

LETTER OF INTENT
and
IMPACT ANALYSIS

and

Other Material Required by
City of Johns Creek Zoning Ordinance
for the
Rezoning and Concurrent
Variance Application

of

RIVERMONT STATION II, LLC.

for

± 10.428 Acres of Land
located at 8483 Holcomb Bridge Road
Land Lots 832, 877 and 878, 1st District, 2nd Section
Fulton County, Georgia

From C-1 Conditional to C-1 Conditional

Submitted for Applicant by:

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Planning & Zoning

I. INTRODUCTION

This Application concerns a ± 10.428-acre tract of land located at 8483 Holcomb Bridge Road in Land Lot 33, 1st District, 1st Section of Fulton County (Parcel ID: #12 308008320519) (“Subject Property”). The Subject Property is currently developed as the Rivermont Station Shopping Center and within the Subject Property is a ±0.70-acre portion (“Lease Area”) currently developed with a Buffalo Emissions drive-through auto emissions testing facility, an Automatic Teller Machine (ATM) for the adjacent First Citizens Bank building, and ±34 parking spaces. The Lease Area is located on the west side of the Rivermont Station Shopping Center’s main entrance on Holcomb Bridge Road. The Lease Area, however, remains vacant on most days with the existing parking spaces being rarely used resulting in an unused parking lot and emissions testing facility at Rivermont’s main gateway into the shopping center.

The Applicant, Rivermont Station II, LLC, seeks to redevelop the Lease Area with a ±950 square foot Dutch Bros Coffee restaurant with a drive through and appurtenant site improvements (“Proposed Development”). The Proposed Development will turn the currently underutilized parking lot into a fitting and attractive addition to the shopping center’s main entrance. The restaurant serves coffee, its own blend of crafted energy drinks and pre-made muffin tops and granola bars. The restaurant will primarily serve drive-through customers, but this location will also have a window and outdoor seating area for walk-up service. There will be no indoor dining. Dutch Bros describes itself as:

a high growth operator and franchisor of drive-thru shops that focus on serving high QUALITY, hand-crafted beverages with unparalleled SPEED and superior SERVICE. Founded in 1992 by brothers Dane and Travis Boersma, Dutch Bros began with a double-head espresso machine and a pushcart in Grants Pass, Oregon. While espresso-based beverages are still at the core of what we do, Dutch Bros now offers a wide variety of unique, customizable cold and hot beverages that delight a broad array of customers. We believe Dutch Bros is more than just the products we serve—we are dedicated to making a massive difference in the lives of our employees, customers and communities. This

combination of hand-crafted and high-quality beverages, our unique drive-thru experience and our community-driven, people-first culture has allowed us to successfully open new shops and continue to share the “Dutch Luv” at 950 locations across 18 states as of September 30, 2024.¹

The Proposed Development will be Dutch Bros Coffee’s second location in the area. It is currently developing another restaurant in Johns Creek at 9630 Medlock Bridge Road, approximately 5 miles from the Subject Property.²

The Applicant has given thoughtful consideration to the design of the Proposed Development to ensure that it is harmonious with the surrounding existing development. For example, the proposed Dutch Bros. building’s setback from Holcomb Bridge will be aligned with the adjacent bank building, thus creating a visual uniformity along the frontage. The utilities on the building will also be located to minimize their view from the roadway. In addition, the proposed drive-through lanes are design to maximize stacking and keep the vehicles away from the shopping center’s existing drive lanes. There will also be an extension of the sidewalks along the property’s frontage and a pedestrian connection to the walk-up window and outdoor seating to promote pedestrian access. In all, the Proposed Development is a fitting development that is a significant enhancement over the vacant parking field that exists today.

The redevelopment of the Lease Area will also not negatively impact the Rivermont Station Shopping Center’s overall parking, either. The Rivermont Station Shopping Center currently has 252 onsite parking spaces. The development of the 950 square foot coffee shop will require the removal of approximately 24 existing parking spaces. After development, both Dutch Bros and the shopping center will require 206 total spaces with ±226 parking spaces provided.

In addition to the other factors mentioned above, the Proposed Development is also aligned

¹ See the Dutch Bros Coffee website at: <https://investors.dutchbros.com/overview/default.aspx>.

² The development at 9630 Medlock Bridge Road was granted a variance to reduce onsite parking pursuant to V-23-0014.

with the Johns Creek Code requirements for large-scale retail/commercial developments.³ In particular, the Johns Creek Code § 4.4.1 notes:

The ordinance [large-scale retail/commercial developments] promotes an appropriate mix of large and small scale retail/service commercial with smaller retail buildings located closer to streets in order to reduce the visual scale of the development, encourage pedestrian traffic, and promote the use of architectural details.

The Proposed Development will place the smaller Dutch Bros Coffee closer to Holcomb Bridge Road, thus buffering the visual scale of the overall shopping center. In addition, the Applicant will be providing sidewalks and connecting pedestrian access to the walk-up window and outdoor seating area to encourage pedestrian traffic.

To allow the Proposed Development, the Applicant is seeking the approval of: 1) a rezoning of the Subject Property from C-1 (Community Business District) Conditional to C-1 Conditional to modify the existing Rivermont Station Shopping Center Site Plan; and 2) one concurrent variance to Johns Creek Code of Ordinances (“Johns Creek Code”) §4.13.C to reduce the minimum frontage on a public right-of-way.

This document is submitted as a Statement of Intent with regard to this Application, a preservation of the Applicant’s constitutional rights, and an impact analysis as required by the City of Johns Creek’s Zoning Ordinance § 28.4.2.

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II. IMPACT ANALYSIS

1.

THE ZONING PROPOSAL WILL PERMIT A USE THAT IS SUITABLE IN VIEW OF THE USE AND DEVELOPMENT OF ADJACENT AND NEARBY PROPERTY

The Lease Area is completely surrounded by compatible commercial uses and right-of-

³ The Johns Creek Code §4.4.1 defines “large-scale retail/service commercial” as any retail and/or service commercial development with gross floor area of 75,000 square feet or greater in C-1 and C-2 Zoning Districts. The Subject Property contains ±40,480 square feet of the Rivermont Station Shopping Center. However, the overall Rivermont Station Shopping Center is ±140,259 square feet.

way. To the northwest, the Lease Area is bounded by a parcel developed with the First Citizens Bank, zoned C-1. To the southeast, the Lease Area abuts the entrance drive of the Rivermont Station Shopping Center and a parcel zoned C-1 and developed with a Chic-Fil-A restaurant. To the south, the Lease Area abuts the right-of-way of Holcomb Bridge Road, and to the north the Lease Area is bounded by the remaining Rivermont Station Shopping Center. The addition of the Dutch Bros Coffee will complement the surrounding commercial development and provide an option for coffee not currently found in the area. The Proposed Development is appropriate use of the Lease Area, considering the surrounding existing development.

2.

THE ZONING PROPOSAL WILL NOT ADVERSELY AFFECT THE EXISTING USE OR USABILITY OF ADJACENT OR NEARBY PROPERTY

The Proposed Development will not adversely affect the surrounding uses. As stated in previous paragraphs, the proposed Dutch Bros Coffee is harmonious with the adjacent commercial uses. The primary goal of land use planning is to eliminate or minimize the potential adverse effect of the dissimilar uses of adjacent tracts of land by establishing a harmonious transition between them. The traditional method of achieving this goal is through both “off-site” and “on-site” transition. Off-site transition consists of avoiding the placement of dissimilar uses next to each other by placing uses of intermediate density between them. On-site transition, which might either supplement or replace off-site transition, consists of measures imposed on a particular property to protect neighborhoods from adverse effects. Although the Proposed Development is surrounded by similar commercial developments and buffering is not required, the proposed site design will incorporate landscape areas along its borders to visually enhance the development. The result is a development that is compatible and will exist harmoniously with the surrounding development.

3.

THE PROPERTY TO BE AFFECTED BY THE ZONING PROPOSAL DOES NOT HAVE A REASONABLE ECONOMIC USE AS CURRENTLY ZONED

The Subject Property is currently zoned C-1 Conditional which allows the proposed coffee drive-through use. The Subject Property, however, is subject to a conditional zoning that must be amended to allow any redevelopment of the Subject Property. As noted in the paragraphs above, the Lease Area is currently developed with parking for the Rivermont Station Shopping Center, an emissions testing facility and an ATM. The current parking has little use to the shopping center and is in need of redevelopment. Any redevelopment of the Lease Area, however, will require the amendment of the currently approved site plan. As a consequence, the current Lease Area will likely remain a vacant parking lot, absent the approval of a rezoning to allow a more fitting development.

4.

THE ZONING PROPOSAL WILL NOT RESULT IN A USE WHICH WILL OR COULD CAUSE AN EXCESSIVE BURDENSOME USE OF EXISTING STREETS, TRANSPORTATION FACILITIES, UTILITIES, OR SCHOOLS

The Applicant does not anticipate any significant impact to the vehicular traffic from the minor number of trips that the Proposed Development will generate. The Trip Generation Memorandum, prepared by A&R Engineering, Inc. and dated 10/7/2024, anticipates that the ±950 square foot Dutch Bros Coffee (ITE category 938 – Coffee/Donut shop with Drive-Through Window and No Indoor Seating)⁴ will generate ±358 total trips on a weekday, ±80 trips during the A.M. peak hour, and ±30 trips during the P.M. peak hour. The Proposed Development's vehicular trips are not anticipated to cause any significant detrimental impacts on the adjacent roadways. The Proposed Development will have access via a signalized intersection to Holcomb Bridge

⁴ The trip generation estimates for the project were based on the rates and equations published in the 11th edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual.

Road, which is classified as a Principal Arterial.⁵ This type of roadway is intended for higher volumes of traffic, and it is anticipated to adequately serve the Proposed Development. Specifically, the Georgia Department of Transportation's (GDOT) traffic data shows ±46,100 trips per day on Holcomb Bridge Road.⁶ The Proposed Development's ±358 anticipated total weekday trips will be less than 0.8% of the total traffic counts on that roadway. Moreover, the Proposed Development will also have access to Nesbitt Ferry Road and Barnwell Road via the Rivermont Station Shopping Center's other entrances.

The Proposed Development is non-residential and will have no impact on local schools. As for utilities, the Subject Property has access to water and sewer.

5.

THE ZONING PROPOSAL IS IN CONFORMITY WITH THE POLICIES AND INTENT OF THE LAND USE PLAN

The Johns Creek 2018-2028 Comprehensive Plan ("Comp Plan") depicts the Subject Property as being within the Newtown character area and the future land use as "Mixed Use - Low Intensity". The Comp Plan defines the Mixed Use - Low Intensity land use as a "mix of residential, commercial retail and office uses."⁷ Considering that the proposal would be a continuation of a commercial use surrounded by existing commercial-retail uses, the proposal is in conformity with the general policy and intent of the Comprehensive Plan.

In addition, the Proposed Development meets the Comp Plan's stated policies for the Newtown area:

- It is also envisioned that the suburban shopping center located along Holcomb Bridge Road will be rezoned to mixed-use, to attract private investors willing to

⁵ See *Georgia Department of Transportation Functional Classification Map*. The right-of-way of Holcomb Bridge Road is within the City of Roswell and does not appear on the Johns Creek Roadway Functional Classification Map.

⁶ Trip data for Holcomb Bridge Road was gathered from GDOT Station 121-0804, located on Holcomb Bridge Road north of Roswell Fire Station #7.

⁷ See the *Comp Plan*, pg. 50.

transform the shopping center into a walkable, low-intensity mixed-use area ...that would showcase this southern gateway into the City from Roswell and GA 400.⁸

Although, the Rivermont Station Shopping Center is not being considered for redevelopment, the proposed Dutch Bros Coffee would be significant improvement to the City's southern corridor over the existing parking lot. The Proposed Development will provide an appealing, low-intensity commercial development with sidewalk connections to allow pedestrian-oriented, walk-up service. In sum, the Proposed Development serves to implement specific goals, objectives and policies of the Johns Creek Comprehensive Plan. The project at issue represents a consistent use commensurate with other existing uses on adjacent and nearby properties. The proposed use, therefore, is suitable *vis-a-vis* the policies of the Comprehensive Plan.

6.

THERE ARE OTHER EXISTING OR CHANGING CONDITIONS AFFECTING THE USE AND DEVELOPMENT OF THE PROPERTY WHICH GIVE SUPPORTING GROUNDS FOR APPROVAL OF THE ZONING PROPOSAL

As noted in previous paragraphs, the property primarily serves as additional parking for the Rivermont Station Shopping Center, which has become operationally unnecessary parking. When the Rivermont Station Shopping Center was developed over 25 years ago, the standard design practice was to provide as much parking area as possible. However, the reality is that its distance location from the shopping center building has resulted in its infrequent use. Instead, the area is in need of redevelopment into a more practical and fitting use with the Shopping Center. The Rivermont Station Shopping Center is conditionally zoned to a site plan which will require a rezoning to allow any redevelopment of the Lease Area. Consequently, unless a rezoning is granted to allow a redevelopment of the Lease Area, it is likely to remain a vacant parking lot.

⁸ See the Comp Plan, pg. 98.

THE ZONING PROPOSAL WILL PERMIT A USE WHICH WILL NOT BE CONSIDERED ENVIRONMENTALLY ADVERSE TO THE NATURAL RESOURCES, ENVIRONMENT AND CITIZENS OF THE CITY OF JOHNS CREEK

The existing tract is currently developed with large amounts of impervious area and few parking lot trees. As such, there are no significant natural features on the Subject Property that require special protection. The Applicant will replant trees, grass, and other landscaping materials as part of its redevelopment of the site. In addition, stormwater management will be provided, including runoff reduction and/or water quality measures as required by the City of Johns Code of Ordinances.⁹

III. CONCURRENT VARIANCE ANALYSIS

The Applicant is seeking one concurrent variance with its request to the following requirement of the Johns Creek Code of Ordinances:

A. JOHNS CREEK CODE OF ORDINANCES § 4.13.C TO REDUCE THE FRONTAGE OF OUTPARCEL.

The Johns Creek Code §4.13.C requires any outparcel to have at least 200-feet of frontage on a public right-of-way. The Rivermont Station Shopping Center has ±553.34 feet of frontage on Holcomb Bridge Road.¹⁰ The proposed Lease Area, however, will have ±108.42 feet of frontage on Holcomb Bridge Road, not counting the frontage of the adjacent entrance drive. When the Lease Area's frontage is combined with the entrance drive frontage there is ±241.54 feet of frontage along Holcomb Bridge Road. In conversations with City Planning Staff, it was indicated that the entrance drive frontage could not be counted with the Lease Area frontage.

⁹ The stormwater design will be completed prior to submittal for the land disturbance permit.

¹⁰ The overall Rivermont Station Shopping Center also has frontage on Nesbitt Ferry Road. In addition, there is access to Barnwell Road through the Rivermont Station Shopping Center's eastern half.

It is important to note that the Applicant is not seeking to subdivide the Lease Area from the Rivermont Station Shopping Center, and the Lease Area will be included in the overall Rivermont Station Shopping Center property and development. In effect, the Rivermont Station Shopping Center frontage will not be affected, and the Lease Area will remain within the Subject Property. Regardless, under the broad definition in the Johns Creek Code the Lease Area and Proposed Development are considered an outparcel. The Johns Creek Code §3.3 defines an outparcel as:

Outparcel (spin-site). A portion of a larger parcel of land generally designed as a site for a separate structure and business from the larger tract. An outparcel may or may not be a subdivision of a larger parcel. To be recognized as an outparcel, the portion must be identified on a Site Plan approved for the larger parcel.

It is important to note that this is not a request to reduce the frontage required by the zoning district. The C-1 district requires a minimum frontage of 35 feet adjoining a street.¹¹ The Lease Area and the Subject Property both meet this requirement. Instead, the Applicant's request is to vary the frontage requirements specific to outparcel development.

Additionally, there will be no detrimental effects to the public from the favorable grant of the variance. The Lease Area will only be separated by a delineation in the lease agreement with Dutch Bros Coffee and will have no visual impact on the property. In fact, the frontage reduction will only appear on paper and cannot be seen by anyone when viewed from the right-of-way. As a result, the Lease Area and the Proposed Development will still appear to have over 200-feet of frontage on Holcomb Bridge Road.

Pursuant to the City of Johns Creek Zoning Ordinance §22.3.1, the criteria for granting a variance are met. First, relief is in harmony with the general purpose and intent of the Zoning

¹¹ See *Johns Creek Code §9.1.3. F.*

Ordinance. Second, the application of the full outparcel frontage requirement to the Subject Property and Lease Area creates unnecessary hardship for the owner due to extraordinary and exceptional conditions because of its size and shape and would not cause any detriment to the public.

IV. NOTICE OF CONSTITUTIONAL CHALLENGE TO UNDERLYING ZONING AND PRESERVATION OF CONSTITUTIONAL RIGHTS

The Applicant respectfully submits that the current zoning classification of the Subject Property and any proposed intervening district is unconstitutional and that rules relative to the Subject Property owner's right to use the Property established in the John Creek Zoning Ordinance, to the extent they prohibit this use, constitute an arbitrary, irrational abuse of discretion and unreasonable use of the zoning power because they bear no substantial relationship to the public health, safety, morality or general welfare of the public and substantially harm the Applicant in violation of the due process and equal protection rights guaranteed by the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia. Further, the failure to allow this use would constitute a taking of private property without just compensation and without due process in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia, and would be in violation of the Commerce Clause, Article I, Section 8, Clause 3 of the Constitution of the United States.

The Applicant respectfully submits that the City Council's failure to approve the requested rezoning would be unconstitutional and would discriminate in an arbitrary, capricious and unreasonable manner between the Subject Property's owner and owners of similarly situated property in violation of Article I, Section III, Paragraph I of the Constitution of the State of Georgia

and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

A refusal to allow the development in question would be invalid inasmuch as it would be denied pursuant to an ordinance which is not in compliance with the Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq., due to the manner in which the Ordinance as a whole and its map(s) have been adopted.

Opponents to this request, if any, lack standing; have failed to exhaust administrative remedies; and have waived their rights to appeal by failing to assert legal and constitutional objections.

V. CONCLUSION

For the foregoing reasons, the Applicant respectfully requests that the proposed rezoning and concurrent variance be approved. The Applicant also invites and welcomes any comments from Staff or other officials of the City so that such recommendations or input might be incorporated as conditions of approval of this Application.

This 3rd day of December 2024.

Respectfully submitted,



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