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Memo

From:	James Minor, Special Counsel, Law Department
To:	Randall M. Skigen, President of the Board of Representatives and members of the Board of Representatives
Re:	Power of Board of Representatives to enact a moratorium on issuance of new building permits for "multi-family/mixed use residences" that remains in effect until rescinded by the Board of Representatives
Date:	May 18, 2017

Valerie Rosenson, Legislative Officer of the Board of Representatives, by email dated May 9, 2017, asked Corporation Counsel Kathryn Emmett for legal review of LU29086, a proposed resolution for the Board of Representatives to impose a moratorium on the issuing of new building permits for multifamily/mixed use residences because of their negative impact on the quality of life (traffic congestion, overcrowding of schools, etc) for Stamford residents, and that the moratorium "shall remain in effect until it is rescinded by the Board of Representatives".

Apparently this proposed resolution is in response to applications dated March 6, 2017, by 260 Long Ridge Land LLC, et al, filed with the Zoning Board, Appl # 217-05 and #217-06 for site and architectural plans and text change, for 120-292 Long Ridge Road, to add 804 residential units and 33,454 sq.ft. of retail to an office park of 550,000 sq.ft. of existing office.

The question posed is whether or not the Board of Representatives has the authority to impose such a moratorium or whether it falls solely within the jurisdiction of the Zoning Board.

Also, even though the proposed Resolution names building permits as being subject to a moratorium, it is really about zoning.

The Building Department does not decide whether a building permit complies with zoning, but gives that authority to the Zoning Enforcement Officer, who signs off on the building permit if the application complies with zoning.

Issue: What is the role of the Board of Representatives in imposing a moratorium on building permits?

Answer: The Board of Representatives cannot intrude into the powers of the Zoning Board since it would be in derogation of the Charter and statutory provisions governing the Zoning Board.

Discussion:

- a) Only the Zoning Board has the power to enact a moratorium on zoning permits

The Zoning Board has the power to impose a moratorium that is limited in scope and time (Fuller suggests that nine months is the limit to a "reasonable time") under Sec. 8-2, CGS.

In 9 Conn. Prac., Land Use Law & Prac. § 19:5 (4th ed.) by Robert A. Fuller, states that despite some negative decisions, in 1984 the Connecticut Supreme Court held that § 8-2 provides statutory authority for a zoning moratorium. Arnold Bernhard and Co., Inc. v. Planning and Zoning Com'n of Town of Westport, 194 Conn. 152, 164 (1984).

Fuller notes that this decision suggests that moratoriums which are in effect for an unreasonable length of time, which are too broad in their scope or which are vaguely worded may be invalid.

In Stamford the power to enact a change of the zoning regulations and a moratorium is based upon Sec. C6-40-1, Powers and Duties of Zoning Board¹ (which is similar to Sec.8-2, CGS) and Sec. C6-40-7.²

¹ **Sec. C6-40-1. - Powers and Duties of Zoning Board.**

The Zoning Board is authorized to regulate the height, number of stories and size of buildings and other structures; the percentage of the area of the lot that may be occupied; the size of yards, courts and other open spaces; the density of population and the location and use of buildings, structures and land or trade, industry, residence or other purposes; and the height, size, location and character of advertising signs and billboards. Said Board may divide the City into districts of such number, shape and area as may be best suited to carry out the purposes of this Chapter; and, within such districts, it may regulate the erection, construction, reconstruction, alteration or use of buildings or structures and the use of land. All such regulations shall be uniform for each class or kind of buildings or structures throughout each district, but the regulations in one district may differ from those in another district, shall be made in accordance with a comprehensive plan and shall be designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population and to facilitate the adequate provision for transportation, water, sewerage, schools, parks and other public requirements. Such regulation shall be made with reasonable consideration as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the City.

The legislature, when it approved the Charter for Stamford, gave the Board of Representatives limited power to review a zone change, upon a proper petition signed by the requisite number of property owners within a prescribed distance of the area changed, and a majority vote of the entire membership of the Board.³

This means that the Board of Representatives does have a limited power of review of a zone change if a proper petition is presented to it, and if it meets the other requirements of C6-40-9.

- b) The Board of Representatives does not have the power to intrude into the jurisdiction of the Zoning Board.

² Sec. C6-40-7. - Amendments to Zoning Regulations, Other Than the Zoning Map, After the Effective Date of the Master Plan.

After the effective date of the Master Plan, the Zoning Regulations, other than the Zoning Map, shall not be amended by the Zoning Board until at least one public hearing has been held thereon, notice of which shall be given as hereinafter provided. If the Zoning Board is the proponent of any such change, said notice shall contain the Board's reasons for such proposed change. Such Zoning Regulations shall not be amended by said Board to permit a use in any area which is contrary to the general land use established for such area by the Master Plan

³ Sec. C6-40-9. - Referral to Board of Representatives by Opponents or Proponents of Amendments to the Zoning Regulations, Other Than the Zoning Map, After the Effective Date of the Master Plan.

After the effective date of the Master Plan, if following a public hearing at which a proposed amendment to the Zoning Regulations, other than the Zoning Map was considered, a petition is filed with the Zoning Board within ten days after the official publication of the Board's decision thereon opposing such decision, such decision with respect to such amendment shall have no force or effect, but the matter shall be referred by the Zoning Board to the Board of Representatives within twenty days after such official publication, together with written findings, recommendations, and reasons. The Board of Representatives shall approve or reject any such proposed amendment at or before its second regularly scheduled meeting following such referral. When acting upon such matters, the Board of Representatives shall be guided by the same standards as are prescribed for the Zoning Board in Section C6-40-1 of this Charter. The failure by the Board of Representatives either to approve or reject said amendment within the above time limit shall be deemed as approval of the Zoning Board's decision. The number of signatures required on any such written petition shall be one hundred, or twenty percent of the owners of privately-owned land within five hundred feet of the area so zoned, whichever is least, if the proposed amendment applies to only one zone. All signers must be landowners in any areas so zoned, or in areas located within five hundred feet of any areas so zoned. If any such amendment applies to two or more zones, or the entire City, the signatures of at least three hundred landowners shall be required, and such signers may be landowners anywhere in the City. (emphasis added).

See the attached 1968 opinion of Corporation Counsel (PS #27, dated 4.29.1968) that states the Board of Representatives has no authority to limit the powers of the Zoning Board, Planning Board or Zoning Board of Appeals by ordinance; and such an attempt is not a legal exercise of power. The Board of Representatives may not intrude upon the prerogatives of the land use boards since it would be in derogation of the powers of the statutory provisions governing these land use boards.

Generally the zoning commission is not subject to control by other agencies of the town's government, Olson v. Avon, 143 Conn. 448, 454 (1956)⁴, and Poulos v. Caparrelli, 25 Conn.Supp. 370, 378 (1964)⁵ since the method of exercising zoning powers comes directly from the legislature by Sec. 8-2, CGS, or in Stamford's case, by Charter.

c) Sec. 8-2h, CGS, immunizes any pending applications before the zoning Board from a moratorium

Sec. 8-2h, CGS, immunizes any zoning application filed prior to a change in zoning regulations, which would include a moratorium:

⁴ In Olson, the town of Avon gave the town meeting power to veto any zone change by majority vote, and this Charter change was held to be invalid. "We conclude that the provisions of the zoning enabling act as it now stands make it abundantly clear that the legislative intent is to vest the power both to enact and to change zoning regulations and zone boundaries exclusively in the zoning commissions of the respective towns and that whatever a zoning commission may do in this regard is in no way subject to the control of a town meeting. Consequently, any attempt by a zoning commission to delegate the powers so vested in it to a town meeting is violative of the statute". Olson v. Town of Avon, 143 Conn. 448, 454 (1956) (emphasis added).

⁵ In Poulos, the court (Palmer, J) denied Plaintiff's demand for an order that the building inspector issue a building permit, allowed under the old zoning, but not after a new zone change. Plaintiff argued that the new, more restrictive zoning was vetoed by the town council and therefore the old zoning applied. The trial court stated that the town council's veto was a nullity, since:

"... the Home Rule Act does not grant to any town which adopts or amends a charter under its provisions any power or authority to divest its zoning commission of any of its exclusive power to enact and change zoning regulations and zone boundaries, as determined by Olson v. Town of Avon, supra. It therefore follows that [veto of the zone change] is invalid because it purports to authorize the Plainville town council to invade the exclusive province of the Plainville planning and zoning commission without legislative sanction to do so. Consequently, the vote of the town council in rejecting the action of the planning and zoning commission in respect to the creation of a new restricted business zone and the enactment of new zoning regulations in regard to the same, to become effective December 1, 1963, was a nullity and of no legal force or effect." Poulos v. Caparrelli, 25 Conn. Supp. 370, 379-80 (1964) (emphasis added).

“(a) An application filed with a zoning commission, planning and zoning commission, zoning board of appeals or agency exercising zoning authority of a town, city which is in conformance with the applicable zoning regulations as of the time of filing shall not be required to comply with, nor shall it be disapproved for the reason that it does not comply with, any change in the zoning regulations or the boundaries of zoning districts of such town, city or borough taking effect after the filing of such application.” (Sec. 8-2h, CGS, emphasis added).

This means that the pending applications # 217-05 and 217-06 for site and architectural plans and text change, for 120-292 Long Ridge Road, are immunized or grandfathered from any moratorium, and would have to be considered under the old zoning regulations.

In 137 East Aurora, LLC v. Zoning Commission of Waterbury 2000 WL 1912211, the plaintiff appealed from a decision of the defendant, the City of Waterbury Zoning Commission, approving a one-year moratorium prohibiting the bureau of inspections from accepting or acting upon building permit applications relating to construction in industrial zones. The controversy was over a proposed asphalt plant on a 6 acre parcel zoned general industrial.

The court (Rogers, J) held that Section 8-2h(b) prohibits newly adopted zoning regulations from applying retroactively to any application for a building permit or a certificate of occupancy filed prior to such adoption, and the moratorium at issue does not apply retroactively. The plaintiffs' building permit application should be considered by the city pursuant to the zoning regulations in effect at the time of the filing and not the moratorium that was approved subsequent to the filing of the plaintiffs' application. 137 E. Aurora, LLC v. Zoning Comm'n of City of Waterbury, 2000 WL 1912211, at *6. (emphasis added).

The Law Department will attend the Land Use Committee meeting scheduled for Wednesday May 31, 2017 to answer any questions.

Encl: PS #27, legal opinion dated April 29, 1968 (1 page)
LU29.086 5/8/17 (1 page)
Letter dated March 6, 2017 Application of 260 Long Ridge Road (3 pages)
Land Use Bureau memo on 260 Long Ridge Road (4 pages)

PS-FF
27

April 29, 1968

Mr. John C. Fusaro, President
Board of Representatives
Municipal Office Bldg.
Stamford, Connecticut

Dear Mr. Fusaro:

With regard to your proposed ordinance covering the powers of the Planning Board, Zoning Board, and Zoning Board of Appeals, we feel that any contemplated ordinance would not be a legal exercise of the legislative power. The various Boards are empowered to set their own rules and regulations, pursuant to the Charter and General Statutes.

The Board of Representatives may not intrude upon the prerogatives of the aforesaid City Boards. To do so would be in derogation of the statutory provisions creating these Boards, and hence beyond the legislative function.

In particular, the clauses referring to increased density requirements are attempts to zone, not within the ambit of a legislature's power.

The Board of Representatives of Stamford may not enlarge or restrict the powers of the duly constituted zoning and planning boards. In the event that it is felt that different rules and/or regulations would better serve the community, such changes should be urged upon the respective boards or by appropriate amendment to the Charter.

Very truly yours,

Paul D. Shapero
Corporation Counsel

By _____ # 27
Ronald M. Schwartz
Asst. Corporation Counsel

RMS:lk
cc: Legislative & Rules Committee

RESOLUTION NO. _____

Moratorium on the issuing of new building permits for multifamily/mixed use residences.

BE IT RESOLVED by the 29th Board of Representatives, in accordance with Section C2-10-1 and Section C2-10-2 of the Charter of the City of Stamford, that:

That, there shall be a Moratorium on the issuing of new building permits for multifamily/mixed use residences, because of their negative impact on the quality of life concerns of the citizens of Stamford, specifically, but not limited to; traffic congestion and parking on streets, public safety, overcrowding of schools, community utilities such as water and sewerage, parks and recreation, open spaces for light and air, undue concentration of populations, and the health, safety and general welfare of the citizens of Stamford.

That this Moratorium shall remain in effect until it is rescinded by the Board of Representatives.

This resolution was approved by _____ at the regular monthly meeting of the 29th Board of Representatives held on Monday, _____, 2017.

Randall M. Skigen,
President

Annie M. Summerville,
Clerk



March 6, 2017

Mr. Ralph Blessing
Land Use Bureau Chief
City of Stamford
Land Use Bureau
888 Washington Boulevard
Stamford, Connecticut 06901

Re: Application of 260 Long Ridge Land LLC, et. al
(the "Applicant") / 120-292 Long Ridge Road

Dear Mr. Blessing:

Enclosed please find an application to the Zoning Board submitted on behalf of Applicant in relation to 120-292 Long Ridge Road (the "Premises").

The site is currently an underutilized office campus located in the C-D zone. Consistent with the 2014 Master Plan and its addition of Category 8 Mixed-Use Campus, applicant seeks an amendment to the Zoning Regulation and approval of a GDP to enable a mixed-use live-work campus on Long Ridge Road. In short, we are proposing to add 804 residential units to the 550,000 SF of office already existing at the site. Under existing zoning, future development would be office use, which is now discouraged under the Master Plan.

Per your request, our GDP plan provides a village center streetscape and additional courtyard green spaces for the residents. We also propose permitting a limited amount of retail (0.01 FAR) as part of the mixed-use community, but none is planned at this stage.

A particular benefit of the project will be the creation of over a half mile of river walk along the Rippowan River. To our knowledge, this will be the first extension of the Mill/Rippowan river walk system to a location north of the Scalzi Park area.

We enclose twelve (12) application binders, each with the following materials for submission to the Zoning Board with reference to the following applications:

- **Application for Site and Architectural Plans (GDP); and**
- **Application for Text Change of the Stamford Zoning Regulations.**

Please find enclosed the following application materials:

- (1) Completed Application forms.
- (2) Zoning Analysis and Plan of Development, prepared by BL Companies and dated April 22, 2015 (with updated Zoning Chart).
- (3) Renderings, prepared by BL Companies.
- (4) Traffic Impact Study, prepared by Fuss & O'Neill and dated February 2017.

1 Elmcroft Road • Suite 500 • Stamford, CT 06902 • 203.846.1900
www.bltooffice.com



(5) Property and Topographic Surveys, prepared by Redniss & Mead.

Lastly, please find checks in the amount of \$1,235 and \$1,500 representing the applicable filing fees.

We look forward to presenting this project to the Zoning Board. To confirm availability of the development team, please inform me as to when the public hearing will be scheduled. If you have any questions concerning this application or require additional information, please do not hesitate to call me.

Sincerely,

A handwritten signature in black ink, appearing to read "Seth Ruzi".

Seth Ruzi

Enclosures

**INTEROFFICE MEMORANDUM
CITY OF STAMFORD**

TO: Robert "Gabe" DeLuca, Board of Representatives, District 14
Carl J. Franzetti, Board of Representative, District 14

FROM: Vineeta Mathur, Associate Planner



DATE: May 5, 2017

RE: Application 217-05 - 260 LONG RIDGE LAND LLC c/o BLT, 120 - 292 Long Ridge Road, Stamford, CT – Text Change, To Amend Section 9.BBB to add a new subsection 5 and renumber existing subsection 5 to become 6 (see attached)

RE: Application 217-06 - 260 LONG RIDGE LAND LLC c/o BLT, 120 – 292 Long Ridge Road, Stamford, CT , Site & Architectural / Requested Use Plans,(GDP) Applicant is proposing a mixed-use live-work campus with the addition of 804 residential units to the 550,000SF of office already existing at the site along with courtyard green spaces, a limited amount of retail (0.01FAR) and the creation of over a half mile of river walk along the Rippowan River.

On behalf of the Zoning Board, a copy of the above captioned applications are hereby enclosed for your information. A complete copy of the file is available in the Land Use Bureau offices on the 7th Floor of the Government Center.

If you have any questions, please feel free to contact me at (203) 977-4716.

260 Long Ridge Road

Applicant

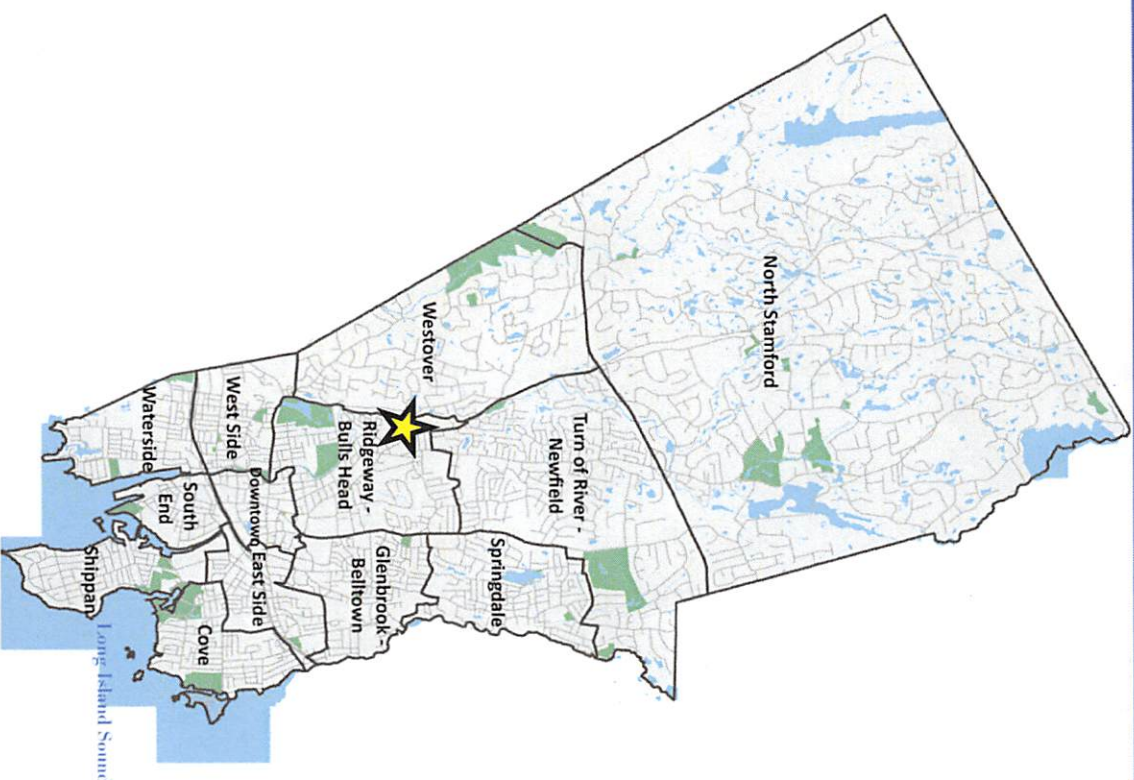
BLT

What is requested?

1. Text Change to C-D district
2. GDP approval

Development facilitated:

Residential infill development in existing office park with 804 units and 33,454 sq.ft. of retail space



Existing conditions

EXISTING SITE VIEWS



LONG RIDGE
MIXED USE DEVELOPMENT
BL JOB #130298
APRIL 17, 2017

5/11/2017



ILLUSTRATIVE SITE PLAN - PROPOSED

SITE PLANS



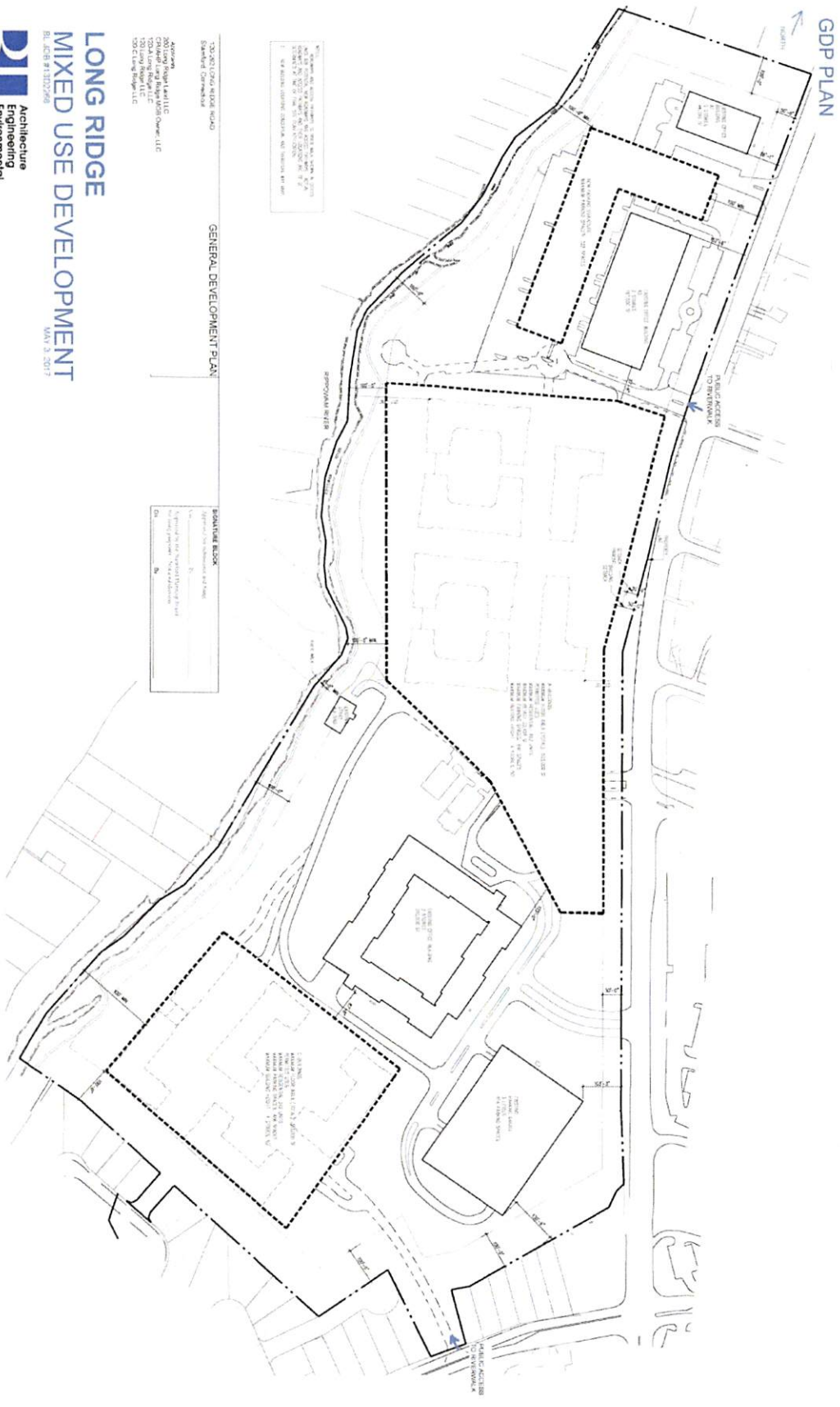
LONG RIDGE
MIXED USE DEVELOPMENT
Rt. JOB# R1202258
APRIL 17, 2017

BL
Architecture
Engineering
Environmental
Land Surveying
Companies

5/11/2017



260 LONG RIDGE ROAD -- PROPOSED GDP



NOTES:
 1. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
 2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
 3. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.
 4. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
 5. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE DRIVEWAY UNLESS OTHERWISE NOTED.

GENERAL DEVELOPMENT PLAN
 Standard Commercial

Author:
 2001 Long Ridge Land LLC
 2001 Long Ridge Land LLC
 2001 Long Ridge Land LLC
 2001 Long Ridge Land LLC

LONG RIDGE
MIXED USE DEVELOPMENT
 MAY 2, 2017



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GDP PLAN

5/11/2017

