

**APRIL 21, 2015 ZONING HEARING
“OTHER BUSINESS”
COMMISSION DISTRICT 2**

ITEM OB- 19

PURPOSE

To amend the zoning minutes for The Vest House, LLC regarding rezoning application Z-13 of 2015 (The Vest House, LLC) for property located on the west side of Mountain Street between Paces Ferry Road and Spring Street, in Land Lots 909 and 952 of the 17th District.

BACKGROUND

The subject property was zoned NRC with stipulations in February 2015 for office and retail subject to many conditions including a letter of agreeable stipulations from Mr. Garvis L. Sams, Jr. dated January 27, 2015. It was discovered after the minutes were approved that the correct letter of agreeable stipulations was the letter dated February 9, 2015. The later letter is the result of agreements with the Vinings Homeowners Association, and also combines the two previous letters into one letter. The Board of Commissioners' decision is attached for review. If approved, all other zoning conditions not in conflict would remain in effect.

RECOMMENDATION

The Board of Commissioners conduct a Public Hearing and consider the proposed zoning stipulation amendment.

ATTACHMENTS

Zoning Stipulations and letter dated February 9, 2015.

MINUTES OF ZONING HEARING
COBB COUNTY BOARD OF COMMISSIONERS
FEBRUARY 17, 2014
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CONSENT AGENDA (CONT.)

~~Z-7~~ ~~INGA AUTO CENTER (CONT.)~~

- Fire Department comments and recommendations
- Stormwater Management Division comments and recommendations
- Water and Sewer Division comments and recommendations
- Cobb DOT comments and recommendations
- Owner/developer to enter into a Development Agreement pursuant to O.C.G.A. §36-71-13 for dedication of system improvements to mitigate traffic concerns

Z-13 THE VEST HOUSE, LLC (owner) requesting Rezoning from NS to NRC for the purpose of Retail, Restaurants, and Offices in Land Lots 909 and 952 of the 17th District. Located on the west side of Mountain Street between Paces Ferry Road and Spring Street (2949 Paces Ferry Road and 5 Mountain Street).

To approve rezoning request Z-13 to the NRC zoning category, subject to:

- Site plan received by the Zoning Division December 4, 2014, with the District Commissioner approving minor modifications (attached and made a part of these minutes)
- Letter of agreeable conditions from Mr. Garvis L. Sams Jr. dated January 27, 2015 (attached and made a part of these minutes)
- Historic Preservation comments and recommendations
- Water and Sewer Division comments and recommendations
- Fire Department comments and recommendations
- Stormwater Management Division comments and recommendations
- Cobb DOT comments and recommendations
- Owner/developer to enter into a Development Agreement pursuant to O.C.G.A. §36-71-13 for dedication of system improvements to mitigate traffic concerns

~~Z-14~~ ~~DAVIS ICE CREAM D/B/A ICE CREAM WAREHOUSE~~ (Ronald H. Loveless, owner) requesting Rezoning from NS to NRC for the purpose of an Ice Cream Warehouse in Land Lot 15 of the 17th District. Located on the west side of Austell Road, across from Hicks Road (2532 Austell Road).

~~To approve rezoning request Z-14 to the NRC zoning category, subject to:~~

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A LIMITED LIABILITY PARTNERSHIP

GARVIS L. SAMS, JR.

JOEL L. LARKIN

PARKS F. HUFF

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376 POWDER SPRINGS STREET

MARIETTA, GEORGIA 30064-3448

770-422-7016

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FACSIMILE

ADAM J. ROZEN

SLHB-LAW.COM

January 27, 2015

VIA EMAIL

Mr. John P. Pederson, AICP, Manager
Cobb County Zoning Division
Community Development Agency
1150 Powder Springs Road, Suite 400
Marietta, GA 30064

Re: Application of The Vest House, LLC to Rezone a 0.54 Acre Tract
from NS to NRC (No. Z-13)

Dear John:

As you know, this firm represents The Vest House, LLC ("TVH") which is the Applicant and Property Owner concerning the above-captioned Application for Rezoning. In that regard, you will recall that we submitted a letter of agreeable stipulations/conditions on December 31, 2014. Since that time, we have continued our dialogue with the County's Professional Staff, Planning Commissioners, the Vinings Homeowners Association ("VHA") and area residents and have agreed to add some additional stipulations which will become conditions and a part of the grant of the requested Rezoning and binding upon the subject property thereafter.

This letter and the stipulations which follow shall be in supplementation to stipulations set forth in the December 31, 2014 stipulation letter:

- 1) To augment and supplement Stipulation No. 3, the Applicant will agree that any exterior modifications or future exterior alterations to either The Vest House or The Smith House shall come back to the District Commissioner for review and approval with notification to VHA beforehand.
- 2) To augment and supplement Paragraph No. 5, the additional following uses shall be prohibited:
 - j. car washes
 - k. convenience stores with fuel sales
 - l. designated recycling collection center
 - m. self-service laundry or laundromat

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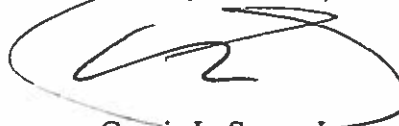
Mr. John P. Pederson, AICP, Manager
Cobb County Zoning Division
Community Development Agency
January 27, 2015
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- n. emissions stations
- o. gas stations
- p. light automotive repair establishments.

In all other respects, the December 31, 2014 stipulation letter shall remain in full force and effect where not in conflict with the supplemental information added above. Please do not hesitate to contact me should you need any additional information or documentation prior to the Application being heard and considered by the Planning Commission and Board of Commissioners. With kind regards, I am

Very truly yours,

SAMS, LARKIN, HUFF & BALLI, LLP



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

GLS/klk

cc: Members, Cobb County Board of Commissioners (via email)
Members, Cobb County Planning Commission (via email)
Mr. Robert L. Hosack, Jr., AICP Director (via email)
Mr. Dana Johnson, AICP Deputy Director (via email)
Mr. Jason Campbell, Planner III (via email)
Mr. Terry Martin, Planner II (via email)
Mr. David Breden, P.E. (via email)
Mr. Eric Meyer, P.E. (via email)
Mr. Tim Davidson, Cobb County Water System (via email)
Ms. Lori Barton, Deputy County Clerk (via email)
Mr. Ken Lynch, Vinings Village HOA (via email)
Mr. Cal Dortch, Vinings Village HOA (via email)
Mr. Ron Sifen (via email)
Mr. Harold J. Youmans (via email)
John C. Mayoue, Esq. (via email)
Mr. David Meyer, RLA (via email)

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February 9, 2015

VIA EMAIL

Mr. John P. Pederson, AICP, Manager
Cobb County Zoning Division
Community Development Agency
1150 Powder Springs Road, Suite 400
Marietta, GA 30064

Re: Application of The Vest House, LLC to Rezone a 0.54 Acre Tract
from NS to NRC (No. Z-13)

Dear John:

You will recall that this firm represents The Vest House, LLC ("TVH") which is the Applicant and Property Owner concerning the above-captioned Application for Rezoning. The Application was unanimously approved by the Planning Commission last week and there was no opposition to the proposal. The Application is now scheduled to be heard and considered for final action by the Cobb County Board of Commissioners on February 17, 2015.

During the pendency of this Application, I have formally submitted a stipulation letter and a supplement to that letter. Additionally, there have been emails between representatives of the Vinings Village HOA and me, many of which contain negotiated stipulations which will become conditions and a part of the grant of the requested rezoning. The purpose of this letter is to consolidate those agreements into one comprehensive document. The referenced consolidated stipulations are as follows, to wit:

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 property which constitutes the subject matter of the above-captioned application for rezoning.
2. The subject property shall be rezoned from the existing "phased-out" category of Neighborhood Shopping ("NS") to the proposed zoning classification of Neighborhood Retail Commercial ("NRC") in substantial conformity to that certain site plan prepared by DGM Land Planning Consultants, dated December 4, 2014, which was submitted concurrently with the application for rezoning.

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Community Development Agency
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3. The subject property consists of approximately 0.54 acres. Located thereon are the historic Vest House (1,650 square feet) and the Smith House (2,050 square feet), both of which have been utilized over the years for a number of different office and commercial purposes allowable under the NS and NRC classifications, respectively.¹

TVH agrees that any exterior modifications or future exterior alterations to either The Vest House or The Smith House shall comport with “The Vinings Vision” with the exteriors of the buildings remaining as similar as possible to their present appearance (with respect to colors and exterior dimensions) and that any such modifications or alterations shall come back to the District Commissioner for review and approval with notice to the Vinings Village HOA beforehand.

4. Except as noted above, the architectural style and composition of both The Vest House and The Smith House shall remain as-built. However, dependent upon the end user for each building, TVH expects appropriate interior rehabbing and retrofitting to accommodate each use.
5. The rezoning of the subject property shall be from NS to NRC for all uses allowable under the NRC district except for the following uses which shall be prohibited²:
 - a. Adult entertainment businesses and tattoo parlors.
 - b. Pawn shops or check cashing establishments.
 - c. Billiard parlors and video arcades as primary businesses.
 - d. Precious metal sales and purchase businesses.
 - e. Flea markets.
 - f. Retail gun, knife or weapon sales.
 - g. Package sale of alcoholic beverages as a primary use; excepting a store specializing exclusively in the sale of wines.

¹ The Vest House and The Smith House lost their “grandfathered” exemptions and present entitlement to be utilized, thus necessitating the filing of the above-captioned application for rezoning.

² TVH has been approached by several potential commercial and/or retail users which are permitted under the NRC classification, including a wellness clinic, gift shops and antique stores, etc.

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- h. Any business which principally features sexually explicit products or drug related paraphernalia.
 - i. Rest homes/convalescent homes.
 - j. Car washes.
 - k. Convenience stores with fuel sales.
 - l. Designated recycling collection center.
 - m. Self-service laundry or laundromat.
 - n. Emission stations.
 - o. Gas stations.
 - p. Light automotive repair establishments.
 - q. Eating and drinking establishments.³
6. The hours of operation with respect to both The Vest House and The Smith House and any businesses which shall operate therein shall be from 8:00 a.m. until 7:00 p.m., Monday – Saturday. However, the District Commissioner shall retain the latitude to modify these days and hours of operation if determined to be a minor modification.
7. Compliance with recommendation from the Cobb County Department of Transportation, upon a redevelopment of the subject property.
8. Compliance with recommendations from the Cobb County Water System with respect to the availability of water and sewer to the site.

³ The subject property presently exceeds parking ratio requirements under the NRC district for retail uses but is presently under parked for eating and drinking establishments. This subparagraph will not stand to preclude TVH from coming back at a later date in the future to request a rezoning which includes eating and/or drinking establishments. However, for now, TVH agrees to this stipulation becoming a condition and a part of the grant of this rezoning.

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9. Compliance with recommendations from the Stormwater Management Division. However, presently, there will be no requirement for the installation of detention, water quality or stormwater management components unless additional impervious surfaces are added to the site in the future which meet or exceed the threshold of 5,000 square feet.
10. The granting of contemporaneous variances regarding NRC setbacks as a result of the as-built circumstances on the subject property as shown on the site plan filed concurrently with the application for rezoning.
11. Compliance with recommendations from the Cobb County Fire Department with respect to Life-Safety and Fire Prevention issues.
12. The District Commissioner shall have the authority to approve certain minor modifications except for those that:
 - a. Reduce the size of an approved buffer adjacent to property which is zoned the same or in a more restrictive zoning district.
 - b. Relocate a structure closer to the property line of an adjacent property which is zoned the same or in a more restrictive zoning district.
 - c. Increase the height of a building adjacent to property which is zoned in the same or more restrictive zoning district.
 - d. Change access locations to different roadways.
 - e. Violate the Cobb County Zoning Ordinance or require the granting of a Variance waiving Zoning Ordinance requirements.

In view of the fact that the subject property is within a Neighborhood Activity Center (“NAC”) as depicted on Cobb County’s Future Land Use Map, the proposal for rezoning the subject property to bring it into compliance with the current NRC district is entirely appropriate from a land use perspective as evidenced by staff’s and the Planning Commission’s recommendations for approval. Nevertheless, please do not hesitate to contact me should you need any additional information or documentation prior to this Application appearing before the Board of Commissioners next week.

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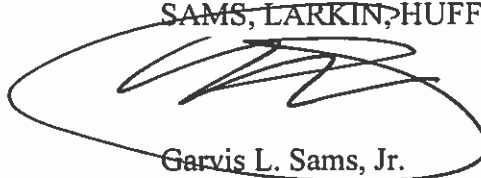
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Community Development Agency
February 9, 2015
Page 5

With kind regards, I am

Very truly yours,

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

GLS/dsj

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