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:

Request(s): Rezoning from R-1 to C-2. The blanket zoning variances are a separate case report.

Location: Parcel ID's 18-297-10-023, 18-297-10-024; and 18-297-10-025 for properties described as "0 Raymond Drive – Rear" and being a portion of the former Northwoods Subdivision Lots 11, 10, and 12, Block "C", Unit 6 respectively – 18-297-10-023 (Lot 11); 18-297-10-024 (Lot 10) and 18-297-10-025 (Lot 12) such properties having been previously/presently addressed as 3484 Raymond Drive (Lot 10), 3488 Raymond Drive (Lot 11), and 3492 Raymond Drive (Lot 12).

Tract Size: Approximately 0.114 +/- acres in total all three lots

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).

Rezoning Standards of Review (Section 1603);

(1) ***The existing uses and zoning nearby.***

The three (3) R-1 zoned lots being rezoned from R-1 to C-2 are surrounded by predominantly C-2 zonings (the PineTree plaza Shopping Center tracts – the "shopping center") and on the east by the R-1 zoned lots within Northwoods Subdivision from which they were subdivided (albeit without apparent approval from the respective authenticating agents). These lots within Northwoods Subdivision are developed as single-family detached structures for residential occupancy while the Halpern R-1 zoned lots are being used for commercial uses.

(2) ***The extent to which property values are diminished by their particular zoning restriction.***

The properties have been in no way diminished by their particular zoning designation apparently since their commercial use has not been deterred by the existing regulations and the need for compliance since the time they were first created and acquired. The subject properties were R-1 on the 1967 base zoning map and clearly intended for residential occupancy as part of a platted R-1 subdivision (Northwoods Subdivision plat of record).

(3) ***The extent to which the destruction of property values of the subject property promotes the health, safety, morals, or general welfare of the public.***

Concern is raised how the health, safety, and general welfare of the public have been impacted by the incompatible land use situation created for the adjacent neighborhood and its inhabitants by way of apparent non-compliance with City codes.

(4) ***The relative harm to the public as compared to the hardship imposed upon the individual property owner.***

There are undetermined hardships for all parties involved. Clearly, the abutting R-1 property owners within the platted Northwoods Subivision whose subdivision lots were diminished in size to become part of the PineTree Plaza assemblage suffer the most immediate hardship in terms of zero (0) transitional buffer between R-1 and C-2.

The R-1 portion of PineTree is clearly not preserved as a transitional buffer given the only apparent vegetation that exists is on the chain-link fencing between the properties and clearly this is not planned, planted, maintained or managed by generally accepted horticultural methods with reference to the buffer requirements of the ordinance.

The Comp Plan notes on Page 21 that "In some areas of Doraville there is poor separation or buffering of incompatible land uses."

The legislative authority using the framework of their regulations may conceivably be an experiment in examining hardship to balance the needs and desires of the Applicant relative to the community absent a court test.

(5) ***The suitability of the subject property for the zoning proposed.***

The subject property represents as-built conditions that are not ideal given the three (3) R-1 zoned properties under review herein for rezoning to C-2 currently contain dumpster and refuse areas which may produce objectionable odors for adjacent residences in addition to having no transitional zoning buffer.

(6) ***The length of time the property has been vacant as zoned, considered in the context of land development of adjacent and nearby property.***

The property has inappropriately been used as part of a commercial entity despite its zoning as R-1 for many years. Clearly, this could be viewed as a failure of enforcement and long standing need for corrective action. **Lawful use of the properties is the key even if the lots could be proven to exist prior to regulation. What is lawful about using R-1 as commercial?**

(7) ***Whether the proposed zoning will permit a use that is suitable in view of the use and development of adjacent and nearby property.***

The subject request (three (3) land swaps from R-1 platted residential subdivision lots) as C-2 could be viewed as a detriment to the adjacent R-1 residences but an improvement to the collective C-2 property which we generally view as a shopping center. Without a doubt, the City does not seem to have exercised any review of the potential non-conformity created by the property owner's acquisition of portions of residential lands. When the purchase of these residual R-1 tracts occurred in 1971-1972 per deeds supplied by the Applicant, the Doraville, Georgia Subdivision Regulations (Ordinance 133, effective October 2, 1967) mandated the approval of this subdivision by the City of Doraville. No proof has been supplied which suggests the City authenticated this land transaction and creation of three (3) substandard R-1 lots. Ordinance 133 is still effective today albeit in its original format. A stand-alone ordinance (adopted since the current Staff tenure) creates a minor subdivision plat process for which the three (3) non-conforming lots are not eligible.

To Wit, the following needs to be quoted from Ordinance 133 (the subdivision regulations):

" Subdivision. The *division, development or redivision of a lot, tract or parcel of land regardless of how it is to be used into two or more lots either by plat or by a metes and bound description (emphasis added),* or the division or redivision of land involving the dedication of a new park, playground, street, or other public way or facility; or the location, realignment, or any other change in existing streets, alleys, or easements,

recreational areas, water areas, or other public improvements, and when appropriate to the context, shall relate to the act or process of subdividing or to the land subdivided."

Clearly, the Northwood Subdivision lots, as they were intended for residential development, were lawful platted lots of record.

Even the exemptions set forth in Ordinance 133, further implicate the impropriety of land division of the R-1 lots for inclusion in the shopping center property.

Quotation excerpts from Ordinance 133, exemptions:

"For the purpose of these regulations, the following are excepted: …"

"(b) The sale or exchange of parcels of land between owners of adjoining properties; provided, that *additional lots are not thereby created and that the* ***lots created are not reduced below minimum sizes required by these regulations or the Zoning Ordinance*** *(emphasis added)."*

Quotation excerpt from Ordinance 133, Section 63, Frontage:

" Each ***lot shall front upon a publicly maintained street*** *(emphasis added)."*

These were the 1971/1972 zoning requirements for R-1 zoned lots as adopted September 7, 1971:

Minimum lot size:

Area: 10,000 square feet except lots without public sewerage which shall have a minimum lot size of one acre, with no dimension being less than 170 feet.*

*Not met at the time of division.

Width: 85

Depth: 120 feet*

*Not met at the time of division.

Minimum Yard Size:

Front: 35 feet*

*Not met at the time of division.

Side: 10 feet

Rear: 25 feet*

*Not met at the time of division.

Minimum Setback from Street Centerline:

Major: 85 feet*

*Not met at the time of division.

Other: 65 feet*

*Not met at the time of division.

Maximum Height of Buildings:

35 feet

NOTE: the three (3) R-1 lots created by Halpern were/ are landlocked relative to frontage access onto a public way. The 1971/1972 zoning ordinance did not allow the uses which subsequently occupied these three (3) R-1 tracts absorbed into the commercial shopping center use. Two (2) of the three (3) transaction sales between Halpern and Northwoods property owners occurred after the adoption of the 1971 zoning ordinance and all occurred subsequent to the adoption of the 1967 Subdivision Regulations (Ordinance 133).

Conclusion: lacking proof to the otherwise of variances to the subdivision regulations/zoning ordinance, these R-1 lots owned by Halpern were/cannot be recognized by the City as legal lots. The three (3) R-1 lot splits owned by Halpern are not depicted on the 1946 zoning map or the base 1967 zoning map and thus they do not pre-date the first inception of zoning by the City but subsequently they clearly exist on all versions of the zoning map in possession of Staff in their present configuration and zoning as R-1. The 1967 subdivision regulations (Ordinance 133) clearly define and acknowledge the term zoning ordinance and compliance with zoning. The 1967 subdivision regulations do not provide for any variance procedure (administrative or otherwise). The 1971 zoning ordinance vested all power for zoning variance(s) with the Board of Zoning Appeals (BOZA) and not Staff. The 1971 BOZA was prevented by the zoning ordinance that "no variance may be granted for the use of land or building or structure that is not permitted by this Ordinance" and "no variance may be granted for conditions which were self-imposed by the applicant." Where is the proof of the lawful exercise of the subdivision regulations and the zoning ordinance? None has been provided to Staff nor can both have been achieved pursuant to the regulations.

Conclusion continued: the 1967 Subdivision Regulations require authentication of the plat by the Mayor per actions of the Mayor and Council AND the DeKalb County Board of Commissioners. No authenticated plat has been provided to Staff

Conclusion continued: the 1967 Subdivision Regulations Article VII, Remedies and Enforcement, Section 75, Plats not to be recorded until approved; lots not to be sold in an unapproved subdivision. "After the date of adoption of these regulations, no person shall record any subdivision plat until same shall have been finally approved in accordance with the procedures outlined herein, nor shall any lot be sold by reference to any subdivision plat recorded or not, if such plat be made after the effective date hereof, unless the same shall have been fully approved in the same manner." The past actions of the Grantor(s) and Grantee (Halpren) do not have to be acknowledged by the City. NOTE: Revisions to recorded plats must be approved by the City pursuant to the subdivision regulations and they must comply with the zoning ordinance.

(8) ***Whether the zoning proposal will adversely affect the existing use or unsuitability of adjacent or nearby property.***

Again, the City has no idea to the extent that the existing R-1 Northwoods lots have been remedied non-conforming by the actions of the then owner and the buyer (Halpern) when portions of these lots were sold without apparent compliance with City codes. Does corrective action (e.g. privacy fencing/plantings on adjacent property in lieu of a buffer; removal/relocation of dumpsters to a more distant location; and merging of disparate lots (as supported by Code) need to occur to mitigate these affects?

(9) ***Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned.***

The property has reasonable economic use as currently zoned R-1 when used in the capacity for which the City Codes and Comprehensive Plan clearly intended them to be. Given the strips (portions of R-1 lots) only occupy accessory/subordinate uses – dumpsters and drive lanes, approximately 15 feet in width more or less in tract size, what is the real value to the City in approving the rezoning other than to resolve multiple Code infraction(s)?

The City has engaged no intermediate land use map amendment to reconcile the Comp Plan with the present post development of commercial on the R-1 zoned lots.

(10) ***Whether the zoning proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.***

None apparently affected.

(11) ***Whether the zoning proposal is in conformity with the policy and intent of the land use plan.***

The property (the 15 foot strip comprised of three (3) lots used in commercial capacity) is classified as Neighborhood Preservation District on the Future Development Map; and, thus, the proposal is clearly not in conformity with the City's current/adopted plan.

(12) ***Whether there are existing or changing conditions affecting the use and development of the property which gives supporting grounds for either approval or disapproval of the zoning proposal.***

The City in no way benefits from the land use change without the combination of all six (6) lots comprising the shopping center property – including the three (3) lots under review herein. Only two (2) of the six (6) lots which make up the shopping center property are depicted in their present configuration of the base 1966 zoning map and none of the R-1 portions of the property are shown in their present configuration.

(13) ***The possible effects of the change in the regulations or map on the character of a zoning district, a particular piece of property, neighborhood, a particular area, or the community; and:***

Unlikely, the property without mitigated conditions required by the City, will not improve. Due to short tenure, Staff cannot attest to how the character of the area is unchanged only to the extent of what was viewed recently on a site visit. Unfortunately, the rear building elevations of the properties which are behind the three (3) subdivided lots within Northwoods Subdivision containing single-family dwellings do not appear to have benefited from the façade renovation relative to their potential view from the rear of their property. A possible viable win-win outcome (among many such options) for the City, the Applicant, and the Northwoods homeowners/neighbors may involve a repainting/cleaning/power wash of these rear elevations; fencing/buffering; and attention to the dumpster situation if the City Council elects to approve the rezoning with Conditions.

(14) ***The impact of the proposed zoning change upon pedestrian and vehicular circulation and traffic thoroughfare capacities and capabilities.***

None provided the site is not re-developed once rezoned C-2. If the existing structure is ever removed by any means, buffers as per Code (the same style as initially envisioned by 1971 zoning ordinance) and further strengthened in the effective zoning ordinance by the time of the alleged variances received by Halpern on August 13, 2001 with proposed property re-development which were in apparent violation of the Zoning Procedures Act due to notification time (less than 15 days) and purpose (incorrectly identifying the property as all C-2 and not C-2/R-1).

Recommendation:

Based upon review of the past and present adopted land use regulations, the Department recommends **Denial** of the three (3) rezoning requests for the properties identified as 0 Raymond Drive – Rear and being DeKalb County Tax Parcels 18-297-10-023; 18-297-10-024; 18-297-10-025 as lots from R-1 to C-2.

The requested variances will be addressed separately. None of the lots meet the C-2 requirements detailed in Ordinance 2008-33 as applicable to the creation of lots in C-2. The current zoning ordinance also forbids the creation of lots with zero public road frontage.