

# SAMS, LARKIN, HUFF & BALLI

A LIMITED LIABILITY PARTNERSHIP

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ADAM J. ROZEN

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SLHB-LAW.COM

July 24, 2018

## **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 Bobby L. Terrell to Rezone a 1.37 Acre Tract from R-20 to NRC (No. Z-58).

Dear John:

This firm represents Bobby L. Terrell (“Applicant”) concerning the above-captioned Application for Rezoning. The Application is scheduled to be heard and considered by the Cobb County Planning Commission on September 4, 2018 and, thereafter, the Application is scheduled to be heard and considered for final action by the Cobb County Board of Commissioners (“BOC”) on September 18, 2018.

The property at issue (“subject property”) is situated on the north side of Chastain Road with direct contiguity to the I-575 on-ramp. The subject property is presently zoned R-20; however, it is located within the confines of a Neighborhood Activity Center (“NAC”) under the County’s Future Land Use Map (“FLUM”) and is not suitable for single-family residential development. The Applicant seeks a Rezoning of the subject property to the Neighborhood Retail Commercial (“NRC”) zoning district for the purpose of retail sales and restaurant(s) which are permitted uses under the NRC district.

The subject property is directly across a median-divided Chastain Road from General Commercial (“GC”) property which was recently entitled for a Climate Controlled Self-Service Storage Facility (“CCSSSF”); is bounded on the east by property zoned Low Rise Office (“LRO”) where Resurgens Orthopaedic Park at Chastain is located; is bounded on the west by the I-575 at Chastain Road on-ramp; and, on the north by two (2) residential properties (3601 & 3602 Lakeside Place, respectively) which are located within Chastain Lakes Subdivision (zoned RA-4).

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As a result of our discussions with and representations to the County's professional staff and nearby business and property owners, the Applicant has agreed to the following stipulations which shall become conditions and a part of the grant of the requested Rezoning and binding upon the subject property thereafter. The referenced stipulations are as follows, to wit:

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 regarding the subject property.
2. The total site area of the subject property consists of approximately 1.37 acres which shall be developed for Neighborhood Retail Commercial uses consisting of retail, office and restaurant(s) components, including all but the hereinafter discussed uses which will be eliminated/prohibited.
3. The architecture style and composition of the NRC building shall be in substantial conformity to the architectural rendering/elevation submitted concurrently with the Application for Rezoning and which is being resubmitted contemporaneously herewith.
4. Upon the construction and development of the subject property, the Applicant will form an Architectural and Landscape Oversight Committee ("ALOC") consisting of the Community Development Agency Director and/or his/her designee; the Applicant and/or his/her designee; and, the Record Titleholders of 3601 and 3602 Lakeside Place (Chastain Lake Subdivision). The Community Development Agency Director shall be the final arbiter with respect to the resolution of any issues which can not otherwise be resolved. After this process has concluded, the architecture and landscaping will be subject to final review and approval by the District Commissioner.

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5. Entrance signage for the proposed development shall be ground-based, monument-style, with finished materials and colors being in substantial conformity to the approved architectural style and composition.
6. All dumpsters servicing the proposed retail development shall be enclosed with a minimum of a six foot (6') high enclosure consistent with the architectural style and in accordance with specific ordinance provisions regarding dumpsters and/or at-grade trash compaction. All dumpsters shall have rubber lids to minimize noise and pick-up times shall be limited to the hours of 7:00 a.m. until 7:00 p.m.
7. The following otherwise permitted uses under the NRC classification shall be prohibited:<sup>1</sup>
  - a. Tattoo parlors and body piercing shops.
  - b. Billiard or Pool parlors.
  - c. Pawn shops.
  - d. Motorcycle sales and/or service facilities.
  - e. Any business which principally features sexually explicit products, performances, or drug related paraphernalia.
  - f. Vape and/or Smoke shops.

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<sup>1</sup> Said uses shall be defined as conditional prohibitions and the Applicant/Property Owner or future developer(s) shall have the right to petition the Board of Commissioners to allow any prohibited use in the context of the filing of an Other Business Application, which, of course, requires posting of the subject property and a public hearing before the BOC.

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8. Upon the development of the subject property, the submission of a landscape plan during the Plan Review Process subject to review and approval by the Community Development Agency, including the following:
  - a. The installation and planting of a twenty foot (20') landscape buffer parallel to the subject property contiguous to the two (2) residences to the north.
  - b. The formation of the ALOC as described above.
  - c. Those areas between sections of the subject property reserved for required parking as well as public rights-of-way, shall be included in the final landscape plan.
  - d. All landscaping shall be professionally designed, maintained and irrigated. Additionally, said landscaped areas shall be maintained, with dead or irrevocably diseased landscaping being replaced as indicated.
  - e. All landscaped areas, setbacks and buffers may be penetrated for purposes of Cobb County required access, utilities and stormwater management, including, but not limited to, detention, drainage and water quality features and any slopes or other required engineering features.
  - f. All HVAC or mechanical systems shall be screened from view.
  - g. Fencing, if any, shall also be reviewed by the ALOC as described above.
  - h. The installation of clearly marked pedestrian walkways will be provided which link the public sidewalk on Chastain Road with planned construction, using striping; different paved materials and/or a raised area with definitive points of demarcation.

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9. Compliance with recommendations from the Cobb County Department of Transportation as follows:
  - a. "Coordination" with the Georgia Department of Transportation ("GDOT") and ensuring that the development is located at least 300' away from the I-575 on-ramp.
  - b. Interparcel access between the subject property and the Resurgens' Park property.
  - c. Right-in/right-out turning movements on Chastain Road which is a four (4) lane, median-divided Arterial right-of-way.
10. Compliance with recommendations from the Stormwater Management Division including detention, water quality and downstream considerations and the Applicant's obligations to secure any off-site stormwater easements which may be required.
11. Compliance with recommendations from the Cobb County Water System with respect to the availability and capacity concerning water and sewer service to the site.
12. Compliance with the recommendations from the Cobb County Fire Marshall's Office regarding Life-Safety and Fire-Prevention measures.
13. Low-intensity, environmental-oriented lighting for the subject property (poles, wall packs and building lighting) will be reviewed and approved by the Community Development Agency to ensure that stray light onto adjoining or nearby properties is eliminated or reduced. A Lighting/Photometric Plan will be submitted during the Plan Review process reflecting all lighting and including lumens, wattage and directional aspects of the lighting.

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14. The District Commissioner shall have the authority to make minor modifications to the site plan, the architecture and these stipulations/conditions either before, during or after the Plan Review process 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 that is adjacent to property which is zoned in the same or more restrictive zoning district.
  - d. Violate the Cobb County Zoning Ordinance.
  - e. Change access locations to different roadways.
  - f. Will be in direct conflict with, or in direct contradiction to, Cobb County regulations.

The entirety of the Subject Property is located within the confines of a NAC under the County's FLUM. For that reason and for the others mentioned above and in view of the stipulations/conditions to which the Applicant has agreed, the proposed Rezoning is entirely appropriate from a land use planning perspective.

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

Very truly yours,

  
SAMS, LARKIN & HUFF, LLP

Garvis L. Sams, Jr.  
[gsams@slhb-law.com](mailto:gsams@slhb-law.com)

GLS, Jr./klk  
Attachment

cc: Listed on next page

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cc: Members, Cobb County Board of Commissioners (via email w/attachment)  
Ms. JoAnn Birrell, District Commissioner (via email w/attachment)  
Mr. Robert L. Hosack, AICP, County Manager (via email w/attachment)  
Members, Cobb County Planning Commission (via email w/attachment)  
BOC Commission Assistants (via email w/attachment)  
Mr. Dana Johnson, AICP, Director (via email w/attachment)  
Mr. Lee McClead, Deputy Director (via email w/attachment)  
Mr. Jason S. Gaines, AICP, Planning Division Manager (via email w/attachment)  
Mr. Jason Campbell, Planner III (via email w/attachment)  
Mr. Terry Martin, Planner III (via email w/attachment)  
Mr. Phillip Westbrook, Planner III (via email w/attachment)  
Mr. Donald Wells, Planner I (via email w/attachment)  
Ms. Tannessa Bates, Planner I (via email w/attachment)  
Ms. Pamela Mabry, County Clerk (via email w/attachment)  
Ms. Robin Pressley, Deputy County Clerk (via email w/attachment)  
Ms. Leila Washington, Deputy County Clerk (via email w/attachment)  
Captain Robert "Rock" Toler, Fire Marshall (via email w/attachment)  
Mr. David Breaden, P.E. (via email w/attachment)  
Ms. Amy Diaz, P.E. (via email w/attachment)  
Ms. Ashley White, P.E. (via email w/attachment)  
Mr. Tim Davidson (via email w/attachment)  
Mr. & Mrs. Robert Hatcher (via regular mail w/enclosure)  
Mr. & Mrs. Joseph Perniciaro (via regular mail w/enclosure)  
Ms. Erin Mulgrew, President, BFCA Advisory Board (via email w/attachment)  
Chastain Lakes HOA (via regular mail w/attachment)  
Mr. Bob Terrell (via email w/attachment)  
Kaimari, LLC (via email w/attachment)





M. BARFORUZ  
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