

LAND USE PLAN AMENDMENT APPLICATION

Planning & Zoning
2635 Talley Street
Decatur, GA 30030
Phone 404-377-6198
Fax 404-378-5054



Please attach a map showing the area for which the amendment is proposed and all immediately adjacent land uses. If there is more than one owner besides the applicant, please list on a separate page.

Address(es) of property 465 Clairemont Avenue (18 006 03 105, remnant portion of now consolidated parcel) Decatur, GA 30030

Existing land use category RL (Low-Density Residential) Proposed land use category I (Institutional)

Name of applicant Smarties Academy c/o Julie Sellers Phone (404) 665-1242

Address 1776 Peachtree Street, NW, Suite 415-South City/state/ZIP Atlanta, Georgia 30309

Email jsellers@dillard sellers.com

Name of property owner The Southeastern Synod of the Evangelical Lutheran Church in America Phone _____

Address _____ City/state/ZIP _____

Reason(s) for proposed amendment Parcel combined with larger adjacent parcel (119 Erie Avenue), land use designation I (Institutional).

Lot combination was approved by the City on 10/29/2021. Proposed amendment would provide a uniform designation for consolidated parcel.

Proposed amendment allows Applicant requested rezoning to Institutional (I), to maintain the current day care use.

List of all permitted land uses for the subject area under the existing Comprehensive Land Use Plan I (Institutional)

Please answer all of the following questions on a separate sheet.

1. How would the uses permitted under the proposed land use category be suitable in view of the use and development of adjacent and nearby property?
2. What adverse affects does the proposed amendment have on the existing use or usability of adjacent or nearby property?
3. To what extent will the proposed amendment result in uses which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools?
4. Are there other existing or changing conditions affecting the use and development of the property which, because of their impact on the public health, safety, morality and general welfare of the community, give supporting grounds for either approval or disapproval of the proposed amendment?

I hereby certify that the above and attached statements and documents are true to the best of my knowledge and belief.

Applicant signature BOGUMILA KADAT Date 2/04/2022



ZONING MAP AMENDMENT APPLICATION

Planning & Zoning
2635 Talley Street
Decatur, GA 30030
Phone 404-377-6198
Fax 404-378-5054



If there is more than one owner besides the applicant, please list on a separate page. If the applicant is not the current property owner, please provide a notarized authorization for this application from the current property owner. Refer to the submittal checklist for submittal requirements.

Address(es) of property 465 Clairemont Avenue (18 006 03 105 and 18 006 03 106; combined lots as of 10/29/2021) Decatur, GA 30030

Existing zoning R-60 (Single-Family Residential) Proposed zoning I (Institutional District)

Existing use of property Daycare and Church Proposed use of property Daycare

Name of applicant Smarties Academy c/o Julie Sellers Phone (404) 665-1242

Address 1776 Peachtree Street, NW, Suite 415-South City/state/ZIP Atlanta, Georgia 30309

Email jsellers@dillardsellers.com
The Southeastern Synod of the

Name of property owner Evangelical Lutheran Church in America Phone _____

Address _____ City/state/ZIP _____

Within the two years immediately preceding the filing of this application, have you, the applicant, made campaign contributions aggregating \$250 or more, or made gifts having an aggregate value of \$250 or more to a local government official of the City of Decatur who will consider this application? Yes No

If you answered yes to the above question, you must file a disclosure report with the Planning & Zoning Department showing the following. The report must be filed within ten days of filing the application.

1. The name of the local government official to whom the campaign contribution or gift was made.
2. The dollar amount of each campaign contribution made by the applicant to the local government official during the two years immediately preceding the filing of the application and the date of each contribution.
3. An enumeration and description of each gift having a value of \$250 or more made by the applicant to the local government official during the two years immediately preceding the filing of the application.

Please answer all of the following questions on a separate sheet.

1. How would the uses permitted under the proposed land use category be suitable in view of the use and development of adjacent and nearby property?
2. What adverse affects does the proposed amendment have on the existing use or usability of adjacent or nearby property?
3. To what extent will the proposed amendment result in uses which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools?
4. Are there other existing or changing conditions affecting the use and development of the property which, because of their impact on the public health, safety, morality and general welfare of the community, give supporting grounds for either approval or disapproval of the proposed amendment?

I hereby certify that the above and attached statements and documents are true to the best of my knowledge and belief.

Applicant signature Bogumila Kabat

Date 2/04/2022



CONDITIONAL USE PERMIT APPLICATION

Planning & Zoning
 2635 Talley Street
 Decatur, GA 30030
 Phone 404-377-6198
 Fax 404-378-5054



Before submitting this application, you must schedule a pre-application conference with the Zoning Administrator to discuss the procedures, standards and regulations required for approval. Attach a plat of the property drawn to scale and showing property lines, locations and heights of existing and proposed buildings and other structures, locations of all driveways and parking/loading areas, a north arrow, and any other information required to demonstrate conformance with the standards for the specific conditional use requested. Please provide one to-scale copy of all plans, as well as one copy of all plans in an 8½" x 11" format. If the applicant is not the current property owner, provide a notarized authorization for this application from the current property owner.

Address of property 465 Clairemont Avenue (18 006 03 105 and 18 006 03 106; combined lots as of 10/29/2021) Decatur, GA 30030

Name of applicant Smarties Academy c/o Julie Sellers Phone (404) 665-1242

Address 1776 Peachtree Street, NW, Suite 415-South City/state/ZIP Atlanta, Georgia 30309

Email jsellers@dillardssellers.com

Name of property owner The Southeastern Synod of the Evangelical Lutheran Church in America Phone _____

Address _____ City/state/ZIP _____

Major amendment to existing conditional use permit New conditional use permit request

Existing zoning R-60--concurrent rezoning request to I (Institutional) Use requested Daycare

Please answer all of the following questions on a separate sheet.

1. How would the proposed use be suitable in view of the use and development of adjacent and nearby property?
2. How is the proposed use consistent with existing zoning requirements?
3. What adverse affects does the proposed use have on the existing use or usability of adjacent or nearby property?
4. To what extent will or could the proposed use cause an excessive or burdensome use of existing streets, transportation facilities, utilities or other public facilities?
5. Describe how the proposed ingress and egress to the subject property is adequate. Include an evaluation of the traffic impact of the proposed use relative to street capacity and safety of public streets and nearby pedestrian uses.
6. What impact will the proposed use have on established property values and on the public health, safety, morality, comfort and general welfare of the residents of the City?

I hereby certify that the above and attached statements and documents are true to the best of my knowledge and belief.

Applicant signature Bogumila Kabat Date 2/04/2022

For personal care home, assisted living facility and nursing home applications, I certify that I have applied for or will immediately apply for the corresponding permit or authorization for the operation of the facility from the State of Georgia Department of Community Health in accordance with its rules and regulations. I also certify that the proposed facility will meet and be operated in conformance with all applicable state and federal laws and regulations and with all codes and regulations of the City.

Applicant signature _____ Date _____



PROPERTY OWNER AUTHORIZATION

Planning & Zoning
 2635 Talley Street
 Decatur, GA 30030
 Phone 404-377-6198
 Fax 404-378-5054



This authorization form must be completed and attached to any City of Decatur planning application for which the applicant is not the property owner. If there is more than one property owner, each owner must complete a separate authorization.

Addresses of property 465 Clairemont Ave. (18 006 03 105 & 18 006 03 106, combined lots) Decatur, GA 30030

Name of applicant Smarties Academy c/o Julie Sellers Phone 404-665-1242

Address 1776 Peachtree St. NW, Ste. 415-S City/state/ZIP Atlanta, Ga 30307

Email jsellers@dillard sellers.com

Name of property owner The Southeastern Synod of the Evangelical Lutheran Church in America Phone 404-589-1977 EX-221

Address PO BOX 400 City/state/ZIP Decatur GA 30031

I hereby swear and affirm that I am the owner of the property located at the above address, which is the subject matter of the attached application. I hereby authorize the applicant listed above to file this application as my agent.

Owner signature [Signature] Date February 7, 2022

Personally appeared before me this 7 day of February, 2022

Notary Public Signature [Signature]



This Owner Authorization is for the Applications submitted by Smarties Academy, including a Land Use Amendment, Zoning Map Amendment, and Conditional Use Permit

2022000862 DEED BOOK 30023 Pg 669
Filed and Recorded: 1/4/2022 9:21:00 AM
Recording Fee: \$25.00
Prepared By:
3227306427
Debra DeBerry
Clerk of Superior Court
DeKalb County, Georgia

Return Recorded Document to:
Origin Title and Escrow, Inc
160 Clairmont Ave.
Suite 490
Decatur, GA 30030
Tax Parcel No.: 18-006-03-106 and 18-006-03-105

QUITCLAIM DEED

STATE OF GEORGIA
COUNTY OF DEKALB

FILE #: 21-12274

THIS INDENTURE, Made the 3rd day of January, 2022, between **The Lutheran Church of the Messiah, Inc, a/k/a The Lutheran Church of the Messiah a/k/a The Evangelical Lutheran Church of the Messiah, a Georgia nonprofit corporation**, as party or parties of the first part, hereinafter called Grantor, and **The Southeastern Synod of the Evangelical Lutheran Church in America, a North Carolina nonprofit corporation**, as party or parties of the second part, hereinafter called Grantee (the words "Grantor" and Grantee" to include their respective heirs, successors and assigns where the context requires or permits).

WITNESSETH that : Grantor, for and in consideration of the sum of one dollar (\$1.00) and other valuable considerations in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, by these presents does hereby remise, convey and forever **QUITCLAIM** unto the said Grantee,

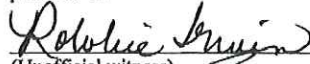
ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 6 OF THE 18TH LAND DISTRICT OF DEKALB COUNTY, GEORGIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON PIN FOUND ON THE SOUTHEAST CORNER OF ERIE AVENUE AND CLAIREMONT AVENUE, THENCE NORTH ALONG THE SOUTHEASTERN SIDE OF ERIE AVENUE NORTH 44 DEGREES 35 MINUTES EAST A DISTANCE OF 370.5 FEET MORE OR LESS TO AN IRON PIN FOUND; THENCE RUNNING ALONG THE SOUTHWESTERN SIDE OF PROPERTY CURRENTLY KNOWN AS 135 ERIE AVE, OWNED BY THOMAS O RAMSEY, SOUTH 45 DEGREES 28 MINUTES EAST A DISTANCE OF 171.48 MORE OR LESS TO A POINT; THENCE NORTH 86 DEGREES EAST A DISTANCE OF 230 FEET MORE OR LESS TO A POINT; THENCE SOUTH 46 DEGREES 13 MINUTES 12 SECONDS WEST A DISTANCE OF 315 MORE OR LESS TO A POINT; THENCE NORTH 47 DEGREES 02 MINUTES 57 SECONDS EAST A DISTANCE OF 121.15 FEET TO AN IRON PIN; THENCE SOUTH 38 DEGREES 21 MINUTES 39 SECONDS WEST A DISTANCE OF 226.39 FEET TO THE NORTHEASTERN SIDE OF CLAIREMONT AVENUE; THENCE NORTHWESTERLY ALONG CLAIREMONT AVENUE A DISTANCE OF 231 FEET MORE OR LESS TO THE CORNER OF ERIE AVENUE AND CLAIREMONT AVENUE, BEING THE POINT OF BEGINNING.

TO HAVE AND TO HOLD the said described premises to grantee, so that neither grantor nor any person or persons claiming under grantor shall at any time, by any means or ways, have, claim or demand any right to title to said premises or appurtenances, or any rights thereof.

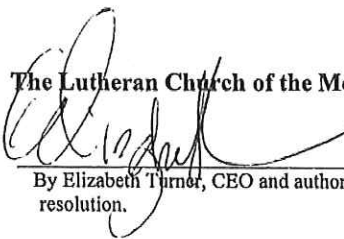
IN WITNESS WHEREOF, the Grantor has signed and sealed this deed, the day and year first above written.

Signed, sealed and delivered in the presence of:


(Unofficial witness)


(Notary Public)




The Lutheran Church of the Messiah, Inc

(Seal)
By Elizabeth Turner, CEO and authorized signatory by resolution.

SECTION A – SELLER'S INFORMATION (Do not use agent's information)		SECTION C – TAX COMPUTATION	
SELLER'S BUSINESS / ORGANIZATION / OTHER NAME The Lutheran Church of the Messiah, Inc. aka The Lutheran ...*		Exempt Code If no exempt code enter NONE	Corporation to Corporation
MAILING ADDRESS (STREET & NUMBER) 465 Clairmont Ave		1. Actual Value of consideration received by seller Complete Line 1A if actual value unknown	\$1.00
CITY, STATE / PROVINCE / REGION, ZIP CODE, COUNTRY Decatur, GA 30030 USA	DATE OF SALE 1/3/2022	1A. Estimated fair market value of Real and Personal property	\$0.00
SECTION B – BUYER'S INFORMATION (Do not use agent's information)		2. Fair market value of Personal Property only	\$0.00
BUYER'S BUSINESS / ORGANIZATION / OTHER NAME The Southeastern Synod of the Evangelical Lutheran Church ...*		3. Amount of liens and encumbrances not removed by transfer	\$0.00
MAILING ADDRESS (Must use buyer's address for tax billing & notice purposes) PO Box 400		4. Net Taxable Value (Line 1 or 1A less Lines 2 and 3)	\$0.00
CITY, STATE / PROVINCE / REGION, ZIP CODE, COUNTRY Decatur, GA 30031 USA	Check Buyers Intended Use () Residential (x) Commercial () Agricultural () Industrial	5. TAX DUE at .10 per \$100 or fraction thereof (Minimum \$1.00)	\$0.00
SECTION D – PROPERTY INFORMATION (Location of Property (Street, Route, Hwy, etc))			
HOUSE NUMBER & EXTENSION (ex 265A)	PRE-DIRECTION, STREET NAME AND TYPE, POST DIRECTION		SUITE NUMBER
COUNTY DEKALB	CITY (IF APPLICABLE) Decatur	MAP & PARCEL NUMBER 18-006-03-105 & 18-006-03-106	ACCOUNT NUMBER
TAX DISTRICT	GMD	LAND DISTRICT	ACRES
			LAND LOT
			SUB LOT & BLOCK
SECTION E – RECORDING INFORMATION (Official Use Only)			
DATE	DEED BOOK 30023	DEED PAGE 669	PLAT BOOK
			PLAT PAGE

ADDITIONAL BUYERS
None

...* This symbol signifies that the data was too big for the field. The original values are shown below.
 SELLER'S BUSINESS NAME: The Lutheran Church of the Messiah, Inc. aka The Lutheran Church of the Messiah aka The Evangelical L
 BUYER'S BUSINESS NAME: The Southeastern Synod of the Evangelical Lutheran Church in America

Disclosure Report
Applicant Representatives

Within the (2) years immediately preceding the filing of this rezoning application have you, as the applicant or opponent for the rezoning petition, made any campaign contributions aggregating \$250.00 or more to a local government official who will consider the application?

Circle One:

Yes

No

Campaign Contribution and Disclosure Report Completed on Behalf of:

Dillard Sellers, LLC, Applicant Representatives

- Smarties Child Care, LLC d/b/a Smarties Academy;
- Applicant for Rezoning, Land Use Plan Amendment, and Condition Use Permit at 465 Clairemont Avenue



2.7. 2022

R. Baxter Russell

on behalf of Dillard Sellers, LLC

LETTER OF REQUEST AND SUMMARY

City of Decatur

**Land Use Plan Amendment Application
Zoning Map Amendment Application
Conditional Use Permit Application**

Applicant:

Smarties Child Care, LLC d/b/a Smarties Academy
c/o Julie L. Sellers

Property:

465 Clairemont Avenue
Decatur, Georgia 30030

Parcel ID Nos.:

18 006 03 105
18 006 03 106

Submitted for Applicant by:

Julie L. Sellers
R. Baxter Russell
DILLARD SELLERS
1776 Peachtree Street NW, Suite 415-S
Atlanta, Georgia 30309
(404) 665-1242
jsellers@dillardsellers.com
brussell@dillardsellers.com

I. INTRODUCTION

The subject property is approximately 2.55 acres located at the corner of Clairemont Avenue and Erie Avenue in the City of Decatur, (DeKalb County Parcel Nos. 18 006 03 105 & 18 006 03 106, previously described as 465 Clairemont Avenue and 119 Erie Avenue, hereafter the “Property”). On October 29, 2021, the City of Decatur approved the combination of the Property’s two parcels into one parcel retaining the address of 465 Clairemont Avenue. The Property is zoned R-60 and has Comprehensive Plan Land Use Designation of “I” Institutional, with a small 0.21-acre portion remaining “RL” Low Density Residential. The Property was developed as a church campus for the Lutheran Church of The Messiah.

The Applicant, Smarties Academy (“Applicant”), owns and operates a day care and early childhood education center in the church facilities on the Property. Beginning as an at-home childcare in 2008, Smarties Academy began operating at the Property in April 2012. For the last ten years, the Academy and its founder Bogna Kabat have grown the day care into a valued member of the community providing high-quality childcare and early education for children and families in Decatur and the surrounding areas. The church campus buildings provide the classrooms and outdoor space for the children to learn.

Due to the residential zoning of the Property, the Applicant’s day care use has functioned as a legal accessory use to the church’s primary use of the Property. The Applicant desires to continue operating its day care at the Clairemont Avenue location and submits this application to make the zoning consistent with the use of the Property.

II. REQUEST SUMMARY

Applicant requests approval of (1) Rezoning, (2) Land Use Plan Amendment, and (3) Conditional Use Permit. The majority of the Property (yellow star below) is designated as Institutional on the Land Use Plan, this application seeks to make the zoning and land use plan consistent and recognize the institutional (education) use of the Property. To achieve this, the designation for a small remnant of the now combined Property must be changed to from “RL” (yellow) to “I” (blue) for a consistent Institutional district.

Location of parcel for land use change:



Despite the historic institutional use, the Property has a residential zoning classification of R-60. This application request approval for the zoning to be consistent with the Land Use designation and the use of the Property as Institutional. Finally, the Applicant submits a Conditional Use Permit application to operate a day care in accordance with the Unified Development Ordinance's ("UDO") Allowed Use Table and use classifications for properties zoned Institutional.

Submitted Requests

1. *Land Use Plan Amendment* (Parcel No. 18 006 03 105)—change the land use plan designation for the remnant parcel from "RL" to "I".
2. *Zoning Map Amendment* (Parcel Nos. 18 006 03 105 & 18 006 03 106)—change the zoning for the Property from R-60 to Institutional District, in accordance with the current and requested land use designation.
3. *Conditional Use Permit* (Parcel Nos. 18 006 03 105 & 18 006 03 106)—request permission to operate a day care, in accordance with the requested zoning map amendment.

III. STANDARDS FOR APPROVAL

The Applicant fully satisfies the criteria set forth in the City's UDO for the submitted Land Use Plan Amendment, Zoning Map Amendment, and Conditional Use Permit. Because Smarties Academy has been operating for over a decade, this application is not a typical rezoning that would change the designation to allow for a completely different use. Instead, these applications are submitted for the continuation of an educational day care center in anticipation of the church use not continuing. Applicant seeks the required approvals to transition the day care use from accessory use to primary use in the event the church ceases operations and extinguishes its primary use of the Property.

Additionally, Applicant's document submission for these applications is unique. Typical application submissions include a site development plan showing the new building types and uses proposed by the zoning request. In this circumstance, the Applicant requests to permission to transition its accessory use to a primary use of the Property. No new uses or building types are currently proposed by the Applicant. While new development or building expansion may be requested in the future, Applicant does not propose any modifications to the church buildings or to the use of Property at this time. Because the existing church buildings are intended to continue serving the day care facility and no new development is currently planned, Applicant submits a survey for its applications in lieu of a future development site plan. Pursuant to UDO Section 5.1.2(C), the Applicant submits a survey showing the existing conditions on the Property to accomplish this rezoning from R-60 to I. Based on the desire and intent to maintain its historic institutional use on the Property, Applicant's submission completely and accurately represents the site conditions for the current and continuing day care center use. The Applicant respectfully requests its applications be granted by the City Commission.

A. Land Use Plan Amendment Request

The Applicant satisfies all the criteria for rezoning as set forth in the Decatur UDO, Section 11.2.2 and the Decatur Land Use Plan Amendment Application Form.

1. **Does the proposed amendment permit uses that are suitable in view of the use and**

development of adjacent and nearby property?

Yes, Applicant's proposed land use plan amendment seeks to change the land use designation from RL to I for the remnant 0.21 acres of the larger 2.55-acre Property. Applicant's request creates a consistent land use plan designation for the entire Property. This request also allows consistent rezoning and use of the Property for a continued day care use compatible with the residential and institutional uses on surrounding properties.

2. Does the proposed amendment adversely affect the existing use or usability of adjacent or nearby property?

Applicant's requested land use plan amendment will have no adverse impacts on the surrounding properties. The proposed amendment for the remnant 0.21 acres will provide a consistent land use plan designation for the Property. Additionally, the requested amendment will allow continuation of a beneficial day care use through approvals of the concurrent rezoning and conditional use permit described herein.

3. Will the proposed amendment result in uses which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools?

The proposed amendment will not create a burdensome use of existing public facilities. Rather, the requested amendment will provide a consistent land use designation for the entire Property and allow the continuation of a high-quality day care operation.

4. Are there other existing or changing conditions affecting the use and development of the property which, because of their impact on the public health, safety, morality and general welfare of the community, give supporting grounds for either approval or disapproval of the proposed amendment?

Applicant established a day care on the Property as an accessory use to the church in 2012. Applicant requests the proposed land use plan amendment, concurrent with the rezoning and conditional use permit applications, in order to continue operating the day care as a primary use on the Property. Approval of these requests allowing the Applicant's continued use of the Property as a day care will provide a sustained benefit and positive impact on the public health and general welfare of the surrounding community.

B. Zoning Map Amendment Request (R-60 to I)

The Applicant satisfies all the criteria for rezoning as set forth in the UDO, Section 11.2.2 and the Decatur Zoning Amendment Application Form.

1. Does the zoning proposal permit a use that is suitable in view of the use and development of adjacent and nearby property?

Applicant requests a rezoning from R-60 to I to continue operating the day care as the primary use of the Property. The rezoning seeks to establish the Applicant's accessory use of the church facility as a legal primary use. The day care use complies with uses and development on surrounding properties. Applicant's requested rezoning does not seek to

modify use or development on the Property.

2. Does the zoning proposal adversely affect the existing use or usability of adjacent or nearby property?

Applicant's proposed rezoning of the Property to the Institutional District will have no adverse impact on surrounding properties. This rezoning together with the concurrent land use plan and use permit application will allow a beneficial day care use to continue.

3. Does the property to be affected by the zoning proposal have a reasonable economic use as currently zoned?

The Property's current R-60 zoning is inconsistent and incompatible with the current land use plan designation for Institutional on the majority of the site. Due to this inconsistency and previous development of the church facilities, the Property's reasonable economic use is limited as currently zoned. Applicant requests this rezoning to the Institutional District to comply with the City's land use plan designation and to continue operating the existing day care as a legal primary use.

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

No, Applicant's requested rezoning will not cause a burdensome use of public facilities. Applicant requests a rezoning to the Institutional District to maintain the current low impact use of the Property as a day care.

5. Does the zoning proposal conform with the policy and intent of the Comprehensive Land Use Plan?

Yes, Applicant's requested rezoning to the Institutional District is compatible with the Institutional land use plan designation on the majority of the Property. A concurrent land use plan amendment application has been submitted for the smaller remnant parcel, requesting the consistent Institutional designation for this portion of land.

6. Are there other existing or changing conditions affecting the use and development of the property which, because of their impact on the public health, safety, morality and general welfare of the community, give supporting grounds for either approval or disapproval of the zoning proposal?

Applicant's day care and early childhood education business provides a productive and beneficial use of the Property for community residents, children and families. Applicant seeks to rezone the Property to maintain a positive impact on the public health and general welfare, by transitioning this day care from an accessory use of the church to the Property's primary use.

C. Conditional Use Permit Request (Day Care)

The Applicant satisfies all the criteria for a conditional use permit as set forth in the

1. How would the proposed use be suitable in view of the use and development of adjacent and nearby property?

The Applicant currently operates a day care that is consistent with the residential and institutional uses on surrounding properties. In connection with the submitted land use plan and rezoning applications, the requested use permit will allow the Applicant to continue operating its day care use at the Property.

2. How is the proposed use consistent with existing zoning requirements?

Applicant's day care use is consistent with the intent and standards of the Institutional District as described in the City's UDO. Applicant's day care utilizes the church buildings and facilities permitted under the Institutional District. Additionally, Applicant's day care will comply with the supplemental use standards for general day care use, as outlined in the UDO, Section 6.5.2.

3. What adverse affects does the proposed use have on the existing use or usability of adjacent or nearby property?

Applicant's use of the Property as a day care will have no adverse impacts on the use or usability of surrounding properties. The day care will continue to provide a benefit to community residents and families.

4. To what extent will or could the proposed use cause an excessive or burdensome use of existing streets, transportation facilities, utilities or other public facilities?

Applicant's day care is a low impact use of the Property and will not cause a burden to any public facilities.

5. Describe how the proposed ingress and egress to the subject property is adequate. Include an evaluation of the traffic impact of the proposed use relative to street capacity and safety of public streets and nearby pedestrian uses.

Applicant's current day care operation provides adequate ingress and egress to the Property through a parking lot entrance and exit located on Erie Avenue. The Property also features a connection to the parking lot through an ingress/egress on Clairemont Avenue. Applicant plans to maintain this parking lot as the day care's primary access point. Applicant's continued day care use will not adversely impact traffic patterns or public safety along Erie Avenue or Clairemont Avenue. Should any unforeseen concerns arise during the application review process, Applicant will work to address these comments with city staff.

6. What impact will the proposed use have on established property values and on the public health, safety, morality, comfort and general welfare of the residents of the City?

Applicant currently operates a day care and early childhood education business at the Property. This day care provides high-quality childcare and education for community

residents. Applicant's business is an asset to the City and establishes a valuable use on the Property to the benefit of surrounding property owners. In connection with the concurrent land use plan and rezoning applications, Applicant requests this conditional use permit to transition its accessory day care use to a legal primary use of the Property. By maintaining the day care business at the current location, Applicant seeks to continue providing a valuable service for the community to the benefit of surrounding properties.

IV. CONCLUSION

For the foregoing reasons, the Applicant respectfully requests that the Decatur City Commission approve these applications. In summary, the requests seek to continue Smarties Academy's decade long history of serving Decatur families and to have the zoning reflect the use may continue as a primary rather than accessory use of the Property. We look forward to working with the City and are available to discuss these applications and any questions. Please do not hesitate to contact me at 404-665-1242 or jsellers@dillardsellers.com.

Sincerely,

DILLARD SELLERS, LLC

/s/ Julie L. Sellers, Esq.

Julie L. Sellers

R. Baxter Russell

Attorneys for the Applicant

Exhibit A
REQUIRED CONSTITUTIONAL AND ANTE LITEM NOTICE

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

The portions of the Unified Development Ordinance of the City of Decatur, Georgia (“UDO”), facially and as applied to the Property, which restrict the Property to any uses, conditions, land use designations, development standards, or to any zoning district other than that proposed by the Applicant are 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 I and Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

The application of the UDO, facially and as applied to the Property, which restricts the Property to any uses, conditions, land use designations, development standards, or to any zoning district other than in accordance with the Applications as proposed by the Applicant is unconstitutional, illegal, null and void, constituting a taking of Applicant’s property in violation of the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States; Article I, Section I, Paragraph I, and Section III, Paragraph I of the Constitution of the State of Georgia of 1983; and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States denying the Applicant an economically viable use of its land while not substantially advancing legitimate state interests.

A denial of the Applications would be unconstitutional under the Takings Clause of the Fifth Amendment to the Constitution of the United States and the Just Compensation Clause of Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983. A refusal by the Decatur City Commission (including its members in both their official and individual capacity) to grant the Application as requested would constitute a taking of the Applicant’s property. Because of this unconstitutional taking, the City of Decatur would be required to pay just compensation to the Applicant.

A denial of the Application would constitute an arbitrary and capricious act by the Decatur City Commission (including its members in both their official and individual capacity) without any rational basis therefore constituting an abuse of discretion in violation of Article I, Section I, Paragraph I and Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. A refusal to grant any of the requested applications including land use plan amendment, rezoning, and/or conditional use permit would lack objective justification and would result only from neighborhood opposition, which would constitute an unlawful delegation of the zoning power to non-legislative bodies in violation of the Georgia Constitution, Article IX, Section II, Paragraph 4.

A refusal by the Decatur City Commission (including its members in both their official and individual capacity) to grant any of the requested applications including land use plan amendment, rezoning, and/or conditional use permit for the Property in accordance with the criteria as requested

by the Applicant would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner between the Applicants and applicants or owners of the similarly situated property in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Any approval of the Applications subject to conditions which are different from the conditions requested by the Applicant to the extent such different conditions would have the effect of further restricting Applicant's utilization of the 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.

A denial of these applications would be unconstitutional. This notice is being given to comply with the provisions of O.C.G.A. § 36-33-5 to afford the City an opportunity to approve the rezoning as requested by the Applicant. If action is not taken by the City to approve the rezoning application within a reasonable time, a claim will be filed in the Superior Court of Dekalb County demanding just and adequate compensation under Georgia law for the taking of the Property, inverse condemnation, diminution of value of the Property, attorney's fees and other damages arising out of the unlawful deprivation of the Applicant's property rights.

Standing Objection

The Applicant further objects to the standing of each and every surrounding resident to challenge, whether before the City Commission or any court of competent jurisdiction, any zoning decision by the City Commission in that he/she has not shown, nor can show, that he/she will suffer special damages within the meaning of Georgia law as a result of said decision. The Applicant raises this objection before the City Commission and requests that the Commission determine the standing of any individual who challenges or objects to the Commission decision to grant the requested land use plan amendment, rezoning, and/or conditional use permit. Applicant further raises this objection before the City Commission to preserve said objection on appeal, if any, to any court of competent jurisdiction.



Planning, Zoning, and Inspections

509 N. McDonough St.
Decatur, Georgia 30030
404-370-4104 ■ Fax 404-370-0691
info@decaturga.com ■ www.decaturga.com

October 29, 2021

Lutheran Church of the Messiah
C/o Bogna Kabat
465 Clairemont Ave
Decatur, GA 30030

Re: Lot Combination
465 Clairemont Ave and 119 Erie Ave,
City of Decatur, DeKalb Co., Georgia

VIA: Electronic mail – bogna@smartiesacademy.com

Dear Ms. Kabat:

The purpose of this letter is to confirm that the City of Decatur approves the combination of parcel #18 006 03 106 and parcel #18 006 03 105 into one parcel to retain the address of 465 Clairemont Avenue.

The city's ordinances allow for administrative approval for lot combinations as long as the lots are contiguous, are within the same jurisdiction, and ownership of record is the same for all properties to be combined. The parcel would remain within the R-60 –Single Family Residential zoning district.

This letter does not waive or relinquish any requirements for any easements that may be part of either parcel. A building permit may be issued for this property in accordance with the city's current zoning and building standards. Please contact me at 678-553-6607 or ryan.sellers@decaturga.com if you have any questions.

Sincerely,

Ryan Sellers
Senior Planner
Acting Zoning Administrator

cc: Jennings Bell
DeKalb County GIS Dept.
Address File

Sec. 5.1. - Institutional District

5.1.1. - Purpose

The purpose of this district is to recognize the particular needs of colleges, seminaries and hospitals already existing and to permit the variety of uses necessary to support such institutions without resorting to spot zoning. The designation of this district within the City shall be made by amendment to the zoning map following consideration of a comprehensive site development plan by the Decatur Planning Commission and approval by the City Commission.

5.1.2. - Development Standards

A. Establishment

Institutional zoning districts shall be established only through regular zoning amendment procedures after consideration by the Planning Commission and approval by the City Commission of a comprehensive site development plan. The comprehensive site development plan will become the regulations governing the development of the institutional zoning district upon establishment of the district, along with the other applicable provisions of this UDO.

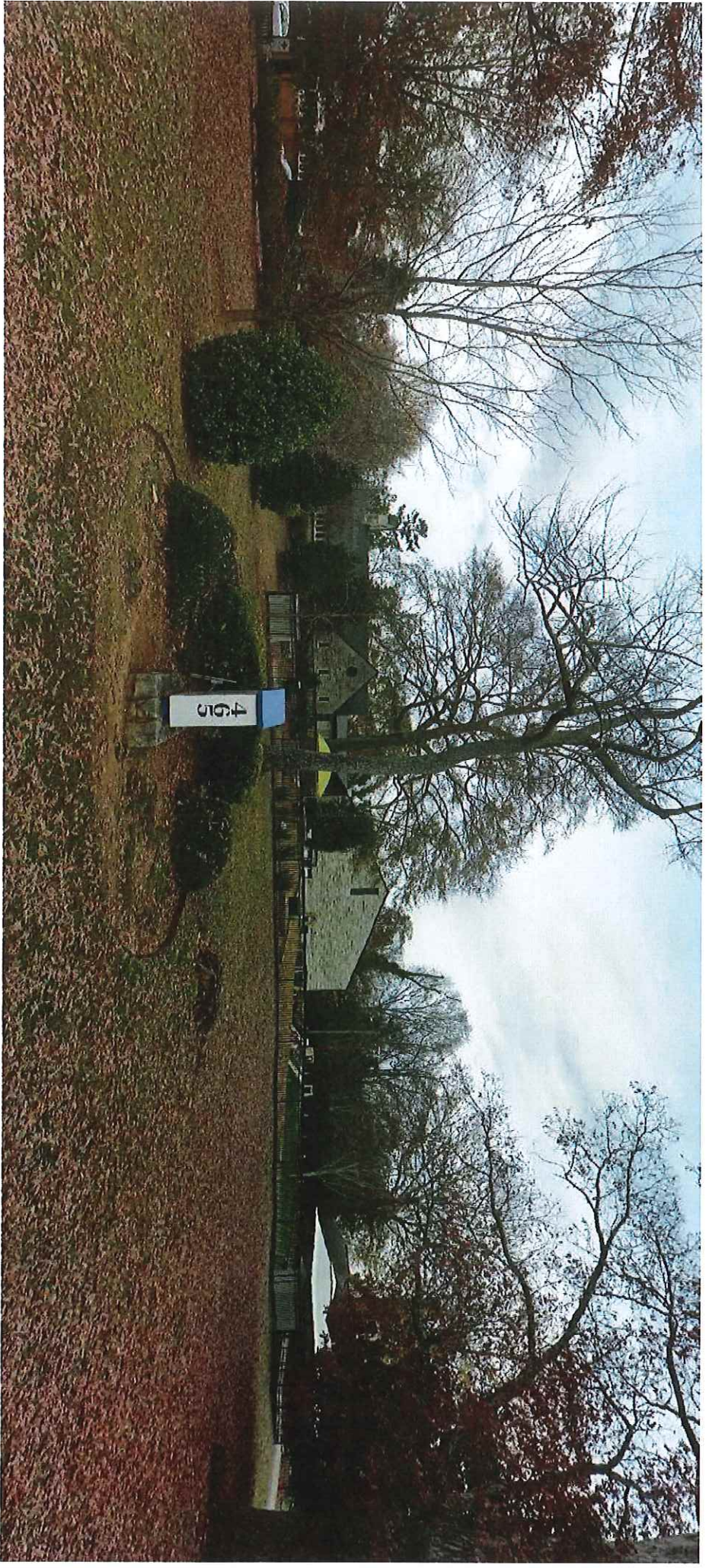
B. Amendments

Amendments to the comprehensive site development plan of an institutional zoning district shall be made by following the same procedure required for amending the UDO and map.

C. Rezoning

Properties which are already developed may be considered for rezoning to institutional with the submission of a site plan showing existing conditions. Any changes proposed in the development or use of the property must be clearly indicated on a comprehensive site development plan.





GENERAL NOTES:
 1: This plot has been prepared without the benefit of a current title report. Easements or encumbrances may exist that are not shown on this plot.
 2: This plot is subject to any restrictions, easements, covenants or restrictions that may exist either written or unwritten.
 3: Underground utilities not shown, hereon may exist. The Surveyor does not take responsibility for absence or presence of any such utilities.
 4: No Geodetic monuments were found within 500 feet of this site
 5: This plot has been prepared for the exclusive use of the person(s) or entities named hereon.

REFERENCE: DB 5578 PC 656
 SURVEY FOR RICHARD HERTZOG BY
 JOSEPH C. KING DATED 5-27-2004

SURVEY DATA:
 TYPE OF SURVEY: RETRACEMENT
 SOURCE OF TITLE DESCRIPTION FOR SUBJECT PROPERTY: DB 5578 PG 605
 PROPERTY OWNER AT TIME OF SURVEY: LUTHERAN CHURCH OF THE MESSIAH
 PARCEL NUMBER: 18-006-03-1105

BEARING BASIS IS SINGLE COMPASS BEARING & ANGLES TURNED. VERTICAL DATUM ASSUMED FROM DEKALB COUNTY 95

465 CLAIREMONT AVENUE
 TOTAL AREA: 9,205 SQ FT. 0.21 AC
 CALCULATED PLAT CLOSURE: 1:140,964

119 ERIE AVENUE
 TOTAL AREA: 10,854 SQ FT. 2.44 AC
 CALCULATED PLAT CLOSURE: 1:101,954

FIELD DATA:
 DATE OF FIELD SURVEY: 11-28-2017, 3-20-2018,
 4-4-2018, 4-13-2018 8-11-21

THE CALCULATED POSITIONAL TOLERANCE BASED ON REDUNDANT LINEAR MEASUREMENTS OF OBSERVED POSITIONS WAS FOUND TO BE 0.002 FEET.
 EQUIPMENT:
 ELECTRONIC TOTAL STATION

FLOOD HAZARD NOTE: THIS PROPERTY IS NOT LOCATED IN A FLOOD HAZARD AREA AS DEFINED BY FIRM MAP OF DEKALB COUNTY, GEORGIA 13089C0066 EFFECTIVE DATE MAY 16, 2013

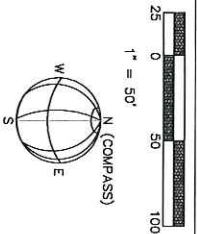
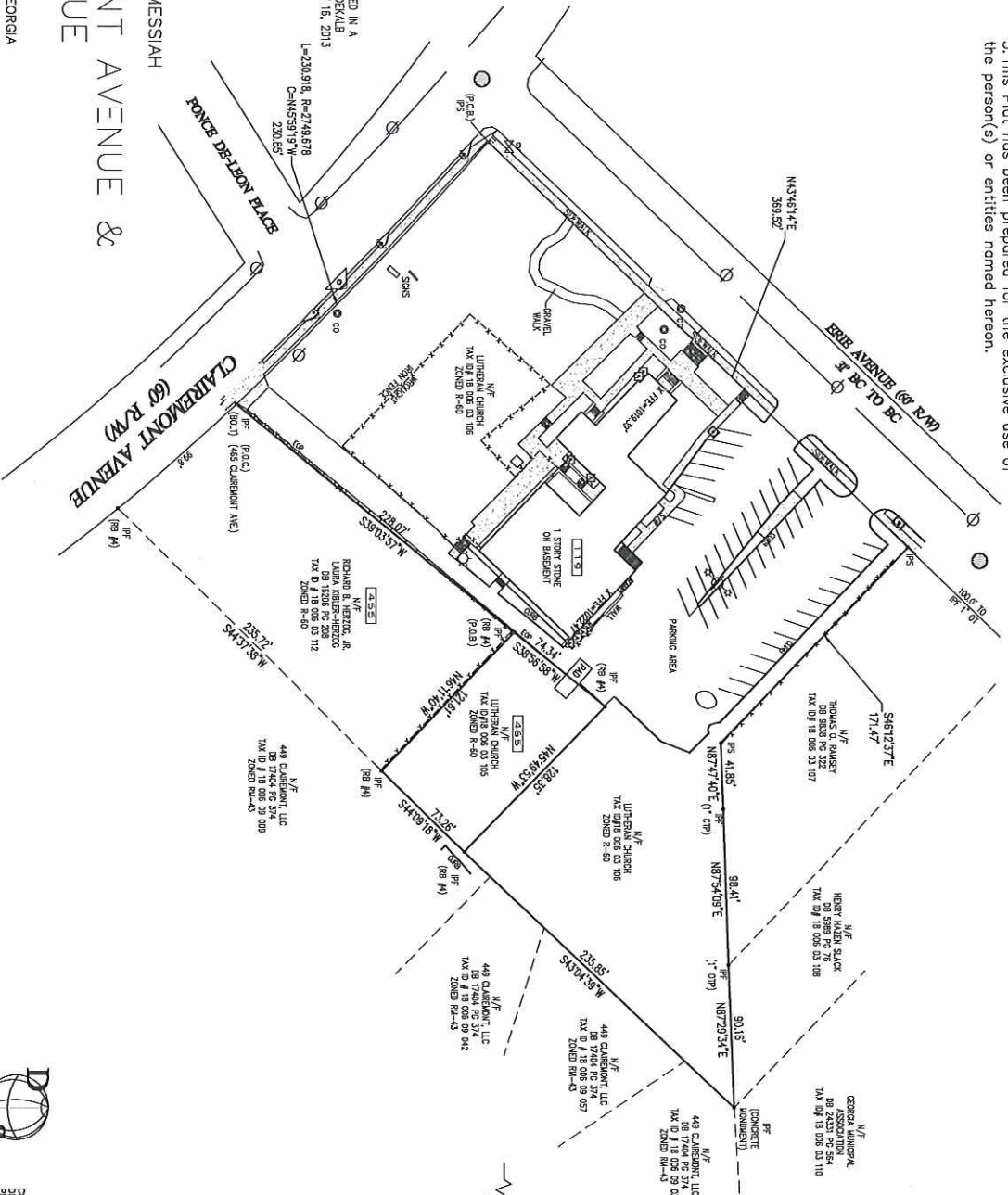
ZONING: R-60
 PREVIOUS SURFACES:
 PAYMENT = 116 SQ. FT.
 TOTAL IMPERVIOUS = 116 SQ. FT. (1.013%)
 TOTAL LOT = 9,205 SQ. FT.

BOUNDARY SURVEY FOR:
 LUTHERAN CHURCH OF THE MESSIAH

465 CLAIREMONT AVENUE &
 119 ERIE AVENUE

CITY OF DECATUR, DEKALB COUNTY, GEORGIA
 LAND LOT 6, DIST 18
 DATE: MARCH 21, 2018; AUGUST 19, 2021 (ADDED 119 ERIE AVENUE)

This plot is a re-entrantment of an existing parcel or parcels of land and does not subdivide or create a new parcel or make any changes to any real property boundaries. The recording information of the documents, maps, plats, or other instruments which created the parcel or parcels are stated hereon.
 RECORDED AVAILABILITY OF PERMITS, COMPLIANCE WITH LOCAL REGULATIONS OR REQUIREMENTS, OR SUITABILITY FOR ANY USE OR PURPOSE OF THE LAND. Furthermore, the undersigned land surveyor certifies that this plot complies with the minimum technical standards for property surveys in Georgia as set forth in the rules and regulations of the Board of Registration for Professional Engineers and Land Surveyors and as set forth in O.C.G.A. Section 15-6-67.



LEGEND

- EPB EDGE OF PAVEMENT (CURB)
- PP POWER POLE
- R/W RIGHT OF WAY
- RF IRON PIN FOUND
- PS 1/2 REBAR SET
- SW SIDE WALK
- OB BOLLARD
- OHV OVERHEAD POWER
- HI FIRE HYDRANT
- CB CATCH BASIN
- WM WALKER
- WM WATER METER
- WM WATER VALVE
- WV WATER VALVE
- GV GAS VALVE
- GM GAS METER
- LM LIGHT POLE
- CP CONCRETE PAD



DB
 DEKALB SURVEYS, INC.
 403 W. POWIE BE LENA
 SUITE 105
 DECATUR, GEORGIA 30030
 404.371.5003



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www.dekalbsurveys.com