

**REZONING APPLICATION**

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

APPLICANT INFORMATION	OWNER INFORMATION*
Spartan Investors 1, LLC c/o Mahaffey Pickens NAME: <u>Tucker, LLP</u> ADDRESS: <u>1550 North Brown Road, Suite 125</u> CITY: <u>Lawrenceville</u> STATE: <u>Georgia</u> ZIP: <u>30043</u> PHONE: <u>770.232.0000</u>	NAME: <u>Wayne H. Mason</u> ADDRESS: <u>2096 Oak Rd</u> CITY: <u>Snellville</u> STATE: <u>Georgia</u> ZIP: <u>30078</u> PHONE: <u>770.232.0000</u>
CONTACT PERSON: <u>Shane Lanham</u> PHONE: <u>770.232.0000</u> CONTACT'S E-MAIL: <u>slanham@mptlawfirm.com</u>	

**APPLICANT IS THE:**

OWNER'S AGENT   
  PROPERTY OWNER   
  CONTRACT PURCHASER

PRESENT ZONING DISTRICTS(S): O-I REQUESTED ZONING DISTRICT: R-TH  
 LAND DISTRICT(S): 6 LAND LOT(S): 050 ACREAGE: +/-6.17  
 ADDRESS OF PROPERTY: 2500 Highpoint Road  
 PROPOSED DEVELOPMENT: Single-family residential townhomes

RESIDENTIAL DEVELOPMENT	NON-RESIDENTIAL DEVELOPMENT
No. of Lots/Dwelling Units: <u>49</u>	No. of Buildings/Lots: <u>N/A</u>
Dwelling Unit Size (Sq. Ft.): <u>Min. 1,000 square feet</u>	Total Building Sq. Ft.: <u>N/A</u>
Gross Density: <u>+/- 7.94 units per acre</u>	Density: <u>N/A</u>
Net Density: <u>+/- 7.94 units per acre</u>	

**PLEASE ATTACH A LETTER OF INTENT EXPLAINING WHAT IS PROPOSED**

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## LEGAL DESCRIPTION

All that tract or parcel of land lying and being in Land Lot 50 of the 6<sup>th</sup> Land District of Gwinnett County, Georgia and being more particularly described as follows:

To find THE TRUE POINT OF BEGINNING, begin at a point located on the northeasterly right-of-way of Highpoint Road having a 80' right-of-way width with the intersection on the Land Lot Line Common to Land Lots 50 and 51, said point being THE TRUE POINT OF BEGINNING;

THENCE North 60 degrees 57 minutes 21 seconds East for a distance of 244.34 feet leaving said right-of-way to point;

Thence South 29 degrees 16 minutes 27 seconds East for a distance of 1,095.61 feet to a point;

THENCE South 59 degrees 21 minutes 06 seconds West for a distance of 244.74 feet to point located on the northeasterly right-of-way of Highpoint Road having a 80' right-of-way width;

THENCE North 29 degrees 15 minutes 25 seconds West for a distance of 1,102.46 feet along said right-of-way to a point, said point being THE TRUE POINT OF BEGINNING.

Together with and subject to covenants, easements, and restrictions of record. Said property contains 6.169 acres more or less.

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

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

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

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

Please see attached

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

Please see attached

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

Please see attached

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

Please see attached

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

Please see attached

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- (F) WHETHER THERE ARE OTHER EXISTING OR CHANGING CONDITIONS AFFECTING THE USE AND DEVELOPMENT OF THE PROPERTY WHICH GIVE SUPPORTING GROUNDS FOR EITHER APPROVAL OR DISAPPROVAL OF THE PROPOSED REZONING:

Please see attached

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

- (A) Yes, the proposed Rezoning Application will permit a use that is suitable in view of the use and development of adjacent and nearby property. The Property is located on Highpoint Road just north of Scenic Highway (aka Georgia State Route 124). The Property is currently zoned O-I. The Property is also adjacent to land zoned O-I and RM.
- (B) No, the proposed Rezoning Application will not adversely affect the existing use or usability of any of the nearby properties. The proposed zoning classification is compatible with existing multifamily and office professional zoning classifications of adjacent property.
- (C) Due to the size, location, layout and dimensions of the subject property, the Applicant submits that the property does not have reasonable economic use as currently zoned.
- (D) No, the proposed rezoning will not result in an excessive or burdensome use of the infrastructure systems. The Property has convenient access to Scenic Highway (State Route 124) and Stone Mountain Highway (US Route 78).
- (E) Yes, the proposed Rezoning Application is in conformity with the policy and intent of the Gwinnett County Land Use Plan.
- (F) The Applicant submits that the subject Property's proximity to Scenic Highway and Stone Mountain Highway provides additional support of this Application. Additionally, the Property is currently zoned O-I and the proposed development would result in a downzoning of the Property.

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Matthew P. Benson  
Gerald Davidson, Jr.\*  
Brian T. Easley  
Kelly O. Faber  
Christopher D. Holbrook  
Frances H. Kim  
Shane M. Lanham

Austen T. Mabe  
Jeffrey R. Mahaffey  
David G. McGee  
Steven A. Pickens  
Andrew D. Stancil  
R. Lee Tucker, Jr.  
\*Of Counsel

**LETTER OF INTENT FOR REZONING APPLICATION**

Mahaffey Pickens Tucker, LLP submits this Letter of Intent and attached Rezoning Application on behalf of the Applicant for the purpose of rezoning to the R-TH zoning classification an approximately 6.17-acre tract (the "Property") situated along Highpoint Road. The Property is currently zoned O-I (Office-Institutional District).

The Applicant proposes to develop a single-family residential community, consisting of 49 attached residential townhomes. The proposed development would have a net density of approximately 7.94 units per acre, which is less than the maximum allowed density prescribed for the R-TH zoning classification set forth in the Gwinnett County Unified Development Ordinance (the "UDO"). The proposed single-family community would consist of homes at a size, quality, and price-point commensurate with or exceeding homes in the surrounding area. The proposed townhomes would include attractive architectural elements which are compatible with the surrounding area. The front façades of the homes would be constructed primarily of brick, stacked stone, cedar shake, fiber-cement siding, and/or board and batten as depicted in the building elevations submitted with the Application.

The proposed townhomes are front-entry units with two-car garages on the front elevation and would be accessed by internal streets and driveways. Currently, the proposed units would be a minimum of 24 feet wide with a minimum of 1,000 square feet of heated floor area. The proposed community would also feature approximately 1.4 acres of common open space at the northwesterly end of the Property.

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The Applicant proposes to development the Property with a single entrance to be located off of Highpoint Road. The entrance would include attractive landscaping, a decorative fence or wall, and entrance monument creating an attractive streetscape. The Applicant is also proposing a reduced buffer adjacent to property zoned R-75 along the northeasterly property line. Instead of the 30-foot natural undisturbed buffer required in the UDO, the Applicant is proposing a 20-foot landscaped buffer as depicted on the Site Plan submitted herewith.

Though the Property is currently zoned O-I, the surrounding area is largely residential with nodes of commercial at intersections and along major travel corridors such as Scenic Highway just to the south. The Property is adjacent to land zoned O-I, R-75, and RM. A rezoning to R-TH would provide a transitional use from the more intense multifamily residential uses allowed in the existing RM and O-I zoning classifications including several duplex and quadraplex units which are present just north of the Property along Highpoint Road and Spruce Circle in the Avalon Circle subdivision. An approval of the Application would bring the property's zoning classification in line with adjacent properties and reduce the intensity of development allowed on the Property.

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

Respectfully submitted this 4th day of October, 2017.

MAHAFFEY PICKENS TUCKER, LLP

  
Shane M. Lanham  
*Attorneys for Applicant*

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**REZONING APPLICANT'S CERTIFICATION**

THE UNDERSIGNED BELOW IS AUTHORIZED TO MAKE THIS APPLICATION. THE UNDERSIGNED IS AWARE THAT NO APPLICATION OR REAPPLICATION AFFECTING THE SAME LAND SHALL BE ACTED UPON WITHIN 12 MONTHS FROM THE DATE OF LAST ACTION BY THE BOARD OF COMMISSIONERS UNLESS WAIVED BY THE BOARD OF COMMISSIONERS. IN NO CASE SHALL AN APPLICATION OR REAPPLICATION BE ACTED UPON IN LESS THAN SIX (6) MONTHS FROM THE DATE OF LAST ACTION BY THE BOARD OF COMMISSIONERS.

  
Signature of Applicant

9/22/17  
Date

Shane Lanham, Attorney for the Applicant

Type or Print Name and Title

  
Signature of Notary Public

9/22/17  
Date

Notary Seal



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\_\_\_\_\_  
Signature of Applicant

10/31/17  
\_\_\_\_\_  
Date

Clint Walters - Vice President  
\_\_\_\_\_  
Type or Print Name and Title

  
\_\_\_\_\_  
Signature of Notary Public

10/31/17  
\_\_\_\_\_  
Date



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**REZONING PROPERTY OWNER'S CERTIFICATION**

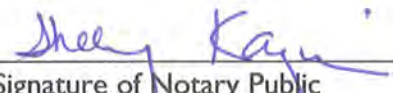
THE UNDERSIGNED BELOW, OR AS ATTACHED, IS THE OWNER OF THE PROPERTY CONSIDERED IN THIS APPLICATION. THE UNDERSIGNED IS AWARE THAT NO APPLICATION OR REAPPLICATION AFFECTING THE SAME LAND SHALL BE ACTED UPON WITHIN 12 MONTHS FROM THE DATE OF LAST ACTION BY THE BOARD OF COMMISSIONERS UNLESS WAIVED BY THE BOARD OF COMMISSIONERS. IN NO CASE SHALL AN APPLICATION OR REAPPLICATION BE ACTED UPON IN LESS THAN SIX (6) MONTHS FROM THE DATE OF LAST ACTION BY THE BOARD OF COMMISSIONERS.

  
\_\_\_\_\_  
Signature of Property Owner

10/30/17  
\_\_\_\_\_  
Date

Wayne H Mason  
\_\_\_\_\_  
Type or Print Name and Title



  
\_\_\_\_\_  
Signature of Notary Public

10/30/17  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Notary Seal

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**CONFLICT OF INTEREST CERTIFICATION FOR REZONING**

The undersigned below, making application for a Rezoning, has complied with the Official Code of Georgia Section 36-67A-1, et. seq, Conflict of Interest in Zoning Actions, and has submitted or attached the required information on the forms provided.

SIGNATURE OF APPLICANT                      DATE                      TYPE OR PRINT NAME AND TITLE

                      9/22/17                      Shane M. Lanham, Attorney for Applicant

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

                      9/22/17



**DISCLOSURE OF CAMPAIGN CONTRIBUTIONS**

Have you, within the two years immediately preceding the filing of this application, made campaign contributions aggregating \$250.00 or more to a member of the Board of Commissioners or a member of the Gwinnett County Planning Commission?

YES     NO    Mahaffey Pickens Tucker, LLP  
 YOUR NAME

If the answer is yes, please complete the following section:

NAME AND OFFICAL POSITION OF GOVERNMENT OFFICIAL	CONTRIBUTIONS (List all which aggregate to \$250 or More)	DATE CONTRIBUTION WAS MADE (Within last two years)
See attached.		

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

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

MAHAFFEY PICKENS TUCKER, LLP

<u>NAME AND OFFICIAL POSITION OF GOVERNMENT OFFICIAL</u>	<u>CONTRIBUTIONS</u>	<u>DATE</u>
Tommy Hunter	\$1000	01/27/2016
Charlotte Nash	\$1000	03/08/2016

RZM2018-00001  
Recv'd 11/9/2017





**VERIFICATION OF CURRENT PAID PROPERTY TAXES FOR REZONING**

THE UNDERSIGNED BELOW IS AUTHORIZED TO MAKE THIS APPLICATION. THE UNDERSIGNED CERTIFIES THAT ALL GWINNETT COUNTY PROPERTY TAXES BILLED TO DATE FOR THE PARCEL LISTED BELOW HAVE BEEN PAID IN FULL TO THE TAX COMMISSIONER OF GWINNETT COUNTY, GEORGIA. IN NO CASE SHALL AN APPLICATION OR REAPPLICATION FOR REZONING BE PROCESSED WITHOUT SUCH PROPERTY VERIFICATION.

**\*Note: A SEPARATE VERIFICATION FORM MUST BE COMPLETED FOR EACH TAX PARCEL INCLUDED IN THE REZONING REQUEST.**

**PARCEL I.D. NUMBER:**                      6                      - 050                      - 234  
(Map Reference Number)                      District                      Land Lot                      Parcel

Signature of Applicant

Date

Shane Lanham, Attorney for the Applicant

Type or Print Name and Title

**TAX COMMISSIONERS USE ONLY**

(PAYMENT OF ALL PROPERTY TAXES BILLED TO DATE FOR THE ABOVE REFERENCED PARCEL HAVE BEEN VERIFIED AS PAID CURRENT AND CONFIRMED BY THE SIGNATURE BELOW)

Debra Smith  
NAME

Tax Service Associate  
TITLE

11.2.2017  
DATE

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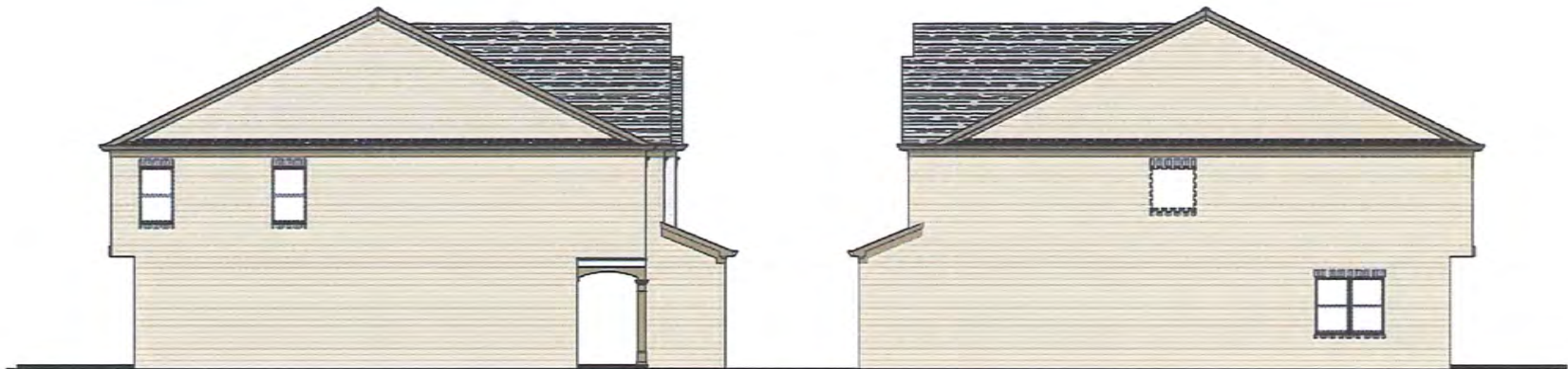
FRONT ELEVATIONS

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SIDE AND REAR ELEVATIONS



## JUSTIFICATION FOR REZONING APPLICATION

The portions of the Gwinnett County Unified Development Ordinance (the “UDO”) which classify or may classify the property which is the subject of this Application (the “Property”) into any less intensive zoning classification other than as requested by the Applicant, are or would be unconstitutional in that they would destroy the Applicant's property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

The application of the UDO as applied to the subject Property, which restricts its use to the present zoning classification is unconstitutional, illegal, null and void, constituting a taking of the Applicant's and the Owner's property in violation of the Just Compensation Clause of the Fifth Amendment and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, Article I, Section I, Paragraph I, and Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983, and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States denying the Applicant an economically viable use of its land while not substantially advancing legitimate state interests.

The Property is presently suitable for development under the R-TH classification as requested by the Applicant, and is not economically suitable for development under the present O-I zoning classification of Gwinnett County. A denial of this Application would constitute an arbitrary and capricious act by the Gwinnett County Board of Commissioners without any rational basis therefore, constituting an abuse of discretion in violation of Article I, Section I, Paragraph I and Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983, and the

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Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

A refusal by the Gwinnett County Board of Commissioners to rezone the Property to the R-TH classification with such conditions as agreed to by the Applicant, so as to permit the only feasible economic use of the Property, would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and owners of similarly situated property in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Any rezoning of the subject Property to the R-TH classification, subject to conditions which are different from the conditions by which the Applicant may amend its application, to the extent such different conditions would have the effect of further restricting the Applicant's and the Owner's utilization of the subject Property, would also constitute an arbitrary, capricious and discriminatory act in zoning the Property to an unconstitutional classification and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove.

Accordingly, the Applicant respectfully requests that the rezoning application submitted by the Applicant relative to the Property be granted and that the Property be rezoned to the zoning classification as shown on the respective application.

This 4th day of October, 2017.

Respectfully submitted,  
MAHAFFEY PICKENS TUCKER, LLP



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Shane M. Lanham  
*Attorneys for Applicant*

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