

COMMONWEALTH OF VIRGINIA
COUNTY OF HENRICO



Virgil R. Hazelett, P.E.
County Manager

November 17, 2009

Towne Center-West, LLC
560 Lynnhaven Parkway
Virginia Beach, VA 23452

Re: Conditional Rezoning Case C-28C-09

Dear Sir:

The Board of Supervisors at its meeting on November 10, 2009, granted your request to conditionally rezone from R-6C General Residence District (Conditional) to B-3C Business District (Conditional), part of Parcel 734-764-9340, containing approximately 4.85 acres, located approximately 325 feet north of W. Broad Street (U.S. Route 250) approximately 1,100 feet east of N. Gayton Road, described as follows:

Portion of Parcel B

All that certain tract, lot or parcel of land situated in Three Chopt Magisterial District, Henrico County, Virginia, as shown as portion of Parcel B on a certain plat of survey by Timmons Group, entitled "Compiled Plat Showing a Portion of Parcel B to be Re-zoned, being a part of GPIN: 734-764-9340" (for Towne Center-West, LLC), dated August 13, 2009 containing 4.85+/- acres of land being more fully described as follows:

Beginning at a point, (being marked as "POB" on the previously referenced plat) said point being the northwest corner to Parcel A and also the southwest corner to Parcel E, said point also being located N 28°31'30" E, 322.48 feet from the southwest corner to Parcel A which lies on the northern right-of-way line of Broad Street Road (U.S. Route 250), said beginning point also marking the start of the proposed zoning line; thence, N 61°28'30" W, 367.08 feet to a point; thence, along a tangent curve to the left with a radius of 200.00 feet, a length of 47.14 feet, a central angle of 13°30'21", a tangent length of 23.68 feet, a chord bearing of N 68°13'41" W, and a chord distance of 47.04 feet to a point; thence, N 74°58'51" W, 150.74 feet to a point; thence, along a tangent curve to the right with a radius of 200.00 feet, a length of 47.13 feet, a central angle of 13°30'10", a tangent length of 23.68 feet, a chord bearing of N 68°13'46" W, and a chord distance of 47.02 feet to a point; thence, N 61°28'41" W, 45.24 feet to a point, said point marking the end of the proposed zoning line; thence, N 27°56'22" E, 19.53 feet to a point; thence, N 39°51'32" E, 494+/- feet to a point, said point being at the intersection of the centerline of a stream; thence, along the centerline of the stream in a southeasterly direction as it

meanders 684+/- feet to a point, said point being on the western property line of Parcel F; thence, leaving the centerline of said stream, S 28°31'30" W, (passing through the southwest corner of Parcel F and the northwest corner of Parcel E at 67+/- feet) 247+/- feet to a point, said point being the true Place and Point of Beginning and containing 211043+/- square feet or 4.85+/- acres of land, more or less.

The Board of Supervisors accepted the following proffered conditions, dated November 5, 2009, which further regulate the above use of your property in addition to all applicable provisions of Chapter 24, Code of Henrico (Zoning Ordinance):

1. **Site Plan.** The Property shall be developed generally consistent with the schematic layout prepared by Timmons Group entitled "TOWNE CENTER WEST - POD 1 REZONING LAYOUT SCHEMATIC - OPTION B" dated August 18, 2009, and attached as Exhibit 1 (the "Site Plan"), (see case file), which such layout is conceptual in nature and may be revised from time to time as required for engineering purposes, as required by any governmental entity or as otherwise requested and specifically permitted at the time of Plan of Development review.
2. **Exterior Elevations.** Unless different architectural treatment and/or materials are requested and specifically permitted at the time of Plan of Development review, any building on the Property shall have exposed exterior walls (above finished grade and exclusive of architectural features, windows and doors) constructed of masonry brick, stone, stucco and siding, exterior insulating finishing systems (E.I.F.S.) and/or glass and may have varying amounts of these exterior materials or an equivalent permanent architecturally finished material, as generally shown in the renderings attached hereto as Exhibits 3 and 4, both dated September 22, 2009, (see case file) which such renderings are conceptual in nature and are provided only as an illustration of the quality of the design and architectural style of such buildings on the Property.

All buildings on the Property shall have at least thirty-five percent (35%) brick or stone in the aggregate on the exposed exterior walls of such buildings, with the front exposed exterior wall of any such building being constructed of at least fifty percent (50%) brick or stone and any side exposed exterior wall visible from the 40' Collector Road being constructed of minimum of thirty-five (35%) brick or stone.

Any building on the Property shall not be covered with or have exposed to view any painted or unfinished concrete block, sheet or corrugated aluminum, iron and/or steel or other materials unless requested and specifically permitted at the time of Plan of Development review.

Roof design shall be implemented so as to minimize building mass and offer variations in building appearance.

3. **Buffers.** Landscaped buffers shall be provided and designed with a cohesive landscape planting plan generally consistent with the "POD 1 SCHEMATIC BUFFER PLAN" dated August 19, 2009, prepared by Timmons Group and attached as Exhibit 2, (see case file) which is conceptual in nature and may vary in detail as otherwise requested and specifically permitted at the time of landscape plan approval. Roads, sidewalks, utility easements, fencing/walls adjacent to any roads or drives, and signage shall be permitted within such buffers.
4. **Vehicular Access.** Unless otherwise requested and specifically permitted at the time of Plan of Development review, access to the Property from West Broad Street shall be provided by Towne Center West Boulevard (private) and Henley Lane (private) as shown on the Site Plan (see case file).
5. **Loading Docks.** Loading docks shall be screened from public view at ground level as approved at the time of Plan of Development review by use of a wall or other architectural feature similar to the exterior material as the building on which it is located, landscaping, or such other method as may be approved at the time of Plan of Development review.
6. **Trash Receptacles.** Any dumpsters and trash receptacles located outside the building, not including convenience cans, shall be screened from public view at ground level with architectural material similar to the main building using such dumpster or trash receptacle unless otherwise requested and approved at the time of Plan of Development review.
7. **Trash removal.** Trash removal on the Property shall be limited to the hours between 7:00 a.m. and 8:00 p.m.
8. **Underground Utility Lines.** All utility lines on the Property shall be underground, except for already existing utilities, junction boxes, meters, utility lines in wetland areas and utility lines required to be above ground by the utility company.
9. **Stone Mulch.** Aggregate stone media shall not be used as a mulch in any landscaped buffer area on the Property nor in any parking lot landscaping areas (including islands), unless otherwise requested and specifically permitted at the time of Plan of Development review.
10. **Outdoor Speakers.** Unless permitted for outdoor dining areas, no public address or speaker systems outside of any building shall be permitted.
11. **Parking Lot and Exterior Lighting.** Parking lot lighting standards within the Property shall not exceed twenty-five (25) feet in height as measured from the grade of the lighting standard, except as otherwise permitted at the time of Plan of Development review.

Parking lot lighting standards shall not exceed twenty (20) feet in height within three hundred (300) feet of the boundary line of the Property along West Broad Street. Parking lot lighting on the Property shall be produced from concealed lighting sources to minimize the impact of such lighting on adjacent properties, unless otherwise permitted at the time of Plan of Development review. Exterior light fixtures shall be produced from concealed sources of light unless other low intensity decorative ornamental fixtures such as gas style lamps are approved at the time of Plan of Development review. Such lighting shall be reduced to no more than a security level following the close of business operations each day. At no time shall the parking lot lighting exceed one-half (1/2) footcandle at the right-of-way lines along West Broad Street.

The exterior lighting on this parcel shall be designed with a cohesive plan with the remainder of Towne Center West so that all exterior lighting shall use compatible design elements.

12. **Pedestrian Circulation.** Pedestrian circulation shall be provided throughout the Property. Except as required at the time of Plan of Development review, such walkways along or on roads, parking areas and access areas used for motor vehicles on the Property shall be constructed of material different than such roads, parking areas and access areas. Such walkways may be constructed of, but not limited to, brick pavers, concrete, stamped concrete, aggregate concrete or other similar material.
13. **Pedestrian Access to Adjoining Properties.** The Property shall be developed in a fashion that provides pedestrian access to other portions of the Towne Center West Development as required by the Planning Commission at the time of Plan of Development.
14. **Pedestrian Areas.** The Property shall be subject to the pedestrian area requirements required by Proffer number 14 from Case C-49C-04 (see case file).
15. **Stormwater Management.** Stormwater runoff will be managed via underground stormwater detention facilities unless otherwise approved by the Planning Commission at the time of Plan of Development approval.
16. **Site Coverage.** The Property shall be subject to the site coverage ratio required by Proffer number 23 from Case C-49C-04 (see case file).
17. **Use Restrictions.** Other than outside dining areas for restaurants, only those uses permitted in the B-2 Business District shall be permitted, subject to the following:
 - a. Any outside dining area for a restaurant shall be permitted on the Property, subject to the following conditions:
 - i. The operator shall not permit food preparation outside the enclosed building.

- ii. The outside dining area shall not be in operation between 10:00 p.m. and 7:00 a.m.
- iii. Prior to operation of the outdoor dining area, the applicant shall submit a site plan of the restaurant and outdoor dining area and obtain Administrative Approval from the Planning Department. The site plan shall show the location of any relocated street furniture, trees/landscaping, and utility lines. Such site plan shall also show landscaping within or along the perimeter of the outdoor dining area to address the reduction and relocation of landscaping, including trees.
- iv. A clear, continuous, and unobstructed pedestrian path not less than 4' in width shall be required for pedestrian circulation between the outdoor dining area and the sidewalk curb.
- v. Barriers to the sidewalk and parking area shall be installed and shall complement the building façade as well as any street furniture. The railings shall not exceed 36" in height and shall consist of commercial grade material for durability. Unless otherwise approved by the Planning Commission, the outdoor railing enclosure shall conform to "Exhibit C" of Case P-19-08 (see case file).
- vi. Outdoor lighting fixtures shall complement the style of building. Lighting fixtures shall be from a concealed source and shall not produce glare for motorists or pedestrians on the adjacent rights-of-way and parking areas and shall illuminate only the outdoor dining area.
- vii. Trash receptacles shall be provided and properly serviced to control litter generated by this use.
- viii. Access to the outdoor dining area shall be available only through the interior of the restaurant, except during an emergency when a patio fence exit gate may be utilized.
- ix. Prior to operation, the applicant shall consult with the Special Services Unit within the Division of Police to discuss crime prevention recommendations and conduct a security survey of the property and restaurant operations. The applicant shall implement mutually agreed upon security recommendations.
- x. Due to the location of existing water and sewer easements, the applicant and/or owner acknowledges their responsibility for any and all damages resulting from the County's need to access and repair the lines.

- xii. Hours of operation shall be extended until 2 a.m. for the interior use of the restaurant only.
 - xiii. The facility's windows shall not be tinted or obscured by posters, advertisements, or similar materials in order to permit surveillance opportunities both from within and from the outside of the building. This shall not prevent blinds from being used during daylight hours.
 - xiv. If calls for police service or other activities on the site dictate the need for security cameras (as determined by the Division of Police), the applicant shall install such cameras. The security cameras and video system shall be designed by a security specialist and shall meet the requirements of the Crime Prevention Unit of the Division of Police.
 - xv. The owner or operator shall provide adequate lighting for the entrances, exits and parking areas serving the use or location. "Adequate lighting" means lighting sufficient for clear visual and security camera surveillance.
- b. The following B-2 Business District uses shall be prohibited on the Property:
- i. flea markets;
 - ii. laundromats and self-service dry-cleaning establishments;
 - iii. gun shop, sales and repairs, except that such gun sales and repairs shall be permitted in a store that sells a variety of sporting goods;
 - iv. establishments whose primary business is check cashing and/or the making of payday loans as defined and regulated by Sections 6.1-432 et seq. and 6.1-444 et seq. of the Code of Virginia (1950), in effect as of the date of the approvals of these proffers (the foregoing shall not preclude banks, savings and loans or similar financial institutions that are not regulated by the foregoing Virginia Code sections);
 - v. lodge and fraternal organization;
 - vi. sign printing and painting shop;
 - vii. skating rinks (unless such ice skating areas are an amenity of the pedestrian-oriented shopping center), roller skating rinks, model racing tracks, electronic video game rooms, bingo halls and billiard parlors unless such billiard parlors are associated with a restaurant;

- viii. restaurants with drive-thru windows (not to exclude, however, restaurants with dedicated parking spaces for the pick-up of carry-out food), unless otherwise requested and specifically permitted at the time of Plan of Development review;
 - ix. funeral home, mortuary and/or undertaking establishment;
 - x. parking lots, commercial (nothing herein shall preclude parking lots as an accessory use to a principally permitted use);
 - xi. automobile filling or service station;
 - xii. hotel, motel or motor lodge.
18. **Hours of Operation.** The hours of operation to the public for any uses on the Property shall not occur between the hours of 2:00 a.m. and 5:30 a.m.
19. **Signage.** Only signage permitted in the B-2 Business District shall be permitted on the Property. Any detached signage on the Property shall be a monument style sign.
- All external signs shall be in compliance with a plan for the coordination of signage on Towne Center West, which plan shall be adopted and enforced by an architectural control committee. This sign plan will be submitted as part of the Plan of Development for the first building on the Property.
20. **Protective Covenants.** The Property shall be subject to protective covenants required by Proffer number 24 from Case C-49C-04 (see case file).
21. **Curb and Gutter.** Curb and gutter shall be used on all streets and shall be designed to meet the current County standard for either "roll top" curb and gutter, which shall measure not less than three (3) feet from edge of pavement on back of curb, or six (6) inches standard curb and gutter.
22. **Burning on Site.** There shall be no burning of construction debris, materials or vegetation on the Property, except to provide warmth to workmen using drums not exceeding fifty-five (55) gallons.
23. **Landscaping.** The 10 (ten) foot landscape buffer on both sides of the portion of the Collector Road as it runs from West Broad Street to the traffic circle will be planted with shade trees of at least three and one-half (3.5) inch caliper at the time of planting, with one such tree to be planted every fifty (50) linear feet along the buffer, all unless otherwise requested and approved at the time of Plan of Development review.

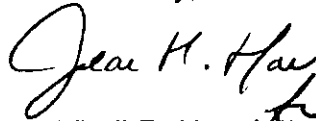
At least one shade tree of at least two and one-half (2.5) inch caliper will be planted on each parking lot island, unless parking lot lighting is required to be

located on such parking island (in which case such a tree shall be omitted from that parking island), all unless otherwise requested and approved at the time of the Plan of Development approval.

24. **Severance.** The unenforceability, elimination, revision or amendment of any proffer set forth herein, in whole or in part, shall not affect the validity or enforceability of the other proffers or the unaffected part of any such proffer.

The Planning Department has been advised of the action of the Board of Supervisors and will revise its records and place a copy of the accepted proffered conditions in the Conditional Zoning Index.

Sincerely,



Virgil R. Hazelett, P.E.
County Manager

pc: Andrew M. Condlin, Esquire
Jennifer D. Mullen, Esquire
Dr. Martha G. Blumenthal, Dir., Research & Planning, Henrico County Schools
Director, Real Estate Assessment
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