



Index #: RZ11-16  
CV11-06

Genero #: 11120061(RZ)  
11120062(CV)

Legistar #: 11-0755

## ZONING APPLICATION

### TYPE OF REQUEST :

- ☒ Rezoning  
☒ Concurrent Variance  
☐ Conditional Use  
☐ Text Amendment  
☐ Other (Explain)

Present Zoning R-3 Residential  
Requested Zoning C-2 Commercial  
Proposed Use Day care center  
Total Acreage 1.354

### PROJECT

Warsaw Road Early Childhood Learning Center

#### Name of Project

1240 Warsaw Road, Roswell, Georgia 30076

#### Property Address/Location

525

First

#### Suite/Apt. #

Second

#### City

#### State

#### Zip Code

12-2190-0525-089-0

#### Land Lot

#### District

#### Section

#### Property ID

### APPLICANT/OWNER

Kara Portnell, Executive Director; Donald K. Voshall, Chairman

Applicant Early Learning Property Management, Inc.

#### Company

57 Executive Park Drive

315

Atlanta, Georgia 30329

#### Mailing Address

404-634-4049

#### Suite/Apt. #

404-634-6986

#### City

#### State

#### Zip Code

kportnell@elpm.org

#### Phone

#### Cell Phone

#### Fax Phone

#### E-mail

### REPRESENTATIVE

Michael G. Kerman, Esq., Sutherland Asbill & Brennan LLP

#### Contact Name and Company (Owner's Agent or Attorney)

999 Peachtree Street NE

2300

Atlanta, Georgia 30309

#### Contact Mailing Address

404-853-8326

#### Suite/Apt. #

404-853-8806

#### City

#### State

#### Zip Code

michael.kerman@sutherland.com

#### Phone

#### Cell Phone

#### Fax Phone

#### E-mail

*I hereby certify that all information provided herein is true and correct*

[Signature]

Date: 12 / 1 / 2011

Applicant Signature: Property Owner or Owner's Representative

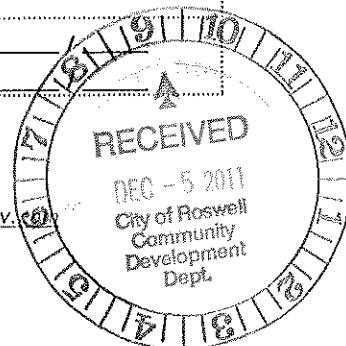
### OFFICE USE

Fee: \$ \_\_\_\_\_ ☐ Cash ☐ Check # \_\_\_\_\_ ☐ CC - Visa/ MC

Date: \_\_\_\_\_ / \_\_\_\_\_

☐ Approved ☐ Denied By: \_\_\_\_\_

Date: \_\_\_\_\_ / \_\_\_\_\_





## Analysis Requirements

**REZONING APPLICATIONS:** Please complete the Analysis Requirements questionnaire. Applicants are required to respond to criteria 1 through 6 pursuant to O.C.G.A. 36-67-3. Further, please complete criteria 7 through 23, as noted below.

**CONCURRENT VARIANCE APPLICATIONS:** Please complete the Analysis Requirements questionnaire. Applicants are required to respond to **criteria 1 through 23**. Complete also the Concurrent Variance Justification, questions 1 – 7 at the end of this section.

**CONDITIONAL USE APPLICATIONS:** Please complete the Analysis Requirements questionnaire. Applicants are required to respond to criteria **1 through 8; also 13, and 18 through 22**. **Criteria 9 through 12, and 14 through 17, and 23 are NOT required to be completed for a Conditional Use Application.**

1. Whether the proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property.

See attached answers to the Analysis Requirements.

2. Whether the proposal will adversely affect the existing use or usability of adjacent or nearby property.
3. Whether the property to be affected by the proposal has a reasonable economic use as currently zoned.
4. Whether the proposal will result in a use which would or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.





5. Whether the proposal is in conformity with the policy intent of the Comprehensive Plan including land use element.
6. 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 proposal.

An applicant for an amendment to the official zoning map may decline to provide any information related to criteria seven (7) through twenty-three (23) if he or she completes, signs, and notarizes the following statement:

*"I do not regard the information required by the City, or any portion thereof as indicated, as necessary or relevant to the City Council in their consideration of my application for rezoning. I stipulate that such information shall not be relevant to the City Council in their deliberations or to any court in its review of the decision on my application for rezoning."*

\_\_\_\_\_  
Owner of Property (Signature) Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

*The above named individual personally appeared before me, and on oath states that he/she is the*  
*\_\_\_\_\_ for the foregoing, and that all above statements are true to the best of his/her knowledge.*

\_\_\_\_\_  
Notary Public (Signature) Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

My Commission Expires:  
Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

7. An explanation of the existing uses and zoning of subject property.
8. An explanation of the existing uses and zoning of nearby property.





9. An explanation of the existing value of the property under the existing zoning and/or overlay district classification.
10. Whether the property can be used in accordance with the existing regulations.
11. The extent to which the property value of the subject property is diminished by the existing zoning district and/or overlay district classification.
12. The value of the property under the proposed zoning district and/or overlay district classification.
13. The suitability of the subject property under the existing zoning district and/or district classification for the proposed use.
14. The suitability of the subject property under the proposed zoning district and/or overlay district classification.





15. The length of time the property has been vacant or unused as currently zoned.
16. A description of all efforts taken by the property owner(s) to use the property or sell the property under the existing zoning district and/or overlay district.
17. The possible creation of an isolated zoning district unrelated to adjacent and nearby districts.
18. Possible effects of a change in zoning or overlay district map, or change in use, on the character of a zoning district.
19. Whether a proposed zoning map amendment or conditional use approval will be a deterrent to the value or improvement of development of adjacent property in accordance with existing regulations.
20. The possible impact on the environment, including but not limited to, drainage, soil erosion and sedimentation, flooding, air quality and water quality.





21. The relation that the proposed map amendment or conditional use bears to the purpose of the overall zoning scheme, with due consideration given as to whether or not the proposed change will help to carry out the purposes of these zoning regulations.
22. The consideration of the preservation of the integrity of residential neighborhoods shall be considered to carry great weight. In those instances in which property fronts on a major thoroughfare and also adjoins an established residential neighborhood, the factor of preservation of the residential area shall be considered to carry great weight.
23. The amount of undeveloped land in the general area affected which has the same zoning or overlay district classification as the map change requested.



#### **Concurrent Variance Justification If Required**

An applicant requesting consideration of a Concurrent Variance to any provision of the Zoning Ordinance shall provide written justification that one or more of the following condition(s) exist: See attached justification.

1. There are extraordinary and exceptional conditions or practical difficulties pertaining to the particular piece of property in question because of its size, shape, topography that are not applicable to other lands or structures in the same district.
2. Any information whereby a literal interpretation of the provisions of this ordinance would effectively deprive the applicant of rights commonly enjoyed by other properties of the district in which the applicant's property is located.
3. Any information supporting that granting the variance requested will not confer upon the property of the applicant any special privileges that are denied to other properties of the district in which the applicant's property is located.
4. Any information that the requested variance will be in harmony with the purpose of the intent of this ordinance and will not be injurious to the neighborhood or to the general welfare.
5. Any information that special circumstances are not the result of the actions of the applicant.
6. Any information that the variance request is the minimum variance that will make possible the proposed use of the land, building, or structure in the use district proposed.
7. Any information that the variance shall not permit a use of land, buildings, or structures, which is not permitted by right in the zoning district or overlay district involved.



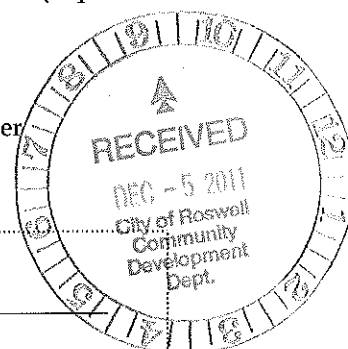
### Application Signature Page

Please complete this Applicant Signature Page for ALL applications. **READ CAREFULLY BEFORE SIGNING.**

- I understand that failure to supply all required information (per the relevant Applicant Checklists and requirements of the *Roswell 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 sign 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.
- I have read the provisions of the Georgia Code Section 36-67A-3 as required regarding Campaign Disclosures. My signed Campaign Disclosure Statement is included with this Application (required for rezoning only).
- I understand that due to a sewer allocation system controlled by Fulton County, sewerage capacity may not be available. I agree to arrange sewer service separately from this application. The method of sewage disposal that is planned for this property is:

Check one:

- ☒ Sanitary Sewer  
☐ Septic Tank



*I respectfully petition that this property be considered as described in this application*

From Use District  
R-3 Multi-family residential

To Use District: C-2 Commercial

Wherefore, applicant prays that the procedures incident to the presentation of this petition be taken, and the property be considered accordingly. Additionally, applicant further acknowledges and fully understands all above statements made by the City of Roswell.

### APPLICANT SIGNATURE (REQUIRED FOR ALL APPLICATIONS)

*I hereby certify that all information provided herein is true and correct*

Donald K. Voshall  
Owner of Property (Signature) Donald K. Voshall, Chairman  
57 Executive Park Drive, Suite 315, Atlanta, GA 30329

Date: 12 / 1 / 2011

Street Address, City, State, Zip

Phone

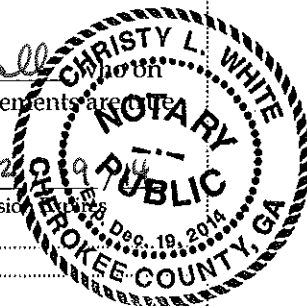
### NOTARY

Personally appeared before me the above Owner named Donald K. Voshall who  
oath says that he/she is the Applicant for the foregoing, and that all the above statements are true  
to the best of his/her knowledge.

Christy L. White  
Notary Public (Signature)

Date: 12 / 1 / 11

Date: 12 / 1 / 11  
Commission Expires



### ATTORNEY / AGENT (IF APPLICABLE)

Michael G. Kerman  
Attorney / Agent (Signature) Michael G. Kerman  
999 Peachtree Street NE, Atlanta, GA 30309

Date: 12 / 2 / 11

404-853-8326

Street Address, City, State, Zip

Phone



## Campaign Disclosure Ordinance

Please read the law and complete the Campaign Disclosure Statement on the following page if you are requesting a Rezoning, Concurrent Variance, or Conditional Use.

GA Citation/Title

GA Code 36-67A-3, Disclosure of campaign contributions

\*38069 Code, 36-67A-3

### CODE OF GEORGIA TITLE 36. LOCAL GOVERNMENT PROVISIONS APPLICABLE TO COUNTIES AND MUNICIPAL CORPORATIONS CHAPTER 67A. CONFLICT OF INTEREST IN ZONING ACTIONS (Current through 2000 General Assembly)

#### 36-67A-3 Disclosure of campaign contributions.

- a) When any applicant for rezoning action has made, within two years immediately preceding the filing of that applicant's application for the rezoning action, campaign contributions aggregating \$250.00 or more to a local government official who will consider the application, it shall be the duty of the applicant to file a disclosure report with the governing authority of the respective local government showing:
  - 1) The name and official position of the local government official to whom the campaign contribution was made; and
  - 2) The dollar amount and description of each campaign contribution made by the applicant to the local government official during the two years immediately preceding the filing of the application for the rezoning action and the date of each such contribution.
- b) The disclosures required by subsection (a) of this Code section shall be filed within ten days after the application for the rezoning action is first filed.
- c) When any opponent of a rezoning action has made, within two years immediately preceding the filing of the rezoning action being opposed, campaign contributions aggregating \$250.00 or more to a local government official of the local government which will consider the application, it shall be the duty of the opponent to file a disclosure with the governing authority respective local government showing:
  - 1) The name and official position of the local government official to whom the campaign contribution was made; and
  - 2) The dollar amount and description of each campaign contribution made by the opponent to the local government official during the two years immediately preceding the filing of the application for the rezoning action and the date of each such contribution.
- d) The disclosure required by subsection (c) of this Code section shall be filed at least five calendar days prior to the first hearing by the local government of any of its agencies on the rezoning application.

(Code 1981, 36-67A-3, enacted by Ga. L. 1986, p. 1269, 1; Ga. L. 1991, p. 1365, 1; Ga. L. 1993, p. 91, 36.)

*Official Code of Georgia Annotated Copyright 1982 - 2000 State of Georgia.*





### APPLICANT CAMPAIGN DISCLOSURE STATEMENT

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 City of Roswell City Council or a member of the City of Roswell Planning Commission?

☐ YES

☒ NO

*Donald K. Voshall*

Date: 12 / 1 / 2011

Applicant/Owner of Property (Signature) Donald K. Voshall, Chairman  
57 Executive Park Drive, Suite 315, Atlanta, GA 30329

Street Address, City, State, Zip

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

Date	Government Official	Official Position	Description	Amount





**Planning & Zoning Director Acceptance Stamp**

- ☒ Rezoning  
☒ Concurrent Variance  
☐ Conditional Use

RECEIVED BY THE CITY OF ROSWELL

ZONING OFFICE Dec. 5, 2011  
Date

APPROVED FOR INITIATION OF A ZONING  
AMENDMENT TO THE ROWELL ZONING  
ORDINANCE AND ZONING MAP BY THE  
ZONING DIRECTOR,

Bradford P. Townsend  
Zoning Director

TIME: 10:00am DATE: Dec 12, 2011

THIS APPLICATION SHALL BE CONSIDERED  
AND MAY BE REFERRED TO AS REZONING  
PETITION NUMBER \_\_\_\_\_

R211-16, CV11-06



**Early Learning Property Management, Inc. ("ELPM")  
Roswell Zoning Application for the  
Warsaw Road Early Childhood Learning Center (the "ELC"),  
located at 1240 Warsaw Road, Roswell, Georgia 30076 (the "Property")**

**Analysis Requirements**

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

ELPM's proposal to rezone the Property to C-2 Neighborhood Commercial from R-3 Multi-Family Residential is suitable to the use and development of adjacent and nearby property. The adjacent and nearby properties have been developed for a variety of uses. The area includes a mix of single-family and multi-family residential developments, professional offices, a day care center, a senior living center and an elementary school. The Property is wedged between two commercial highway corridors (the Holcomb Bridge Road corridor and the Old Roswell Road corridor), which contain a variety of highway commercial uses, including office, retail, restaurants, and professional services. Rezoning the Property to neighborhood commercial would bridge the gap between this more intensive highway commercial use and the interior residential neighborhoods nearby.

*2. Whether the proposal will adversely affect the existing use or usability of adjacent or nearby property.*

The proposed use would not adversely affect the existing use of adjacent or nearby property. Adjacent and nearby properties are compatible with the proposed neighborhood commercial zoning district. In fact, the Property has been used for commercial purposes (as a day care center) for a number of years, which use has not adversely affected adjacent or nearby properties.

*3. Whether the property to be affected by the proposal has a reasonable economic use as currently zoned.*

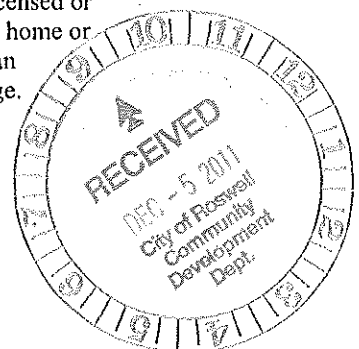
The Property is currently zoned R-3 Multi-Family Residential. Under current zoning regulations, a day care center<sup>1</sup> is not a permitted use in the R-3 zoning district. The building

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<sup>1</sup> Under the zoning ordinance, a "day care center" is defined as:

[a]ny place operated by a person, society, agency, corporation, institution or group, and licensed or registered by the State of Georgia and licensed by the City of Roswell as a group day care home or day care center, wherein are received for pay for group supervision and care, for fewer than twenty-four (24) hours per day, seven (7) or more children under eighteen (18) years of age.

Roswell Zoning Ordinance, Section 3.2.



located on the Property, however, was constructed at a time when day care centers were a permitted use in the R-3 zoning district and the Property has continuously operated as a day care center. Therefore, the ELC is a nonconforming use and subject to certain restrictions imposed by existing zoning regulations.<sup>2</sup>

Under the Roswell zoning code, a nonconforming use may not be re-established after discontinuance for three months. Roswell Zoning Ordinance, Section 14.3.3. Additionally, a “nonconforming use shall not be expanded, enlarged or extended, in land area or in floor space or volume of space in a building or structure, except for a use which complies with the zoning district in which said use is located.” *Id.* at Section 14.4.4. Finally, a “nonconforming use shall not be rebuilt, altered or repaired after damage exceeding fifty (50) percent of its replacement cost . . . .” *Id.* at Section 14.3.5.

The proposed zoning district, C-2 Neighborhood Commercial, would not impose such restrictions on the ELC because day care centers are a permitted use in that district.

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

The proposal would not impose any burdensome use of existing transportation facilities or schools. The Property is located in the North Central Roswell Planning Area, which is mostly developed land, and is less than one quarter mile from the Holcomb Bridge Road (SR 92) corridor. The ELC, which is located on Warsaw Road, is accessible from both Old Roswell Road and Holcomb Bridge Road, the intersections of which have traffic lights. The ELC is also about one half mile south of the Mimosa Elementary School, which is also located on Warsaw Road. Like the Mimosa Elementary School, the ELC pulls much of its enrollment from the surrounding neighborhoods.

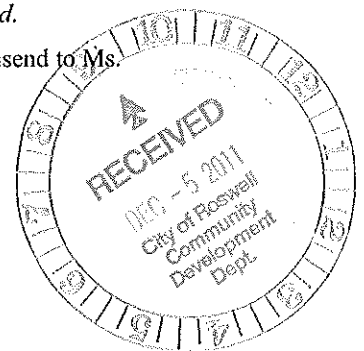
*5. Whether the proposal is in conformity with the policy intent of the Comprehensive Plan including land use element.*

The proposal conforms with and furthers the policy intent of the 2025 Comprehensive Plan (“2025 Comp. Plan”) and the 2030 Comprehensive Plan (“2030 Comp. Plan”), including the population, community facilities and services, and land use elements.

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The ELC provides high quality early learning to preschool age children and is, therefore, more like a “nursery or kindergarten school,” which is defined under the zoning ordinance as “any building used routinely for the daytime care or education of preschool age children and including all normal accessory and play areas.” *Id.* For purposes of the zoning ordinance, “a nursery or kindergarten school is considered to be a day care center.” *Id.*

<sup>2</sup> A zoning confirmation letter for the Property, dated June 10, 2011 from Mr. Bradford D. Townsend to Ms. Alexandra McLaughlin is attached to this zoning application as Exhibit “A”.

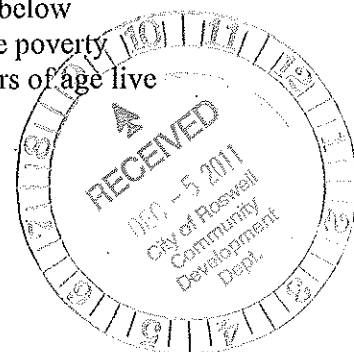


The proposal carries forward the Comprehensive Plan's land use element. The 2030 Comp. Plan envisions a dramatic redevelopment of the Georgia 400/Holcomb Bridge Node, which character area is directly across the street from the Property. In fact, the 2030 Comp. Plan envisions that the area across the street from the Property will be "Mixed Use Mid-Rise (4-8 Floors)." 2030 Comp. Plan, p. 25. Rezoning the Property to C-2 neighborhood commercial serves to protect, support and maintain the surrounding neighborhood and the Suburban Residential character area in which the Property is located. Specifically, the proposal would create a "transition in land use intensity stepping down from high-intensity commercial or industrial uses to low intensity single-family residential developments." 2025 Comp. Plan, p. 269. The Property, zoned as C-2 Neighborhood Commercial, would be an "intervening use[] that [has] intermediate intensities." *Id.* The proposal would ensure that there is a "lower intensity near neighborhoods" and serve as a buffer to the Suburban Residential character area. 2030 Comp. Plan, p. 32.

The proposal also furthers the community facilities and services element. One of the goals under the 2025 Comp. Plan's community facilities and services element is to "maintain productive and cooperative relationships with providers of technical and higher education in the North Fulton area (e.g., DeVry, Reinhardt, Georgia State)." 2025 Comp. Plan, p. 302. ELPM also shares this goal. ELPM is currently strategizing with potential partners to discuss opportunities to link colleges with local high quality early learning centers and incorporate teaching labs into their early learning degree programs. The Comprehensive Plan also provides that Roswell "should take an active role in promoting effective health and human service delivery to City residents by encouraging and supporting the work of the county and other providers (including private, non-profit organizations) to meet identified needs" and should "aim to create conditions that allow . . . community supported service provision for those in need." 2025 Comp. Plan., p. 304; 2030 Comp. Plan, p. 61. Additionally, the plan provides that Roswell should "continue to add special services for the special populations." 2025 Comp. Plan., p. 304.

The ELC will further these goals by providing high quality childcare and other services to Roswell's families and children with special needs. There are 672 children between the ages of 5 and 15 that have disabilities that require special accommodations. 2025 Comp. Plan, p. 30. The ELC and Easter Seals North Georgia ("Easter Seals") provide comprehensive services to children enrolled in the facility including nutrition, disability and mental health services. The ELC and Easter Seals also provide screening, evaluation and treatment for children with disabilities or who may be at risk of developmental delays. Additionally, Easter Seals' P.L.A.Y. project provides training and support for families of children diagnosed with Autism, aiming to improve language, social and play skills in the children.

Finally, the proposal furthers the population element of the Comprehensive Plan by providing high quality early childhood education to Roswell's children from low-income families. According to the U.S. Census Bureau statistics from the 2000 census, 6.9% of Roswell's population is between 0 and 4 years old, and 1,193 children are enrolled in a nursery school or preschool. 2025 Comp. Plan, pp. 15, 21. 14.9% of Roswell's population has a household income below \$30,000 and 10.4% of Roswell's population has a household income below \$25,000. *Id.* at pp. 24-25. An estimated 7% of Roswell's population lives below the poverty threshold. 2030 Comp. Plan, p. 51. In fact, 6.8% of Roswell's children under 5 years of age live below the poverty line. 2025 Comp. Plan., p. 25.



The ELC gives priority to children from low-income families, as defined in the Family Income Guidelines of the Head Start Act. The ELC, like all ELPM properties, is accredited by the National Academy of Early Childhood Programs, a division of the National Association for the Education of Young Children (NAYEC). Thus, the ELC provides accessible, quality early learning to children who ordinarily would not have this opportunity as their more advantaged peers.

*6. 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 proposal.*

At the time when the ELC building was constructed, a day care center was a permitted use. Rezoning the Property to a district in which this historical use is permitted would conform the zoning map to the existing use and development of the Property.

*7. An explanation of the existing uses and zoning of subject property.*

As discussed in Number 3 above, the Property is currently zoned R-3 Multi-Family Residential. The Property is currently used as an early learning center for preschool age children. The Property operates as a day care center under the nonconforming use regulations in the zoning ordinance.

The Property is owned by ELPM and is leased to Easter Seals. ELPM is a Georgia non-profit organization and a 501(c)(3) tax exempt organization and a 170(b)(1)(A)(vi) public charity. ELPM was created to help address the lack of high quality early learning facilities in metro Atlanta. ELPM's mission is to support and promote early childhood learning and development by providing safe and adequate facilities where early learning programs and activities can be conducted, thereby fostering early childhood development for underprivileged children.

Under the lease to Easter Seals, Easter Seals pays ELPM below-market rent. All rent from the lease is used to pay operating expenses that are the responsibility of ELPM under the lease, including maintenance and repairs, and the balance is reserved for capital repairs and replacements which are also the responsibility of ELPM under the lease.

The Property consists of a 1.354 acre parcel, upon which is located a single, one-story brick building that is approximately 8,883 square feet, an outside playground and parking facilities. The building has 4 classrooms for infants and toddlers, 3 classrooms for 3-year olds, and 1 classroom for pre-kindergarten children. The building also has an office, kitchen and laundry room. The ELC serves a total of 103 children between the ages of 6 weeks and 4 years old, including children enrolled in the Head Start and Early Head Start programs.

*8. An explanation of the existing uses and zoning of nearby property.*



Adjacent uses include a senior center, multifamily residential, and single family residential. Across the street is a very large apartment complex, from which the ELC gets many of its enrolled students.

Nearby uses include medical and professional office space, additional multifamily residential, and an elementary school. A for-profit day care center is also located less than one half mile north of the Property on Warsaw Road. There is a lot of highway commercial development (C-3 Highway Commercial) along the Holcomb Bridge Road corridor, which is less than one quarter mile from the Property. Development along this commercial highway includes shopping centers and outparcels containing a mix of restaurant, retail, and professional services.

*9. An explanation of the existing value of the property under the existing zoning and/or overlay district classification.*

ELPM purchased the Property, with its existing zoning classification, on June 22, 2011 for \$885,000. This price represents a likely fair market value of the Property under the current zoning classification.

*10. Whether the property can be used in accordance with the existing regulations.*

Under the nonconforming use provisions of the zoning ordinance, ELPM may continue to lease the Property for day care center purposes in the R-3 Multi-Family Residential district (as a nonconforming use) under the following circumstances:

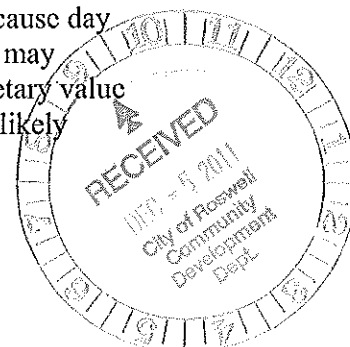
- The Property does not lie vacant for more than 3 months and the tenant's license to operate a day care center does not lapse for more than 3 months;
- ELPM does not expand the building or land area; and
- The building is not more than 50% destroyed or damaged.

*11. The extent to which the property value of the subject property is diminished by the existing zoning district and/or overlay district classification.*

As discussed above, ELPM may continue to use the Property for day care center purposes only in a manner that is consistent with the nonconforming use provisions of the zoning ordinance. These restrictions reduce the value of the Property to ELPM. For example, if the Property lies vacant for more than 3 months or is more than 50% destroyed, ELPM may not use the Property to further its mission to support and promote early childhood learning and development.

*12. The value of the property under the proposed zoning district and/or overlay district classification.*

The Property under the proposed zoning classification is more valuable to ELPM because day care centers are permitted as of right in that classification, which ensures that ELPM may continue to use the Property to further its mission. It is difficult to estimate the monetary value of the Property under the proposed zoning district. The value of the Property would likely



increase under the proposed zoning district because it could be used for neighborhood commercial purposes.

*13. The suitability of the subject property under the existing zoning district and/or district classification for the proposed use.*

As stated above, a day care center is not a permitted use in the existing R-3 Multi-Family Residential zoning district. The ELC is only permitted as long as it operates within the restrictions of the nonconforming use provisions of the zoning ordinance.

*14. The suitability of the subject property under the proposed zoning district and/or overlay district classification.*

The proposed zoning district (C-2 Neighborhood Commercial) is "is intended to provide suitable areas for the retailing of goods and the provision of services to adjacent and nearby residential neighborhoods." Roswell Zoning Ordinance, Section 6.3.1. These districts are "predominately occupied by establishments that offer goods or merchandise for sale or rent to nearby residents." 2025 Comp. Plan., 262. While the ELC is not a retail use, the facility does provide services to nearby residents. In fact, it is ELPM's mission to bring high quality early learning programs to families and neighborhoods that might not otherwise have access to those services.

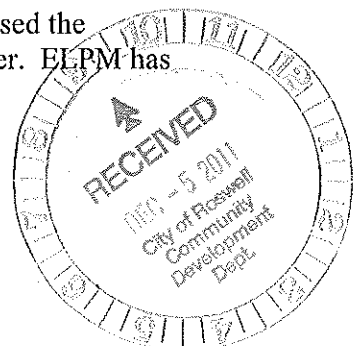
The zoning code also provides that "[m]ost of the uses permitted in the C-2 district are not auto-oriented in nature, and the overall character of neighborhood commercial districts is such that access by both vehicles and pedestrians is possible." Roswell Zoning Ordinance, Section 6.3.1. Although vehicular access to the Property is available from Warsaw Road, the Property is not auto-oriented. In fact, vehicular access and parking occupy a small portion of the Property and are located along the eastern boundary (not in front of the building). Moreover, there is a sidewalk on the Property along Warsaw Road and pedestrian access to the Property from the surrounding residential neighborhoods and commercial establishments is available.

*15. The length of time the property has been vacant or unused as currently zoned.*

ELPM purchased the Property on June 22, 2011. Since that time, the Property has been used as an early childhood learning center. Prior to ELPM's purchase, the Property was owned and operated as a day care center by an unrelated entity. ELPM is unaware of any time during which the Property has been vacant or unused.

*16. A description of all efforts taken by the property owner(s) to use the property or sell the property under the existing zoning district and/or overlay district.*

Since the time that ELPM purchased the Property on June 22, 2011, ELPM has leased the Property to Easter Seals, which has operated the Property as an early learning center. ELPM has made no attempts to sell the Property.





*17. The possible creation of an isolated zoning district unrelated to adjacent and nearby districts.*

If the Property is rezoned to the C-2 Neighborhood Commercial district, it would be the only C-2 district in the general area surrounding the Property. That said, the C-2 district is intended to be an "intervening use[] that [has] intermediate intensities." 2025 Comp. Plan, p. 269. Moreover, the nature of a neighborhood commercial district means that it is a use that serves the surrounding neighborhoods. The Property would provide services to both the neighboring single-family and multi-family neighborhoods, as well as the surrounding commercial and professional districts.

*18. Possible effects of a change in zoning or overlay district map, or change in use, on the character of a zoning district.*

This proposal contemplates no change in the use of the Property. The requested change in the zoning would have a minimal impact on the character of the C-2 district. There are relatively few C-2 districts on the current zoning map and the majority of the existing C-2 districts are located in the Historic District or the Parkway Village District. A rezoning of the Property to the C-2 classification expands this zoning district to additional areas.

*19. Whether a proposed zoning map amendment or conditional use approval will be a deterrent to the value or improvement of development of adjacent property in accordance with existing regulations.*

The proposed zoning map amendment will not deter the value or development of adjacent property. Under the nonconforming use provisions of the zoning ordinance, the Property is currently used for a more intensive use than is currently permitted under the existing zoning classification. This existing use has not had any deterrent effect on adjacent property.

*20. The possible impact on the environment, including but not limited to, drainage, soil erosion and sedimentation, flooding, air quality and water quality.*

The Property has already been developed and has been operating as a commercial use for a number of years. The proposed zoning map amendment would not produce any greater impact on the environment than the present use and zoning classification.

*21. The relation that the proposed map amendment or conditional use bears to the purpose of the overall zoning scheme, with due consideration given as to whether or not the proposed change will help to carry out the purposes of these zoning regulations.*



The proposed map amendment would carry out the purpose of the overall zoning scheme. The Property is listed on the Future Development Map of the 2030 Comprehensive Plan as "Suburban Residential." According to the 2030 Comprehensive Plan, this character area includes "pocket retail" and the C-2 zoning classification. 2030 Comp. Plan, p. 8. The one-story building located on the Property is in keeping with the Suburban Residential area's "low-scale development." *Id.* at p. 12. Moreover, the building located on the Property is constructed of brick and is landscaped in keeping with the adjacent subdivisions. *Id.* at p. 13. The Property is also located close to a major crossroad, the Holcomb Bridge Road and Warsaw Road intersection. *Id.* This intersection is envisioned to be an "Intensified Node" within the Georgia 400/Holcomb Bridge character area. *Id.* at 24.

ELPM is committed to providing high quality early learning facilities to the surrounding communities in which its partners offer services. This mission coincides with the City's vision to provide a more connected, livable and workable community. In order to ensure that ELPM can continue providing services to the public and the neighboring community, the Property should be rezoned to C-2, which expressly permits the use of the Property for day care center and other public/institutional purposes.

*22. The consideration of the preservation of the integrity of residential neighborhoods shall be considered to carry great weight. In those instances in which property fronts on a major thoroughfare and also adjoins an established residential neighborhood, the factor of preservation of the residential area shall be considered to carry great weight.*

The Property does not front a major thoroughfare, but does adjoin established residential neighborhoods. There is an established single family residential neighborhood abutting the western boundary of the Property and there is a large, multi-family apartment complex directly across Warsaw Road. As discussed above, there will be no change in the character of the residential area because the Property has been used for day care center purposes for a number of years and this proposal does not request a change in the character of the existing use.

*23. The amount of undeveloped land in the general area affected which has the same zoning or overlay district classification as the map change requested.*

There are no undeveloped parcels of land in the general area which have the C-2 Neighborhood Commercial district classification. There is an undeveloped parcel of land designated C-2 Neighborhood Commercial located north of the Property on Mansell Road.

#### **Concurrent Variance Justification**

*1. There are extraordinary and exceptional conditions or practical difficulties pertaining to the particular piece of property in question because of its size, shape, topography that are not applicable to other lands or structures in the same district.*



Not applicable.

*2. Any information whereby a literal interpretation of the provisions of this ordinance would effectively deprive the applicant of rights commonly enjoyed by other properties of the district in which the applicant's property is located.*

Not applicable.

*3. Any information supporting that granting the variance requested will not confer upon the property of the applicant any special privileges that are denied to other properties of the district in which the applicant's property is located.*

Not applicable.

*4. Any information that the requested variance will be in harmony with the purpose of the intent of this ordinance and will not be injurious to the neighborhood or to the general welfare.*

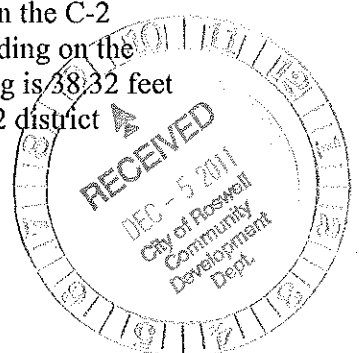
The requested variance would not be injurious to the neighborhood because the request does not seek any new use or further development of the Property. The requested variance is sought merely to conform the existing character of the building and the Property with the requirements of the requested rezoning district.

*5. Any information that special circumstances are not the result of the actions of the applicant.*

As discussed in the above rezoning analysis, when the Property was constructed, a day care center was a permitted use in the R-3 zoning classification. The Property has been operating as a day care center since ELPM acquired the building under the non-conforming use provisions in the zoning ordinance. The next more intensive use district under the zoning ordinance that best conforms to the character of the surrounding area is the C-2 Neighborhood Commercial district. As discussed below in number 6, the existing building, which was constructed at a time when a day care center was permitted in an R-3 district, does not meet all of the dimensional requirements of the C-2 district.

*6. Any information that the variance request is the minimum variance that will make possible the proposed use of the land, building, or structure in the use district proposed.*

ELPM requests that the minimum size requirement for individual establishments in the C-2 district be adjusted from 5,000 square feet to allow for the existing size of the building on the Property (8,883 square feet). Additionally, at its closest point, the existing building is 38.32 feet from the edge of the Property boundary and the adjacent R-1 district. Existing C-2 district



dimensional requirements provide for a minimum 50 foot setback and a 40 foot minimum width of natural buffer when abutting an R-1 district. Roswell Zoning Ordinance, Table 6.2. As you can see from the survey, there is a white, wooden fence that circumscribes the building and play areas, which serves as a buffer between the Property and the abutting R-1 district. Other than the requested variances, which relate to the nature of the existing nonconforming character of the building and its location on the Property, ELPM makes no further variance requests. The requested variance is the minimum variance that will make ELPM's use of the land and building possible in the C-2 district.

*7. Any information that the variance shall not permit a use of land, buildings, or structures, which is not permitted by right in the zoning district or overlay district involved.*

A day care center is a permitted use in the C-2 district.



# EXHIBIT "A"



June 10, 2011

Ms. Alexandra McLaughlin  
Sutherland, Asbill & Brennan LLP  
999 Peachtree Street NE, Suite 2300  
Atlanta, GA 30309-3996

Subject: Zoning Confirmation for property located at 1240 Warsaw Road, Land Lot 525, First District, Second Section, Fulton County, Roswell, Georgia as shown on the ALTA/ACSM Land Title Survey prepared by Houston Engineering, Inc., for "Early Learning Property Management, Inc., and First American Title Insurance Company" on 06/02/2011.

Dear Ms. McLaughlin:

The above referenced property is currently zoned R-3 (Multi-Family Residential).

Please find enclosed a copy of the R-3 (Multi-Family Residential) requirements that are in effect at this time.

Currently, a daycare is not a permitted use in R-3 zoning classification but was listed as a permitted use when this building was constructed, therefore the building may be used as a daycare as long as it is in use. A non-conforming use shall not be re-established after discontinuance for three (3) months according to Section 14.3.3 of the Roswell Zoning Ordinance (enclosed).

If you have any questions, please contact me at (770) 641-3780.

Sincerely,



Bradford D. Townsend, AICP  
Planning and Zoning Director

BT/cm

