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**APPLICANT:** Reo Thi Pham

**PETITION NO:** Z-64

**PHONE#:** (404) 373-9596 **EMAIL:** kwilliams@williamsteusink.com

**HEARING DATE (PC):** 10-07-14

**REPRESENTATIVE:** Kyle Williams

**HEARING DATE (BOC):** 10-21-14

**PHONE#:** (404) 373-9596 **EMAIL:** kwilliams@williamsteusink.com

**PRESENT ZONING:** GC

**TITLEHOLDER:** Reo Thi Pham

**PROPOSED ZONING:** O&I

**PROPERTY LOCATION:** North side of Anderson Mill Road, west of Austell Road

**PROPOSED USE:** Clinic and Professional Offices

(1840 and 1850 Anderson Mill Road).

**ACCESS TO PROPERTY:** Anderson Mill Road

**SIZE OF TRACT:** 0.7644 acre

**DISTRICT:** 19

**PHYSICAL CHARACTERISTICS TO SITE:** A one story brick and frame building, a one story stucco building, and a one story metal garage

**LAND LOT(S):** 993

**PARCEL(S):** 5, 18

**TAXES: PAID** X **DUE** \_\_\_\_\_

**COMMISSION DISTRICT:** 4

**CONTIGUOUS ZONING/DEVELOPMENT**

**NORTH:** RM-8/ Mill Park Condo Sub Division

**SOUTH:** GC/ Brusters and Nathans

**EAST:** R-20/ Undeveloped Lot

**WEST:** RM-8/ Mill Park Condo Sub Division

**OPPOSITION:** NO. OPPOSED **PETITION NO:** \_\_\_\_\_ **SPOKESMAN** \_\_\_\_\_

**PLANNING COMMISSION RECOMMENDATION**

**APPROVED** \_\_\_\_\_ **MOTION BY** \_\_\_\_\_

**REJECTED** \_\_\_\_\_ **SECONDED** \_\_\_\_\_

**HELD** \_\_\_\_\_ **CARRIED** \_\_\_\_\_

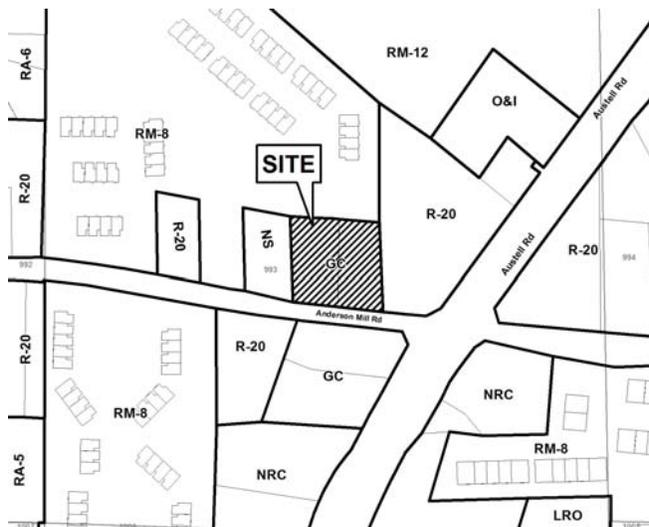
**BOARD OF COMMISSIONERS DECISION**

**APPROVED** \_\_\_\_\_ **MOTION BY** \_\_\_\_\_

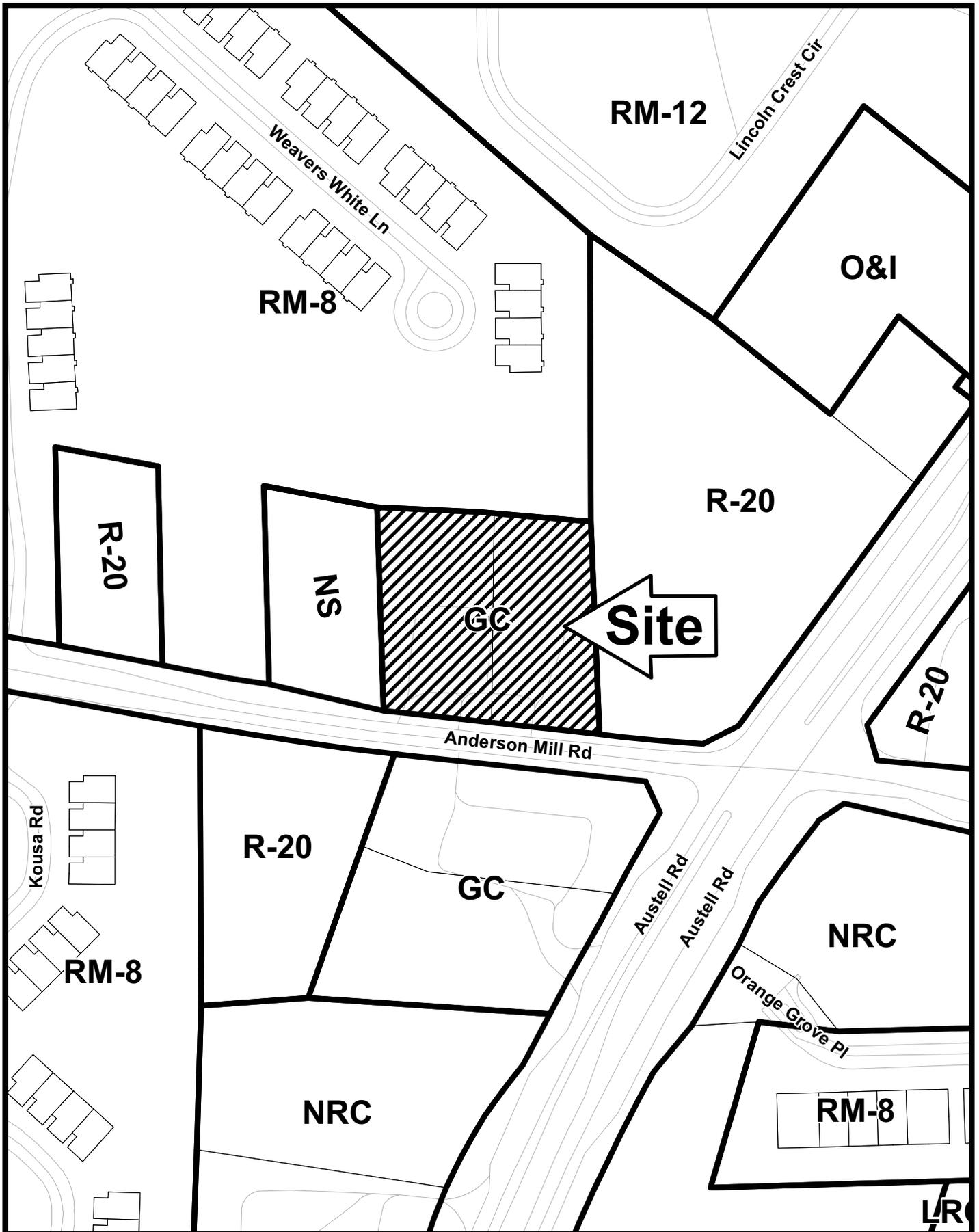
**REJECTED** \_\_\_\_\_ **SECONDED** \_\_\_\_\_

**HELD** \_\_\_\_\_ **CARRIED** \_\_\_\_\_

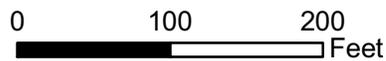
**STIPULATIONS:**



# Z-64



This map is provided for display and planning purposes only. It is not meant to be a legal description.



-  City Boundary
-  Zoning Boundary

APPLICANT: Reo Thi Pham

PETITION NO.: Z-64

PRESENT ZONING: GC

PETITION FOR: O&I

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**ZONING COMMENTS:**

**Staff Member Responsible:** Donald Wells

**Land Use Plan Recommendation:** Neighborhood Activity Center (NAC)

**Proposed Number of Buildings:** 2      **Total Square Footage of Development:** 3,769

**F.A.R.:** 0.13      **Square Footage/Acre:** 5852

**Parking Spaces Required:** 14      **Parking Spaces Provided:** 10

Applicant is requesting the O&I zoning category in order to utilize the current buildings for offices and a clinic use. The property has been zoned Neighborhood Shopping (NS) since December 26, 1972. According to Cobb County Business License there has not been any active businesses operating from the applicant's property within the past year. The County Code requires that a non conforming use must be brought up to current zoning standards if the use has been abandoned longer than 6 months. It shall be prima facie evidence of abandonment for the owner and/or operator of the nonconforming use to discontinue the nonconforming use for 12 months, to fail to obtain a new or renew an existing business license as required under the Code of Cobb County, Georgia, for the operation of such nonconforming use. As referenced in the applicant's summary of proposed rezoning, the properties General Commercial (GC) zoning category is located outside of a community activity center or regional activity center and shall be deemed to be a grandfathered. The property is located in Neighborhood Activity Center (NAC) on the land use plan. The applicant intends to use existing buildings, and the offices will operate Monday through Friday 9 AM to 5 PM.

If approved the following variances will be needed;

- Waive the front setback from 50 feet to 47.71 feet on tract 1;
- Waive the side setback from 15 feet to 10.40 feet on tract 1;
- Waive minimum lot size requirement from 20,000 square feet to 18,639 square feet on tract2;
- Waive minimum lot size requirement from 20,000 square feet to 19055.8 square feet on tract 1;
- Reduce required parking from 14 spaces to 10 spaces;
- Waive the landscape buffer along the north property line and;
- Waive the 8 foot landscape strip along the road.

**Cemetery Preservation:** No comment.

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**FIRE COMMENTS:**

Plans must be submitted to the Cobb County Fire Marshal's Office to initiate the Certificate of Occupancy process.

APPLICANT: Reo Thi Pham

PETITION NO.: Z-64

PRESENT ZONING: GC

PETITION FOR: O&I

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**PLANNING COMMENTS:**

The applicant is requesting a rezoning from GC to O&I for purpose of clinical and professional offices. The 0.764 acre site is located on the north side of Anderson Mill Road, west of Austell Road.

**Comprehensive Plan**

The parcel is within a Neighborhood Activity Center (NAC) future land use category, with GC zoning designation. The purpose of the (NAC) category is to provide for areas that serve neighborhood residents and businesses. Typical land uses for these areas include small offices, limited retail and grocery stores.

**Master Plan/Corridor Study**

Not applicable.

**Historic Preservation**

After consulting various county historic resources surveys, historic maps, archaeology surveys and Civil War trench location maps, staff finds that no known significant historic resources appear to be affected by this application. No further comment. No action by applicant requested at this time.

**Design Guidelines**

Is the parcel in an area with Design Guidelines?  Yes  No

If yes, design guidelines area \_\_\_\_\_

Does the current site plan comply with the design requirements?

**Incentive Zones**

Is the property within an Opportunity Zone?  Yes  No

The Opportunity Zone is an incentive that provides \$3,500 tax credit per job in eligible areas if two or more jobs are being created. This incentive is available for new or existing businesses.

Is the property within an Enterprise Zone?  Yes  No

The Enterprise Zone is an incentive that provides tax abatements and other economic incentives for qualifying businesses locating or expanding within designated areas for new jobs and capital investments.

Is the property eligible for incentives through the Commercial and Industrial Property Rehabilitation Program?

Yes  No

The Commercial and Industrial Property Rehabilitation Program is an incentive that provides a reduction in ad valorem property taxes for qualifying redevelopment in eligible areas.

**Special Districts**

Is this property within the Cumberland Special District #1 (hotel/motel fee)?

Yes  No

Is this property within the Cumberland Special District #2 (ad valorem tax)?

Yes  No

APPLICANT Reo Thi Pham

PETITION NO. Z-064

PRESENT ZONING GC

PETITION FOR O&I

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**WATER COMMENTS:** NOTE: Comments reflect only what facilities were in existence at the time of this review.

Available at Development:  Yes  No

Fire Flow Test Required:  Yes  No

Size / Location of Existing Water Main(s): 14" AC / N side of Anderson Mill Rd

Additional Comments: Existing water customer(s)

Developer may be required to install/upgrade water mains, based on fire flow test results or Fire Department Code. This will be resolved in the Plan Review Process.

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**SEWER COMMENTS:** NOTE: Comments reflect only what facilities were in existence at the time of this review.

In Drainage Basin:  Yes  No

At Development:  Yes  No

Approximate Distance to Nearest Sewer: +/- 250' N in Weavers White Ln (private)

Estimated Waste Generation (in G.P.D.): A D F= 320 Peak= 800

Treatment Plant: South Cobb

Plant Capacity:  Available  Not Available

Line Capacity:  Available  Not Available

Projected Plant Availability:  0 - 5 years  5 - 10 years  over 10 years

Drv Sewers Required:  Yes  No

Off-site Easements Required:  Yes\*  No \*If off-site easements are required, Developer must submit easements to CCWS for review/approval as to form and stipulations prior to the execution of easements by the property owners. All easement acquisitions are the responsibility of the Developer

Flow Test Required:  Yes  No

Letter of Allocation issued:  Yes  No

Septic Tank Recommended by this Department:  Yes  No

Subject to Health Department Approval:  Yes  No

Additional Environmental Health Dept approval required for continued use of septic system(s)  
Comments:

Developer will be responsible for connecting to the existing County water and sewer systems, installing and/or upgrading all outfalls and water mains, obtaining on and/or offsite easements, dedication of on and/or offsite water and sewer to Cobb County, as may be required. Rezoning does not guarantee water/sewer availability/capacity unless so stated in writing by the Cobb County Water System. Permit issuances subject to continued treatment plant compliance with EPD discharge requirements.

**APPLICANT: Reo Thi Pham**

**PETITION NO.: Z-64**

**PRESENT ZONING: GC**

**PETITION FOR: O&I**

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**STORMWATER MANAGEMENT COMMENTS**

No site changes are proposed. Any future expansion or redevelopment will be required to meet current stormwater management regulations.

**APPLICANT: Reo Thi Pham**

**PETITION NO.: Z-64**

**PRESENT ZONING: R-20**

**PETITION FOR: R-15**

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**TRANSPORTATION COMMENTS**

The following comments and recommendations are based on field investigation and office review of the subject rezoning case:

ROADWAY	AVERAGE DAILY TRIPS	ROADWAY CLASSIFICATION	SPEED LIMIT	JURISDICTIONAL CONTROL	MIN. R.O.W. REQUIREMENTS
Anderson Mill Road	4500	Minor Collector	35 mph	Cobb County	60'

*Based on 2009 traffic counting data taken by Cobb County DOT (Anderson Mill Road)*

**COMMENTS AND OBSERVATIONS**

Anderson Mill Road is classified as a minor collector and according to the available information the existing right-of-way does not meet the minimum requirements for this classification.

**RECOMMENDATIONS**

Recommend applicant consider entering into a development agreement pursuant to O.C.G.A. 36-71-13 for dedication of the following system improvements to mitigate traffic concerns: a) donation of right-of-way on the north side of Anderson Mill Road, a minimum of 30' from the roadway centerline.

Recommend one driveway apron for each tract.

Recommend curb, gutter, and sidewalk along the Anderson Mill Road frontage.

Recommend applicant be required to meet all Cobb County Development Standards and Ordinances related to project improvements.

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## STAFF RECOMMENDATIONS

### Z-64 REO THI PHAM

- A. It is Staff's opinion that the applicant's rezoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby properties. Currently developed as offices and have been vacant for at least 6 months, the request would will allow a vacant property to continue to be used for offices.
- B. It is Staff's opinion that the applicant's rezoning proposal will not have an adverse affect on the usability of adjacent or nearby property. Surrounding properties include an ice cream store and undeveloped residential land. The proposed use has existed on the property and should not bring any negative effects.
- C. It is Staff's opinion that the applicant's rezoning proposal will not result in a use which would cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools. This opinion can be supported by the departmental comments contained in this analysis.
- D. It is Staff's opinion that the applicant's rezoning proposal is not conformity with the policy and intent of the *Cobb County Comprehensive Plan*. The property lies in an area delineated as NAC neighborhood activity center on the future land use map. The purpose of the NAC land use is to provide for areas that serve neighborhood residents and businesses. Typical uses include small offices, limited retail and grocery stores.
- E. It is Staff's opinion that there are existing and changing conditions affecting the use and development of the property which give supporting grounds for deleting the applicant's rezoning proposal to the LRO category. LRO zoning category not only meets the intent of the *Cobb County Comprehensive Plan*, staff believes LRO category will be a better fit in the area.

Based on the above analysis, Staff recommends **DELETING** the request to LRO subject to the following conditions:

- Site plans received July 7<sup>th</sup>, 2014 with District commissioner approving minor modifications;
- Allowance of clinic use;
- Site plan to meet all parking requirements;
- Final landscape plan to be approved by County Arborist, with 20 foot landscape buffer to be added alongside the north property line where possible;
- Fire Department comments and recommendations;
- Water and sewer comments and recommendations;
- Department of Transportation comments and recommendations and;
- Owner/developer entering into a development agreement pursuant to O.C.G.A. 36-71-13 for dedication of the following system improvements to mitigate traffic concerns.

**The recommendations made by the Planning and Zoning Staff are only the opinions of the Planning and Zoning Staff and are by no means the final decision. The Cobb County Board of Commissioners makes the final decisions on all Rezoning and Land Use Permits at an advertised public hearing.**



Application #: Z-64  
 PC Hearing Date: 10-7-14  
 BOC Hearing Date: 10-21-14

## Summary of Intent for Rezoning



**Part 1. Residential Rezoning Information (attach additional information if needed)**

- a) Proposed unit square-footage(s): N/A
- b) Proposed building architecture: N/A
- c) Proposed selling prices(s): N/A
- d) List all requested variances: N/A

**Part 2. Non-residential Rezoning Information (attach additional information if needed)**

- a) Proposed use(s): NON RETAIL COMMERCIAL USES OF CLINIC AND PROFESSIONAL OFFICES
- b) Proposed building architecture: AS EXISTING; ONE-STORY OFFICE BUILDINGS ON EACH PARCEL
- c) Proposed hours/days of operation: NORMAL WEEKDAY BUSINESS HOURS OF OPERATION (I.E. 9AM-5PM)
- d) List all requested variances: NONE

**Part 3. Other Pertinent Information (List or attach additional information if needed)**

SEE ATTACHED: (A) SUMMARY OF PROPOSED REZONING; (B) DOCUMENTED IMPACT ANALYSIS; AND, (C) ADDITIONAL SUPPORTING DOCUMENTATION

**Part 4. Is any of the property included on the proposed site plan owned by the Local, State, or Federal Government?**

(Please list all Right-of-Ways, Government owned lots, County owned parcels and/or remnants, etc., and attach a plat clearly showing where these properties are located). N/A

**Part 5. Is this application a result of a Code Enforcement action? No ; Yes  (If yes, attach a copy of the Notice of Violation and/or tickets to this form).**

Applicant signature: *Pham* Date: 7-2-14  
 Applicant name (printed): RED THI PHAM



R. Kyle Williams  
Attorney at Law

404.373.9351 Direct Dial  
kwilliams@williamsteusink.com

July 3, 2014

*via Hand Delivery*

Rob Hosack, AICP  
Director  
Cobb County, Georgia  
Zoning Division  
1150 Powder Springs Street  
Suite 400  
Marietta, Georgia 30064



Re: **APPLICATION FOR REZONING**

**1840 and 1850 Anderson Mill Road, Austell, Cobb County, Georgia 30328**

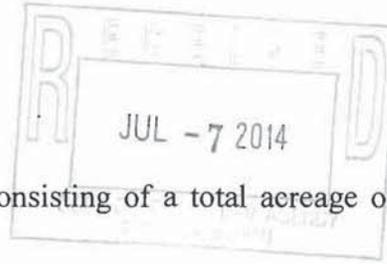
Dear Director Hosack:

I represent Reo Thi Pham. Ms. Pham owns that certain real property known as and located at 1840 Anderson Mill Road, Austell, Cobb County, Georgia 30328 (“1840 Anderson Mill”) and 1850 Anderson Mill Road, Austell, Cobb County, Georgia 30328 (“1850 Anderson Mill”) (collectively, the “Property”). The Property is currently zoned GC – General Commercial; however, it is our impression that it is necessary to rezone the Property due to the fact that the Property constitutes a grandfathered, nonconforming use as it is currently zoned pursuant to Section 134-227 of the Official Code of Cobb County, Georgia. As such, Ms. Pham respectfully submits this application to rezone the Property to O&I – Office and Institutional zoning district consistent with the comprehensive plan and to allow for nonretail commercial uses of the Property according to the existing development of the Property.

**A. SUMMARY OF PROPOSED REZONING**

Ms. Pham requests rezoning of the Property from GC – General Commercial zoning district to O&I – Office and Institutional zoning district consistent with the comprehensive plan and to allow for nonretail commercial uses of the Property as it is currently existing and developed. The rezoning is necessary due to the fact that the Property constitutes a grandfathered, nonconforming use as it is currently zoned GC – General Commercial zoning district pursuant to Section 134-227 of the Official Code of Cobb County, Georgia (the “Code”).

Ms. Pham purchased the Property on January 17, 2011 pursuant to the *Warranty Deed* filed and recorded in Deed Book 14832, Page 3251 in the Real Estate Records of Cobb County, Georgia, a copy of which is attached hereto at Tab No. 1. The Property consists of a total acreage of approximately 0.7644 with 1840 Anderson Mill consisting of a total acreage of



approximately 0.4591 and 1850 Anderson Mill consisting of a total acreage of approximately 0.3053.

1840 Anderson Mill is improved with a one-story commercial office building consisting of two thousand (2,000 sq. ft.) square feet of interior heated space, one hundred ninety-six (196 sq. ft.) square feet of exterior open porch, and servicing asphalt driveway and parking. At the time of purchase by Applicant, 1840 Anderson Mill was vacant and not being used or occupied. 1840 Anderson Mill has remained vacant and not being used or occupied with the discontinued use continuing for more than one-year and through the date of this application.

1850 Anderson Mill is improved with a one-story commercial office building consisting of one thousand sixty-two (1,062 sq. ft.) square feet of interior heated space, two hundred four (204 sq ft) square feet of exterior open deck, and servicing asphalt driveway and parking. 1850 Anderson Mill has been consistently occupied and in use as a nonretail office from the time of the purchase by Applicant and through the date of this application.

The discontinued use and occupancy of 1840 Anderson Mill triggers and necessitates this application pursuant to Sections 134-31(b)(4), 134-227(1)b, and 134-227(13)f of the Code due to the fact that the Property is currently zoned GC – General Commercial zoning district pursuant to Section 134-227 of the Code. 1850 Anderson Mill is in compliance with its grandfathered and nonconforming status as currently zoned GC – General Commercial zoning district pursuant to applicable provisions of the Code. However, Applicant includes both 1840 Anderson Mill and 1850 Anderson Mill in this rezoning application in an effort to efficiently and effectively address and proactively respond to the codified decision that the GC – General Commercial zoning district is no longer appropriate and to bring the Property back in for rezoning consistent with the comprehensive plan. See, Code, Section 134-277(1)b.

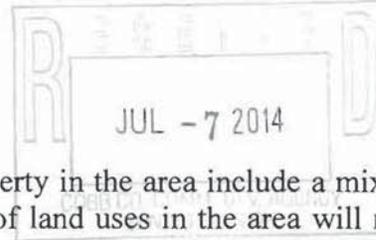
## **B. DOCUMENTED IMPACT ANALYSIS**

### **(a) Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property.**

The proposed rezoning of the Property will bring the Property in compliance with the existing Code, including the comprehensive plan, and fulfill the codified decision that the GC – General Commercial zoning district is no longer appropriate and to bring the Property back in for rezoning consistent with the comprehensive plan. See, Code, Section 134-277(1)b. The land uses and development of adjacent and nearby property in the area include a mix of commercial, office, and high density residential. The balance of land uses in the area will not be impacted, except to provide that the Property is rezoned consistent with the Code and comprehensive plan.

### **(b) Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property.**

The proposed rezoning of the Property will bring the Property in compliance with the existing Code, including the comprehensive plan, and fulfill the codified decision that the GC – General Commercial zoning district is no longer appropriate and to bring the Property back in for rezoning consistent with the comprehensive plan. See, Code, Section 134-277(1)b. The land



uses and development of adjacent and nearby property in the area include a mix of commercial, office, and high density residential. The balance of land uses in the area will not be impacted, except to provide that the Property is rezoned consistent with the Code and comprehensive plan.

**(c) Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned.**

1840 Anderson Mill does not have a reasonable economic use as currently the property must be brought back in for rezoning consistent with the comprehensive plan due to the discontinuation of its grandfathered, nonconforming use as a G-C General Commercial district pursuant to Sections 134-31(b)(4), 134-227(1)b, and 134-227(13)f of the Code. Essentially, 1840 Anderson Mill is not currently zoned and must be rezoned consistent with the comprehensive plan prior to any use or development of the property. Rezoning 1840 Anderson Mill to O&I – Office and Institutional is consistent with the historical zoning designation of G-C General Commercial district, the current development, and historical usage of the property. Rezoning 1840 Anderson Mill to O&I – Office and Institutional is consistent with the comprehensive plan.

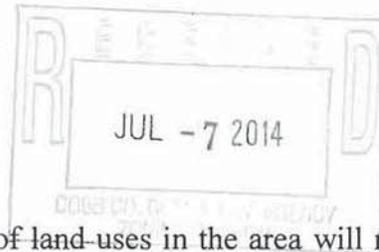
1850 Anderson Mill possesses a viable use as a continuing grandfathered, nonconforming use as a G-C General Commercial zoning district. However, rezoning 1850 Anderson Mill is consistent with the codified decision that the GC – General Commercial zoning district is no longer appropriate, and to bring the Property back in for rezoning consistent with the comprehensive plan. See, Code, Section 134-277(1)b. Furthermore, rezoning 1850 Anderson Mill to O&I – Office and Institutional is consistent with the historical zoning designation of G-C General Commercial district, the current development, and historical usage of the property. Rezoning 1850 Anderson Mill to O&I – Office and Institutional is consistent with the comprehensive plan.

**(d) Whether the zoning proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.**

The proposed rezoning is consistent with historical usage of existing streets, transportation facilities, utilities, and schools and does not propose any increased usage. The proposed rezoning will not result in any additional usage of existing streets, transportation facilities, utilities, or schools. The proposed rezoning will not result in an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.

**(e) Whether the zoning proposal is in conformity with the policy and intent of the land use plan.**

The proposed rezoning of the Property will bring the Property in compliance with the existing Code, including the comprehensive plan, and fulfill the codified decision that the GC – General Commercial zoning district is no longer appropriate and to bring the Property back in for rezoning consistent with the comprehensive plan. See, Code, Section 134-277(1)b. The land uses and development of adjacent and nearby property in the area include a mix of commercial,



office, and high density residential. The balance of land-uses in the area will not be impacted, except to provide that the Property is rezoned consistent with the Code and comprehensive plan.

**(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 zoning proposal.**

The proposed rezoning of the Property will bring the Property in compliance with the existing Code, including the comprehensive plan, and fulfill the codified decision that the GC – General Commercial zoning district is no longer appropriate and to bring the Property back in for rezoning consistent with the comprehensive plan. See, Code, Section 134-277(1)b. The land uses and development of adjacent and nearby property in the area include a mix of commercial, office, and high density residential. The balance of land uses in the area will not be impacted, except to provide that the Property is rezoned consistent with the Code and comprehensive plan.

**C. ADDITIONAL SUPPORTING DOCUMENTATION**

Ms. Pham includes as additional support for her Application the following:

- (1) Tab No. 1 - *Warranty Deed* filed and recorded in Deed Book 14832, Page 3251 in the Real Estate Records of Cobb County, Georgia;
- (2) Tab No. 2 - Legal Descriptions of 1840 Anderson Mill and 1850 Anderson Mill;
- (3) Tab No. 3 - Copy of Paid Tax Receipts for the Property;
- (4) Tab No. 4 – Copy of current site plan and current boundary survey of the Property;
- (5) Tab No. 5 – Zoning Application Disclosure Forms; and,
- (6) Tab No. 6 – Summary of Intent for Rezoning.

I appreciate consideration of this request for rezoning. Please do not hesitate to contact me with any questions or request for additional information or documentation.

Sincerely,

  
R. Kyle Williams

RKW/alh

cc: Reo Thi Pham