

SAMS, LARKIN, HUFF & BALLI

A LIMITED LIABILITY PARTNERSHIP

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March 26, 2018

(REVISED STIPULATION LETTER, SITE PLAN & ARCHITECTURAL RENDERINGS/ELEVATIONS)

VIA HAND DELIVERY AND EMAIL:

Mr. Ken Suddreth, Director
Community Development Department
City of Smyrna
3180 Atlanta Road
Smyrna, GA 30080

Re: Applications of Westplan Investors Acquisitions, LLC, to Annex and Rezone an approximate 8.7 Acre Tract from O&I (Cobb County) and NS (City of Smyrna) to Conditional – MU (City of Smyrna) – No. 2017-314

Dear Ken:

You will recall that this firm represents Westplan Investors Acquisitions, LLC (“Westplan”) concerning the above-captioned Applications for Annexation & Rezoning (the “Applications”). The Applications are scheduled to be heard and considered by the Smyrna Planning & Zoning Board on April 9, 2018 and, thereafter, are scheduled to be heard and considered by the Mayor and City Council for final action on May 21, 2018.

These Applications were submitted to the City on July 14, 2017 but were tabled during the Development of Regional Impact (“DRI”) review by the Atlanta Regional Commission (“ARC”) and the Georgia Regional Transportation Authority (“GRTA”). That DRI process has now been completed with ARC rendering a positive Regional Review Finding (“RRF”) on January 9, 2018 and with GRTA, likewise, issuing an equally supportive Notice of Decision (“NOD”) on February 5, 2018.

As a result of the foregoing an in concurrence with the continued dialogue established with members of the City’s Professional Staff, the Ward Council Member, area business and property owners and representatives from Cobb County’s Community Development Staff, this letter will serve as Westplan’s revised and consolidated letter of agreeable stipulations/

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conditions. In furtherance thereof, Westplan proposes to annex and rezone the property at issue (“Subject Property”) to allow for the construction and development of a Mixed-Use Development consisting of the following:

- A 6-12 story Hotel which will accommodate a range from 140 to 250 Hotel rooms with associated structured parking.
- A 5-6 story Multi-Family building consisting of a total number of 310 Class “A”, highly amenitized luxury apartment homes.
- Approximately 10,000 sq. ft. of commercially-oriented space consisting of leasing offices and Multi-Family oriented amenities within the 5-6 story Multi-Family building.
- A 3-4 story office building containing approximately 80,000 sq. ft. with extensive and prominent frontage on and visibility from I-285.
- A 2 story flex retail/office building with 7,500 sq. ft. of upscale retail space and 7,500 sq. ft. of office/commercial space over the retail.
- The positioning of future aerial pedestrian connectivity on the Subject Property’s Spring Road frontage and I-285 frontage, respectively.

Westplan’s primary goal is to target development opportunities in primary markets which have distinct site and sub-market characteristics such as the Subject Property located on Spring Road. Spring Road is an arterial which connects the east side of Smyrna (Cobb Parkway/ Cumberland area) with Smyrna Proper (Atlanta Road/downtown Smyrna/South Cobb Drive). It is a clear and significant commuter route as traffic access is near the I-285 and I-75 Corridors as well as the Cumberland/Galleria area and, of course, The Battery Atlanta and SunTrust Park.

Spring Hill Road connects the Subject Property to Cumberland Boulevard and to Mt. Wilkerson Parkway and Paces Ferry Road southwest of the site with properties thereon being uniquely positioned, particularly with the traffic/transportation improvements planned and completed in the area generally and for The Battery and SunTrust Park, specifically. Moreover, the Mixed-Use Development planned for the Subject Property, as noted by ARC & GRTA, is consistent with the City of Smyrna’s Spring Road Corridor LCI Master Plan (“LCI”), adopted by

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the City in April, 2017; the directives and conditions set forth in ARC's RRF; and, compliant with the direction and conditions imposed by GRТА's NOD.

Clearly, a huge draw for Westplan is the \$400 Million Dollar Mixed-Use Development in the form of The Battery which surrounds SunTrust Park and which is owned by the Atlanta Braves. In that regard, the Cumberland Community Improvement District ("CID") has literally laid the groundwork for the types of growth and development trends which have now been firmly established. According to projections, the CID, defined as a 6.5 square mile area around Cobb County's largest job centers, will add 5,000 dwelling units to the Multi-Family housing market which will bring approximately 11,000 new residents to this sub-area of the City of Smyrna/Cobb County.

With respect to the foregoing, Westplan has proposed this annexation and rezoning which will constitute an approximate \$100 Million Dollar Mixed-Use Development which will serve as an architectural and aesthetic enhancement within this robust section of the City of Smyrna and within the Cumberland/Galleria Regional Activity Center. The purpose of this letter is to provide you and the City's staff with a revised list of agreeable stipulations which, if the Applications are approved, as submitted and revised, shall become conditions and a part of the grant of the requested annexation and rezoning and binding upon the Subject Property thereafter. The referenced revised stipulations are as follows, to wit:

STIPULATIONS APPLICABLE TO THE OVERALL MIXED-USE DEVELOPMENT

1. The revised stipulations and conditions set forth herein shall replace and supersede in full any and all prior stipulations and conditions in whatsoever form which are currently in place concerning the Subject Property.
2. Westplan seeks to Annex and Rezone the Subject Property to allow for a Mixed-Use Development subject to and in substantial conformity to the revised site plan prepared by Summit Engineering Consultants, Inc. which is being submitted concurrently herewith.
3. The Subject Property consists of an approximate 8.7 acre tract of land which shall be developed as a Mixed-Use Development including the components mentioned above with ancillary and permitted uses allowed under and pursuant to the MU Zoning District.

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4. Westplan shall be the Master Developer and will be involved in all aspects of the Development including but not limited to all components located therein.
5. Westplan shall construct the vertical improvement constituted by the Multi-Family component in substantial conformity to the revised site plan or as amended, from time to time (with Westplan's consent) by the City of Smyrna's Community Development Director ("CDD") to the extent such authority is granted by the Mayor and City Council.

Concurrently with the issuance of a final Certificate of Occupancy for the above-described vertical improvement (Multi-Family component), a request for the issuance of developmental permits for the Hotel, Retail and the Office components and shall be submitted to the City.

6. Prior to the issuance of the final Multi-Family Certificate of Occupancy, Westplan shall submit Master Protective Covenants for the Mixed-Use Development which shall include all phases. Concurrently therewith, a Master Association document shall be submitted which will include all components of the proposed Development. The Master Association will ultimately be responsible for the oversight, upkeep and maintenance of all entrance areas, common areas, community buildings and structures, open space areas, pedestrian connectivity and similar features contained within the overall Mixed-Use Development.
7. The Master Association shall have architectural design regulations and other usual and necessary covenants and restrictions to protect the quality and integrity of the Mixed-Use Development's architecture.
8. Westplan agrees to construct all of the necessary roadways and infrastructure improvements as more particularly shown and reflected on the revised site plan which is being submitted concurrently herewith. Additionally, Westplan agrees to comply in all respects with the City's Specifications with respect to such infrastructure improvements interior to the Mixed-Use Development.
9. Entrance signage shall be ground-based, monument-style signage with finish, materials and colors being in substantial conformity to the architectural style embodied in the Mixed-Use Development. There shall be no temporary signs excepting only "grand opening" signage and signage indicating the coming development. Free-standing signage

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and other signage such as building attached, vertical marquee signage shall be permitted in accordance with the terms and provisions of the City of Smyrna Sign Ordinance. Additionally, the proposed signage reflected on the site plan in the form of an outdoor billboard shall be constructed in conformity to said plan in terms of its preliminarily depicted positioning, subject to review and approval by appropriate State of Georgia agencies.

10. The entrance areas of the Mixed-Use Development shall be professionally designed, landscaped, maintained and themed to the architectural style and composition of the development.
11. Lighting within the proposed Mixed-Use Development shall be environmentally sensitive, decorative and themed to the architectural style and composition of the respective components of the development. Every effort shall be made to make all lighting as unobtrusive as possible.
12. Architecture for the Mixed-Use Development shall be in reasonable conformity to the architectural renderings/elevations (depicting the Hotel, Retail, Multi-Family and Office components) which are being submitted concurrently herewith.
13. All setback areas may be penetrated for purposes of detention, utilities and stormwater management as long as such encroachments satisfy City of Smyrna requirements.
14. An agreement to comply with City of Smyrna Development Standards and Ordinances related to project improvements except as hereinafter approved by the Mayor and City Council and the Community Development Director as their respective authority may allow.
15. Parking for the Hotel, future office space, commercial/retail and the Multi-Family component will be provided by means of structured and surface parking as shown on the revised site plan and by complying with the parking ratio requirements required under the City of Smyrna's Developmental Regulations.
16. All streets within the proposed Mixed-Use Development shall be private and shall be owned and maintained by Westplan and/or its successors in title and responsibility.

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17. Prior to the issuance of building permits, the City's staff shall review and approve all architecture which shall be in substantial conformity to the architecture depicted in the architectural renderings/elevation. Said architectural style and composition shall also be reviewed by the City's Urban Design Committee, if applicable to this proposed Mixed-Use Development.
18. The plans which have been submitted may include Restaurants as a part of the Hotel/Retail/ Commercial components within the proposed Mixed-Use Development. Said restaurants may serve alcoholic beverages as part of their respective food services upon securing the proper permits from the City of Smyrna and state agencies as a part of a separate process.
19. In lieu of listing applicable requests for contemporaneous variances pertaining to the MU Zoning District, this project is being stipulated as "site plan specific" so that the overall project is in accordance with the referenced site plan and the within and foregoing stipulations and conditions. Notwithstanding anything contained herein to the contrary, the maximum number of residential units shall not exceed a total number of three-hundred ten (310) units.
20. Minor modifications to the within and foregoing stipulations/conditions, lighting, landscaping, signage, architecture, site fixtures and the like may be approved by the City's CDD or his designee as needed or necessary.

STIPULATIONS APPLICABLE TO THE NON-RESIDENTIAL COMPONENTS OF THE PROPOSED MIXED-USE DEVELOPMENT

1. Westplan proposes a Hotel, Retail and Office space by utilizing the Mixed-Use Concept with varying facades, roof elevations and other aesthetically pleasing treatments in substantive conformity to the revised architectural renderings/elevations mentioned hereinabove and attached hereto.
2. The architectural style and composition shall be substantially similar to the architectural renderings/elevations being submitted contemporaneously herewith or as may be approved during the Plan Review process. It is understood that said architectural renderings are conceptual in nature and shall be refined, clarified and focused as the

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development proceeds through the Plan Review process. Additionally, it is also understood that the positioning of windows, patios and other such features may be revised during the final Plan Review process as well.

3. The proposed Non-Residential components shall include a flexible mix of Hotel, Commercial, Retail and Office Space which will also include ancillary commercial-type uses for the Multi-Family Residential Component (Leasing Office, Recreational Amenities, Business Center, etc.).
4. Landscaping for the proposed development shall be pursuant to a specific landscape plan which shall be submitted during the Plan Review process, with reference being made to said landscape plan for a more particular delineation and location of the plantings and species to be planted.
5. Parking area lighting shall be a maximum height of thirty feet and shall be environmentally sensitive, energy efficient, horizontal cut-off luminaries which will eliminate light pollution and in order to prevent illumination from penetrating outside the boundaries of the Subject Property.
6. Hooded security lighting shall be utilized on the buildings within the non-Residential areas as required by Smyrna Development Regulations.
7. Westplan agrees to install and construct site lighting pursuant to a site lighting/ photometric plan which shall be submitted to the City's staff for review and approval during the Plan and Review process.
8. Dumpsters will be positioned so as to prevent visual intrusion from streets, connection points to the community spaces and wherever possible with screening by landscaping, walls and/or vegetation. Dumpsters shall have rubber lids and bumpers to minimize noise during emptying. At-grade trash compaction shall also be allowed and screened as appropriate.
9. Any exhaust from restaurant facilities which may be constructed shall be filtered and/or attenuated to minimize odors.

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10. There shall be no outside paging systems, phone bells or loud speakers. However, outdoor music systems and outdoor musical performances shall be allowed.
11. The following otherwise permitted uses shall be prohibited:
 - a. Video arcades as a primary use.
 - b. Adult-themed book and novelty stores as a primary use.
 - c. Automotive sales, repair and/or service facilities.
 - d. Movie theaters.
 - e. Gas stations and convenience stores with gas sales.
 - f. Pawn shops.
 - g. Automotive wash service.
 - h. Boats sales and repairs.
 - i. Boarding and breeding kennels.
 - j. Dry cleaning plants.
 - k. Farm equipment sales and service.
 - l. Lumber, hardware and other building material establishments.
 - m. Mobile home and travel trailer sales.
 - n. Motorcycle sales and service.
 - o. Check cashing establishments.
 - p. Service stations.

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- q. Station terminals for bus and rail passenger service.
 - r. Taxi stands.
 - s. Tattoo parlors.
 - t. Massage parlors.
 - u. Pool halls.
 - v. Package stores (except in the context of wine/spirits sold in a market or specialty shop).
12. The non-Residential components will include pedestrian walkways between the proposed buildings and throughout the parking areas subject to approval by the City's staff. There will also be pedestrian connectivity between the non-Residential and Residential components including two (2) points of potential Pedestrian Aerial Connectivity located on the Subject Property's Spring Road frontage and I-285 frontage, respectively.
13. In order to implement the recommendations within the LCI and those set forth by ARC and GRTA with respect to pedestrian connectivity and walkability, Westplan, in concert with the City's CDD, shall have the latitude to move the positioning of building footprints on the site in order to enhance pedestrian connectivity, including, but not limited to, potential future aerial pedestrian connectivity.

STIPULATIONS APPLICABLE TO THE RESIDENTIAL (LUXURY APARTMENTS) COMPONENT OF THE PROPOSED MIXED-USE DEVELOPMENT

1. Within the Residential area of the proposed Mixed-Use Development there shall be a total maximum number of 310 Highly-Amenitized Class "A" Luxury Apartment homes.
2. The proposed Residential Community shall have state of art recreational facilities and amenities for the use and enjoyment of its residents, as follows:

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- a. Conveniently located pool area which will include a clubhouse which will feature a lounge and coffee bar area.
 - b. A fitness center which will be fully equipped and shall contain a separate yoga studio.
 - c. An outside courtyard and connectivity to existing and planned pedestrian connectivity by virtue of multi-walk sidewalks and Cobb County's Circulator Route.
 - d. Bicycle racks; and,
 - e. Controlled access.
3. Floor plans and finishes within the Multi-Family homes shall consist, at a minimum, of the following:
- a. A minimum of 9 feet ceiling heights from floor to finished ceilings and greater and a minimum of 10 feet between floors.
 - b. Wood framed cabinetry or its equivalent.
 - c. Enhanced granite, Corian, marble or other solid surface countertops.
 - d. High-end appliances consistent with luxury apartment and condominium finishes.
 - e. Deep stainless steel kitchen sinks.
 - f. Wood-inspired plank flooring throughout.
 - g. Spacious, open floor plans including spacious walk-in closets.
 - h. High speed internet wiring in all units.
 - i. Upgraded lighting package throughout each unit.
 - j. Brushed nickel or chrome bathroom and kitchen fixtures.

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- k. Wood-inspired plank flooring in all bathrooms and laundry rooms. Also, tile tub surround and tile showers in select units.
 - l. Window treatments throughout the units to present an uniform appearance.
 - m. First class landscape and hardscape throughout the proposed developed.
 - n. Energy efficient construction which will meet and exceed the Georgia Energy Code.
 - o. Double paned, insulated windows in all units; and
 - p. Controlled access to buildings, parking and amenity areas.
4. The overall lighting within the proposed development shall be environmentally sensitive, decorative and themed to the architectural style and composition of the buildings.
 5. Pedestrian lighting style and concept will be subject to review and approval by the Community Development Director with input from the Ward Council Member during the Plan Review process. Additionally, hooded lighting shall be utilized on the buildings and throughout the walkways, surface parking areas and parking garage.
 6. Signage for the proposed development shall be ground-based, monument style and shall be constructed in the style and of materials which are complimentary to the proposed architecture as aforementioned. As shown on the revised site plan Westplan has designated an area contiguous to I-285 for a potential billboard site but understanding that securing same is a part of a separate process.
 7. Compliance with recommendations from the City Engineer and Public Works Director with respect to hydrology, detention and downstream considerations.
 8. Compliance with recommendations from the City Engineer and Public Works Director with respect to traffic and transportation issues. Additionally, compliance with recommendations from that previously submitted and recently revised Traffic Impact Study ("TIS"), prepared by A&R Engineering, Inc., including, but not necessarily limited to, recommendations from ARC & GRTA and the following:

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- a. The installation of sidewalks emanating from the proposed project to connect to sidewalks along the Spring Road Corridor.
 - b. Construction of a deceleration lane for entering traffic based upon local standards.
 - c. Both points of ingress/egress to the site shall be right-in/right-out turning movements only and shall consist of one (1) entering lane and one (1) exiting lane.
9. All construction and employee vehicles and equipment will be parked and otherwise located on the Subject Property during the development of infrastructure and construction of the buildings.
 10. Landscaping for the entrance area, signage areas, amenity and courtyard areas and all other common areas immediately surrounding the proposed buildings shall be professionally designed, implemented and maintained.
 11. All utilities servicing units within the proposed development shall be located underground.
 12. Any retaining walls exposed to public rights-of-way or adjacent properties shall be faced with hard surfaced materials such as brick, stone, stacked stone and/or split-faced segmented block wall.
 13. Any sidewalk, curb or guttering damaged or destroyed during construction shall be repaired or fully replaced during the completion of the project.
 14. All landscaping referenced herein shall be approved by the City of Smyrna Arborist as a part of the Plan Review process and incorporated into the overall landscape plan for the proposed development.

Westplan's Applications are in conformity with the policy and intent of the City of Smyrna's and Cobb County's Comprehensive Land Use Plans, both of which delineate the Subject Property to be within a Regional Activity Center ("RAC") and/or Community Activity Center ("CAC") land use categories, respectively. For those reasons and because the Subject Property meets the intent of the City's LCI; the City's and County's Future Land Use Maps; and recommendations from ARC and GRTA, the proposed Annexation and Rezoning are entirely appropriate from a land use planning perspective.

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Please do not hesitate to contact me should you or the City's Staff require any further information or documentation prior to the formulation of your Zoning Analysis and Staff Recommendations. With kind regards, I am

Very truly yours,

SAMS, LARKIN, HUFF & BALLI, LLP


Garvis L. Sams, Jr.
gsams@slhb-law.com

GLS/dls

Attachments

- cc: Honorable A. Max Bacon, Mayor (via email w/attachments)
Mr. Derek Norton, City Council Member (via email w/attachments)
Members, Smyrna City Council (via email w/attachments)
Members, Smyrna Planning & Zoning Board (via email w/attachments)
Ms. Tammi Sadler Jones, City Administrator (via email w/attachments)
Mr. Tom Boland, Economic Development Manager (via email w/attachments)
Mr. Russell Martin, AICP, Senior Planner,
Smyrna Community Development Department (via email w/attachments)
Scott A. Cochran, Esq. (via email w/attachments)
Mr. Eric Randall, P.E., City Engineer (via email w/attachments)
Mr. Scott Stokes, Public Works Director (via email w/attachments)
Ms. Terri Graham, City Clerk (via email w/attachments)
Mr. Robert L. Hosack, Jr., AICP, Cobb County Manager (via email w/attachments)
Mr. Dana Johnson, AICP Director, Cobb Community Development Agency (via email w/attachments)
Mr. Chris Harrell, P.E., Summit Engineering Consultants, Inc. (via email w/attachments)
Mr. Brad Johnson, Westplan Investors (via email w/attachments)