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September 2, 2018

VIA EMAIL AND REGULAR MAIL

Mayor Donna Whitener
City Council Members
City of Blue Ridge, Georgia
480 West First Street
Blue Ridge, Georgia 30513

Re: Variance Request of Blue Ridge Hotel, LLC ("Applicant")
Seeking to request an increase in stories from four to five stories
Zoning Category Central Business District ("CBD")

Dear Mayor:

As discussed, there is a pending variance request to the City in which the above referenced Applicant has sought a "variance" to the requirements set forth in the CBD relating to building height. As question has arisen as to whether the Applicant actually needs a variance if the height of the building reaches no higher than 60 feet? After research and analysis my conclusion is that **the Applicant does not need the variance** if the hotel complies with the 60 foot height limitation.

First, it must be remember that if there is an ambiguity in a zoning ordinance, Georgia law requires that ambiguity to be decided in favor of the property owner, not the government. Specifically, the Georgia Supreme Court has said [and it has been followed almost every year since by the Supreme Court or the Court of Appeals] in Board of Commissioners of Henry County v. Welch, 253 Ga. 682, 683 (1985) "[t]he rule of construction in this state is that of the majority of states, that zoning ordinances should be strictly construed in favor of the property owner, and ambiguities in the language of zoning ordinances **should be resolved in favor of the free use of property**." (emphasis added); Truby v. Hall, 237 Ga. App. 498 (1999). "Ambiguity ...is duplicity, indistinctiveness, uncertainty of meaning of expression, and words or phrases which cause uncertainty of meaning and may be fairly construed in more than one way." Allstate Ins. Co. v. Grayes, 216 Ga. App. 419, 422, (1995) With that legal requirement and standard in mind, I turn to the exact language at issue here.

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At Article 11 of the Zoning Ordinance, the CBD has a “chart” that sets forth that buildings constructed within a CBD zone are limited by two different measurements of height. (See attached). That is, the chart lists a maximum of 4 “stories” **yet** also lists a maximum of 60 feet in “height.” The CBD zoning category does not set forth in a sentence whether a property owner may comply with one or the other or must comply with both. However, it seems clear of the two forms of measurement, the form of measurement that is most definable [and thus enforceable] is height. This is supported by the fact the Zoning Ordinance at Article 3 entitled “General Provisions” [which applies to all zoning districts including CBD] includes a Section 3.5 entitled “**Height of Buildings**” and reads “no building shall be erected, converted, enlarged, reconstructed, moved or structurally altered **to exceed the height limitation** established for the district [here CBD] in which such building is located.” (see attached). There is no mention of a “story limitation” nor is there any requirement in the “General Provisions” that a building must comply with a “story limitation”. Further support for the height limitation being the actual restriction is set forth in Article 15 of the Zoning Ordinance dealing with the PUD zoning category which appears to be one of the only places [if not the only] that the Zoning Ordinance actually spells out the two measurement restrictions in writing as opposed to using a “chart” or table. Tellingly, in the only written section, Section 15.4 states that “the maximum building height shall be 5 stories **or** 60 feet.” (see attached). In conclusion, it seems clear that the limitation set forth in the CBD should be expressly interpreted to read “4 stories OR 60 feet”] and, if not, then that limitation utilizing two measurements is at least ambiguous and thus the least restrictive measure must be utilized which is again the 60 foot height limit. Board of Commissioners of Henry County v. Welch, 253 Ga. 682, 683 (1985)

Therefore, it is my legal opinion that, in its current form, the Zoning Ordinance limits the height of any structure within the CBD to 4 stories or 60’ feet. Accordingly, the Applicant need not request the **height variance** if the hotel does not exceed 60’ feet. It would be my advice that the hearing scheduled for September 4, 2018 be cancelled as unnecessary and that a zoning certification be issued to the Applicant which is complies with the legal opinion in this letter. I would also advise that we amend those certain portions of the Zoning Ordinance which use both story and feet as a height limitation. I am happy to answer any questions regarding this matter at you or any Council member’s convenience. Thank you.

Sincerely,

/s/ James Balli

jballi@slhb-law.com

cc: Jeff Stewart, Land Development
Kelsey Ledford, City Clerk

ARTICLE 11 - CBD CENTRAL BUSINESS DISTRICT REGULATIONS

11.1 Purpose. This district is designed and intended as a specialized district directed to serve the pedestrian in a compact central area of the city. The CBD district will provide for a high-density shopping and business environment, especially stressing the pedestrian function and interaction of people and businesses, rather than being heavily oriented toward the use of automobiles.

11.2 Permitted Uses. See Article 13- Table of Permissible and Conditional Uses.

11.3 Area, Yard, and Height Regulations. The following shall apply:

Minimum Lot Area	Minimum Lot Width	Minimum Front Setback	Minimum Side Yard	Minimum Rear Yard	Maximum Stories	Height Feet
None Required	None	None	None*	15'	4	60'

* Except where buffers are required between the commercial area and abutting residential districts and uses, then the fifteen (15) feet of buffer shall create a greater required minimum setback. The buffer is required on the side and rear lines.

11.4 Off-Street Parking. The Off-street parking requirements for commercial uses in the CBD shall be waived. All residential uses which are functioning as the principal use on an individual lot shall meet the parking requirements of Section 18.8.

11.5 Required Buffers Between Commercial and Residential Uses. See Article 14 - Buffer Requirements.

11.6 Appearance Standards. All single-family residential dwellings within the CBD district shall meet the requirements of the Appearance Standards according to Section 3.13.

ARTICLE 3 - GENERAL PROVISIONS

Except as hereinafter provided:

3.1 Use of Land. No land shall be used except for a purpose permitted in the district in which it is located.

3.2 Lot of Record. Any lot existing at the time of the adoption or amendment of this Ordinance, that has an area or width that is less than required by this Ordinance may be used.

3.2-1 Single Lots. Where the owner of a lot at the adoption or amendment of this Ordinance or his successor in title thereto does not own sufficient land to enable him to conform to the dimensional requirements of this Ordinance, such lot may be used as a building site. In any residential district, any lot of record which has a width or area less than required, may be use for a single-family dwelling only. When it is not possible to provide the required side yard and at the same time build a minimum width single-family dwelling, the Zoning Board of Appeals is empowered to review a variance request reducing the side yard requirements, the minimum amount necessary for a reasonable dwelling, but in no case shall any side yard be less than five (5) feet in width.

3.2-2 Adjoining Lots. When two (2) or more adjoining lots of record with continuous frontage are in one ownership at any time after the adoption or amendment of this Ordinance and such lots, individually, are too small to meet the yard, width and area requirements of the district in which they are located, then such contiguous lots shall be considered as a single lot or several lots of the minimum width and area required in the zoning district in which they are located.

3.3 Location of Buildings. Every building hereafter erected, converted, enlarged, reconstructed, moved or structurally altered shall be located on a lot as herein defined except as approved by the Zoning Board of Appeals under Article 23.

3.4 Use of Buildings. No building or structure shall be erected, converted, enlarged, reconstructed, moved, structurally altered or used, except for a use permitted in the district in which such building or structure is located.

3.5 Height of Buildings. No building shall be erected, converted, enlarged, reconstructed, moved or structurally altered to exceed the height limit herein established for the district in which such building is located.

3.5-1 Exceptions to Height Regulations

a. The height limitations of this ordinance shall not apply to:

Belfries	Public monuments
Chimneys	Telecommunication Towers
Church spires	Silos

15.2-3 Delay in Construction. In the event that construction is not begun within two years from the date of approval by the Council, or is begun but is halted for a period of more than one year, said approval shall be void. Re-approval must follow the procedure set forth in Section 15.1 and 15.2 of this Article.

15.2-4 Amendment to the Plan. The plan may be amended in accordance with the procedures set forth in Sections 15.1 and 15.2 of this Article.

15.3 Permitted Uses for all PUDs.

- a. Single-family dwelling
- b. Multiple-family dwelling
- c. Church or other place of religious worship
- d. School-public, private or parochial offering a curriculum similar to that of a public school.
- e. Recreation area such as golf course, park, playground, tennis court, swimming area, country club and similar uses
- f. Community/Meeting hall.
- g. Day care facilities (Family only).
- h. Uses customarily accessory to the above.
- i. The following commercial uses are allowed if the size of the PUD contains twenty (20) acres or more:
 - 1) offices;
 - 2) automatic teller machines;
 - 3) car washes;
 - 4) convenience stores with gasoline, but not motor vehicle service stations.
 - 5) video/music stores; game rooms/arcades, not to include taverns and lounges.
 - 6) art/photography/antique/dance studios.
 - 7) quick print/delivery-drop shoppes.
 - 8) retail stores such as food, drugs, books, flowers, hardware (not including outside storage/display of goods), and toys.
 - 9) service establishment like dry cleaning drop-off, barber/beauty shoppes, coin-operated laundry, and similar uses.
 - 10) Assisted living facility; (family, group, and congregate).
 - 11) Day Care (Group and Facility)

15.4 Area, Yard and Height Regulations:

- a. A PUD shall have a minimum frontage of one-hundred (100) feet on a public street.
- b. No building shall be located closer than 25 feet to any tract boundary, 25 feet to any existing public right-of-way or 25 feet to any proposed street within the development.
- c. **The maximum building height shall be 5 stories or 60 feet.**