

**MAY 15, 2018 ZONING HEARING
"OTHER BUSINESS"
COMMISSION DISTRICT 3**

ITEM OB-024

PURPOSE

To consider a site plan and stipulation amendment for GD Kennesaw, LLC regarding rezoning application Z-54 of 2017 for property located at the northwest corner of Big Shanty Road and George Busbee Parkway in Land Lots 502 and 503 of the 16th District.

BACKGROUND

The subject property was rezoned to Regional Retail Commercial (RRC) in 2017 for the purpose of student housing and retail. The applicant has finished the final engineering of the project and needs to amend the site plan and certain stipulations. The site plan needs to be amended to move the parking deck from the north side of the property to the east side of the property, to show a fire-access road around the building, reorient the building, and to revise the surface parking lot. The applicant needs to revise the stipulations to reduce the retail portion from 17,500 square feet to 11,000 square feet. The parking deck was stipulated to be a maximum of 6 levels. Due to a reduction in surface parking spaces based on the revised site plan, the parking deck is proposed to be 7 levels with six levels above ground and one level below ground. The deck will not exceed to the height of the residential building. If approved, all other stipulations would remain in effect.

STAFF COMMENTS

Stormwater Management: Stormwater Management will now be provided underground. All other previous Stormwater Management comments to remain in effect.

Cobb DOT: 1) Recommend applicant be required to meet all Cobb County Development Standards and Ordinances related to project improvements; 2) Recommend a deceleration lane Big Shanty Road for the entrance. Recommend final length and design be approved by Cobb County Department of Transportation during plan review;

(Continued on the next page)

**MAY 15, 2018 ZONING HEARING
OTHER BUSINESS ITEM 24
COMMISSION DISTRICT 3
PAGE 2**

Cobb DOT comments continued:

3) Recommend a taper for the entrance on George Busbee Parkway. Recommend final length and design be approved by Cobb County Department of Transportation during plan review; 4) Recommend fire access entrances be mountable curb only and be gated with signage for fire access only; 5) Recommend the right-in/ right-out entrance on George Busbee Parkway be designed with a raised concrete median to prevent left turns out. Recommend final design be approved by Cobb County Department of Transportation during plan review; and 6) Recommend applicant coordinate with Cobb County DOT prior to development plan approval to ensure compatibility with the proposed KSU Trail Project - Project # 0012874. Recommend applicant construct the portion of the bike/pedestrian trail that will pass through their property and along their frontage and dedicate right-of-way needed for the project.

RECOMMENDATION

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

ATTACHMENTS

Other Business Application and zoning stipulations.

(Site Plan and Stipulation Amendment)
Application for "Other Business"

Cobb County, Georgia

(Cobb County Zoning Division - 770-528-2035)

OB Application No.: OB- 24 -2018

BOC Hearing Date Requested: May 15, 2018

Applicant: GD Kennesaw LLC Phone #: (401) 456-5890
(applicant's name printed)

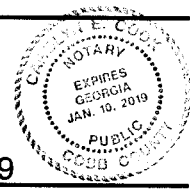
Address: 7 Jackson Walkway, Providence, RI 02903 E-Mail: aang@gilbaneco.com

MOORE INGRAM JOHNSON & STEELE, LLP
J. Kevin Moore Address: Emerson Overlook, Suite 100, 326 Roswell Street
(representative's name, printed) Marietta, GA 30060

BY: [Signature] Phone #: (770) 429-1499 E-Mail: jkm@mijs.com
(representative's signature) Georgia Bar No. 519728

Signed, sealed and delivered in presence of:

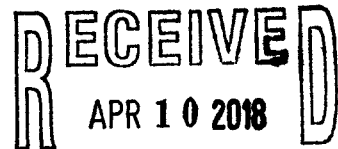
[Signature] My commission expires: January 10, 2019
Notary Public



Titleholder(s) : GD Kennesaw LLC Phone #: (401) 456-5890
(property owner's name printed)

Address: 7 Jackson Walkway, Providence, RI 02903 E-Mail: aang@gilbaneco.com

See Attached Exhibit "A"
(Property owner's signature)



Signed, sealed and delivered in presence of:

My commission expires: _____
Notary Public

COBB CO. COMM. DEV. AGENCY
ZONING DIVISION

Commission District: 3 (Birrell) **Zoning Case:** Z-54 (2017)

Size of property in acres: 3.973+/- **Original Date of Hearing:** 09/19/2017
Hearing Date: 10/17/2017

Location: Intersection of the northwesterly side of Big Shanty Road and the westerly side of George Busbee Parkway
(street address, if applicable; nearest intersection, etc.) (3061 George Busbee Parkway)

Land Lot(s): 502, 503 **District(s):** 16th

State specifically the need or reason(s) for Other Business: _____

See Exhibit "B" attached hereto and incorporated herein by reference.

EXHIBIT "A" - ATTACHMENT TO APPLICATION FOR "OTHER BUSINESS"
(SITE PLAN AND STIPULATION AMENDMENT)

OB Application No.: OB- 24 -2018
Application No.: Z-54 (2017)
Original Hearing Date: September 19, 2017
Date of Zoning Decision: October 17, 2017
Current Hearing Date: May 15, 2018

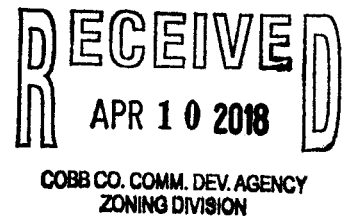
BEFORE THE COBB COUNTY BOARD OF COMMISSIONERS

Applicant/Titleholder: GD Kennesaw LLC

GD KENNESAW LLC,
a Delaware limited liability company

BY: Gilbane Development Company
Its: Manager

BY: 
Matthew Lawrence
Senior Vice President

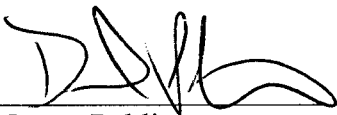


Date Executed: 4/9/18

Address: 7 Jackson Walkway
Providence, Rhode Island 02903

Telephone No.: (401) 456-5890

Signed, sealed, and delivered in the presence of:



Notary Public
Commission Expires: 3/11/20

[Notary Seal]

DANIEL P. STEVENSON
NOTARY PUBLIC
STATE OF RHODE ISLAND
MY COMMISSION EXPIRES 03/11/2020
ID #: 52988

EXHIBIT "B" - ATTACHMENT TO APPLICATION FOR "OTHER BUSINESS"
(SITE PLAN AND STIPULATION AMENDMENT)

OB Application No.:	OB- <u>24</u> -2018
Application No.:	Z-54 (2017)
Original Hearing Date:	September 19, 2017
Date of Zoning Decision:	October 17, 2017
Current OB Hearing Date:	May 15, 2018

BEFORE THE COBB COUNTY BOARD OF COMMISSIONERS

Applicant/Titleholder: GD Kennesaw LLC

RECEIVED
APR 10 2018

**COBB CO. COMM. DEV. AGENCY
ZONING DIVISION**

GD Kennesaw LLC, as Applicant and Owner in this Application for "Other Business" (hereinafter collectively "Applicant"), proposes amendments to the previously approved site plan and stipulations of property located at the intersection of the northwesterly side of Big Shanty Road and the westerly side of George Busbee Parkway, being more particularly known as 3061 George Busbee Parkway, Land Lots 502 and 503, 16th District, 2nd Section, Cobb County, Georgia (hereinafter collectively the "Property" or the "Subject Property"). The Property is approximately 3.97 acres and was rezoned to the Regional Retail Commercial ("RRC") zoning classification in 2017 to allow for a mixed-use development consisting of retail and "for lease" residential units to be used for student housing by Kennesaw State University.

In December 2017, Applicant acquired the Property and is now pursuing development of the Property for the uses sought in the original rezoning. While working through engineering and development for the project, Applicant has become aware of certain modifications which would accommodate variations in the original, approved Site Plan, and modifications to stipulations while maintaining the overall quality and integrity of the development.

Applicant seeks approval by the Cobb County Board of Commissioners for revisions to the previously approved Site Plan and amendments to certain stipulations and conditions related to the Property. With this Application for "Other Business," Applicant presents for approval the Site Plan prepared for Applicant by Kimley Horn & Associates, Inc. dated April 10, 2018, a reduced copy of which is attached hereto as Exhibit "1" for ease of reference, and is further submitted with the overall Application package. However, since the previously approved stipulations will be amended, the stipulations proposed for the development of the Subject Property pursuant to the Site Plan will be enumerated in a separate letter of agreeable stipulations and conditions which will be filed with the Cobb County Zoning Office prior to the scheduled hearing before the Cobb County Board of Commissioners.

02-02-2018
Proposed
Site Plan

C2-00

SHEET NUMBER

PROJECT NO.

DATE

GLABNE BUSBEE
3061 GEORGE BUSBEE PKY NW
SITE PLAN

CLIENT
GD KENNESAW, LLC
7 JACKSON WALKWAY
PROVIDENCE, RI 02903
PHONE: 401-456-5900



Kimley-Horn
11724 AMBER PARK DRIVE, SUITE 600
ALPHARETTA, GEORGIA 30009
WWW.KIMLEY-HORN.COM

NO.	REVISIONS	DATE	BY
1			
2			
3			
4			
5			
6			
7			

SITE NOTES:

TOTAL SITE AREA: 3.97 ACRES (BEFORE RSU TRAIL AND 3.85 ACRES (AFTER RSU TRAIL))

ZONING: R-10

IMPROVED COVERAGE PROPOSED: 3.30 ACRES (5% BEFORE RSU TRAIL, 8% AFTER RSU TRAIL)

DRIVEWAY STRIPES: 10 FT

FRONT YARD (GEORGE BUSBEE): 50 FT

FRONT YARD (BUSBEE SHED): 10 FT

REAR YARD (NORTH): 10 FT

REAR YARD (SOUTH): 10 FT

REQUESTED BUILDING SETBACKS:
FRONT YARD (GEORGE BUSBEE): 0 FT
FRONT YARD (BUSBEE SHED): 10 FT
SIDE YARD (WEST): 10 FT
REAR YARD (NORTH): 10 FT

PROPOSED USE: RESIDENTIAL

198 HOUSING UNITS (MAX)
11,000 S.F. (MAX)

THE PROPOSED BUILDING INFORMATION SYSTEM (BIM) AND 3D MODEL ARE FROM AN ELECTRONIC FILE PROVIDED BY CLIENT. 3D MODEL DATED 02/26/2018 AND IS FOR ILLUSTRATIVE PURPOSES ONLY.

4-10-2018

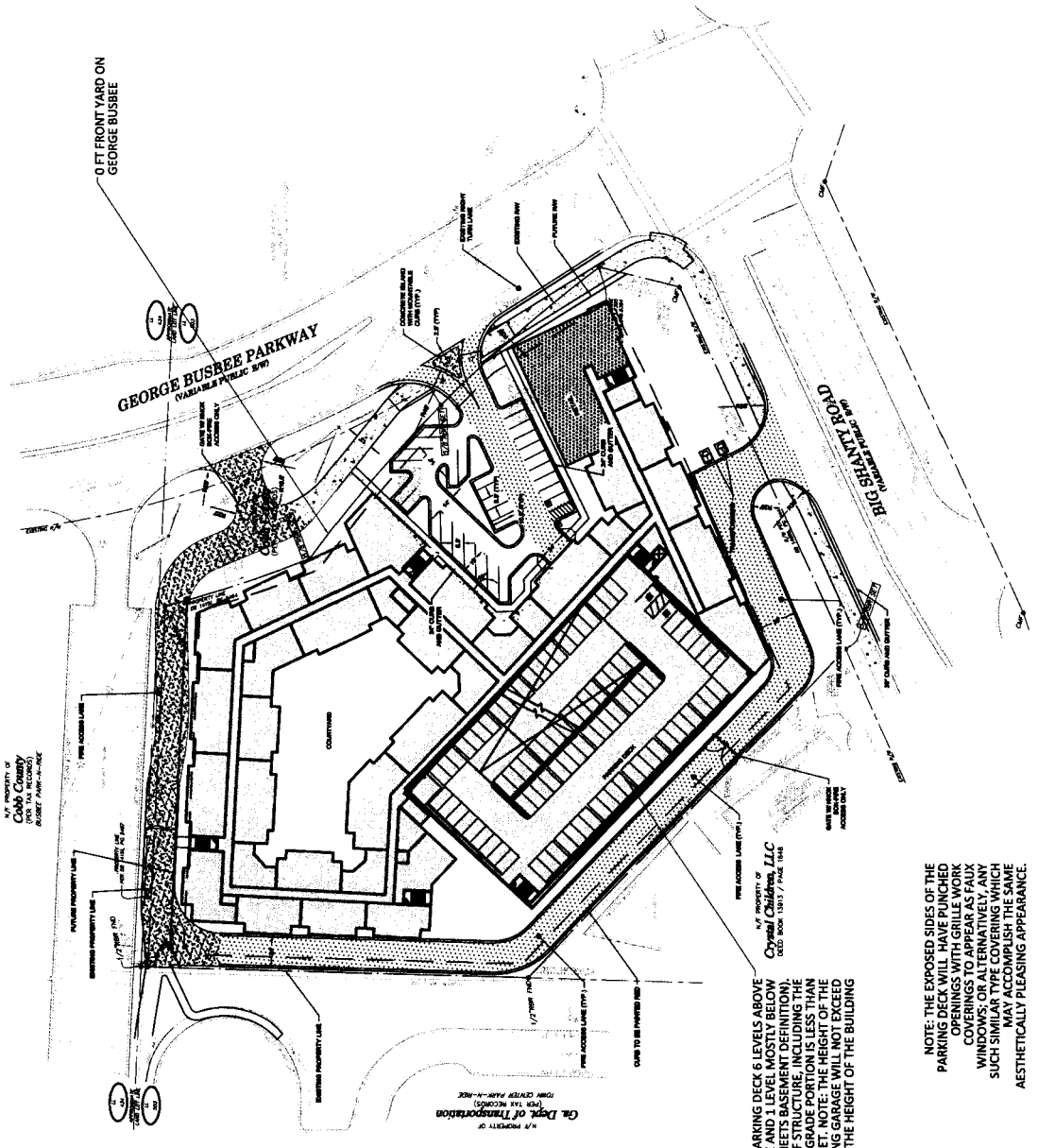


GRAPHIC SCALE IN FEET
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GEORGIA811
Call before you dig.
1-800-4-A-DAWG

RECEIVED
APR 10 2018

COBB CO. CLERK'S OFFICE
ZONING DIVISION



7 LEVEL PARKING DECK 6 LEVELS ABOVE GRADE AND 1 LEVEL MOSTLY BELOW GRADE (MEETS BASEMENT DEFINITION) HEIGHT OF STRUCTURE, INCLUDING THE BELOW GRADE PORTION IS LESS THAN 67 FEET. NOTE: THE HEIGHT OF THE PARKING GARAGE WILL NOT EXCEED THE HEIGHT OF THE BUILDING

NOTE: THE EXPOSED SIDES OF THE PARKING DECK WILL HAVE PUNCHED COVERINGS WITH GRILLE WORK WHICH WILL APPEAR AS FAUX CONCRETE. THE COVERINGS, SUCH AS SHAW TYPE COVERINGS, WHICH MAY ACCOMPLISH THE SAME AESTHETICALLY PLEASING APPEARANCE.

RECEIVED
APR 10 2018

COBB CO. COMM. DEV. AGENCY
ZONING DIVISION

**SITE PLAN APPROVED BY BOARD OF
COMMISSIONERS PURSUANT TO
APPLICATION FOR
REZONING NO. Z-54 (2017)
– OCTOBER 17, 2017**

Petition No. Z-S4
 Meeting Date 10-17-17
 Continued

STUDENT HOUSING + RETAIL 3081 GEORGE BUSBEE PKY NW ZONING SITE PLAN		RZ1.1 ZONING DISTRICT
KENNESAW KORNER MF, LP 2828 COLLEGE AVE STE. 200 PHONE 878-1188		DATE: 9/22/17 DRAWN BY: [Signature]
Kimley-Horn 817 W. JACKSON STREET ATLANTA, GEORGIA 30333 PHONE 404-525-8800		

9-22-2017



SEP 27 2017
 COBB CO. COMM. DEV. AGENCY
 ZONING DIVISION

B.O.B.
 [Signature]

SITE NOTES

1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
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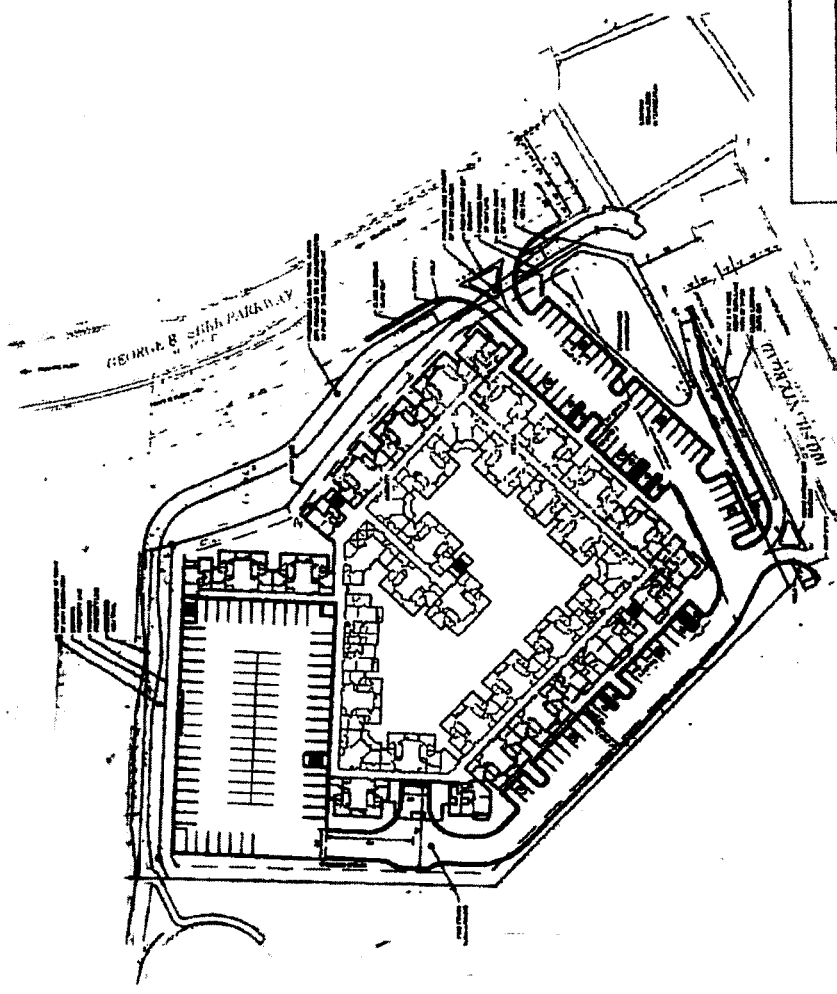


EXHIBIT "A"

**SITE PLAN SUBMITTED FOR AMENDMENT
AND APPROVAL BY BOARD OF
COMMISSIONERS PURSUANT TO
APPLICATION FOR “OTHER BUSINESS” –
MAY 15, 2018**

**BUILDING SECTIONS PLAN PRESENTED
PURSUANT TO APPLICATION FOR
“OTHER BUSINESS”
– MAY 15, 2018**

**OFFICIAL MINUTES OF COBB COUNTY
BOARD OF COMMISSIONERS ZONING
HEARING AS TO APPLICATION FOR
REZONING Z-54 (2017)
– OCTOBER 17, 2017**

**MINUTES OF ZONING HEARING
COBB COUNTY BOARD OF COMMISSIONERS
OCTOBER 17, 2017
9:00 A.M.**

The Board of Commissioners' Zoning Hearing was held on Tuesday, October 17, 2017 at 9:00 a.m. in the second floor public meeting room of the Cobb County Building A, Marietta, Georgia. Present and comprising a quorum of the Board were:

Chairman Mike Boyce
Commissioner JoAnn Birrell
Commissioner Cupid
Commissioner Bob Ott
Commissioner Bob Weatherford

Chairman Boyce requested that petition Z-54 (Kennesaw Corner MF, LP) be removed from the Consent Agenda due to the complexity of the case. The Board was agreeable to this request and by consensus, Z-54 was moved to the Regular Agenda and heard in its numerical order.

Z-54 **KENNESAW CORNER MF, LP** (Recreation Resources at Town Center, Inc., owner) requesting Rezoning from **GC** to **RRC** for the purpose of Student Housing and Retail in Land Lots 502 and 503 of the 16th District. Located at the northwest corner of Big Shanty Road and George Busbee Parkway.

The public hearing was opened, and Mr. Kevin Moore addressed the Board. Following presentation and discussion, the following motion was made:

MOTION: Motion by Birrell, second by Ott, to approve Z-54 to the **RRC** zoning category, subject to:

- 1. Final site plan, landscape plan, and security plan to be approved by the District Commissioner**
- 2. Letter of agreeable conditions from Mr. John Moore dated September 27, 2017 (attached and made a part of these minutes)**
- 3. Letters of agreeable conditions from Mr. Kevin Moore dated October 3, 2017 and October 16, 2017 (attached and made a part of these minutes)**
- 4. Letter from Ms. Tracy Rathbone, Town Center CID, dated October 16, 2017, for reference *only* (attached and made a part of these minutes)**
- 5. Applicant's representative will work with the Bells Ferry Civic Association and the property owner regarding security issues**
- 6. Developer, Department of Transportation, and a representative from Community Development will work with and have dialogue with the Town Center CID to determine if adjustments can be made to the site plan to meet the spirit of the Town Center master plan; District Commissioner to approve the final site plan**

VOTE: ADOPTED 5-0

MOORE INGRAM JOHNSON & STEELE

A LIMITED LIABILITY PARTNERSHIP
WWW.MIJS.COM

JOHN H. MOORE
STEPHEN C. STEELE
WILLIAM R. JOHNSON†
ROBERT D. INGRAM†
J. BRIAN O'NEIL
G. PHILLIP BEGGS
ELDON L. BASHAM
MATTHEW J. HOWARD
JERE C. SMITH
CLAYTON O. CARMACK
KEVIN S. GARLOCK
J. KEVIN MOORE
RODNEY R. MCCOLLDOCH
SUSAN B. STUART
BRIAN D. SMITH
HARRY R. TEAR III
W. TROY HART†
JEFFREY A. DAKE
CHRISTOPHER C. MINGLEDORFF*
PHILIP C. THOMPSON
SHANE MAYES
ALEXANDER S. MORRISON**
GREGORY H. FULLER†
DOUGLAS W. BUTLER, JR

CAREY E. OLSON*
RYAN M. INGRAM
JOYCE W. HARPER
CHARLES E. PIERCE*
WILMA R. BUSH
TODD I. HEIRD*
CARLA C. WESTER*
AMY L. JETT*
SHAWN G. SHELTON
D. AUSTIN GILLIS†
KRISTEN C. STEVENSON*
SARAH H. BEST*†
RYAN C. EDENS*
JULIE C. FULLER*
TAMMI L. BROWN
JONATHAN J. SMITH
WILLIAM B. WARINAY†
DAVID P. CONLEY
LOURDES M. SANCERN†
LESLIE S. NEUBAUER
JENNIFER B. SIMPSON
CHRISTIAN H. LAYCOCK
LIZA D. HARRELL**
JOHN A. EARLY

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EMERSON OVERLOOK
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MARIETTA, GEORGIA 30066
TELEPHONE (770) 428-1488

KNOXVILLE, TENNESSEE
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KNOXVILLE, TENNESSEE 37923
TELEPHONE (865) 892-8039

JACKSONVILLE, FLORIDA
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JACKSONVILLE, FLORIDA 32254
TELEPHONE (904) 428-1488

BRENTWOOD, TENNESSEE
5200 MARYLAND WAY - STE 301
BRENTWOOD, TENNESSEE 37027
TELEPHONE (615) 425-7347

LEXINGTON, KENTUCKY
2333 ALEXANDRIA DRIVE
LEXINGTON, KENTUCKY 40504
TELEPHONE (502) 419-8021

CHARLESTON, SOUTH CAROLINA
885 ISLAND PARK DR - STE B
CHARLESTON, SOUTH CAROLINA 29402
TELEPHONE (843) 302-0002

ORLANDO, FLORIDA
7380 W. SAND LAKE RD - STE 500
ORLANDO, FLORIDA 32818
TELEPHONE (407) 367-8233

CHRISTOPHER W. SHERMAN*
KENNETH D. HALL
BRENT R. LAMAN*
CHRISTOPHER R. BROOKS*
ALLISON M. HELSINGER*
MICHAEL R. BEANE*
MICHAEL E. PATTERSON**
RYAN T. BOWDEN
JARED C. WILLIAMS**
CHRISTOPHER G. ROWE*
TIFFANY B. SHERRILL*
DAVID W. SAMMONS*
MARSHALL L. PORTWENT
PETER F. FRECH*
LAUREN E. SMITH*
LESLIE M. ROWE
TAYLOR W. WILLIAMS
MATTHEW R. HALL*
TYLER S. WATERFIELD**
BARRON K. MARTIN*
JENNIFER A. LOWE*
DEREK J. BROWN
KEVIN B. HARRIS
GARETT P. FRANKLYN*

DEBBIE K. HAUGHTON
M. ANDREW WOMACK*
SHAREE L. TUMBLING
MARC D. ROBINSON
ZACH T. POWERS**
LINDSAY A. FLEMING
JONATHAN D. MWILOH
DANIEL R. FINK

OF COUNSEL:
JOHN L. SKELTON, JR.†

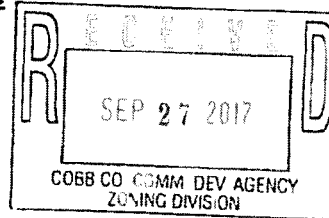
† ALSO ADMITTED IN TN
* ALSO ADMITTED IN FL
** ALSO ADMITTED IN GA
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† ALSO ADMITTED IN KY
† ALSO ADMITTED IN SC
† ALSO ADMITTED IN MS
† ALSO ADMITTED IN WV
* ADMITTED ONLY IN TN
* ADMITTED ONLY IN FL
** ADMITTED ONLY IN NC
* ADMITTED ONLY IN NY

Min. Bk. 83 Petition No. Z-54
Doc. Type 9-27-17 letter

September 27, 2017

Meeting Date 10-17-17

Hand Delivered



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

RE: Application for Rezoning - Application No. Z-54 (2017)
Applicant: Kennesaw Corner MF, LP
Property Owner: Recreation Resources at Town Center, Inc.
Property: 4.39 acres, more or less, located at the northwest corner of Big Shanty Road and George Busbee Parkway, Land Lot 503, 16th District, 2nd Section, Cobb County, Georgia

Dear John:

The undersigned and this firm represent Kennesaw Corner MF, LP, the Applicant (hereinafter referred to as "Applicant"), and Recreation Resources at Town Center, Inc., the Property Owner (hereinafter referred to as "Owner" or "Property Owner"), in the pending Application for Rezoning with regard to a total tract of 4.39 acres, more or less, located at the northwest corner of Big Shanty Road and George Busbee Parkway, Land Lot 503, 16th District, 2nd Section, Cobb County, Georgia (hereinafter referred to as the "Property" or the "Subject Property"). After meetings with Planning and Zoning Staff; reviewing the Departmental Comments and Staff Recommendations; and reviewing the uses of surrounding properties, we have been authorized

MOORE INGRAM JOHNSON & STEELE

Mr. John P. Pederson, AICP
Zoning Division Manager
Zoning Division
Cobb County Community Development Agency
Page 2 of 8
September 27, 2017

Petition No. 2-54
Meeting Date 10-17-17
Continued

by the Applicant to submit this revised letter of agreeable stipulations and conditions, which, if the Application for Rezoning is approved, as submitted, shall become a part of the grant of the requested zoning and shall be binding upon the Subject Property. This letter shall supersede and replace in full the previous letter of agreeable stipulations and conditions dated and filed August 30, 2017. The revised, proposed stipulations are as follows:

- (1) The 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 on the Subject Property; together with any and all Departmental Comments and Staff Recommendations relating to the Subject Property from any prior zoning actions.
- (2) Applicant seeks rezoning of the Subject Property from the existing zoning classification of General Commercial ("GC") to the proposed zoning classification of Regional Retail Commercial ("RRC"), site plan specific to the revised Zoning Site Plan prepared for Applicant by Kimley-Horn and Associates, Inc. dated June 19, 2017, last revised September 22, 2017, and filed contemporaneously with the filing of this revised stipulation letter. A reduced copy of the revised Zoning Site Plan is attached hereto as Exhibit "A" and incorporated herein by reference.
- (3) By this letter of agreeable stipulations and conditions, Applicant amends its Application for Rezoning to include the revised Zoning Site Plan for the proposed development hereinabove referenced, same being prepared by Kimley-Horn and Associates, Inc. dated June 19, 2017, last revised September 22, 2017, and filed with the Zoning Office contemporaneously with the filing of this letter of agreeable stipulations and conditions.
- (4) The Subject Property consists of approximately 4.93 acres of total site area.
- (5) Applicant intends to construct a structure, a maximum of six (6) stories or a maximum of eighty-five (85) feet in height. The structure shall be traditional in style and architecture and shall be substantially similar to the rendering attached hereto as Exhibit "B" and incorporated herein by reference.
- (6) The development shall contain a maximum of 17,500 square feet of retail space located on the street level of the proposed development. The remainder of the structure shall contain a maximum of two hundred fifteen (215) housing units for students at area institutions of higher education.

MOORE INGRAM JOHNSON & STEELE

Mr. John P. Pederson, AICP
Zoning Division Manager
Zoning Division
Cobb County Community Development Agency
Page 3 of 8
September 27, 2017

Petition No. 2-54
Meeting Date 10-17-17
Continued

I. STIPULATIONS APPLICABLE TO THE OVERALL DEVELOPMENT

- (1) Access to the proposed development shall be right-in/right-out drives located on both Big Shanty Road and George Busbee Parkway, as more particularly shown and reflected on the revised Zoning Site Plan.
- (2) Entrance signage for the proposed development shall be ground-based, monument-style signage, with the finish, materials, and color being in conformity with the architecture and design of the building. Such signage shall contain no flashing sign components. The location of the entrance signage shall be as more particularly shown and reflected on the revised Zoning Site Plan.
- (3) The entrance area, together with all islands and planted areas, shall be professionally designed, landscaped, and maintained. These areas shall be part of the overall landscape plan approved by the Cobb County Arborist as part of the Plan Review Process.
- (4) Surface lighting within the proposed development shall be environmentally sensitive, decorative, and themed to the architecture and style of the overall development, as allowed by the power provider.
- (5) Additionally, hooded security lighting shall be utilized on the exteriors of the building, parking deck, surface parking area, and walkways throughout the proposed development.
- (6) Parking for the proposed development shall be both surface parking; as well as, a maximum six-level parking deck. The portion of the parking deck reserved for resident parking shall be gated. Parking for the development will comply with the Cobb County Parking Code; except as may be altered by a parking study submitted to and approved by Staff.
- (7) The residents and tenants within the proposed development will utilize a compactor system for refuse.
- (8) There shall be no tenant vehicles or vehicles of any type parked in front of the proposed building containing tenant identification signage or advertising signage. This provision shall be contained within any lease between Applicant and any

MOORE INGRAM JOHNSON & STEELE

Mr. John P. Pederson, AICP
Zoning Division Manager
Zoning Division
Cobb County Community Development Agency
Page 4 of 8
September 27, 2017

Petition No 2-54
Meeting Date 10-17-17
Continued

prospective tenant, and Applicant agrees to enforce these provisions against any tenant which violates the foregoing.

- (9) Setbacks for the proposed development shall be as more particularly shown and reflected on the referenced revised Zoning Site Plan, as follows:
- (a) Front Setback: Ten (10) feet;
(along George Busbee Parkway)
 - (b) Front Setback: Fifty (50) feet;
(along Big Shanty Road)
 - (c) Side Setback: Ten (10) feet; and
(west)
 - (d) Rear Setback: Ten (10) feet
(north).
- (10) Minor modifications to the within stipulations, the referenced, revised Zoning Site Plan, lighting, landscaping, building architecture, signage, site features, and the like, may be approved by the District Commissioner, as needed or necessary, except for those that:
- (a) Increase the density of a residential project or the overall square footage of a non-residential project;
 - (b) Reduce the size of an approved buffer adjacent to a property that is zoned the same or in a more restrictive zoning district;
 - (c) Relocate a structure closer to the property line of an adjacent property that is zoned the same or in a more restrictive zoning district;
 - (d) Increase the height of a building that is adjacent to a property that is zoned the same or in a more restrictive zoning district; or
 - (e) Change an access location to a different roadway.
- (11) All setbacks and buffer areas may be penetrated for purposes of access, utilities, and stormwater management, including, but not limited to, detention/retention

MOORE INGRAM JOHNSON & STEELE

Mr. John P. Pederson, AICP
Zoning Division Manager
Zoning Division
Cobb County Community Development Agency
Page 5 of 8
September 27, 2017

Petition No 2-54
Meeting Date 10-17-17
Continued

facilities, drainage facilities, and any and all slopes or other required engineering features of the foregoing.

- (12) Applicant agrees to comply with all Cobb County Development Standards and Ordinances relating to project improvements, except as approved by the Board of Commissioners or by the Department of Transportation or Community Development Agency, as their authority may allow.
- (13) Applicant agrees to comply with all Cobb County Stormwater Management requirements applicable to the Subject Property.
- (14) The detention area shall be located as shown and reflected on the revised Zoning Site Plan fenced. The area shall be fenced with either wrought-iron type fencing or black chain link fencing, a minimum of six (6) feet in height, and landscaped to the exterior for purposes of visual screening. The landscaping shall be incorporated into the landscape plan and approved by the Cobb County Arborist during the Plan Review Process.
- (15) All utilities for the proposed development shall be located underground.

II. RESIDENTIAL STUDENT HOUSING COMPONENT

- (1) The residential student housing component of the proposed development shall have a maximum of two hundred fifteen (215) residential leased units contained within one mid-rise building, a maximum of six (6) stories in height, above grade, as more particularly shown and reflected on the revised Zoning Site Plan.
- (2) Applicant agrees there shall be a minimum of six (6) resident employees of the management company or ownership.
- (3) Access to the residential units shall be secured, carded access for residents and their guests only.
- (4) All public areas, hallways, parking areas, and access points shall have appropriate surveillance cameras and controlled, secure access.

MOORE INGRAM JOHNSON & STEELE

Mr. John P. Pederson, AICP
Zoning Division Manager
Zoning Division
Cobb County Community Development Agency
Page 6 of 8
September 27, 2017

Petition No 2-54
Meeting Date 10-17-17
Continued

- (5) Applicant agrees to cooperate with Kennesaw State University, and to the extent agreeable with Kennesaw State University, offer or support joint educational opportunities and student learning space to entrance academic programs.
- (6) Applicant agrees to provide meaningful, dedicated space for student learning environments.
- (7) Applicant agrees to include within all residential leases a disclosure that surrounding and adjacent properties are used, and will be used, for school-related activities, functions, athletic events, and practices; as well as, student band performances or practices; associated with nearby and adjacent campus activities.

III. RETAIL COMPONENT

- (1) The retail component of the proposed development shall consist of a maximum of 17,500 square feet and shall be located on the ground floor of the proposed building. The retailers will be geared to provide goods and services for the students within the residential component.
- (2) Parking for tenants and customers of the proposed retailers shall be in surface parking areas; as well as, within designated areas of the parking deck.
- (3) The following uses shall be prohibited from the proposed retail center:
 - (a) Video arcades as a primary use;
 - (b) Adult-themed bookstores as a primary use;
 - (c) Automotive sales, leasing, repair, and/or service facilities;
 - (d) Gas stations and self-service gas stations that sell gas and convenience stores;
 - (e) Truck and trailer leasing facilities;
 - (f) Automotive paint and body repair shops;
 - (g) Automotive upholstery shops;
 - (h) Billiards and pool halls which are the sole or predominant use;
 - (i) Bus stations (not to exclude bus stops);
 - (j) Full-service gas stations;
 - (k) Light automotive repair;
 - (l) Rooming houses and boarding houses;

MOORE INGRAM JOHNSON & STEELE

Mr. John P. Pederson, AICP
Zoning Division Manager
Zoning Division
Cobb County Community Development Agency
Page 7 of 8
September 27, 2017

Petition No 2-54
Meeting Date 10-17-17
Continued

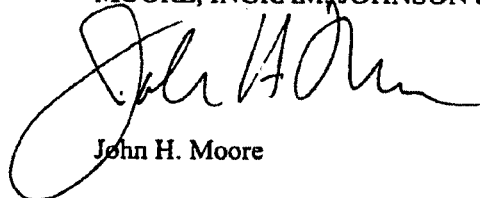
- (m) Any form of adult entertainment business
- (n) Nightclubs and bars, except that same would be permitted within a restaurant or hotel provided that they are an integral part of a restaurant or hotel operation;
- (o) Pawn shops;
- (p) Tattoo parlors;
- (q) Check cashing establishment;
- (r) Wholesale stores;
- (s) Gun, knife, or weaponry stores;
- (t) Second-hand or thrift stores; and
- (u) Flea markets.

We believe the requested zoning, pursuant to the revised Zoning Site Plan and the revised stipulations set forth herein, is an appropriate use of the Subject Property. The proposed development is an exciting project which blends student housing and retailers providing necessary services together in a mixed-use development. This area of Cobb County is perfectly situated for this type of development, being in close proximity to the main campus of Kennesaw State University and Interstate 75 and Interstate 575. The overall community shall be of the highest quality, shall be compatible with surrounding retail developments, businesses, and neighborhoods; and shall be an enhancement to the Subject Property and Cobb County as a whole. Thank you for your consideration in this request.

With kindest regards, I remain

Very truly yours,

MOORE, INGRAM, JOHNSON & STEELE, LLP



John H. Moore

JHM:cc
Attachments

MOORE INGRAM JOHNSON & STEELE

Petition No. 2-54
Meeting Date 10-17-17
Continued

Mr. John P. Pederson, AICP
Zoning Division Manager
Zoning Division
Cobb County Community Development Agency
Page 8 of 8
September 27, 2017

c: Cobb County Board of Commissioners:
Mike Boyce, Chairman
JoAnn Birrell
Lisa N. Cupid
Robert J. Ott
Bob Weatherford
(With Copies of Attachments)

Cobb County Planning Commission:
Mike Terry, Chairman
Thea Powell
Judy Williams
Skip Gunther
Galt Porter
(With Copies of Attachments)

Jason A. Campbell
Planner III
Zoning Division
Cobb County Community Development Agency
(With Copies of Attachments)

Kennesaw Corner MF, LP
(With Copies of Attachments)

Petition No. Z-54
 Meeting Date 10-17-17
 Continued

STUDENT HOUSING + RETAIL 3061 GEORGE BUSBEE PKY NW ZONING SITE PLAN	KENESSAW KORNER MF, L.P. 811 W. PEACOCKS AVENUE ATLANTA, GEORGIA 30308 PHONE: 404.481.1000	KIMLEY-HORN 1100 N. WILSON AVENUE ATLANTA, GEORGIA 30309 PHONE: 404.525.1000
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9-22-2017

SEP 27 2017
 COBB CO COMM DEV AGENCY
 ZONING DIVISION

SITE NOTES

1. THE SUBMITTED SITE PLAN IS TO BE CONSIDERED AS SHOWN AND THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPLICABLE AGENCIES AND AGENCIES.

2. THE CLIENT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPLICABLE AGENCIES AND AGENCIES.

3. THE CLIENT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPLICABLE AGENCIES AND AGENCIES.

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8. THE CLIENT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPLICABLE AGENCIES AND AGENCIES.

9. THE CLIENT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPLICABLE AGENCIES AND AGENCIES.

10. THE CLIENT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPLICABLE AGENCIES AND AGENCIES.

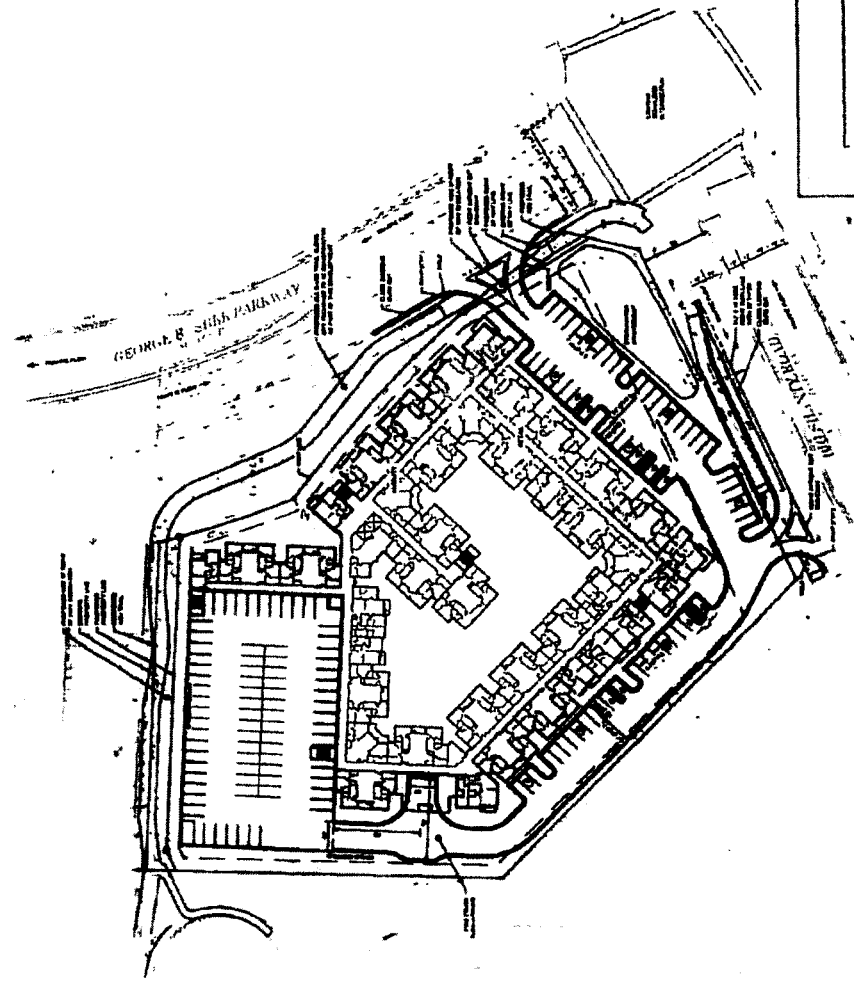


EXHIBIT "A"

Petition No 2-54
Meeting Date 10-17-17
Continued

08/19/2017

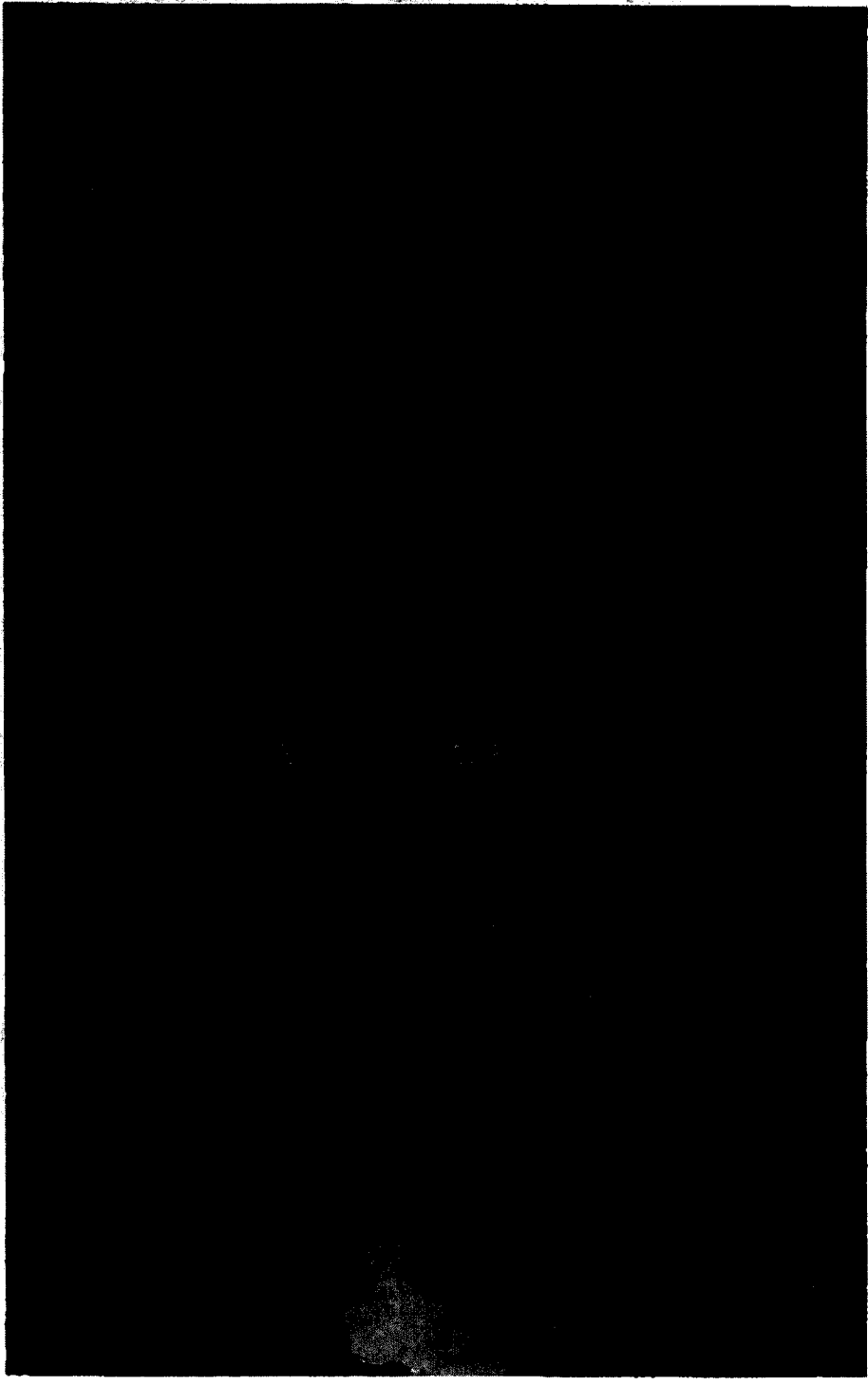


EXHIBIT "B"

17014: KENNESAW STUDENT HOUSING
KENNESAW, GEORGIA
FOUNTAIN RESIDENTIAL
ARCHITECTURE DEMARRETT

CONCEPTUAL 3D RENDERING

MOORE INGRAM JOHNSON & STEELE

A LIMITED LIABILITY PARTNERSHIP
WWW.MIJS.COM

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JOHN L. SKELTON, JR.¹

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⁷ ALSO ADMITTED IN SC
⁸ ALSO ADMITTED IN NC
⁹ ALSO ADMITTED IN IN
¹⁰ ADMITTED ONLY IN TN
¹¹ ADMITTED ONLY IN FL
¹² ADMITTED ONLY IN SC
¹³ ADMITTED ONLY IN NY
¹⁴ ADMITTED ONLY IN NY

October 3, 2017

Hand Delivered

Min. Bk. 63 Petition No. Z-54
Doc. Type 10-3-17 letter

Meeting Date 10-17-17

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

RE: Application for Rezoning - Application No. Z-54 (2017)
Applicant: Kennesaw Corner MF, LP
Property Owner: Recreation Resources at Town Center, Inc.
Property: 4.39 acres, more or less, located at the northwest corner of Big Shanty Road and George Busbee Parkway, Land Lot 503, 16th District, 2nd Section, Cobb County, Georgia

Dear John:

On behalf of the Applicant, Kennesaw Corner MF, LP (hereinafter "Applicant"); as well as, the Property Owner, Recreation Resources at Town Center, Inc. (hereinafter the "Owners" or the "Property Owners"), please allow this correspondence to serve as a supplement to the letter of agreeable stipulations and conditions dated and filed with your office on September 27, 2017, as follows:

- (1) Applicant agrees to a reduction in the overall height of the proposed building from six (6) stories to five (5) stories, with a maximum height of sixty-seven (67) feet (a reduction from the current maximum height of eighty-six (86) feet).

MOORE INGRAM JOHNSON & STEELE

Mr. John P. Pederson, AICP
Zoning Division Manager
Zoning Division
Cobb County Community Development Agency
Page 2 of 2
October 3, 2017

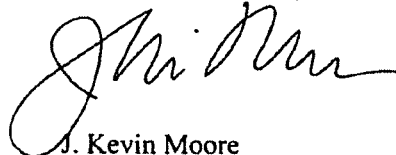
Petition No. 2-54
Meeting Date 10-17-17
Continued

- (2) Applicant agrees to a reduction in the overall residential density from two hundred fifteen (215) units to one hundred ninety-five (195) units.
- (3) Applicant agrees that exposed sides of the proposed parking deck shall have punched openings with grille work coverings to appear as faux windows; or, alternatively, any such similar type covering which may accomplish the same aesthetically pleasing appearance.
- (4) Applicant agrees to include within all residential leases additional disclosure language that noise from such university-related activities on adjoining and nearby properties will include; but not necessarily be limited to, loud noises from outdoor band practices, which could occur in both early morning and later evening times; loud noises associated with crowds attending sporting events also at times which could include mornings, evenings, and later at night.
- (5) Applicant agrees to include on-site signage which restricts parking so as to prohibit off-site use and maximize parking for on-site purposes only.
- (6) The balance and remainder of the September 27, 2017, stipulation letter, which is not otherwise in direct conflict with the supplemental stipulations set forth above, is unchanged by this supplemental letter.

With kindest regards, I remain

Very truly yours,

MOORE, INGRAM, JOHNSON & STEELE, LLP



J. Kevin Moore

JKM:cc

c: Kennesaw Corner MF, LP

MOORE INGRAM JOHNSON & STEELE

A LIMITED LIABILITY PARTNERSHIP
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OF COUNSEL:
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• ALSO ADMITTED IN NY
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‡ ADMITTED ONLY IN FL
• ADMITTED ONLY IN IN
• ADMITTED ONLY IN KY
• ADMITTED ONLY IN NY

Min. Bk. 63 Petition No. Z-54
Doc. Type Letter (10-16-17)

October 16, 2017

Meeting Date 10-17-17

FILED WITH COUNTY CLERK THIS 17th DAY
OF Oct. 2017 BY K. Moore
RE Z-54
John Ireland
COUNTY CLERK/ASST. COUNTY CLERK/DEPUTY COUNTY CLERK
COBB COUNTY, GEORGIA

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

RE: Application for Rezoning - Application No. Z-54 (2017)
Applicant: Kennesaw Corner MF, LP
Property Owner: Recreation Resources at Town Center, Inc.
Property: 4.39 acres, more or less, located at the northwest corner of Big Shanty Road and George Busbee Parkway, Land Lot 503, 16th District, 2nd Section, Cobb County, Georgia

Dear John:

On behalf of the Applicant, Kennesaw Corner MF, LP (hereinafter "Applicant"); as well as, the Property Owner, Recreation Resources at Town Center, Inc. (hereinafter the "Owners" or the "Property Owners"), please allow this correspondence to serve as an amendment to the supplemental letter of agreeable stipulations and conditions dated October 2, 2017, and filed at the Cobb County Planning Commission Zoning Hearing on October 3, 2017, as follows:

- (1) Applicant amends the supplemental stipulation letter by deleting subparagraph (4) in its entirety and inserting in lieu thereof the following:

MOORE INGRAM JOHNSON & STEELE

Mr. John P. Pederson, AICP
Zoning Division Manager
Zoning Division
Cobb County Community Development Agency
Page 2 of 3
October 16, 2017

Petition No. Z-54
Meeting Date 10-17-17
Continued

- (4) Applicant agrees to include within all residential leases additional disclosure language that noise from such University-related activities on adjoining and nearby properties will include; but not necessarily be limited to, loud noises from outdoor band practices, which could occur in both early morning and later evening times; loud noises associated with crowds attending sporting events, also at times which could include mornings, evenings, and later at night; and loud noises emanating from University and University-related practices occurring on fields located adjacent to or in the surrounding area of the Subject Property (including any prospective practice football field located between the existing and former BrandSmart building and Interstate 75).

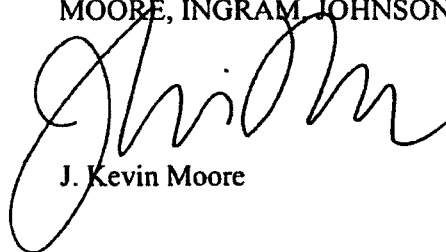
- (2) To confirm and clarify, Applicant agrees to the donation of right-of-way for the purpose of a planned multi-use trail which traverses the Property as referenced and identified on the submitted Site Plan, last revised September 22, 2017. Further, Applicant agrees to construct the trail as more specifically shown and identified on the revised, submitted Site Plan.

- (3) The balance and remainder of the September 27, 2017, stipulation letter; as well as, the October 2, 2017, supplemental letter, which are not otherwise in direct conflict with the amended stipulation set forth above, are unchanged by this amendment.

With kindest regards, I remain

Very truly yours,

MOORE, INGRAM JOHNSON & STEELE, LLP



J. Kevin Moore

JKM:cc

MOORE INGRAM JOHNSON & STEELE

Mr. John P. Pederson, AICP
Zoning Division Manager
Zoning Division
Cobb County Community Development Agency
Page 3 of 3
October 16, 2017

Petition No. Z-54
Meeting Date 10-17-17
Continued

- c: Cobb County Board of Commissioners:
 - Mike Boyce, Chairman
 - JoAnn Birrell
 - Lisa N. Cupid
 - Robert J. Ott
 - Bob Weatherford

- Jason A. Campbell
 - Planner III
 - Zoning Division
 - Cobb County Community Development Agency

- Kennesaw Corner MF, LP



Min. Bk. 03 Petition No. Z-54
Doc. Type letter (for reference only)
Meeting Date 10-17-17

1701 Barrett Lakes Boulevard, Suite 200
Kennesaw, GA 30144

October 16, 2017

Cobb County Board of Commissioners
100 Cherokee Street
Marietta, Georgia 30090

Re: Z-54 (2017), Kennesaw Corner MF, LP

Dear County Commissioners:

We are aware that the above zoning application was recommended for approval by the Planning and Zoning Commission on October 3rd, 2017. Upon review of the zoning application, Z-54, submitted by the applicant, Kennesaw Corner MF, LP, as well as departmental reviews by the County, the Town Center Community Improvement District (TCCID) would like to submit the following comments for consideration if the Board of Commissioners approves this zoning request:

- The current Master Plan for the Town Center CID, adopted by Cobb County in April 2017, specifically delineates George Busbee Parkway as a "Complete Street" concept with pedestrian/ bicycle facilities as well as enhance lighting and landscaping. The variances requested for the setback along George Busbee would not allow enough space for this planned improvement. Refer to the section provided on page two that demonstrates the layout for improvements as well as appropriate dimensions and building heights.
- "Smart Corridor" technology is also being considered along George Busbee Parkway as part of future enhancements, but the space needed is not yet defined.
- Big Shanty Road is also identified in the Master Plan as a "Complete Street" which builds upon the existing Big Shanty trail by adding lighting and landscaping to increase the buffer between vehicular traffic and pedestrians/ bicycles.
- Recommendations for future buildings are to face and front George Busbee Parkway and Big Shanty with limited setbacks. Optimally, drive aisles and parking spaces would be located to the rear or side of the building and not between public streets and primary building frontages (particularly retail spaces).
- The KSU to Mall Bike/ Pedestrian Path is currently in engineering phase with the Town Center CID and Cobb County DOT. This three-mile trail is a critical north-south connection point for Kennesaw State University, the Fifth-Third Stadium, and the core of the Town Center activity area. This proposed development could negatively impact the ROW needed for this project, unless appropriate ROW is reserved. The KSU to Mall Bike/ Pedestrian Path would benefit this proposed development and its residents. If the BOC approves this application, then we would respectfully ask that appropriate ROW be preserved.
- The Town Center CID is finalizing an agreement with Cobb County to create a lighting district for street, pedestrian and decorative mast arms throughout the district. This intersection is in the Tier One priority list once the agreement is approved.



Petition No. Z-54
Meeting Date 10-17-17
Continued

1701 Barrett Lakes Boulevard, Suite 200
Kennesaw, GA 30144

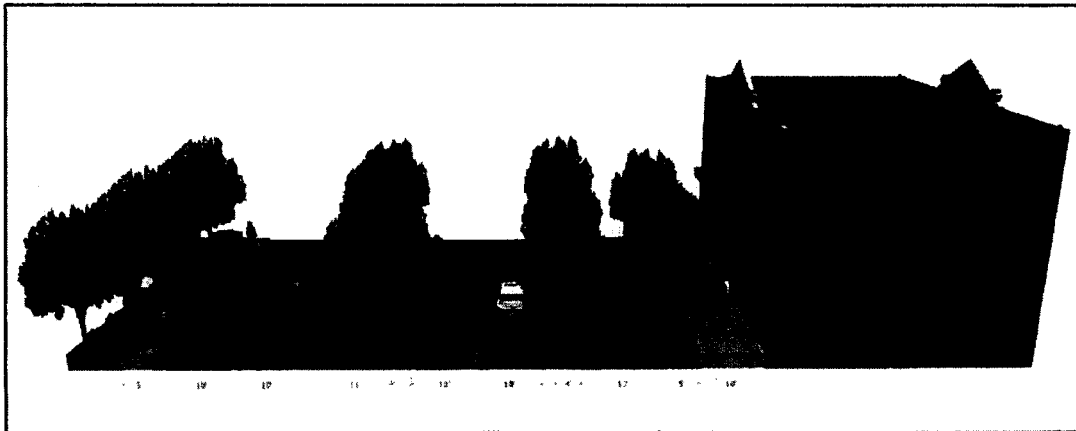
- Any additional items that are included in the TCCID Design Guidelines, which were approved by the Cobb County Board of Commissioners in 2016, should be considered as a part of this development. This includes lighting, benches, trash cans, and recommendations for plantings, etc.

If this development is approved by the Board of Commissioners, it is the request of the TCCID that each of these issues be considered as stipulations for approval and construction of both this and future projects within the TCCID.

Sincerely,

A handwritten signature in cursive script that reads 'Tracy Rathbone'.

Tracy Rathbone
Executive Director



TCCID Master Plan, February 2017
Complete Street concept and section

**2017 PAID AD VALOREM PROPERTY TAX
RECIPT FOR SUBJECT PROPERTY
(TAX PARCEL NO. 16050300030)**



Printed: 4/6/2018

Cobb County Online Tax Receipt

Thank you for your payment!

CARLA JACKSON TAX COMMISSIONER
CHELLY MCDUFFIE CHIEF DEPUTY
Phone: 770-528-8600
Fax: 770-528-8679

Payer:
ICEFORUM AT TOWN CENTER INC

**RECREATION RESOURCES AT TOWN
CENTER
INC**

Payment Date: 10/15/2017

Tax Year	Parcel ID	Due Date	Appeal Amount			Taxes Due
2017	16050300030	10/15/2017	Pay:	N/A	or	\$0.00
Interest	Penalty	Fees	Total Due	Amount Paid	Balance	
\$0.00	\$0.00	\$0.00	\$0.00	\$39,306.20	\$0.00	



Scan this code with your mobile phone to view this bill!!

**CORPORATE AUTHORITY FOR
APPLICANT, GDC KENNESAW LLC**

GILBANE DEVELOPMENT COMPANY
CERTIFICATE OF SECRETARY

The undersigned, being the Secretary of Gilbane Development Company, a Rhode Island corporation (the "Company"), hereby certifies that:

1. That the Company is, on the date hereof, the duly elected, qualified and acting Manager of GD Kennesaw LLC.

2. That Matthew P. Lawrence is, on the date hereof, the duly elected, qualified and acting Senior Vice President of the Company, and that, in such capacity, he is authorized in his sole discretion to execute documents on behalf of the Company in his capacity as Senior Vice President.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the 9th day of April, 2018.



Molly M. Stolmeier, Secretary

THE INTERESTS DESCRIBED HEREIN HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES ACT OF ANY STATE OR JURISDICTION. NO SALE, OFFER TO SELL, OR OTHER TRANSFER OF THESE INTERESTS MAY BE MADE BY A MEMBER UNLESS PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT, OR UNLESS IN THE OPINION OF COUNSEL TO THE COMPANY THE PROPOSED DISPOSITION FALLS WITHIN A VALID EXEMPTION FROM THE REGISTRATION PROVISIONS OF THOSE ACTS.

AMENDED AND RESTATED
OPERATING AGREEMENT
OF
GD KENNESAW LLC

This OPERATING AGREEMENT ("Agreement") of GD Kennesaw LLC, a Delaware limited liability company (the "Company"), is made and entered into as of the 13th day of December, 2017 (the "Effective Date") by and between Gilbane Development Company, a Rhode Island corporation ("GDC"), and the undersigned individuals (GDC and such individuals are hereinafter sometimes referred to collectively as the "Members" and individually as a "Member").

WITNESSETH:

WHEREAS, Kennesaw Korner MF, LP, a Delaware limited partnership (the "Original Member"), caused the formation of the Company by filing with the Office of the Secretary of State of the State of Delaware, Division of Corporations, a Certificate of Formation, and, pursuant to such filing, the Company was formed as a Delaware limited liability company on December 4, 2017 pursuant to and in accordance with the Delaware Limited Liability Company Act, as the same may be amended from time to time (the "Act"); and

WHEREAS, the Original Member entered into an Operating Agreement for the Company dated as of December 12, 2017 ("Original Operating Agreement"); and

WHEREAS, GDC acquired one hundred percent (100%) of the outstanding membership interests in the Company from the Original Member pursuant to that certain Conveyance of Membership Interests dated December 13, 2017; and

WHEREAS, GDC has agreed to admit the undersigned individuals as Members in the Company; and

WHEREAS, the Members wish to amend and restate the Original Operating Agreement to reflect the Conveyance of Membership Interests and the admission of the undersigned individuals as new Members, and to affirm their respective interests in the Company as a result thereof and to otherwise govern the operation and management of the Company and the conduct of its business as provided in this Agreement.

Member shall equal the net amount that would have been allocated to each such Member if the Regulatory Allocations had not occurred.

ARTICLE V

Management of the Company

5.1. Management. The Business of the Company shall be managed by the Members. The rights of the Members in the control of the Company shall be allocated in accordance with the Member's Profits Interest. In discharging their management duties, the Members hereby appoint GDC to act as manager ("Manager") on behalf of the Company, as more fully described below.

5.2. Manager Duties. The Manager acting for, in the name and on behalf of the Company is hereby authorized, as follows:

(a) To acquire by purchase, lease, or otherwise, any real or personal property which may be necessary, convenient, or incidental to the accomplishment of the Business of the Company;

(b) To construct, operate, maintain, finance, and improve, and to own, sell, convey, assign, mortgage, or lease any real estate and any personal property necessary, convenient, or incidental to the accomplishment of the Business of the Company;

(c) To borrow money on behalf of the Company and issue evidence of indebtedness in furtherance of any or all of the purposes of the Company, and to secure the same by mortgage, pledge, or other lien on any assets of the Company;

(d) To prepay in whole or in part, refinance, recast, increase, modify, or extend any mortgages affecting the development and in connection therewith to execute any extensions, renewals, or modifications of any mortgages on any assets of the Company;

(e) To execute and deliver one or more notes and mortgages and all other documents required in connection with the acquisition, operation, construction, development, improvement, maintenance, and operation of any assets of the Company;

(f) To enter into one or more construction contracts, easement agreements, restrictive covenants and other documents upon such terms and conditions as the Manager shall deem appropriate, and to perform any and all obligations of the Company arising under such agreements; and

(g) To enter into any kind of activity and to perform and carry out contracts of any kind necessary to, or in connection with, or incidental to the accomplishment of the Business of the Company so long as said activities and contracts may be lawfully carried

on or performed by a limited liability company under the laws of the State of Delaware and pursuant to the laws of any other jurisdiction in which the Company transacts business. All instruments or agreements to be executed on behalf of the Company may be signed by the Manager. The Manager shall devote to the Company such time as may be necessary for the proper performance of its duties.

5.3. Nature of Manager Relationship. In discharging its duties under this Agreement, the Manager shall have the rights and obligations of a Manager as provided for in the Act. This delegation of duties to the Manager by the Members is contractual in nature and is not intended, nor does it, limit the rights and obligations of the Members to manage the Business of the Company. The Manager agrees to discharge its duties, and to exercise its rights and powers as a fiduciary with respect to the Company and the Members, in good faith based upon the perceived best interests of the Company and all of its Members.

5.4. Restrictions on Manager's Powers. Notwithstanding anything contained in this Operating Agreement to the contrary, without the written consent of a majority of the Members, the Manager shall have no authority to take any of the following actions unless otherwise permitted by this Operating Agreement:

- (a) Act in contravention of applicable law or this Agreement, or engage in any act which would make it impossible to carry on the ordinary business of the Company;
- (b) Alter the primary purpose of the Company as set forth in this Agreement;
- (c) Cause the Company to make loans to any entity;
- (d) Possess any Company property or assign the rights of the Company in specific Company property for other than a Company purpose;
- (e) Perform any act (other than an act required by this Agreement or any act taken in good faith in reliance upon counsel's opinion) which would, or could be reasonably foreseen to subject the other Members to personal liability for the debts or other liabilities of the Company; or
- (f) Admit additional Members.

ARTICLE VI

Transfer of Profits Interest

6.1. General Provisions. Except as provided in this paragraph or for a sale of a Member's Profits Interest to GDC in accordance with Article VII of this Agreement, no Member shall sell, assign, pledge, hypothecate, encumber or in any way transfer any portion of a Profits Interest, whether involuntarily or by operation of law, during the term of this Agreement without the unanimous, written consent of all the Members. Notwithstanding the foregoing or anything