

REZONING APPLICATION FORM  
CITY OF CUMMING, GEORGIA

Rezoning Request No. 2024173  
Date Paid \_\_\_\_\_ Receipt# \_\_\_\_\_  
Amount Paid \_\_\_\_\_

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Property Owner: Name: Micter Enterprises LLC  
Address: 2745 Antioch Road  
Cumming, GA 30040  
Phone: 678-878-7582

RECEIVED  
JUL 09 2024  
CITY OF CUMMING

Applicant: Name: Mickey Layman  
(if different from owner) Address: 2745 Antioch Road  
Cumming, GA 30040  
Phone: 678-878-7582

Agent: (if applicable) Name: Sean Courtney Phone: 770-887-7761

Existing Zoning: R1A

Proposed Zoning: OP

Existing Use: Residential

Proposed Use: Office

Acreage of Site: 0.935 acres

Location of Property: 223 Kelly Mill Road  
(street address)

Tax Map and Parcel # C08-061

Applicants shall submit (22) sets of application as follows in order; Application 3 pages, letter of intent, legal description with metes and bounds, plat survey, required site plans, developments plans, elevation drawings to the Zoning Administrative Officer for distribution to the applicable bodies and/or review agencies. The Zoning Administrative Officer may require more or less copies depending on the nature and extent of required review.

All 22 sets must be on 8 1/2 x 11 inch paper. Do not staple!

Please be advised of the following:

- 1) The applicant is bound by the submitted site plan and letter of intent if this application is approved.
- 2) It is a legal requirement that the public hearing for this Rezoning, be advertised in the legal County organ in addition to posting a rezoning sign on the subject property.

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Complete the following information. (This section may be addressed in the letter of intent.)

1. The existing uses and zoning of nearby property and whether the proposed zoning will adversely affect the existing use or usability of nearby property.

See LOI for items 1 - 9

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2. The extent to which property values are diminished by the particular zoning restrictions.

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3. The extent to which the destruction of property values promotes the health, safety, morals or general welfare of the public.

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4. The relative gain to the public, as compared to the hardship imposed upon the individual property owner.

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5. The physical suitability of the subject property for development as presently zoned and under the proposed zoning district.

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6. The length of time the property has been vacant, considered in the context of land development in the area in the vicinity of the property, and whether there are existing or changed conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the rezoning request.

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7. The zoning history of the subject property.

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8. The extent to which the proposed zoning will result in a use which will or could cause excessive or burdensome use of existing streets, transportation facilities, utilities, schools, parks, or other public facilities.

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9. Whether the zoning proposal is in conformity with the policy and intent of the comprehensive plan, land use plan, or other adopted plans.

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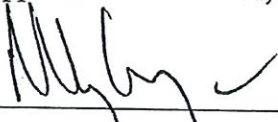
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**Property Owner's Certification**

I hereby certify that I am the owner of the property described in the attached legal description, that all information contained in this application is true and correct to the best of my knowledge, and that the applicant and/or agent listed above is authorized to act as the applicant and/or agent in the pursuit of the rezoning of this property. I further certify that, within the past two years, the applicant has not made any campaign contributions or made gifts of \$250 or more to members of the Governing Body or Planning Commission who will consider this application, or that if such contributions or gifts have been made, the amount and recipient of such contributions or gifts will be disclosed within ten (10) days after this application is first filed, as required by Title 36, Chapter 85, Georgia Laws.

Signature of Property Owner: 

Printed Name of Property Owner: Mickey Layman for Mictor Enterprises LLC

Date of Signature: 5/31/2018



LAW OFFICES  
**LIPSCOMB JOHNSON LLP**

112 NORTH MAIN STREET  
CUMMING, GEORGIA 30040  
TELEPHONE: 770-887-7761  
FAX: 770-889-8123

EMORY LIPSCOMB  
PUTNAM CLARK SMITH, P.C.  
CHRISTOPHER D. LIGHT  
SEAN COURTNEY  
ASHLEY B. MASHBURN  
ANDERSON LIPSCOMB

COY R. JOHNSON, P.C.  
(1928-2024)

L. LEE DAILEY  
(1939-2013)

July 2, 2024

**VIA HAND DELIVERY**

City of Cumming Planning and Zoning Department  
Attn: Mr. Scott Morgan, Zoning Administrator  
100 Main Street  
Cumming, Georgia 30040

Re: Letter of Intent as required by Section 113-110(3) of the Zoning Ordinance of the City of Cumming, Georgia – Rezoning for Mickey Layman - Request No. 2024\_\_\_\_\_

Dear Mr. Morgan:

This letter of intent is submitted pursuant to Section 113-110(3), and by reference section 113-112, of the Zoning Ordinance of the City of Cumming, Georgia, as part of Mickey Layman's (the "Applicant's") proposed Rezoning Application (the application and all supplemental documents filed contemporaneously therewith are collectively referred to herein as the "Application"). The Applicant is the owner of the property subject to this rezoning application, commonly known as Forsyth County Tax Parcel Number C08-061 (the "Subject Property"). The Applicant seeks to rezone the Subject Property from its existing R-1A Classification to the OP Classification in order to utilize the existing structure for an office. The existing square footage of the structure is approximately 1238 square feet.

With regard to the specific rezoning criteria and requested information contained in sections 1 through 9 of the Application, the Applicant hereby addresses them as follows:

The existing zoning of surrounding properties are OP, CBD and R-1A. Based on the fact that it is already adjacent to existing commercial districts, the proposed rezoning will not adversely affect the existing use or usability of nearby properties but will rather complement existing use patterns.

Although the City's Comprehensive Plan and Future Land Use Map anticipates the proposed use of the subject property as residential, the Applicant believes that the proposed OP Classification will be in keeping with the developing trend in the area of commercial/office uses.

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The existing use of the Subject Property at its current zoning classification does not allow for the proposed use in which the Applicant is seeking, and the Applicant is requesting to continue with the trend of converting a residential structure into office space, therefore it is anticipated that approval of the proposed rezoning to the OP district will raise and not diminish surrounding property values.

Approval of the Applicant's Application would not cause a safety hazard or noxious condition, would not reduce property values in the surrounding area, and therefore would promote the health, safety, morals and general welfare of the public. The relative gain to the public is also estimated to be significant as the proposed commercial use will mesh well into the existing commercial/office land uses in the area.

The Subject Property is physically suitable for development as requested by the Applicant under the OP zoning district and is not currently suitable for development under its existing zoning designation.

The Subject Property is vacant to the best of the Applicant's knowledge and belief, there are no existing or changed conditions affecting the use or development of the Subject Property which would give supporting grounds for disapproval of the rezoning request. As far as the Subject Property's zoning history is concerned, to the best of the Applicant's knowledge and belief, the Subject Property has at all times been zoned City of Cumming- R-1A and has been used as a residential homes.

The build out and transition of the Subject Property from its current use to the Applicant's proposed use will be gradual and in keeping with current and estimated growth patterns in the City, and it is therefore not anticipated that the proposed rezoning/development will result in or cause excessive or burdensome use of existing streets, transportation facilities, utilities, schools, parks, or other public facilities.

Refusal to grant approval of the requested rezoning as described in the Rezoning Application would impose a disproportionate hardship on the Applicant without accruing any benefits to any surrounding property owners. The provisions of the Zoning Ordinance that require the development of the property to be different from the Applicant's plan are unconstitutional in that they would constitute a taking of the Applicant's property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section 3, Paragraph 1 of the Constitution of the State of Georgia, and the Fifth and Fourteenth Amendments to the Constitution of the United States.

A refusal by the City of Cumming to approve this Application, so as to permit viable economic use of the property, would be unconstitutional and would discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and the owners of similarly situated



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property in violation of Article I, Section 1, Paragraph 2 of the Constitution of the State of Georgia and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Furthermore, a decision denying the Application would constitute an arbitrary and irrational abuse of discretion and constitute an unreasonable application of local land use authority bearing no relationship to the public health, safety, morality or general welfare of the public in violation of Article I, Section 1, Paragraph 1 of the Constitution of the State of Georgia and the Due Process Clause of the Fifth and Fourteenth Amendments to the Constitution of the United States. The Applicant maintains that a refusal to approve the Application as requested would be an abuse of discretion under the power granted to local governments by the Georgia Constitution and the Zoning Procedures Law, O.C.G.A. Section 36-66-1, et seq.

The Applicant reserves all other rights and privileges under the Constitutions of the United States and the State of Georgia, and available at law and in equity, in the event that the City of Cumming refuses to approve this Application as requested by the Applicant. The Applicant respectfully asks that the Application be approved as requested and reserves the right to amend this Letter of Intent and the Application by supplementing additional responses and documents

Thank you very sincerely and respectfully for your consideration of this request.

Sean Courtney,  
Attorney for Mickey Layman

## LEGAL DESCRIPTION

All that tract or parcel of land lying and being in Land Lots 1249, 1250, 1271, and 1272, 3rd District, 1st Section, City of Cumming, Forsyth County, Georgia, being 0.935 acres as shown on a Boundary Survey for AJS Auctions, LLC, dated March 7, 2024 as surveyed by Kevin F. Tibbetts, Registered Land Surveyor and being more particularly described as follows:

To Arrive at the True Point of Beginning, commence at the intersection of the centerlines of Ambulance Drive and Kelly Mill Road; thence from said intersection South 84 degrees 06 minutes 18 seconds West 222.99 feet to a point in Land Lot 1271 on the Northerly right of way of Kelly Mill Road being the Point of Beginning; thence from said Point of Beginning along said right of way South 56 degrees 58 minutes 06 seconds West 110.83 feet to a point; thence leaving said right of way North 34 degrees 17 minutes 37 seconds West 229.45 feet to a point in Land Lot 1249; thence North 30 degrees 29 minutes 12 seconds West 112.94 feet to a point; thence North 86 degrees 33 minutes 55 seconds East 172.12 feet to a point in Land Lot 1250; thence South 24 degrees 27 minutes 16 seconds East 260.12 feet to the Point of Beginning, said property being more fully described according to the above referenced survey which is incorporated herein.

Being the same property described in Deed Book 5967, page 27, Forsyth County, Georgia records.







Micter Enterprises, LLC

Zoning Conditions

1. The following uses shall not be permitted on the subject property:
  - a. Convenience stores, with or without gasoline pumps;
  - b. bars, lounges or night clubs not to preclude restaurants such as but not limited to Applebee's from serving alcohol.
  - c. hotels or motels
  - d. theaters
  - e. electronic game playing centers
  - f. adult entertainment centers
  - g. adult novelty stores
  - h. pawn shops;
  - i. pool halls;
  - j. tattoo parlors;
  - k. Daycare or school
  - l. Guesthouse
  - m. Institutional Residential Living and Care Facility
2. Owner shall provide adequate parking depending on the use of the property as determined by the Cumming Department of Planning and Zoning.
3. The City requires a site plan, specifying the proposed parking, landscaping and buffers.
4. Any remodeling/renovation shall be permitted by the Cumming Department of Planning and Zoning and the Forsyth County Fire Department.
5. Any business use must be connected to the Cumming Department of Utilities public water and sanitary sewer.
6. If the structure is removed, any reconstruction, or expansion beyond 10% of the existing footprint, must come back before the Mayor & Council for approval.