

LETTER OF INTENT

and

IMPACT ANALYSIS

Filed on behalf of:

Toro Development, LLC

for

± 41.710 Acres of Land

located on Johns Creek Parkway

Land Lot 398, 399, 400, 403, 404 and 405, 11th District, Fulton County, Georgia

Requesting:

Modifications of Zoning Conditions pursuant to Zoning Ordinance § 28.9

--and--

A Special Use Permit to Exceed Building Height Maximums of Section 12A.4.4.3.C.

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July 3, 2024
RZ-24-0007 &
SUP-24-0002
Planning & Zoning

INTRODUCTION

This application is submitted in connection with the Medley Johns Creek project previously approved by the Mayor and Council of Johns Creek on December 12, 2022. The project, which has attracted national attention and praise for its revisioning of aged and depreciated office space into a vibrant and innovative hub anchoring the newly-created City of Johns Creek Town Center.¹ The total redevelopment contains 47.71 acres with frontage along McGinnis Ferry Road, Johns Creek Parkway, and Lakefield Drive (the “Subject Property”). The development will include a diverse mix of restaurants, retail, office, and residential uses, with extensive civic and amenity spaces to serve as a central gathering spot for the community. Medley will rival the quality regional mixed-used developments occurring across the Metro-Atlanta area such as Avalon and Halcyon.

As planning and leasing efforts have progressed, Medley’s developer, Toro Development, LLC (“Toro”) has seen an opportunity to better anchor this project as a premier destination within Metro-Atlanta. Specifically, Toro envisions a first-class boutique hotel seamlessly integrating within Medley’s array of office, retail, and residential uses. Replacing what the approved plan designated for a 60,000 square foot, 2-story entertainment space, this hotel proposal anchors the development with a premier hospitality partner having high-end amenities, up to 8,000 square feet of meeting and event spaces, and an ancillary restaurant and bar. This change improves the development by further diversifying the mix of uses on the property, increasing the customer base for surrounding retail and restaurant uses, and by expanding the hospitality offerings within the City with a new first-class hotel. This hotel will be a tremendous amenity for Johns Creek’s business community, while at the same time providing a destination for local residents seeking an upscale local venue for social events such as weddings.

Importantly, the hotel’s development does not alter or reduce Medley’s commitment to developing a connected and engaged community. Medley’s emphasis remains in the development of centralized, activated, common space surrounded by curated restaurant and retail vendors. This change furthers that commitment by adding a use that compliments the surrounding office and retail uses. The existing civic and recreational spaces remain in their original configuration.

This improvement to Medley’s vision requires approval of several entitlement requests to be approved by Mayor and Council. First, this development requires modifications to the zoning conditions providing certain square footages of various uses and the site plan provided in connection with the zoning decision. The effect of these changes reduces the square footage of retail space from 140,000 square feet to 90,000 square feet. Restaurant space will be increased from 60,000 square feet to 65,000 solely on account of a restaurant in the hotel. Finally, this change also results in the addition of 175 hotel rooms with amenities such as meeting and event spaces.

¹ See, e.g., Atlanta Journal-Constitution, Pizza, Thai food and tapas coming to the Medley development in Johns Creek <<https://www.ajc.com/food-and-dining/pizza-thai-food-and-tapas-coming-to-the-medley-development-in-johns-creek/ALXTOZPV3JCXVCHBNESGGXB6EY/>>; Urbanize Atlanta, Medley project scores 9 more retail, restaurant signings < <https://atlanta.urbanize.city/post/medley-johns-creek-project-9-more-retail-restaurant>> last accessed on June 27, 2024;

In addition to these changes in zoning conditions, the request requires a Special Land Use Permit to exceed the height restrictions imposed in the TC-X zoning district. The zoning district limits the building height to 60 feet or 4 stories, whichever is less. See, The City of Johns Creek Zoning Ordinance (the “Zoning Ordinance”) § 12A.4.4.3.C. The proposed new hotel will have a maximum of six stories and have a height of 75 feet.

A. Modification of Zoning Conditions

The Medley Project was approved unanimously by the Johns Creek City Council on December 12, 2022. The Council’s approval of the rezoning application, RZ-22-008, included twenty-three (23) conditions. This modification pertains to the first two conditions. Condition 1 limited the uses and square footages of each use within Medley, providing as follows:

1. The property shall be limited to residential, commercial, public/institutional and accessory uses allowable in the TC-X Zoning District, not exceeding the following density and height:
 - a. 750 multifamily units and 137 for-sale townhome units at a density of 21.27 units per acre, not greater than 4 stories or 60 feet in height;
 - b. 200,000 square feet of commercial use at a density of 4,795.01 square feet per acre, not greater than 4 stories or 60 feet in height. Rooftop and outdoor dining areas shall not count against the maximum non-residential entitlement.
 - c. 110,000 square feet for office use at a density of 2,637.26 square feet per acre, not greater than 4 stories in height.

Condition 2 tied the development project to the site plan submitted in connection with rezoning request. The condition states:

2. The site shall be developed in general accordance with the site plan received and date stamped by the City of Johns Creek on November 15, 2022. Said site plan is conceptual and the final site plan must meet or exceed the Town Center Code, land development regulations and zoning conditions prior to the approval of a land disturbance permit.

The original site plan detailed certain proportions of retail, restaurant, and residential uses:

LAND USES & DENSITIES	
MAX ALLOWABLE RESIDENTIAL	30 DUA
PROPOSED RESIDENTIAL	900 UNITS (21.58 DUA)
MULTIFAMILY (60% 1BD, 40% 2BD)	750 UNITS (17.98 DUA)
TOWNHOMES	150 UNITS (3.60 DUA)
PROPOSED COMMERCIAL	200,000 SF (4,795 SF/ACRE)
RETAIL	80,000 SF (1,918 SF/ACRE)
RESTAURANT	80,000 SF (1,439 SF/ACRE)
ENTERTAINMENT	80,000 SF (1,439 SF/ACRE)
EXISTING OFFICE	110,000 SF (2,637 SF/ACRE)

Toro's request here seeks revisions to the site plan and other minor changes to access and parking orientations be approved and replace the previously approved site plan specific condition. To permit Toro's development of the proposed Hotel building, both of these conditions must be amended by replacing the 60,000 square feet entertainment space with the hotel building and increasing the restaurant uses by 5,000 square feet to accommodate the hotel restaurant. No changes are requested to the mix or number of residential units. Condition 1, therefore, is proposed to be amended accordingly:

- a. 750 multifamily units and 137 for-sale townhome units at a density of 21.27 units per acre, not greater than 4 stories or 60 feet in height;
- b. 155,000 square feet of commercial use at a density of 4,795.01 square feet per acre, not greater than 4 stories or 60 feet in height. Rooftop and outdoor dining areas shall not count against the maximum non-residential entitlement.
- c. One hotel with no more than 175 guest rooms, 8,000 square feet of meeting and event spaces and an associated restaurant located within the hotel building (the square footage of which is included in the calculations for commercial use).
- d. 110,000 square feet for office use at a density of 2,637.26 square feet per acre, not greater than 4 stories in height.

As detailed by the attached traffic study, the change results in a net reduction of 460 vehicle trips per day and is not anticipated to materially change the traffic impact or the decisions rendered during the Atlanta Regional Commission and Georgia Regional Transportation Authority's decision after Development of Regional Impact review.

B. Special Use Request

As previously discussed, the TC-X district imposes a 60 Feet or 4 story height limit upon buildings located within the zoning district. The proposed front façade of the hotel building will not exceed these limits as it faces the centralized plaza area. However, topographical features and other design considerations require that the building exceed those limits on the sides and the rear of the building and a maximum of seventy-five (75) feet or six (6) stories from the building's rear is necessary. Pursuant to Zoning Ordinance § 12A.4.7, exceeding this limit requires a special use permit pursuant to Article XXVIII.

IMPACT ANALYSIS

A. Modifications of Zoning Conditions

Does the zoning proposal permit a use that is suitable in view of the use and development of adjacent and nearby property?

Yes. Medley is a mixed use project that seeks to create vibrancy and connectivity by curating complimentary uses within a distinctive space. Hotel uses are permitted by right in the TC-X

zoning district.² The necessity of this zoning proposal arises from the conditions of the zoning approval rather than any policy limiting hotel uses in the TC-X zoning district. The proposed hotel use, as opposed to an entertainment use, will provide retailers and restaurants with additional customers and the civic spaces with great vibrancy. And, it will do so with less of an impact on traffic, noise, and aesthetics. As detailed in the accompanying traffic report, the change in use reduces the anticipated traffic counts by 460 trips per day. Moreover, the hotel’s guests—typically with discretionary spending associated with a business or recreational trip—provide ideal customers for many of the surrounding restaurants and retailers. The mix of hotel guests, residential homeowners, and office employees in the area provides a consistent stream of customers throughout the day and through the week, providing retailers with more consistent customer bases, and providing the City with a more vibrant Town Center.

Hotel uses have complimented regional mixed-use projects across the Metro-Atlanta area. At Avalon, a previous Toro development, The Hotel at Avalon supplements surrounding retail uses and provides convenient and attractive lodging for surrounding offices. Similarly, other regional projects have implemented hotel and hospitality uses to foster investment and vibrancy within a mixed-use development.

Does the zoning proposal adversely affect the existing use or usability of adjacent or nearby property?

No. The hotel use is complimentary to the mixed-use development envisioned at Medley. The development reduces traffic impacts. Further, hotel uses are less intensive in terms of noise, signage, and lighting than other entertainment uses. The aesthetic is more consistent with the surrounding uses and up-scale sense of place intended for Medley.

Does the property to be rezoned have a reasonable economic use as currently zoned?

Requiring the entertainment building to remain anchored to the development as required by the zoning conditions restricts a reasonable economic use of the property. Recent changes in the retail and restaurant markets emphasizes the need for uses which are complimentary to restaurant and retail spaces—particularly where office spaces provide day-time clientele but limited opportunity for weeknight or weekend users. In this way, hotel guests fill a needed market for the surrounding retail users. In addition, a high-end boutique hotel will be an important amenity for the business community in Johns Creek, helping to recruit companies to fill the City’s vacant office supply, including the office component of Medley.

Will the zoning proposal result in a use that could cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools?

No. The hotel will not impact existing utilities or schools. The hotel will also result in a net reduction in trip generation as compared to the previous entertainment/retail use.

Is the zoning proposal in conformity with the policies and intent of the land use plan?

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² This application is being filed subject to a proposed amendment to the TC-X zoning district expanding the room numbers permitted with the TC-X zoning district to more than 175 rooms.

Yes. The Comprehensive Plan depicts the Medley project as being within the Technology Park community area. Toro's addition of the Hotel aligns with the Comprehensive Plan's stated intent for Technology Park:

The vision for Technology Park is to redevelop this suburban office park into a live-work-play destination for business owners who want to live in a premier residential community, have a short commute to their offices, and have an amenity-rich park at their business' front door.

The core area of Technology Park has been identified as the location of the City's new 'Town Center.'... Importantly, it will be able to accommodate restaurants, entertainment venues, events, and festivals without negatively impacting any residential subdivisions. It is envisioned that by creating a master plan for the Town Center, and rezoning the area to high-intensity mixed-use, the City will enhance its opportunities to attract new corporate businesses - expanding the City's health, wellness, educational and technology sectors - and create vibrancy and a sense of place for Johns Creek."

(See the City of Johns Creek Comprehensive Plan 2018, pg. 152)

The project is consistent with the Comprehensive Plan's future land use as Mixed-Use High-Intensity. As previously discussed, the hotel compliments retail, restaurant, and office uses while having less of an impact on residential users than would be associated with a higher intensity retail/entertainment use. Further, the Town Center Plan, acknowledges small inventory of hotel options in Johns Creek, particularly in the high-end hotel space. Johns Creek has three hotels currently, with another located just outside the City limits. These hotels are within the mid-priced market and are aged when compared to the recent hotel developments in surrounding Alpharetta and Duluth. The Town Center Plan acknowledges the dearth of 4- to 5-star hotel offerings in the City and acknowledges the opportunity for a higher-end hotel, as proposed here. Town Center Plan pp. 123-25. This project fulfills that need.

Are there existing or changing conditions that affect the use and development of the property which support either approval or denial of the zoning proposal?

Yes. Recent disruptions in the office and retail sectors have changed the development environments for these asset classes. Developments looking to have thriving retail and office spaces must incorporate a variety of complimentary uses to distinguish the spaces from other similar developments and provide a mix of customer bases and amenities. Hotels have been effectively used in connection with other mixed-use projects to serve these developments and provide a "captive" market, often with significant discretionary spending capabilities.

Does the zoning proposal permit a use that can be considered environmentally adverse to the natural resources, environment and citizens of the City of Johns Creek?

No. The hotel development would replace an approved building with similar impervious surface coverage. Demands for water, sewer, and other utilities, would be generally consistent with the

demands of the uses being replaced, and sufficient capacity exists. There would be no significant increase in the associated environmental impacts.

B. SPECIAL USE CONSIDERATIONS

Whether the proposed use is consistent with the Comprehensive Land Use Plan and/or Economic Development Revitalization plans adopted by the Mayor and City Council.

Hotel uses are permitted by right in the zoning district. The special use permit requested here is only necessary to exceed the height restrictions in the TC-X zoning district. The building exceeds the height restriction only when measured from the rear of the building due to the difference in topography between the plaza and the parking lot to the rear of the building. Without the permit, the topography would require that the hotel be restricted to be two stories above the plaza ground level and the hotel project would be infeasible.

While the rear of the building will exceed the height limit, the front of the building will not and the hotel will appear to be a four story building from the plaza—similar to the surrounding mixed-use and multi-family buildings. Thus, the hotel's height will be comparable to the heights of the surrounding buildings and consistent with the intent of the Town Center Plan. The two stories at the rear of the building and the parking lot will be below the grade of the ground floor and largely concealed from direct sight lines from McGinnis Ferry Road due to the surrounding buildings within Medley.

Compatibility with land uses and zoning districts in the vicinity of the property for which the Use Permit is proposed.

This SUP does not seek permission to change the associated use, only the height of the hotel building. The hotel's height will be similar to the surrounding buildings, such that the rooflines of the various multi-family, retail, and office buildings will be on similar planes and have similar heights. As such, the concession on the height requirements here will not interfere with the compatibility of other land uses.

Whether the proposed use may violate local, state and/or federal statutes, ordinances or regulations governing land development.

The SUP does not violate any local, state, or federal statutes, ordinances, or regulations.

The effect of the proposed use on traffic flow, vehicular and pedestrian, along adjoining streets.

The SUP will not affect the traffic flow or materially change the approved configuration of roads and sidewalks within the development. The hotel will be serviced by a surface parking lot and surrounding structured-parking. As detailed in the accompanying traffic study, the hotel reduces the daily trips compared to the previous entertainment use.

The location and number of off-street parking spaces.

The commercial uses at Medley (retail, restaurants, office, and hotel) will share their parking supply, and the residential uses will have dedicated parking. The previous site plan provided 2,599 parking spaces for all uses against a requirement of 2,232 spaces, resulting in a surplus of 367 parking spaces. The reduction of 50,000 sf of retail would reduce the requirement by 100 spaces, and the addition of the hotel would increase the requirement by 204 spaces, resulting in a new

requirement of 2,336 spaces. The supply will remain approximately 2,599 spaces, such that we will have a surplus of approximately 263 spaces. In addition, parking demand for hotels typically peaks overnight, and is low during the day when retail and office parking demands peak, providing further efficiency to the sharing of parking by commercial uses.

The amount and location of open space.

The open space on the plan is generally unchanged from that which was depicted and approved with the original zoning.

Protective screening.

No screening is required given the proximity to mixed-uses and civic areas, and lack of visibility from public rights-of-way

Hours and manner of operation.

The hotel will remain operational with staff and security on-site 24 hours per day.

Outdoor lighting.

Lighting design will be in compliance with City requirements.

Ingress and egress to the property.

Ingress and egress to the property will remain as proposed in the originally approved site plan,. Additional loading areas will be developed from interior roads within the development. Those changes are not anticipated to materially impact traffic flows or the use of surrounding properties.

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PROPOSED CONDITIONS

Toro proposes that Conditions 1 and 2 be modified accordingly:

1. The property shall be limited to residential, commercial, public/institutional and accessory uses allowable in the TC-X Zoning District, not exceeding the following density and height:

- a. 750 multifamily units and 137 for-sale townhome units at a density of 21.27 units per acre, not greater than 4 stories or 60 feet in height;
- b. 155,000 square feet of commercial use (including retail and restaurants) at a density of 4,795.01 square feet per acre, not greater than 4 stories or 60 feet in height. Rooftop and outdoor dining areas shall not count against the maximum non-residential entitlement.
- c. One hotel with no more than 175 guest rooms, 8,000 square feet of meeting and event spaces and an associated restaurant located within the hotel building (the square footage of which is included in the calculations for commercial use).
- d. 110,000 square feet for office use at a density of 2,637.26 square feet per acre, not greater than 4 stories in height.

2. The site shall be developed in general accordance with the site plan received and date stamped by the City of Johns Creek on the date of filing the application. Said site plan is conceptual and

the final site plan must meet or exceed the Town Center Code, land development regulations and zoning conditions prior to the approval of a land disturbance permit.

Toro proposes that a Conditional Use Permit be issued with the following conditions:

1. The Hotel Building indicated on the site plan provided to Staff with the submission of the Zoning Application shall be permitted in accordance with Zoning Ordinance § 12A.4.7 to exceed the applicable height limits.
2. The Hotel Building may not exceed seventy-five feet (75') or six stories.

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

Toro 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.

Toro 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.

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Respectfully submitted,

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