rezoning and special use permit request proposes a use that entirely compatible with the character of this commercial intersection and commercial to residential transition zone. The proposed office and/or day care use is designed to serve the families and adult residents of the surrounding communities and which would be open only during the day, having little if any impact on surrounding properties during nights and weekends when nearby property owners would most likely be enjoying the usability of their homes.

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

No. The existing, limited NS zoning district differs from all of the adjacent and nearby zoning districts, limits the business and office uses, and does not permit the compatible, requested day care use. It would be impossible to use and develop the property with its current zoning conditions.

- 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:

No. This property is located in an area with public water and sewer availability, and convenient access to major thoroughfares. This rezoning will not cause excessive use of existing streets, transportation facilities, utilities, will have no impact on the schools and will actually reduce car trips for residents of the surrounding subdivisions who are currently driving farther away to take their family members to other adult day care facilities, and or provide a convenient professional office location to the surrounding neighborhoods.

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

Almost every other parcel at the Rockbridge Road and Five Forks Tricum intersection is zoned C-2, and with the C-2 zoning district located directly across the street from the subject property, off Old Tucker Road, and within the appropriate O&I transitional zoning district currently reflected along Old Tucker Road. The Land Use Plan clearly identifies this area as an emerging commercial node, with several parcels designated for Office/Institutional use. The rezoning and special use permit requests propose an office and day care use that would be in conformance with the policy and intent of the Land Use Plan as well as the current zoning of the subject Property and adjacent O&I and nearby commercial/C-2 property.

- 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.

Yes. To impose additional conditions on this small parcel and proposed uses, located within an appropriate commercial and O&I node would be inappropriate and would make use of the Property extremely difficult, if not economically impossible.

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LETTER OF INTENT (O-I with SUP for Day Care)
1180 Old Tucker Road

The Applicant, Jessica Lane (hereafter, "Applicant"), submits this Rezoning Application and Special Use Permit Application for the purpose of rezoning from the current NS zoning district, already allowing for neighborhood business uses, to the O-I zoning classification with a special use permit for an adult daycare facility in the existing building on a 1.697 acre tract (hereinafter, the "Property") located near the intersection of Rockbridge Road, Old Tucker Road, and Five Forks Trickum Road. The subject property covered by this Application is currently zoned NS.

As stated in the Application, the Applicant intends to lease and use the property as (1) an adult day care facility intended to serve the families of the surrounding neighborhoods and (2) a potential professional office designed to serve residents from the surrounding neighborhoods who are self-employed or currently leasing office space in other areas. In Gwinnett County, day care uses and office uses are frequently located at signalized intersections on major arterial roads in predominantly residential areas, especially where the nearby and adjacent properties appropriately transition from C-1 to O&I zoning, and this request is consistent with prior Board of Commissioners precedent in prior day care/office rezonings on similarly situated properties throughout Gwinnett County.

This site is also consistent with other O-I zonings in the area. The subject Property is adjacent to property zoned O&I and currently being used for office purposes, across from a commercial contractor, and almost directly across from the Kroger shopping center. The adjacent and nearby uses are consistent with the proposed office and day care uses. The property is only a few parcels away from the major Retail and Commercial node identified on the Gwinnett 2020 Land Use Plan Map and located at the Rockbridge Road and Five Forks Trickum Road intersection. The existing commercial to office transitional zoning districts from Rockbridge Road down Old Tucker Road, located adjacent to and further past the subject property and adjacent to residential neighborhoods, makes arguments suggesting that this request would result in "spot zoning" extremely difficult to support.

The proposed use and requested rezoning is consistent with the intent of the Zoning Ordinance for O-I office and day care uses specifically. The property has access to a public water supply, public sanitary sewer, and "convenient access to collector streets, major thoroughfares or state or interstate highways."

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Most importantly, the subject property has absolutely no reasonable economic use as currently zoned NS. It would be all but impossible to develop and/or market the property for any neighborhood business uses due to (1) the property's relatively small size and configuration, (2) the narrow, limited uses permitted under the current zoning district, and (2) the Property's location at the busy signalized intersection of three major roads.

The development of the property as a day care facility and small office use is appropriate to the subject tract and is entirely consistent with the residential character and uses of the adjacent and surrounding property. In fact, it is hard to imagine anything other than a day care and office uses that would be more appropriate to the subject tract in light of all of the foregoing factors.

CONCLUSION

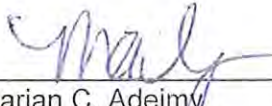
This proposed zoning and requested special use permit would result in a high quality, adult day care facility and/or office that will serve the residents of the surrounding area. Applicant and its representatives welcome the opportunity to meet with the staff of the Gwinnett County Department of Planning and Development to answer any questions or to address any concerns. Applicant respectfully requests your approval of this Application.

This 1st day of November, 2013.

One Sugarloaf Centre
1960 Satellite Blvd., Suite 4000
Duluth, Georgia 30097
(770) 822-0900

Respectfully submitted,

ANDERSEN, TATE & CARR, P.C.



Marian C. Adeimy
Attorneys for Applicant

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MARIAN C. ADEIMY
Attorney at Law

E-mail: madeimy@atclawfirm.com

JUSTIFICATION FOR REZONING AND SPECIAL USE PERMIT

The Applicant, Jessica Lane, (hereinafter the "Applicant") hereby states that the portions of the Gwinnett County Zoning Resolution and/or zoning conditions which presently restrict the property which is the subject of this Application, being 1180 Old Tucker Rd., Stone Mountain, Georgia (hereinafter the "Property") are unconstitutional in that they 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 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 use under the requested O&I zoning classification as property for office use, located adjacent to and across from property zoned O&I, C-1, and C-2, and is suitable for the requested special use permit for day care use, and for all other uses and conditions as requested by the Applicant, and is not economically suitable for development under the present zoning classification and conditions. 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 change the requested zoning and grant the requested special use permit, 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.

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Any rezoning of the subject Property to the requested zoning classification, use, or some other classification, subject to 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 the 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 the Rezoning and Special Use Permit applications submitted by the Applicant relative to the Property, as amended, be granted, and that the Property be rezoned to the zoning classification, uses, and conditions requested therein.

This 1st day of November, 2013.

Respectfully submitted,

ANDERSEN, TATE & CARR, P.C.



Marian C. Adeimy
Attorney for Owner/Applicant

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SPECIAL USE PERMIT 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.

Mary 11-1-13
Signature of Applicant Date

Marian C. Adeimy, Attorney for Applicant

Type or Print Name and Title

Ginger Conroy 11-1-13 
Signature of Notary Public Date Notary Seal

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SPECIAL USE PERMIT 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.

Mari 11-1-13
Signature of Property Owner Date

Marian C. Adeimy, Attorney for Property Owner/Applicant Jessica Lane
Type or Print Name and Title

Ginger Conroy 11-1-13 
Signature of Notary Public Date Notary Seal

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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	February 22, 2011
	\$1,000	November 16, 2011
	\$500	February 20, 2013
Jace Brooks, District 1 Commissioner	\$500	March 15, 2012
	\$500	December 20, 2012
Lynette Howard, District 2 Commissioner	\$1,000	May 25, 2010
	\$1,000	October 27, 2011
Tommy Hunter, District 3 Commissioner	\$1,500	October 1, 2012
	\$500	December 28, 2012
	\$1,500	August 22, 2013
John Heard, District 4 Commissioner	\$1,000	February 16, 2010
	\$1,000	August 25, 2011

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