

REZONING APPLICATION

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

APPLICANT INFORMATION	OWNER INFORMATION*
Beverly J. Searles Foundation, Inc. c/o Mahaffey NAME: <u>Pickens Tucker, LLP</u> ADDRESS: <u>1550 North Brown Road, Suite 125</u> CITY: <u>Lawrenceville</u> STATE: <u>Georgia</u> ZIP: <u>30043</u> PHONE: <u>770.232.0000</u>	NAME: <u>George Liu</u> ADDRESS: <u>1266 W Paces Ferry Rd, Ste 581</u> CITY: <u>Atlanta</u> STATE: <u>Georgia</u> ZIP: <u>30327</u> PHONE: <u>770.232.0000</u>
CONTACT PERSON: <u>Shane Lanham</u> PHONE: <u>770.232.0000</u> CONTACT'S E-MAIL: <u>slanham@mptlawfirm.com</u>	

APPLICANT IS THE:

OWNER'S AGENT
 PROPERTY OWNER
 CONTRACT PURCHASER

PRESENT ZONING DISTRICTS(S): C-2 REQUESTED ZONING DISTRICT: O-1 w/ SUPs
 LAND DISTRICT(S): 7 LAND LOT(S): 018 ACREAGE: +/-16.67
 ADDRESS OF PROPERTY: Hurricane Shoals Road & Old Peachtree Road
 PROPOSED DEVELOPMENT: Retirement Community, Independent Living

RESIDENTIAL DEVELOPMENT	NON-RESIDENTIAL DEVELOPMENT
No. of Lots/Dwelling Units: <u>240 units</u>	No. of Buildings/Lots: <u>NA</u>
Dwelling Unit Size (Sq. Ft.): <u>600+ square feet per unit</u>	Total Building Sq. Ft.: <u>NA</u>
Gross Density: <u>+/- 14.4 units per acre</u>	Density: <u>NA</u>
Net Density: <u>+/- 14.4 units per acre</u>	

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 18 of the 7th District, Gwinnett County, Georgia and being more particularly described as follows:

BEGINNING at the southerly end of a miter at the intersection of the southerly right-of-way line of Old Peachtree Road and the westerly right-of-way line of Hurricane Shoals Road, run along the westerly right-of-way line of Hurricane Shoals Road S 53°45'17" W a distance of 76.12 feet to a point; thence S 44°07'40" W a distance of 49.18 feet to a point; thence S 36°46'23" W a distance of 98.91 feet to a point; thence along a curve to the right, said curve having a chord bearing of S 50°13'19" W and a length of 391.79 feet and a radius of 2,970.00 feet, a distance of 392.08 feet to a point; thence S 32°37'28" W a distance of 52.98 feet to a point; thence along a curve to the right, said curve having a chord bearing of S 60°13'09" W and a length of 341.66 feet and a radius of 2,251.83 feet, a distance of 341.99 feet to a point; thence N30°42'08" W a distance of 995.38 feet to a point; thence N59°42'17" E a distance of 182.55 feet to a point; thence N23°03'47" E a distance of 200.18 feet to a point on the southerly right-of-way line of Old Peachtree Road; thence continuing along said right-of-way line S66°43'28" E a distance of 706.28 feet to a point; thence S 61°00'49" E a distance of 150.75 feet to a point; thence S 83°25'25" E a distance of 52.20 feet to a point; thence S 66°43'28" E a distance of 100.00 feet to a point; thence S 50°01'03" E a distance of 52.18 feet to a point; thence S 68°32'44" E a distance of 93.65 feet to a point; thence S 12°30'41" E a distance of 31.11 feet to a point; said point being the POINT OF BEGINNING.

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REZONING APPLICANT'S RESPONSE
STANDARDS GOVERNING THE EXERCISE OF THE ZONING POWER

PURSUANT TO REQUIREMENTS OF THE UNIFIED DEVELOPMENT ORDINANCE, 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 attached

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

Please see attached

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

Please see attached

- (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 attached

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

Please see attached

- (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 attached

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REZONING AND SPECIAL USE PERMIT APPLICANT'S RESPONSE
STANDARDS GOVERNING THE EXERCISE OF THE ZONING POWER

(A) Yes, the proposed Rezoning and Special Use Permit applications (the "Applications") will permit a use that is suitable in view of the use and development of adjacent and nearby properties. The proposed development will provide a transitional use from the commercial uses at the Hurricane Shoals Old Peachtree node to the residential uses to the west.

(B) No, the proposed development will not adversely affect the existing use or usability of adjacent or nearby properties. The proposed development will enhance the surrounding area and serve as an amenity for the community by providing additional housing options for seniors and allowing them to age in place closer to their families.

(C) Due to the location and layout of the subject property and the character of surrounding developments, the subject property does not have reasonable economic use as currently zoned.

(D) No, the proposed Applications will not result in an excessive or burdensome use of existing streets, transportation facilities, utilities or schools. The proposed development will generate less vehicular traffic than other permitted uses in the C-2 and O-1 zoning classifications.

(E) Yes, the proposed development is in conformity with the policy and intent of the Gwinnett County 2030 and 2040 Unified Plans. Policy Goal A.4.4 of the 2030 Plan is to "Support Expanded Housing Opportunities for Seniors." Similarly, the 2040 Plan specifically encourages senior living in the Property's designated character area.

(F) The Applicant submits that the commercial/retail nature of the Property and its close proximity to residential areas provides additional support for approval of the Applications as a transitional use.

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Matthew P. Benson
 Gerald Davidson, Jr.*
 Brian T. Easley
 Kelly O. Faber
 Christopher D. Holbrook
 Nicholas N. Kemper
 Shane M. Lanham
 Austen T. Mabe

Jeffrey R. Mahaffey
 Steven A. Pickens
 Catherine V. Schutz
 Thomas A. Simpson
 Andrew D. Stancil
 R. Lee Tucker, Jr.

*Of Counsel

**LETTER OF INTENT FOR
 REZONING AND SPECIAL USE PERMIT APPLICATIONS OF
 BEVERLY J. SEARLES FOUNDATION, INC.**

Mahaffey Pickens Tucker, LLP submits this letter of intent and related rezoning and special use permit applications (the “Applications”) on behalf of the Beverly J. Searles Foundation, Inc. (the “Applicant”) in order to develop an approximately 16.67-acre tract (the “Property”) located at the intersection of Old Peachtree Road and Hurricane Shoals Road just north of University Parkway (State Route 316). The Property is currently zoned C-2 and is located at an established commercial node. To the west, the Property is adjacent to land zoned RA-200 containing Hebron Christian Academy’s elementary school and the Retreat at Apalachee subdivision zoned R-ZT. Across Old Peachtree Road to the north is the Nichols Glen subdivision zoned R-ZT and to the east across Hurricane Shoals Road is a variety of commercial uses including a liquor store, self-storage facility, and convenience store with fuel pumps and restaurant. Additional land across the intersection and caddy corner from the subject Property is also zoned C-2.

The Applicant requests approval of the Applications in order to allow the construction of an approximately 300,000 square foot Independent Living Retirement Community. The Applicant is also partnering with Minnesota-based Dominion, which is a long-term owner, operator, developer and residential management company with 45+ years of experience in housing such as the proposed development. Dominion is among the Nation’s largest of such companies with over 30,000 units owned and managed. Dominion’s long-term approach and decades of experience would ensure a quality development for decades to come. Specifically, the Applicant is requesting (i) to down zone the Property from C-2 to the O-I zoning classification, (ii) a Special Use Permit for the use of Retirement Community, Independent Living, and (iii) an additional Special Use Permit for a building height increase to 65 feet.

The proposed development is compatible with the policies of the 2030 and 2040 Unified Plans which both encourage expanding housing options for seniors. The current 2030 Plan encourages land use decisions which allow residents to “age in place” in their current neighborhoods and communities as a way to increase the quality of life for all citizens of Gwinnett County. Expanding housing options for seniors allows current residents to remain in their communities as they progress through various stages of life and also provides housing options for senior citizens that retire from out of the area and choose to relocate closer to their families. Policy A.4.4 of the 2030 Plan is to “Support Expanded Housing Opportunities for

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Seniors.” According to the 2030 Plan, “as more people choose to ‘age in place’ and/or relocate to Gwinnett to be closer to children and grandchildren, demand for various forms of senior housing will rise.” The proposed development will create a community for seniors to “age in place” in close proximity to necessary services such as grocery stores, banks, churches, pharmacies, and health care services as well as recreational activities at Rabbit Hill Park. Additionally, the 2040 Plan provides that while Gwinnett has “a broadly younger population, by 2040 many of the people who fueled Gwinnett’s initial waves of growth when they were young people will be in a dramatically different phase of life. Providing senior housing options will be critical to ensuring these people are able to remain a part of our community.” Similar to the 2030 Plan’s character area designation, the 2040 Plan designates the Property as within the Emerging Suburban Character Area which specifically encourages senior living as one of its “Potential Development Types.” In addition, the Property is located in an area that shares many characteristics with the Neighborhood Node Character Area given the surrounding commercial and institutional uses. The 2040 Plan also encourages senior living in this character area.

In addition to being supported by the land use policies set forth in the Gwinnett 2030 and 2040 Plans, the proposed development is in line with traditional land planning policies by providing an appropriate transition between commercial, institutional, and residential land uses. Approval of the Applications will reduce the intensity of potential development on the Property and will provide an appropriate transition from the high-intensity commercial uses at the Hurricane Shoals Old Peachtree node and the lower-intensity single-family residential uses to the west.

The proposed retirement community is designed for active adults and will provide several amenities to serve future residents. Specifically, the community will include a community garden, courtyard, walkways, benches, and dog washing and walking areas. Interior amenities will include common spaces dedicated for a fitness center, business center, game, card, and craft room, theatre, laundry facilities and beauty salon. Residences would be provided with full kitchens including dishwasher, stove, refrigerator, and microwave. Further, kitchens come equipped with modern powder-based stovetop fire suppression canisters above the stove top. Additionally, each unit will feature an exterior patio/balcony.

The Applicant and its representatives welcome the opportunity to meet with staff of the Gwinnett County Department of Planning & Development to answer any questions or to address any concerns relating to the matters set forth in this letter or in the Applications filed herewith. The Applicant respectfully requests your approval of these Applications.

This 7th day of December, 2018.

Respectfully submitted,

MAHAFFEY PICKENS TUCKER, LLP



Shane M. Lanham
Attorneys for the 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.



Signature of Applicant

12/3/18

Date

Shane Lanham, Attorney for the Applicant

Type or Print Name and Title



Signature of Notary Public

12/3/18

Date



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REZONING APPLICANT'S CERTIFICATION

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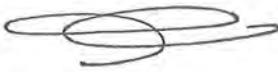
Signature of Applicant

11/30/2018

Date

DAVID S. SEARLES - JR.

Type or Print Name and Title



Signature of Notary Public

11/30/2018

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.

George Li

12/3/2018

Signature of Property Owner

Date

GEORGE LIU

Type or Print Name and Title

B. M. Major

12/3/18

Signature of Notary Public

Date



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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

 12/3/18 Shane M. Lanham, Attorney for Applicant

SIGNATURE OF APPLICANT'S ATTORNEY OR REPRESENTATIVE DATE TYPE OR PRINT NAME AND TITLE

 12/3/18
 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 Mahaffey Pickens Tucker, LLP
 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 attached.		

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

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CONFLICT OF INTEREST CERTIFICATION FOR REZONING/CHANGE IN
CONDITIONS AND SPECIAL USE PERMIT APPLICATIONS

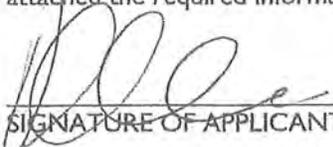
MAHAFFEY PICKENS TUCKER, LLP

<u>NAME AND OFFICIAL POSITION OF GOVERNMENT OFFICIAL</u>	<u>CONTRIBUTIONS</u>	<u>DATE</u>
John Heard	\$2000	02/20/2018
Lynnette Howard	\$1000	04/18/2018
John Heard	\$2000	10/02/2018

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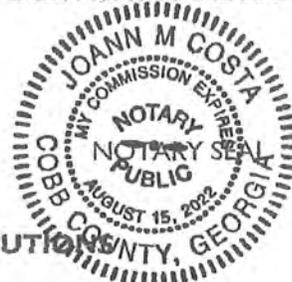
CONFLICT OF INTEREST CERTIFICATION FOR REZONING

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.

 November 30, 2018 David S. Searles, Jr., CFO
 SIGNATURE OF APPLICANT DATE TYPE OR PRINT NAME AND TITLE

SIGNATURE OF APPLICANT'S DATE TYPE OR PRINT NAME AND TITLE
 ATTORNEY OR REPRESENTATIVE

 11/30/2018
 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 David S. Searles, Jr.
 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)

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: 7 . 018 . 028
(Map Reference Number) District Land Lot Parcel



Signature of Applicant

12/3/18

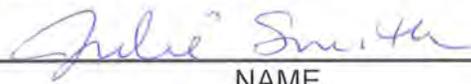
Date

Shane Lanham, Attorney for the 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)



NAME

TSA

TITLE

12-3-18

DATE

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JUSTIFICATION FOR REZONING AND SPECIAL USE PERMIT APPLICATIONS

The portions of the Gwinnett County Unified Development Ordinance (the “UDO”) which classify or may classify the property which is the subject of this Application (the “Property”) into any less intensive zoning classification other than as requested by the Applicant, are or would be unconstitutional in that they would destroy the Applicant's property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section I, Paragraph 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 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 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 development under the O-I classification with the Special Use Permits (“SUP”) as requested by the Applicant, and is not economically suitable for development under the present C-2 zoning classification of Gwinnett County. A denial of this Application 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, 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

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Constitution of the United States.

A refusal by the Gwinnett County Board of Commissioners to rezone the Property to the O-I zoning classification and grant the requested SUPs with such conditions as agreed to by the Applicant, 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 of the subject Property to the O-I classification, and/or grant of the SUPs, 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 SUP applications submitted by the Applicant relative to the Property be granted and that the Property be rezoned to the zoning classification as shown on the respective application.

This 7th day of December, 2018.

Respectfully submitted,

MAHAFFEY PICKENS TUCKER, LLP



Shane M. Lanham
Attorneys for Applicant

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