

Community Development  
4119 Adrian Street  
Tucker, GA 30084  
Phone: 678-597-9040  
Email: [permits@tuckerga.gov](mailto:permits@tuckerga.gov)  
Website: [www.tuckerga.gov](http://www.tuckerga.gov)

# Land Use Petition Application

Type of Application:  Rezoning    Comprehensive Plan Amendment    Special Land Use Permit    Concurrent Variance

## APPLICANT INFORMATION

Applicant is the:    Property Owner    Owner's Agent    Contract Purchaser

Name:            GMC REAL ESTATE ACQUISITIONS, LLC c/o Kathryn M. Zickert

Address:        1230 Peachtree Street

City:            Atlanta

State:          GA

Zip:            30309

Contact Name:            Kathryn M. Zickert

Phone:            (404) 815-3500

Email:            [kzickert@sgrlaw.com](mailto:kzickert@sgrlaw.com)

## OWNER INFORMATION

Name:            DEBRA A. HARDEN and B and A VENTURES, LLC

Address:

City:

State:

Zip:

Contact Name:

Phone:

Email:

## PROPERTY INFORMATION

Property Address:    4260 LAWRENCEVILLE HWY, TUCKER, GA 30084

Present Zoning District(s):    R-75

Requested Zoning District(s):    C-1

Present Land Use Category:    RESIDENTIAL MED. LOT

Requested Land Use Category:    LOCAL COMMERCIAL

Land District:    18th

Land Lot(s):    214

Acreage:    1.25

Proposed Development:    RESTAURANT AND SHOPS

Concurrent Variance(s):

## RESIDENTIAL DEVELOPMENT

No. of Lots/Dwelling Units:

Dwelling Unit Size (Sq. Ft.):

Density:

## NON-RESIDENTIAL DEVELOPMENT

No. of Buildings/Lots:    2

Total Building Sq. Ft.:    11,100

Density:    21.7%

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MAR 25 2019

**PROPERTY OWNER'S CERTIFICATION**

I do solemnly swear and attest, subject to criminal penalties for false swearing, that I am the legal owner, as reflected in the records of DeKalb County, Georgia, of the property identified below, which is the subject of the attached Land Use Petition before the City of Tucker, Georgia. As the legal owner of record of the subject property, I hereby authorize the individual named below to act as the applicant in the pursuit of the Application for Rezoning (RZ), Comprehensive Plan Amendment (CA), Special Land Use Permit (SLUP), & Concurrent Variance (CV) in request of the items indicated below.

I, B and A Ventures LLC, authorize, GMC Real Estate Acquisitions, LLC  
(Property Owner) c/o Kathryn M. Zickert (Applicant)

to file for RZ and SLUP, at 4260 Lawrenceville Hwy, Tucker, GA 30084  
(RZ, CA, SLUP, CV) (Address)

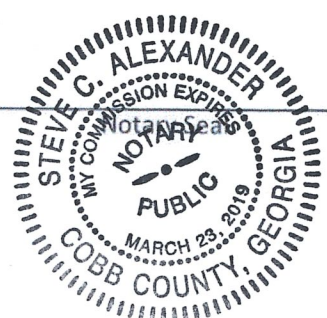
on this date March, 15, 20 19  
(Month) (Day)

- I understand that if a rezoning is denied or assigned a zoning classification other than the classification requested in the application, then no portion of the same property may again be considered for rezoning for a period of twenty-four (24) months from the date of the mayor and city councils' final decision.
- I understand that if an application for a special land use permit affecting all or a portion of the same property for which an application for the same special land use was denied shall not be submitted before twenty-four (24) months have passed from the date of final decision by the mayor and city council on the previous special land use permit.
- I understand that failure to supply all required information (per the relevant Applicant Checklists and requirements of the Tucker Zoning Ordinance) will result in REJECTION OF THE APPLICATION.
- I understand that preliminary approval of my design plan does not authorize final approval of my zoning or signage request. I agree to arrange additional permitting separately, after approval is obtained.
- I understand that representation associated with this application on behalf of the property owner, project coordinator, potential property owner, agent or such other representative shall be binding.

[Signature] 3-15-19  
Signature of Property Owner Date

B and A Ventures, LLC  
Type or Print Name and Title

[Signature] 3/15/19  
Signature of Notary Public Date



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RZ-19-0003  
SLUP-19-0006

**PROPERTY OWNER'S CERTIFICATION**

I do solemnly swear and attest, subject to criminal penalties for false swearing, that I am the legal owner, as reflected in the records of DeKalb County, Georgia, of the property identified below, which is the subject of the attached Land Use Petition before the City of Tucker, Georgia. As the legal owner of record of the subject property, I hereby authorize the individual named below to act as the applicant in the pursuit of the Application for Rezoning (RZ), Comprehensive Plan Amendment (CA), Special Land Use Permit (SLUP), & Concurrent Variance (CV) in request of the items indicated below.

I, DEBRA A. HARDEN, authorize, GMC Real Estate Acquisitions, LLC  
(Property Owner) c/o Kathryn M. Zickert  
(Applicant)

to file for RZ and SLUP, at 4260 Lawrenceville Hwy, Tucker, GA 30084  
(RZ, CA, SLUP, CV) (Address)

on this date March 19, 2019  
(Month) (Day)

- I understand that if a rezoning is denied or assigned a zoning classification other than the classification requested in the application, then no portion of the same property may again be considered for rezoning for a period of twenty-four (24) months from the date of the mayor and city councils' final decision.
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Debra A. Harden  
Signature of Property Owner

3/19/2019  
Date

Debra A. Harden  
Type or Print Name and Title

Pedro A. Castro  
Signature of Notary Public

03/19/2019  
Date

Notary Seal  
**PEDRO A CASTRO**  
**NOTARY PUBLIC**  
**GWINNETT COUNTY, GEORGIA**  
**MY COMM. EXPIRES 05/08/2022**

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**APPLICANT'S CERTIFICATION**

THE UNDERSIGNED BELOW STATES UNDER OATH THAT THEY ARE AUTHORIZED TO MAKE THIS APPLICATION. THE UNDERSIGNED IS AWARE THAT NO APPLICATION OR REAPPLICATION AFFECTING THE SAME LAND SHALL BE ACTED UPON WITHIN 24 MONTHS FROM THE DATE OF LAST ACTION BY THE MAYOR AND CITY COUNCIL.

Kathryn M. Zickert 3/25/19  
Signature of Applicant Date

Kathryn M. Zickert, Attorney for GMC Real Estate Acquisitions, LLC  
Type or Print Name and Title

Patricia E. Gilchrist 3/25/19  
Signature of Notary Public Date Notary Seal



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## **Standards and Factors Governing Review of proposed amendments to the official zoning map**

Section 7.3.5 of the City of Tucker Zoning Ordinance lists standards and factors that are found to be relevant to the exercise of the city's zoning powers and shall govern the review of all proposed amendments to the Official Zoning Map. The applicant shall write a detailed written analysis of each standard and factor as it relates to their proposed project.

## **STANDARDS AND FACTORS GOVERNING REVIEW OF PROPOSED AMENDMENTS TO THE COMPREHENSIVE PLAN MAP**

Section 7.3.4 of the City of Tucker Zoning Ordinance lists standards and factors that are found to be relevant for evaluating applications for amendments to the comprehensive plan map and shall govern the review of all proposed amendments to the comprehensive plan map. The applicant shall write a detailed written analysis of each standard and factor as it relates to their proposed project.

## **SPECIAL LAND USE PERMIT CRITERIA**

Section 7.4.6 and 7.4.7 of the City of Tucker Zoning Ordinance lists specific criteria that shall be considered by the community development department, the planning commission, and the mayor and city council in evaluating and deciding any application for a special land use permit. No application for a special land use permit shall be granted by the mayor and city council unless satisfactory provisions and arrangements have been made concerning each of the following factors, all of which are applicable to each application, and the application is in compliance with all applicable regulations in Article 4. The applicant shall write a detailed written analysis of criteria as it relates to their proposed project.

## **CONCURRENT VARIANCE CRITERIA**

Section 7.5.3 of the City of Tucker Zoning Ordinance lists specific criteria the board shall use in determining whether or not to grant a variance. The applicant shall provide a written analysis of how the request complies with this criteria, if they are requesting a concurrent variance.

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# ENVIRONMENTAL SITE ANALYSIS (ESA) FORM

Analyze the impact of the proposed rezoning and provide a written point-by-point response to Points 1 through 3:

1. **CONFORMANCE WITH THE COMPREHENSIVE PLAN.** Describe the proposed project and the existing environmental conditions on the site. Describe adjacent properties. Include a site plan that depicts the proposed project.

Describe how the project conforms to the Comprehensive Land Use Plan. Include the portion of the Comprehensive Plan Land Use Map which supports the project's conformity to the Plan. Evaluate the proposed project with respect to the land use suggestion of the Comprehensive Plan as well as any pertinent Plan policies.

2. **ENVIRONMENTAL IMPACTS OF THE PROPOSED PROJECT.** For each environmental site feature listed below, indicate the presence or absence of that feature on the property. Describe how the proposed project may encroach or adversely affect an environmental site feature. Information on environmental site features may be obtained from the indicated source(s).

a. Wetlands

- U. S. Fish and Wildlife Service, National Wetlands Inventory (<http://wetlands.fws.gov/downloads.htm>)
- Georgia Geologic Survey (404-656-3214)
- Field observation and subsequent wetlands delineation/survey if applicable

b. Floodplain

- Federal Emergency Management Agency (<http://www.fema.org>)
- Field observation and verification

c. Streams/stream buffers

- Field observation and verification

d. Slopes exceeding 25 percent over a 10-foot rise in elevation

- United States Geologic Survey Topographic Quadrangle Map
- Field observation and verification

e. Vegetation

- United States Department of Agriculture, Nature Resource Conservation Service
- Field observation

f. Wildlife Species (including fish)

- United States Fish and Wildlife Service
- Georgia Department of Natural Services, Wildlife Resources Division, Natural Heritage Program
- Field observation

g. Archeological/Historical Sites

- Historic Resources Survey
- Georgia Department of Natural Resources, Historic Preservation Division
- Field observation and verification

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## ENVIRONMENTAL SITE ANALYSIS (ESA) FORM (CONTINUED)

3. **PROJECT IMPLEMENTATION MEASURES.** Describe how the project implements each of the measures listed below as applicable. Indicate specific implementation measures required to protect environmental site feature(s) that may be impacted.
- a. Protection of environmentally sensitive areas, i.e., floodplain, slopes exceeding 25 percent, river corridors.
  - b. Protection of water quality
  - c. Minimization of negative impacts on existing infrastructure
  - d. Minimization on archeological/historically significant areas
  - e. Minimization of negative impacts on environmentally stressed communities where environmentally stressed communities are defined as communities exposed to a minimum of two environmentally adverse conditions resulting from public and private municipal (e.g., solid waste and wastewater treatment facilities, utilities, airports, and railroads) and industrial (e.g., landfills, quarries and manufacturing facilities) uses.
  - f. Creation and preservation of green space and open space
  - g. Protection of citizens from the negative impacts of noise and lighting
  - h. Protection of parks and recreational green space
  - i. Minimization of impacts to wildlife habitats

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LEGAL DESCRIPTION COMMITMENT #190175GA (TRACTS "A" -and- "B"):

All that Tract or parcel of land lying and being in Land Lot 214 of the 18th District of DeKalb County, Georgia, being more particularly described as follows:

BEGINNING at an iron pin at the intersection formed by the North line of Land Lot 214 and the Southeasterly side of Burns Drive; thence Easterly along the said Land Lot Line 211.8 feet to an iron pin at the intersection formed by the said Land Lot Line and the Northwesterly side of Lawrenceville Highway (U.S. Highway No. 29) [based on an 80 foot right of way]; thence Southwesterly along the Northwesterly side of Lawrenceville Highway 146.6 feet to an iron pin; thence Northwesterly 226 feet to an iron pin on the Southeasterly side of Burns Drive; thence Northeasterly along the Southeasterly side of Burns Drive 113 feet to the iron pin at point of beginning. Being described according to Plat of Survey made by A.J. Poe, Registered Surveyor, dated February 13, 1956.

LESS and EXCEPT that portion of the above property described in that Right of Way Deed dated October 4, 1982 and recorded in Deed Book 4666, Page 510, DeKalb County, Georgia records.

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LEGAL DESCRIPTION COMMITMENT #GA251810108V (TRACT "C"):

All that tract or parcel of land lying and being in the 18th District of originally Henry, now DeKalb County, Georgia, beginning at a point one hundred fourteen (114) feet South of the original land line between Land Lot Nos. 214 and 225 on the West side of what is known as Stone Mountain Road and running thence along the East side of said road one hundred forty-eight (148) feet; thence East two hundred thirty eight (238) feet to an iron corner; thence North one hundred forty-eight (148) feet to an iron corner; thence West two hundred thirty-eight (238) feet to the point of beginning.

Being the same land conveyed to Debra A. Harden by virtue of Quitclaim Deed from Betty P. Lanford, individually and as Successor Executor of the Estate of Frances Britt Lanford, dated June 16, 2010, recorded February 22, 2011 in Deed Book 22367 Page 158, DeKalb County, Georgia records.

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SLUP-19-0006



ELEVATION PICTURED IS FOR REFERENCE ONLY, AND DOES NOT REFLECT THE FINAL DESIGN FOR THE NOTED PROJECT LOCATION. FACADE DESIGN AND CORRESPONDING MATERIALS MAY CHANGE PENDING FURTHER DESIGN DEVELOPMENT RELATIVE TO PROJECT AND LOCAL DESIGN STANDARDS

1 EAST ELEVATION (FRONTING LAWRENCEVILLE HWY)  
SCALE: 1/16" = 1'-0"

GEYER MORRIS  
COMPANY

LAWRENCEVILLE HWY

TUCKER, GEORGIA

PHILLIPS

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SLUP-19-0006

STATEMENT OF INTENT

and

Other Material Required by  
City of Tucker Zoning Ordinance  
for the  
Rezoning Application

of

**GMC REAL ESTATE ACQUISITIONS, LLC**

for

±1.25 Acres of Land  
located in  
Land Lot 214, 18<sup>th</sup> District, DeKalb County

Address:  
4260 Lawrenceville Highway

Submitted for Applicant by:

Kathryn M. Zickert  
Dennis J. Webb, Jr.  
J. Alexander Brock  
Smith, Gambrell & Russell, LLP  
Promenade II Suite 3100  
1230 Peachtree Street, NE  
Atlanta, Georgia 30309  
404-815-3500

## **I. INTRODUCTION AND ANALYSIS**

This application seeks to rezone ±1.25 acre property in the City of Tucker from C-1 and R-75 to C-1 to allow a retail and restaurant development. The property is located on the west side of Lawrenceville Highway, in the southwestern quadrant of its intersection with Lynburn Drive (the “Subject Property”). The Subject Property is more particularly located at 4270 and 4260 Lawrenceville Highway, (Parcel IDs 18 214 10 025 and 18 214 10 026, respectively). The parcel at 4270 Lawrenceville Highway is zoned C-1 and the parcel at 4260 Lawrenceville Highway is zoned R-75, both of which are in the Downtown Overlay. The Applicant intends to develop both parcels with a commercial shops building, containing a mix of restaurant and retail, along with a drive-thru restaurant on southern parcel and appurtenant site improvements (the “Proposed Development”). This application seeks to rezone both parcels from C-1 and R-75 to C-1 to allow the Proposed Development.<sup>1</sup>

The Subject Property currently consists of two vacant single family homes that were most recently used for commercial businesses. The Applicant intends to completely remove the existing homes and redevelop the property for the Proposed Development. The Proposed Development is entirely consistent with the surrounding development. To the north, the Subject Property abuts the right-of-way of Lynburn Drive. Across Lynburn Drive is property zoned Neighborhood Shopping, owner by LSB Investments, LLLP (the “LSB property”). The LSB property is developed with a Starbucks with a drive thru and two shops buildings, containing a mix of restaurant and retail uses, which is a similar mix to what the Applicant is now proposing. To the east the Subject Property abuts the right-of-way of Lawrenceville Highway. Further east,

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<sup>1</sup> The Applicant is including the appropriately zoned C-1 parcel, because it includes a portion of the Proposed Development and it is likely that the rezoning may be conditioned to a site plan for the entire development (including the existing C-1 parcel) or otherwise conditioned.

across Lawrenceville Highway is the Cofer Crossing Shopping Center, zoned C-1. The Cofer Crossing Shopping Center has a number outparcels, one of which contains a Taco Bell/Kentucky Fried Chicken drive-thru restaurant. South of the Subject Property is the H&M Auto and Tire Service property, zoned C-2. To the west the Subject Property abuts the right-of-way of Burns Drive (aka Railroad Avenue). Across Burns Drive is the Happy Faces Family of Companies Employment Agency, which is zoned C-2. It is apparent from the surrounding commercial uses and zoning districts that the proposed C-1 zoning is entirely appropriate and complementary to the existing developments.

In fact, the Subject Property is one of the only R-75 properties in the surrounding area (the others being 4310 Lynburn Drive and the First Christian Church of Tucker, located at 4291 Lynburn Drive.) The Subject Property's R-75 zoning exists as an island of residential zoning in an otherwise commercial area. The R-75 zoning is likely a leftover vestige from when this section of Lawrenceville Highway was less heavily developed and more conducive to single family residential. Since Lawrenceville Highway's growth into a five-lane highway, the Subject Property has become unsuitable for residential use and it is highly unlikely that it will ever be used for such purpose. As evidence of the unsuitability of residential use, the existing single family homes have been used commercial businesses in recent years and the yards have served as parking lots. Accordingly, the rezoning of the Subject Property to C-1 will allow a development that is harmonious with the surrounding commercial businesses.

Any negative impact of the Proposed Development will be minimized through the incorporation of a number of design elements. As an example, the Subject Property is currently served through three (3) full access curb-cuts, one on Lawrenceville Highway, Lynburn Drive and Burns Drive. The Applicant is proposing the elimination of the access point on Lynburn

Drive and changing the access point on Lawrenceville Highway to right-in/right-out movements only. The effect of these modifications improves the movement of vehicles into and out of the Proposed Development far beyond what exists today. The Applicant is also proposing, among other items, to improve the pedestrian walkability by adding a 15-foot wide streetscape along the entire frontage of Lawrenceville Highway and Lynburn Drive and orienting the buildings toward Lawrenceville Highway. This will improve the pedestrian walkability to the area and help activate the Lawrenceville Highway streetscape.

The Applicant submits this document as a Statement of Intent with regard to this Application, a preservation of the Applicant's constitutional rights, and a written justification for the Application as required by the City of Tucker Zoning Ordinance, § 7.3.5. A Site Plan has been filed with the original Application, along with the other required materials.

### **III. ZONING HISTORY**

The Subject Property is zoned R-75 and being within the Downtown Overlay, Village Subarea. Also, it is designated as being "Downtown" (DT) on the City's Future Land Use Map. The Applicant's research of the Subject Property's has not revealed any prior rezonings or conditions that affect the property. The DT character area fully allows the proposed C-1 Zoning.

### **IV. IMPACT ANALYSIS**

#### **A. WHETHER THE ZONING PROPOSAL IS IN CONFORMITY WITH THE POLICY AND INTENT OF THE COMPREHENSIVE PLAN.**

The proposed use is consistent with the Tucker Tomorrow Comprehensive Plan, which indicates the Subject Property as being within the DT character area. The Comprehensive Plan's stated policy and intent for the DT character area is to create a "place where more development is encouraged, specifically a relatively high-density mix of retail, office, services, and employment." The proposed retail and restaurant uses fall neatly within this stated intent.

Furthermore, the Proposed Development meets many of the expressed goals for the Downtown character area:

- Encouraging a greater density (up to three stories) across the rest of downtown, including allowances for zero-lot line development for both commercial and residential uses. Of significant benefit to the pedestrian experience, zero-lot line development allows businesses to construct buildings with storefront windows along the sidewalk
- Implementing streetscape designs that are highly pedestrian oriented, with strong, walkable connections between different uses.
- Clearly defining road edges by locating buildings at roadside with parking in the rear.

The proposed use, therefore, is suitable vis-a-vis the policies of the Comprehensive Plan.

**B. WHETHER THE ZONING PROPOSAL WILL PERMIT A USE THAT IS SUITABLE IN VIEW OF THE USE AND DEVELOPMENT OF ADJACENT AND NEARBY PROPERTY OR PROPERTIES.**

Yes. The adjacent and nearby properties are a mix of commercial uses and the proposed C-1 zoning is complementary and suitable to these uses. The proposed retail and restaurant use will be complementary to the nearby commercial uses and suitable for the property's location on Lawrenceville Highway.

**C. WHETHER THE PROPERTY TO BE AFFECTED BY THE ZONING PROPOSAL HAS A REASONABLE ECONOMIC USE AS CURRENTLY ZONED.**

No. It is highly unlikely that the Subject Property will ever be redeveloped or used in a manner consistent with the current R-75 zoning. The R-75 parcel was, until recently, occupied by a commercial use (e.g. a nail salon). This use of the Subject Property for non-residential purposes indicates the incompatibility of the current R-75 zoning.

**D. WHETHER THE ZONING PROPOSAL WILL ADVERSELY AFFECT THE EXISTING USE OR USABILITY OF ADJACENT OR NEARBY PROPERTY OR PROPERTIES.**

No. The primary goal of land use planning is to eliminate or minimize the potential adverse effect of the dissimilar uses of adjacent tracts of land by establishing a harmonious transition between them. The traditional method of achieving this goal is through both “off-site” and “on-site” transition. Off-site transition consists of avoiding the placement of dissimilar uses next to each other by placing uses of intermediate density between them. On-site transition, which might either supplement or replace off-site transition, consists of measures imposed on or adjacent to the more intensive use to protect neighborhoods from adverse effects. Thus, this method of land use planning includes measures such as maintenance of buffers; walls, fences or berms; lighting control; noise control; aesthetic control; limitations on building location and orientation; location of or restrictions upon accessory uses; and prohibition of certain uses or hours of use normally permitted for that district. Many of these devices have been or will be utilized in this application.

The Proposed Development will pay careful attention to scale, buffering, setbacks, and landscaping so that it will blend and complement the adjacent developments. Accordingly, rezoning the Subject Property to C-1 will not adversely affect the nearby existing uses and will enhance the adjacent properties.

**E. 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 ZONING PROPOSAL.**

As stated in previous paragraphs, the history and the other surrounding uses of the Subject Property demonstrates that it is not viable for residential use. As a result, the property has not functioned as a residential use in a number of years and will likely remain vacant, absent



the rezoning to a favorable district. Its location directly fronting a major arterial, coupled with the actual development that has occurred in the area, make the Subject Property an ideal location for the Proposed Development. The current zoning limits the Subject Property's development to residential single family and limited other uses, but the trend in the surrounding area, coupled with the location of the Subject Property, leads any proposed development of the property towards a commercial use.

Hence, the zoning requested here conforms to the ideals and spirit of the City of Tucker's Zoning Ordinance and complements the existing uses in the area, while developing a practical, useful and marketable development that will redevelop an underutilized property into an asset for the immediate area and the city as a whole.

**F. WHETHER THE ZONING PROPOSAL WILL ADVERSELY AFFECT HISTORIC BUILDINGS, SITES, DISTRICTS, OR ARCHAEOLOGICAL RESOURCES.**

The Applicant is not aware of any historic buildings, sites, districts, or archaeological resources either on the Subject Property or located in the immediate vicinity that would suffer adverse impacts from the rezoning requested.

**G. WHETHER THE REQUESTED REZONING WILL NOT RESULT IN A USE WHICH WILL OR COULD CAUSE EXCESSIVE OR BURDENSOME USE OF EXISTING STREETS, TRANSPORTATION FACILITIES, UTILITIES, OR SCHOOLS.**

No. The proposed development will not overly burden existing streets or transportation facilities. According to the ITE Trip Generation Manual, the ±8,300 square feet of specialty retail (ITE category 826)<sup>2</sup> and the Arby's drive-thru restaurant<sup>3</sup> will generate 57 trips during the

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<sup>2</sup> ITE category 826, Specialty Retail Center, accounts for shops buildings with both retail and small restaurant use.

<sup>3</sup> Trip generation for the Arby's restaurant is based on data provided by Arby's for its actual restaurant operations.

A.M. peak hour<sup>4</sup>, and 122 trips during the P.M. peak hour. The Subject Property is located on Lawrenceville Highway, classified as a Major Arterial, and with quick access to the signaled intersection with Lynburn Drive. Lawrenceville Highway is a five-lane state highway classified as a major arterial, which indicates that the road is intended to carry large volumes of traffic. This major roadway is more than adequate to accommodate the additional trips the proposed development will generate. Furthermore, the proposed drive-thru restaurant does not serve breakfast and will not contribute any trips to the AM peak hour. In fact, the drive-thru will have its peak times during the lunch hour, which is opposite the normal peak hours on the adjacent roadways. Therefore, the proposed development is not anticipated to contribute significantly to the trips on the surrounding roadways.

As for utilities, the Subject Property has access to water and sewer. Finally, the Proposed Development is commercial and will have no impact on local schools.

#### **H. WHETHER THE ZONING PROPOSAL ADVERSELY IMPACTS THE ENVIRONMENT OR SURROUNDING NATURAL RESOURCES.**

The Applicant will comply with all federal, state, and City regulations relating to environmental protection to ensure that the proposed development will not adversely affect the environment.

#### **V. NOTICE OF CONSTITUTIONAL CHALLENGES AND PRESERVATION OF CONSTITUTIONAL RIGHTS**

The zoning on the Subject Property (and any intervening zoning district other than that requested) is unconstitutional. Further, the Zoning Ordinance of the City of Tucker, Georgia lacks adequate standards for the Mayor and City Council to exercise their power to zone and rezone. In essence, the standards are not sufficient to contain the discretion of the Mayor and

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<sup>4</sup> The proposed drive-thru restaurant does not serve breakfast and will not contribute any trips to the AM peak hour.

City Council and to provide the Courts with a reasonable basis for judicial review. Because the stated standards (individually and collectively) are too vague and uncertain to provide reasonable guidance to the Mayor and City Council, the Zoning Ordinance violates the Fifth and Fourteenth Amendments of the Constitution of the United States in matters of zoning. The Zoning Ordinance also violates Article I, Section III, Paragraph 1; and Article I, Paragraphs 1 and 2 of the Constitution of State of Georgia, 1983.

The Mayor and City Council are granted the power to zone pursuant to Article IX, Section II, Paragraph 4 of the Constitution of the State of Georgia, 1983. It is a power which must be fairly exercised. Based on this element of fairness, the Zoning Ordinance of the City of Tucker, Georgia violates Article IX, Section II, Paragraph 4 of the Constitution of the State of Georgia, 1983.

The Zoning Ordinance presently in effect is contrary to the best interest of the health and welfare of the citizens of the City of Tucker, Georgia, and constitutes an arbitrary and capricious act. As a result, the Zoning Ordinance is in violation of Article I, Section I, Paragraphs 1 and 2 of the Constitution of the State of Georgia 1983; Article I, Section III, Paragraph 1 of the Constitution of the State of Georgia; and Article I, Section II, Paragraph 3 of the Constitution of the State of Georgia, 1983. Furthermore, the Zoning Ordinance violates the due process clause and equal protection clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

In addition, the Zoning Ordinance presently in effect is unconstitutional in that it renders this property unusable and destroys its marketability. Therefore, the Zoning Ordinance constitutes a taking of applicant's property without just and adequate compensation and without due process of law in violation of the Fifth and Fourteenth Amendments to the United States

Constitutional and in violation of Article I, Section I, Paragraph 1 and Article I, Section III, Paragraph 1(a) of the Constitution of Georgia.

The failure to rezone the subject property as requested, would constitute the taking of property without due process and without the payment of adequate compensation in violation of Article I, Section I, Paragraph 1 of the Constitution of the State of Georgia, 1983; and the Fifth and Fourteenth Amendments of the Constitution of the United States.

Failure to grant the application for rezoning or to zone the property to any other classification including other intervening classifications, would be contrary to the best interest of the health and welfare of the citizens of the City of Tucker, Georgia, and would further constitute an arbitrary and capricious act. As such, failure to grant the application would constitute a Violation of Article I, Section I, Paragraph 1 of the Constitution of the State of Georgia, 1983; and Article I, Section III, Paragraph 1 of the Constitution of the State of Georgia; and Article I, Section II, Paragraph 3 of the Constitution of the State of Georgia, 1983, together with the due process clause and equal protection clauses of Fifth and Fourteenth Amendments to the Constitution of the United States of America.

Any limitation on the time for presentation of the issues before the Mayor and City Council who have the power to zone and rezone is a violation of the guarantees of free speech under Article I, Section I, Paragraph 5 of the Constitution of the State of Georgia, 1983 and the First Amendment of the Constitution of the United States of America. Further, said limitations are in violation of the right to petition and assemble, in violation of Article I, Section I, Paragraph IX of the Constitution of Georgia, 1983 and the First Amendment of the Constitution of the United States of America as well as the due process clauses of the Constitution of Georgia, 1983 and the Constitution of the United States of America.

The Zoning Ordinance of the City of Tucker is unlawful, null and void in that its adoption and map adoption/maintenance did not comply with the requirements of its predecessor ordinance and/or the Zoning Procedures Law, O.C.G.A. § 36-66-1, et seq.

**VI. CONCLUSION**

For the foregoing reasons, the Applicant respectfully requests that the Rezoning Application at issue be approved. The Applicant also invites and welcomes any comments from Staff or other officials of the City of Tucker so that such recommendations or input might be incorporated as conditions of approval of this Application.

This 25<sup>th</sup> day of March, 2019.

Respectfully submitted,



Kathryn M. Zickert  
Dennis J. Webb, Jr.  
J. Alexander Brock  
Attorneys For Applicant

Smith, Gambrell & Russell, LLP  
Promenade II, suite 3100  
1230 Peachtree Street, N.E.  
Atlanta, Georgia 30309  
404-815-3500

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MAR 25 2019

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Department

RZ-19-0003  
SLUP-19-0006

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**STATEMENT OF INTENT**

and

Other Material Required by  
City of Tucker Zoning Ordinance  
for the  
Special Land Use Permit Application

of

**GMC REAL ESTATE ACQUISITIONS, LLC**

for

±0.82 Acres of Land  
located in  
Land Lot 214, 18<sup>th</sup> District, DeKalb County

Address:  
4260 Lawrenceville Highway

Submitted for Applicant by:

Kathryn M. Zickert  
Dennis J. Webb, Jr.  
J. Alexander Brock  
Smith, Gambrell & Russell, LLP  
Promenade II Suite 3100  
1230 Peachtree Street, NE  
Atlanta, Georgia 30309  
404-815-3500

## **I. INTRODUCTION AND ANALYSIS**

This application seeks a Special Land Use Permit (“SLUP”) to allow the development of a restaurant with drive-thru use on a ±0.82 acre property in the City of Tucker. The property is located on the west side of Lawrenceville Highway, approximately 107-feet south of its intersection with Lynburn Drive (the “Subject Property”). The Subject Property is more particularly located at 4260 Lawrenceville Highway, (Parcel ID 18 214 10 026) and is zoned R-75 and in the Downtown Overlay. The petitioner has also submitted a concurrent application to re-zone the Subject Property to C-1.

The Subject Property currently consists of a vacant single family home that was most recently used as a commercial nail salon. The Applicant intends to remove the existing residential structure and redevelop the property for a proposed Arby’s restaurant with both inside seating and a drive-thru window along with appurtenant site improvements (the “Proposed Development”). The restaurant will offer lunch and dinner menus, but is closed for breakfast. Additionally, the Proposed Development will be a part of the redevelopment of the adjacent property at 4270 Lawrenceville Highway (the “Northern Tract” and collectively with the Subject Property the “Overall Tract”). The Northern Tract will contain a shops building with restaurant and retail uses and will be developed concurrently with the Proposed Development (collectively the “Overall Development”).

The proposed C-1 zoning district allows restaurants with a drive-thru only through a SLUP if it is located within an activity center. The City of Tucker’s Zoning Map, Zoning Ordinance and the Comprehensive Plan do not list the Subject Property within any activity center.<sup>1</sup> However, in conversations with City Staff it is the City’s interpretation that the

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<sup>1</sup> The only activity center noted within the City of Tucker’s Zoning Ordinance and Comprehensive Plan is the Regional Activity Center, which is not inclusive of the Subject Property.

Downtown character area was previously listed as an activity center and is still interpreted as such, despite being not labeled in the current Comprehensive Plan. Although the Applicant disagrees with this statement, out of an abundance of caution it is filing this request for a Special Land Use Permit to allow a restaurant with a drive-thru on the Subject Property.

The proposed use is consistent with the surrounding development. To the north of the Subject Property is the Northern Tract. The Northern Tract is zoned C-1 and is included with the rezoning of the Subject Property, but is not subject to the instant SLUP application. Further north, the Northern Tract abuts the right-of-way of Lynburn Drive. Across Lynburn Drive is property zoned Neighborhood Shopping, owner by LSB Investments, LLLP (the “LSB property”). The LSB property contains a Starbucks with a drive thru and two shops buildings, containing a mix of restaurant and retail uses, a similar mix to what the Applicant is now proposing. To the east the Subject Property abuts the right-of-way of Lawrenceville Highway. Further east, across Lawrenceville Highway is the Cofer Crossing Shopping Center, zoned C-1. The Cofer Crossing Shopping Center has a number outparcels, one of which contains a Taco Bell/Kentucky Fried Chicken drive-thru restaurant. South of the Subject Property is the H&M Auto and Tire Service property, zoned C-2. To the west the Subject Property abuts the right-of-way of Burns Drive (aka Railroad Avenue). Across Burns Drive is the Happy Faces Family of Companies, Employment Agency, which is zoned C-2. It is apparent from the surround commercial and other restaurant drive-thru uses that the proposed SLUP application to allow a drive-thru is entirely appropriate.

The design of the Proposed Development is also incorporating a number of elements to help reduce and/or eliminate the impact from the proposed drive-thru. One of the larger impacts of any drive-thru is the traffic it may generate, however through careful design considerations,



the Applicant is reducing the potential impacts from the Arby's traffic. The Overall Tract is currently served through three (3) full access curb-cuts, one each on Lawrenceville Highway, Lynburn Drive and Burns Drive. The Applicant is proposing the elimination of the access point on Lynburn Drive and changing the access point on Lawrenceville Highway to right-in/right-out movements only. These modifications eliminate any left-turn movements onto and off of Lawrenceville Highway and directs much of the vehicular traffic away from Lawrenceville Highway and to the nearby signalized intersection. As an example, traffic leaving the property and seeking to go north on Lawrenceville Highway must exist the Proposed Development on Burns Drive and then turn at the signalized intersection at Lynburn Drive and Lawrenceville Highway. Cars traveling west will leave the property via the Burns Drive exit and access Lynburn Drive. Therefore, the only traffic from the drive-thru that is directly accessing Lawrenceville Highway through a right-hand turn movement and travelling south.

Additionally, the design provides sufficient drive-thru stacking to ensure that cars in the drive-thru lane do not negatively impact the internal traffic circulation of the shopping center. Also, the building's orientation places the drive-thru entrance at the rear of the property, away from Lawrenceville Highway. This orientation prevents the possibility of the stacking queue backing-up into the right-of-way and impacting street traffic.

Finally, Arby's operating hours limit the impacts to the peak traffic generating times. The Institute of Transportation Engineers (ITE) Trip Generation Manual (Ninth Edition) defines the peak AM hour as one hour of traffic between 7 and 9 a.m. and the peak PM hour as one hour between 4 and 6 p.m. Arby's does not have a breakfast menu and is not open during the peak AM hour, hence it will have no impact on the AM traffic generation. In addition, Arby's peak service is during the midday lunch hour, when business and other traffic is generally off-peak.

Although Arby's has dinner traffic it is not its major peak time and its contribution to vehicular trips on the nearby roadways will not be significant. According to data based on Arby's actual trip generation at its other restaurants of similar size, the proposed Arby's is expected to add 0 trips during the A.M. peak hour<sup>2</sup>, and 80 trips during the P.M. peak hour. As a result, the traffic generation is anticipated to be minimal on the adjacent roadways.

The Applicant submits this document as a Statement of Intent with regard to this Application, a preservation of the Applicant's constitutional rights, and a written justification for the Application as required by the City of Tucker Zoning Ordinance, § 7.4.6. A Site Plan has been filed with the original Application, along with the other required materials.

### **III. ZONING HISTORY**

The Subject Property is zoned R-75 and being within the Downtown Overlay, Village Subarea. Also, it is designated as being "Downtown" (DT) on the City's Future Land Use Map. The Applicant's research of the Subject Property's has not revealed any prior rezonings or conditions that affect the property. As noted in prior paragraphs, the Applicant is submitting a concurrent application to rezone the Subject Property to C-1. The DT character area fully allows the proposed C-1 Zoning.

### **IV. IMPACT ANALYSIS**

The following paragraphs are a written analysis of the criteria for the granting of a SLUP as outlined in the City of Tucker Zoning Ordinance § 7.4.6:

#### **A. ADEQUACY OF THE SIZE OF THE SITE FOR THE USE CONTEMPLATED AND WHETHER OR NOT ADEQUATE LAND AREA IS AVAILABLE FOR THE PROPOSED USE INCLUDING PROVISION OF ALL REQUIRED YARDS, OPEN SPACE, OFF-STREET PARKING, AND ALL OTHER APPLICABLE REQUIREMENTS OF THE ZONING DISTRICT IN WHICH THE USE IS PROPOSED TO BE LOCATED.**

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<sup>2</sup> The proposed drive-thru restaurant does not serve breakfast and will not contribute any trips to the AM peak hour.

The size of Subject Property is typical for the proposed use and provides ample room to allow for the required yards, setbacks and open space. The Overall Proposed development will have a total of 24% open space, where the Downtown Overlay, Village Zone only requires 10% open space. In addition there is adequate room for landscaping, parking and vehicle maneuvering. As a result, the Applicant is not seeking any variances to allow the Proposed Development.

**B. COMPATIBILITY OF THE PROPOSED USE WITH ADJACENT PROPERTIES AND LAND USES AND WITH OTHER PROPERTIES AND LAND USES IN THE DISTRICT. THE PROPOSED USE WILL BE COMPATIBLE WITH ADJACENT PROPERTIES.**

As outlined in the paragraphs above, the proposed development is completely compatible with the surround commercial uses. In addition, its location on Lawrenceville Highway makes it attractive for this type of development. The surrounding area and the City in general, contain a number of office and other commercial uses whose workers typically seek quick alternatives for lunchtime meals. The proposed Arby's fills this niche by allowing quick serve meals and drive thru access for those that seek fast meals to pick up and take back for eating at their workplace. As a result, the drive-thru use is compatible and a needed use for this area.

**C. ADEQUACY OF PUBLIC SERVICES, PUBLIC FACILITIES, AND UTILITIES TO SERVE THE PROPOSED USE.**

The Subject Property is currently served by water and sewer and the Applicant anticipates sufficient capacity to allow the proposed use. The Subject Property is in a highly commercial area, surrounded by like-uses and accordingly, the Applicant does not anticipate a significant burden to any of the public services or facilities as a result of allowing the proposed use.

**D. ADEQUACY OF THE PUBLIC STREET ON WHICH THE USE IS PROPOSED TO BE LOCATED AND WHETHER OR NOT THERE IS SUFFICIENT TRAFFIC-**

**CARRYING CAPACITY FOR THE USE PROPOSED SO AS NOT TO UNDULY INCREASE TRAFFIC AND CREATE CONGESTION IN THE AREA.**

Lawrenceville Highway is a state highway classified as a major arterial and Burns Drive and Lynburn Road are classified as local streets. *See DeKalb County 2014 Transportation Plan, Figure 5-2, Functional Classification Map: DeKalb County.* The traffic to be generated by the proposed project should not significantly affect traffic capacities along these roadways and surrounding streets, even at peak hours, and can be accommodated. Additionally, as stated in the previous paragraphs of this Statement of Intent, the Proposed Development will improve traffic flow via limited access to Lawrenceville Hwy.

**E. WHETHER OR NOT EXISTING LAND USES LOCATED ALONG ACCESS ROUTES TO THE SITE WILL BE ADVERSELY AFFECTED BY THE CHARACTER OF THE VEHICLES OR THE VOLUME OF TRAFFIC GENERATED BY THE PROPOSED USE.**

Character of vehicles and volume of traffic should be similar to adjacent uses. The Proposed Development is located on a corner of an existing signalized intersection and much of the traffic from the development will be routed to this intersection, so no adverse impact along a route is expected.

**F. ADEQUACY OF INGRESS AND EGRESS TO THE SUBJECT PROPERTY AND TO ALL PROPOSED BUILDINGS, STRUCTURES, AND USES THEREON, WITH PARTICULAR REFERENCE TO PEDESTRIAN AND AUTOMOTIVE SAFETY AND CONVENIENCE, TRAFFIC FLOW AND CONTROL, AND ACCESS IN THE EVENT OF FIRE OR OTHER EMERGENCY.**

Property has adequate pedestrian access and safety will be improved with the proposed sidewalk improvements along Lawrenceville Highway and Lynburn Drive. Additionally, automotive safety will be enhanced over the current condition with proposed limited access and roadway improvements.

**G. WHETHER OR NOT THE PROPOSED USE WILL CREATE ADVERSE IMPACTS UPON ANY ADJOINING LAND USE BY REASON OF NOISE, SMOKE, ODOR, DUST, OR VIBRATION GENERATED BY THE PROPOSED USE.**

No adverse impacts are anticipated due to noise, smoke, odor, dust or vibration. The proposed use is similar in nature and operation to uses within the vicinity of the Subject Property and is entirely appropriate for the area and in light of the surrounding uses.

**H. WHETHER OR NOT THE PROPOSED USE WILL CREATE ADVERSE IMPACTS UPON ANY ADJOINING LAND USE BY REASON OF THE HOURS OF OPERATION OF THE PROPOSED USE.**

The proposed use will not create adverse impacts upon adjoining land and will have standard hours of operation.

**I. WHETHER OR NOT THE PROPOSED USE WILL CREATE ADVERSE IMPACTS UPON ANY ADJOINING LAND USE BY REASON OF THE MANNER OF OPERATION OF THE PROPOSED USE.**

Manner of operation and proposed use will be consistent with nearby properties. No adverse impacts are expected. As described in further detail above, the surrounding properties are a mix of commercial uses of similar or more intense (e.g. the auto repair to the south) use. Consequently, the proposed drive-thru restaurant is not anticipated to negatively impact any of the surrounding properties, but in fact will add to and support the positive growth of the area.

**J. WHETHER OR NOT THE PROPOSED USE IS OTHERWISE CONSISTENT WITH THE REQUIREMENTS OF THE ZONING DISTRICT CLASSIFICATION IN WHICH THE USE IS PROPOSED TO BE LOCATED.**

The proposed use is entirely consistent with the C-1 zoning and the Downtown Village Zone overlay and would be allowed as of right, without the need for a SLUP, if it was not interpreted as being within an activity center. Indeed, and as noted above, the Applicant contends that the Subject Property is not within an activity center because of its omission of any such designation

within the City of Tucker's Zoning Ordinance and Comprehensive Plan. The Applicant has discussed this with City Staff, who is of an opposite opinion. In an effort to avoid delays to the development of the Subject Property the Applicant is hereby submitting the instant application under protest.

**K. WHETHER OR NOT THE PROPOSED USE IS CONSISTENT WITH THE POLICIES OF THE COMPREHENSIVE PLAN.**

The proposed use is consistent with the Tucker Tomorrow Comprehensive Plan, which indicates the Subject Property as being within the DT character area. The Comprehensive Plan's stated policy and intent for the DT character area is to create a "place where more development is encouraged, specifically a relatively high-density mix of retail, office, services, and employment." The proposed restaurant use falls neatly in line with this stated intent. Furthermore, the Proposed Development meets many of the stated goals for the Downtown character area:

- Encouraging a greater density (up to three stories) across the rest of downtown, including allowances for zero-lot line development for both commercial and residential uses. Of significant benefit to the pedestrian experience, zero-lot line development allows businesses to construct buildings with storefront windows along the sidewalk
- Implementing streetscape designs that are highly pedestrian oriented, with strong, walkable connections between different uses.
- Clearly defining road edges by locating buildings at roadside with parking in the rear.

The proposed use, therefore, is suitable vis-a-vis the policies of the Comprehensive Plan.

**L. WHETHER OR NOT THE PROPOSED USE PROVIDES FOR ALL REQUIRED BUFFER ZONES AND TRANSITIONAL BUFFER ZONES WHERE REQUIRED BY THE REGULATIONS OF THE ZONING DISTRICT IN WHICH THE USE IS PROPOSED TO BE LOCATED.**

The proposed use provides for all required buffer zones. The Subject Property is surrounded by right-of-way and compatibly zoned commercial property and, therefore, no transitional buffers are required.

**M. WHETHER OR NOT THERE IS ADEQUATE PROVISION OF REFUSE AND SERVICE AREAS.**

The proposed development will provide enclosed refuse enclosure areas and adequate service areas to the rear of the building.

**N. WHETHER THE LENGTH OF TIME FOR WHICH THE SPECIAL LAND USE PERMIT IS GRANTED SHOULD BE LIMITED IN DURATION.**

The proposed land use would not be temporary and would seek to serve the community for a significant period of time.

**O. WHETHER OR NOT THE SIZE, SCALE AND MASSING OF PROPOSED BUILDINGS ARE APPROPRIATE IN RELATION TO THE SIZE OF THE SUBJECT PROPERTY AND IN RELATION TO THE SIZE, SCALE AND MASSING OF ADJACENT AND NEARBY LOTS AND BUILDINGS.**

Size, scale and massing of the proposed building is standard and similar to adjacent properties. The Applicant has included a rendered elevation of the proposed Arby's building to show the architectural style and materials used in the façade. The materials and style are consistent with other commercial restaurants in the area and will add to the appeal of Lawrenceville Highway as a commercial center.

**P. WHETHER THE PROPOSED USE WILL ADVERSELY AFFECT HISTORIC BUILDINGS, SITES, DISTRICTS, OR ARCHAEOLOGICAL RESOURCES.**

The Applicant is not aware of any historic buildings, sites, districts, or archaeological resources either on the Subject Property or located in the immediate vicinity that would suffer adverse impacts from the rezoning requested.

**Q. WHETHER THE PROPOSED USE SATISFIES THE REQUIREMENTS CONTAINED WITHIN THE SUPPLEMENTAL REGULATIONS FOR SUCH SPECIAL LAND USE PERMIT.**

The design of the Proposed Development satisfies the requirements for drive-thru restaurants as outlined in the Tucker Zoning Ordinance §4.2.23. An analysis of each of these criteria is provided below:

- 1. Drive-through facilities shall not be located within sixty (60) feet of a residentially zoned property, as measured from any menu or speaker box to the property line of adjacent residential property.**

The drive through is approximately 318 linear feet from the nearest residentially zoned property (the First Christian Church of Tucker, located at 4291 Lynburn Drive)

- 2. No drive-through facility shall be located on a property less than ten thousand (10,000) square feet in area. Stacking spaces for queuing of cars shall be provided for the drive-through area as required in Article 6.**

The Subject Property is ±0.82 acres (±35,719 square feet) and the Overall Tract is ±1.25 acres (±54,450 square feet). The proposed design provides ten (10) stacking spaces and the entrance to the drive-thru lane is located more than 50-feet from any intersection, in compliance with Article 6.

- 3. Drive-through lanes and service windows shall be located to the side or rear of buildings. If on a corner lot, only the pickup window may be located on the side between the principal structure and a public street.**



The proposed drive-thru window is located on the south side of the building, away from the adjacent streets.

- 4. Drive-through canopies and other structures, where present, shall be constructed from the same materials as the primary building and with a similar level of architectural quality and detailing.**

The drive-through canopy will be architecturally similar to the rest of the building.

- 5. Speaker boxes shall be pointed away from adjacent residential properties. Speaker boxes shall not play music but shall only be used for communication for placing orders.**

There are no adjacent or nearby residential properties near the speaker box and the speaker box will not play music.

- 6. Stacking spaces shall be provided for any use having a drive-through facility or areas having drop-off and pick-up areas in accordance with the following requirements. Stacking spaces shall be a minimum of ten (10) feet wide and twenty-five (25) feet long. Stacking spaces shall begin at the last service window for the drive-through lane (typically the "pick-up" window).**

The drive-thru stacking is shown on the site plan attached to this application.

The stacking lane is 10-feet wide and is of sufficient length to provide stacking for 10 standard vehicles.

- 7. Financial institutions with drive-through windows, car washes (automated or staffed facilities), drive-through coffee sales facilities, and any other uses with drive-through facilities with the exception of restaurants with drive-through facilities, shall provide three stacking spaces for each window or drive-through service facility.**

N/A

- 8. Restaurants with drive-through facilities shall provide ten (10) stacking spaces per lane for each window or drive-through service facility.**

The proposed design calls for 10 stacking spaces for the one drive-thru lane.

**9. The following general standards shall apply to all stacking spaces and drive-through facilities:**

- a. Drive-through lanes shall not impede on and off-site traffic movements, shall not cross or pass through off-street parking areas, and shall not create a potentially unsafe condition where crossed by pedestrian access to a public entrance of a building.**

The proposed drive-thru lane is of sufficient width so that at least 10 cars stacking in the drive-thru lane do not back up into the parking lot or other travel lanes.

- b. Drive-through lanes shall be separated by striping or curbing from off-street parking areas. Individual lanes shall be striped, marked or otherwise distinctly delineated.**

The proposed drive-thru lane is delineated by striping.

- c. All drive-through facilities shall include a bypass lane with a minimum width of ten (10) feet, by which traffic may navigate around the drive-through facility without traveling in the drive-through lane. The bypass lane may share space with a parking access aisle.**

A 12-foot bypass lane is provided.

**10. Drive-through lanes must be set back five (5) feet from all lot lines and roadway right-of-way lines.**

The drive-thru lane is setback at least five (5) feet from all property lines. Refer to the site plan attached to this application.

**R. WHETHER OR NOT THE PROPOSED USE WILL CREATE A NEGATIVE SHADOW IMPACT ON ANY ADJOINING LOT OR BUILDING AS A RESULT OF THE PROPOSED BUILDING HEIGHT.**

The proposed building is one-story in height and no negative shadow impact on adjoining lot is expected.

**S. WHETHER THE PROPOSED USE WOULD RESULT IN A DISPROPORTIONATE PROLIFERATION OF THAT OR SIMILAR USES IN THE SUBJECT CHARACTER AREA;**

The proposed use is similar to several existing commercial uses within the area, but not the same. There are three other drive-thru restaurants within 500-feet of the Subject Property, however the operation of and market for each of these restaurants is very different. Unlike the nearby Starbucks, Taco Bell/KFC, and Chic-fil-A, the proposed Arby's does not offer a breakfast menu and is aimed toward the lunchtime crowds. In addition, the menus of each of these restaurants is very different, with Starbucks being mostly coffee sales. Arby's will not be adding another similar restaurant into the area, but instead will be adding variety to the quick serve dining choices for the City. Arby's serves a variety of sandwich items including its signature roast beef sandwiches, which are not offered at the other nearby drive-thru restaurants. This will be much appreciated by the surrounding workers and nearby residents and will add to the variety of dining in the City. It is the Applicant's firm belief that the Arby's restaurant will be very successful in the area as it fills a void in the dining options.

**T. WHETHER THE PROPOSED USE WOULD BE CONSISTENT WITH THE NEEDS OF THE NEIGHBORHOOD OR THE COMMUNITY AS A WHOLE, BE COMPATIBLE WITH THE NEIGHBORHOOD, AND WOULD NOT BE IN CONFLICT WITH THE OVERALL OBJECTIVE OF THE COMPREHENSIVE PLAN.**

The Proposed Development would offer pedestrian and streetscape improvement which do not currently exist, but which the community has indicated is desirable. These proposed improvements would enhance the connectivity within the community and demonstrate the potential for redevelopment which is encouraged in the future based on the Comprehensive Plan. Also, as indicated in the paragraphs above, the Proposed Development is entirely consistent and compatible with the development trends in the area.

## **V. NOTICE OF CONSTITUTIONAL CHALLENGES AND PRESERVATION OF CONSTITUTIONAL RIGHTS**

The zoning on the Subject Property (and any intervening zoning district other than that requested) is unconstitutional. Further, the Zoning Ordinance of the City of Tucker, Georgia lacks adequate standards for the Mayor and City Council to exercise their power to zone and rezone. In essence, the standards are not sufficient to contain the discretion of the Mayor and City Council and to provide the Courts with a reasonable basis for judicial review. Because the stated standards (individually and collectively) are too vague and uncertain to provide reasonable guidance to the Mayor and City Council, the Zoning Ordinance violates the Fifth and Fourteenth Amendments of the Constitution of the United States in matters of zoning. The Zoning Ordinance also violates Article I, Section III, Paragraph 1; and Article I, Paragraphs 1 and 2 of the Constitution of State of Georgia, 1983.

The Mayor and City Council are granted the power to zone pursuant to Article IX, Section II, Paragraph 4 of the Constitution of the State of Georgia, 1983. It is a power which must be fairly exercised. Based on this element of fairness, the Zoning Ordinance of the City of Tucker, Georgia violates Article IX, Section II, Paragraph 4 of the Constitution of the State of Georgia, 1983.

The Zoning Ordinance presently in effect is contrary to the best interest of the health and welfare of the citizens of the City of Tucker, Georgia, and constitutes an arbitrary and capricious act. As a result, the Zoning Ordinance is in violation of Article I, Section I, Paragraphs 1 and 2 of the Constitution of the State of Georgia 1983; Article I, Section III, Paragraph 1 of the Constitution of the State of Georgia; and Article I, Section II, Paragraph 3 of the Constitution of the State of Georgia, 1983. Furthermore, the Zoning Ordinance violates the due process clause

and equal protection clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

In addition, the Zoning Ordinance presently in effect is unconstitutional in that it renders this property unusable and destroys its marketability. Therefore, the Zoning Ordinance constitutes a taking of applicant's property without just and adequate compensation and without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitutional and in violation of Article I, Section I, Paragraph 1 and Article I, Section III, Paragraph 1(a) of the Constitution of Georgia.

The failure to grant the Special Land Use Permit to allow a drive-thru restaurant on the Subject Property as requested, would constitute the taking of property without due process and without the payment of adequate compensation in violation of Article I, Section I, Paragraph 1 of the Constitution of the State of Georgia, 1983; and the Fifth and Fourteenth Amendments of the Constitution of the United States.

Failure to grant the application for the Special Land Use Permit would be contrary to the best interest of the health and welfare of the citizens of the City of Tucker, Georgia, and would further constitute an arbitrary and capricious act. As such, failure to grant the application would constitute a Violation of Article I, Section I, Paragraph 1 of the Constitution of the State of Georgia, 1983; and Article I, Section III, Paragraph 1 of the Constitution of the State of Georgia; and Article I, Section II, Paragraph 3 of the Constitution of the State of Georgia, 1983, together with the due process clause and equal protection clauses of Fifth and Fourteenth Amendments to the Constitution of the United States of America.

Any limitation on the time for presentation of the issues before the Mayor and City Council who have the power to zone and rezone is a violation of the guarantees of free speech

under Article I, Section I, Paragraph 5 of the Constitution of the State of Georgia, 1983 and the First Amendment of the Constitution of the United States of America. Further, said limitations are in violation of the right to petition and assemble, in violation of Article I, Section I, Paragraph IX of the Constitution of Georgia, 1983 and the First Amendment of the Constitution of the United States of America as well as the due process clauses of the Constitution of Georgia, 1983 and the Constitution of the United States of America.


The Zoning Ordinance of the City of Tucker is unlawful, null and void in that its adoption and map adoption/maintenance did not comply with the requirements of its predecessor ordinance and/or the Zoning Procedures Law, O.C.G.A. § 36-66-1, et seq.

#### **VI. CONCLUSION**

For the foregoing reasons, the Applicant respectfully requests that the Special Land Use Permit Application at issue be approved. The Applicant also invites and welcomes any comments from Staff or other officials of the City of Tucker so that such recommendations or input might be incorporated as conditions of approval of this Application.

This 25<sup>th</sup> day of March, 2019.

Respectfully submitted,



Kathryn M. Zickert  
Dennis J. Webb, Jr.  
J. Alexander Brock  
Attorneys For Applicant

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City of Tucker

MAR 25 2019

Community Development  
Department

RZ-19-0003  
SLUP-19-0006

Smith, Gambrell & Russell, LLP  
Promenade II, suite 3100  
1230 Peachtree Street, N.E.  
Atlanta, Georgia 30309  
404-815-3500

# DISCLOSURE REPORT FORM

WITHIN THE (2) YEARS IMMEDIATELY PRECEDING THE FILING OF THIS ZONING PETITION HAVE YOU, AS THE APPLICANT OR OPPONENT FOR THE REZONING PETITION, OR AN ATTORNEY OR AGENT OF THE APPLICANT OR OPPONENT FOR THE REZONING PETITION, MADE ANY CAMPAIGN CONTRIBUTIONS AGGREGATING \$250.00 OR MORE OR MADE GIFTS HAVING AN AGGREGATE VALUE OF \$250.00 TO THE MAYOR OR ANY MEMBER OF THE CITY COUNCIL.

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City of Tucker  
MAR 25 2019

CIRCLE ONE:            YES (if YES, complete points 1 through 4);            NO (if NO, complete only point 4)

1.    CIRCLE ONE:            **Party to Petition** (If party to petition, complete sections 2, 3 and 4 below)

Community Development  
Department

**In Opposition to Petition** (If in opposition, proceed to sections 3 and 4 below)

RZ-19-0003  
SLUP-19-0006

2.    List all individuals or business entities which have an ownership interest in the property which is the subject of this rezoning petition:

- |   |    |
|---|----|
| 1.    Debra A. Harden                   | 5. |
| 2.    GMC Real Estate Acquisitions, LLC | 6. |
| 3.    B and A Ventures, LLC             | 7. |
| 4.                                      | 8. |

3.    CAMPAIGN CONTRIBUTIONS:

Name of Government Official	Total Dollar Amount	Date of Contribution	Enumeration and Description of Gift Valued at \$250.00 or more

4.    The undersigned acknowledges that this disclosure is made in accordance with the Official Code of Georgia, Section 36-67A-1 et. seq. Conflict of interest in zoning actions, and that the information set forth herein is true to the undersigned's best knowledge, information and belief.

Name (print) Dennis J. Webb, Jr.

Signature:             Date: 3/25/19

# DISCLOSURE REPORT FORM

WITHIN THE (2) YEARS IMMEDIATELY PRECEDING THE FILING OF THIS ZONING PETITION HAVE YOU, AS THE APPLICANT OR OPPONENT FOR THE REZONING PETITION, OR AN ATTORNEY OR AGENT OF THE APPLICANT OR OPPONENT FOR THE REZONING PETITION, MADE ANY CAMPAIGN CONTRIBUTIONS AGGREGATING \$250.00 OR MORE OR MADE GIFTS HAVING AN AGGREGATE VALUE OF \$250.00 TO THE MAYOR OR ANY MEMBER OF THE CITY COUNCIL.

CIRCLE ONE: YES (if YES, complete points 1 through 4);

NO (if NO, complete only point 4)

RECEIVED  
City of Tucker  
MAR 25 2019

1. CIRCLE ONE: Party to Petition (If party to petition, complete sections 2, 3 and 4 below)

Community Development  
Department  
RZ-19-0003  
SLUP-19-0004

In Opposition to Petition (If in opposition, proceed to sections 3 and 4 below)

2. List all individuals or business entities which have an ownership interest in the property which is the subject of this rezoning petition:

- |                                      |    |
|--------------------------------------|----|
| 1. Debra A. Harden                   | 5. |
| 2. GMC Real Estate Acquisitions, LLC | 6. |
| 3. B and A Ventures, LLC             | 7. |
| 4.                                   | 8. |

3. CAMPAIGN CONTRIBUTIONS:

Name of Government Official	Total Dollar Amount	Date of Contribution	Enumeration and Description of Gift Valued at \$250.00 or more

4. The undersigned acknowledges that this disclosure is made in accordance with the Official Code of Georgia, Section 36-67A-1 et. seq. Conflict of interest in zoning actions, and that the information set forth herein is true to the undersigned's best knowledge, information and belief.

Name (print) J. Alexander Brock

Signature:  Date: 3/25/19



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RECEIVED  
City of Tucker  
MAR 25 2019

CIRCLE ONE:                    YES (if YES, complete points 1 through 4);                    NO (if NO, complete only point 4)

1.        CIRCLE ONE:                    Party to Petition (If party to petition, complete sections 2, 3 and 4 below)

Community Development  
Department  
RZ-19-0003  
SLUP-19-0006

In Opposition to Petition (If in opposition, proceed to sections 3 and 4 below)

2.        List all individuals or business entities which have an ownership interest in the property which is the subject of this rezoning petition:

- |   |    |
|---|----|
| 1.    Debra A. Harden                   | 5. |
| 2.    GMC Real Estate Acquisitions, LLC | 6. |
| 3.    B and A Ventures, LLC             | 7. |
| 4.                                      | 8. |

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Name (print)           Kathryn M. Zickert            
 Signature:           Kathryn M. Zickert                              Date:           3/25/19

# DISCLOSURE REPORT FORM

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CIRCLE ONE: YES (if YES, complete points 1 through 4);

**NO** (if NO, complete only point 4)

RECEIVED  
City of Tucker  
MAR 25 2019

1. CIRCLE ONE: **Party to Petition** (If party to petition, complete sections 2, 3 and 4 below) **Community Development Department**  
**In Opposition to Petition** (If in opposition, proceed to sections 3 and 4 below)

RZ-19-0003  
SLUP-19-0006

2. List all individuals or business entities which have an ownership interest in the property which is the subject of this rezoning petition:

- |                                      |    |
|--------------------------------------|----|
| 1. Debra A. Harden                   | 5. |
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| 3. B and A Ventures, LLC             | 7. |
| 4.                                   | 8. |

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Name (print) DEBRA A. HARDEN

Signature: *Debra A. Harden*

Date: 3/19/2019

# DISCLOSURE REPORT FORM

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City of Tucker

MAR 25 2019

CIRCLE ONE:                    YES (if YES, complete points 1 through 4);                    NO (if NO, complete only point 4)

1.        CIRCLE ONE:                    Party to Petition (If party to petition, complete sections 2, 3 and 4 below)

Community Development  
Department

In Opposition to Petition (If in opposition, proceed to sections 3 and 4 below)

RZ-19-0003  
SLUP-19-0006

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- |   |    |
|---|----|
| 1.    Debra A. Harden                   | 5. |
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| 3.    B and A Ventures, LLC             | 7. |
| 4.                                      | 8. |

3.        CAMPAIGN CONTRIBUTIONS:

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Name (print) CAMERON GROGAN

Signature:                     Date: 3/20/2019

# DISCLOSURE REPORT FORM

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NO (if NO, complete only point 4)

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City of Tucker

MAR 25 2019

1. CIRCLE ONE: Party to Petition (If party to petition, complete sections 2, 3 and 4 below)

Community Development  
Department

In Opposition to Petition (If in opposition, proceed to sections 3 and 4 below)

RZ-19-0003  
SLUP-19-0006

2. List all individuals or business entities which have an ownership interest in the property which is the subject of this rezoning petition:

1. Debra A. Harden	5.
2. GMC Real Estate Acquisitions, LLC	6.
3. B and A Ventures, LLC	7.
4.	8.

3. CAMPAIGN CONTRIBUTIONS:

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4. The undersigned acknowledges that this disclosure is made in accordance with the Official Code of Georgia, Section 36-67A-1 et. seq. Conflict of interest in zoning actions, and that the information set forth herein is true to the undersigned's best knowledge, information and belief.

Name (print)

Andrea Alexander

Signature:

Andrea Alexander

Date:

3-15-19