

**SAMS, LARKIN, HUFF & BALLI, LLP**

ATTORNEYS AT LAW

376 POWDER SPRINGS STREET

SUITE 100

MARIETTA, GA 30064-3448

JAMES A. W. BALLI

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(Admitted in GA and AL)  
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August 1, 2018

**VIA EMAIL: [John.Pederson@cobbcounty.org](mailto:John.Pederson@cobbcounty.org)**  
**AND HAND DELIVERY**

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

Re: Application of Powers Ferry Road Project, LLC (“Applicant”) to Rezone a 8.84 acre tract of land (“Site”) from GC to RRC, Land Lots 941, 942, 986, 985, 17<sup>th</sup> District, 2<sup>nd</sup> Section, Cobb County, Georgia, 1927, 1931, 1935 and 1945 Powers Ferry Road (the “Project”) (Z-47 of 2018).

Dear John:

As you are aware, I represent the Applicant who is seeking to re-develop a Site that for years has frankly been an eyesore and known as “restaurant row.” The Project has proposed a complete re-vitalization on the Site for a mixed-use development consisting of 181 active senior homes, approximately 9,000 square feet of retail and amenity space located on the first floor of the active adult building, 10,000 square feet of restaurant space (which will allow Rose & Crown to increase from 4,400 to 6,000 square feet of space) and 290 leasable high-end multi-family units with an attached parking garage. As you are aware, the Site is located squarely within the area designated on the Cobb County Future Land Use Map as a Regional Activity Center (“RAC”) which is the category that allows the most intense projects. I appreciate Staff’s hard work analyzing this Project and the thoughtful and detailed recommendation that the Planning Commission and the Board of Commissioners approve the Project. After meeting with the Planning Commissioner for this District and listening to his suggestions, we have made some of his suggested changes and/or additions.

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That said, I am submitting with this letter a new Site Plan dated July 24, 2018<sup>1</sup> which shall supersede any previous Site Plans and be the plan utilized at the public hearing. In addition, I am submitting this letter of acceptable variances/conditions<sup>2</sup> which shall become conditions and a part of the grant of the requested rezoning [if, and only if, the proposal is approved for the Project at the density requested and as depicted on the Site Plan] and binding upon the Site thereafter 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 Site; together with any and all Departmental Comments and Staff Recommendations relating to the Subject Property from any prior zoning actions.
- (2) Rezoning of the Subject Property shall be from the existing General Commercial ("GC") zoning category to the Regional Retail Commercial ("RRC"), and shall be site plan specific to the revised Rezoning Site Plan ("Site Plan") prepared for Applicant by Planners & Engineers Collaborative, dated April 30, 2018, revised on July 24, 2018, signed on July 31, 2018 and filed with the Zoning Office on August 1, 2018. A reduced copy of the revised Site Plan is attached to this stipulation letter for ease of reference as Exhibit "A" and incorporated herein by reference.
- (3) The Subject Property consists of approximately 8.844 acres of total site area and shall be developed for a mixed-use development consisting of restaurant, limited retail and residential.

**RESIDENTIAL COMPONENT**

- (4) The residential component of the proposed development shall have a maximum of two hundred ninety (290) up-scale multi-family leasable units and one hundred eight-one (181) active senior adult units.
- (5) Units shall consist primarily of studio, one, and two bedrooms, with the majority of units consisting of studio and one bedroom units.

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<sup>1</sup> The change to the plan dated July 24, 2018 (which was signed on July 31, 2018) was a repositioning of the Rose and Crown restaurant location and to add additional parking. The site now has a total parking of 711 parking spaces.

<sup>2</sup> These stipulations are voluntary positive variants from the RRC zoning code and, as such, are not required by the RRC code.

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- (6) Building architecture and exterior facade of the proposed residential buildings **shall be** substantially similar to those shown and reflected on Exhibit "B" attached hereto and incorporated herein by reference. The District Commissioner shall have final approval of the elevations.
- (7) Floor plans and finishes for the residential units shall consist, at a minimum, or shall exceed the level of quality, of the following:
  - (a) Enhanced Corian, granite, quartz, or marble counter tops, or other solid surface materials;
  - (b) Minimum ceiling heights:
    - i) Minimum 9 feet will be the goal, except in furred-down areas, from floor to finished ceiling and greater; and as required to coordinate with MEP drops
    - ii) Minimum 10 feet between floors;
  - (c) Top-of-the line appliances; such as Whirlpool or General Electric ("GE");
  - (d) Premium grade cabinetry;
  - (e) A selection of faux hardwood flooring, high-end carpet, and tile throughout;
  - (f) Spacious open floor plans;
  - (g) Brushed chrome, brushed nickel, or antiqued or brushed brown or bronze bathroom and kitchen fixtures;
  - (h) Spacious closets;
  - (i) Units include tile surrounds, either tubs with showers and/or shower only walk-ins;
  - (j) Energy-efficient construction which will meet or exceed the Georgia Energy Code;
- (8) All residents of the proposed residential community shall have access to and use and enjoyment of the amenity areas, which will include, at a minimum, the following:
  - (a) Pool;
  - (b) Fitness center;
  - (c) Clubroom;
  - (d) Business center or internet cafe;
  - (e) Electric vehicle charging stations (or other alternate power source); and
  - (f) Bicycle racks.
  - (g) Electric car charge stations.
- (9) The Property Owner Association and/or Applicant (or its designee) shall manage the day-to-day operations of the residential components including the responsibility of all commonly used amenities within the proposed community and shall be responsible for

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the management of all monies and ensuring that the Project Components are properly insured.

- (10) Pedestrian crossings within the interior of the Site shall have standard painted markings. Pedestrian crossings will also be provided at appropriate areas. No other pedestrian markings shall be required within the proposed development.

#### **RESTAURANT / RETAIL COMPONENT**

- (11) The Site includes restaurants within the proposed mixed-use Project. Said restaurants may serve alcoholic beverages as a part of their respective food and beverage services upon securing the proper permits from Cobb County and State agencies. The popular Rose and Crown Restaurant is envisioned to be one of the restaurants on the site and increase in size from 4,400 square feet to 6,000 square feet.
- (12) Consistent with discussions with the area residents, there shall be a focus on pedestrian safety which shall including sidewalks, proper signage, crosswalks and other industry best practices to ensure safe pedestrian ingress and egress.

#### **LANDSCAPING AND SCREENING / PROTECTIONS**

- (13) All landscaping referenced herein; including, but not limited to, the frontage, entrance area, island areas, and open space areas will be substantially similar to the Conceptual Landscape plan attached hereto as Exhibit "C" and shall be approved by the District Commissioner as part of the plan review process and incorporated into the overall landscape plan for the proposed community.
- (14) The entrance areas, together with all planted areas, shall be professionally designed, landscaped, irrigated and maintained, and shall be in substantial conformity to the Conceptual Landscape Plan attached hereto.
- (15) Lighting within the proposed development shall be environmentally sensitive, decorative, and themed to the architecture and style of the respective components of the development. However, any exterior lighting added along the Powers Ferry sidewalk will be in keeping with the CID standards and designs.
- (16) There shall be no tenant vehicles or vehicles of any type permanently parked in front of the proposed overall development containing tenant identification signage or advertising signage. This provision shall be contained within any lease between the property owners

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- and any prospective tenant and the property owners agree to undertake their best efforts to enforce these provisions against any tenant which violates the foregoing.
- (17) Construction hours shall be in accordance with Cobb County standards with no outside construction work being allowed on Sunday unless pre-approved by the District Commissioner.
- (18) Dumpsters, or at-grade trash compaction facilities, will be screened and enclosed as required under the RRC district and will otherwise be positioned to be screened from major streets, connecting points to community spaces and wherever possible from any pedestrian-oriented component of the Subject Property. Dumpsters shall have rubber lids and bumpers to minimize noise during emptying and shall otherwise comply with Cobb County Development Regulations.
- (19) There shall be no outside paging systems, phone bells or loud speakers.

**MISCELLANEOUS STIPULATIONS / POSITIVE VARIANTS**

- (20) Setbacks for the components of the overall proposed development shall be as more particularly shown and reflected on the referenced Site Plan.
- (21) A Site Lighting/Photometric Plan shall be submitted to Staff during the Plan Review process.
- (22) Signage for the proposed overall development shall have finish, materials, and color consistent with the architecture and design of the overall development. Such signage shall contain no flashing sign components. Each building within the overall development shall have entrance and building signage pursuant to Cobb County Standards and Ordinances.
- (23) With respect to interior signage, standard street signage shall be utilized. However, a “topper” may be installed on any street signage, at the property owner’s sole discretion, indicating a connection with or relation to PFCA as a gateway-type of “branding” for PFCA and Cobb County.
- (24) There shall be no stacking of construction vehicles on or along Powers Ferry Road, Windy Ridge Parkway or Windy Ridge Extension waiting for entry upon the Site. Applicant further agrees to provide an on-site traffic controller for coordination of construction and demolition traffic during construction and delivery hours. All construction worker vehicles to be parked on site. No parking of any construction trucks or vehicles, either worker or delivery, to be parked or stacked on surrounding subdivision

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streets. Also, there will be **no parking of construction vehicles or by future residents/customers** at adjacent office buildings or on the Horizon's Condominium property and that prohibition shall be clearly identified.

- (25) Compliance with Cobb County Development Standards and Ordinances related to project improvements except as otherwise approved by the Board of Commissioners and/or the Cobb County Community Development Agency, as their respective authority may allow.
- (26) Compliance with the recommendations from the Cobb County Water System with respect to the availability and acquisition of water and sewer to service the Site.
- (27) All setbacks and buffer areas may be penetrated for purposes of access, utilities, and stormwater management, including, but not limited to, detention/retention facilities, drainage facilities, surface parking, and any and all slopes or other required engineering features of the foregoing. Buffer averaging will be allowed.
- (28) 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.
- (29) The following uses shall be prohibited from the proposed overall development:
  - (i) any type of sexually oriented business including, without limitation, massage parlors, modeling studios, tanning salons, bookstores or video sales or rent stores primarily engaged in the sale or lease of sexually explicit materials; provided, that, nothing herein shall prohibit "incidental" (defined below) sales or rentals of videos by a nationally recognized video sales and rental outlet (for purposes hereof, "incidental" sales or rentals shall mean sales and rentals which, in the aggregate, do not account for more than 10% of the total revenues derived from the operation of the business on the property) and further provided that nothing in this clause shall prohibit massage or tanning services when the same are ancillary to the operation of a spa or health care facility; (ii) any establishment engaged in gaming or gambling activities, including a game room, bowling alley, video arcade, pool hall, billiard parlor, bingo parlor, off-track betting parlor, or other gaming hall; (iii) an animal boarding facility or veterinary offices; (iv) tire, battery and automobile accessories shop; (v) consular or embassy offices; (vi) health care clinic where health care services are provided for free; (vii) drug or alcohol treatment facility, or other any substance abuse rehabilitation or detoxification recovery center; (viii) tattoo parlor; (ix) head shop or other facility which sells drug paraphernalia, (x) any dry cleaner

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(except that a dry cleaner facility which serves only as a drop off and pick up for customers shall be permitted), (xi) laundromat which is open to the public; (xii) the sale of firearms or ammunition for firearms; (xiii) second hand, salvage or surplus store, or any business selling primarily low price point, poor quality, used or discount merchandise or services such as, by way of example, so called "dollar" stores, "99 cent" stores and "Five-Below" stores; (xiv) a call center or other facility which operates primarily as a facility for telephonic solicitation or other communication support; (xv) sale, rental or storage of new or used motor vehicles including, without limitation, automobiles, trucks, trailers, motorcycles, boats or recreational vehicles; (xvi) junk yard or surplus store; (xvii) any mortuary or funeral home; (xviii) any fire or bankruptcy sale or auction house operation; (xix) a free standing self-storage facility; (xx) a child care center or facility (provided that nothing in this clause shall prohibit such uses when the same are provided as a service or benefit to employees of a business); (xxi) any nuisance; (xxii) a telecommunications tower; (xxiii) mobile home or trailer park; (xxiv) the drilling for and/or removal of subsurface substances; (xxv) school; (xxvi) church; (xxvii) a banquet hall, auditorium or other place of public assembly; (xxviii) museum; (xxix) pawn shop; (xxx) carnival, circus or amusement park; (xxxii) skating rink; (xxxiii) a blood bank; (xxxiiii) nightclub or dancehall; (xxxiv) topless/bottomless nightclub or restaurant or similar venue for adult entertainment; (xxxv) flea market, swap meet or similar enterprise; (xxxvi) car wash, auto parts store, gas station or auto repair shop; (xxxvii) manufacturing or processing plant; (xxxviii) check cashing service; (xxxix) a gun range, regardless of whether indoors or outdoors; (xl) the sale of fireworks; (xli) a community, entertainment or recreational center, or other location for community events; (xlii) a labor organization; (xliiii) any hypnotist, psychic, tarot card or palm reading business; (xliv) a "rent to own" store whose primary business is selling goods or merchandise on extended terms to high risk consumer groups; (xlv) any business whose primary business is a fleet car or truck operation that requires that fleet vehicles are regularly parked, loaded or unloaded or enter or leave the Central Parcel; (xlvi) a movie theater; and/or (xlvii) a drive-thru restaurant.

- (30) As to the overall development, there shall be "zero lot lines" among the various components within the development so as to allow for the free flow of access, parking, and the like.
- (31) The overall development may be subdivided into individual parcels. As such, there shall be no requirement for setbacks, as between individual parcels. Further, parking for the entire development shall be as shown on the Site Plan with no parking requirement as to any individual parcel. Likewise, access shall be afforded throughout the overall development, as shown, with no access required for any individual parcel. The overall

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development shall be subject to a Declaration of Covenants, Easements, and Restrictions which may provide for cross-parking and access between and among any individual parcel.

- (32) As a part of the future development of the Site, there shall be protective covenants which shall be incorporated as each component of the Project is permitted and platted. Said protective covenants shall run with the Site for the maximum timeframe allowed by law.
- (33) Applicant will work with Cobb County regarding locating a circulator bus stop adjacent to the Site and is willing to pay to install a bus shelter. Applicant is willing to allow a digital informational sign to be placed on Applicant's property, if needed, showing current waiting times for the circulator
- (34) Applicant will identify and have designated Rideshare locations to reduce traffic and required parking.
- (35) The District Commissioner shall have the authority to make minor modifications to the site plan and these stipulations/conditions during the Plan Review process except for those that:
  - a. Reduce the size of an approved buffer adjacent to property that is zoned the same or in a more restrictive zoning district.
  - b. Relocate a structure closer to the property line of an adjacent property that is zoned the same or in a more restrictive zoning district.
  - c. Increase the height of a building that is adjacent to property that is zoned the same or in a more restrictive zoning district.
  - d. Change access location to a different roadway.
  - e. Increase the density of the Residential Community.
  - f. Violate the Cobb County Zoning Ordinance applicable to the property.
  - g. Are not acceptable to the owner of the Site.



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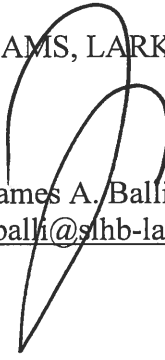
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Please do not hesitate to contact me should you or the staff require any further information or documentation prior to the Application being heard and considered by the Planning Commission and the Board of Commissioners.

Sincerely,

SAMS, LARKIN, HUFF & BALLI, LLP



James A. Balli  
[jballi@slhb-law.com](mailto:jballi@slhb-law.com)

Enclosures

cc: Commissioner Bob Ott  
Planning Commissioner Andy Smith  
Cobb County Planning Commissioners  
Robert Hosack, County Manager  
Pamela L. Mabry, County Clerk  
Sheri George, Community Liaison-Zoning, Powers Ferry Corridor Alliance  
Patti Rice, President PFCA  
Other interested parties upon request who have emailed the Applicant.

# Exhibit “A”



# Exhibit “B”





brick

cementitious siding

brick

cementitious siding & trim

cementitious siding or architectural panel

tigerwood or cementitious siding

cementitious siding & trim

tigerwood or cementitious siding

cementitious siding & trim

brick

cementitious siding or architectural panel

brick

glass





PERSPECTIVE LOOKING NORTH-WEST - SENIOR LIVING - POWERS FERRY

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# Exhibit “C”



SCALE: 1" = 40'

0' 40' 80' 120'