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October 9, 2017

Planning and Zoning Board for the City of Smyrna

Hon. Joel Powell, Chair
Hon. Tom Bartlett, Ward 1
Hon. Leslie Lightfoot, Ward 2
Hon. Emily Hein Warren, Ward 3
Hon. Earl Rice, Ward 4
Hon. Cheri Harrington, Ward 5
Hon. Denny Campo, Ward 6
Hon. David Monroe, Ward 7

2800 King Street
Smyrna, GA 30080

Re: **2017 252** Public Hearing Zoning Request Z17 013 Rezoning from R 15 to RAD Conditional for the development of four single family residences at a density of 3.39 units per acre 1.18 Acres Land Lot 593 1505 & 1515 Spring Street Neighborhood Commercial, LLC

Dear Chairman Powell and Honorable Members of the Board:

On my own behalf and on behalf of all other persons similarly situated, I write in opposition to the above referenced project (the "Project"). Those who will be impacted by the Project place the Mayor and City Council, as the governing authority of the City of Smyrna, on notice, by and through this letter to the Planning and Zoning Board that the Project will be violation of the Zoning Code of the City of Smyrna, even if rezoned to RAD Conditional. The Project should also be subject to the City's Subdivision Ordinance and is violation of its provisions. The reason for this "replat by rezoning" rather than complying with the Zoning Ordinance and the Subdivision Ordinance is to avoid exposing the fact that the location of three of the four houses which are purported to be individually platted single family lots are shown on the site plan to only have frontage on a "private drive" or an "alley" and by definition will fail to meet the requirement that RAD lots be developed with a front yard which has frontage on a "Street Right of Way."

I draw your attention to four definitions from the City's Zoning Code

(402.53) Street: A **dedicated and accepted public right-of-way** which affords primary access to abutting property.

(402.39) Lot frontage: The distance for which **the boundary line of a lot and a street right-of-way line are coincident.**

(402.60) Yard: That area of a lot between the principal building and adjoining lot lines, open, unoccupied and unobstructed by any portion of a structure from the ground upward, except where encroachments and accessory buildings are expressly permitted herein.

(402.61) Yard, front: An open, unoccupied space on the same lot with a principal building, extending across the full width of the lot between side lot lines, **and situated between the street right-of-way line and that line representing the minimum front yard setback requirements.**

Because these proposed lots **will not have a front yard which is on a public street**, they cannot be classified as meeting the requirements for a lot in the RAD zoning district. Even if a variance is granted to reduce the setback distance, these lots will not have frontage on a public street. As to the argument that an "alley" can serve as frontage, the Zoning specifically forbids that application.

(402.2) Alley: A public or private way, at the rear or side of property, permanently reserved as a means of secondary vehicular access to abutting property. **Frontage on said alley shall not be construed as satisfying the requirements of this ordinance related to frontage on a dedicated street.**

Section 801 of the Code confirms this analysis with its heading which is "Minimum Front Yard Setback from **Street** Right of Way (feet)" (emphasis added). While it is typical of the maneuvering of developers to use RAD Conditional to reduce the setback distances, this Site Plan does not indicate that there is any frontage on a "Street".

Further to this point, the plat of the Project indicates that it is included in the definition of a "subdivision" and fails to meet the requirements of the Subdivision Ordinance.

502.17. Subdivision: All divisions of a tract or parcel of land two or more lots, building sites or other divisions of land for the purpose, whether immediate or future, of sale, legacy or building development, including all divisions of land involving a new street or change in an existing street, and including resubdivision and, where appropriate to the context, relating to the process of subdividing or to the land or area subdivided; provided, however, that the following **are not included within this definition:**

- (a) The division of land into parcels of five acres or more where no new street is involved.
- (b) The combination or recombination of portions of previously platted lots **where the total number of lots is not increased**

and the resultant lots are equal in size to the standards of the City of Smyrna.

(c) A division or sale of land by judicial decree.

(d) The sale or exchange of a parcel of land between owners of adjoining properties, provided that additional lots are not thereby created.

Because the replat of the Project **does not meet** subpart (b), this means that the Project is **not excluded** from the definition of a "Subdivision" and is therefore, required to comply with the Subdivision Ordinance. The Project is located where two lots previously existed and four lots are proposed and that the "resultant lots" will not be "equal in size to the standards of the City of Smyrna." This type of redevelopment comes under the definition of "combinations and replats."

Sec. 406. - Combinations and replats.

Where separate lots or parcels of land are proposed to be combined or replatted, such action shall be reviewed by the planning commission and, if found to result in the same number or fewer lots or parcels, final approval of such action by the planning commission shall be required. If, however, upon review the planning commission finds that such combination or replatting **does result in the creation of a greater number of lots or parcels, such combination or replatting shall be subjected to the requirements of this ordinance and receive preliminary approval by the planning commission and final plat approval by the planning commission and the mayor and council before recording of such plat.**

It is obvious why the developer chose not to submit under the requirements of the Subdivision Ordinance. The requirements for the development of streets would have immediately made the failure to provide the required frontage obvious in a way that the purported replatting by rezoning apparently did not. The type of streets allowed by a Subdivision Ordinance immediately point out why this Project cannot be approved with "front yards" on a private drive.

502.14. Street: A way for vehicular traffic, whether designated as an avenue, boulevard, court, road, highway, expressway, lane, alley or other way; and for the purposes of this ordinance, "streets" are grouped into the following categories (see Illustration 1):

(a) Arterial: A street or highway designated as an arterial on the major thoroughfare plan of the City of Smyrna.

(b) Collector street: A street or highway designated as a collector on the major thoroughfare plan of the City of Smyrna.

(c) Local street: A street used primarily for access to abutting properties.

(d) Alley: A public or private way, located at the rear or side of properties and permanently **reserved as a means of secondary vehicular access to properties otherwise abutting on a street.**

(e) Cul-de-sac: A local street having one end open to traffic and being permanently terminated by a vehicular turnaround of adequate design.

(f) Marginal access street: A local street which is parallel and adjacent to an arterial street and which provides access to abutting properties with protection from through traffic.

If the definition of an "alley" is considered in context, it is plain that the intent of the Zoning Ordinance and the Subdivision Ordinance are that legal single family lots are required to have a front yard on a "Street" as defined in Sec 402.53 ("A **dedicated and accepted public right-of-way** which affords primary access to abutting property."). It is clear beyond argument that the "stacking" of building sites on an alley as proposed by the Project is not permitted by the Zoning Code or the Subdivision Ordinance. The "private drive" proposed by the Project could only be defined under the Subdivision Ordinance as an "alley" and therefore could not meet the requirements because an "alley" is only allowed to provide "secondary vehicular access" to the properties. Please note that when it is stated that "for the purposes of this ordinance, "streets" are grouped into the following categories" those are the only types of "streets" which are permitted. See e.g. *Alexander Properties Group v. Doe*, 280 Ga. 306, 309 (2006) ("Pursuant to the principle of statutory construction, '*Expressum facit cessare tacitum*' (if some things are expressly mentioned, the inference is stronger that those omitted were intended to be excluded) and its companion, the venerable principle, '*Expressio unius est exclusio alterius*' ("The express mention of one thing implies the exclusion of another")... ").

I and my neighbors have standing to bring this defect in the application to the attention of the Board and the Mayor and City Council as the governing authority and do so to preserve the right to take later action to determine if the future development, even if rezoned, will be in violation of the Zoning Ordinance. I do not read the Application for the Project to seek a waiver of the requirement for frontage on a public street and if this Project is approved as RAD Conditional, the governing authority cannot approve a site plan which does not comply with the Zoning Code. ("It is well settled that property owners may seek to prevent their neighbors from developing or using their property in violation of its existing zoning without showing special damages." *Rock v. Head*, 254 Ga. App. 382 (2002)).

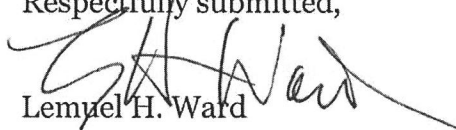
In addition to the above stated right to determine if the future development, even if rezoned, will be in violation of the Zoning Ordinance, it is stated affirmatively that the approval of this rezoning would be unconstitutional and in violation of the Georgia Constitution and the United States Constitution and would interfere with the rights of certain property owners who will have and can demonstrate special damages. Such special damages would include, without limitation, diminution of property value due to development based on an illegal approval by the governing authority, increased

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difficulty in obtaining access to the public street which is being used to support an illegal number of residences, as well as the loss of privacy and increased noise from an illegal number of residences being allowed an illegal approval by the governing authority. Such other and further constitutional claims and special damages not specifically stated herein are reserved.

This letter of objection is provided upon the first public hearing of Z 17 13 required by the Zoning Procedures Law and is expected and requested to be made a part of the record which will be reviewed by the Mayor and City Council as the governing authority of the City of Smyrna. The notice is being provided to the governing authority so that it may have the opportunity to address the claims brought forward and reserved prior to their being raised in the Superior Court of Cobb County.

Respectfully submitted,



Lemuel H. Ward