City of Brookhaven Received by PZ July 1, 2020

LETTER OF INTENT

Rezoning and Stream Buffer Variance

The applicant requests a rezoning from O-I to Master Planned Development (MPD) district to accommodate the redevelopment of the 21.14 acre property located at 1400 Lake Hearn Drive, Brookhaven, Georgia. The property is bounded by Lake Hearn Drive to the south and east, Perimeter Center Parkway to the west, and Interstate 285 to the north. The property is currently improved with an office complex that has been either underutilized or vacant for several years. Concurrently with this rezoning application, the applicant also seeks a stream buffer variance as the site plan indicates encroachments into the stream buffer stream that traverses the property from east to west. The proposed redevelopment of this property will result in a mixed-use development that contains approximately 615 residential units; 25,000 square feet of commercial space; and approximately 5.14 acres of dedicated park space and a ¾ mile long trail.

Master Planned Development District Rationale

Because of the high-intensity, mixed-use nature of the project, MPD is the zoning district best suited to accommodate the development. MPD allows for the applicant to master plan the development site while working with the city of Brookhaven to obtain substantial public benefit through the creation of dedicated park/open space, ¾ mile long trail and dedicated workforce housing. Other possible zoning districts for the proposed development in the City of Brookhaven Zoning Code include MX2 and CX. While these districts permit mixed-use developments they are not suitable to accommodate a project of this scale. A project of this scale on a property with an existing stream and heavy vegetation should be master planned in order to obtain highest and best uses while achieving substantial public benefit. Neither of the aforementioned zoning districts requires the applicant to affirmatively agree to achieve certain public benefits like the MPD zoning district requires.

ZONING MAP AMENDMENT CRITERIA

a. Whether the zoning proposal is in conformity with the policy and intent of the comprehensive plan.

The zoning proposal is in conformity with the policy and intent of the comprehensive plan. First, the proposal is directly aligned with the overall vision statement in Section 3.2 of the comprehensive plan. That is, the proposal will "preserve [the] unique character and history of neighborhoods, parks, and natural assets while welcoming higher density activity nodes that support transit use, biking, community hubs, sense of place, and diversity of residents and businesses." Second, the proposal is aligned with the policies and intent of the Perimeter Center Character Area designated for the property. The policy and guidance for this character area seeks to continue high-intensity land uses that provide employment opportunities and a diverse tax base. The type of development contemplated by this character area includes mixed-use, multi-family residential and neighborhood commercial development. Here, the applicant intends to develop a high-intensity mixed-use development that includes multi-family residential, commercial and recreational uses.

b. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby properties;

The proposed MPD zoning will accommodate uses that are compatible with the use and development of properties in the surrounding area. Many of the existing uses in the area include office, multi-family residential and commercial uses. Just across Lake Hearn Drive is a Hyatt Regency hotel, office space for Cox Automotive, Verizon, various restaurants, IBM Watson office space and the Villa Sonoma Condominiums. Expanding the radius a bit wider, across Interstate 285 to the north is the State Farm Insurance office complex; Palisades office park; retail (including Perimeter Mall); and the Dunwoody MARTA station. Further, the commercial component of the proposed development, including proposed retail and restaurant space are complementary to the office and residential uses. In all, the proposed mixed-use development contemplated by this applicantion is suitable and compatible with the character of the uses in the immediate area.

c. Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned;

The property, as it is currently zoned, coupled with the fact that there is a large vacant office complex on the property, suggests that it does not have a reasonable economic use. The current O-I zoning is not supported by and is largely inconsistent with the future land use plans for the area. Unless any potential redevelopment of this property contemplates a single-use of the property as office space, then a rezoning will be necessary.

d. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property;

The zoning proposal will not adversely affect the existing use or usability of the adjacent or nearby properties. As mentioned above, the zoning proposal will allow for the development of the property that will contain a mix of uses that are similar and compatible with the uses in the surrounding area.

e. Whether there are other existing or changing conditions affecting the use and development of the property that provide supporting grounds for either approval or disapproval of the zoning proposal;

The property is improved with a vacant office building and surface parking lot. The proposed development will bring new and active uses to the property that will return vibrancy to this highly visible property. New vibrancy that will be brought to the property and to the area is supported by the conditions already existing in the area. There has been a rise in development activity over the past decade on both sides of Interstate 285 near the property. With the direct link across Interstate 285 that provides access to all of the activity in that area, allowing for the development of a mixed-use project on this property is appropriate.

f. Whether the zoning proposal will adversely affect historic buildings, sites, districts, or archaeological resources;

The zoning proposal will not adversely affect historic buildings, sites, districts or archaeological resources.

g. Whether the zoning proposal will result in a use that will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools; and

The zoning proposal will not have an excessive or burdensome use of existing streets, transportation facilities, utilities or schools. Because the property is currently improved with a now vacant office complex, adequate transportation, utility and street infrastructure is in place to service the development proposed by the applicant.

h. Whether the aesthetic and architectural design of the site is compatible with the intent and requirements of the Comprehensive Plan, the Character Area Study, and any Overlay District.

The aesthetic and architectural design of the site is compatible with the intent and requirements of the Comprehensive Plan and the Perimeter Center Character area. No overlay district applies to the property.

MASTER PLANNED DEVELOPMENT CRITERIA

In reviewing and making decisions on proposed MPD rezonings and preliminary development plans, review and decision making bodies shall consider at least the following factors:

a. The preliminary development plan's consistency with any adopted plans for the area;

There are no adopted plans for the area other than the future land use plan contained within the Comprehensive Plan. The Comprehensive Plan designates this area as the Perimeter Center Character area that intends to provide for high-intensity mixed use developments that include both residential and commercial. The preliminary development plan for the property proposes a high-intensity mixed use development that includes office, residential and commercial, which is consistent with the Perimeter Center Character area.

b. The preliminary development plan's consistency with the MPD district provisions of Division 6-3;

The preliminary development plan is consistent with the MPD district provisions of Division 6-3. The zoning proposal for this property is necessitated by the fact that the MPD district is needed in order to carry out the proposed development. With respect to the Approval Criteria found in Section 27-500, the proposed development cannot be reasonably accommodated by other available regulations of the zoning ordinance. The application thresholds found in Section 27-497 have been satisfied as (1) the property contains more than two continues acres of land area as the property contains a total of 21.14 acres, (2) the application includes a written explanation describing the community benefits of the proposed development, which is included above, and (3) the applicant will satisfy the publicly accessible open space public benefit threshold in a development agreement to be negotiated. Further, the proposed development will result in a greater benefit to the city as a whole than development under conventional zoning district regulations as described above in the rationale.

c. The sufficiency of the terms and conditions proposed to protect the interest of the public and the residents of the MPD in the case of a plan that proposes development over a long period of time.

Project is presently intended to be a phased development. Any terms and conditions to project the interest of the public and residents of the MPD will be negotiated in the development agreement mentioned above.

CONCURRENT VARIANCES

Concurrent with the rezoning request to MPD, the applicant requests the following variances:

1. **A Stream Buffer Variance from Section 14-153 to permit construction within the city stream buffers for the following:**
   a. Construction of culverts to accommodate construction of the access to the site;
   b. Grading to meet roadway elevations and building finished floor elevations; and
   c. Impervious surfaces for roadway and pedestrian sidewalk for ingress and egress to the site.
2. **A variance from Section 27-842(2)(a) to allow ramps and sloping floors of the parking decks to be visible from the street (Interstate-285 and Lake Hearn Drive).**
3. **A variance from Section 27-954(a) to allow retaining walls to exceed 4 feet in height in certain areas as shown on the site plan.**
4. **A variance from Section 27-778 to provide for flexibility in the location of parking spaces that will be shared by various users/tenants on the site.**

VARIANCE REVIEW CRITERIA

1) **The grant of the variance will not be detrimental to the public health, safety or welfare or injurious to property or improvements;**

The grant of the variances requested will not be detrimental to the public health, safety or welfare or injurious to property or improvements. The stream will be protected despite the encroachment into the buffer zone surrounding the stream. There will be no downstream impacts felt from the redevelopment of the site. Allowing the ramps and sloping floors of the parking decks to be visible from the street are not detrimental given the site conditions. The retaining wall variances are not detrimental nor injurious to property or improvements but are rather beneficial as a result of the topography on the site. Allowing for shared parking spaces across the site as opposed to being in direct proximity to the building of the associated use is not detrimental nor injurious to the public health, safety or welfare.

2) **The variance request is based on conditions that are:**
   a. Unique to the subject property;

While the stream traverses other property in the area, the location of the stream near the front of the property along the nearly the entire south end of the property is unique. The topography, size, shape and location of the property are unique features of the property that create the conditions causing the need for the requested variances.

   b. Not generally applicable to other properties in the same zoning district;

This application request a rezoning to the MPD zoning district. There are no other properties zoned MPD in proximity as this application is the first MPD rezoning request made under the new City of Brookhaven Zoning Ordinance. Accordingly, the conditions peculiar to this property are generally not applicable to other properties in this same zoning district.

c. Not the result of the subject property owner's or applicant's actions;

The need for variances are not the result of the property owner's or applicant's actions. The property was purchased in the manner it currently exists.

3) Because of the particular conditions, shape, size, orientation or topographic conditions, the strict application of the requirements of this zoning ordinance would deprive the property owner of rights and privileges enjoyed by other similarly situated property owners;

The shape, size and orientation of the property, combined with the stream, would deprive the property owner of the privileges enjoyed by similarly situated property owners. The property is sandwiched between construction on Interstate 285, Perimeter Center Parkway and Lake Hearn Drive. Also, the MARTA rail line crosses the property via an elevated bridge near the southern and eastern portions of the property. A stream travels east to west near the southern portion of the property and near where the only practical access to the property can be located. There are no other properties in the immediate area that are confined in the manner the subject property is by road infrastructure, natural resources, and public transit.

4) The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other similarly situated properties;

The variances requested are minimal and do not constitute a grant of special privilege. The variances are being requested out of necessity in order to be able to accommodate the redevelopment of this highly visible, yet underutilized property. The requested stream buffer variances were thoughtfully designed so as to minimize the impact in the buffer area. The variance to allow the parking garages to be exposed to public streets is limited in the since that ultimate view from those spaces is minimal. The retaining wall height variances are limited to only what is required based on existing conditions.

5) The literal interpretation and strict application of the applicable provisions or requirements of this zoning ordinance would cause undue hardship or practical difficulty, as distinguished from a mere inconvenience; and

If the zoning ordinance was strictly enforced, access to the interior of the site would not be achievable except some sort of elevated roadway, which would be highly impracticable. Further, because the stream buffer takes up such a large amount of space through the interior of the site, any development would be far too limited to be practicable and functional. Improvements on the site would be disjointed and would not promote the sort of mixed-use development contemplated by the comprehensive plan and the zoning ordinance. For the parking garages, PD-1 (as listed on the site plan) is only visible from Interstate 285 and PD-2 is heavily screened by the existing vegetation that will largely remain. Implementing the type of screening required by the zoning ordinance will be impractical given the location. The retaining wall

variances are unavoidable due to the existing topography and requirement to maintain the existing sidewalk while connecting with the existing grade within the site.

6) **The requested variance would be consistent with the spirit and purpose of this zoning ordinance and the comprehensive plan.**

The variances requested, if granted, would accommodate the redevelopment of the property following a rezoning to MPD. MPD encourages large mixed-use developments that are not achievable under other zoning districts. Further, the property is located in the Perimeter Center Character Area, which encourages development of property into high-intensity mixed use developments. Therefore, the requested variances would accommodate development that is not only consistent with the spirit and purpose of the zoning ordinance but also the comprehensive plan.