

AUG 27 2018

APPLICATION

Community Development
 Department

APPLICANT INFORMATION	OWNER INFORMATION
NAME: <u>The Carmel Mar Thoma Center</u> <u>c/o The Galloway Law Group</u>	NAME: <u>Mount Carmel Christian Church</u>
ADDRESS: <u>3500 Lenox Road NE, Suite 760</u>	ADDRESS: <u>6015 Old Stone Mountain Road</u>
CITY: <u>Atlanta</u>	CITY: <u>Stone Mountain</u>
STATE: <u>GA</u> ZIP: <u>30326</u>	STATE: <u>GA</u> ZIP: <u>30087</u>
PHONE: <u>(404) 965-3680</u>	PHONE: <u>(770) 279-8437</u>

CONTACT PERSON: Laurel David PHONE: (404) 965-3680

CONTACT'S E-MAIL: laurel@glawgp.com

APPLICANT IS THE:

OWNER'S AGENT PROPERTY OWNER CONTRACT PURCHASER

PRESENT ZONING DISTRICTS(S): RE REQUESTED ZONING DISTRICT: n/a

PRESENT LAND USE CATEGORY: IN REQUESTED LAND USE CATEGORY: n/a

LAND DISTRICT(S): 18 LAND LOT(S): 176 ACREAGE: approx. 43 acres

ADDRESS OF PROPERTY: 6015 Old Stone Mountain Road

PROPOSED DEVELOPMENT: n/a - Applicant seeks a Special Land Use Permit for a place of worship and a school, but will use the existing church buildings located on the site

CONCURRENT VARIANCES: none


RESIDENTIAL DEVELOPMENT	NON-RESIDENTIAL DEVELOPMENT
No. of Lots/Dwelling Units <u>n/a</u>	No. of Buildings/Lots: <u>same as existing</u>
Dwelling Unit Size (Sq. Ft.): <u>n/a</u>	Total Building Sq. Ft. <u>same as existing</u>
Density: <u>n/a</u>	Density: <u>same as existing</u>

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.

Joshy Jacob Aug 24, 2018
Signature of Applicant Date

By: Joshy Jacob for The Carmel Mar Thoma Center
Type or Print Name and Title

[Signature] 08/24/2018 
Signature of Notary Public Date Notary Seal

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AUG 27 2018
Community Development
Department
SLUP-18-004
SLUP-18-005

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, Mount Carmel Christian Church, authorize, The Carmel Mar Thoma Center,
(Property Owner) (Applicant)

to file for SLUP, at 6015 Old Stone Mountain Road
(RZ, CA, SLUP, CV) (Address)

on this date _____, 20____
(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.

 8-23-18
Signature of Property Owner Date

By: Jim Barber, Trustee and Church Administrator for Mount Carmel Christian Church
Type or Print Name and Title

 August 23, 2018
Signature of Notary Public Date



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SLUP-18-004
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AUG 27 2018

DISCLOSURE REPORT FORM

Community Development
Department

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)

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

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. _____ | 5. _____ |
| 2. _____ | 6. _____ |
| 3. _____ | 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) By: Jim Barber for Mountain Carmel Christian Church, as Owner

Signature:  Date: 8-23-18

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Name (print) By: Joshy Jacob for The Carmel Mar Thoma Center, as Applicant

Signature: *Joshy Jacob* Date: Aug 27, 2018

SLUP-18-004
SLUP-18-005

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Name (print) By: Laurel David for The Galloway Law Group, LLC, as Attorney for the Applicant

Signature: Laurel David Date: 8/23/18

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Community Development
Department

SLUP-18-004
SLUP-18-005

**LETTER OF INTENT AND ANALYSIS OF CRITERIA
APPLICATION FOR SPECIAL LAND USE PERMIT
CITY OF TUCKER, GEORGIA**

The Carmel Mar Thoma Center (the “Applicant”) requests a Special Land Use Permit (SLUP) to operate a place of worship and a school at 6015 Old Stone Mountain Road (Parcel Identification Number 18 176 04 002) (the “Property”). The Property is zoned to the Residential Estate (RE) district, which allows places of worship and schools with approval of Special Land Use Permits (SLUP’s). The church that has existed at the Property, as well as the buildings that are present, are legal existing nonconforming, as they have been continually operated since before the formation of the City of Tucker. The Applicant also wishes to reestablish a school in the existing buildings, where an earlier school ceased its operations more than six (6) months ago. The Applicant does not presently propose any alteration of the existing structures or the construction of any additional buildings.

To the criteria established at Section 7.4.6. of the Zoning Ordinance of the City of Tucker that are considered in the evaluation of applications for SLUP’s, the Applicant responds as follows:

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.

The Property measures approximately 41 acres in area. The existing church building that the Applicant will reuse is located in the interior of the Property, well back from all Property lines. The existing parking spaces are sufficient to serve the Applicant’s church purposes, and ample open space is present to meet the RE district’s 20% requirement.

B. Compatibility of the proposed use with adjacent properties and land uses and with other properties and land uses in the district.

The Mount Carmel Christian Church has operated as a place of worship at the Property for many years, and the Applicant will continue the use of the Property as a place of worship. In addition, the existing school buildings contain forty-four (44) classrooms, a gymnasium, and a cafeteria. The church has larger rooms that can be used for school assemblies. The land to the

west and south of the Property is parkland owned by the State and is undeveloped. Land to the north and east of the Property is also zoned to the RE district and used for detached dwellings. As both single-family dwellings and places of worship are allowed in the RE district, it is evident that these uses are compatible with one another.

C. Adequacy of public services, public facilities, and utilities to serve the proposed use.

The proposed uses are the same that have existed at the Property for many years. The public services, facilities, and utilities that have served the church and school are adequate for the continuing use, as the Applicant does not plan any alteration of the existing buildings.

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.

The proposed uses are the same uses that have existed at the Property for many years, although the school did cease operations recently. The public street on which the Property is located is adequate for the uses going forward, as there is currently sufficient traffic-carrying capacity. The peak times of use for the church will not conflict with commuter traffic. Traffic for the school will be mitigated by the use of carpooling and shuttle buses. Accordingly, the Applicant's use will not unduly increase traffic or create congestion in the area.

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.

The vehicles typically accessing the Property will be personal automobiles, similar to those most typically accessing the surrounding single-family residential land uses. As the proposed use is the same as the existing use, the volume of this traffic will not adversely affect nearby properties, especially as the peak hours of operation will coincide with weekend services.

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.

As shown on the survey of existing conditions submitted with this application, the Property is served by sufficient ingress and egress, and ample facilities exist for vehicular and

pedestrian circulation. Lengthy driveways as well as internal sidewalks serve the church use, increasing the safety and convenience of both pedestrian and automotive traffic.

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.

The proposed uses will not adversely impact adjoining land uses by generating noise, smoke, odor, dust, or vibration.

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.

As a place of worship, the Applicant will offer some activities during the week and will provide its primary services on weekends. Its hours of operation will be typical of other places of worship, and will not adversely impact adjoining land uses. The school will also keep typical daytime school hours that will not impact adjoining land uses.

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.

The Applicant's operations are not noxious in manner. As such, the use will not adversely impact adjoining land uses by reason of its manner of operation.

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 Property is consistent with the minimum lot dimensions, setbacks, and open space requirements of the RE district. The existing church and school buildings were built years ago and will not be altered as a result of the requested SLUP.

K. Whether or not the proposed use is consistent with the policies of the comprehensive plan.

The Future Land Use Map of the City of Tucker assigns the Property to the Institutional land use category. The proposed uses as a place of worship and a school are consistent with this land use category.

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 Zoning Ordinance does not require a transitional buffer zone at the Property. See Sec. 5.4.5., Table 5.2(a). However, on the Property's northern and western sides, where it adjoins or is near to other properties zoned to the RE district, ample open space is present between the existing buildings and neighboring residential buildings, satisfying the intent of the buffer provision of the supplemental regulations for places of worship. See Sec. 4.2.42. Likewise, this broad open space is a sufficient buffer between the school buildings and the residential properties. See Sec. 4.2.43.

M. Whether or not there is adequate provision of refuse and service areas.

The refuse and service areas currently serving the property have satisfied the needs of the existing church and school for many years. The requested SLUP will allow these uses to continue at the Property, such that the refuse and service areas will remain adequate.

N. Whether the length of time for which the special land use permit is granted should be limited in duration.

Due to the nature of the proposed uses as a place of worship and a school, the SLUP should not be limited in its duration.

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.

The Property is greater than 40 acres in size, far larger than nearby properties zoned to the RE district. The existing buildings are located in more or less the center of the Property, and the nearest adjoining parcel is undeveloped. Accordingly, the size, scale, and massing of the building, which the Applicant does not propose to change, is appropriate for the Property.

P. Whether the proposed use will adversely affect historic buildings, sites, districts, or archaeological resources.

The Property is not within a historic district, and the Applicant is not aware of any historic buildings, sites, districts or archaeological resources on the site or located in the

immediate vicinity. Consequently the proposed uses will not adversely affect historic buildings, sites, districts, or archeological resources.

Q. Whether the proposed use satisfies the requirements contained within the supplemental regulations for such special land use permit.

As described above, the existing buildings are located on a large lot that provides wide front, side, and rear yards. The Applicant does not propose to make any changes to the existing building, driveways, or parking areas.

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 buildings that the Applicant proposes to continue using as a church and a school are located in more or less the center of a lot that is more than 40 acres in size, and are surrounded on two and one-half sides by undeveloped parkland owned by the State. The structures will not create a negative shadow impact on any adjoining lot or building.

S. Whether the proposed use would result in a disproportionate proliferation of that or similar uses in the subject character area;

The Property has long been used as a church and a school, and the Future Land Use Map appropriately assigns it to the Institutional character area. The SLUP now requested proposes the continuation of those uses. Approval of this continuity in use need not result in a disproportionate proliferation of the church or schools uses in the Institutional character area, although such uses are consistent with the character area's intent.

T. Whether the proposed use would be consistent with the needs of the neighborhood or the community as a whole, would be compatible with the neighborhood, and would not be in conflict with the overall objective of the comprehensive plan.

Like the neighborhood to the north and east, the Property is zoned to the RE district, which allows places of worship and schools with approval of a SLUP. Accordingly, the Zoning Ordinance endorses the compatibility of the school and place of worship uses and other uses allowed in the RE district, including detached dwellings. Moreover, the Institutional character area to which the Future Land Use Map assigns the Property supports the proposed uses. Finally, the buildings that the Applicant will use have existed at their current location for many years. For all these reasons, the proposed uses are appropriate for the Property.

Because the Applicant's proposal is consistent with the foregoing criteria established by the City of Tucker for the granting of SLUP's, the Applicant respectfully asks that the City Council approve the SLUP for a school and a place of worship as requested.

Sincerely,

THE GALLOWAY LAW GROUP, LLC



Laurel David

Jordan Edwards

Attorneys for the Applicant

3500 Lenox Road NE, Suite 760
Atlanta, GA 30326
(404) 965-3680

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Community Development
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SLUP-18-005

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CONSTITUTIONAL OBJECTIONS
APPLICATION FOR SPECIAL LAND USE PERMIT Community Development
CITY OF TUCKER, GEORGIA Department

SLUP-18-004
SLUP-18-005

Georgia Law and the procedures of the City of Tucker require us to raise Federal and State Constitutional objections during the Special Land Use Permit application process. While the Owner/Applicant anticipates a smooth application process, failure to raise constitutional objections at this stage may mean that the Owner/Applicant will be barred from raising important legal claims later in the process. Accordingly, we are required to raise the following constitutional objections at this time:

The portions of the Zoning Ordinance of the City of Tucker, Georgia, as applied to the Property, that would result in a denial of the Special Land Use Permit as requested by the Owner/Applicant, are, or would be, unconstitutional in that they would destroy the Owner/Applicant's property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, Article I, Section III, Paragraph I 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.

Any application of the Code of the City of Tucker or the City of Tucker Zoning Ordinance to the Property which restricts its use to any use in a manner other than that requested by the Owner/Applicant is unconstitutional, illegal and null and void because such an application constitutes a taking of the Owner/Applicant's property in violation of the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States, Article I, Section I, Paragraph I, and Article I, Section III, Paragraph I, of the Constitution of the State of Georgia of 1983 and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States because such an application denies the Owner/Applicant an economically viable use of its land while not substantially advancing legitimate state interests.

A denial of this Application or approval subject to conditions which differ from those proposed by the Owner/Applicant, would also violate the Religious Land Use and Institutionalized Persons Act by imposing a substantial burden on the exercise of religion without a compelling government interest or without using the least restrictive means possible of furthering a compelling governmental interest.

A denial of this Application would also constitute an arbitrary and capricious act by the City Council of the City of Tucker without any rational basis therefore, thereby constituting an abuse of discretion in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983 and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

A refusal to grant the Special Land Use Permit as requested by the Owner/Applicant would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner

between the Owner/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 approval of the Special Land Use Permit subject to conditions that are different from the conditions requested by the Owner/Applicant, to the extent such different conditions would have the effect of further restricting the Owner/Applicant's utilization of the Property, would also constitute an arbitrary, capricious and discriminatory act and would likewise violate each of the provisions of the State and Federal Constitutions set forth herein above.

In addition, this constitutes formal written notice to the City of Tucker, pursuant to O.C.G.A. § 36-33-5, that the Owner/Applicant plans to seek to recover all damages that it sustains or suffers as a result of the denial of this Application and/or the unconstitutional zoning of the Property by the City of Tucker. Such damages may include, but are not necessarily limited to, damages related to the diminution in the value of the Property, attorneys' fees and expenses of litigation.

Accordingly, the Applicant respectfully requests that the City Council of the City of Tucker grant the Special Land Use Permit requested by the Applicant.

THE GALLOWAY LAW GROUP, LLC



Laurel David
Jordan Edwards
Attorneys for Applicant

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