In The Matter Of:

City of Doraville

State of Georgia

City Council Special Meeting w/ Public Hearing

September 28, 2009

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CITY COUNCIL MEETING

CITY OF DORAVILLE

STATE OF GEORGIA

SPECIAL MEETING

WITH PUBLIC HEARINGS

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Transcript of the proceedings held in the City Council Room at Doraville City Hall, 3725 Park Avenue, Doraville, Georgia, Mayor Ray Jenkins presiding, before Theresa Bretch, Certified Court Reporter, commencing at 6:30 p.m. on Monday, September 28, 2009.

* * *

APPEARANCES:
Doraville City Council:
Hon. Ray Jenkins, Mayor
Councilmember Maria Alexander
Councilmember Brian Bates
Councilmember Robert Spangler
Councilmember Donna Pittman
Councilmember Bob Roche
Councilmember Pam Fleming
Murray J. Weed, City Attorney
Sandra Bryant Assistant City Clerk

P R O C E E D I N G S

MAYOR JENKINS: Meeting come to order. This is a special-called meeting, public hearing.

Anyway, call the roll, please.

ASSISTANT CLERK BRYANT: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Here.

ASSISTANT CLERK BRYANT: Councilmember Bates?

COUNCILMEMBER BATES: Here.

ASSISTANT CLERK BRYANT: Councilmember Fleming?

COUNCILMEMBER FLEMING: Here.

ASSISTANT CLERK BRYANT: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Here.

ASSISTANT CLERK BRYANT: Councilmember Roche?

COUNCILMEMBER ROCHE: Here.

ASSISTANT CLERK BRYANT: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Here.

MAYOR JENKINS: Okay, Scott, take over.

MR. HAEBERLIN: Mayor, before we get on the agenda, I want to kind of go over a chronological

review of these public hearing sessions just for the audience benefit as well. Tonight's petitions are only for petitions that have been advertised thus so, and so basically we're going to announce the petition. First we're going to hear from the applicant and then we're going to hear from -- then of course the Council has an opportunity to address the applicant. Then we're going to hear from the staff and, again, an opportunity again for questions.

When the public hearing session begins, the Mayor will ask for a call of those who'd like to speak in favor of the item. If you could, just raise your hand so the Mayor knows how many people would like to speak in favor, and we can divide that time among those who would like to speak in favor. And again, with those who'd like to speak against the petition item, again raise your hand and the Mayor then can divide that time between the folks who'd like to speak.

Then we will close the public hearing and then the Council will deliberate, and that's basically how each of the hearings will be conducted.

Any business that's not relevant to the petition items at hand, the person will be asked to address the item at hand or be asked to leave the

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podium.
So with that being said, we go to Item 3A. Mayor and Council, as you're aware, there has been a withdrawal of this petition item which is the Kingport Kuo variance. So at this time, there is no action required on the first item, Item 3A.
If we could move to Item 4A, which is a conditional use request for massage therapy, Mr. Hao Nguyen for M-Spa, Clover Plaza Shopping Center, 5659 Buford Highway, Suites 201 and 202. It's zoned C-2. It currently is two tax parcels, 18-320-01-028 and 18-321-08-003.
At this time, we would like the Applicant to come forward and speak about his petition.
MR. NGUYEN: Good evening. M-Spa is a spa just like any other spa, like Spa Sydell's, where we have skin care like facial massage and massage therapy. And we are trying to open the business to help the community, to create jobs and business and also to serve the people in the community who work so hard and don't have really --
COUNCILMEMBER BATES: Excuse me.
COUNCILMEMBER ALEXANDER: Excuse me, please.
COUNCILMEMBER BATES: Mr. Frank?
COUNCILMEMBER ALEXANDER: Excuse me. Can

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you please . . . Thank you.
COUNCILMEMBER BATES: Thank you.
COUNCILMEMBER ALEXANDER: I'm sorry.
MR. NGUYEN: We have a high quality, you know, spa to go to to relax and to, you know, take care of, you know, things that they cannot find in the city of Doraville, you know.
We are planning to hire people who have license and who are professional, who have the skills to do the massage therapy, and we hope that you will approve our, you know, business license.
Thank you very much.
MAYOR JENKINS: Ask you a question, sir.
What kind of business are you going to do that you cannot find within the city of Doraville? That just struck me as kind of funny.
MR. NGUYEN: What kind of business?
MAYOR JENKINS: Yes. What do you do that you cannot find within the city of Doraville?
MR. NGUYEN: Well, we can find massage therapy in the city of Doraville but the quality may not -- like what we are trying to, you know, provide -- the quality of the services, more professional, more like upscale, you know.
COUNCILMEMBER PITTMAN: Could you elaborate

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on the services, please.
MR. NGUYEN: It's like skin care, massage therapy just like Spa Sydell. If you've been to Spa Sydell, you know the services and they're, you know, very professional, very, you know, good quality, high quality.
COUNCILMEMBER PITTMAN: What type massage?
MR. NGUYEN: Again, it's like a professional massage.
COUNCILMEMBER PITTMAN: But I mean shoulder?
MR. NGUYEN: Shoulder; you know, facial massage, body massage.
COUNCILMEMBER PITTMAN: Full-body massage?
MR. NGUYEN: Yes, full-body massage.
COUNCILMEMBER BATES: Do you have any other locations, sir?
MR. NGUYEN: I'm sorry?
COUNCILMEMBER BATES: Do you have any other locations?
MR. NGUYEN: Yeah, we do. We have one in Duluth, the city of Duluth. I mean we are professional, you know, people. We always, you know, hire people who have licenses and who are professional with the skill that can serve the ser- -- I mean the public.

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COUNCILMEMBER PITTMAN: What's the name of the one in Duluth?
MR. NGUYEN: Spa Bella.
COUNCILMEMBER PITTMAN: Spa Bella?
MR. NGUYEN: Yes.
COUNCILMEMBER PITTMAN: How long have you been there?
MR. NGUYEN: We've been there since 1999.
COUNCILMEMBER PITTMAN: So do you do nails?
MR. NGUYEN: Yeah, we do nails, we do hair, we do, you know, a lot of -- It just like, you know, a upscale spa, you know, where you can come in for your skin care and when you need relax, you have body massage, you know.
COUNCILMEMBER PITTMAN: So there's different licensing for nails and things like that, so they're going to have those licenses as well?
MR. NGUYEN: Yeah.
COUNCILMEMBER PITTMAN: They have them already or they're going to have them?
MR. NGUYEN: Oh, they already have them, yes. They already have them.
COUNCILMEMBER BATES: And why in that particular location? There's another spa in that same building, same floor, right adjacent to it. Why

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there?
MR. NGUYEN: Well, we talk to the owner. That place is basically a hair salon. I don't know why they use the name spa, but they do hair most of the time. I asked them if they would do facial massage or skin care, and they said they -- they wouldn't do it because they don't know how to do it. So it's just the name of the -- you know, the business, spa, but they don't do actually anything that has to do with spa, you know, services.
COUNCILMEMBER PITTMAN: Your hours?
MR. NGUYEN: Because most of the people in this area, they are open pretty late, so we try to serve those, you know, owners who, you know, can come after they get off from work. So we started from like 9:30 until 10 o'clock.
COUNCILMEMBER BATES: 9:30 a.m.?
MR. NGUYEN: Yeah. 9:30 a.m. until 10 o'clock p.m., yes.
COUNCILMEMBER ALEXANDER: The clinic that is located in that building, they have accupressure services already.
MR. NGUYEN: Yes. Accupressure is different, I think. It's a different therapy. It's not -- it has to do with like if you have medical

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conditions that you need, you know, like really medical attention. Accupressure is more like treatment.
We are like reflexology and relaxation, you know, therapy.
COUNCILMEMBER ALEXANDER: Have you been given the Article IX, our ordinance regulations regarding massage parlors and what's required of employees?
MR. NGUYEN: Yes, yes, we have. We have that, all the ordinance and all the requirements that Scott provided.
COUNCILMEMBER ALEXANDER: Uh-huh. And so you have no problem with background checks being done on all your employees?
MR. NGUYEN: Oh, yes, yes. Yeah, absolutely. Like I said, they are professional. I mean they have pride in what they're doing. So I don't hire people with criminal problems, you know, (imperceptible) or whatever.
COUNCILMEMBER BATES: What's the square footage of the space you're going to be leasing?
MR. NGUYEN: It's around 2,500, I believe, yeah.
COUNCILMEMBER FLEMING: With the two

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parcels?
MR. NGUYEN: Yes, the two units. On the second floor, two units, 201 and 202.
MAYOR JENKINS: Any more questions from the table?
COUNCILMEMBER ROCHE: Actually, I was going to look up something on the Internet but apparently the Internet's down again, so if you could get that fixed.
MAYOR JENKINS: Come back with that, please, sir?
COUNCILMEMBER ROCHE: Yeah. I said I was trying to look up something on the -- on the web, but I guess the wireless isn't working again?
I don't know if we can -- I mean obviously we can't do anything about it now, but for the next meeting, if we could get that straightened out, I'd appreciate it, because I have no way of looking things up.
MAYOR JENKINS: Oh, I understand. I didn't understand what you said.
COUNCILMEMBER ROCHE: Until then, I have no questions.
MAYOR JENKINS: You don't have any more questions.

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COUNCILMEMBER FLEMING: Mr. Nguyen, I may not be able to phrase this correctly, but do you do internal massages?
MR. NGUYEN: Internal massages?
COUNCILMEMBER FLEMING: As in colon therapy or --
MR. NGUYEN: It's more like reflexology, you know. It's more of -- it's not like treatment. We do it for people that come, you know, when they're tired and they just need a like full-body massage just to feel better, to relax, to reflex their muscles, things like that. It's not really a medical massage, so it's not really internal. It's more like external, I guess.
COUNCILMEMBER FLEMING: Would you be selling products there?
MR. NGUYEN: No.
COUNCILMEMBER FLEMING: Hair products? skin products? nail products?
Is it going to be part of -- you know, part of your location to have retail in it as well?
MR. NGUYEN: Well, we might display, but, you know, according to -- based on my experience, you know, we have a spa like Spa Bella, it's not really a good, you know, business. We don't sell those kind of

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1 products. We might have displayed them, but not many
2 people buy, you know, those products.
3 MAYOR JENKINS: Scott?
4 Do you have nothing else? You finished,
5 sir?
6 MR. NGUYEN: Yes, I'm finished.
7 MAYOR JENKINS: Do you have anything else,
8 Scott?
9 MR. HAEBERLIN: Yeah. I want to just go
10 over very briefly.
11 I wanted to hand the Applicant a copy from
12 the regulatory codes which also address the issuance
13 of the occupational tax license for that of massage
14 parlor (presenting). I wanted to make sure the
15 gentleman did have that.
16 You folks are familiar with the site. It is
17 the Clover Plaza Shopping Center.
18 Presently, the property owner had notified
19 me that he is taking action to join the two parcels
20 together and so that our shopping center will be
21 located on one tax parcel and be reflective of having
22 one tax identification.
23 Infrastructure, nothing special; environ-
24 mental, et cetera.
25 Existing curb cuts and sidewalk mobility is

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1 already present.
2 The property is C-2, and the reason why
3 you're coming -- this is coming to you is because C-2
4 does require this as a conditional use.
5 Now, there are some establishments in that
6 facility that predate the adoption of our C-2
7 ordinance, however, massage was not a listed permitted
8 use in the old zoning ordinance that we have. So
9 they're looked at on a case-by-case basis pursuant to
10 our new Zoning Ordinance 2008-33.
11 What you're looking at, the building is
12 approximately 37,000 square feet, as the Applicant did
13 state. Two suites, Suite 201 and 202.
14 Code compliance, nothing particular because
15 of -- because of the recency of the property. How-
16 ever, we are having some problems with window signage
17 at this location, and that it's a common problem
18 throughout the city, obviously, but window signage in
19 particularly at the Clover Plaza.
20 Parking. The parking's based on that of a
21 multi-tenant shopping center, so there's nothing
22 significant there. I don't think that this business
23 will have any real impact on parking. It's the same
24 as other retail uses.
25 The gentleman did apply for or one of his

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1 assignees did apply for an interior finish. The
2 reason why he was refused the processing of that item
3 is to avoid any potential vesting claims that he may
4 have. So we have not processed any interior finish
5 work at this time pending the outcome of the City
6 Council's decision.
7 And then the last item, which is the most
8 important, the regulatory controls that are already in
9 place which I handed the Applicant just a few minutes
10 ago, "Hours of operation and other items are addressed
11 within Article IX, Massage Parlors, including but not
12 limited to criminal background investigation,
13 fingerprinting, et cetera. Thus, the granting of a
14 Conditional Use by the City Council is no guarantee of
15 any relief from the regulatory requirements and/or
16 retention of a masseuse/masseur permit as part of the
17 occupational tax license review and ongoing regulation
18 by the Doraville Police Department."
19 Basically what that says, the regulatory
20 controls are in the hands of the Police Department.
21 They can be exercised by the Police Department any
22 time, and that is relative through all massage
23 establishments throughout the city.
24 And as you're aware at this time, the
25 ultimate decision of conditional use does vest with

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1 that of the City Council.
2 And the last page of your package is you did
3 see the public notification signage. I wanted you to
4 be aware of that. Also, too, the architecture and the
5 site plan.
6 And with that, I turn it back to you, the
7 Council.
8 MAYOR JENKINS: Thank you, Scott.
9 MR. HAEBERLIN: So at this time, Mayor, if
10 you are ready to open the public hearing.
11 Who would like to speak in favor of the
12 petition? Would you please raise your hand? Anybody
13 other than the Applicant?
14 Anyone who would like to speak against the
15 petition, please raise your hand.
16 Okay. Just one? Tom.
17 MAYOR JENKINS: Okay.
18 MR. HART: I believe this is a nonconforming
19 use in C-2. Last year, they voted in eight foot-
20 massage parlors on Buford Highway, and so we'd like to
21 see something else on Buford Highway other than
22 massage parlors.
23 So I don't recommend that you pass this.
24 It's a nonconforming use. You don't have to put it in
25 there. Thank you.

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MAYOR JENKINS: Thank you, Tom.
Okay. I'm going to bring it up to the table. Do I have a motion?
ATTORNEY WEED: Well, Mr. Mayor, before you do that, I'd like to go over the procedural -- part of the conditional use procedural rules real quickly. They're based upon Section 1501. There are essentially four of them.
One, the application and site plan submitted by the Applicant must be considered; two, that all specific conditions of the ordinance relative to the Conditional Use have been met; three, that the Applicant has made a binding agreement for any specific limitations or conditions necessary to protect the public interest and ensure the continued beneficial use and enjoyment of nearby properties or that no special limitations are needed to protect the public; and four, that the conditional use with specific limitations and design features as may be required will further the aims of the land use plan and will not be unduly detrimental to nearby properties.
So I wanted to remind the Council of those basic standards so that you could apply them to the facts in this case.

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MAYOR JENKINS: Thank you.
All right. I'll bring it back to the table. We'll have a motion or any more discussion.
COUNCILMEMBER FLEMING: I have another question for Mr. Nguyen if possible.
MAYOR JENKINS: Okay.
COUNCILMEMBER FLEMING: Mr. Nguyen, is your establishment -- will it have public baths in this establishment?
MR. NGUYEN: No, no. Just regular bathroom.
COUNCILMEMBER FLEMING: I'm sorry?
MR. NGUYEN: Regular restrooms.
COUNCILMEMBER FLEMING: Okay.
MR. NGUYEN: No bath.
COUNCILMEMBER FLEMING: I just wanted to find out whether you were having public bath locations --
MR. NGUYEN: No.
COUNCILMEMBER FLEMING: -- for people to have steam baths together.
MR. NGUYEN: No, ma'am.
COUNCILMEMBER FLEMING: Okay. Thank you.
COUNCILMEMBER PITTMAN: Do you have the whirlpools --
MR. NGUYEN: No. It's just for --

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COUNCILMEMBER PITTMAN: -- for the feet?
MR. NGUYEN: -- the feet. Yeah, just for -- yeah, basically.
COUNCILMEMBER PITTMAN: You do?
MR. NGUYEN: Yeah.
And we hope if we do well, we might expand it, you know. But now, with the square footage, we cannot accommodate all that now.
COUNCILMEMBER FLEMING: Do you plan on keeping both locations?
MR. NGUYEN: Yes, yes.
COUNCILMEMBER FLEMING: Okay. So this will be an additional location to the one in Duluth.
MR. NGUYEN: Yes.
MAYOR JENKINS: Anybody else?
COUNCILMEMBER PITTMAN: I would actually like to visit the other site in Duluth, personally. I would like to check the other site out in Duluth.
MR. NGUYEN: Well, let me say this: She was mentioning about the foot massage.
MAYOR JENKINS: Speak up, sir.
MR. NGUYEN: She was mentioning about the foot massage. This is not the typical. That's why we tried to open something new, something different.
COUNCILMEMBER PITTMAN: Uh-huh.

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MR. NGUYEN: Foot massage that you've been to, you see them, and they're very unorganized and very -- they look very unprofessional sometimes, you know, and so we're trying to make it different. We open a business, you know, different than the other eight foot massage.
COUNCILMEMBER FLEMING: But your location in Duluth is upper class --
MR. NGUYEN: Yeah, we're higher, yeah.
COUNCILMEMBER FLEMING: -- high end.
MR. NGUYEN: Yes.
COUNCILMEMBER FLEMING: And the one that you propose to open in Doraville will be that type of location; correct?
MR. NGUYEN: Yes, ma'am. Yes, ma'am.
COUNCILMEMBER FLEMING: I agree with Ms. Pittman. I'd like to table this particular request until we have an opportunity to possibly visit that location.
MR. NGUYEN: Yeah. You -- you --
COUNCILMEMBER ROCHE: Before we do that, I just have a quick question.
What is the percentage of male versus female clientele?
MR. NGUYEN: For this new location or --

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COUNCILMEMBER ROCHE: No, for the existing one.
MR. NGUYEN: It's about more -- maybe 50/50 percent, I guess. 50/50.
COUNCILMEMBER ROCHE: You don't know?
MR. NGUYEN: Well, it just varies. Some months, some weeks, you know, they have -- we have more male customers; some weeks we have more female customers.
COUNCILMEMBER ROCHE: Well, I mean you're operating a business. I would think you would have a pretty good idea of what your clientele -- you know, who they are.
MR. NGUYEN: Like I say, it's about 50/50, 50 percent male, because we do hair and nails and skin care, so a lot of them are women. But then recently, the last few months, we don't see many women. I mean they try to save money so they don't come a lot.
COUNCILMEMBER ROCHE: But as far as the massage services, are you saying that the women come for the hair styling and the men come for the massage services? Is that what you're say?
MR. NGUYEN: Well, recently we have about 50 percent of the males come in and 50 percent of the women -- you know, the females come in for massage.

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That's what I can tell you -- recently.
COUNCILMEMBER BATES: Are your massage therapists -- are they all women? all men?
MR. NGUYEN: Oh, the massage therapists? Well, we have one male and we have a woman, too.
COUNCILMEMBER BATES: How many employees -- how many therapists are you going to employ?
MR. NGUYEN: Right now in it, we have three now.
COUNCILMEMBER BATES: In Duluth?
MR. NGUYEN: Yeah, in Duluth.
COUNCILMEMBER BATES: And it's one male and two women?
MR. NGUYEN: Yes, yes.
COUNCILMEMBER PITTMAN: So is there going to be a difference in that location and this location on what you're going to be doing or what you do there versus what you do here or --
MR. NGUYEN: They're going to be the same, similar.
COUNCILMEMBER PITTMAN: The same.
MR. NGUYEN: Yeah, because --
COUNCILMEMBER PITTMAN: So if we go there, it's going to be pretty much what we're going to see here.

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MR. NGUYEN: Yeah, except for the hair. We probably -- we don't have space for the hair, you know, so we're not going to do hair. We do basically skin care and therapy, massage therapy.
COUNCILMEMBER BATES: I have a question for Mr. Haeberlin or Mr. Weed.
The hair and nail, that's regulated by the Secretary of State and the Cosmetology Board. Are massage therapist licenses regulated by the same licensing board?
ATTORNEY WEED: No, sir.
COUNCILMEMBER BATES: The Department of Health?
ATTORNEY WEED: No, sir. Currently massage is dealt with on a local level.
COUNCILMEMBER BATES: The licensing requirement.
COUNCILMEMBER FLEMING: The State license.
ATTORNEY WEED: I'm sorry. There is a State licensing requirement, but where they're located, it's done purely locally.
COUNCILMEMBER BATES: Right. But as far as who regulates the -- who provides the State license.
MR. HAEBERLIN: Board of Massage Therapy.
ATTORNEY WEED: They're not the same unit of

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government that does the nails and hair. That's a separate board.
COUNCILMEMBER BATES: That's what I was getting at.
ATTORNEY WEED: Yes.
COUNCILMEMBER BATES: There's two different entities --
ATTORNEY WEED: Yes.
COUNCILMEMBER BATES: -- that will license different parts of --
ATTORNEY WEED: That's correct.
COUNCILMEMBER BATES: -- hypothetically, this business.
ATTORNEY WEED: That's right.
COUNCILMEMBER BATES: Okay.
ATTORNEY WEED: So one employee might have to have multiple certifications.
COUNCILMEMBER BATES: Thank you.
COUNCILMEMBER ALEXANDER: Is your business located in the city limits of Duluth or in unincorporated Gwinnett County?
MR. NGUYEN: In the city limits of Duluth.
COUNCILMEMBER ALEXANDER: Where exactly is it located?
MR. NGUYEN: It's right on the corner of

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Buford Highway and Highway 120 where the Duluth Highway is. 120 is Duluth Highway. So --

COUNCILMEMBER ALEXANDER: Is it in the --

MR. NGUYEN: -- Buford Highway and --

COUNCILMEMBER ALEXANDER: -- shopping center on the corner?

MR. NGUYEN: Yeah. It's on the corner -- it's not exactly on the corner but a little bit further back. It's right in front of the City of Duluth building, City of Duluth.

COUNCILMEMBER ALEXANDER: Is it in the older strip shopping center on the corner?

MR. NGUYEN: That's right. Near Rexall. You know --

COUNCILMEMBER ALEXANDER: Right.

MR. NGUYEN: -- Rexall?

COUNCILMEMBER PITTMAN: I'd like to make a motion that we postpone this to do a site visit to your location in Duluth.

And what would be the next date that we could bring this up?

MR. HAEBERLIN: October 26th, I believe, at 6:30 p.m.

COUNCILMEMBER PITTMAN: And place it back on the agenda on October 26.

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MAYOR JENKINS: Do I get a second?

COUNCILMEMBER FLEMING: Second.

MAYOR JENKINS: Any more discussion?

- - -

(No response)

- - -

MAYOR JENKINS: Call the roll, please.

ASSISTANT CLERK BRYANT: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

ASSISTANT CLERK BRYANT: Councilmember Bates?

COUNCILMEMBER BATES: Yes.

ASSISTANT CLERK BRYANT: Councilmember Fleming?

COUNCILMEMBER FLEMING: Yes.

ASSISTANT CLERK BRYANT: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

ASSISTANT CLERK BRYANT: Councilmember Roche?

COUNCILMEMBER ROCHE: Yes.

ASSISTANT CLERK BRYANT: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Yes.

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MAYOR JENKINS: It'll be on the agenda October the 26th.

All right, Scott.

MR. HAEBERLIN: I apologize, Mayor. One of my folders seems to have gone missing.

I apologize. Things were sitting out, and sometimes they do disappear, but I'll follow up on that one.

The next item that you have under new business is conditional use request for a church, Mrs. Kim for Living Word Presbyterian Church, 6087 Buford Highway, zoned C-1, tax parcel I.D. 18-338-08-084. This is at the corner of English Oak Drive and Buford Highway. Many of you remember it as the Korean Times location.

At this time, we'd like the Applicant to come forward.

MS. KIM: Hi. How are you?

COUNCILMEMBER FLEMING: Fine.

MS. KIM: I am a member of this church, and what we're trying to do is actually move into this new building and build a little church in this little building. And I don't know what the objection would be, but I feel that this area actually needs a little -- a Korean church to, I guess, represent God, heal

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mind/soul.

I mean we're not doing anything other than actually having church service here. They'll have morning services early in the morning at 6 o'clock, and there's going to be maybe a Wednesday service, Friday service and a Sunday service. And the majority of our church members are actually a lot of the college students, and we're actually here to, I guess -- Sort of gone brain dead here. Just to actually, I guess -- Oh, my goodness, you know. There are days where my brain just won't ...

But anyway, a lot of the church members, like I said, they're from a lot of these colleges around here, and it's closer by. We actually had one in Duluth, and so we're actually trying to move towards -- I guess closer to the college students. It's a lot more easier access. It's shorter drive.

I don't know what to tell you. I just went blank, I mean. I had all these things that I was going to tell you, beautiful things. Let me tell you, I had it all recited, but for some reason I just went blank, so you ask me.

COUNCILMEMBER BATES: You said service would be at 6:00 a.m.?

MS. KIM: Six o'clock in the morning.

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COUNCILMEMBER BATES: Every day?
MS. KIM: It's Monday through Friday, 6 o'clock. It's for people who actually want to come for early service. It's only for 30 minutes.
Wednesdays -- we used to have services at Wednesday night, 7 o'clock to 8:00, but I think we might have moved that to, Friday 7:00 to 8:00. I've got to actually check with my pastor.
COUNCILMEMBER PITTMAN: Is it inside only?
MS. KIM: Yeah, inside only.
COUNCILMEMBER PITTMAN: No outside --
MS. KIM: No.
COUNCILMEMBER PITTMAN: -- concerts or --
MS. KIM: No outside activity whatsoever. It's all inside. It's very -- it's a traditional church, nothing wacko.
ATTORNEY WEED: Ma'am, you may have said it but I didn't hear you. Would you state your name and your residence address for the record? I didn't hear you say those things but I could have missed it.
MS. KIM: My residence.
ATTORNEY WEED: Yes.
COUNCILMEMBER FLEMING: Your name.
ATTORNEY WEED: Your name and your residence address.

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MS. KIM: My name's Cindy Kim. I live at 2439 Oak Hill Overlook. That's in Duluth.
But I do go to church -- it's nearby right now. We're actually renting a place just not even a block away, for a month, because this has not gone through. So we're actually asking your permission to allow us to use that building so that we can actually use it as a church.
I -- like I said, I had it all planned out but just went blank. I'm sorry.
COUNCILMEMBER PITTMAN: And you said you were in Duluth --
MS. KIM: Yeah.
COUNCILMEMBER PITTMAN: -- at one time?
MS. KIM: Yeah.
COUNCILMEMBER PITTMAN: So you're no longer there?
MS. KIM: Yeah.
COUNCILMEMBER PITTMAN: So you're no longer there?
MS. KIM: No, no, no. I live in Duluth.
COUNCILMEMBER PITTMAN: So you didn't have a church in Duluth.
MS. KIM: We did have a church in Duluth. It was in -- what was the -- Howell Park. We actually

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rented a little space in Howell Park in Duluth and it was temporary, and it -- I mean it was too -- it was just too far for our church members, so we decided to move. It was closer for me, but most of the church members live in, I guess, college. It's nearer towards downtown, so we actually found a space nearer by in Doraville.
COUNCILMEMBER PITTMAN: So where are you at now?
MS. KIM: Right now, we're actually -- we thought we were actually ready to move in. We didn't know we had to do this whole ordeal. And so we're actually renting a space like a block away.
What is --
UNIDENTIFIED SPEAKER: Spring Hall.
MS. KIM: Spring Hall is the place.
UNIDENTIFIED SPEAKER: Global Forum.
MS. KIM: It's called Global Forum, I guess. And there's a little space that we're renting for a month, hoping that you guys would approve today to let us actually move in.
COUNCILMEMBER FLEMING: And Ms. Kim, you're the applicant?
MS. KIM: No, no, no. Pastor Kim and Ms. -- his wife, yeah. I'm just a church member. Yes, I'm

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supposed to speak for them. I was supposed to sing for them but I just messed up.
COUNCILMEMBER BATES: And how long have you been incorporated as a church?
MS. KIM: Two years now, yeah. I moved from Florida two years ago, and I'm a member of the --
COUNCILMEMBER BATES: No. How long has the church been with the State of Georgia?
MS. KIM: With the State of Georgia, how long?
- - -
(Brief conversation in Korean.)
- - -
MS. MIAO SOO KIM: Okay. My name is Miao Soo Kim (ph). I'm Pastor Kim's wife. And we're registered in the State of Georgia, so I can --
MS. KIM: (Speaks in Korean)
MS. MIAO SOO KIM: For two years. For two years. And my hus- -- moved here 12 years ago and we started the church in Marietta. My husband, he established a church more than 200 -- more than 200 people, so we are successful right now.
We started the new church, it's been two years. So if you want to see this one, this one, and this is for insurance --

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MS. KIM: We've got all the paperwork --
MS. MIAO SOO KIM: Yeah.
MS. KIM: -- so that we can run a church.
MS. MIAO SOO KIM: We can show you.
MS. KIM: And we have insurance papers stating that we're insured just in case anything goes wrong.
COUNCILMEMBER BATES: Thank you. And are you officially affiliated with the Presbyterian Church?
MS. KIM: Yes.
COUNCILMEMBER ALEXANDER: And you have 200 members?
MS. KIM: No, no, no, no. This was previously. No, no, no, no.
She just started up in Duluth. We just started up. We only have 40 to fif- -- I mean the most we would have is maybe 45 to 50. But these days, a lot of kids are sick and everything, so I think the most that we had was 35 show up.
COUNCILMEMBER ALEXANDER: There was activity going on at that building yesterday. Were you --
MS. KIM: Well, actually --
COUNCILMEMBER ALEXANDER: -- there doing church?

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MS. KIM: Actually, we're leasing from the Korean Times, and they're actually fixing the roof and fixing some of the tiles that had been wet so that we -- if you guys approve for us to use it as a church, where we can actually move in without smelling like mold.
MAYOR JENKINS: Murray?
ATTORNEY WEED: Yes, sir.
MAYOR JENKINS: Scott? How about the acreage there? Is there not a required acreage for a church?
MR. HAEBERLIN: No, sir.
ATTORNEY WEED: There's nothing set out.
Does the current ordinance set out the minimum amount of acreage for a church building?
MR. HAEBERLIN: No, sir, not in commercial.
ATTORNEY WEED: There are -- the area's got 23 parking spaces, and if you give me a moment, I can tell you what the acreage is. It's 0.486 acres which is about 21,000 square feet.
COUNCILMEMBER SPANGLER: And how many parking spaces?
ATTORNEY WEED: Currently 23 by my count.
COUNCILMEMBER SPANGLER: What would you do for additional parking if you had more than 23

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members?
MS. KIM: There is actually -- We did think about that, you know, but if we do get in --
You know, I hope. I hope to God that we get big. But if we do get big, we would have to move. But there is actually an empty space right next to this building, and we've already talked to the person that owns it, and they said they would actually -- if we ever grow and if we ever need extra parking, that they would allow us to park there. So that's sort of been covered. And it's not been written, no. It's just verbal.
COUNCILMEMBER SPANGLER: How many spaces do you think are there?
MS. KIM: Over there, it's an empty land and it's just flat, and I see people selling watermelons once in a while and have carts there selling -- you know, do that stuff. But it should cover more than -- more than the space that we have, because it's around the building. So if it's got 23, I'm sure it would fit more than 50 cars there, you know. It's a pretty -- just empty, big lot, which, you know, if you have 50 cars, I don't think we could fit all these people into that little space, either. So I hope to God that it gets big, you know.

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COUNCILMEMBER BATES: Mr. Weed, are churches required to bring their facilities up to ADA compliance?
ATTORNEY WEED: No, sir, there's no particular requirement for that.
ADA compliance usually deals with the type of use of a building in the sense of unless it's an historic or other exemption for the same. So in this case, the Building Inspector would have to tell you whether they'd have to --
COUNCILMEMBER BATES: But there's no exemption for religious entities to bring bathrooms and parking up to ADA compliance?
ATTORNEY WEED: Based upon my experience, no. But once again, that's a question better suited to the Building Inspector.
Usually what the Federal law requires is that churches be treated just like any other place of public assembly, that they be treated like movie theaters, that they be treated like amphitheaters, things of that nature.
So once again, that's a question better asked to the Building Inspector, but I would imagine the rules are compatible unless the building has some sort of historical exemption, which I don't think

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would be the case here.
COUNCILMEMBER BATES: Thank you.
COUNCILMEMBER FLEMING: Would you be renting this building or purchasing it?
MS. KIM: We -- we are leasing it, actually. We're not purchasing it, no. We don't have the funds yet. It's a small starter church and we're hoping to do well.
But it does have two bathrooms if that's the question. It's got men and women, so -- It needs fixing, but, you know, we're hoping you guys will approve so that we can fix it and sort of move on.
COUNCILMEMBER FLEMING: This is a question for Mr. Weed or Mr. Haeberlin.
In regards to fire code safety, numbers of people that would require a sprinkler system?
ATTORNEY WEED: I'll start and Scott can finish.
That isn't currently in the Zoning Code with regard -- There would be some requirements, of course, in the life safety fire codes and also in the building codes, but what they are offhand, I don't know.
Scott, do you have anything further to add on whether a sprinkler system would be required?
MR. HAEBERLIN: In most jurisdictions,

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10,000 square feet is a threshold. But since this is a place of assembly, I'm going to err on the side of caution, and my belief is that would require a sprinkler system; however, we'll have to have that reviewed by the Dekalb County Fire Marshall. He provides that service to us.
COUNCILMEMBER FLEMING: Thank you, because I don't believe that it does have a sprinkler system at the present time.
MS. KIM: It doesn't.
And does that mean that if the Fire Marshall actually approves and he okays it with the safety and all the inspection, would you guys also approve that? I don't -- I don't know how that would go.
COUNCILMEMBER ROCHE: I'm not sure. Is it ours to approve or disapprove? I would think that would be the Fire Marshall. I mean since we don't have any rules on it, I mean --
ATTORNEY WEED: Yeah. With regard to what the Council is here to decide, I'll refer you back to 1501, which I'll read for you, actually, to render a judgment in this case. But what you're here to decide is based upon the four standards --
COUNCILMEMBER ROCHE: Right.
ATTORNEY WEED: -- of 1501, is this use as

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presented or this use with whatever conditions you think -- or additional conditions that are appropriate added to it, appropriate in the zone as a conditional use? and that's it.
Now you might find out after you get a report from the Fire Marshall, that might change your judgment. That might be a fact that's important enough for you to delay the decision, and you certainly could consider that information.
COUNCILMEMBER ROCHE: Well, but if the Fire Marshall said no, then they couldn't occupy the building; is that correct?
ATTORNEY WEED: Unless they put in a sprinkler system.
COUNCILMEMBER ROCHE: Right. But that's over and beyond us agreeing or disagreeing on a conditional use.
COUNCILMEMBER BATES: But they won't get to that point unless they get approved tonight --
COUNCILMEMBER ROCHE: Right.
COUNCILMEMBER BATES: -- for usage.
ATTORNEY WEED: Well, I don't know if it would -- As far as I know, there is no chain that indicates what order these things come in. In other words, if the Applicant had sought some sort of review

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by the Fire Marshall, contingent review with the understanding that you still had -- they still had to come here, I imagine for the proper fee that the Fire Marshall would go look at it. And our ordinances don't establish a certain chain that it has to be done in a certain order.
MS. KIM: Fire-wise, I mean unless we have a electrical problem, I don't recall anything that's really flammable, or we're not going to do -- I mean it's not a restaurant or any -- you know, a cookout place. It's just a place, a meeting place. It's got two -- you know, one in the back; it's a door. We have fire extinguisher. I mean we're hoping that the Fire Marshall actually passes us, you know, like you said, you know.
I mean we're really, I guess, hard-working soul-savers. We really need this place right now because we're about to like end little contract for a month and we really need to get in. I mean we basically are just going to paint the walls and set up some chairs and just have, you know, a church meeting. And I'm just hoping you guys would see through this and just let us sort of use the place as a meeting place.
I mean honestly, it's not -- it's not going

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1 to burn. I mean there's no harmful, flammable
2 nothing, nothing to do with any of that there, you
3 know. And we just need a place to just sit and
4 actually do our little prayers and, you know, little
5 meetings, and it's not like, you know, a gentleman's
6 place, massaging or, you know, nothing difficult or
7 nothing --
8 You know, nothing to do with anything but
9 just sharing good work, God's work. That's all we're
10 there to do. It's not a cult, you know. I mean it's
11 a pure, down to earth, only through Bible. That's all
12 we believe in, and I hope you guys just let us just
13 move in by next week because we really need the place.
14 COUNCILMEMBER ALEXANDER: We understand and
15 we sympathize, but public safety --
16 MS. KIM: Yeah.
17 COUNCILMEMBER ALEXANDER: -- and the protec-
18 tion of people in a closed space is extremely impor-
19 tant.
20 MS. KIM: Oh, yeah.
21 COUNCILMEMBER ALEXANDER: By the size of the
22 building, you're only allowed to have a maximum number
23 of 69 people in there at any --
24 MS. KIM: Yeah.
25 COUNCILMEMBER ALEXANDER: -- one time.

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1 MS. KIM: Yeah.
2 COUNCILMEMBER ALEXANDER: We haven't seen
3 the exits, the fire exits. We don't --
4 MS. KIM: Yeah.
5 COUNCILMEMBER ALEXANDER: -- know how you're
6 going to lay it out.
7 MS. KIM: Yeah, I understand.
8 COUNCILMEMBER ALEXANDER: And if it's got
9 gas heat or a gas hot water heater, that's another
10 source of ignition.
11 MS. KIM: Yeah. There is no gas. It's all
12 electric.
13 COUNCILMEMBER ALEXANDER: So it's electric
14 heat also.
15 MS. KIM: Yes.
16 COUNCILMEMBER ALEXANDER: And we don't even
17 know, you know, the condition of the HVAC. I believe
18 the building's been, you know, empty for over a year.
19 MS. KIM: Yeah, it's been empty. And we
20 went in there. It's a mess. I mean like I said. The
21 only thing that we require -- we're going to actually
22 start doing is just painting the walls because, you
23 know, it looks like it needs a good painting and
24 actually just clean the carpet, set some chairs up and
25 do our little -- you know, like I said, little

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1 sessions.
2 It might sound like, you know, 45 to 50
3 people, but come and go, morning service is empty. I
4 mean it's whoever wants to come and pour out their
5 heart if they're having hardships. Especially with
6 bad economy these days, you know, you want to go
7 somewhere and actually just, you know, kneel and pray,
8 and this a place where you could just open up and just
9 do what you need to do.
10 And it's an open door for any of the church
11 members. You guys are welcome at any time. We're
12 open at 6:00. You know, it's just a place where you
13 just heal yourself and you just want to pour out to,
14 you know, God. I don't know if you guys all believe
15 in God, you know, but it helps, it really does,
16 especially in this hardship that everyone's going
17 through. Even if you're not, you know, there's bad
18 relationships, there's kids that -- you know, I have
19 two teens, and my gosh, you know.
20 COUNCILMEMBER BATES: Thank you.
21 COUNCILMEMBER ALEXANDER: We understand --
22 MS. KIM: Yeah.
23 COUNCILMEMBER ALEXANDER: -- the purpose of
24 church.
25 MS. KIM: Yeah. Well, I'm going --

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1 COUNCILMEMBER ALEXANDER: Okay.
2 MS. KIM: -- into way too much detail here.
3 COUNCILMEMBER ALEXANDER: But I mean you're
4 already -- if each one of your parishioners drives a
5 car, you already are out of parking.
6 MS. KIM: Yeah, but we have -- I have two
7 kids. A lot of these church --
8 COUNCILMEMBER ALEXANDER: Okay. Can I --
9 MS. KIM: -- have kids. That's why we have
10 30 people.
11 COUNCILMEMBER ALEXANDER: Okay. So I have
12 concerns because of the lack of parking there.
13 The persons I saw in the parking lot
14 yesterday, they looked like they were church-goers
15 also. So I'm concerned that there's not overflow
16 parking being used at that lot from the other church
17 that is south of that on Buford Highway because that
18 has a very large congregation.
19 MS. KIM: Yeah.
20 COUNCILMEMBER ALEXANDER: I'm just not
21 comfortable with the location of this building for
22 your intent, because of where it's located. I'm
23 afraid we would end up with overflow parking in the
24 apartments or on English Oak Drive. And I'm very
25 uncomfortable with it not being sprinklered, for it

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being a gathering place for people.
COUNCILMEMBER SPANGLER: Would your congregation or whatever you want to call it be in agreement to putting in sprinkler systems?
MS. KIM: I don't know what the cost is. I mean, like I said, we're a starter, and if the Fire Marshall actually wants us to put it in, we would actually have to maybe go in half-and-half with an owner. I don't know what the -- like I said, you know, the -- the budget with our little church that's just a starter right now, you know, we're going through a hard time so we're trying to look for a small place where we could rent it. Like I said, it's not a big group. You know, like -- just like, you know, church or school, we have members that's always sick or, you know, they come and go, you know, and like we might have 45, but when it shows, it's, you know, about 30. And we're still trying to grow, and if we grow, hopefully we could grow out of this building.
COUNCILMEMBER BATES: Do you have an agreement or a lease with the landlord?
MS. KIM: Yes.
COUNCILMEMBER SPANGLER: Can you --
COUNCILMEMBER PITTMAN: Will you be doing --

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COUNCILMEMBER SPANGLER: I'm sorry, Ms. Pittman.
Could you get an agreement, a signed agreement from the adjoining property about using the parking spaces?
MS. KIM: I think so. I mean like I said, we -- we did have a verbal, you know, okay. So I mean I'm sure we could contact them and maybe have a little statement stating that we can actually use that space during a Sunday because nobody uses it. I mean we've been there. I mean church members, we go there to look at the building and see what we need to do if it's ever approved. And we've been there many times during Sunday, and it's never been used. They're selling watermelons, like I said, you know. That's the only thing that I've seen during Sundays, anyway.
COUNCILMEMBER FLEMING: Will there be someone at the church all day long, though?
MS. KIM: No.
COUNCILMEMBER FLEMING: Just in the morning Monday --
MS. KIM: Yeah, for --
COUNCILMEMBER FLEMING: -- through Friday --
MS. KIM: -- 30 minutes.
COUNCILMEMBER FLEMING: -- from 6:00 until

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basically 7 o'clock.
MS. KIM: Maybe, yeah. 6:30, 6:45 probably.
COUNCILMEMBER PITTMAN: So will you be doing any after-church activities like dinners, lunches occasionally?
MS. KIM: We don't have that right now. It's not that organized. It's not big enough.
COUNCILMEMBER PITTMAN: Well, once it becomes organized, do you think you might be doing that?
MS. KIM: If it gets ever big and organized, I think we would probably have to move out of that building.
COUNCILMEMBER PITTMAN: So the answer's no, you would not?
MS. KIM: No, not right now.
It's been two years, and we only have that many members and we're -- we're just getting a little bit closer, like I said, because of the college students. They have a hard time getting transportation to where we were before.
COUNCILMEMBER ALEXANDER: Have you looked into sharing church facilities with another church?
MS. KIM: Yeah, we did. We did do that actually at the -- the Howell Park, and there was

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actually three churches and we gathered. And it was three small groups, and so altogether I think there was 70, and I think our member was 30, so the rest of it was the other two small group. And not in this building. It's a solo thing.
COUNCILMEMBER ALEXANDER: Correct. I mean in this area that you looked at.
MS. KIM: Oh, no, no, no. No.
COUNCILMEMBER ROCHE: Once again, I mean I'm a little bit concerned about sprinkler systems, too, but I mean if I understand what Attorney Weed said, it's kind of beyond our purview. I mean it's not our job, so to speak, and I don't mean it --
MS. KIM: Yeah, yeah.
COUNCILMEMBER ROCHE: -- the way it sounds.
MS. KIM: Yeah.
COUNCILMEMBER ROCHE: It's not our responsibility. I am certainly not qualified to say whether or not the building is safe --
MS. KIM: Sure.
COUNCILMEMBER ROCHE: -- from a fire standpoint, you know. I think our job here is to decide whether or not it's an acceptable conditional use, so -- and I would assume that you're going to get some kind of certificate from the Fire Marshall,

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1 anyway, regardless of what we decided, so, you know --
2 MS. KIM: I think this is the first proce-
3 dure. We actually have to get you guys' approval, and
4 then --
5 COUNCILMEMBER ROCHE: I understand.
6 MS. KIM: -- they come out and they look at
7 the whole place and see if it's safe enough for, you
8 know, the church members to be there for --
9 COUNCILMEMBER ROCHE: Right.
10 MS. KIM: -- a certain amount of hours. I
11 don't know what the occupancy is.
12 COUNCILMEMBER ROCHE: Yeah. I don't think
13 the Fire Marshall would issue a certificate or what-
14 ever it is they do --
15 MS. KIM: Yeah.
16 COUNCILMEMBER ROCHE: -- unless they
17 determined it was safe, so --
18 UNIDENTIFIED SPEAKER: Can I say something?
19 COUNCILMEMBER ROCHE: Well, we're going to
20 have a public hearing in a minute.
21 UNIDENTIFIED SPEAKER: I'm a member of this
22 church as well.
23 COUNCILMEMBER ROCHE: Yeah. Well, I think
24 we'll have the public hearing.
25 I have no more questions for the Applicant.

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1 MS. KIM: If you want to see any paperwork
2 from insurance to the whole ordeal, I have it all in
3 front of me. If you want me to pass it around, you
4 guys could all look at it and make decisions on it and
5 -- It's a small, little quiet church. We don't make a
6 whole lot of hoodads (ph), you know.
7 MAYOR JENKINS: We understand.
8 Okay. Thank you.
9 MS. KIM: Now, how early would I know so
10 that I can actually contact the Fire Marshall and
11 actually make an appointment and do all that?
12 COUNCILMEMBER ROCHE: Well, we have the rest
13 of the process that we go through --
14 MS. KIM: Oh, okay.
15 COUNCILMEMBER ROCHE: -- tonight with the
16 public hearing and all that.
17 MS. KIM: Okay.
18 COUNCILMEMBER ROCHE: So we'll see what
19 happens.
20 MS. KIM: So soon after this hearing ends,
21 then you guys will say yea or nay to me and then I can
22 actually schedule, or how does --
23 This is like my first time.
24 ATTORNEY WEED: Well, they're going to --
25 now that you've made your comments representing the

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1 Applicant, they will then turn it over and open up a
2 public hearing. People who want to speak in favor
3 will be able to do that. People who want to speak
4 against will do that. Then the Council will take it
5 back up to the bench. They'll debate it amongst
6 themselves whether or not they want to approve it.
7 I'm going to read out the standards that
8 would be applied to the facts that you've presented
9 tonight, and you may get a decision tonight; or if
10 they determine that they require more information,
11 they'll set it to a date certain. They'll tell you
12 when that date will be and when you need to be back.
13 So either one might be an option. We'll find out in a
14 few minutes.
15 MS. KIM: Okay. Thank you.
16 MAYOR JENKINS: Anything else at the table?
17 Anything else at the table?
18 - - -
19 (No response)
20 - - -
21 MAYOR JENKINS: Scott?
22 MR. HAEBERLIN: Not a whole lot of comments.
23 As you realize, it's C-1. This is a historical
24 parcel, and that explains the small acreage.
25 I did want to go over some statements that

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1 were made previously on the record. Global Forum is
2 in Gwinnett County. This is not within the city's
3 jurisdiction, so the present address is actually in
4 Gwinnett County.
5 On the zoning situation, the property is
6 about 4,425 heated square feet. It was built in 1966,
7 so does that explain the extended age.
8 Based on the parking on site -- and I did
9 just get a revised site plan from a gentleman in the
10 audience, with the church -- they actually have 26
11 spaces, so it's not a huge deviation. But just based
12 on zoning alone -- and this is not, again, Fire
13 Marshall occupancy -- it looks like about 69 seats in
14 the building. Maybe a little more, because they've
15 got three more spaces. So it's not a substantial
16 deviation.
17 And we had a discussion earlier about ADA
18 compliance. And if you've seen some of the pictures
19 of the site, you're aware, you see that there's not a
20 ramp, there's not the necessary lane for van
21 accessible for handicapped. So those are items we're
22 going to address with the occupancy.
23 Signage. We do have a very large pole sign
24 on the site. Again -- and this is looked at with
25 respect to the site's location. And you know, if it

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would be a panel change-out, certainly that's something the sign code does entertain. But typically, the signage is probably too large for the location.

Transitional buffers. This probably does abut R-3. If you look through the package of pictures, you see that there is absolutely no buffer between this C-1 property and the R-3. Now, obviously the church is an existing encroachment and so that limits the amount of area that can be planted; however, there essentially is no -- no buffer whatsoever so we have a vacant, devoid area between the church and the residential apartments behind it.

Again, landscaping and streetscaping, again, nonexistent, and the property would benefit from planting materials. The City does have at its option to use money from the tree fund because the majority of the areas that front roads are actually in right-of-ways, so that would be public areas. So that's the only reason I put that forth as a discussion item. If the City would want to beautify the public areas, they certainly have access at this site.

In a discussion about process, well, conditional use, if they get approved by the City Council, they're obviously going to have a

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Fire-Marshall inspection initiated by the City of Doraville; also, too, an inspection by the Building Official. At that time, they will have items perhaps that are corrective deficiencies that they will have to handle. If they are not able to satisfy those requirements, essentially the conditional use is a moot issue because they can't get occupancy. So we really are just addressing the situation with the conditional use at this time. And normal permitting process, because they're not a business, they're not getting a business license. We'll just simply initiate a Fire Marshall and a Building Official review.

So you've had an opportunity to look at some of the situations on the site. You do see that there are some general maintenance issues. The property is in general disrepair relative to the outside. There has been some code enforcement activity recently regarding the dumpsters and also, too, parking the vehicles-for-sale on the site. So there are some issues that need to be addressed as far as general upkeep. That can be done separate and distinct from the petition we're reviewing tonight, but I did want to let the Council know there are items of interest to the City staff and also to code enforcement that are

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being addressed on the site.

COUNCILMEMBER BATES: Mr. Haeberlin, does the property line abut the driveway or does it abut the building?

MR. HAEBERLIN: The property line as indicated to me from the certified survey shows that 13.6 feet is behind the building, which runs downhill to the property line which abuts the 20-foot private drive going into the apartment facility. So essentially only 13.6 feet is available for transitional buffer at this time.

COUNCILMEMBER BATES: Thank you.

MR. HAEBERLIN: Are there any other questions of the Council?

- - -

(No response)

- - -

MR. HAEBERLIN: None? Okay. At this time, the Mayor is going to open the public hearing. Those that would like to speak in favor, please raise your hand if you would like to speak in favor.

Well, if we've got about 10 people, about one minute -- one minute per person --

MAYOR JENKINS: I'll allow --

MR. HAEBERLIN: -- in this session.

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MAYOR JENKINS: -- 10 minutes for everybody to speak for and then 10 against.

MR. HAEBERLIN: So you guys still want to speak, all the collective hands? Okay.

The ones who would like to speak, please come forward, and this is only those in favor. And once we get those for, we'll know exactly what your breakdown is for timing. So everybody that would like to speak, please come forward to the podium.

THE REPORTER: And just speak one at a time if you would and spell your name for the record.

MAYOR JENKINS: Yes.

MR. KIM: My name is Steve Kim and I just want to say something --

THE REPORTER: Spell your name, please.

MR. KIM: Steve Kim. Last name (spelling) K-I-M.

Okay. I just want to say something about sprinkler system, and I just want to let you guys know that, you know, at the most, when we have like a little get-together, it will be no more than three hours. Okay. We'll get together like a morning service, we'll have morning service for about 30 minutes; a Wednesday service, and if we did have a Wednesday service, it will be about like two hours --

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1 two hours at the most. And same thing to Friday. And
2 Sunday, it's a straight service. Okay. After
3 service, we might have like a little get-together. No
4 one's going to be sleeping there, and one existing
5 business without a sprinkler system, and those people
6 that have a business there before, they probably
7 occupied the building moreso than we would occupy it.
8 Okay, now, and also the parking situation, I
9 mean as you can see, the people that you see over
10 here, this is the majority of our congregation.
11 Majority of our congregation, probably about 70
12 percent, they're like -- they're students, they go to
13 Emory. And we have like a bus -- like a bus
14 transportation that provides transportation service to
15 pick up those students and back and forth. So parking
16 space, I understand it's a limited space, but, you
17 know, but for what we intend to use, it's more than
18 sufficient. And you know, we have right now, we only
19 have like a one-year lease agreement. So I mean if
20 our church does get bigger, I mean we will move on.
21 We won't be like a nuisance to like -- to the
22 community. That's all.
23 MAYOR JENKINS: All right. Next?
24 MR. HAEBERLIN: Was there just one more
25 person that's going to speak?

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1 MAYOR JENKINS: How many more's going to
2 speak?
3 MR. HAEBERLIN: Two more? About three --
4 about three minutes apiece. We're down to just three
5 people give or take.
6 MR. BAEK: Good evening. My name is Nam
7 Baek. (Spelling) B-A-E-K is my last name.
8 THE REPORTER: What's your first name?
9 MR. BAEK: (Spelling) N-A-M.
10 I'm agent for landlord. The Korea Times
11 moved to Duluth one year ago, and the landlord is
12 trying to sell for one year. And the rest, the
13 maintenance issue and the dumping issue and the
14 (imperceptible), two air conditioner were stolen in
15 one year period. And one of the Council member
16 mention that there was activity. The landlord invest
17 like $20,000 to re-roof and repair the faceboard
18 interior, so, and they put the new air conditioner
19 early September.
20 What I want to say is this is a temporary
21 lease, and with the church opening in that area, it
22 will bring a lot of good things to the community
23 including the area will be maintained regularly and
24 there will be more traffic coming from outside of our
25 city, and these will bring more business maybe. And

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1 so I strongly suggest to approve this conditional use.
2 And also, I don't know about the building
3 inspection or sprinkler, or what the rule is, but
4 actually one of the (imperceptible) mentioned, I
5 strongly suggest approve this permission and start the
6 church service in that location. Thank you.
7 And about the location, I have more know-
8 ledge than any other church member, so I can answer
9 any questions about the buildings and what the land-
10 lord's intention may be, if I can answer those
11 questions.
12 COUNCILMEMBER SPANGLER: Would the landlord
13 be willing to put in a sprinkler system?
14 MR. BAEK: No. We never discussed or
15 raised, but now landlord is spending $20,000 and the
16 monthly rent is not very great. And the church and
17 for the landlord and for the Doraville city, it will
18 be win-and-win if the church come into the location.
19 But if you ask more money to spend, it will be too
20 much. If they spend like 20K, it will be more than
21 one year's rent.
22 COUNCILMEMBER SPANGLER: I understand that,
23 but the roof probably needed to be fixed anyway
24 whether it was going to be --
25 MR. BAEK: Yeah, but we --

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1 COUNCILMEMBER SPANGLER: -- rented or not.
2 MR. BAEK: I don't know what the rule is.
3 Landlord may not know. But we have to follow the rule
4 if there is a rule. Yeah, I agree with that. But we
5 don't need to over-engineering of putting things.
6 COUNCILMEMBER SPANGLER: Okay.
7 MR. BAEK: Thank you.
8 MAYOR JENKINS: Next?
9 UNIDENTIFIED SPEAKER: Sir, I don't think
10 I'll speak because there's two people already said
11 what I wanted to say. Thank you.
12 MAYOR JENKINS: Anybody else for it?
13 - - -
14 (No response)
15 - - -
16 MAYOR JENKINS: Okay. Anybody against it?
17 Hold your hand up if you're against it.
18 - - -
19 (No response)
20 - - -
21 MR. HAEBERLIN: Mayor, I just did want to
22 state for the record for Mr. Weed's edification is the
23 gentleman Mr. Kim here is the gentleman who revised --
24 provided me with the revised site plan that shows the
25 26 spaces versus the 23 spaces, so it's just a

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1 marginal -- marginal difference.
2 ATTORNEY WEED: And what is in your package
3 is the one with the 23 spaces, and I'm holding in my
4 hand, which is what has -- which -- pardon me -- the
5 one with the 26 spaces. I assume that they're going
6 to want this, you know, to be considered by you, so
7 I'm giving it to the Council so you can consider it
8 (presenting).
9 COUNCILMEMBER FLEMING: Are they lined
10 spaces?
11 MR. BAEK: They are.
12 ATTORNEY WEED: And I will note for the
13 record that the application must include a site plan
14 drawn to scale depicting how the proposed conditional
15 use will conform to all space limits, buffers, parking
16 and loading provisions and other provisions of this
17 ordinance.
18 You know, I will advise you that if you
19 elect to accept the revised site plan which was handed
20 apparently to Scott tonight at the meeting --
21 MR. HAEBERLIN: Yes, sir.
22 ATTORNEY WEED: -- you can do that, but I
23 wanted to read the Code to you.
24 COUNCILMEMBER ROCHE: Are we back up here
25 again, Mayor?

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1 MAYOR JENKINS: Yes.
2 Wait'll she looks at that.
3 Okay. I'm going to bring it back up to the
4 table. Anymore questions? Any more discussion?
5 COUNCILMEMBER ROCHE: I can think of a lot
6 worse uses.
7 I'd like to go ahead and make a motion that
8 we accept this conditional use request for the church
9 at 6087 Buford Highway, tax parcel I.D. 18-338-08-084.
10 MAYOR JENKINS: And as you said, they'll
11 have to come up to par with the health department --
12 COUNCILMEMBER ROCHE: Of course.
13 MAYOR JENKINS: -- and the fire department
14 or whatever. That won't be us.
15 COUNCILMEMBER ROCHE: Right.
16 MAYOR JENKINS: Okay. Do I get a second?
17 COUNCILMEMBER SPANGLER: Second.
18 ATTORNEY WEED: Mr. Mayor, before you bring
19 it to a vote, I want to remind the Council that the
20 law that you apply to the facts is Section 1501.
21 There are four primary things: that you consider the
22 application and site plan submitted by the applicant;
23 you must determine that it meets all specific
24 conditions of the ordinance relative to the
25 conditional use; that the applicant has made a binding

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1 agreement for any specific limitation or condition
2 necessary to protect the public interest and ensure
3 the continued beneficial use and enjoyment of the
4 property by nearby property owners or that no special
5 limitations are needed; and four, that the conditional
6 use with the specific limitations and design features
7 as may have been required will further the aims of the
8 land use plan and will not unduly be detrimental to
9 nearby properties.
10 MAYOR JENKINS: Do they have a copy of that?
11 COUNCILMEMBER ROCHE: That's the ordinance.
12 ATTORNEY WEED: It's the Code, Your Honor.
13 MAYOR JENKINS: They have a copy?
14 ATTORNEY WEED: I assume that they do. I
15 imagine Scott gave it to them. But those are the --
16 that's the 1501 standards.
17 COUNCILMEMBER FLEMING: Mr. Haeberlin, was
18 there a sign put up for this particular conditional
19 use?
20 MR. HAEBERLIN: Yes, ma'am, there was.
21 There was actually a sign put up on both public right-
22 of-ways so that there's -- they could read from both
23 English Oak and from Buford Highway.
24 COUNCILMEMBER FLEMING: So anyone from that
25 neighborhood who wished to be here this evening could

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1 have been here --
2 MR. HAEBERLIN: Yes, ma'am.
3 COUNCILMEMBER FLEMING: -- to make any type
4 of comment.
5 MR. HAEBERLIN: That is correct.
6 COUNCILMEMBER FLEMING: Thank you very much.
7 COUNCILMEMBER ROCHE: And I guess the only
8 concern I have about any of the limitations was what
9 we talked about earlier as far as the safety of the
10 building, and that's going to be addressed, anyway, so
11 -- You know, that's beyond our purview, so --
12 MAYOR JENKINS: Any more discussion?
13 - - -
14 (No response)
15 - - -
16 MAYOR JENKINS: Call the roll.
17 ASSISTANT CLERK BRYANT: Councilmember
18 Alexander?
19 COUNCILMEMBER ALEXANDER: No.
20 ASSISTANT CLERK BRYANT: Councilmember
21 Bates?
22 COUNCILMEMBER BATES: Yes.
23 ASSISTANT CLERK BRYANT: Councilmember
24 Fleming?
25 COUNCILMEMBER FLEMING: Yes.

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ASSISTANT CLERK BRYANT: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
ASSISTANT CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
ASSISTANT CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
MAYOR JENKINS: Thank you. Yes.
COUNCILMEMBER ROCHE: Congratulations.
- - -
(Applause)
- - -
MS. KIM: So is our next move calling the Fire Marshall?
MR. HAEBERLIN: I did want to go over that before the members leave.
MS. KIM: Oh, oh.
MR. HAEBERLIN: Please, a representative please come see Ms. Ruby Biggers here tomorrow at City Hall, and that will initiate the inspection phase of the facility.
MS. KIM: Okay.
MR. HAEBERLIN: And so we'll need to get

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with Ms. Ruby Biggers tomorrow here where the City Clerk is located from 8:30 to 4:30.
MS. KIM: 8:30 to 4:30.
MR. HAEBERLIN: Yes, ma'am.
MS. KIM: Okay. Thank you.
MAYOR JENKINS: Five-minute break.
- - -
(Brief recess)
- - -
MAYOR JENKINS: Scott, you ready?
MR. HAEBERLIN: Yes, sir.
We're getting back into old business, which is Section 903 which is R-1, Single-Family Residential District. We did recess this from 9-14-09. And as we've been doing this in the past, we're kind of work-shopping this item until we get to the public hearing phase.
Everybody has a copy of version 5, which is the draft of September 24th, '09, 1 of 15, and let's go to that.
And there was one item I did want to address to the Council particularly before you ask me questions, and of course we do need to hold a public hearing as well.
On page 4 of 15, under Permitted Uses, if

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you would review that, please, on home occupation. The way that is written right now is that if somebody wanted an in-home daycare for up to seven children, they could do that the way that language is written. I'm not for certain if that is the intention of the Council but I wanted to draw attention to that.
In your previous code, an in-home daycare was only limited to three children and it was a conditional use. So we do need some clarification if that is the intent of the Council to allow up to seven children, and that is on page 4 of 15.
There have been some comments from Councilwoman Fleming regarding daycare and I also have received some comments from Councilwoman Alexander as well.
So just trying to get a consensus of the Council. Is that appropriate wording for what you're intending to do within R-1?
COUNCILMEMBER FLEMING: That is -- that's my intent.
MR. HAEBERLIN: Okay.
COUNCILMEMBER ROCHE: Up to seven, yeah.
COUNCILMEMBER PITTMAN: Seven kids?
MR. HAEBERLIN: Up to seven children.
COUNCILMEMBER PITTMAN: Wonder what the

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State regulation is, you have to have so many?
COUNCILMEMBER FLEMING: Seven.
MR. HAEBERLIN: You can have up to seven.
COUNCILMEMBER PITTMAN: That is at seven. Oh. Well --
COUNCILMEMBER ALEXANDER: As discussed with law enforcement in another jurisdiction, they are having a large amount of personal-care home move into their residential areas -- personal-care homes are not required to be licensed by the State due to the small number of patients -- and unfortunately, the police department is getting involved because of the number of abuse cases.
I have concerns of a personal-care home being allowed to move into residential area. There's no health inspections, there's nothing. And I -- I have great concerns for the safety of the persons in the homes, and there's been some recent things on the news with the same thing: that they unfortunately just put the people in the house and they had no supervision. They were just sort of left on their own with their medications and everything.
And I just have great concern for the safety of the people in these homes. And I don't know what the number of State -- persons for a personal-care

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1 home to be State regulated, but I feel like there
2 needs to be some type of oversight.
3 COUNCILMEMBER ROCHE: But is it appropriate
4 for that oversight to come from a zoning ordinance?
5 COUNCILMEMBER BATES: Well, if we're --
6 COUNCILMEMBER ALEXANDER: We're allowing it
7 in --
8 COUNCILMEMBER BATES: Right.
9 COUNCILMEMBER ALEXANDER: -- the zoning
10 ordinance.
11 COUNCILMEMBER ROCHE: Well, it would just
12 seem kind of like what we talked about with sprinkler
13 systems: that that's kind of a different area, I
14 guess. It's a different type of thing.
15 COUNCILMEMBER FLEMING: Well, originally
16 this particular paragraph stopped it within R-1.
17 MR. HAEBERLIN: That's correct.
18 COUNCILMEMBER FLEMING: So they were not
19 going to be permitted in R-1.
20 So I understand what Ms. Alexander is saying
21 and I concur. So maybe to correct this is to remove
22 the daycare from that sentence.
23 COUNCILMEMBER ROCHE: Well, what about
24 nursing homes and personal-care homes?
25 COUNCILMEMBER FLEMING: You -- they would

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1 not be permitted in R-1.
2 COUNCILMEMBER ROCHE: So it's not just
3 daycare. You're talking about daycare, personal care,
4 group homes?
5 COUNCILMEMBER FLEMING: I'm talking about
6 the original statement was "shall not be permitted as
7 customary home occupations within R-1," period. Okay?
8 But I felt that a day care -- you know, a child
9 daycare was and probably still is quite common where
10 you've got a homemaker that is taking care of
11 neighbors' children and it's their home occupation.
12 So I did not feel that we should not permit that as a
13 home occupation.
14 COUNCILMEMBER ROCHE: So you're saying that
15 children's non-adult day care, I guess.
16 COUNCILMEMBER FLEMING: Correct. Children's
17 daycare. Children's daycare should be excluded from
18 that sentence.
19 Is that where you're coming from,
20 Ms. Alexander, so that we -- the other
21 personal cares, and nursing homes and so forth,
22 because they're not being regulated?
23 COUNCILMEMBER ALEXANDER: I guess also I'm
24 concerned about the number of children increasing from
25 three to seven. And is there anything in here -- or

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1 when someone gets an occupational thing, that
2 specifies they have to reside at the house where the
3 daycare is? Because what's to stop from somebody
4 renting the house and just doing a business?
5 MR. HAEBERLIN: Yes. Let me give you a
6 little background. I do get a lot of calls on these
7 type items, this whole group of items. Okay?
8 Primarily people are intending on buying a home in the
9 city for the intentional purpose of running a business
10 there. The majority of the people I speak to do not
11 indicate that they're going to live there. Okay?
12 That's one of the guiding principles of home
13 occupation: you must live there. Now, you may rent
14 the property, you may not own the property; but it is
15 part of the home occupation to reside there. Okay?
16 And so my personal opinion is that this type
17 of use in a residential area is contrary to the
18 guiding principles of home occupation: no visitors,
19 no signage, you know, normal things within a
20 residential zone. So I think it does increase
21 activity.
22 So that's my personal, as your planner,
23 opposition to having any of these uses in R-1.
24 However, what Councilwoman Fleming is indicating is
25 that for daycare for children, which was under the old

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1 code up to three children as a conditional use, she
2 would like for you to consider that somewhere between
3 three and seven perhaps as a conditional use in the
4 Code and she doesn't seem to have a problem excluding
5 all the other items that we have --
6 COUNCILMEMBER FLEMING: That is correct.
7 MR. HAEBERLIN: -- specifically eliminated.
8 COUNCILMEMBER FLEMING: That's correct.
9 COUNCILMEMBER ROCHE: But in our home -- we
10 have an ordinance about home occupation. You know,
11 isn't that part of our requirement that you have to
12 live in the property?
13 MR. HAEBERLIN: That is correct.
14 ATTORNEY WEED: Yes.
15 COUNCILMEMBER ROCHE: So it's basically
16 already covered, then.
17 MR. HAEBERLIN: Correct.
18 And what I want you to be aware of, though,
19 in your home occupation ordinance it says 25 percent
20 or no more than 500 square feet of the facility.
21 Okay. Now, so if you have a thousand-
22 square-foot house, more than half of it can be used
23 for a day care. Okay? If you have a 750-square-foot
24 house, three-quarters of it's used for day care.
25 COUNCILMEMBER ROCHE: How many

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750-square-foot houses do we have? They're not legal, remember?

MR. HAEBERLIN: Well, we have a lot of homes that are around 800, so it's not uncommon.

So I just want people to be aware, our typical home, I think we --

Brian, you might help me with this. Was it like a thousand?

So we do have some big out-lyers. We have some very small homes, we have some very big homes and we've got a lot in between.

COUNCILMEMBER BATES: It was actually 1,400.

MR. HAEBERLIN: 1,400. Okay. So our average home is a lot bigger than some of the small out-lyers we do have in the city.

This is not to say that if somebody came in here and they had a 725-square-foot home and it was a consideration of the conditional use, that you could address it.

But generally speaking, it would be then eligible to everybody in R-1 whether they have 700 square feet or 2,000 square feet.

COUNCILMEMBER ROCHE: As long as they live in the house.

MR. HAEBERLIN: Yes.

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COUNCILMEMBER ROCHE: So the part about living on the property is --

MR. HAEBERLIN: That will not change.

COUNCILMEMBER ROCHE: It's already covered.

MR. HAEBERLIN: That will not change.

COUNCILMEMBER ROCHE: So we're okay there.

MR. HAEBERLIN: Correct.

I mean I'll let you know on the enforcement of home occupations, we have lots of problems with this because we have a lot of people that put down administrative office, and then before we know it, we have additional employees there.

Again, one of the guiding principles of home occupation is you would not have an employee. So this one person must care for all those children. This one person or an individual that resides in their household must care for these children. They can't bring in outside people. So that is, again, one of your guiding principles on home occupation.

Home occupations generally require a lot of regulation, and we should expect that. And we should certainly expect that even more with a daycare.

COUNCILMEMBER FLEMING: And I truly don't have a problem with our previous ordinance because it was no more than three on top of your own, if I'm not

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mistaken -- three outside children.

MR. HAEBERLIN: It said -- actually, it said -- it was "uses common to all residential districts" was that big clause we had before that lumped everything together. And it said up to three children, and it didn't say anything about whether they were your own or not.

COUNCILMEMBER FLEMING: But if you're charging for that child's daycare, one would assume that they are not your child.

MR. HAEBERLIN: It wasn't clear in the old ordinance.

COUNCILMEMBER FLEMING: Right. So --

MR. HAEBERLIN: I will definitely agree with you on that.

COUNCILMEMBER FLEMING: -- you know, I -- and I truly --

Now, is that part of the R-1?

MR. HAEBERLIN: That, in the old code --

COUNCILMEMBER FLEMING: Or that's in the

MR. HAEBERLIN: -- was in that general-uses-common-to-every-district where we had all those things that we were very concerned about being in R-1, R-2, R-3, R-4, et cetera, and then we eliminated that.

COUNCILMEMBER FLEMING: That was 902;

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correct?

MR. HAEBERLIN: Yes.

COUNCILMEMBER FLEMING: Okay.

MR. HAEBERLIN: So now we're in this district here, and since it's a concern within R-1, the Council would have to make a decision as to its appropriate use within R-1. We were going to address it in each district as we come through those districts and rewrite them.

So if it is your desire to have up to three as a conditional use, we need to add that language here.

COUNCILMEMBER BATES: I need a little bit of clarification because I read this several times and I didn't understand the intent.

It says "personal care homes, nursing homes, and daycare shall not be permitted as customary home occupations within R-1 when state regulation . . . is required."

So if State regulation wasn't required, they would be permitted?

MR. HAEBERLIN: The way that reads, in my opinion, yes.

ATTORNEY WEED: That's correct, yes.

MR. HAEBERLIN: Uh-huh.

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COUNCILMEMBER BATES: Is there a group home, a personal-care home, a nursing home or daycare that does not require State regulation?
ATTORNEY WEED: I don't know.
COUNCILMEMBER BATES: Then, we need to get rid of that last sentence.
ATTORNEY WEED: Our instructions we felt were pretty clear to write language that would permit it, so we did that.
COUNCILMEMBER BATES: I don't --
ATTORNEY WEED: At least as a draft.
COUNCILMEMBER BATES: And I don't recall that, so. But I just want to make sure that I was clear in my understanding of how that read now.
COUNCILMEMBER ROCHE: When you say "group homes," does that include like halfway houses and three-quarter houses and all that?
ATTORNEY WEED: Yes, sir.
COUNCILMEMBER ROCHE: Okay. I mean personally, I mean people have enough -- it's pretty tough out there as it is, and I think anything we can do to expand the opportunity for daycare is not a bad thing within reason. Not more than seven, obviously, but this is R-1, so -- which is not townhomes, so --
MR. HAEBERLIN: And recall in your previous

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ordinance before we deleted the uses common to every residential district, this was in every residential district. So an apartment complex -- a dweller in an apartment complex could have applied for a conditional use for daycare as the old Code was written.
COUNCILMEMBER ROCHE: Right, and that's why we're changing it.
MR. HAEBERLIN: Yes.
COUNCILMEMBER ROCHE: I don't think that we necessarily want daycares in apartments or townhomes.
MR. HAEBERLIN: So is it the consensus of the Council? I mean you could do a motion and a second to have daycare as a condition use up to three children or what is the will of the Council on that item?
COUNCILMEMBER ROCHE: As a conditional use, which would mean that anyone who wants to would have to come to Council before; and that way, the Council could look and see if they have a nice big yard and if they have a house that's not 700 square feet, and someone's living there and all that. So I would be fine with it as a conditional use. It seems reasonable.
ATTORNEY WEED: With regard to child daycare or with regard to the entire list?

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COUNCILMEMBER ROCHE: Just the child daycare, not adult daycare, I guess.
COUNCILMEMBER BATES: And Mr. Weed, is there any magic reasoning behind why the State said seven children?
ATTORNEY WEED: I think you know my response.
COUNCILMEMBER BATES: It's the football field.
ATTORNEY WEED: That's exactly right. Someone decided it would be so long.
COUNCILMEMBER BATES: And does it stipulate minimum age? Or could it be seven infants? Could it be seven 12-year-olds?
ATTORNEY WEED: I do believe there is -- there's some age brackets in there with regard to the different groupings. I don't remember them. I have them in my office and I could tell you first thing tomorrow morning.
COUNCILMEMBER BATES: Seven infants is a lot to take care of.
COUNCILMEMBER PITTMAN: It is regulated according to the age of the infants. You can only have so many of those.
ATTORNEY WEED: They're broke into age

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groupings but I couldn't cite it verbatim to you right now. I can tomorrow morning.
MR. HAEBERLIN: And recall in our past definitions -- and off the top of my head, you know, this is not what I memorize -- but in our past definitions, we did adopt the State definitions relative to infants, what Councilman Pittman is speaking regarding.
COUNCILMEMBER ROCHE: So if we made it a conditional use for up to seven, and they someone approached us for a conditional use, as part of that decision, could we say yes, but for five kids, or yes, but for some number less than the maximum allowed by this?
ATTORNEY WEED: Well, I think yes, you could. You know, tonight for example you could have required a sprinkler system from the church if you wanted to --
COUNCILMEMBER ROCHE: Right.
ATTORNEY WEED: -- and especially if they had agreed to it. I mean you can ask them for anything.
COUNCILMEMBER ROCHE: Right.
ATTORNEY WEED: And if you had determined that certain legitimate conditions on a particular

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1 piece of property were more appropriate, as long as
2 you had clearly articulable reasons that say five is
3 appropriate because your back yard is only so big or
4 whatever they might be, if they had logic, reason,
5 those would be defensible.
6 COUNCILMEMBER ROCHE: And I guess my only
7 point, though, is if we make it a conditional use,
8 that still gives us the option -- I mean we could have
9 conditional -- conditions on conditional uses --
10 ATTORNEY WEED: Absolutely.
11 COUNCILMEMBER ROCHE: -- if we wanted to.
12 We still have --
13 ATTORNEY WEED: Yes.
14 COUNCILMEMBER ROCHE: -- that discretion, so
15 we're not --
16 ATTORNEY WEED: Just for that purpose.
17 COUNCILMEMBER ROCHE: By making it a
18 conditional use, we're not throwing it all away and
19 saying everyone come and, you know, do whatever you
20 want. It's on a case-by-case basis decided by the
21 Council.
22 COUNCILMEMBER FLEMING: But I still think we
23 need to define what our expectations are for them to
24 have a children's daycare in their home. For
25 instance, a fenced back yard and that type of thing

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1 because we don't want just children, you know, running
2 all over the place as far as the streets are
3 concerned, for their safety.
4 So I think it needs to be removed from
5 permitted use and put over into conditional, but like
6 I said, we need to define a few more areas that ...
7 MR. HAEBERLIN: Well, the State does have
8 some play area requirements for daycare. Of course if
9 they're really not involved in these at-home daycares
10 too much, I mean I'm not for certain on whether those
11 play-area requirements apply. That's something we'd
12 have to ask of the State.
13 Generally I get uncomfortable with the up-
14 to-seven children. I was much more comfortable with
15 the three that was in the old Code, if anything, and
16 I'm just, you know, putting that two cents in.
17 As Councilwoman Fleming indicated, if
18 they're keeping their own children, they may have two
19 or three children, and if they have their for-pay
20 three children, you know, that could be up to seven
21 already. And then that's where my area of lack of
22 comfort doesn't exist [sic], because if you accept up
23 to seven and the person has three children of their
24 own, there are really 10 kids there in 500 square
25 feet.

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1 COUNCILMEMBER PITTMAN: And they also take
2 in -- they may have seven children all day, but after
3 school hours, sometimes they have two or three extras
4 that come in after school.
5 ATTORNEY WEED: And this Council has
6 religiously, if I can use that term, elected not to
7 define a family. So whose kids they are, they'd have
8 to create legislation to define whose kids they are,
9 whether it's -- you know, whether you're being paid or
10 not, you know, if that matters, because you could have
11 a situation where grandmother's being paid by the
12 parents to take care of the kids in sort of a stipend,
13 that type of thing. That's rather common.
14 COUNCILMEMBER PITTMAN: So if it's seven
15 children and you've got a mother and a grandmother
16 that's doing this, could you have 14 kids because it's
17 seven per adult?
18 ATTORNEY WEED: Yeah.
19 COUNCILMEMBER FLEMING: Per home occupation.
20 COUNCILMEMBER PITTMAN: But --
21 COUNCILMEMBER ROCHE: It's per address.
22 COUNCILMEMBER FLEMING: Per address.
23 COUNCILMEMBER PITTMAN: But I'm saying the
24 State, though, is --
25 COUNCILMEMBER FLEMING: I'm still more

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1 comfortable with three.
2 COUNCILMEMBER ROCHE: Well . . .
3 COUNCILMEMBER FLEMING: More than three?
4 COUNCILMEMBER ROCHE: Just sounds like what
5 we're saying is a conditional use up to three.
6 COUNCILMEMBER FLEMING: That's what I'm more
7 comfortable with.
8 We had a few mods.
9 COUNCILMEMBER ROCHE: Somebody want to make
10 a motion?
11 COUNCILMEMBER ALEXANDER: So are we going to
12 remove everything else listed?
13 COUNCILMEMBER BATES: Well, I'll take a stab
14 at this: to move daycare as a conditional use, with
15 the number of children not to exceed three and be in
16 compliance with State regulation and then to delete
17 everything following, "R-1 when state regulation . . .
18 is required."
19 COUNCILMEMBER ROCHE: And then the only
20 thing I'd add is it's child daycare, not adult
21 daycare.
22 COUNCILMEMBER PITTMAN: What about daycare
23 that's already existing in our city?
24 MR. HAEBERLIN: Well, they should have had a
25 conditional use, obviously, if they were residential.

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ATTORNEY WEED: If they were legal before, they're legal now. But if they were illegal before, they're still just as illegal and ought to be shut down.

COUNCILMEMBER FLEMING: And the old code read three, anyway. So we're not really changing the Code; we're just putting it over into R-1 rather than in the 902.

COUNCILMEMBER BATES: And Mr. Roche, I'll accept child.

COUNCILMEMBER FLEMING: Can we also include a conditional on the condition, of moving it to condition of the fact that they must have a view of the property to indicate that they have a fenced-in back yard or fenced-in property of some sort?

COUNCILMEMBER ALEXANDER: Would they have to submit a site plan?

MR. HAEBERLIN: Well, it is a conditional use, so yes, they will have to submit a site plan which could be an as-built survey of the property.

ATTORNEY WEED: They'll have to do a plan drawn to scale, how the proposed conditional use will conform to space limits, buffers, parking and loading and other conditions of the ordinance is what they have to submit.

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COUNCILMEMBER BATES: I think that we could use not having a fence as criteria to deny it.

COUNCILMEMBER ROCHE: Right. I think if we go down the road of trying to set up the criteria now, we'll be here forever and ever --

COUNCILMEMBER FLEMING: Okay.

COUNCILMEMBER ROCHE: -- versus just looking at the situation when it happens.

COUNCILMEMBER BATES: And the State regulations may stipulate what's in there as well.

COUNCILMEMBER ROCHE: I'll second that motion that I think you made.

COUNCILMEMBER BATES: Thank you.

MAYOR JENKINS: Any more discussion?

- - -

(No response)

- - -

ASSISTANT CLERK BRYANT: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

ASSISTANT CLERK BRYANT: Councilmember Bates?

COUNCILMEMBER BATES: Yes.

COUNCILMEMBER FLEMING: Councilmember Fleming?

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COUNCILMEMBER FLEMING: Yes.

ASSISTANT CLERK BRYANT: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

ASSISTANT CLERK BRYANT: Councilmember Roche?

COUNCILMEMBER ROCHE: Yes.

ASSISTANT CLERK BRYANT: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Yes.

MAYOR JENKINS: Okay, Scott.

MR. HAEBERLIN: Okay. Now that the concern of staff is addressed, of course the Council feel free to address any other concerns they had.

Mr. Weed and I have made a good faith effort, we believe, to replicate that which you requested of us throughout the rest of the ordinance, and you have received copies of them with the changes, and these have been prepared by Mr. Weed's secretary for a final draft to the City Council.

COUNCILMEMBER BATES: I do have a question for you on page 5.

MR. HAEBERLIN: Yes, sir.

COUNCILMEMBER BATES: And I apologize. I'm looking at version 5 dated September 23rd, so I

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understand that there's a version 5 dated September 24th.

ATTORNEY WEED: That's Scott's version. There's one more version after that, that I sent.

COUNCILMEMBER BATES: Okay. I just --

ATTORNEY WEED: But they're probably pretty close.

COUNCILMEMBER BATES: I just grabbed my version 5, so I apologize.

It's going to be -- yeah, it's page 5. It's about halfway down.

MR. HAEBERLIN: Okay.

COUNCILMEMBER BATES: And it starts with the sentence "in no case." Let me know when you're with me.

MR. HAEBERLIN: Uh-huh.

COUNCILMEMBER BATES: "In no case, shall the principal structure be rebuilt whereby a minimum distance from all leading edges of the principal structure," should that first "principal" be "accessory structure?"

ATTORNEY WEED: No. Not in our point of view, but --

MR. HAEBERLIN: Huh-uh.

ATTORNEY WEED: -- it's up to you.

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1 COUNCILMEMBER BATES: "In no case, shall the
2 principal structure be rebuilt" -- so you're
3 rebuilding a principal structure -- "whereby a minimum
4 distance from all leading edges of the principal
5 structure of 20 feet is not maintained between the
6 principal structure and the accessory structure."
7 So the principal structure must be 20 feet
8 from itself?
9 MR. HAEBERLIN: What we're saying is the
10 principal structure is always the prevailing criterion
11 and that when they lay out the new principal struc-
12 ture, that principal structure must be 20 feet from
13 any existing accessory that they're going to keep.
14 COUNCILMEMBER BATES: I understand that.
15 MR. HAEBERLIN: And I understand
16 semantically, I see where you're going with your
17 discussion on it.
18 COUNCILMEMBER BATES: It says, "the
19 principal structure shall be rebuilt whereby a minimum
20 distance from all leading edges of the principal
21 structure of 20 feet is not maintained."
22 Okay. I'm ignorant tonight, then, I guess,
23 so --
24 MR. HAEBERLIN: Well, no.
25 COUNCILMEMBER BATES: But that doesn't --

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1 MR. HAEBERLIN: I see how you're -- you're
2 reading it one different tone than we're reading it,
3 and maybe it's just the words are not --
4 ATTORNEY WEED: We're always open --
5 MR. HAEBERLIN: -- coming in the same.
6 ATTORNEY WEED: -- to suggestion --
7 MR. HAEBERLIN: Yeah.
8 ATTORNEY WEED: -- if you want to change it.
9 COUNCILMEMBER BATES: I understand the
10 intent. I'm with you. I do.
11 I just thought that it read. I made an
12 incorrect assumption, I guess, that the first
13 principal structure should have been an accessory
14 structure, but I understand.
15 COUNCILMEMBER FLEMING: Well, why shouldn't
16 it just read, "In no case shall the principal struc-
17 ture be rebuilt whereby a minimum distance from all
18 leading edges of the existing accessory structure?"
19 MR. HAEBERLIN: I think what Brian -- and
20 I'm listening to you, Councilwoman Fleming -- is
21 saying he believes -- is not between -- it should be
22 "is not maintained between the accessory structures
23 and the principal structure."
24 You're wanting to reverse that; correct? Is
25 that how you're semantically feeling it's appropriate?

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1 ATTORNEY WEED: There's got to be 20 feet
2 between the principal structure and any accessory
3 structure you want to pick.
4 MR. HAEBERLIN: Right.
5 COUNCILMEMBER BATES: I understand that.
6 ATTORNEY WEED: We could say that. I could
7 fancy it up a little bit, but we could say that.
8 COUNCILMEMBER BATES: Sure. I'm okay with
9 that. I just want to -- And this was under the -- is
10 this under the catastrophic?
11 MR. HAEBERLIN: Yes, sir.
12 COUNCILMEMBER ALEXANDER: It's under
13 Accessory Uses.
14 COUNCILMEMBER BATES: No. It's under
15 Accessory Uses based upon a catastrophic.
16 MR. HAEBERLIN: Yes, sir.
17 You know, the reason we have all this
18 discussion in here is --
19 COUNCILMEMBER BATES: Right.
20 MR. HAEBERLIN: -- because we discussed --
21 COUNCILMEMBER BATES: Right.
22 MR. HAEBERLIN: -- catastrophic events
23 relative to the principal structure being destroyed.
24 COUNCILMEMBER BATES: So if the principal
25 structure is being rebuilt, it's got to be 20 feet

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1 from accessory structures or you've got to move the
2 accessory structures to within 20 feet. Right?
3 If you want to build -- if you want to build
4 a building, it's got to be 20 feet away from an
5 accessory structure.
6 ATTORNEY WEED: Yes.
7 COUNCILMEMBER BATES: If you want to keep it
8 where it is right now and there's an accessory struc-
9 ture that's closer, you either have to move the
10 building or move the structure -- move the accessory
11 structure.
12 ATTORNEY WEED: Correct.
13 COUNCILMEMBER BATES: Right?
14 ATTORNEY WEED: And you get to pick which
15 one.
16 COUNCILMEMBER BATES: Right.
17 ATTORNEY WEED: You get to pick which
18 accessory structures you want to leave, you get to
19 pick which ones go. All we care about is the 20 feet.
20 COUNCILMEMBER BATES: Thank you. I'm good.
21 MR. HAEBERLIN: So really this section --
22 the reason why Mr. Weed was happy with our language
23 and I was as well, it's choice-oriented versus being
24 very prescriptive. It's choice-oriented relative to
25 the situation, and so we thought that it gave people

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1 lots of opportunities in this catastrophic event.
2 COUNCILMEMBER BATES: I'm good. Thank you
3 for the clarification.
4 COUNCILMEMBER ALEXANDER: I had just sort of
5 sentence structure on page 8 --
6 MR. HAEBERLIN: Yes, ma'am.
7 COUNCILMEMBER ALEXANDER: -- the one that
8 begins "Ordinance within R-1." "Any division of this
9 parcel be made."
10 ATTORNEY WEED: Yeah. Thank you. We need
11 to put in a "shall." We changed around so many times,
12 we just didn't put in a "shall."
13 It'll be, "Any division of this parcel shall
14 be made" -- "shall not be made" I believe is what we
15 actually want to prevent -- "which creates a lot
16 substandard to this requirement." But we'll do that.
17 Thank you.
18 On page 10, you know, we did fully define
19 catastrophic, and so if you guys want to look at that
20 if you have not had an opportunity to review that, we
21 did a very thorough discussion of what catastrophic
22 was and what it meant to the city so it's fully
23 defined for this section of the Code. "As used within
24 this section, 'catastrophic' shall mean involuntary
25 destruction by means of fire, flood, wind, earthquake

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1 or other natural geological karst, seismic and/or
2 terroristic occurrence -- e.g., acts of war -- which
3 is beyond the control of the homeowner. Catastrophic
4 shall not refer to destruction by willful neglected,
5 structural defect, mold, or other wood-destroying
6 organisms," such as termites, carpenter ants,
7 et cetera. So we did a pretty good -- I think we did
8 a thorough job of what catastrophic was to mean.
9 COUNCILMEMBER ROCHE: And flood is
10 definitely included, so --
11 ATTORNEY WEED: Yes.
12 MR. HAEBERLIN: Yes.
13 COUNCILMEMBER BATES: I want to thank you
14 both for doing a very thorough and accurate job of
15 coalescing all of the Council's questions, comments,
16 concerns into a what I think is a pretty accurate
17 representation of what we talked about for two
18 consecutive meetings. So thank you both for doing
19 that.
20 ATTORNEY WEED: You're welcome. I keep
21 waiting for a "but," but I'm delighted you said that.
22 COUNCILMEMBER BATES: I have -- I have --
23 COUNCILMEMBER FLEMING: No "buts," just a
24 motion.
25 COUNCILMEMBER BATES: I have no "but," so

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1 I'm -- Let me rephrase that. One "t."
2 I've got no further questions or comments.
3 MR. HAEBERLIN: Are there any other
4 questions from Council regarding this before we go to
5 the public hearing section, which we have not had?
6 Were there any other comments before we go
7 to the public hearing session for this item?
8 MAYOR JENKINS: Bob?
9 COUNCILMEMBER ROCHE: I'm good.
10 MAYOR JENKINS: Okay.
11 MR. HAEBERLIN: Okay. Public hearing.
12 Those who would like to speak for this ordinance
13 adoption, please raise your hand.
14 Nobody speaking for?
15 - - -
16 (No response)
17 - - -
18 MR. HAEBERLIN: Last try.
19 - - -
20 (No response)
21 - - -
22 MR. HAEBERLIN: Those who would like to
23 speak against this section, please raise your hand.
24 - - -
25 (No response)

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1 - - -
2 MR. HAEBERLIN: Seeing none again, turn it
3 back to the Council.
4 ATTORNEY WEED: You wore them all out, I
5 think.
6 MAYOR JENKINS: Bring it back to the table.
7 UNIDENTIFIED SPEAKER: Does that mean the
8 day care section also?
9 MR. HAEBERLIN: Pardon me?
10 UNIDENTIFIED SPEAKER: The day care?
11 MR. HAEBERLIN: Well, we addressed day care
12 within R-1. All we're doing right now is residential
13 single-family detached right now.
14 MAYOR JENKINS: Okay. I'll bring it back up
15 to the table.
16 COUNCILMEMBER BATES: I'll make a motion to
17 accept 901. Sorry. 903, R-1, Single Family.
18 COUNCILMEMBER FLEMING: With the amendment
19 of this evening.
20 COUNCILMEMBER BATES: Yeah, with the
21 adjustments made.
22 COUNCILMEMBER FLEMING: Second.
23 MAYOR JENKINS: Anymore discussion?
24 - - -
25 (No response)

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- - -
MAYOR JENKINS: Call the roll, please.
ASSISTANT CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
ASSISTANT CLERK BRYANT: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
ASSISTANT CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
ASSISTANT CLERK BRYANT: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
ASSISTANT CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
ASSISTANT CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
MR. HAEBERLIN: The next item we have, Mayor, is Section 601, which is Accessory Uses or Structures. This is recessed from 9/14/09, and again will have to hold a public hearing once we get through our workshop with the session -- with the Mayor and

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Council. So if you're looking at draft version 5, September 24th, '09, which was in your packages.
COUNCILMEMBER BATES: I've got two questions for you.
MR. HAEBERLIN: Yes, sir.
COUNCILMEMBER BATES: I'm on page 6 of 12.
MR. HAEBERLIN: Yes, sir.
COUNCILMEMBER BATES: The very last bullet point, the freestanding wooden or composite decks less than two feet in vertical height. What we just passed in 903 had a maximum of 100 square feet if I remember correctly. I just want to make sure that they're consistent.
MR. HAEBERLIN: They can be. You say maximum 100 square feet? Okay.
ATTORNEY WEED: And you're saying that's what's in R-1 now, Councilman?
COUNCILMEMBER BATES: I'm pretty sure that I read that.
ATTORNEY WEED: And I don't disbelieve you. I'm just curious.
COUNCILMEMBER BATES: And it might have been under the detached.
No. I apologize. It's a conditional use. Any detached structure without roof which is elevated

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above or below the ground more than two feet and more than 10 square feet in area.
So what we've got is an exempted accessory use that is a conditional use.
MR. HAEBERLIN: Well, remember R-1 is specific to that district. We're talking generally now within all districts.
COUNCILMEMBER BATES: Right.
MR. HAEBERLIN: So you're wanting to put a maximum on the freestanding wooden or composite decks as an exemption. You want to have some size exemption on that.
COUNCILMEMBER BATES: Not necessarily.
I just want to make sure that I was clear that we've got an exempted accessory structure that is a conditional use structure in R-1. Is that correct?
MR. HAEBERLIN: Well, this one would be without roof. So maybe we should clarify this exemption as without roof. Without roof.
ATTORNEY WEED: Freestanding wooden or composite decks without a roof, without roof. Without a roof, I think.
MR. HAEBERLIN: Less than two feet in vertical height and a maximum of 100 square feet.
So if you wanted to have these little decks

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basically like stepping pads in your back yard from one area to the next maybe to go over a stream buffer or water area, you could do that, and it would be permitted exceptions.
COUNCILMEMBER BATES: And the reason why I want to go this route is that this is -- as I'm reading this, it's a freestanding deck. It's not attached to --
MR. HAEBERLIN: Correct.
COUNCILMEMBER BATES: -- the structure. So it's free-floating out there in the front yard or back yard. I just don't want it to be, you know, 2,000 square feet of deck.
MR. HAEBERLIN: So think of them like stepping pads. If you have a back yard with a lot of topography, you might have this little series of squares which are detached from the house, that you step across maybe little water areas or ravines or whatever. And it still allows you to do this but it doesn't allow it to get out of control in terms of, you know, a 500-square-foot deck.
COUNCILMEMBER BATES: And I'm amenable to altering it. I just think we need to have some --
MR. HAEBERLIN: Okay.
COUNCILMEMBER BATES: -- maximum size there.

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COUNCILMEMBER ALEXANDER: I believe I asked a question previously and I believe you guys were going to get back to me, because it says something in here about the concrete piers, and I asked about the preformed deck footings that you can use to build your deck upon and I believe you were going to check with the building inspector on that.

MR. HAEBERLIN: Well, my understanding from Mr. Calcaterra is that those are used now within the context of being -- I hate to use the word "mounted," but encased in the concrete footing. In other words, just using those alone does not provide adequate anchoring to the ground. So if you just put these little concrete piers and build something on top of it, it can still lift up.

A lot of times, what people will do is anchor these into a concrete foundation or a form that they're doing, and he said those are generally acceptable. Of course, he's going to review each person's plan relative to their topography on their site.

COUNCILMEMBER BATES: And this is going to be a semantics question. I'm on 7 of 12, number 3. And it's going to be the second sentence, that begins with "No dwelling unit with a single-family attached residential district . . . shall be permitted to

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have," is that an "its?"

MR. HAEBERLIN: "Its." "Its own accessory structure."

COUNCILMEMBER BATES: Okay. Thank you.

MR. HAEBERLIN: I think we've addressed the concerns. And again, this is a living document. As we work with this, we may find little areas that we need to tweak. But for the most part, we've done and made a substantial move from what we had before, which, you know, we're really much more detailed than we ever were in terms of accessory. The prior code left a lot of decisionmaking in the hands of the person who was supposed to interpret the code.

COUNCILMEMBER ALEXANDER: And you did say that there were things in place to allow a construction trailer on the property as --

MR. HAEBERLIN: Yes, ma'am.

COUNCILMEMBER ALEXANDER: -- something is being developed. Okay.

MR. HAEBERLIN: I did put on page 9, 9 of 12 under number 9, "See also Section 606 regarding buildings on approved construction sites." So we have another section of the Code that addresses construction trailers.

On the discussion of dumpsters, because I

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know someone will ask this, basically what I did was I resolved it to dumpsters would be in rear and side yards. I basically took out the potential for a front yard and will address dumpsters further when we get through a rewrite of the dumpster ordinance. So basically I didn't even make it a consideration in the front yard.

I do think in the future there might be some problems, but of course these sites will be encumbered by topography and other features that would allow the Council to consider variances.

COUNCILMEMBER BATES: But it did reference the dumpster ordinance, and we can address the front issue in that dumpster ordinance, then; correct?

ATTORNEY WEED: Yes.

MR. HAEBERLIN: Uh-huh.

ATTORNEY WEED: And one of the traditional basic reasons to actually grant the variance -- And some cities don't do variances very well. They think that's just an excuse to rewrite code for one person. But one of the traditional reasons to do variances would be literal topographical or, you know, geological hardship not created by the owner of the property.

MR. HAEBERLIN: Correct.

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And we did say in here as well, we've not made an attempt to classify every type of accessory structure that could ever exist. I mean we just can't do that. And so we put a clause in there basically to say that, and I think it's important that that is in there.

We did address greenhouses as well and put requirements on there: living plant material, you know, legal flora and edible crop material. So I mean there's a lot, again, you can do in R-1 as well.

COUNCILMEMBER FLEMING: Thank you.

COUNCILMEMBER BATES: I did like the legal, legal flora. That was a nice touch.

And again, thank you guys for --

COUNCILMEMBER FLEMING: Yes.

COUNCILMEMBER BATES: -- coalescing our thoughts and questions and concerns.

COUNCILMEMBER FLEMING: It was very easy to read.

ATTORNEY WEED: You're welcome.

MR. HAEBERLIN: Are there any other questions on 601?

- - -

(No response)

- - -

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MR. HAEBERLIN: Okay. And then we'll need to have our public hearing session.
The Mayor is opening the public hearing. Those who would like to speak in favor of the petition, please raise your hand.
You'd like to speak in favor, sir?
MR. FRANK: I have a question. I have a question.
MR. HAEBERLIN: Well --
MR. FRANK: What does that -- when does that happen?
MR. HAEBERLIN: Well, it's really not a question part of the -- unless the Council wants to entertain a question.
ATTORNEY WEED: I would advise you to let the gentleman ask his question --
MAYOR JENKINS: Okay.
ATTORNEY WEED: -- whether, you know --
MAYOR JENKINS: Come on up to the microphone.
ATTORNEY WEED: -- technically you'll have to allow staff to answer it perhaps, but we'll see what his question is.
MR. FRANK: I just have one quick question.
MAYOR JENKINS: Come on up.

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ATTORNEY WEED: Sir, come to the podium, please.
MR. HAEBERLIN: And please state your name and legal residence for the court reporter as well.
MR. FRANK: It's Joe Frank.
I just had a question. If you have an existing property, an existing building, is this for residential only or does it also involve commercial?
MR. HAEBERLIN: Also involves commercial.
MR. FRANK: Okay. If you have an existing property with an existing building and there is no space to put a dumpster on the back of the building like some of the buildings are that have already been built for a number of years in the city, so how do you address the dumpster issue?
MR. HAEBERLIN: Mayor and Council, may I answer?
We're going to be doing a dumpster ordinance as well. We're going to be looking at revising the dumpster ordinance.
COUNCILMEMBER BATES: Mr. Frank, this ordinance does not address dumpsters at all, so nothing has changed.
MR. FRANK: Oh, it does not. Okay. I'm sorry. I just heard a conversation about a dumpster.

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COUNCILMEMBER BATES: Certainly understand.
MR. FRANK: Thank you.
COUNCILMEMBER FLEMING: That'll be taken at a later date.
MR. FRANK: Thank you very much.
MR. HAEBERLIN: Was there anyone else who would like to speak for the ordinance change?
Stuart? No? Are you against or for?
MR. ANDERSON: I'm another question. Sorry.
MR. HAEBERLIN: Come forward to the microphone and please state your name and legal residence.
MR. ANDERSON: Stuart Anderson, 2595 Barrylynn Drive, Doraville.
I'm wondering if the sentence -- I probably have an old version -- if the sentence about structure shall be used for agricultural purposes was taken out. I believe that it stated that we couldn't use accessory structures for agricultural purposes. Has that been addressed or taken out?
MR. HAEBERLIN: We addressed that within the context of the greenhouses with legal flora and edible crops.
MR. ANDERSON: So they're okay.
MR. HAEBERLIN: In greenhouses, yes, sir.
MR. ANDERSON: All right. And were flag

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poles ever discussed, the height of flag poles?
ATTORNEY WEED: Yes.
MR. ANDERSON: Did we finish that?
ATTORNEY WEED: 15 feet.
MR. HAEBERLIN: 15 feet in residential.
MR. ANDERSON: Thank you.
ATTORNEY WEED: We were feeling very patriotic at that moment.
COUNCILMEMBER FLEMING: And you can put those in the front, side or the rear.
MR. HAEBERLIN: Yes.
Was there anybody else who would like to speak in favor?
- - -
(No response)
- - -
MR. HAEBERLIN: Could everybody raise their hand that would like to speak against this ordinance? Anybody against?
- - -
(No response)
- - -
MR. HAEBERLIN: Seeing none, Mayor, I return it to you, the Council.
MAYOR JENKINS: Bring it back up to the

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1 table.
2 Scott, you got any more?
3 MR. HAEBERLIN: No, sir.
4 MAYOR JENKINS: Okay. Entertain a motion or
5 whatever.
6 COUNCILMEMBER FLEMING: I'd like to make a
7 motion to adopt Section 601, Accessory Uses, with the
8 additions or amendments that we considered this
9 evening.
10 COUNCILMEMBER BATES: Second.
11 MAYOR JENKINS: Anymore discussion?
12 - - -
13 (No response)
14 - - -
15 MAYOR JENKINS: Call the roll, please.
16 ASSISTANT CLERK BRYANT: Councilmember
17 Alexander?
18 COUNCILMEMBER ALEXANDER: Yes.
19 ASSISTANT CLERK BRYANT: Councilmember
20 Bates?
21 COUNCILMEMBER BATES: Yes.
22 ASSISTANT CLERK BRYANT: Councilmember
23 Fleming?
24 COUNCILMEMBER FLEMING: Yes.
25 ASSISTANT CLERK BRYANT: Councilmember

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1 Pittman?
2 COUNCILMEMBER PITTMAN: Yes.
3 ASSISTANT CLERK BRYANT: Councilmember
4 Roche?
5 COUNCILMEMBER ROCHE: Yes.
6 ASSISTANT CLERK BRYANT: Councilmember
7 Spangler?
8 COUNCILMEMBER SPANGLER: Yes.
9 MR. HAEBERLIN: Okay. The next item we have
10 is Section 1501, Conditional Use Criteria, and, again,
11 this was recessed from 9/14/09. We have not conducted
12 a public hearing, and actually it's been on several
13 agendas. I don't think we've actually discussed the
14 context of this in any real detail.
15 The reason why this ordinance was drafted is
16 that there were several members of Council who felt
17 that there was not enough guiding principles both for
18 themselves and for the staff, which is myself and
19 Mr. Weed as well, to review applications for
20 conditional use.
21 There may be a general understanding in the
22 public that conditional use is bad. No. They're
23 neutral. Conditional uses are neither good nor bad
24 but they'll evaluate specifically a specific site. So
25 every site is somewhat different, and there could be

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1 an opportunity for one item to work well on one site
2 and not work well on another, and that's one of the
3 reasons why conditional uses are within the Code.
4 As we discussed previously, this is going to
5 require conditional uses to come back to the Council.
6 So when they're approved, they would come back for
7 consideration of whether there is going to be a
8 hearing for the Council to terminate or to continue
9 the conditional use.
10 This item went before the Planning
11 Commission and the Planning Commission's recommen-
12 dation was that of denial. They shared the same
13 concerns with me that the staffing level is not
14 adequate to handle this and that we should think in
15 terms of maybe not just doing a year review but having
16 a strata -- you know, one, three, five, something like
17 that -- that Council could elect for renewals and so
18 therefore we would not constantly be in this cycle of
19 looking at conditional uses and renewing them.
20 So those were the discussion items at the
21 Planning Commission level.
22 COUNCILMEMBER BATES: Could you set an
23 arbitrary date of all conditional uses will be
24 reviewed July?
25 ATTORNEY WEED: Yes.

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1 COUNCILMEMBER BATES: And if you just got
2 approved in June, you'd be up for review in July, and
3 if you got approved the previous July, you'd be up for
4 review in July?
5 ATTORNEY WEED: Yes, that's legal.
6 COUNCILMEMBER FLEMING: But I think the
7 Planning Commission and possibly even ours would be if
8 we set it for a 12-month period.
9 If we set it for one to five years, then
10 when we permit the conditional use, we can make that
11 determination at the time dependent upon the
12 conditional use.
13 COUNCILMEMBER BATES: Understood. My only
14 concern with this 12-month ruling is that you'll be
15 reviewing potentially conditional uses every month,
16 and that's going to create a backlog potentially if we
17 start granting them, of having a year conditional use
18 review or a two-year, whichever the time cycle is, you
19 know, every month; whereas if we said arbitrarily
20 July, then we know that come every July, we're going
21 to have -- you know, all seven or all 30 if we go this
22 route are up for review that month versus one this
23 month and two next month and nothing in November but
24 seven in January.
25 MR. HAEBERLIN: And remember it'll be

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1 cumulative. Right now, let's say we have very few
2 conditional uses. Well, three years from now, we
3 might have a whole lot of conditional uses. So the
4 cumulative effect over time is my biggest concern.
5 COUNCILMEMBER ROCHE: Is there anything in
6 our current ordinance that would prevent us from
7 saying we will grant you a conditional use and you
8 have to come back in two years or five years or seven
9 years if it was a --
10 ATTORNEY WEED: Nothing that prevents it.
11 COUNCILMEMBER ROCHE: -- conditional use
12 that we were concerned about?
13 ATTORNEY WEED: There's nothing that allows
14 it either but there's nothing that prevents it.
15 COUNCILMEMBER ROCHE: Well, I guess that's
16 my question is if we had something that we were
17 concerned about and said, fine, we'll give you a
18 conditional use but in this case you have to come back
19 in two years.
20 ATTORNEY WEED: Yeah. The judgment calls
21 make me queasy, as a lawyer.
22 Arguably, you could do that, but what you
23 have to do is you have to establish what the criteria
24 are going to be -- the objective, reasonable, fully-
25 articulable criteria that everyone can follow, to make

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1 that determination about what would trigger it coming
2 before you: what bad act or what thing, you know,
3 would mandate the review.
4 So could you do it? Is it possible? Yes.
5 But then you'd have to have me draft language that
6 provided what the standards were that you would apply
7 to whatever fact presented itself, to determine
8 whether you wanted it called to hearing, and that
9 makes me a little nervous.
10 COUNCILMEMBER ALEXANDER: So if someone came
11 up in review in front of us and then we denied, how
12 would you stop them from doing their business?
13 ATTORNEY WEED: I don't think I understand
14 the question.
15 If someone was granted a conditional-use
16 permit --
17 COUNCILMEMBER ALEXANDER: Correct.
18 ATTORNEY WEED: -- they acted under it for a
19 year, let's say, and then they came before you for an
20 automatic hearing and you denied them, you send the
21 police out there and chain the door. You, you know --
22 MR. HAEBERLIN: Write a citation.
23 ATTORNEY WEED: You write citations every
24 day that they're in existence up to a thousand dollars
25 a day for a fine.

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1 COUNCILMEMBER ALEXANDER: And you would have
2 to have criteria of why they were okay this year and
3 not okay the following year.
4 ATTORNEY WEED: Right. And the criteria
5 that you would apply would be the standards that are
6 already in the Code.
7 COUNCILMEMBER ALEXANDER: That you used to
8 grant them the permit.
9 ATTORNEY WEED: Correct.
10 So bear in mind there's always the standards
11 and the facts. What you do is you apply the standards
12 to the facts. We are assuming that some event would
13 have occurred in that year time frame.
14 We'll take a massage parlor. We found out
15 that during the year time frame that you granted them
16 a conditional use that there was solicitation of
17 prostitution. That's plenty of reason to, you know,
18 not renew their conditional use permit that year when
19 they come up for review.
20 COUNCILMEMBER ROCHE: Well, wouldn't there
21 be other ways of shutting it down?
22 ATTORNEY WEED: There would be both.
23 COUNCILMEMBER ROCHE: Right; other than --
24 ATTORNEY WEED: And I would recommend you do
25 both.

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1 COUNCILMEMBER ROCHE: -- the zoning ordi-
2 nance.
3 ATTORNEY WEED: Yes.
4 MR. HAEBERLIN: Police Department, yeah,
5 regulatory codes.
6 ATTORNEY WEED: Yeah. There would be the
7 regulatory aspect of it but there would be the zoning
8 ordinance, too, and I would do both.
9 MR. HAEBERLIN: But really there's a lot of
10 conditional uses that won't have any regulatory code
11 attached to them.
12 ATTORNEY WEED: And I'll give you another
13 example. What if it were one employee at that
14 business, and of course the manager's always going to
15 say, "I didn't know anything about it. I disavow the
16 employee," you know, that still could be evidence on
17 the zoning front to not renew the conditional use
18 permit. It's perfectly legitimate.
19 COUNCILMEMBER ROCHE: I mean I like the part
20 about the standards and the criteria and all that but
21 I'm kind of -- I guess I could argue both sides of
22 this one. I'm not sure.
23 MR. HAEBERLIN: In previous jurisdictions --
24 and of course we have different legal counsel and they
25 have slightly different opinions -- conditional uses

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1 might have been granted for a certain time frame.
2 There may have been conditions on the
3 conditional use; for example, I don't know, install
4 one pedestrian bench or something. We always had
5 problems with those folks following through with that.
6 This would give you an opportunity. "That was a
7 stipulation you put forth, and it's been a year and
8 you've not installed your bench. You know, what is
9 the situation? We're thinking about revoking your
10 conditional use because of that."
11 I mean I know that's an arbitrary discus-
12 sion but I wanted to use that as an example, and, to
13 me, that's the type thing you'll be looking at.
14 ATTORNEY WEED: And I've represented juris-
15 dictions that do it both ways.
16 MR. HAEBERLIN: Correct.
17 ATTORNEY WEED: City of Hapeville for years
18 had a one-year -- had an annual renewal cycle where
19 the council had to literally hear and renew every
20 conditional use. Now they pretty much rubber stamp
21 them at the recommendation of the planner, but, you
22 know, if there was something strange that occurred,
23 I'm sure the planner would have said, "In this case,
24 something odd has occurred. You might want to think
25 about this."

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1 And there are other jurisdictions that don't
2 renew them at all. And eventually Hapeville decided
3 that they got tired of doing that, and, by gosh, once
4 you got your conditional use, it was part and parcel
5 of your zoning, and until something completely off the
6 wall happened, that was it. You never had to worry
7 about that again, never had to come before council
8 again. That's legal too.
9 COUNCILMEMBER ROCHE: I guess if there was
10 some sort of a public nuisance or whatever, I would
11 just assume that we would handle that through a
12 regular ordinance because we can always do that.
13 ATTORNEY WEED: Yes.
14 But I would say this. I'm going to go back
15 to my massage parlor ordinance. I mean I'm not
16 advocating either way, because either thing is legal
17 and we'll write it however you want.
18 But in the massage parlor example again,
19 once again let's say that you were granted your
20 conditional use. One employee gets arrested or
21 convicted of solicitation of prostitution or some
22 sexual, you know, offense. We can react to that in a
23 number of ways. We can react to it criminally in that
24 one employee can be prosecuted. However, criminally,
25 the owner of the operation, the manager, cannot be

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1 held vicariously liable for the acts of their employee
2 -- okay? -- unless that owner said go do that, and
3 they're never going to admit that.
4 So there you have that one employee being
5 punished, rightly so, but that business just keeps on
6 going. And that's why I'm saying to you that you
7 might want to have another option to deal with the
8 ramifications of that situation. You may determine
9 that, you know, it was a once-in-a-lifetime thing and
10 you believe the manager or the owner that it'll never
11 happen again or you may determine that this is how
12 they do their business and they're going to stop doing
13 it in Doraville.
14 COUNCILMEMBER ALEXANDER: I know you're
15 talking about a massage industry thing but yet we
16 punish the persons that hold possession of the alcohol
17 license if their server breaks the law. So why would
18 the same --
19 ATTORNEY WEED: You don't punish them
20 criminally. You punish them civilly. Because the
21 case law is very clear that you can't punish the owner
22 or manager of an operation that serves alcoholic
23 beverages for the offenses of their employee because
24 there's no vicarious liability under criminal law.
25 There's lots of vicarious liability that you

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1 can have under civil law, which means that while you
2 can't convict the manager for the crimes of the
3 employee, you can certainly shut the whole business
4 down because of that.
5 COUNCILMEMBER ROCHE: What about their
6 business licenses? Can we deny a business license?
7 ATTORNEY WEED: No, sir. A business license
8 is just a tax. It's just a tax.
9 COUNCILMEMBER ROCHE: Okay.
10 ATTORNEY WEED: Whenever you think "business
11 license," think "tax" and leave it at that.
12 A regulatory license, however, you could
13 deny that.
14 MR. HAEBERLIN: And certainly there is ample
15 room, and Mr. Weed will agree. In your regulatory
16 codes, there's ample room for improvement. Some of
17 them are very good and there's some that need a little
18 work.
19 COUNCILMEMBER FLEMING: So we're back to the
20 one year.
21 MR. HAEBERLIN: Well, I think one thing
22 that'll help is you have certain CUPs already in the
23 ordinance that are limited and are not allowed to have
24 one year. So I think that you could say on those
25 items -- and Mr. Weed may chime in -- on page 4 of 10,

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1 a CUP is granted on a twelve-month basis from the date
2 of approval unless stipulated elsewhere in the
3 ordinance or zoning ordinance, something like that.
4 ATTORNEY WEED: Sure.
5 MR. HAEBERLIN: So that'll move some of
6 those things off your plate a little bit. Okay?
7 Because like rodeos, I think we have about 30 -- I
8 can't remember the day time; maybe it's 14 days or
9 something -- rodeos and carnivals, something like
10 that. So there are some things that do not go for a
11 year, anyways. So those kind of remove that as a
12 consideration.
13 ATTORNEY WEED: And please also bear in
14 mind, I mean our position on conditional use permits
15 -- and I think this is our position -- is that they
16 are an exception to the rule. They should only be
17 granted very, very rarely. You know, either -- once
18 again, it either is a permitted use or it's
19 nonpermitted. Conditional uses, you know, that should
20 be -- that shouldn't be that common. So hopefully,
21 you're not going to have them racked, packed and
22 stacked for you. If you grant a lot of them, you
23 will.
24 COUNCILMEMBER BATES: Anybody know how many
25 we have right now?

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1 MR. HAEBERLIN: Not that many. Not that
2 many. Thinking just off the top of my head, four or
3 five. It's not that many.
4 COUNCILMEMBER FLEMING: But there again, I'm
5 getting away from the time element here, this is --
6 Mr. Weed, correct me if I'm wrong, but we have not
7 addressed permitting the applicant. We are giving the
8 conditional use to the address, still.
9 ATTORNEY WEED: Yes, because conditional
10 uses are zoning and zoning always goes with the land,
11 not the individual.
12 COUNCILMEMBER FLEMING: There is no away
13 around that.
14 ATTORNEY WEED: Not in my opinion, no,
15 ma'am. I mean it's -- I think the Zoning Procedures
16 Act is pretty clear that a conditional use would be a
17 zoning decision under the zoning code, and if it's a
18 zoning decision, it's zoning.
19 COUNCILMEMBER ROCHE: And I guess if it was
20 the other way, if I lived in one house and I got a
21 conditional use permit, I could move three doors down
22 and still have that conditional use permit if it was
23 based on the occupant or the owner.
24 COUNCILMEMBER FLEMING: Is that correct,
25 Mr. Weed?

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1 ATTORNEY WEED: Yes, ma'am, and I'm just
2 going to --
3 COUNCILMEMBER ROCHE: I'm just saying that's
4 why it's not that way.
5 ATTORNEY WEED: Right.
6 *36-66-3, subsection (4), subsection (E),
7 the grant of a permit relating to a special use of
8 property constitutes a quote/unquote zoning decision.
9 And a zoning decision includes any final legislative
10 action by a government that results in any of the
11 things listed including the grant of a permit relating
12 to special use of property.
13 I think it's just flat out defined as
14 zoning.
15 COUNCILMEMBER FLEMING: Well, can we limit
16 it to the suite address, then? Because again, I'm
17 going to repeat what I said before, I don't want to
18 see Plaza One -- if we give a conditional use to
19 anyone that goes into Plaza One, that whole building
20 there hypothetically could become all of the same
21 conditional use.
22 ATTORNEY WEED: And you're right. That is a
23 perfectly legitimate concern. Unfortunately, I think
24 the courts of Georgia made a very bad decision based
25 upon that one set of facts that they had with regard

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1 to the great expansion, the alleged expansion of a
2 junk yard where they were using only one part of it
3 for a certain use; however, the court said if they
4 allowed it for -- if the council allowed it for one
5 part for a certain use, they could do it throughout.
6 I think that's just the case law. I don't like it. I
7 don't think it's good case law, but I think that's
8 what we're bound by. And so if you grant one for one
9 suite, then, you know, that part of the zoning, it can
10 be replicated throughout the entire land mass.
11 COUNCILMEMBER BATES: But does that make the
12 conditional use null for the rest of that --
13 ATTORNEY WEED: No. I think --
14 COUNCILMEMBER BATES: -- property?
15 ATTORNEY WEED: -- people still have to come
16 and apply for it. And if you've got clearly articu-
17 lable objective reasons to say no, you can say no.
18 And one of those clearly articulable objective reasons
19 might be -- and I hate to keep going back to massage
20 parlors but that's what you're going to see more of
21 than anything else as far as conditional uses, in my
22 opinion. I think Scott can say no, but I think --
23 MR. HAEBERLIN: Churches. Churches.
24 ATTORNEY WEED: Yeah, okay.
25 All right. Both places are places where you

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can relieve sin.
In either case, you deal with the situation where you've got a conditional use and you get to determine based upon, you know, for example, market saturation or lack of parking or there's no buffering, there's no sprinkler system. Those are objective criteria that you can reach on an individual basis.
But going back to Councilman Fleming's question, would it be possible that after you've granted a conditional use in a suite, that it can go anywhere on the property? The answer to that question is yes. It doesn't mean that you can't deny it for some other correct reason.
COUNCILMEMBER FLEMING: Though we didn't put market saturation in here, I was trying to get to that based on population. Originally when I first brought all this up, I was trying --
ATTORNEY WEED: I remember.
COUNCILMEMBER FLEMING: -- to get to population: based on our population, X-number should only be allowed for conditional uses.
ATTORNEY WEED: And it's still my opinion that the best place for that will be in the massage code when we make the amendments to that -- that way, it'll never get as far as a zoning issue -- because

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that's so much easier to regulate.
Massage uses are plainly allowed to be regulated more intensely than most uses, much like alcohol beverage sales locations. And that way, if you regulate it up front, then you never get to the zoning question, and I still think that's the best way of handling it.
MR. HAEBERLIN: Same way with pawn shops. I mean those are common things.
COUNCILMEMBER ROCHE: And labor, day labor?
ATTORNEY WEED: Labor pools, yeah, exactly.
COUNCILMEMBER ALEXANDER: So we could apply the rules that we set forth regarding the labor pools based on demographics and population size to pawn shops and to massage?
ATTORNEY WEED: Yes, in my opinion.
COUNCILMEMBER BATES: Tattoo?
ATTORNEY WEED: Yes. If it's in the laundry list of uses that can be regulated in Title 48. I think it's 48-13-30. I'm pretty sure that's correct off the top of my head. If it's in that laundry list of uses you could regulate, regulate away.
MR. HAEBERLIN: And the same thing with regulatory fees, regulatory fees that would be separate and discrete from processing this application. So there are a lot of things that can be addressed in regulatory codes.

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COUNCILMEMBER ROCHE: Okay. So right now you're saying we only have about five or six or four or five current --
MR. HAEBERLIN: Not many.
COUNCILMEMBER ROCHE: -- conditional uses?
MR. HAEBERLIN: It's not many.
COUNCILMEMBER ROCHE: And it almost seems like we spend more time on this than we'd spend on conditional uses. I guess I'm just --
You know, where are we at with this? As written, if we grant a conditional use, then we have to come back every 12 months.
ATTORNEY WEED: Correct; from their anniversary date of --
COUNCILMEMBER ROCHE: From their anniversary.
The people that have conditional uses now, that doesn't apply to them.
ATTORNEY WEED: I would lean towards not. I would say that if they had a legal nonconf- -- well, it goes back to if they had a legal nonconforming use. If there was --
COUNCILMEMBER ROCHE: Right.

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ATTORNEY WEED: -- a legal nonconforming use, they don't -- it doesn't apply to them.
COUNCILMEMBER ROCHE: I'm just making sure we lay out the facts so we get it.
COUNCILMEMBER FLEMING: So each year, they pay the conditional use fee?
MR. HAEBERLIN: Huh-uh. They would only pay the conditional use fee at the time they made the original application. So you would bear the cost of all the subsequent hearings -- you, the Council.
COUNCILMEMBER BATES: Who'd be responsible for notifying the businesses? Is that a function of you? Ms. Biggers? the Clerk?
MR. HAEBERLIN: I guess it would be me, yeah.
ATTORNEY WEED: You mean to remind them that their one-year anniversary is coming due?
COUNCILMEMBER BATES: And that they've got a hearing coming up on X-date.
ATTORNEY WEED: Well, purely technically, I mean after you've been granted your zoning, you know, it's always the individual's responsibility to --
Ignorance of the law is no excuse.
COUNCILMEMBER BATES: But --
ATTORNEY WEED: Supposedly you're supposed

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1 to keep up with that type of thing and make sure that
2 there's nothing you've got to do.
3 COUNCILMEMBER BATES: But there would be a
4 requirement for us to have to notify Council of that.
5 ATTORNEY WEED: And there would be a hearing
6 under the ZPA, so all the ZPA rules for advertising
7 would be followed.
8 COUNCILMEMBER BATES: So we'd have to put a
9 sign up, we'd have to print it in the paper.
10 ATTORNEY WEED: No, you wouldn't have to put
11 a sign up because that's an exemption because you the
12 government would be bringing forth the matter as
13 opposed to the individual, but you would have to post
14 an ad and put it on the door and the usual notices.
15 COUNCILMEMBER BATES: And what would happen
16 if we forgot to do a 12-month review?
17 ATTORNEY WEED: Then if something bad came
18 up in month 13, you know, you might be out of luck.
19 COUNCILMEMBER BATES: You'd have to wait
20 another 11 months?
21 ATTORNEY WEED: I mean, you know, their
22 lawyer would certainly argue, well, you know --
23 I mean I would still think you could bring
24 it up under the terms of you could deal with the bad
25 act via the other regulatory ordinance, you know, we

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1 talked about tonight that Councilman Roche, for
2 example, has pointed out.
3 But as far as doing a zoning matter, you may
4 have missed your window of opportunity.
5 COUNCILMEMBER BATES: I'm just not excited
6 about having continual monthly reviews.
7 I think if we go this route, let's set a
8 month and that all conditional uses are up for review
9 in the month of November and that's just everybody
10 comes back in November.
11 COUNCILMEMBER FLEMING: Well, don't they
12 have to renew their occupancy permit in January?
13 MR. HAEBERLIN: It expires December 31st of
14 that year.
15 COUNCILMEMBER FLEMING: So do we get more in
16 December, renewing in December or January?
17 ASSISTANT CLERK BRYANT: They have until
18 March 31st without any penalty but you can't really
19 force them to come in December.
20 ATTORNEY WEED: A better example might be an
21 alcohol beverage regulation. Those are usually done
22 on an annual basis. You know, you can do them on a
23 calendar year basis, that they have to renew by -- you
24 know.
25 Usually most of the ordinances I've seen,

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1 you've got to renew by November the 15th. If you
2 don't renew by that date, then --
3 COUNCILMEMBER BATES: But this isn't an
4 applicant-initiated review. This is a government-
5 initiated review.
6 ATTORNEY WEED: Yes. That's what I'm
7 saying. You can set the date at whatever you want it
8 to be.
9 COUNCILMEMBER BATES: But if I'm following
10 Ms. Fleming's question, if we're going to do a review
11 of an applicant, we should probably do it before
12 they're paying their occupation tax versus, you know,
13 two months after they've paid their occupation tax and
14 then they get denied.
15 ATTORNEY WEED: I think that's very nice of
16 you. You're not required to do that, but that's very
17 considerate of the Council.
18 COUNCILMEMBER BATES: And correct me if I'm
19 wrong, Ms. Fleming.
20 COUNCILMEMBER FLEMING: No. That's where I
21 was going.
22 ATTORNEY WEED: Because your occupation tax
23 gives you no rights whatsoever.
24 COUNCILMEMBER BATES: I understand that.
25 ATTORNEY WEED: But if you -- you know,

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1 that's a very considerate thing for the Council to do.
2 COUNCILMEMBER BATES: I mean if we're going
3 to be mean, we might as well be mean -- mean and
4 conscientious than just mean.
5 COUNCILMEMBER ALEXANDER: So Mr. Haeberlin,
6 how are you going to keep up with these conditional
7 uses, I mean? Are you going to start building a
8 database or --
9 COUNCILMEMBER BATES: Can they be coded in
10 the occupation tax? I mean is there a way to code
11 them in the software that we've got?
12 ASSISTANT CLERK BRYANT: We could ask in our
13 Intergov to see if they can add something else to our
14 business license, but that means that Scott needs to
15 have access to it because right now he doesn't have
16 access to our software.
17 COUNCILMEMBER BATES: I generally like the
18 application process and the standards. I'm just not
19 sold on the renewal process.
20 COUNCILMEMBER ROCHE: Well, how about this?
21 I mean there's one sentence here. It starts on page 4
22 of 10 and it says, "A CUP is granted on a twelve month
23 basis from the date of approval," and there is within
24 thirty days, et cetera, et cetera.
25 I mean I understand that we need -- we may

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not be able to decide on that sentence or whether it's going to be whatever, but I think that the rest of the ordinance is valuable and I think it would help us a lot to pass that.

And I was thinking maybe just for the moment go ahead and consider passing the ordinance, you know, without this section and then we can come back and decide that -- you know, put that on next time. Would that be acceptable? That way, we can at least deal with what we agree on and get that done, and then the part that's still contentious, we can still sort that out. But that way, we're not throwing out the baby with the -- the whole thing just because of one thing that we're not necessarily in agreement on.

How would you feel about that?

MR. HAEBERLIN: The 12 months -- legally speaking, the 12 months could be 24 months, could be 36 months. That's just your recommendation as to the 12 month.

ATTORNEY WEED: Sure, yes.

MR. HAEBERLIN: So you-all could change that number anywhere you want.

ATTORNEY WEED: I got that from the Council. Somebody said 12 months when we were talking about it.

MR. HAEBERLIN: I think, though, that --

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ATTORNEY WEED: It could be whatever.

MR. HAEBERLIN: So you know, that's just something for you to consider.

COUNCILMEMBER ROCHE: Yeah. My only point is that if this one part is the sticking point, the renewal part, but the rest of it's okay, maybe we could move on and pass the rest of it and deal with the sticking point at some point.

MR. HAEBERLIN: And you know, you might have these -- these conditional uses, a lot of them may have expired, the business went out of business, they abandon it. There's all sorts of things that could happen in this time frame.

COUNCILMEMBER ROCHE: I understand.

MR. HAEBERLIN: So you know, there's a situation where don't assume that everything's going to be there at that 12-month mark for us to review. It may already have been gone.

COUNCILMEMBER ROCHE: Well, again, if there's only a handful of these --

COUNCILMEMBER FLEMING: So you're suggesting to delete that sentence about the 12-month period; correct?

COUNCILMEMBER ROCHE: If that's going to be a sticking point to get the rest of this passed.

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I mean I'm okay with it, frankly, I mean if we don't have that many conditional use permits, anyway, if we have four or five a year.

I realize it's a pain in the you-know-what to deal with them, but, you know, that's --

MR. HAEBERLIN: I mean maybe you --

COUNCILMEMBER ROCHE: -- just the nature of government.

MR. HAEBERLIN: Maybe you want to make it for 24 months. It gives us a protracted time frame, and hey, many of those CUPs again might have already expired. I mean the person lost interest in it, they didn't make money, they didn't like Doraville as a location or what have you. So on that 24-month time frame, I may find that these 12 CUPs, six of them are already gone, for example. So it may not be as onerous as we think it is.

COUNCILMEMBER ROCHE: Well, when I go to a dentist, they always make me address a little card and they stick it in a thing and they stick it in the mail six months later so I know to come clean my teeth, you know. It could be as simple as that.

MR. HAEBERLIN: Yeah.

COUNCILMEMBER ROCHE: You know, just have them address a little card while they're there, you

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know, with a tooth on it or something.

COUNCILMEMBER SPANGLER: So is your recommendation, Mr. Haeberlin, to go to 24 months?

MR. HAEBERLIN: I think it's something you should consider. You know, I can see a lot of people feel that the 12 months is really, really useful. Okay? But I think with Mr. Weed's proposals to address the regulatory codes, everything in the regulatory code can be certainly tightened up, and a lot of those industries that you're concerned about will be addressed otherwise. And then in a 24-month period, it's highly likely that many of these CUPs will just go out of business, you know. Probably just one in four businesses that open in any community survive more than 24 months. Questionable, okay, especially in this economy. So we may not have a huge amount of CUPs to renew. They may be out of business.

So I think that's something you should consider. I do think you should say no matter what that number is, a CUP is granted for whatever months for basis from the day of approval unless specifically described elsewhere in the zoning ordinance. So, then, all the things that are only granted for 14 days are automatic -- 14 days, that's it -- like rodeos and things of that nature. I think that would be good

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1 language.
2 COUNCILMEMBER FLEMING: So addressing
3 Mr. Bates's comment about having them come on a
4 specific month, wouldn't it be best to do it in
5 November, right, if they're starting their permitting
6 in --
7 COUNCILMEMBER BATES: Yeah, I mean it
8 would --
9 COUNCILMEMBER FLEMING: Because December
10 would be a rough month for all of us, but November?
11 COUNCILMEMBER BATES: They would know
12 whether or not they could get their occupation tax.
13 COUNCILMEMBER FLEMING: So instead of saying
14 within 30 days of the CUP anniversary, we'd say in
15 November.
16 MR. HAEBERLIN: Now, remember some CUPs will
17 not get an occupational tax. Like the church was a
18 great example. That's a CUP that doesn't get
19 occupational tax. So really, whatever month your --
20 COUNCILMEMBER FLEMING: But dr they not get
21 an occupational permit --
22 MR. HAEBERLIN: They get --
23 COUNCILMEMBER FLEMING: -- to move into?
24 MR. HAEBERLIN: They get a certificate of
25 occupancy, yes, ma'am --

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1 COUNCILMEMBER FLEMING: Right.
2 MR. HAEBERLIN: -- but they don't really get
3 an occupational tax license.
4 So there are some things I want to make you
5 aware based on what we did earlier tonight. There are
6 some things that are very unusual CUPs. A church is
7 one of them.
8 COUNCILMEMBER SPANGLER: Well, if we're
9 going to put a specific month like November, then
10 let's go for the 24 months.
11 COUNCILMEMBER BATES: If we did that -- and
12 I don't know that I'm in favor or against it, but if
13 we did that, then at a minimum a business would be
14 able to operate for 12 months before being reviewed.
15 So if they get a CUP in November of 2009 and
16 we just had our hearings, then the next one would
17 be -- Well, if we have hearings in November -- I'm
18 working myself through this so bear with me.
19 If it's a two-year review time, then they
20 would be operating for 23 months, right? because then
21 it would be November of 2011 when they were up for
22 review.
23 MR. HAEBERLIN: And they may not even be in
24 operation by then, certainly.
25 I think when you start strata-ing everything

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1 into one month, you got to realize, then that creates
2 a huge crash. What if we have months when we have
3 very little if no zoning activity when we could be
4 reviewing conditional uses?
5 COUNCILMEMBER BATES: But what if we have
6 months where there's 14 items?
7 MR. HAEBERLIN: That could always happen.
8 COUNCILMEMBER BATES: And then if we don't
9 review them in that month, then we've missed our
10 window?
11 MR. HAEBERLIN: Well, we have had some
12 problems with backlogs in agendas, but, you know, we
13 are addressing some monumental changes right now.
14 Do I feel sometime in the next three to five
15 years that we'll be completely through all development
16 and zoning regulations? I certainly hope so. And so
17 then our agendas would just be pure petitions; that's
18 it.
19 COUNCILMEMBER ROCHE: I would probably feel
20 most comfortable with what we have here, just 24
21 months from the anniversary. That way, it smooths out
22 and we don't have a big --
23 In November, I'm thinking about
24 Thanksgiving, you know. I'm not thinking about -- you
25 know. And that would be the same with the staff,

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1 because the holiday season starts and everything else.
2 And if it doesn't work, then we can always
3 come back and look at it again.
4 MR. HAEBERLIN: And you could certainly
5 always -- could they not schedule a hearing and then
6 recess it to a date specific if they had to?
7 ATTORNEY WEED: Uh-huh.
8 MR. HAEBERLIN: If there was, I don't know,
9 Thanksgiving, for example.
10 COUNCILMEMBER ROCHE: I mean I defer to
11 Councilwoman Fleming. I believe she basically was the
12 -- pretty much the sponsor of this ordinance, you
13 know, and that's --
14 COUNCILMEMBER FLEMING: Within 30 days of
15 the anniversary date? Is that what you're saying?
16 COUNCILMEMBER ROCHE: Sure.
17 COUNCILMEMBER FLEMING: Or suggesting?
18 COUNCILMEMBER ROCHE: As long as we had --
19 COUNCILMEMBER FLEMING: The 24 months.
20 COUNCILMEMBER ROCHE: -- right, 24 months.
21 But also we need the line in there about the --
22 COUNCILMEMBER FLEMING: Unless otherwise
23 noted in the ordinance.
24 COUNCILMEMBER ROCHE: Unless, right, for
25 rodeos and --

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When was the last time we had a rodeo?
MR. HAEBERLIN: We actually had gentlemen come in not even three weeks ago and get a conditional use application for that specific item, and I'm waiting to hear back from him.
COUNCILMEMBER SPANGLER: So this will be our first.
MR. HAEBERLIN: Well, my understanding from the Mayor, in the past, there have been some rodeos and there had been some traffic concerns relative to the location which was --
COUNCILMEMBER SPANGLER: I don't remember any rodeos. I remember --
COUNCILMEMBER ALEXANDER: Yes, there was.
COUNCILMEMBER FLEMING: Yeah. Down at --
COUNCILMEMBER SPANGLER: -- the Carlyles (ph) but not --
COUNCILMEMBER FLEMING: -- the end of New Peachtree. At the end of New Peachtree and Buford Highway on the left-hand side, it says rodeo. It used to be the International Ballroom if you'll recall.
ASSISTANT CLERK BRYANT: Yeah. That's the name of their business now.
COUNCILMEMBER FLEMING: I'm sorry?
ASSISTANT CLERK BRYANT: That's the name of

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their business now, something rodeo.
COUNCILMEMBER FLEMING: Is that where they want to put it?
ASSISTANT CLERK BRYANT: I think so.
MR. HAEBERLIN: I think that was the inquiry, yes, ma'am.
COUNCILMEMBER SPANGLER: Where?
COUNCILMEMBER ALEXANDER: Mr. Weed?
MR. HAEBERLIN: The old building products place.
MAYOR JENKINS: Yeah, that's what --
COUNCILMEMBER ALEXANDER: Mr. Weed, on the 24-month review, what about concerns of encumbering a future council? Is that just irrelevant?
ATTORNEY WEED: Well, a future council really isn't being --
Let's -- let's look at it like this. Conditional uses are zoning. You don't ordinarily review every piece of property that has a zoning on it every year. You simply zone it, and until something bad happens or until the applicant wants it changed or until you the government want it changed for some reason, you never revisit it again, literally. It never comes back up.
So I would say to you that I think what you

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need to bear in mind is whatever time frame you set if you actually do want to have a review, then, you know, pick a time frame that's going to be meaningful so that you can actually deal with anything bad that comes up through that time frame.
Do you understand where I'm going with that?
COUNCILMEMBER ALEXANDER: Yeah, but I don't think you answered my question.
ATTORNEY WEED: Okay. Ask it again.
COUNCILMEMBER ALEXANDER: The 24-month time frame, you're going to be -- there's a chance -- I just see that as encumbering a future council because we have elections.
ATTORNEY WEED: I don't think that's a real issue, because bear in mind that the next council can simply change the ordinance. The individual land owner will be vested to whatever degree they're vested underneath the ordinance that existed at the time that they got their zoning or got their conditional use.
COUNCILMEMBER ALEXANDER: And I guess that's another concern I have. These people are going to be vested, and if we all of a sudden decide to deny them, I mean they would -- I think that would create a proclivity to sue us.
ATTORNEY WEED: Well, you can sue anybody

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for anything, but the question would be, did you have -- based upon the standards set out in the ordinance, after you heard the facts and applied the standards, did you come to the conclusion that the standards were somehow violated? And if you came to that conclusion, then you did everything by the book, and if the court throws it out, the court throws it out. You did your job. That's all you can do.
MR. HAEBERLIN: You know, Mayor and Council, we can always try it for 12 months and see how it works. We could leave it at 12 and we can see how it works. We can always amend -- we can amend this if we don't think it works and we think it needs to be 24 or 36 or whatever, if you think it needs to be every six months, every nine months. You know, we can always -- we can always try it out as written and see what success rate we get with it and we'll know for 12 months, so --
I think it is important that you have that criterion, though. I mean I feel better as staff knowing there are more criterion for me to able to address with you rather than simply saying, you know, there's such minimal criteria.
COUNCILMEMBER BATES: That leads me to a really good question. Could you run hypotheticals for

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us? Take a couple of conditional uses in C-1 or C-2 and apply these standards so we can see if there's actually criteria that would deny.

ATTORNEY WEED: I think you could have legally, in my opinion -- this is a good example. One, though, you didn't make a decision so I'm not going to go into that. But a hypothetical example of a massage parlor.

Once again, what are the uses you're going to get? You're going to get conditional use permits on primarily two things: apparently, churches and massage parlors. And I don't -- off the top of my head, I can't really think of what else, but it's very limited. So bearing that in mind, you've got a narrow spectrum of things that you can actually -- you have to talk about at all. So it would probably be a massage parlor or a church that's going to be before you.

And then with regard to the four criteria that you have right now, based upon the site plan, you could have legally told the church that you weren't going to accept the new evidence they provided only tonight. That would have been a perfectly legal, valid thing to do. You agreed to accept it, which was also perfectly legal and valid.

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For the failure to produce that evidence, you could have made a decision that the 23 parking spaces that they originally submitted and signed under oath under what was their package were not enough and you could have denied that use. Perfectly legal. I can defend that. Clearly objective. You had a reason to do it. You could articulate the reason to do it, and parking is one of the criteria already in 1501, if you'd chosen to do that. But you weighed the evidence and you made a decision to approve, which was also fine, and you accepted that piece of evidence in, which was your call to make, which you did, so --

MR. HAEBERLIN: Same with buffering Mayor -- Murray.

ATTORNEY WEED: Yeah. There was no buffer.

MR. HAEBERLIN: There was no buffer.

ATTORNEY WEED: There is a clear buffer requirement or it clearly says that you must address buffering, which you did. And the evidence was before you from Scott that there was no buffering between the R-3 and the church. You could have denied it based on the fact there was no buffering. Perfectly legal. I can defend that; I can win that case.

You know, what you can't do of course is you can't -- you can't say no for no good reason. But if

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you've got a clearly articulable reason based upon the standards, that is all you have to do. The courts don't expect you to be perfect. They expect you to be honest. They expect you to apply the standards in your code to the facts.

Does that answer your question?

So as far as hypotheticals, we've simply added more criteria. Some of the criteria that I really like, I actually, from the original ordinance, you'll notice I kept them in paragraphs 7 and 8. Very specifically, I left them in on page 7 of 10. That's why they're there, because those are great criteria. They're objective, they're easy to understand, they're right there in black and white.

MR. HAEBERLIN: Yeah. And some of these, like some of these locations will never be adjacent to a neighborhood so there'll never be a consideration as to the neighborhood reaction. They might be surrounded on all four sides by commercial. So I mean every site's going to be different.

ATTORNEY WEED: All I'll ever ask of you as Council members is that you apply the standards to the facts, and whatever conclusion you reach, I can defend.

COUNCILMEMBER ROCHE: And the nice thing

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about having the standards is that someone that may be contemplating applying for a conditional use has a pretty good idea --

ATTORNEY WEED: Exactly. And if you're --

COUNCILMEMBER ROCHE: -- of what to expect.

ATTORNEY WEED: If you're wise, you yourself or you hire a lawyer who's going to go down that list of criteria and say, "I do this, so I meet that. I do this, so I meet that. I do this, so I meet that."

COUNCILMEMBER ROCHE: Right.

I have no more questions at this point.

MAYOR JENKINS: Anybody have a motion or --

COUNCILMEMBER ROCHE: Well, we have to go into a public --

COUNCILMEMBER FLEMING: We have to have a public hearing.

MAYOR JENKINS: Public hearing, yes, but do we need to change something before we --

MR. HAEBERLIN: If you guys are going to address motions, it's the textual. Not adopting the item right now, but textual. What would you like to change if anything?

MAYOR JENKINS: If you need to change it.

COUNCILMEMBER ROCHE: Well, to get this out of the way, I'll make a motion that we add to that

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paragraph on page 4 of 10, from the date of, within 30 days, whatever. We need to add somewhere in there, wherever is appropriate, the part about if it --

COUNCILMEMBER FLEMING: Unless otherwise noted.

COUNCILMEMBER ROCHE: Unless otherwise noted in another ordinance.

ATTORNEY WEED: I was going to put it, Councilman, that "A CUP is granted on" -- right now, "a twelve month basis unless otherwise provided in other ordinances." Well, I'll put, "unless another time period is provided in other ordinances," that's better, "and then from the date of approval," period.

COUNCILMEMBER ROCHE: And I'll move that. I'll make that motion to make that change.

COUNCILMEMBER FLEMING: Second.

MAYOR JENKINS: Anymore discussion?

- - -

(No response)

- - -

MAYOR JENKINS: Call the roll, please.

ASSISTANT CLERK BRYANT: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: No.

ASSISTANT CLERK BRYANT: Councilmember

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Bates?

COUNCILMEMBER BATES: Yes.

ASSISTANT CLERK BRYANT: Councilmember Fleming?

COUNCILMEMBER FLEMING: Yes.

ASSISTANT CLERK BRYANT: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

ASSISTANT CLERK BRYANT: Councilmember Roche?

COUNCILMEMBER ROCHE: Yes.

ASSISTANT CLERK BRYANT: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Yes.

MAYOR JENKINS: All right. Public hearing.

COUNCILMEMBER ROCHE: Well, no. Do we want to talk about the 12 months or the 24? I just wanted to get that piece out of the way.

MAYOR JENKINS: All right.

COUNCILMEMBER FLEMING: I thought you did it at 12 months.

COUNCILMEMBER ROCHE: No, I didn't. I just --

COUNCILMEMBER FLEMING: And Mr. Weed, you thought we did the 12 months?

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ATTORNEY WEED: That's how I read it.

COUNCILMEMBER FLEMING: Yeah. That's how he read it.

COUNCILMEMBER ROCHE: Well, that's because that's what it says today, right.

Did you want to modify that to 24 or have an anniversary date or whatever? I just wanted to make sure we got the thing in there about unless otherwise.

Well, I mean if we're okay with 12 months, we'll --

COUNCILMEMBER FLEMING: I'm okay with 12 months.

COUNCILMEMBER ROCHE: -- leave it at 12 months.

COUNCILMEMBER PITTMAN: Let's try with the 12 months. We could always change it later.

COUNCILMEMBER ROCHE: I make a motion we do nothing, then. How about that?

ATTORNEY WEED: Sometimes that's the right thing to do.

COUNCILMEMBER FLEMING: And leave the 30 day the anniversary date.

COUNCILMEMBER ROCHE: Yeah.

MAYOR JENKINS: Okay, Scott.

MR. HAEBERLIN: The Mayor is now at this

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time opening the public hearing session. Those who would like to speak in favor of this code amendment, please raise your hand. Ben? I've got two?

MR. FRANK: I have a question.

MR. HAEBERLIN: Okay, Mr. Frank. Would you come forward, please. Please spell your name and your legal residence.

MR. FRANK: Yeah. I'm Joe Frank.

I just had a question and hopefully it relates to it, but in case it doesn't, forgive me. In the case of that church that you-all approved, it was mentioned that that building did not conform to the setback of the apartment complex that's behind it. And my question was it appears to me that that building would not conform whether it was a church, whether it was any -- or whether it was used for any other kind of business, it still wouldn't conform to the setback. Is --

MR. HAEBERLIN: That's correct.

MR. FRANK: -- that correct?

MR. HAEBERLIN: That's correct.

MR. FRANK: So then what will the property owner do if the building -- since that building has been there since 1960-something? Is that just going to be a piece of wasted property since -- unless he

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1 keeps getting the variance on it every time, he would
2 never use it again, although when it was built it was
3 in accordance to the then codes.
4 So it was built to code, but apparently the
5 code has been changed since then, and now it becomes
6 useless, unusable.
7 So it seems to me that those properties that
8 are already built and are already in existence, the
9 new codes should not apply to those properties because
10 those properties were all built in good faith in
11 accordance to the city ordinance and in accordance
12 with what was approved at the time that it was built.
13 And by changing it now, you're basically
14 just entirely destroying the property unless the
15 property owner can depend on the City Council, on the
16 kindness and the generosity of the City Council to
17 keep giving a continuous variance on it, which is
18 going to be also a problem when he goes to lease it to
19 somebody. It's going to be very hard to get a tenant
20 who's going to have to depend each year on a city
21 council, and when the city council changes, he may get
22 it from one city council but then when the city
23 council changes, he may no longer get it from the
24 different city council, and that's going to be very
25 hard to get anybody to rent that space.

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1 MAYOR JENKINS: I guess we'll have to deal
2 with that at each time that it comes up.
3 ATTORNEY WEED: Well, that's -- yeah.
4 MR. FRANK: Well -- well, that --
5 ATTORNEY WEED: Mr. Frank's understanding of
6 the law is completely incorrect, but that's neither
7 here nor there. He's can hire a lawyer. He's got --
8 he's hired lawyers. They can explain how the law
9 works to him.
10 MR. FRANK: Now, what I'm saying --
11 ATTORNEY WEED: You've said a lot tonight,
12 and now I can try if Council wants me to.
13 MR. FRANK: Well, what I was saying is and
14 what I'm asking the Council to do is to say if the
15 property has been built and it has already been there,
16 it was obviously built in accordance to the -- to what
17 was acceptable at the time that it was built, because
18 it was built, it was approved by the City. the permits
19 were given and everything of that.
20 I don't think it is right to come back after
21 several years and change everything which makes that
22 property now totally unusable, worthless. This is
23 what I'm saying. And I think it not necessarily
24 approve. And that should apply to each and every
25 property because a lot of properties on Buford Highway

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1 don't meet the current codes. Buford Highway has been
2 widened and a lot of property has been taken way, so
3 parking lots are a situation. Setbacks. I don't know
4 what the ordinance is now, but at one time you could
5 build right up to the property line and now it's
6 coming back and saying, well, there's supposed to be a
7 setback. So there again -- Or maybe the property that
8 is behind it changed zoning. So you know, you have a
9 commercial property now that is adjoining an apartment
10 where an apartment is a residential. But the fact
11 that the property behind might have been O&I, then it
12 got changed to an apartment, now makes your property,
13 the subject commercial property, not in compliance.
14 So it should be grandfathered in to whatever
15 has been there. Should be grandfathered in, and this
16 is what I -- this is my -- what I'm trying to say is
17 it's okay, what you're doing is fine, but it should
18 apply going forward rather than being applied to the
19 properties going backwards, the properties that are
20 existing. It should apply to the new properties, to
21 the new construction, to the new development rather
22 than applying also to the existing ones. That's what
23 I say.
24 MAYOR JENKINS: Thank you.
25 MR. FRANK: And is --

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1 MAYOR JENKINS: Thank you, Frank.
2 MR. FRANK: And is there anything that can
3 be done on that? Thank you.
4 COUNCILMEMBER ROCHE: I think this ordinance
5 only applies to new conditional uses going forward;
6 right?
7 MAYOR JENKINS: We deal with each -- in the
8 past, we deal with it now as we did tonight.
9 MR. FRANK: Okay.
10 COUNCILMEMBER ROCHE: On its own merits.
11 MAYOR JENKINS: And then all this is for new
12 construction.
13 MR. FRANK: Oh, this is for new construc-
14 tion and all of that?
15 COUNCILMEMBER ROCHE: New, yes.
16 MR. FRANK: Okay.
17 MR. HAEBERLIN: New conditional uses.
18 COUNCILMEMBER ROCHE: New conditional uses.
19 ATTORNEY WEED: Yes. Not for new con-
20 struction.
21 MR. HAEBERLIN: New conditional uses.
22 MAYOR JENKINS: Yeah.
23 ATTORNEY WEED: Mr. Frank, you should talk
24 to your lawyer, and I will never presume to know more
25 than Adam Hoffmeyer, so you ought to talk to him and

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1 get legal counsel.
2 MR. FRANK: Well, this is something for the
3 City's passing, so the City should be able to tell
4 whether it applies to the old or to new. I should not
5 have to go to a lawyer to --
6 ATTORNEY WEED: I think my client under-
7 stands that. I think the Council clearly understands
8 that.
9 MAYOR JENKINS: Yes, we do.
10 COUNCILMEMBER ROCHE: And this is new
11 conditional uses going forward. Whatever's there
12 today is still there.
13 MR. FRANK: Okay. Okay. I appreciate it.
14 ATTORNEY WEED: But Mr. Frank, a number of
15 things you said are not accurate and I just want that
16 to be on the record for any future litigation.
17 MR. FRANK: Well, that's why I was asking
18 from the City, from the City Council, to clarify it.
19 ATTORNEY WEED: If they pass the ordinance,
20 it'll be clarified and you can always seek legal
21 counsel with regard to the ordinance.
22 MAYOR JENKINS: Thank you, Joe.
23 MR. HAEBERLIN: And another gentleman, Ben
24 Crawford also.
25 MAYOR JENKINS: Is this for or against?

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1 MR. CRAWFORD: I'm Ben Crawford, 3959 Red
2 Oak Drive.
3 Actually, different. I think it should be
4 24 months, but that's up to City Council on how they
5 want to do this.
6 But I think it's important with conditional
7 uses some thought gets put into them when they get
8 applied and granted or denied, and I do think there
9 should be a review process where this City Council or
10 future city councils can go back and look and see if
11 things do change in a period of time. I think that it
12 would be better if you had 24 months, but 12 months is
13 a start and if it becomes too much of a problem you
14 can always change it.
15 But I think it's good to have oversight on
16 the conditional uses. A lot of examples were made
17 tonight on how things can change. Conditional uses
18 are such that you're allowing to come in with
19 conditions, therefore, it's a conditional use, and if
20 things -- if they don't live up to their end of the
21 bargain, it should be that the City Council has the
22 right to take that use away from them.
23 Thank you.
24 MAYOR JENKINS: Thank you, Ben.
25 MR. HAEBERLIN: Anyone else who would like

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1 to speak for the ordinance change?
2 Please also state your name and your legal
3 residence.
4 MS. GILLMAN: Good evening. My name is
5 Carol Gillman. My legal residence is 3344 Chestnut
6 Woods Circle, Doraville 30340-3296.
7 I favor oversight of this conditional uses.
8 I think it's imperative, I think it's relevant, and I
9 support the oversight. And if Mr. Haeberlin and the
10 Council is fine with 12 months, so am I.
11 COUNCILMEMBER FLEMING: Thank you.
12 COUNCILMEMBER PITTMAN: Thank you.
13 MR. HAEBERLIN: Anybody else for?
14 - - -
15 (No response)
16 - - -
17 MR. HAEBERLIN: Those who are against the
18 ordinance change, please raise your hand.
19 Stuart, would you come forward.
20 Anybody else?
21 - - -
22 (No response)
23 - - -
24 MR. HAEBERLIN: Anybody else?
25 - - -

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1 (No response)
2 MR. HAEBERLIN: No?
3 Okay. Mr. Anderson.
4 MR. ANDERSON: Stuart Anderson, Doraville,
5 Georgia.
6 I'm against this ordinance period about
7 conditional uses. We have in zoning permitted uses,
8 prohibited uses and variances. What we're setting up
9 here tonight is defense against lawsuits, discussion
10 of vested rights, reviews.
11 If we do pass this, I agree with everybody
12 that's spoken earlier that we certainly need a review
13 process.
14 We're setting up, once again, a review
15 process that's going to be extra work for the City
16 Council, et cetera, et cetera.
17 I disagree with Mr. Frank a little bit.
18 I agree with him that it's a constant threat
19 to businesses and it certainly should be grandfathered
20 or a pre-existing use, so I agree with that a hundred
21 percent.
22 But this -- what you're setting up not only
23 is lawsuits and discussion about lawsuits, vested
24 rights, reviews, more and more work, but it's a
25 constant threat to new businesses coming in.

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That's fine, Mr. Frank, that your business and businesses that exist that are nonconforming be grandfathered in. That's fairly standard stuff and it's not -- Murray, I'm not sure.

But nonetheless, what we're certainly setting up here is a constant threat to new businesses that are not -- that are in this conditional use category. We're setting up a whole lot of extra work, extra layers of zoning consideration that aren't necessary.

We have permitted uses, prohibited uses, and if somebody needs a variance or a special land use condition, then they should come before the City Council and the Planning Commission and go through that process.

I also think that if this is passed, the Planning Commission should be included in the process because this is a variance. This is a variance up front. If we let conditional uses go in or we have an ordinance about conditional uses, that is an up-front variance and the Planning Commission should be another filter for that as well, but I'm against doing it at all. You're adding a whole bunch of extra stuff that's not necessary. It's not --

I won't be redundant. I'm sorry. Thank

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you.

MAYOR JENKINS: Okay. Anybody --

MR. HAEBERLIN: Anyone else --

MAYOR JENKINS: -- else against?

MR. HAEBERLIN: -- against?

- - -

(No response)

- - -

MR. HAEBERLIN: Seeing none, return it to the Council, close the hearing, Mayor.

MAYOR JENKINS: All right. Thank you.

COUNCILMEMBER FLEMING: Mayor, may I ask Mr. Weed a question?

MAYOR JENKINS: Yes.

COUNCILMEMBER FLEMING: If we permitted a conditional use and after 12 months we decided for whatever reason to not renew their conditional use, we are denying the applicant. We're not denying the location. Okay?

ATTORNEY WEED: I don't agree with that but I'm listening to your question.

COUNCILMEMBER FLEMING: Let's take Clover Pla- -- I mean let's take Plaza One, for instance. Okay. So that person now is denied that conditional use, and Susie Jones comes in for an occupational

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permit and we have to give her that use -- I mean permit her for that. She doesn't even have to apply for a conditional use, does she? because it's --

ATTORNEY WEED: No.

COUNCILMEMBER FLEMING: -- already been granted.

ATTORNEY WEED: No.

If -- if -- Let's be specific. You named a certain location, and the use let's say is a massage establishment.

COUNCILMEMBER FLEMING: Okay.

ATTORNEY WEED: Nothing's changed, meaning although one -- although the zoning has changed for one suite in that unit and arguably in the future that use could be applied to any other part of it, when the next person comes in, it's still a conditional use and you would then have to -- your reason for not granting it would be greatly limited.

You'd really have to find some really good reasons to differentiate the second person from the first person who asked for it but it would be possible to do if you applied the standards, arguably.

But so yes, you could still deny other people, but your opportunity for a defensible decision for the second person that you're trying to deny and

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everybody thereafter keeps dwindling. So after you grant the one, the evidentiary level just increases as to why you'd be able to differentiate the first one from the second one.

COUNCILMEMBER ROCHE: If we adopt criteria, could we change the criteria later?

ATTORNEY WEED: Yes.

COUNCILMEMBER ROCHE: So if we granted a conditional use permit based on this criteria that perhaps we're going to pass tonight and then six months later we decide to change that criteria, then it comes up for renewal, we have new criteria.

ATTORNEY WEED: If Susie doesn't come in and apply during the time frame underneath the existing ordinance and she comes in after the ordinance had been changed, her criteria could be completely different than the person you granted it to, so -- and then she would be judged by the latter criteria.

COUNCILMEMBER ROCHE: Could we change the criteria and deny a renewal to someone we granted one to already?

ATTORNEY WEED: I think my answer to that is probably no. It would have to be judged based upon the --

COUNCILMEMBER ROCHE: I understand.

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ATTORNEY WEED: -- relevant criteria --
COUNCILMEMBER ROCHE: But at least --
ATTORNEY WEED: -- when you granted it --
COUNCILMEMBER ROCHE: -- we could put it --
ATTORNEY WEED: -- because of zoning.
COUNCILMEMBER ROCHE: -- going forward. Okay.
ATTORNEY WEED: They'd be grandfathered in.
COUNCILMEMBER ROCHE: I understand.
COUNCILMEMBER FLEMING: But once we've already permitted a conditional use, it's a permitted use for that property.
ATTORNEY WEED: It's still a conditional use. It's a permitted use as a conditional use on that property. It's both.
But the question would be when the judge -- when Susie walks in the door, the judge looking at it objectively and months later, he will say, "You better have a darn good reason to differentiate between the first person you granted it to and why you denied her."
COUNCILMEMBER ROCHE: And could that reason be new criteria?
ATTORNEY WEED: Sure. But that will be a completely different ordinance.

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COUNCILMEMBER ROCHE: Exactly.
ATTORNEY WEED: They're not even the same ordinances. You're not playing on the same ball fields anymore.
COUNCILMEMBER ROCHE: So we can get -- so that's one way to get past that.
COUNCILMEMBER FLEMING: We're not denying the property. We're denying the applicant.
ATTORNEY WEED: But what is the applicant applying for?
COUNCILMEMBER FLEMING: For the conditional use.
ATTORNEY WEED: Exactly. And the conditional use deals solely with the land. You're not denying the applicant anything. The applicant -- you don't care who the applicant is. The applicant could be a box, an empty box standing behind the microphone, or as my law professor used to say when he looked out at the 300 of us in our class, "To me, you're just a bunch of cabbages." It could be just a cabbage at the microphone. You don't care who's up there. What you care about is what is the use on the land.
You never deny an applicant. You would deny an application.

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COUNCILMEMBER FLEMING: Okay.
MAYOR JENKINS: All right, Scott.
COUNCILMEMBER ALEXANDER: Mr. Weed, in page 6 under number 3 under Expiration, my copy still says "discounted" instead of "discontinued."
ATTORNEY WEED: All right. Bear in mind, we -- yeah, we haven't revisited this since August.
MR. HAEBERLIN: A long time.
ATTORNEY WEED: Yeah. This is not a clean draft at all. This is the same one we had back then.
But thank you. I'll fix that.
MR. HAEBERLIN: I'll ask a silly question. Do we need to waive first reading? I'm just going to ask that.
ATTORNEY WEED: No. This has appeared on more than one agenda.
COUNCILMEMBER FLEMING: What was your question? I didn't hear it.
MR. HAEBERLIN: Whether we need to waive first reading. I just want to make certain.
COUNCILMEMBER FLEMING: No. I think we've read this several times.
COUNCILMEMBER PITTMAN: Yeah.
MAYOR JENKINS: Do I have a motion?
COUNCILMEMBER FLEMING: I'd like to make a

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motion to adopt Section 1501, Conditional Use, with the corrections so noted this evening.
MAYOR JENKINS: Second?
COUNCILMEMBER FLEMING: Reluctantly.
COUNCILMEMBER ROCHE: Second.
MAYOR JENKINS: Anymore discussion?
- - -
(No response)
- - -
MAYOR JENKINS: Call the roll.
ASSISTANT CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
ASSISTANT CLERK BRYANT: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
ASSISTANT CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
ASSISTANT CLERK BRYANT: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
ASSISTANT CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.

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ASSISTANT CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
MAYOR JENKINS: All right. We're going to take a five-minute break.
- - -
(Brief recess)
- - -
MR. HAEBERLIN: Item 6A, 6B and 6C, which are collectively R-2, R-3, R-4, I would like for you to recess these to October 26, 2009, so that the City Council has time to receive information from Mr. Weed and myself as well as the Planning Commission.
MAYOR JENKINS: Motion?
COUNCILMEMBER ROCHE: So moved.
COUNCILMEMBER FLEMING: So moved. Second.
COUNCILMEMBER SPANGLER: Second.
MAYOR JENKINS: Call the roll.
ASSISTANT CLERK BRYANT: Who was first?
COUNCILMEMBER FLEMING: Anybody.
MAYOR JENKINS: Call the roll.
ASSISTANT CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.

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ASSISTANT CLERK BRYANT: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
ASSISTANT CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
ASSISTANT CLERK BRYANT: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
ASSISTANT CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
ASSISTANT CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
ATTORNEY WEED: Now, Mr. Mayor, just as a purely procedural matter because it was clearly on the agenda, I would like to ask Council to go ahead and extend the meeting until after the completion of an Executive Session if we have one.
I've got 19 minutes -- 18 minutes until 10:00, and I don't think that's really required because these items were clearly listed on the agenda and they were public hearings, so I think that would supersede our regular, you know, ending meeting time

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anyway, but I'd like that to be on the record.
So if you'd entertain a motion and a second to extend the meeting for --
MAYOR JENKINS: Twenty minutes?
ATTORNEY WEED: Well, I'd say 30 probably. It all depends on how many questions you got.
COUNCILMEMBER PITTMAN: So moved.
COUNCILMEMBER SPANGLER: Well, don't even put any time limit on it because we're not going to keep it anyway.
ATTORNEY WEED: I'd prefer that, but that's up to you.
COUNCILMEMBER SPANGLER: Well, let's not put a time. We'll just extend the meeting --
COUNCILMEMBER PITTMAN: Just extend it.
COUNCILMEMBER SPANGLER: -- for whatever time is appropriate.
MAYOR JENKINS: Long as it don't go past midnight.
COUNCILMEMBER SPANGLER: It doesn't matter.
ATTORNEY WEED: It won't do that.
MAYOR JENKINS: Yeah, it does.
ATTORNEY WEED: No, sir.
MAYOR JENKINS: I'm serious.
COUNCILMEMBER PITTMAN: So moved.

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MAYOR JENKINS: We're not going into another --
COUNCILMEMBER ROCHE: Second. So seconded.
MAYOR JENKINS: Call the roll, please.
ASSISTANT CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
ASSISTANT CLERK BRYANT: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
ASSISTANT CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
ASSISTANT CLERK BRYANT: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
ASSISTANT CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
ASSISTANT CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
MAYOR JENKINS: Okay.
ATTORNEY WEED: And I'd ask -- Mr. Mayor, I'd respectfully ask the Council to consider going

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into Executive Session for the purposes of discussion of a possible acquisition of real estate.
MAYOR JENKINS: Okay. That's what I was going to ask the Council. Do you think it's necessary for us to have this under some of the new things that have come up?
COUNCILMEMBER ROCHE: I think so.
MAYOR JENKINS: Do you still think we need to go in?
COUNCILMEMBER ROCHE: Yes.
MAYOR JENKINS: Okay.
COUNCILMEMBER ROCHE: I'll make a motion that we go into Executive Session to discuss possible acquisition of property.
MAYOR JENKINS: Okay.
COUNCILMEMBER BATES: Second.
COUNCILMEMBER PITTMAN: Second.
MAYOR JENKINS: Call the roll.
ASSISTANT CLERK BRYANT: Who seconded?
COUNCILMEMBER FLEMING: Brian.
ASSISTANT CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
ASSISTANT CLERK BRYANT: Councilmember Bates?

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COUNCILMEMBER BATES: Yes.
ASSISTANT CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
ASSISTANT CLERK BRYANT: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
ASSISTANT CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
ASSISTANT CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
- - -
(Executive Session)
- - -
(A motion was made by Councilmember Roche to come out of Executive Session. The motion was seconded by Councilmember Fleming. The motion was passed by unanimous vote.)
- - -
MAYOR JENKINS: Meeting come to order.
Motion to adjourn?
COUNCILMEMBER SPANGLER: So moved.
COUNCILMEMBER PITTMAN: Second.

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MAYOR JENKINS: Call the roll, please.
ASSISTANT CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
ASSISTANT CLERK BRYANT: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
ASSISTANT CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
ASSISTANT CLERK BRYANT: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
ASSISTANT CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
ASSISTANT CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
- - -
(Meeting adjourned at approximately 10:50 p.m.)
-o0o-

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C E R T I F I C A T E

STATE OF GEORGIA]
COUNTY OF DEKALB]

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the proceedings were reduced to typewriting under my direction and control.

I further certify that the transcript is a true and correct record of the evidence given at the said proceedings.

I further certify that I am neither a relative or employee or attorney or counsel to any of the parties, nor financially or otherwise interested in this matter.

This the 29th day of October, 2009.

_____
Theresa Bretch, CCR
Permit No. B-755

[SEAL]

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