Staff Report
City of Doraville, Georgia
Planning and Zoning

MCC Public Hearing(s):
MCC public hearing scheduled for October 25, 2010 @ 6:30 p.m.

PC Public Hearing(s):
PC public hearing scheduled for October 21, 2010 @ 7:00 p.m.

Applicant: Kathryn M. Zickert and Dennis J. Webb, Jr., Smith, Gambrell & Russell, LLP, Attorneys for Halpern Enterprises

Request(s): Blanket variances for all C-2 Dimensional Requirements set forth in Ordinance 2008-33 and the development characteristics of the zoning code to thereby recognize the post-development scenario site conditions presently on-site.
The primary identified variances are the following:

Article XII (Table) Parking Variance (Reduction in Number of Spaces to 584):
Article IX, Section 910, Rear Building Setback Reduction;
Article XI, Sections 1101 through 1104, Eliminate Transitional Zoning Buffer Requirement Where Adjacent to Residential Zoned Land;
Article IX, Section 910, Impervious Lot Coverage Variance (Increase) from 85 percent as per Code to 96.02 percent.

Location: Parcel ID's:
18-297-10-020 (5165 Buford Highway); 1.1 +/- acres; C-2;

18-310-03-009 (5269 Buford Highway); 1.3 +/- acres; C-2;

18-310-03-003 (5197 Buford Highway); 10.695 +/- acres; C-2;

Tract Size: As detailed above.

PROLOGUE:

The town of Doraville was incorporated by an act of the Georgia General Assembly, approved December 15, 1871. In 1947, the Town of Doraville became the City of Doraville. At the time, the City was given the authority to extend the City limits at any time by ordinance. See also the History of Doraville, Georgia by Laura and Ken Barre, copyright 1995, Library of Congress Catalog Car Number 95-78654).

The earliest known zoning map of the City of Doraville (which has just recently been found) dates back to April 11, 1946. The map encompasses some of the property which is part of the six (6) lots which encompass the Halpern's PineTree Plaza Shopping Center (the Plaza). Any assertion that the property was developed at a time when wholly there was no zoning or regulations are wrong. The 1946 zoning map shows some of the Halpern property was "Business" and some was "Residential." There were only four (4) zoning

designations. Thus, at least some of the earliest portions of the Plaza (perhaps all of it) were developed with City regulations. Surely, most of the property was rezoned business or commercial before it was initially developed and then later sold to the Halpern family apparently in 1964. Halpern Enterprises engaged in further development and re-development of the Plaza. If portions of the Plaza were in the unincorporated DeKalb County there were also planning and zoning regulations. DeKalb County instituted zoning on September 1, 1956, and subdivision regulations in 1964 (one year after the establishment of the Building Department) – source John Calcaterra. Annexed land from the County would presumably carry lateral zoning and regulations in place with it to the City. There may be versions of the City zoning map between 1946 and the 1967 base map that have not been provided to Staff. The 1967 base map essentially represents the present City confines and all the Halpern property but in many different lot configuration(s).

VAR - Standards of Review (§ Section 1402 of Zoning Code);

(1) ***There are extraordinary and exceptional conditions pertaining to the particular piece of property in question due to its size, shape, or topography that are not applicable to other lands or structures in the same district.*** As has been established in the rezoning case being presented coincident with this petition, there is nothing that is peculiar to these three (3) sites which warrant blanket variances in light of the past activities which have occurred which bring us to the discovered zoning discrepancy which has been unequivocally established by the City's present Zoning Administrator. Cannot these three (3) lots be merged with other shopping center tax parcel(s) to create a more conforming situation and to reconcile all past errors with a shopping center facility in single ownership on one (and only one) C-2 compliant lot? Certainly, the City zoning ordinance sets forth the definition of a shopping center as a planned and unified development (Section 402 Definitions).

(2) ***A literal interpretation of the provisions of this Ordinance would deprive the Applicant of rights commonly enjoyed by other properties of the district in which the property is located.*** There has never been blanket variances within this jurisdiction of the magnitude being requested here (without further accommodation of the City's needs as well) that Staff is aware of. As a planner, the recommendation to the legislative body is that, absent a true hardship, the entire C-2 district must first be re-written if it is the desire of the Council to waive all existing regulations when the purported hardship(s) of the Applicant could be so easily remedied by lot consolidation. Other colleagues (e.g. the present City Attorney has presented the same argument before the Council in public meetings). The basis of zoning is the application of district requirements on a per lot basis and not averaged across many contiguous lots only one (1) of which appears to pre-date zoning and none, in this specific case, which have been applied for rezoning from R-1 to C-2.

(3) ***Granting the variance requested will not confer upon the property of the applicant any special privileges that are denied to other properties of the district in which the applicant's property is located.*** False. This situation should have never occurred with the proper past application of City Codes. Time after time, the City could have exercised its power to compel the rezoning of the tracts and the necessary lot consolidation supported by many versions of the zoning code and the subdivision regulations. Unfortunately, lack of in-house staff and poor record keeping would have made the situation presented difficult to resolve. These situations pre-date the present planning staff tenure.

The City zoning ordinance in Section 402, Definitions, supports Staff contention that in order for the Halpren properties to claim the benefit of parking numbers based on a criterion of shopping center that they must, in fact, be a shopping center.

"Shopping Center means a group of commercial establishments having a building composition that is an architectural unit and ***<u>is not a miscellaneous assemblage of stores; planned, developed, analyzed as a unit</u>****, related in location, size and types of shops to the trade area that unit serves,* ***<u>and providing on-site parking in definite relationship to the types and sizes of stores.</u>***

Clearly, the site was not developed as a unit as it has evolved not only in lot composition with the addition and rearrangement of lots but never the consolidation of these lots to allow the analysis of the disparate tracts as a unit.

Parking is a zoning defensible argument because it is exclusively encoded in zoning.

The existing parking code already provides a zoning relief function for reducing required parking – the installation of landscape parking lot islands. The Applicant has refused all suggestions thus far from the City Planner and City Arborist to install islands or to provide a long-term plan to stage these island installations as the property continues to evolve and investment can be made. The City was and remains amicable in working with the Applicant.

(4) ***The requested variance will be in harmony with the purpose and intent of this Ordinance and will not be injurious to the neighborhood or to the general welfare.*** False. The present Ordinance does not facilitate the continued recognition or advancements of these lots absent mediation with the City. The blanket variances being granted absent true hardship may invalidate the Ordinance and Staff questions why they are even being entertained but has discharged his duty to put these items before the City Council.

(5) ***The special circumstances are not the results of the applicant.*** False. The Applicant has acknowledged fully within several correspondences to the City that they have been aware of the disparate zoning of the collective shopping center property and have proceeded with development and re-development of the property time and time again.

Based on the legal consultation with the City Attorney, the jurisdiction – the City – cannot be held to any probable improper actions of past administrators of the Code no matter how well intentioned or, perhaps, misinformed they were.

There are no compelling reasons to explain why these same Applicants applied for much of the same variances in 2001 if they are not needed.

(6) ***The variances requested is the minimum variance that will make possible the legal use of the land, building or structure.*** False. Much of the situation(s) which necessitate the variances can be remedied with lot consolidation and the installation of landscape islands. The Code generally supports decreasing non-conformity. The Applicant's attorney has not generally expressed a willingness to move forward in partnership with the City to achieve this worthwhile and long warranted objective.

(7) ***The variance is not a request to permit a use of land, buildings, or structures which is not permitted by right in the district involved.*** False. Not all the existing three (3) C-2 lots contain uses which can be alleged to be legal non-conforming given only one (1) may appear to pre-date the first inception of zoning. Additionally, the CU for ATM on one of these C-2 zoned lots is not a use permitted by right in the district but rather a Conditional Use.

Recommendation(s):

Based on the fact findings presented in the rezoning case and the variance criterion contained herein, the Department recommends **Denial** of all the requested variance(s) discussed herein for the properties identified as 18-297-10-020 (5165 Buford Highway); 18-310-03-009 (5269 Buford Highway); and 18-310-03-003 (5197 Buford Highway).