In The Matter Of:

City of Doraville

State of Georgia

City Council Meeting

October 25, 2010

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CITY COUNCIL MEETING

CITY OF DORAVILLE

STATE OF GEORGIA

PUBLIC HEARINGS

* * *

Transcript of the meeting 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 approximately 6:30 p.m., October 25, 2010.

* * *

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APPEARANCES:
Doraville City Council:
Hon. Ray Jenkins, Mayor
Councilmember Maria Alexander
Councilmember Brian Bates
Councilmember Karen Pachuta
Councilmember Donna Pittman
Councilmember Pam Fleming
Rhonda Blackmon, City Clerk
Murray J. Weed, City Attorney

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P R O C E E D I N G S

MAYOR JENKINS: Meeting come to order. Call the roll.

CLERK BLACKMON: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Here.

CLERK BLACKMON: Councilmember Bates?

COUNCILMEMBER BATES: Here.

CLERK BLACKMON: Councilmember Fleming?

COUNCILMEMBER FLEMING: Here.

CLERK BLACKMON: Councilmember Pachuta?

COUNCILMEMBER PACHUTA: Here.

CLERK BLACKMON: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Here.

CLERK BLACKMON: Councilmember Roche is absent.

MAYOR JENKINS: We have no minutes to approve, no Mayor's comments.

Department head reports. You don't have any, do you, Scott?

MR. HAEBERLIN: Sir, the only thing I'd like to do is go over how the meeting occurs, so if I could have just a few minutes.

MAYOR JENKINS: Okay.

MR. HAEBERLIN: This is really just for the benefit of those of you who have not been a guest with

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us before.

If you're an applicant tonight, you're going to come forward to the podium first and then you'll have your discussion with the Council; and second, then the staff will go, and third, we'll have a public hearing, and this is where the public can speak either for or against.

The Mayor will then close the public hearing and then the Council will deliberate on the item at hand. That's generally how most of the items are going to proceed tonight. I want to let you know --

And almost everybody who's an applicant has a copy of the agenda; correct? Anybody that's an applicant that does not have a copy of the agenda? Okay. Because it was a lengthy agenda, I want to let you know where you are on the agenda.

That's it, sir.

MAYOR JENKINS: Thank you. We have no public comments, no old business. All is new business, so I want to ask Scott to come on up.

COUNCILMEMBER ALEXANDER: Mayor, I sent out a --

MAYOR JENKINS: Excuse me.

COUNCILMEMBER ALEXANDER: I sent out an e-mail this afternoon asking to add a quick item -- it

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1 won't take five minutes -- to the agenda regarding the
2 sanitation RFP.
3 MAYOR JENKINS: Yes, ma'am.
4 COUNCILMEMBER ALEXANDER: I'd like to make a
5 motion to add a modification to the sanitation RFP to
6 the agenda.
7 MAYOR JENKINS: Second?
8 COUNCILMEMBER PACHUTA: Second.
9 MAYOR JENKINS: More discussion?
10 COUNCILMEMBER FLEMING: Will that be to the
11 end of the agenda? Are you putting that to the end of
12 the agenda?
13 COUNCILMEMBER ALEXANDER: I just wanted to
14 go ahead and knock it out. It's not going to be five
15 minutes --
16 COUNCILMEMBER FLEMING: Okay. That's fine.
17 COUNCILMEMBER ALEXANDER: -- if it's okay.
18 COUNCILMEMBER FLEMING: Okay.
19 COUNCILMEMBER ALEXANDER: Okay.
20 COUNCILMEMBER FLEMING: I wasn't sure.
21 COUNCILMEMBER ALEXANDER: Okay.
22 MAYOR JENKINS: Call the roll.
23 CLERK BLACKMON: Councilmember Alexander?
24 COUNCILMEMBER ALEXANDER: Yes.
25 CLERK BLACKMON: Councilmember Bates?

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1 COUNCILMEMBER BATES: Yes.
2 CLERK BLACKMON: Councilmember Fleming?
3 COUNCILMEMBER FLEMING: Yes.
4 CLERK BLACKMON: Councilmember Pachuta?
5 COUNCILMEMBER PACHUTA: Yes.
6 CLERK BLACKMON: Councilmember Pittman?
7 COUNCILMEMBER PITTMAN: Yes.
8 COUNCILMEMBER ALEXANDER: Included in the
9 sanitation RFP in Section 1.7 was a projected time
10 table. That's on page 5. And it had a date for the
11 offerors to submit questions to City Hall, of October
12 15th. City Hall was supposed to have responded to
13 those questions by October the 20th. We realized
14 today that that did not happen, so I would like to
15 make a motion just to extend the time to end of
16 business day tomorrow for City Hall to get all the
17 questions answered and posted to the web so we can
18 still keep our time schedule as far as opening our
19 bids and things of that nature.
20 MAYOR JENKINS: I thought it was Friday.
21 You say you'll close it tomorrow?
22 COUNCILMEMBER ALEXANDER: The questions were
23 supposed to have been answered by the 20th.
24 MAYOR JENKINS: Oh, okay.
25 COUNCILMEMBER ALEXANDER: And so this is

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1 just for the questions only.
2 MAYOR JENKINS: Okay.
3 COUNCILMEMBER ALEXANDER: Pursuant to page
4 8, Section 6.5 entitled Evaluation of Proposals
5 Procedure, paragraph 5, specifically the language:
6 The City reserves the right, stop, continuing on, to
7 issue such clarifications, modifications and/or
8 amendments as it may deem appropriate.
9 I make a motion to modify Section 1.7
10 Projected Time Table, on page 5 of the RFP to read,
11 "Addendum issued for pre-preproposal questions,
12 October 26, 2010."
13 COUNCILMEMBER BATES: Second.
14 MAYOR JENKINS: Any discussion?
15 COUNCILMEMBER FLEMING: I just have a
16 question in regards to that.
17 Did the RFP indicate that the answers would
18 be posted on the web or were they going to be
19 forwarded to the individual requesters?
20 COUNCILMEMBER ALEXANDER: I believe all the
21 answers were going to be posted -- questions and the
22 answers were going to be posted on the web so everyone
23 knows.
24 COUNCILMEMBER FLEMING: Thank you.
25 ATTORNEY WEED: That is correct.

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1 COUNCILMEMBER FLEMING: Thank you.
2 MAYOR JENKINS: More discussion?
3 - - -
4 (No response)
5 - - -
6 MAYOR JENKINS: Call the roll.
7 CLERK BLACKMON: Councilmember Alexander?
8 COUNCILMEMBER ALEXANDER: Yes.
9 CLERK BLACKMON: Councilmember Bates?
10 COUNCILMEMBER BATES: Yes.
11 CLERK BLACKMON: Councilmember Fleming?
12 COUNCILMEMBER FLEMING: Yes.
13 CLERK BLACKMON: Councilmember Pachuta?
14 COUNCILMEMBER PACHUTA: Yes.
15 CLERK BLACKMON: Councilmember Pittman?
16 COUNCILMEMBER PITTMAN: Yes.
17 COUNCILMEMBER ALEXANDER: Thank you.
18 MAYOR JENKINS: Is that all?
19 COUNCILMEMBER ALEXANDER: Yes, sir.
20 MAYOR JENKINS: Okay. Scott, let's get
21 number VIIIA; go ahead.
22 MR. HAEBERLIN: Please, I apologize if I
23 misspeak your name or correct me, please.
24 Rakesh Kumar Garg for AKG Globally. This is
25 a retail liquor store, which is Ordinance 2010-24,

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1 6500 Peachtree Industrial Boulevard, zoned C-2.
2 I'm going to be brief on these. I want to
3 show everybody where this is first before we invite
4 the applicant to come forward and speak about his
5 requested conditional use.
6 It is this location right here. This is
7 Peachtree Industrial Boulevard where Tilly Mill Road
8 comes in. This is Tilly Mill Road, the Home Depot.
9 This site right here, which is on the corner of PIB
10 and Tilly Mill Road. This is the city of Dunwoody up
11 here. There are some residential components in
12 Dunwoody on this side of the street.
13 So this is the location. I believe it was
14 called Holiday Liquors at one point in time. It is
15 the first request.
16 At this time, we invite the applicant to
17 come forward and speak regarding their conditional
18 use. Sir, you'll have to come forward to the
19 microphone, please, and when you come to the
20 microphone, please state your name for the record and
21 also too your legal address.
22 MR. GARG: My name is Rakesh Kumar Garg, and
23 hello, everybody.
24 COUNCILMEMBER FLEMING: Good evening.
25 MR. GARG: Good evening.

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1 The liquor store been there almost 38 years
2 in the city of Doraville, and I've been there almost
3 12 years now, I think.
4 This is the first time I heard that it was
5 C-1/C-2 things. So I just got application last month
6 that it need to be do from C-1 to C-2. And whatever
7 the requirement they request of me to submit, I did
8 submit. I'm pretty sure everybody have a copy of
9 that, the fact that I sent it and submit to him.
10 So I would like to continue the business
11 over there. I don't know what else to say.
12 COUNCILMEMBER BATES: I don't have any
13 questions.
14 COUNCILMEMBER FLEMING: I don't have any
15 questions for you.
16 MAYOR JENKINS: Scott?
17 MR. HAEBERLIN: I'll try to be as brief
18 because I know there's a lot of agenda tonight.
19 Obviously, before, this use was not allowed
20 in the zoning district but is now currently allowed as
21 a conditional use. That's the reason why we have the
22 applicant coming before us. And this is based on a
23 directive at the August 30th, 2010 meeting.
24 I did recommend approval of the requested
25 conditional use based on the specifics of the site and

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1 the standards of review that we have.
2 I did want to caution everyone that I'm only
3 looking at the conditional use. I did not evaluate
4 the specifics of the alcohol code for each applicant,
5 because that is actually the City Clerk's function. I
6 did in fact, however, do a memo to you regarding
7 liquor stores. Your local code has some distance
8 requirements that are over and above State law
9 requirements, so I want you to be aware of this.
10 As I stated previously, there is some
11 residential in proximity to the site. So even though
12 we may approve the conditional use, we won't know
13 whether they're going to get a liquor license until a
14 later point in time, and that will be in conjunction
15 with the City Clerk and the police department.
16 So I did recommend approval based on the
17 standards and there being no expansion in the square
18 footage footprint of the existing facility.
19 2009-28 is the conditional use ordinance,
20 and basically it says the Council can review these
21 uses every year if they wish so, or if they don't wish
22 so, they can let it continue. And there's currently
23 two retail liquor stores in the city. I am generally
24 supportive of these locations. I think they're
25 actually appropriately located.

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1 Now, again, the follow-up is that my
2 recommendation of approval is no assurance that
3 they're going to pass the muster of the alcohol
4 ordinance. That's one of the reasons why I did the
5 memorandum to the Council regarding that. You may
6 want to look at your local code and redefine the
7 distance from a private residence. That is something
8 you might want to do in conjunction with these
9 applications.
10 Are there any questions?
11 - - -
12 (No response)
13 - - -
14 MR. HAEBERLIN: Okay. At this time, the
15 Mayor would open the public hearing.
16 Those who would like to speak in favor of
17 the petition item, please raise your hand. Anyone
18 who'd like to speak in favor.
19 Seeing none, anyone who would like to speak
20 against the petition item, please raise your hand.
21 Again seeing none, I close it, bring it back
22 to you, the Mayor.
23 MAYOR JENKINS: Bring it up to the table.
24 Any comments from the table?
25 COUNCILMEMBER PITTMAN: So I actually have

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just one comment. My only concern is the loitering problems we have on your property. I'm very concerned about that. I was just wondering if maybe you could work on that a little bit harder.

MR. GARG: We can work on that. No problem. But the last time I have talked to you, City of Doraville have put a trash can over there. They come every week to pick that trash up. And my side of the parking lot, most of the time it's clean now.

And Spanish people were hanging over there. I think City of Doraville and Dunwoody, they're doing a very good job, so now I don't have much problem with those.

COUNCILMEMBER PITTMAN: Okay. And we do appreciate you working with us. I just -- there's been a little bit of problems in the last couple of weeks, so that would be my only problem.

MR. GARG: Sure. Whatever. We will work whatever it takes to fix it.

COUNCILMEMBER PITTMAN: Okay. Thank you.

COUNCILMEMBER FLEMING: In regards to our alcohol ordinance, either Mr. Haeberlin or Mr. Weed, prior to 2010, because we're still working on our distances, it would appear, based on the applicant's having occupied this particular location for 12 years,

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that the distances are correct at this time, or based on our previous ordinances or the distance regulations that were in effect at the time of the original application?

ATTORNEY WEED: Well, I'm going to answer that question two ways. The first answer I have to your question is that I think whatever answer I give you will be irrelevant in the context of a conditional use permit, meaning that I will answer your question to the best of my ability but I don't think you should apply any weight to the answer with regard to the approval or denial of the zoning conditional use permit.

COUNCILMEMBER FLEMING: Okay. Thank you.

ATTORNEY WEED: So that's my first answer.

If you still want an answer to your second question, I need some time to look up Chapter 3, and I'll try to figure that out, which I can do now or I can do later.

COUNCILMEMBER FLEMING: I think it needs -- because as soon as he finishes here, tomorrow morning, having been given the conditional use if we approve it, he'll be coming to the City Clerk -- is that correct? -- to apply --

MR. HAEBERLIN: That's correct.

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COUNCILMEMBER FLEMING: -- for his alcohol permit, or does he have a current one at this present time, Ms. Blackmon?

CLERK BLACKMON: I -- I cannot recall. He would have asked Ms. Bryant.

MR. HAEBERLIN: This is the one -- there is one that may have been issued in error, and I say that because one half of this building is a traditional package store where beer and wine is sold. One half the building is a full liquor store. So if they have been issued in error, that is correct, to this site, because of us not knowing the matrix of what's inside the building. So regardless, you know, if the CU is approved, it would go through the normal procedural process of the evaluation of a liquor survey.

Now, 12 years ago, based on what I recall, the liquor code would have been the same. However, there's been changing conditions in this area. Certainly, there's been some residential condominiums converted across the street, so there's been some changing conditions. I don't know that that was evaluated 12 years ago. I don't know that the staff evaluated the full context of the situation including the areas that were outside the city.

COUNCILMEMBER FLEMING: Right.

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MR. HAEBERLIN: So I think we'll need to evaluate it based on what's in effect today. And so like I said, I am still concerned about that distance requirement.

COUNCILMEMBER FLEMING: Okay, Mr. Kumar. Do you have --

MR. GARG: I've been there 12 years. There is no new residential construction in that area that I know of, and as you can see, the State law says it has to be 600 feet from any school ground, 300 feet from any other retail package store, 300 feet it must be from a church building, and 500 ... 300 feet from any government owned or operated alcohol treatment center.

COUNCILMEMBER FLEMING: Okay. Could --

MR. GARG: So that distance has been met, and there is no residential construction in that area for last 12 years.

COUNCILMEMBER FLEMING: Okay. Could you tell me, since we're not sure right this second whether you have the most current 2010 alcohol, beer and wine package store permit, do you have that certificate?

My apologies if he submitted it. I apologize.

MR. HAEBERLIN: Sir, if we could have you

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1 come forward. We've got a microphone, and it's just
2 -- it's making it difficult for the court reporter.
3 So I think what Ms. Fleming is talking about
4 is our local code imposes more severe regulations than
5 State law, and that's what Mr. Weed's looking up right
6 now.
7 COUNCILMEMBER FLEMING: Correct.
8 MR. HAEBERLIN: Okay.
9 MR. GARG: Just talking about the distance
10 by the State department. And even City of Doraville,
11 I think, changed the distance look like the last few
12 years. Before that distance were different, and if
13 you are -- I mean I could find that applicant -- the
14 paper you sent me with the application, I think that
15 will tell you.
16 Okay. The City of Doraville Court. It says
17 100 yard of the property line of private residence on
18 the same side of street. Hundred yards property line
19 from any public library or public park. Hundred yards
20 from property line of any church, chapel, monastery
21 and other place used for religious services. Two
22 hundred yards from property line of any college or
23 school. Two hundred yards from property line of
24 convict camp, penitentiary or other penal or
25 corrective institute (inaudible).

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1 COUNCILMEMBER FLEMING: Okay.
2 MR. GARG: So that is --
3 ATTORNEY WEED: That is correct.
4 MR. GARG: That is City of Doraville.
5 ATTORNEY WEED: That's Section 3-167. It
6 hasn't been changed since 1972.
7 COUNCILMEMBER FLEMING: I just don't want
8 you to have any problems once you leave here today if
9 you have an approval of the conditional use.
10 I didn't see in your materials a permit.
11 Council, did you notice one in your packet?
12 MR. GARG: I think whatever they told me
13 bring it, I think I have that in the package, whatever
14 the City requested. I also have copy of the license.
15 COUNCILMEMBER FLEMING: Okay. That's --
16 MR. GARG: I can go get it.
17 COUNCILMEMBER FLEMING: That's quite all
18 right. That's quite all right.
19 MR. GARG: Yeah. I don't think --
20 COUNCILMEMBER FLEMING: I just wanted --
21 MR. GARG: -- I have that.
22 COUNCILMEMBER FLEMING: -- to touch base
23 with you on that one.
24 MR. GARG: Yeah.
25 COUNCILMEMBER FLEMING: That's all the

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1 questions I had.
2 ATTORNEY WEED: And although we've resolved
3 the answer, I would advise the Council to apply no
4 weight. We have determined that this distance had not
5 been met and we've determined that the distance may
6 have been met. I advise the Council not to apply any
7 weight to that evidence.
8 MAYOR JENKINS: Any more questions from the
9 table?
10 - - -
11 (No response)
12 - - -
13 MR. HAEBERLIN: We have already had the
14 public hearing. We had no folks, and it's back at the
15 table with you guys.
16 COUNCILMEMBER FLEMING: I'd like to make a
17 motion to accept the conditional or approve the
18 conditional use for 6400 Peachtree Industrial
19 Boulevard, that's parcel number 18-342-05-013, for a
20 retail liquor store.
21 COUNCILMEMBER PITTMAN: Second.
22 MAYOR JENKINS: More discussion?
23 - - -
24 (No response)
25 - - -

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1 MAYOR JENKINS: Call the roll, please.
2 CLERK BLACKMON: Councilmember Alexander?
3 COUNCILMEMBER ALEXANDER: Yes.
4 CLERK BLACKMON: Councilmember Bates?
5 COUNCILMEMBER BATES: Yes.
6 CLERK BLACKMON: Councilmember Fleming?
7 COUNCILMEMBER FLEMING: Yes.
8 CLERK BLACKMON: Councilmember Pachuta?
9 COUNCILMEMBER PACHUTA: Yes.
10 CLERK BLACKMON: Councilmember Pittman?
11 COUNCILMEMBER PITTMAN: Yes.
12 MAYOR JENKINS: Motion carried. Thank you.
13 MR. HAEBERLIN: Okay. The next item is
14 another public hearing, conditional use, again another
15 retail liquor store. Same situation. This one is
16 International Beverage. It is 5224 Buford Highway, I
17 believe, zoned C-2.
18 At this time, I invite Mr. Kim or his
19 representative to come forward.
20 MR. MARATECK: Good evening, ladies and
21 gentlemen. My name's Arthur Marateck. I'm the
22 attorney representing Mr. Kim.
23 I would just -- I'm going to have Mr. Kim
24 say a few words.
25 But I would ask, it's my understanding

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1 Mr. Kim has operated this store for three years but
2 the store has been at that location for many years.
3 This is Mr. Kim's sole source of employment and this
4 is where he obtains his livelihood.
5 He has been -- and he is asking the Council
6 to approve the conditional use. It's my understanding
7 that the --
8 MAYOR JENKINS: Come closer to the mike,
9 please, sir.
10 MR. MARATECK: It's my understanding that
11 there's been a recommendation that the conditional use
12 permit be approved, and we're not aware of any
13 problems with regard to his operation of the
14 establishment that would -- that would be
15 objectionable to the issuance of a conditional use
16 permit.
17 THE REPORTER: Would you spell your name and
18 give your address, please.
19 MR. MARATECK: Yes. Last name is M-a-r-a-t-
20 e-c-k. First name is Arthur. My address is 1700
21 Water Place, Atlanta, Georgia 30339.
22 Mr. Kim, do you have anything to say to
23 Council?
24 MR. KIM: Well, no. I brought my lawyer
25 because, you know, I've been there three years with

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1 the proper application. But I'm following what City,
2 you know, special conditional use, and I -- I did best
3 I can to follow and, you know, I just hope you approve
4 my conditional use. Thank you.
5 MAYOR JENKINS: Scott, come on up.
6 Any questions from the table on it?
7 COUNCILMEMBER BATES: I do have one.
8 You've provided in the application a survey
9 showing the distance between schools, school houses or
10 churches, but it did not include any residential
11 component. Are you planning on submitting a survey
12 that includes the residential component?
13 MR. MARATECK: Yes, if that's -- if that's a
14 requirement, then we intend to produce that, yes. I
15 understand there is a survey that was provided, and if
16 there's additional information that Council requests,
17 then Mr. Kim is prepared to --
18 COUNCILMEMBER BATES: And it's not our
19 request. It's my understanding that it's State law
20 regarding distance from residential, or it's a city
21 ordinance.
22 ATTORNEY WEED: It's a city ordinance.
23 COUNCILMEMBER BATES: It would need to be
24 included in the application for an occupational tax
25 placard. Thank you.

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1 MR. KIM: If I may, I know there's no
2 residential on the same street except there's
3 apartment back behind business. But if I believe
4 right, that -- if it required by the same street,
5 there's none, no residential place nearby, you know, a
6 mile or two mile, I think, there's no residential
7 apartment or anything like that.
8 COUNCILMEMBER BATES: Okay. Well, that's
9 not for me to decide, but that needs to be included in
10 the survey for the appropriate personnel to review and
11 evaluate.
12 MR. KIM: Right. I understand, but I think
13 when I got the application, applied, the certified
14 surveyor came, and one of the requirement I think was,
15 you know, clarifying the residential distance, and I
16 don't know whether there was -- because not -- it was
17 more than mile away or not, but I'm not sure, but, you
18 know, I can find out from the surveyor.
19 MAYOR JENKINS: Anybody else?
20 COUNCILMEMBER FLEMING: No, sir.
21 MAYOR JENKINS: Okay. Thank you.
22 MR. MARATECK: Thank you.
23 MAYOR JENKINS: Scott?
24 MR. HAEBERLIN: Okay. I'm going to try to
25 give you a perspective on where this is. I apologize,

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1 I didn't at first.
2 This is 5200 Buford Highway, which I believe
3 is the old Lutheran church. We're in the vicinity of
4 McDonald's. This is the International Liquors right
5 here at 5224. This is the apartments that are I think
6 generally known as Windsgate.
7 So again, in this situation, after reviewing
8 the standards of review, again, the staff thought this
9 is an appropriate location based on just the zoning
10 standards of review for the conditional use. However,
11 again, I did not evaluate the effectiveness of the
12 liquor codes.
13 I recommended approval with reservations,
14 again, that there be no expansion in the square
15 footage of the existing liquor facility. And this is
16 part of kind of a multi-tenant form of shopping center
17 that it's again.
18 Again, it would be governed by the ordinance
19 which allows it to come back before the Council on a
20 yearly basis. Again, like I said, I have not
21 evaluated any revised liquor survey on behalf of the
22 City. I just want to make people aware of that.
23 Again, recommendation is approval with
24 reservations.
25 COUNCILMEMBER PITTMAN: Is that Windchase

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Apartments?
MR. HAEBERLIN: Windchase, yes, ma'am.
If there are no questions at this time from the Council, we'll open the public hearing phase.
- - -
(No response)
- - -
MR. HAEBERLIN: The Mayor has now opened the public hearing. Those who would like to speak in favor of the application, please raise your hand.
Seeing none, those who would like to speak against the application, who are not in favor of the application, please raise your hand.
Again seeing none, I return it to the Council.
MR. HAEBERLIN: Thank you, Scott.
All right. Bring it up to the table.
COUNCILMEMBER FLEMING: I have a question for Mr. Haeberlin.
Do all of the applicants that are here this evening receive your staff reports in advance of our public hearing?
MR. HAEBERLIN: Yes, ma'am.
COUNCILMEMBER FLEMING: Okay. Thank you very much.

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MR. HAEBERLIN: They were all fax'd the reports, unfortunately, because of time in this particular situation, Thursday morning, I believe.
COUNCILMEMBER FLEMING: Thank you.
MAYOR JENKINS: Do I get a motion?
COUNCILMEMBER FLEMING: Want me to do another one?
COUNCILMEMBER BATES: Sure.
COUNCILMEMBER FLEMING: Okay. I make a motion to approve the conditional use for a retail liquor store at 5224 Buford Highway, parcel I.D. number 18-310-04-035.
MAYOR JENKINS: Do I get a second?
COUNCILMEMBER PACHUTA: Second.
MAYOR JENKINS: Any more discussion?
- - -
(No response)
- - -
MAYOR JENKINS: Call the roll.
CLERK BLACKMON: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
CLERK BLACKMON: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
CLERK BLACKMON: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.

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CLERK BLACKMON: Councilmember Pachuta?
COUNCILMEMBER PACHUTA: Yes.
CLERK BLACKMON: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
MAYOR JENKINS: Thank you.
Scott, VIII-C.
MR. HAEBERLIN: The next item is a public hearing. This is a rezoning with zoning variances, Kathryn Zickert and Dennis J. Webb for Halpern Enterprises. These are the 0 Raymond Drive properties that were a portion of Northwoods subdivision, and I'm going to -- before we bring the applicant forward, I'm going to try to show graphically on the map so people are aware of where we're looking at.
Actually brought up right here. We just looked at the International Liquors location, which was right here. The properties being rezoned right here are these three yellow small slivers of property. This parcel, this parcel and this parcel as well as these three residential parcels are part of what is known as Pinetree Plaza shopping center.
At this time, I invite the applicant to come forward at the podium.
ATTORNEY WEED: Mr. Webb, just as a procedural matter at the outset before -- and I don't

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want to break your rhythm when you're actually making your presentation -- you've got this item, and by my count, you have the following --
MR. BROWN: Three items.
ATTORNEY WEED: I've got three items; correct.
Do you want to be heard on all these items at one time, or would you like to be heard on them individually?
MR. WEBB: We'll defer to the will of the Council on that. However you prefer to proceed.
ATTORNEY WEED: If Mr. Webb has no objection, then I would recommend to Council that you do it all at one time.
MAYOR JENKINS: All parcels together at one time.
ATTORNEY WEED: Sir?
MAYOR JENKINS: Altogether at one time; right?
ATTORNEY WEED: Yes, sir.
MAYOR JENKINS: All right.
ATTORNEY WEED: Mr. Webb and his client apparently have no objection to that, so --
MAYOR JENKINS: Let me mention --
ATTORNEY WEED: -- my advice would be to --

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MAYOR JENKINS: -- one thing, Murray.
ATTORNEY WEED: -- handle it at one time.
MAYOR JENKINS: If anybody that has already completed their . . . if you want to leave, you can go ahead and leave. It's up to you.
All right, Murray. I'm sorry.
ATTORNEY WEED: That's quite all right.
COUNCILMEMBER FLEMING: He would like us to pass these down (presenting).
My comment in regards to hearing them all at one time is that there may be different public comments for different various ones. And not just that. Because of the different parcel numbers that we may have to be making motions to and everything, I would feel -- I personally would feel more comfortable taking them per item that's on the agenda since there are so many.
MR. BROWN: I think --
MR. WEBB: That makes sense.
MR. BROWN: -- in addition, if we can change our mind, we'd like to do it individually as well.
ATTORNEY WEED: Good enough.
COUNCILMEMBER FLEMING: Okay.
ATTORNEY WEED: Let's proceed.
COUNCILMEMBER FLEMING: Thank you very much.

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Less confusing for me, for sure.
MR. BROWN: I think you're right.
UNIDENTIFIED SPEAKER: We still can't hear anything back here.
- - -
(Brief overspeaking)
- - -
ATTORNEY WEED: The microphones are working. They may not be picking up in the back, but I'm afraid that's all the sound we've got.
MR. BROWN: Good evening. My name is Bill Brown. I'm with Halpern Enterprises.
Basically the impetus for this evening -- and I'll speak briefly about these requests as a group -- several months ago, we came in front of the Council for an approval of an ATM in Pinetree Plaza.
We were approved by Council with some conditions. But during that evening, it came to light that there were some issues on the property of Pinetree Plaza that the Council would like to address and, in my terms, clean up. And that's why we're here tonight is to go through some technical issues on the property in the hopes of getting it cleaned up and ultimately have the ATM reapproved.
Basically, Pinetree Plaza has existed in

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various forms since the 1950s. It was brought by the Halpern family in 1966.
The property we're talking about as far as the R-1 is located here in the rear-most southern portion of the property. It's three properties that were purchased in 1972. They're about 15 feet deep, each parcel, and they total a width of approximately 335 feet.
Today, we -- you know, we can't read the minds of people that are no longer with us when this was done in 1972 with the expansion of the property. We have to assume with the property operating now almost 40 years, that this was done in conjunction between the City and the owner.
Bernard Halpern is no longer with us, so he cannot tell us why and what for as far as the property, and the City has obviously allowed the property to operate uninterrupted for almost 40 years.
One thing that we are willing to discuss tonight -- and I say "discuss," because I think it's something that we need to understand a little bit better as a group between Halpern and the City -- is the possibility of combining these three R-1 lots with our southernmost tax parcel to create one contiguous lot, and that would give the R-1 properties street

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frontage along Buford Highway.
This is the tax lot right here going up to Buford Highway -- this is Subway, to give people a context, at the shopping center -- and these properties. So we would combine these properties with this tax lot.
This is an issue that we have just been thinking about and discussed briefly, and so it is something in the interest of moving this forward and finding an equitable solution for all parties that we are willing to discuss.
Given the format of us having one opportunity to discuss or talk, having the City talk afterwards, and then the folks that live in Doraville talk, we're going to need some flexibility on that, I believe.
Just in the last few days, there have been some issues raised. It's some dumpsters that exist behind this area. There are approximately four dumpsters.
Jimmy Cushman, who is here tonight, he's had sole management responsibility for the property for over five years. During that period, we have never once received a complaint either from a property owner, anyone from the City; basically no one.

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1 Suddenly this weekend, one person has
2 surfaced. Jimmy did meet with them late this
3 afternoon and is in the process of working out an
4 equitable solution with Betsy Whiteside.
5 Basically what we're proposing is to
6 relocate the four dumpsters so they're not quite as
7 close to the homes and move them into a different area
8 of the property, and we've also agreed to trim some of
9 the rear landscaping in her area.
10 I believe she may be coming here tonight if
11 she's able, so she could speak for herself at that
12 time. Okay.
13 So as far as the first issue, those are my
14 comments.
15 COUNCILMEMBER FLEMING: Could you tell me
16 what lot number I.D., if you have it, either one of
17 you, that you're possibly suggesting to move all four
18 lots into one?
19 MR. BROWN: I'm sorry. Say that one more
20 time?
21 COUNCILMEMBER FLEMING: Will we then
22 reassign -- or Dekalb County or the State then
23 reassign another parcel number for the four?
24 MR. HAEBERLIN: I think what they're
25 speaking of is 5165 Buford Highway being combined with

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1 the three Raymond Drive properties. My belief would
2 be that Dekalb County, when we go through this
3 process, would probably converge it all into 5165
4 Buford Highway on your -- on your --
5 Ma'am, look at your yellow map that's in
6 your zoning report as well. This one (indicating)
7 COUNCILMEMBER FLEMING: Thank you.
8 MR. WEBB: My name is Den Webb. I'm a land
9 use attorney, and my address is 1230 Peachtree Street,
10 Atlanta 30309. I will be brief since I am the backup
11 man tonight, but I just want to touch on a couple
12 points to try and move this process along.
13 First, I want to get back to the -- really
14 the legal reason why we're here. As Bill mentioned,
15 Halpern Enterprises went through the process this
16 summer of getting a conditional use permit, and at the
17 time it was granted, there was a condition put on the
18 permit that effectively said: Within the next 12
19 months, you, Halpern, will come back and rezone these
20 R-1 parcels to C-2. So that's really the driver for
21 our application tonight.
22 Number two, I just want to touch on the
23 process of how we got here. Long before we filed an
24 application, we sat down with the City staff,
25 including Mr. Haeberlin, Mr. Weed, the city arborist,

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1 to talk about our situation and come up with a road
2 map that we thought would be effective.
3 The City emphasized the fact that they were
4 here to help us, and we wanted to come up with a
5 process that would resolve our really highly technical
6 issues.
7 So we walked out of that meeting with a
8 plan, and we executed that plan. Since we have filed
9 it, there have been a few issues raised, and we have
10 made changes at the request of the city staff and the
11 city attorney, but we -- but we do believe we've done
12 everything that's been asked up to this point
13 including filing for a blanket variance for this
14 property.
15 If the consolidation goes forward, that
16 really may be a non-issue at this point, but I'd be
17 happy to address what exactly we mean by "blanket
18 variance" if you want. I can skip over that if you'd
19 like to avoid it.
20 The only issue that remains on the point of
21 consolidation is -- I think that is an agreeable
22 solution.
23 Actually, it was a smart idea. I'm not sure whose
24 idea it was. But we've kicked around a couple
25 different options as to how to address that.

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1 Consolidation was one that we discussed, but we didn't
2 look at it in exactly the way it was proposed tonight.
3 But the fundamental point that needs to be
4 attached to any request to consolidation is some
5 affirmative statement from the City that the act of
6 consolidation won't affect the grandfathered non-
7 conforming lawful use status of this property. That's
8 really the driver for a lot of what we do, and we
9 would ask that that --
10 The last point really just relates to the
11 consolidation. I think that is a fine proposal, but
12 we would ask for an affirmative statement from the
13 City that that act does not affect the grandfathered
14 legal-nonconforming-use status that applies to
15 Pinetree Plaza today.
16 And I think I'll stop there, and I'm happy
17 to take any questions you have. Thank you.
18 MAYOR JENKINS: Okay. Thank you.
19 Scott?
20 MR. HAEBERLIN: I don't really have a lot,
21 but there are some things that I think are important.
22 Any time you come to a jurisdiction, the
23 most important thing you can find is information, and
24 they all vary on how their information has been
25 compiled and stored. Just recently, I found the 1946

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1 zoning map. So hallelujah, we know we have zoning
2 since 1946. It's probably the most important thing
3 we've found since I've been here.
4 As well, everybody is familiar with the 1966
5 base map, which is what we thought was the base zoning
6 for the city. But the good thing about this map is it
7 pretty much reflects the city as it exists today. You
8 know, the parcels a little bit different, little bit,
9 but mostly it's the city that exists today. That map
10 there is the city as it existed in 1946, which
11 included a portion of the property that became the
12 Pinetree Plaza.
13 So in this instance, we kind of know that
14 we've had zoning and regulations on these properties
15 for a long time.
16 So it was mentioned earlier that this lot
17 split of these three lots occurred somewhere around
18 '71/'72, and at that time, we had the City of
19 Doraville subdivision regulations, Ordinance 133,
20 still effective today. This is what tells people what
21 they can do in terms of dividing land.
22 It basically says the government has the
23 authority to make all decisions regarding the division
24 of land. So in this case, when these lots -- when
25 there was a portion broken off of them, the City of

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1 Doraville would have been required to approve those,
2 and I think there's no dispute on that situation.
3 Now, on this map here, the 1966 map, those
4 three lot splits are not shown, so in 1966, clearly
5 they did not exist.
6 So we get down to the whole semantics. I
7 don't want to argue too much of it. Was the lot split
8 legal? Does the City have to recognize it? Upon my
9 review of your regulations, no, because it all comes
10 down to how was the property used.
11 Well, the property is residential but it's
12 been used as commercial. So despite all the previous
13 situations that have occurred with zoning actions,
14 we're still at the present situation of how to resolve
15 this situation.
16 The problem is your comprehensive plan does
17 not anticipate this property becoming commercial. It
18 anticipates this property being residential. Don't
19 know why. Maybe the person didn't do a very detailed
20 study of looking at the particular sites.
21 So the comprehensive plan is -- again, it's
22 very legally defensible for the planning staff. So my
23 recommendation was based on -- obviously, the
24 discussion which occurred before was the applicant was
25 not willing to combine any of the lots. I think the

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1 idea of combining the lots creates a lot less
2 nonconformity than we had, so it actually puts us in a
3 better situation than we were, because clearly these
4 three lots did not meet the requirements when they
5 were split to be R-1 and they don't meet the
6 requirements today to be C-2.
7 And so that is the intention and the reason
8 why the staff report is written in the manner in which
9 it is. Are there any questions for staff?
10 COUNCILMEMBER BATES: Which application are
11 we hearing first?
12 MR. HAEBERLIN: We are doing the 0 Raymond
13 Drive properties. We are rezoning three R-1
14 properties to C-2, and that is just the rezoning
15 action, I believe.
16 COUNCILMEMBER FLEMING: And is the one that
17 starts out Prologue, (pronouncing). Forget it. This
18 one right here?
19 MR. HAEBERLIN: Yes, ma'am, that is it.
20 Pinetree Northwoods Subdivision Tracts Rezoning.
21 COUNCILMEMBER FLEMING: Okay. Thank you.
22 MR. HAEBERLIN: 0 Raymond Drive Properties.
23 It is the first report in your series after the map of
24 the property, which is this map with yellow highlights
25 that shows how the parcels are broken out. And this

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1 basically has a prologue which kind of gives a history
2 of the city, which is based on this book, the city --
3 The History of the City of Doraville, Georgia, which
4 was extremely important in reviewing this zoning case.
5 So if there are no further questions, we'll
6 go to the public hearing phase.
7 MAYOR JENKINS: All right. Go ahead, Scott.
8 COUNCILMEMBER ALEXANDER: I have a question,
9 please.
10 MAYOR JENKINS: Oh, wait a minute.
11 COUNCILMEMBER ALEXANDER: I guess we're
12 going to deduce that whomever the residential property
13 owner was of those three lots divided them and sold
14 off a portion to the Halperns?
15 MR. HAEBERLIN: Yeah. You know, I mean they
16 were the -- the -- I'm going to get my grantor/
17 grantees confused. They were the grantor, correct,
18 and the Halperns were the grantees.
19 Regardless of whomever made the decision,
20 let's say the decision was not in conformity with the
21 zoning code, it still was not a correct decision. I
22 think that's what you're trying to allege.
23 COUNCILMEMBER BATES: But based upon that,
24 if the residential property owner willingly sold their
25 property to Halpern at the time, the assumption was

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that it was going to be used as part of the commercial property. I think that would be a safe assumption.

MR. HAEBERLIN: I mean I don't know. In the analysis that was provided to the City, the applicant alleged that the property had been used as a buffer, and I don't think the semantics of what constituted a buffer was fully vetted out.

Regardless of whomever sold the land, the act of selling the land again creates a situation where these R-1 lots may have been diminished. When I say "diminished," they may not meet the current -- excuse me -- they may have not met the R-1 requirements at the time. Surely these little strips at 15 feet wide did not meet the requirements.

So we really could not have recognized the lots then; we can't really recognize them today absent being part of larger parcel.

But you can certainly have a split-zone piece of property if that's what you're asking.

Now, do I advise you to have a split-zone piece of property where the R-1 portion has dumpsters and drive lanes on it? Probably not. It's not in the best interest of the city.

COUNCILMEMBER BATES: Thank you.

MR. HAEBERLIN: Uh-huh. Are there any other

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questions?

- - -

(No response)

- - -

MR. HAEBERLIN: At this time, the Mayor is opening the public hearing for this item. This is the rezoning of the three residential lots, R-1 to C-2. These are known as the 0 Raymond Drive properties, collectively, on the agenda for this evening.

Those who would like to speak in favor of the rezoning, please raise your hand. I see one. Any more?

Stuart, would you please come forward and state your name and your address for the record.

MR. ANDERSON: Stuart Anderson, 2595 Barry Lyn.

The comment that was made was -- and a very logical one, that the strip of land that was sold across the back three of these properties was for a buffer, and that's a possibility. However, in the -- in the functional drawing that's how this -- how this property -- how these three properties are set up. That strip of land is clearly used as a power supply, shall we say. It's technical. It's not -- it's not been used as a buffer at all. It has all the power

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through it that is distributed to the rest of the buildings and functions along that way.

So I'm saying that it is C-2. Somehow, a compromise perhaps between Betsy and -- and the neighbors and the Halperns should be suggested.

But at the same time, that property, to me, looking at it as an engineer, it's been technical the whole time. It hasn't been buffer at all. It's where they laid down their wires.

Thank you.

MAYOR JENKINS: Thank you.

MR. HAEBERLIN: Okay. We heard those speak in favor.

Those who would like to speak against the petition, please raise your hand. I only see two. If you'd come forward. Three. Excuse me. Come forward one at a time and state your name and your address for the record.

MR. O'CONNOR: Joe O'Connor, chairman of the planning commission.

And I don't know if you had an opportunity to get my report, because I wasn't able to finish it till after 5 o'clock this afternoon, since we had our meeting which lasted for two hours on Thursday.

But we had -- at the meeting, we voted five

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to nothing to recommend denial. But on the condition, we thought if the City and the applicants could get together and in effect agree to just having -- consolidating into one lot, these -- there's at least six different strips in there, then it would be much easier to manage any type of rezoning or any -- any other type of matter that needed to be done.

I'd gone back in there that same day we had the hearing. It's an alleyway, and there are dumpsters next to it. And the only -- the only -- it's the only thing that separated the buildings from the three residential lots, there is a fence there.

And I think, if I heard correctly, the Halperns' representative today indicated that perhaps they were willing to consolidate those three lots with the one lot in front of Subway. That's a start. I think if they would agree to consolidate everything, it would make it easier, especially with the variances that they're seeking now, which, if you give them the variances for their whole place, there won't be anything left for us, the City, to be able to direct where we want this property to go in the future.

So we do recommend that the City and the applicant get together and try to make a reasonable effort to consolidate this property into one property,

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because that's what it is: it's basically a commercial property.

And I can wait for further comment on the next -- on the next issue, which is the granted variances. So thank you for your time.

MAYOR JENKINS: Thank you.

MR. HAEBERLIN: Next speaker at this time.

MR. HART: The city's been clamoring for quality zoning and zoning laws in the city for the last -- since 2003, that I can remember, and the complaints were always Buford Highway and what Buford Highway looked like.

And people complained about noise and light -- light pollution and et cetera, et cetera, in the neighborhoods, particularly in the Northwoods area, and they wanted Buford Highway and the downtown area to look like some quality development in the other cities. And the first step in quality development is adhering to the laws in the state of Georgia as well as local zoning laws.

I've built things in this city, and we -- first thing we had to do is do a tree survey and find out how much pervious and nonpervious surface, where the -- find out where the water's going to go. And we've cut up a lot of asphalt here and removed it so

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that the water did have someplace to go and have the drains placed so they could go into the creek and didn't wipe out the next door neighbor.

Commercial pieces of property butted together usually may have a zero setback, but when they start going from C-2 to M-1 and M-2, those buffers get larger. For instance, when they had the tank farm fire, there was supposed to be a 500-foot buffer there. Well, the houses caught on fire. They were in the 500-foot buffer. Had the City followed the rules at the time, those houses in the tank farm fire wouldn't have burned down, because they wouldn't have been there. The City of Doraville just has had a big problem, unlike some of the other cities around here, of following the rules.

And so at some point in time, you have to draw the mark in the sand and say, okay, if we want quality construction in the city, if we want things to move forward like other towns and, you know, follow their success stories, then you have to start doing something that meets at least the minimum bar of which the other municipalities operate.

And so 15 percent of the property being -- you know, or 15 percent being pervious surface -- in other words, grass and trees, et cetera -- and at

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least a 40- to 75-foot buffer between residential neighborhoods and commercial are the minimum standards. These are things that the City of Doraville fails to follow time after time after time.

Now, what they're wanting us to do is rezone this R-1 piece of property that somebody sold to somebody. Just because you sold the piece of property to your neighbor doesn't give you the right to sign off on whatever the zoning is. The zoning is up to the City here. And if they want to rezone it to C-2, they can rezone it to C-2, but it's their ...

So I'm against it. Thank you.

MR. HAEBERLIN: The next speaker may come forward.

MS. CRAWFORD: Susan Crawford, Oakcliff.

I just -- I'm not on the planning commission and I don't know much about zoning, but it seems to me that if that strip is -- is actually a buffer -- and I can see how it should be -- you know, there should be a buffer area there, that it didn't seem to me to be a buffer. It seemed to be a continuation of the industrial right up to this fence that was kind of a fence. It was kind of falling apart.

As I said, I'm not going to get into the zoning aspect, but possibly a fence that's made of

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wood that would absorb some of the sound and if there are any odors, and just -- It does seem to me that there are some very heavy things there that would -- and they've probably been there a long time, although I don't really think it's relevant or even germane to try to decide who was thinking what when they may or may not have done something many years ago.

But what Mr. Hart said is true: that now is now, and you have to make the decisions for now and for the future.

But it's just my humble opinion that you could put up a fence, and that would help make a buffer, because from that area, that little strip, you are looking right down into houses below that -- that probably do hear the clang-clang of the dumpsters when they're emptied and smell the odors.

That's my opinion. Thank you.

MR. HAEBERLIN: At this time, the Mayor --

UNIDENTIFIED SPEAKER: One more.

MR. HAEBERLIN: Oh. I apologize. Let him speak.

MR. CRAWFORD: Ben Crawford, Oakcliff Estates.

Actually, I'm here tonight speaking as a resident of the city of Doraville, and my opinion on

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1 this is that seeing these things that transpire -- and
2 this is not business against resident or anything
3 else. This is the citizens looking out for the city.
4 And being good stewards of the city, being people that
5 are involved in the city, we want to see things go in
6 the right direction. And I feel like we've been
7 trying to move in that direction for a number of
8 years.
9 This is a piece of property that has been
10 used by the applicant tonight, and which is a not
11 lawful use, evidently. There's no proof on the
12 applicant's part that he had any right other than, you
13 know, as Mr. Bates mentioned, that he had just used it
14 that way. And you know, maybe -- I'm not trying to
15 misquote you, but maybe just because it got sold to
16 him, that he could use it as a commercial property
17 because it was part of his commercial property, and
18 the person selling it thought, "That's what I'm
19 selling it for," but that's not a case of this.
20 This is a case of a strip -- three strips of
21 land being sold to a -- to a commercial owner who
22 maybe he had the intention of making it commercial,
23 but the burden of proof lies on the applicant.
24 So we've got a situation that the applicant
25 created. So to me, it seems like we're moving in the

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1 right direction tonight but maybe we need to move a
2 little further. There have to be some concessions
3 made. There has to be some compromise. That's how
4 government works. And this is a good time tonight to
5 deal with this tonight and make some -- make some, you
6 know, conditions with your -- any kind of approval or
7 denial, whatever you decide to do, but to take that as
8 an opportunity to work with the business and say,
9 "Look, this is what happened, this is what we have now
10 and this is how we choose to deal with it."
11 Thank you for your time.
12 MR. HAEBERLIN: Okay. At this time, the
13 Mayor has closed the public hearing. And the item
14 returns to the Mayor and Council. This is only the
15 rezoning of the R-1 lots to C-2.
16 COUNCILMEMBER BATES: This is going to be a
17 question for the applicant, Mr. Brown, Mr. Green. Is
18 it Mr. Green?
19 COUNCILMEMBER FLEMING: Brown.
20 COUNCILMEMBER BATES: I'm sorry.
21 MR. BROWN: Brown, Green.
22 COUNCILMEMBER BATES: I don't know where
23 Green came from. I apologize.
24 I know that you guys have looked at the
25 property in the back and are willing to at least do

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1 some relocation of the dumpsters.
2 Are there other items which you guys are
3 willing to consider as far as truly creating or
4 working to create an actual buffer between the
5 commercial properties and the residential properties?
6 MR. BROWN: At this time, we've only been
7 able to meet with Betsy Whiteside. And as I stated
8 earlier, we're going to help clean up the area back
9 there.
10 We have not had a chance yet to meet with
11 the other property owners. If they have some issues
12 they'd like addressed, we'll try to address them.
13 MR. WEBB: I think it's important to note
14 that those property owners are not here tonight to
15 state an objection if they have one.
16 MS. WHITESIDE: Except for me.
17 MAYOR JENKINS: Ms. Whiteside is here.
18 MR. WEBB: Yeah. Well, except for the woman
19 who spoke, yes. I'm sorry.
20 MAYOR JENKINS: Can I ask the question, what
21 -- what -- how do you feel, Ms. Whiteside?
22 MS. WHITESIDE: I don't really have a
23 preference one way or the other about the zoning
24 because I don't think that it's ultimately going to
25 make much of a difference in anything.

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1 I will say that I did meet with Mr. Cushman
2 this evening, and I do feel as though, this issue
3 aside, they would have been willing to work with the
4 neighbors on getting that area -- making sure that
5 area stays well kept.
6 And when I -- I have complained a couple of
7 times about the smell. Once was some years ago, to
8 you, Mayor Jenkins, and you went right to the
9 restaurant and took care of it and, you know, that was
10 -- that was great. And then the other time was the
11 quality of life folks came out once.
12 I've never approached Halpern about it. I
13 didn't really even think about that. I just went
14 with, you know, approaching people in the City, so --
15 I was there today, I was there yesterday out
16 that in area looking and, you know, it's -- it's not
17 filthy-dirty-nasty-smelly at the moment. It is
18 overgrown. The dumpsters, yes, we would definitely
19 appreciate them being moved because there is an odor
20 and a noise issue with the banging of the -- when they
21 empty the dumpsters.
22 But I don't see how the zoning issue is
23 affecting it, so I'm not really certain what
24 that's --
25 COUNCILMEMBER BATES: Ms. Whiteside, since

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we got you up on the hot seat, what time do the dumpsters get emptied? Is it -- is it early? late? weekends?

MS. WHITESIDE: No. If I recall, it's not weekends; however, on -- I wanted to say Friday mornings around or sometime between 5:00 a.m. and 7:00 a.m. --

COUNCILMEMBER BATES: Well, we'll --

MS. WHITESIDE: -- we hear the sound.

COUNCILMEMBER BATES: We'll nip that real quick because our dumpster ordinance is 7:00 a.m.

So if you guys can make sure that your service providers are aware, are aware of that.

MAYOR JENKINS: You're right. They're not supposed to come in until after 7:00 a.m.

MR. BROWN: Understandable. Absolutely.

MAYOR JENKINS: And they do come in early. I've heard them. Will you handle that?

MR. BROWN: Yes, we can, definitely.

MAYOR JENKINS: Thank you.

COUNCILMEMBER PITTMAN: There was some mention of a wooden fence rather than the little fence that's there. Is that something you might even consider?

MR. BROWN: I think at this point, we'd

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prefer to work within the existing conditions. We're relocating the dumpsters. It's going to come at a good expense. They're going to need concrete pads to be put in. As we said, we've met with Ms. Whiteside and, you know, we're going to work on her landscaping area. You know, we'll do some things to spruce up the area.

COUNCILMEMBER BATES: What's the proposed location for the new dumpsters? Is it going to be adjacent to the buildings or is it going to be in an entirely different location on the property?

MR. BROWN: Two we're going to move further north.

Correct, Jimmy?

MR. CUSHMAN: Correct.

MR. BROWN: And then two we'll move around the side of the building, so to the south and west, so we'll get them out of the rear residential abutment.

COUNCILMEMBER BATES: Okay. And how often are those dumpsters replaced or cleaned? I don't know if there's -- if they're used for disposal of -- of produce or food goods, but if they are, then I can appreciate odor emanating from those after a period of time.

Is there a replacement plan on the dumpsters

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or a cleaning of them, that if not in place now, could be implemented?

MR. CUSHMAN: I can certainly look into that as far as the replacement side of that. They were -- these dumpsters in fact were replaced about a year and a half ago that are back at the property line here.

As far as, you know, we do require that anything from the restaurants, they're all double bagged before they're put into the -- into the dumpster, with that, that consideration.

MR. WEBB: How often are they cleaned?

MR. CUSHMAN: So, and I'm not --

MR. BROWN: They're emptied.

MR. CUSHMAN: I'm not familiar.

They're emptied three times a week, on Monday, Wednesdays and Fridays.

And I'm sorry. I'm Jimmy Cushman.

COUNCILMEMBER BATES: Thank you.

MAYOR JENKINS: Thank you.

MR. HAEBERLIN: I would have one comment on the dumpster location. I certainly think that's possible, but I think we will need to at least attach to the structure on the side, a screening wall at least coming out parallel to Buford Highway.

Remember, how your dumpster ordinance is

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currently constructed, they really don't allow -- and your accessory structure code doesn't really allow these things inside of rear yards.

But if it's part of the principal structure, e.g., that the screening wall is attached to the side of the building, then these -- these items will then not be seen from or visible from Buford Highway. I think that's the way to mitigate that situation -- I just wanted to point that out -- unless we subsequently change the dumpster ordinance.

MAYOR JENKINS: Maria, do you have anything else?

COUNCILMEMBER ALEXANDER: No, sir. My questions, Councilman Bates was kind enough to ask. Thank you.

MAYOR JENKINS: Okay.

COUNCILMEMBER BATES: I'm going to make a motion to approve the rezoning of R-1 to C-2 for three individual parcels, parcel IDs 18-297-10-023, -024, and -025.

I'm not going to put any specific conditions on the motion but ask that the applicants look at and evaluate buffers, fencing, dumpster locations, screen walls, because we'll get to the conditional use here in a minute.

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COUNCILMEMBER FLEMING: Mr. Bates, are those three just going to C-2 or are you combining -- is your motion to combine the three into one?

COUNCILMEMBER BATES: Thank you.

I will put the conditions -- a condition on it to combine the three residential lots into one lot.

COUNCILMEMBER FLEMING: Combine it into --

COUNCILMEMBER BATES: Into the --

COUNCILMEMBER FLEMING: Into the --

COUNCILMEMBER BATES: -- commercial 51 -- into the commercial lot located 5165, which is lot 18-297-10-020.

COUNCILMEMBER FLEMING: Second.

MAYOR JENKINS: Any more discussion?

- - -

(No response)

- - -

MAYOR JENKINS: Call the roll, please.

CLERK BLACKMON: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

CLERK BLACKMON: Councilmember Bates?

COUNCILMEMBER BATES: Yes.

CLERK BLACKMON: Councilmember Fleming?

COUNCILMEMBER FLEMING: Yes.

CLERK BLACKMON: Councilmember Pachuta?

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COUNCILMEMBER PACHUTA: Yes.

CLERK BLACKMON: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

MAYOR JENKINS: Thank you.

MR. HAEBERLIN: It is with the staff's understanding that I can use the minor subdivision plat process to assist me in doing that? I mean I just want to make sure that specific direction of the staff, that if I need to use the minor subdivision plat process which allows me as the planner to approve that combination and send it over to the Dekalb County Tax Assessors, I just want to make sure that that's self -- that's self-assumed.

I see no objection, so --

COUNCILMEMBER BATES: I don't think that's a particular problem.

MR. HAEBERLIN: Okay. Let's move on to the next item, then.

This is the public hearing -- this is on the zoning variances. This includes the three 0 Raymond Drive properties that we just discussed, which were the slivers that were cut off the other lots, plus the remaining three parcels: 5165 Buford Highway, 5197 Buford Highway, and 5269 Buford Highway.

Now, the general variances being discussed

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are that of parking, building setbacks, and transitional buffers as well as impervious surface, which just means how much of the property is blacktop or asphalt, how much devoted to green space.

So at this time, I'll invite the applicant to come forward.

MR. BROWN: In August of 2001, Halpern Enterprises sought some variances that were granted unanimously by the Council at the time. After this now infamous ATM issue came up, we were made aware by staff that they feel that the properly may have been improperly advertised for the variance. We are not acknowledging that at this point. Again, at the request of Council, we are here to work with you and find an equitable solution.

And basically we've been operating under this variance for almost ten years, and the variance includes a parking variance, a building setback variance and a planted buffer variance. And tonight, we are basically asking that you reaffirm what we've relied on for the last nine years, that these variances are in fact kept intact.

I'll let Den Webb continue.

MR. WEBB: This is Den Webb again. Let me fill in a few additional points, please.

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After we filed the initial series of applications a couple months ago, the City raised this issue about the six separate tax I.D.'s on this site, and, you know, there was a discussion as to whether or not these six different tax parcels were technically six different lots for purposes of using dimensional and other zoning requirements.

And we had a meeting, we had a couple phone calls with Mr. Weed and Haeberlin, and ultimately we decided on two options. One was the consolidation option, which we have alluded to earlier. The second was a blanket variance which would allow each of these six parcels to be relieved of the individual application of dimensional or other requirements and allow the 14 acres to be treated as a whole for application of those dimensional and other requirements.

We chose option two, the blanket variance, for a couple of different reasons. Some of this may have been resolved by the motion you just made, Mr. Councilman, but I think there still are a few issues. And fundamentally, our goal is now and always has been to have this 14 acres treated as a whole for dimensional and other requirements of the zoning ordinance.

Bill touched on the variances we're seeking

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in addition to those blanket variances, and I'll be brief on those.

As mentioned, Halpern sought three variances in 2001, and the City Council granted those variances. The first variance was to reduce the parking requirement to 584 spaces, the second variance was to reduce the building setback in the rear from 30 feet to 10 feet, and the third variance was to eliminate the 40-foot planted buffer at the rear of this property. And again, the City Council approved each of those variances.

At some point recently, although this occurred nine years ago, the staff raised a question about advertising. Again, we're not taking a position. We're just asking the City Council to reaffirm an action it already took, using the same standards, by the way, that would be required to apply tonight.

There is one minor exception, though, to this particular set of variances that we are seeking. The building setback variance that was granted in the past was from 30 feet to 10 feet. At the time, there was a metal shed or a metal building that's shown on the site plan. It was there at the time that variance was granted. I don't know if it was overlooked or

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what. But we would ask that the rear setback variance be reduced from 30 feet to zero feet just for the purposes of allowing the shed. The remainder of the property on either side of the shed will respect the 10-foot varied setback.

The last variance we're seeking really relates to the impervious surface on this site. As all of you know and it has been at least alluded to tonight, the impetus for all of these applications was the hope to put an ATM in the parking lot.

The staff has informed Halpern that to do so, it technically would be required to meet the current impervious surface requirements. Those are the site has to have 85 percent or less impervious surface.

That's something the center simply can't meet. It was developed long before that ordinance was in place. In fact, the impervious surface count on this property now is 97 percent. So we're requesting this final variance simply to allow for the existing condition.

The addition of the ATM will not enlarge the amount of impervious on the site. It really won't affect it at all. We're just, again, seeking a variance to allow for the existing condition that

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already exists on this site.

I think I'll stop there. Again, we do want -- request an affirmative statement from the City Council that all of these actions, the rezoning action, the actions on the variance, will not affect the grandfathered lawful nonconforming use status of this Pinetree Plaza. Thank you.

COUNCILMEMBER FLEMING: Do you have an idea what the lot number is on the shed, where the shed is?

MR. HAEBERLIN: Should be 5197. Should be the same lot here where the conditional use is. I believe it's right here. As we look on the screen, I believe it's right here where the little pointer is.

MR. WEBB: Is this the --

MR. BROWN: That's correct.

MR. WEBB: -- land lot line right here?

MR. BROWN: Yeah.

MR. HAEBERLIN: Yes, sir.

MR. WEBB: Okay. That's correct.

MR. HAEBERLIN: I believe it's 5197 is what I believe.

MR. WEBB: It's identified on the survey as storage shed, 1-story metal building. It's at the rear of sort of the --

MR. HAEBERLIN: Yes, ma'am.

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MR. WEBB: -- southeast --

MR. HAEBERLIN: It is the tax parcel represented by the address of 5197.

COUNCILMEMBER FLEMING: Buford Highway?

MR. HAEBERLIN: Yes, ma'am.

COUNCILMEMBER BATES: Do y'all have any long-term plans on reducing the amount of impervious surface?

MR. BROWN: One of the issues we have with Pinetree Plaza is that it was developed when Buford Highway was two lanes, and obviously now it's seven lanes, and during that process, a lot of parking has basically disappeared from the shopping center.

We are trying very hard to bring in national tenants to the center. We did bring one last year at great expense. We're talking to some others. And one of the biggest issues they have is adequate parking. So that's a long way of saying it's difficult for us certainly to take out parking to add pervious space.

We are not anti-green; we're not anti-trees. This property has just suffered from a loss of a lot of right-of-way over, you know, almost a 50-year period as Buford Highway's expanded. And I think we're currently parked at -- don't hold me to the exact number, but about 3.65 per thousand. Most

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1 retailers like 5 per thousand. Some are coming down
2 and acknowledging 4 per thousand is adequate. But you
3 know, either way, we're borderline inadequate parking,
4 so it's difficult for us to do that.
5 We are looking into other ways to add some
6 green elements to the center, but we don't have any
7 immediate plans right now.
8 MAYOR JENKINS: Scott?
9 MR. HAEBERLIN: The variances that occurred
10 in 2001 is unfortunate because at the time they did
11 not reflect the correct zoning of the entire parcel.
12 They also too did not comply with the time limit
13 that's afforded by the Zoning Procedures Act, which is
14 a 15-day notice, minimum 15-day notice. And so that's
15 why the situation in 2001 is coming back to you today,
16 because the variances were not properly processed in
17 accordance with the Zoning Procedures Act, and I think
18 that is fully vetted by the approved minutes from that
19 time frame.
20 Surely the building setback variance and the
21 transitional zoning buffer variances that you've heard
22 tonight are situations where we know the building's
23 not going to move. We're realistic; we know that. We
24 know that buffers, however limited they are, there's
25 not a lot of ability to work with them, it's limited;

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1 it's limited, unless we redevelop the site.
2 Now, the impervious surface and the parking
3 variances are really based on what does the code allow
4 now. And the code allows them now to go from almost a
5 halfing situation. They can -- and I know this is not
6 the desire of the applicant -- reduce their parking in
7 half if this is actually a shopping center, by
8 installing tree islands.
9 And right now it's wide open. It doesn't
10 say install one island per 20 spaces; it just says
11 tree islands. So conceivably, the Council could
12 mitigate with the applicant some long-term plan for
13 tree islands, and I think the city arborist will go
14 over that in more detail.
15 What the tree islands do is they help the
16 impervious surface calculation. So while we may never
17 get to that great number of 15 percent, let's say we
18 get to 5 or 6 percent, and we have some enhancement of
19 the property.
20 So that's why the recommendations for the
21 variances was a recommendation of denial. I think
22 there are other avenues to eliminate many of these
23 variances.
24 And again, this was based on original
25 discussion that the applicant was not going to combine

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1 any of the lots. And again, we've had some movement
2 on that, as I've heard tonight. And the movement on
3 the lots is certainly going to help the nonconformity.
4 It's certainly going to decrease the nonconformity.
5 And I ask that the City Council consider
6 structuring a long-term plan for decreasing the
7 nonconformity as part of their review tonight.
8 Are there any questions?
9 COUNCILMEMBER FLEMING: So you're indicating
10 that tree islands are suggested but there's not a
11 number that -- there is a not a perfect number that
12 they would have to fill?
13 MR. HAEBERLIN: Not yet. When we did the
14 parking amendment, we opened that avenue up. Okay?
15 And now we've not followed back in with the develop-
16 ment regulation that says one island for every 20
17 spaces.
18 Right now, you're currently engaging the
19 Buford Highway Overlay. That's one of the recommen-
20 dations of the planner, assisting you in that.
21 So right now, it's pretty broad, it's pretty
22 open. So for this entire 13 acre site, would 12 or 13
23 parking islands be appropriate? I don't know.
24 The city arborist and I looked at the site,
25 really looked at the visible areas of the site,

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1 because as a city, you know, we like to see the pretty
2 out front. In other words, the areas that are not
3 seen from the street, we didn't really focus on. But
4 we thought that you could achieve either 12 or 13
5 islands.
6 Now, that does come at some parking loss,
7 and we recognize that. We might actually be able to
8 regain some parking on the lot, and we might look with
9 the applicant's engineer and see if there's other
10 spaces here where we can mark out new parking spaces.
11 So there is potential, I think, but -- and again,
12 that's going to require some analysis with an engineer
13 or a site planner.
14 If there are no further questions, I'll open
15 the public hearing.
16 - - -
17 (No response)
18 - - -
19 MR. HAEBERLIN: The Mayor has opened the
20 public hearing at this time regarding the variances
21 that are discussed for these lots, these six lots.
22 Those who would like to speak in favor of
23 the variances, please raise your hand.
24 Seeing none, those of you --
25 COUNCILMEMBER BATES: You've got one in

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1 front.
2 MR. HAEBERLIN: Would you like to speak in
3 favor?
4 MS. CALVERT: Uh-huh.
5 MR. HAEBERLIN: Okay. Let's come forward
6 and state your name and your address.
7 MS. CALVERT: Ginny Calvert, 4082 English
8 Oak Drive, Doraville.
9 I don't see where consolidation of the three
10 properties would make all that much difference as far
11 as the variances or the ordinances.
12 As far as the tree islands or the islands
13 with green space, it's going to take up some more
14 parking areas that they don't have. I would prefer to
15 see trees lining the streets instead of back in into
16 the parking lot areas.
17 Thank you.
18 COUNCILMEMBER FLEMING: Thank you.
19 MAYOR JENKINS: Thank you.
20 MR. HAEBERLIN: Okay. Those who would like
21 to speak against the variances being discussed
22 tonight, please raise your hand. (Counting) one, two,
23 three, four. Just four people. Like two-and-a-half
24 minutes apiece.
25 Please come forward and state your name and

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1 your address for the record, please. Whoever wants to
2 go first, go ahead.
3 MR. O'CONNOR: Joe O'Connor, planning
4 commission chairman. As I've previously said, we had
5 a meeting and public hearings on this issue.
6 I note that the applicant now wants to
7 consolidate all, for the purposes of changing the
8 maximum impervious lot coverage to 97 rather than the
9 85 percent. That means we probably won't see anything
10 green there unless it grows through the pavement.
11 They want to eliminate the 40-foot planted
12 buffer along the boundary. That's another elimination
13 of green spot.
14 They want to reduce the amount of parking
15 space they need, without, at this time, at least,
16 indicating their willingness to put in some type of
17 planters or dividers in the parking lot.
18 That's why the planning commission voted 5
19 to 0 against the proposed blanket variances. Thank
20 you.
21 MAYOR JENKINS: Thank you.
22 MR. HAEBERLIN: Next person?
23 MR. HART: Tom Hart. Repeat after me.
24 I quite frankly don't understand why we have
25 a tree ordinance or a stream ordinance or zoning

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1 ordinances in the city at all. I mean it seems like
2 everybody else has to follow these rules except if you
3 have a large piece of property. Then you don't have
4 to follow them; you just go to the City Council and
5 get your little wiggle, you know.
6 And people complain about the bad old days
7 of Gene Lively. Gene's not dead. It's still going
8 on. The midnight rezone is still here.
9 And we don't want to -- we don't want to
10 move the shed behind the property. We don't want to
11 put any more pervious surface in. There's 40 feet
12 right behind the building right now, that includes a
13 shed, that includes a lot of asphalt. They got
14 dumpsters sitting back there. They're sitting on
15 impervious surface called asphalt.
16 If there was a buffer between these
17 buildings and the adjacent neighborhood, then you
18 would pick up trees and green space; therefore,
19 pervious surface. It's not that it's not available.
20 There's corners of the parking lot where you can't
21 park. Look at a corner of a parking lot. When we
22 build other things, we cut the corners out and put in
23 green space. There's plenty there. The problem is
24 you've got an applicant and a Council that don't want
25 to follow any rules. That's what the problem is.

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1 And your job up there is to protect the
2 citizens of this city, and I don't see any of that
3 going on tonight. They're going to kind of maybe work
4 on it. What do you mean, kind of maybe work on it?
5 What does that mean?
6 Do you understand the concepts here? Do you
7 understand what the buffers mean? Do you understand
8 what the pervious --?
9 You just spent a million dollars over there
10 on a park, redoing the stream bed. Where is the water
11 coming from? Ask yourself that question.
12 You just ignore every basic building rule
13 there is, and you sit up there, "Well, they promised
14 to --" They got a shed there. So the whole shopping
15 center, 14 acres, wants a zero setback variance
16 because they got a shed. Well, move the shed.
17 You guys -- I don't --. No hope.
18 Thank you.
19 MS. HOFFMEISTER: Bonita Hoffmeister,
20 Oakcliff Estates.
21 Mayor Jenkins, City Council, what you have
22 before you is a unique opportunity to improve the
23 outward appearance of Doraville. It doesn't mean that
24 you take Halpern to the cleaners and make them
25 completely revamp their lot to our vision today, but

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it does mean that the two of you work together to come up with some more green space.

Coming here tonight, I looked at some of the properties that have been redeveloped here in Doraville. The ones that are rented that are full have a nice landscape in front of them.

I don't expect Halpern to come up with the full percentage, but I do expect them to work with us, I expect the City to work with them, so that we can have a more beautiful, usable, viable city.

Thank you.

MS. CRAWFORD: Susan Crawford, Oakcliff.

I agree. I think that our city leaves much to be desired when it comes to aesthetics. This is a very small part of it, but I would urge you to please pay attention, and any little, tiny bit of greenery in these enormous expanses of parking lot would be very helpful. Please consider this.

And please listen to the planning commissioners from time to time.

Thank you.

MR. CRAWFORD: Ben Crawford, Oakcliff Estates. I'm up here as a private citizen.

I think you should look in your zoning book and read all seven of those items you have to

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consider, because it does underline the word "all." So I realize that that's a hard word to accept, but it is there, and it does say "all."

So in your mind's eye, if you can look me in the face or look any resident in the face and say that all have been met by the applicant, then fine. If not, you have to deny. And the way to look at that is to take each item and explain why you're making your vote tonight. That's what I would like to hear.

Thank you.

MR. HAEBERLIN: I think that was it, Mayor and Council. I return it to you guys.

MAYOR JENKINS: Okay. Bring it back to the table.

COUNCILMEMBER PACHUTA: Is the only -- Three of the requests are the same request from 2001; correct? And the only different one is the impervious lot coverage; is that correct?

MR. HAEBERLIN: Yeah. The impervious situation is a more recent one. And I think the maintenance building that we discussed is a more recent one as well, which is right here.

COUNCILMEMBER FLEMING: But the building's been there since 2001; is that correct?

MR. HAEBERLIN: I don't know the situation

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on the maintenance shed.

MR. WEBB: It's actually been there since the nineties. It was there at the time the three variances were granted for this property in 2001.

COUNCILMEMBER PITTMAN: What is it used for?

MR. BROWN: It's space for a tenant. It's leased by one of our tenants.

MAYOR JENKINS: Storage?

MR. BROWN: It's used for excess inventory storage.

MAYOR JENKINS: Did you not say that that building was added at a certain time and the Council gave permission? Did I hear that or am I --

MR. BROWN: I wasn't with the company at the time. I believe it was added in 1995 for a specific tenant.

COUNCILMEMBER FLEMING: It's unfortunate that the ATM machine has triggered so many things that have cropped up from that. We're here tonight hearing some -- having to make decisions on things that happened 10 years ago or that were decided on 10 years ago, and neither the applicant nor the City can really prove one way or another whether it was done legally or not legally.

I agree with Ms. Calvert. I like tree

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islands but I prefer seeing trees up close and pine trees down into a gully area. It's real hard to make a decision on tree islands, because we're not sure at this present time how large they are going to have to be required or the requirement of those islands are going to have to be.

And I truly believe that if the Halperns are trying to get quality businesses in here that are requiring additional parking, that we as residents and Council need to also listen to that plea as well.

That's what I want to say at this point.

COUNCILMEMBER BATES: Mr. Haeberlin, I have a question for you.

MR. HAEBERLIN: Yes, sir.

COUNCILMEMBER BATES: The conditional-use ATM issuance of permits is contingent upon the variances for parking, impervious surfaces, setbacks, buffers, et cetera; is that correct?

MR. HAEBERLIN: On the lot at which it's located. Remember these are all six different lots, yeah.

COUNCILMEMBER BATES: Or three. Potentially three now.

MR. HAEBERLIN: Yeah, potentially three.

COUNCILMEMBER BATES: So yes, the ATM as a

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1 conditional use, the building permits are based upon
2 the variances that the applicant is requesting now; is
3 that correct?
4 MR. HAEBERLIN: I would say from the zoning
5 side, yes, I mean even though there are other
6 provisions that are non-zoning related. What I am
7 here tonight is to resolve those zoning situations.
8 And I think that that's -- you know, the variances
9 being granted will diminish the nonconformity
10 certainly across the entire property.
11 COUNCILMEMBER BATES: And to the applicant,
12 have you guys done a parking study to see if there's a
13 way to increase or reconfigure the parking lot to take
14 into consideration parking islands and maintain the
15 current level of parking spaces?
16 MR. WEBB: To my knowledge, that has not
17 been done. It certainly hasn't been done as part of
18 this process, and I can touch on briefly why.
19 Halpern just spent $3,000,000 giving that
20 center a facelift. It's certainly done its part to
21 improve the outward appearance of that particular
22 property and Doraville as a whole.
23 What we view and we felt like when we met
24 with the staff and the staff attorney, a couple months
25 ago to plot out how this process would proceed and

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1 exactly what type of rezoning, conditional use permit,
2 the variance applications that we would file, that we
3 were in agreement that this request for an ATM is at
4 best a minor modification.
5 And we're talking about 110 square feet of
6 disturbed area on top of a parking lot that's already
7 there. So minor modifications generally don't trigger
8 redevelopment standards. They shouldn't.
9 It's my understanding that you guys are
10 talking about modifying your own tree protection plan
11 to prevent minor modifications like what we're talking
12 about here from triggering redevelopment standards.
13 So you know, that's really the genesis of
14 our request for a variance. I think there will be a
15 time when something more significant is done, that a
16 reasonable threshold will be crossed and Halpern will
17 redevelop that center and comply with not only the
18 existing zoning requirements but also tree islands and
19 tree additional requirements and things like that, but
20 we just don't feel like that threshold is even
21 remotely close to being crossed here. Thank you.
22 MAYOR JENKINS: Anybody else? Any more
23 discussion at the table?
24 COUNCILMEMBER FLEMING: I wanted to just
25 clarify and make sure that I have my notes correct,

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1 because I don't believe I do.
2 The building setback variance is from 30 to
3 10 feet; is that correct?
4 MR. WEBB: Yes, ma'am. We are requesting 30
5 to 10 feet except for the expanse of the shed.
6 COUNCILMEMBER FLEMING: The shed from 30 to
7 zero, and that's at 5197 Buford Highway; correct?
8 MR. WEBB: I believe that's correct. Yes,
9 that's correct.
10 COUNCILMEMBER FLEMING: And eliminate the
11 traditional zoning buffer; correct? Is that --
12 MR. WEBB: Yeah.
13 COUNCILMEMBER FLEMING: I had put
14 "eliminate" down there. Is that what the term was?
15 MR. WEBB: Yeah. In 2001, the request was
16 to eliminate the 40-foot planting buffer from the
17 rear, and of course that's how the center was
18 constructed after that variance was granted.
19 And there's one more. The parking issue.
20 The number that is sought in the variance just affirms
21 the amount of spaces that are on the site now.
22 COUNCILMEMBER FLEMING: And that was 584;
23 correct?
24 MR. WEBB: Yes, ma'am.
25 COUNCILMEMBER FLEMING: I think you've heard

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1 the desires of the residents, and I think also that
2 yes, we'd like to see a little bit more green. So
3 maybe one of these days you guys can do that study as
4 to how many parking spaces that you might be able to
5 also increase but also be able to possibly add some
6 green somewhere along the way.
7 Go right ahead.
8 MR. BROWN: If I can, we actually were
9 approached by a parking-study analytical firm. And
10 really the way they do it is through restriping and
11 making the spaces smaller, and it's not -- in today's
12 world when people are buying larger cars what we're
13 seeing, if anything, tenants are going the other way.
14 They're wanting larger parking spaces so that, you
15 know, people don't get their doors dinged when they're
16 opening. So Den Webb was not aware of that when he
17 answered that question. So we have been approached,
18 but, quite frankly, their solution wasn't feasible.
19 COUNCILMEMBER FLEMING: Thank you.
20 MAYOR JENKINS: Anybody else?
21 COUNCILMEMBER ALEXANDER: I've got some
22 questions.
23 I guess I'm a little confused about the use
24 of an accessory structure as rental property, because
25 you said you were leasing it to one of your tenants to

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house excess inventory.
MR. WEBB: That is the use it's being put to, yes, ma'am.
I'm not aware of any prohibition of that. I mean the fundamental point of an accessory structure is whether or not it meets the ordinance requirements. I'm not aware of any additional prohibition on leasing or not leasing or specifically how it's used other than in an accessory capacity.
COUNCILMEMBER ALEXANDER: There's no internal space that could be used for that purpose?
MR. BROWN: Not at this time. They've outgrown the space and have leased this space for that extra inventory.
COUNCILMEMBER ALEXANDER: I was just wondering if there was space in the center itself near their location to use for their excess inventory.
MR. BROWN: We do have vacancy in the center, yes, but this space is honestly much more affordable, and tenants these days are having a hard enough time making their rent. You know, we're doing a number of concessions on a fairly regular basis. This would probably put a big hardship on the tenant.
MAYOR JENKINS: Brian, you got anything?
COUNCILMEMBER BATES: No, sir.

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MAYOR JENKINS: Maria?
COUNCILMEMBER ALEXANDER: No, sir.
I'm not comfortable, I don't think, doing the blanket variances. I understand the intent of the applicant to request the blanket variances, but I guess I look at it you don't want to consolidate all the parcels but you want this particular set of rules to apply to all the parcels. So I guess I'm having a little bit of hesitancy following that train of thought.
MR. WEBB: There were, as I said, a couple meetings between the applicant and staff. There were two possible solutions for dealing with this concept of six separate lots on the site, one of which was a consolidation, but that doesn't work from a business standpoint.
The parcels, the six separate parcels, are taxed separately and in separate amounts and the tenants pay different amounts for rent depending on where they are on the site. And so consolidating would, from a business standpoint, create incredible hardships for some tenants and probably work out as a benefit to some, but from a business standpoint, it's simply unworkable.
That's why we chose the second solution that

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the staff offered, which was this idea of a blanket variance. And again, you know, the reality is anybody driving by this site would look at it and think that's one big 14-acre piece of land. Anybody driving by that site would expect that the setback buffer and other requirements would be applied to that parcel as a whole, and that's all we're asking.
I think the Council has taken one step towards resolving that by consolidating four lots, but there still are two remaining, and not creating variances would effectively render the remaining parcel unworkable.
So I think it is still important. It's probably not as important as it was, but it's vital that that variance be approved, and I think the request is reasonable. We're still trying to deal with the property as a whole, and I think there's a valid justification for the blanket variances under the situation at hand.
COUNCILMEMBER FLEMING: Well, the reason why I specifically asked what the numbers were was because I don't like the term "blanket" either.
MR. WEBB: I've been doing this for a long time. I've never heard that term before either. It came up in a conversation with Mr. Weed -- that was

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his expression -- so we continued it on. You know, it does make some sense in the way he used it, and I think it makes some sense in the way we're proposing to use it here, so --
ATTORNEY WEED: You can either do that or you can consolidate the lots, which is what I've said the entire time.
MR. WEBB: Well, we were given two options, and we chose one. It's as simple as that.
COUNCILMEMBER FLEMING: But will we not, if we made the motion, Mr. Weed, be able to then, whatever the motion is, indicate that the parking variance shall be 584 spaces, the building setback variance is going to be from 30 to 10 feet --
ATTORNEY WEED: Yes, ma'am.
COUNCILMEMBER FLEMING: -- the transitional zoning buffer is -- you know, is eliminating the 40-foot buffer, and at 5197 the setback will be from 30 to zero feet?
ATTORNEY WEED: In my opinion, pursuant to Section 1401, et. seq., you can certainly do that. If you find that the variances meet the standards, you can break them down if you care to in the manner in which you've outlined tonight.
MR. WEBB: And just for the record, there

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are two more in addition to those.
Of course there's the impervious issue that we've already discussed, which would simply allow the existing impervious on site.
And the second is, again, although the setback buffer and parking variances would apply to part of the property -- particularly the setback and buffer would apply to the rear -- there still is an issue, at least according to the staff interpretation, about setback and buffer between the different tax parcels.
And I think you need a blanket variance for that, because again, you know, for example, the staff has taken the position that, you know, there is a dividing line right here through the middle of the building. So if that's true and there is no blanket variance, then, technically speaking, we'd have to come up with some kind of a setback between two -- some kind of a setback here where there's already a building. I mean is that --?
I mean the blanket variances are really just designed to deal with an existing condition. It's as simple as that. And I don't see any other way to do this without granting it. And I don't see there's a hardship. I don't see there's anything negative for

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the city. I think it really is like everything else we're trying to do tonight, which is just clean up sort of a 40-year-old collection of loose ends.
MAYOR JENKINS: Anybody else?
COUNCILMEMBER BATES: Would you guys be willing over the long term at some point working with your business owner to eliminate over a period of time that shed?
MR. BROWN: I don't know what you mean by period of time, but we generally have long-term leases. We'd prefer to leave it in place as it was when the other variance was done.
You know, these days in this economic climate, you know, those are very extremely tough decisions to make. We're quite frankly looking for tenants to lease space wherever we can.
COUNCILMEMBER ALEXANDER: I guess my concern with the zero setback on that, that shed, is how do you identify that building? I mean do you have latitude and longitude? Because we don't want to grant a zero setback and then some other type of structure rebuilt there.
MR. WEBB: That is a good question and one I've thought about myself.
The site plan is obviously part of the

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application. It can be scaled. So the variance for the shed could be tied to the site plan. That way, someone could -- if they thought in the future it had been expanded, could scale what's on the survey, go out and measure what's on the site, and that would tell you the difference.
MR. HAEBERLIN: Murray, we can mark this as Exhibit A tonight if we need to and identify that specific lot if we need to.
MR. WEBB: And I have some extra copies of 8-1/2 x 11 color versions of that survey with me if you'd like them.
COUNCILMEMBER PACHUTA: I was just going to say, maybe this is for Murray, if we granted a variance to specifically allow the metal shed, I wouldn't want that -- I don't know if that shed is being used for a lawful use within our zoning code, and I wouldn't want to us --
ATTORNEY WEED: Well, my --
COUNCILMEMBER PACHUTA: -- grant that.
ATTORNEY WEED: -- understanding of an accessory use is that it -- I mean without getting an administrative search warrant and going into the place and, you know, confirming that, you know, they're not trafficking slaves through there or something equally

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terrible, which we can certainly do, you know, the rental aspect of it is irrelevant. I agree with Mr. Webb on that.
COUNCILMEMBER PACHUTA: Okay.
ATTORNEY WEED: So I would suggest if you would feel better -- and the applicants could certainly agree to some sort of City inspection of it, make that one of the conditions of the granting of the variance, and we go have code enforcement take a look at it and make sure that, you know, nothing untoward is occurring there.
COUNCILMEMBER PACHUTA: No, but the rental of it for storage too in an accessory structure is fine. Is that what you're saying?
ATTORNEY WEED: My opinion is it's fine.
I don't know if Mr. Haeberlin's got a different opinion, but I don't think our code delineates, you know. Just the requirements, you know, the accessory structures on the property, but what you do with them isn't spelled out. I mean there's no prohibition on rental, that I remember.
COUNCILMEMBER PACHUTA: Okay.
MR. HAEBERLIN: We took a very liberal approach to the concept of accessory structure with shopping centers because we realize that -- let's use

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an example, and I'm going to pick somebody national just to say something. Let's say that the Halpern Enterprises wished to build a McDonald's in their parking lot. Is it the principal structure or is it the accessory structure? So we took a very liberal perspective on accessory structures in our rewrite of accessory structures. Okay?

And that being said, I would say that, you know, these structures don't get a certificate of occupancy; they get a certificate of completion. And provided that gets the annual fire marshall inspections, then the storage but not operation of a business out of that accessory -- we'll call it accessory for the sake of purposes here -- is not a problem.

I think we just need to have the record keeping. We need to know that Tenant X has 4,000 -- well, whatever -- 2,000 square feet of storage in this unit here. May not be something we know about. I think it's a record keeping thing. We're not really having a business being run out of that location. We're having storage occur there.

I don't really -- I don't really think it's a huge issue. I just think it's really an inspection and code enforcement issue.

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MAYOR JENKINS: I'm sure that Mr. Halpern and his people wouldn't mind inspection in that building, would you?

MR. BROWN: That's fine.

COUNCILMEMBER BATES: I'm going to make a motion to grant the variances requesting the setback reduction, transitional zoning buffer, impervious lot coverage and the parking variance for parcels 18-310-03-009, 18-310-03-003 and 18-297-10-020 with a couple of stipulations.

One is that the setback reduction for 5197 be reduced from 30 feet to zero feet only along the portion where the metal shed is, that the metal shed is not to be expanded and that it be open for inspection by Quality of Life.

MAYOR JENKINS: That's your motion.

COUNCILMEMBER BATES: Yes, sir.

COUNCILMEMBER FLEMING: Would we --

COUNCILMEMBER BATES: Yes, ma'am.

COUNCILMEMBER FLEMING: Are you going to call for a second? I was going to ask Mr. Bates if he would be agreeable to consideration for an amendment to his motion.

COUNCILMEMBER BATES: Yes, ma'am.

COUNCILMEMBER FLEMING: That if the shed were ever to be removed, that it then goes back to a 30-foot setback.

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COUNCILMEMBER BATES: Yes, ma'am, I'll accept that.

MR. WEBB: Can I ask a point of clarification? I still have a question about, you know, this technical issue that we're dealing with and using the site as it's already developed.

I don't know if your motion includes this concept of a blanket variance or not, and there are different ways you can say it, but the point is we want to use the property as-is, as proposed to be redeveloped for an ATM.

And again, if we're talking about a solid building spans the property line and the staff taking the position that there are different lot lines within it, then it's simply humanly impossibly to observe setback, buffer and other dimensional requirements absent some type of a variance.

And I don't care what we call it. Blanket variance may be a word that scares people. But the point is, this property has been developed for 40 years. We want to continue to use it in the configuration that's reflected on this survey that we submitted with the application.

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COUNCILMEMBER BATES: Mr. Weed, does my motion cover that or does it need to be restated?

ATTORNEY WEED: My opinion is your motion covers that.

COUNCILMEMBER BATES: Thank you.

ATTORNEY WEED: I mean it grants the variance that they've applied for and with additional stipulations.

MAYOR JENKINS: Do we get a second on the variance -- I mean that motion?

COUNCILMEMBER PACHUTA: Second.

MAYOR JENKINS: Okay. Any more discussion?

COUNCILMEMBER FLEMING: Then, I'll ask that question of Mr. Haeberlin, then.

Would you find it difficult or have difficulty in granting a use with the way that we've made the motion, without it being, quote/unquote, a blanket zoning variance?

MR. HAEBERLIN: Well, what we're dealing with is the common law nature that today C-2 does not allow you to have lot lines run through buildings. Okay?

Now, the building official -- let me say from a zoning perspective, if you grant that relief, I will comply with that relief. But I will let you know

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that the building official, from his technical code situation, may have a problem with that and he may have a problem with occupancies. So I don't know. We'll wait and see what Mr. Calcaterra responds to that. I don't -- I don't know if he will make that an issue or he will not make that an issue.

But typically that's one of the reasons why building officials do not like a zero lot line requirement, because they don't have the necessary ratings for having a line through the building. That's a much more technical situation than I'm prepared to discuss this evening. That would be the building official.

MR. WEBB: I have one more request for clarification.

I don't know if you meant to say this or not, but you said if the shed is removed, the setback goes back to 30 feet. But the variance would allow -- the setback is actually 10 feet with the variance except for the --

COUNCILMEMBER FLEMING: I'm sorry. My apologies. 30 to 10; that is correct.

MR. WEBB: Okay. Thank you.

COUNCILMEMBER BATES: And I do need to clarify the motion, that it would -- it's making an

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assumption that those three now-zoned C-2 lots are included in 5165.

MAYOR JENKINS: Any more discussion?

COUNCILMEMBER BATES: Mr. Weed, I just want to clarify again that my motion as made addresses Mr. Webb's concern and Mr. Haeberlin's concern regarding lot lines going through a structure.

ATTORNEY WEED: Well, I can't speculate on either of the gentlemen's intentions, buy I do think I understand your intention.

My understanding of your motion is that you have granted Mr. Webb's client's application for a variance with four stipulations, and that's -- I can confirm that.

So whether it addresses all of their individual concerns, I don't know. They can speak for themselves. But I think I understood your intention, and that's what you've done. If it's approved, you have granted the applicant what they asked for with four stipulations.

MR. HAEBERLIN: If we could make this -- if we can mark this as Exhibit A. Oh, unfortunately we don't have the lot lines. The yellow exhibit that the Mayor and Council were provided in their packages -- Councilman Bates, if you could hold that up -- that

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more clearly shows the lot lines, and maybe we should make -- Well, that, and this in conjunction should perhaps be Exhibit A.

ATTORNEY WEED: Well, just make them -- well, you can make them A and B.

MR. HAEBERLIN: That's fine with me.

And what I'm asking for staff is clarification. I think what Councilman Bates means: only to the extent of the existing development on the property. If these buildings were somehow removed, that that variance would not follow with new construction. I think that's what you're trying to say.

COUNCILMEMBER BATES: That would be the intent, yes.

COUNCILMEMBER FLEMING: Absolutely.

ATTORNEY WEED: And we can just have a notation for the record that what will be marked as Exhibit B has already been provided to the applicant by virtue of the staff report.

Is that correct, Mr. Haeberlin?

MR. HAEBERLIN: I don't think I was able to fax that to them as part of --

ATTORNEY WEED: All right. Well, let's --

MR. HAEBERLIN: -- the staff report.

ATTORNEY WEED: Well, I'll come take a look

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at it.

MR. HAEBERLIN: It was just really an amalgamation of the zoning tax parcels, giving reference to how the tax parcels lay adjacent to each other.

ATTORNEY WEED: All right. Without any objection from the applicant, A and B, if the Council so approves them, can be made part of the record. Further explanation of the motion and the second.

COUNCILMEMBER BATES: That'll be -- part of the motion would be to -- per attachments A and B showing the existing conditions.

ATTORNEY WEED: And there is no objection from the applicant. Is that correct, Mr. Webb?

MR. WEBB: I do not object to the exhibits, no.

MR. HAEBERLIN: Unfortunately because we marked their larger exhibit, I would like for them to be able to leave with that, may we mark the smaller exhibit --

CLERK BLACKMON: I have marked it.

MR. HAEBERLIN: -- in lieu of it? Okay. As A? I don't want to take the applicant's site plan unless they want me to have it.

CLERK BLACKMON: This would be Exhibit A,

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this will be Exhibit B.
MR. HAEBERLIN: Yes, ma'am.
ATTORNEY WEED: And just to state it, because it's being taken down, the larger version of the diagram is also replicated in an 8-1/2 x 11 sheet of paper marked as Exhibit B -- pardon me -- Exhibit A, which has been attached to the record without objection by the applicant.
MAYOR JENKINS: Anything else? We got a motion and a second.
Rhonda, are you prepared to re-read that?
CLERK BLACKMON: I'll do the best I can.
ATTORNEY WEED: Well, we got two court reporters. We can't do better than that.
MAYOR JENKINS: I would like to hear it.
CLERK BLACKMON: What I have is they're approving the variances for 18-310-03-009, 18-310-03-003, 18-310-03-020, setback reduction for 5197 from 30 feet to zero feet only where the metal shed is; no expansion of the metal shed but the metal shed shall be open for inspection by Quality of Life, and if the shed ever be removed from said property, it goes back to the -- 30-foot setback?
COUNCILMEMBER FLEMING: 10.
CLERK BLACKMON: -- 10-foot setback.

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That is what I have.
MAYOR JENKINS: Thank you.
Is that sufficient?
COUNCILMEMBER BATES: We just need to modify I think one of the lot --
COUNCILMEMBER FLEMING: Parcels.
COUNCILMEMBER BATES: -- numbers was incorrect.
CLERK BLACKMON: Did I have it incorrect?
COUNCILMEMBER BATES: The one that ends in -20 --
CLERK BLACKMON: 297 --
COUNCILMEMBER BATES: -- should -- yeah, 297.
CLERK BLACKMON: 18-297-03-020.
COUNCILMEMBER FLEMING: No. Dash 10.
COUNCILMEMBER BATES: Dash 10.
THE REPORTER: Would you repeat that, Rhonda?
CLERK BLACKMON: 18-297-10-020 --
COUNCILMEMBER BATES: Yes.
CLERK BLACKMON: -- the third one that I mentioned.
MR. WEBB: Yeah. My only question -- And I'm sorry. I was fumbling for my tax parcel I.D.

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numbers.
I want to make sure, the application we filed related to 18-297-20-024, -025 and -020 as well as 18-310-03-009, 18-310-03-009 [sic] and 18-310-03-003, so --
COUNCILMEMBER BATES: Based upon the rezoning and the conditions on the rezoning from the previous action, 18-297-10-024, -025, and -310-03-009 will be combined with 18-310-03-009.
MR. WEBB: I gotcha, but I just want -- That hadn't happened, and I just want to make sure we're straight on what we're talking about right now.
But you have attached a condition or some stipulation that addresses that issue.
MR. HAEBERLIN: I understand what the applicant's saying. I think the applicant is saying that these portions that were R-1 that we just rezoned to C-2, he wants to make sure he has a buffer variance on them. I think --
COUNCILMEMBER ALEXANDER: We need to --
MR. HAEBERLIN: -- that's what he's asking.
COUNCILMEMBER ALEXANDER: -- clarify something here, because we've got --
COUNCILMEMBER BATES: Two different lot numbers.

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COUNCILMEMBER ALEXANDER: -- two different parcel I.D.s attached to the same lot.
MR. HAEBERLIN: Could be a typo. The ones that are the R-1s are sequential. So that the last number, the last two digits should be sequential, in a row. Those are the three that are the R-1 lots that became C-2.
MR. WEBB: There are two tax parcel I.D.s for the same lot. They have different addresses, I believe.
COUNCILMEMBER ALEXANDER: 5165 Buford Highway, I believe, if I understood correctly, is the parcel at the south end of the property that you're going to combine the three residential parcels into.
MR. HAEBERLIN: That's correct. I understand. I agree with you, yes.
COUNCILMEMBER ALEXANDER: Okay.
COUNCILMEMBER BATES: We just need -- I think, for the record, that's going to be the address, because we've got two different lot numbers, one on the staff report and one on the agenda.
MR. HAEBERLIN: There was -- I think there was a transpose. I do apologize for that.
The intention was still -- this is 5165, this is 5197, this is 5269, and these three residual

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1 lots are all 0 Raymond Drive.
2 COUNCILMEMBER ALEXANDER: I just want to be
3 careful because we are using the minutes as the formal
4 record of these hearings, and I don't want any
5 discrepancy on the parcel I.D.s, because that's being
6 given along with the street address.
7 MR. HAEBERLIN: Okay.
8 COUNCILMEMBER ALEXANDER: And I just want to
9 make sure that our previous rezoning action is correct
10 based on the parcel I.D.
11 COUNCILMEMBER FLEMING: Okay. If I am not
12 mistaken, my motion on the previous was -23 -- or
13 Brian's, I'm sure -- -023, -024 and -025 would be --
14 those were the three R-1s that would go into the C-2
15 of 5165 Raymond Drive -- I mean Buford Highway.
16 COUNCILMEMBER ALEXANDER: What was the
17 parcel I.D. on the 5165, though?
18 COUNCILMEMBER FLEMING: We did not mention
19 it.
20 CLERK BLACKMON: Yes. I have it written
21 down as 18-297-10-020 in that motion.
22 COUNCILMEMBER ALEXANDER: On the rezoning?
23 CLERK BLACKMON: Yes.
24 COUNCILMEMBER BATES: Okay.
25 MR. WEBB: I'm sorry; 5165 is 18-297-10-020.

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1 COUNCILMEMBER FLEMING: Yeah.
2 COUNCILMEMBER ALEXANDER: Okay.
3 COUNCILMEMBER BATES: Okay.
4 CLERK BLACKMON: 5165 will then be the
5 street address.
6 COUNCILMEMBER BATES: Then just so every-
7 body's clear, the motion is to grant the variances for
8 -024, -025 and -23 to be combined with 5165 of
9 18-297-10-020.
10 Mr. Webb, do you concur with that?
11 MR. WEBB: I'm sorry. I'm lagging behind
12 here. I'm looking between two different things.
13 0 Raymond Drive rear 18-297-10-024,
14 0 Raymond Drive rear 18-297-10-025, and 0 Raymond
15 Drive rear 18-310-03-009 [sic] would be combined into
16 5165 Buford Highway, which is 18-297-10-020.
17 The requested variance also applies to two
18 additional parcels, 5267 Buford Highway which is
19 18-10-310-03-009 [sic] and 597 [sic] Buford Highway
20 which is 18-310-03-003.
21 That's the way I got it.
22 COUNCILMEMBER BATES: And that's not what
23 I've got now, because I've got -- I heard you read
24 18-310-003-009 twice.
25 COUNCILMEMBER ALEXANDER: Yeah, we have --

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1 MR. WEBB: That is correct. There are two
2 separate addresses under that same tax parcel I.D.
3 number, and I can't explain that. That's outside of
4 my orbit. But that's true, and I believe that's
5 always been the case.
6 COUNCILMEMBER BATES: Because we've got --
7 we've got three concurrent. On the R-1s, we've got
8 three concurrent parcel I.D.s of -297-10-023, -024 and
9 -25 listed.
10 MR. HAEBERLIN: Correct.
11 ATTORNEY WEED: Rezoned from R-1 to C-1.
12 COUNCILMEMBER BATES: But Mr. Webb has --
13 COUNCILMEMBER FLEMING: C-2.
14 ATTORNEY WEED: C-2.
15 COUNCILMEMBER BATES: But Mr. Webb has
16 indicated that one of those is actually 18-310-03-009.
17 MR. WEBB: That's what my information
18 states.
19 What are you looking at?
20 MR. HAEBERLIN: Well, I was looking at this
21 exhibit that I provided them right here.
22 I mean I definitely agree 5165 is being
23 combined with the three lots which were previously R-1
24 and are now C-2.
25 5197 is the ATM lot, which we're going to

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1 work on next, and 5269 is I guess where the Halpern
2 main office is, and that's another lot.
3 So I mean I'm understanding the directive of
4 the staff -- of the Council, certainly.
5 COUNCILMEMBER BATES: Well, I concur with
6 Ms. Alexander. If the transcripts of the minutes are
7 being used to read in lot I.D.'s, and all of a sudden
8 we get into the actual research and the lot I.D.s
9 don't match the minutes and the motions, then where
10 are we?
11 MR. WEBB: I have an idea. We've got this
12 drawing Exhibit B that we're attaching. We could
13 number these parcels --
14 COUNCILMEMBER BATES: Perfect.
15 MR. WEBB: -- or letter them.
16 COUNCILMEMBER BATES: Mr. Weed, do you
17 concur with that?
18 ATTORNEY WEED: I concur.
19 MR. WEBB: All right. You want me to do it
20 or --
21 COUNCILMEMBER BATES: Perfect. Go right
22 ahead. You got the pen and the paper.
23 MR. WEBB: (Complying)
24 MR. HAEBERLIN: Okay. What he's showing is
25 5165 being combined -- it's A, with B, C and D, which

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are the 0 Raymond Drives, E is the 5197 and F is the 5269 -- that's logical as an exhibit -- in case there were any errors, because what happens sometimes, these lots will cross a land lot line and the County tax assessor will assign what I call a shadow lot number, and sometimes we get duplicates.

CLERK BLACKMON: We're going to keep the original on this B.

This will be Exhibit C, and I'll make you-all a copy right now.

MAYOR JENKINS: Call the roll.

CLERK BLACKMON: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

CLERK BLACKMON: Councilmember Bates?

COUNCILMEMBER BATES: Yes.

CLERK BLACKMON: Councilmember Fleming?

CLERK BLACKMON: Councilmember Pachuta?

COUNCILMEMBER PACHUTA: Yes.

CLERK BLACKMON: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

MR. HAEBERLIN: Sir, the next item is the conditional use for that of an ATM, and the ATM is going to be located on the 5197 parcel, which is this parcel right here. It's the bulk of the acreage of the property.

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And so at this time, I invite the applicant to come forward and speak on the conditional use application.

ATTORNEY WEED: And before we do, as a matter of procedure, I would advise the Mayor and Council to extend the meeting pursuant to your meeting rules.

MAYOR JENKINS: We're going to do that now. I need a motion to extend the meeting.

COUNCILMEMBER PACHUTA: So moved.

COUNCILMEMBER PITTMAN: So moved.

Take your pick.

COUNCILMEMBER PACHUTA: Take your pick.

MAYOR JENKINS: Call the roll.

CLERK BLACKMON: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Was it seconded?

COUNCILMEMBER BATES: We need a --

COUNCILMEMBER ALEXANDER: A second.

COUNCILMEMBER BATES: We need a second.

CLERK BLACKMON: Go ahead.

MAYOR JENKINS: Excuse me?

COUNCILMEMBER BATES: We needed it seconded.

COUNCILMEMBER PITTMAN: Second.

MAYOR JENKINS: I thought we got one. Okay.

CLERK BLACKMON: Councilmember Alexander?

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COUNCILMEMBER ALEXANDER: Yes.

CLERK BLACKMON: Councilmember Bates?

COUNCILMEMBER BATES: Yes.

CLERK BLACKMON: Councilmember Fleming?

COUNCILMEMBER FLEMING: Yes.

CLERK BLACKMON: Councilmember Pachuta?

COUNCILMEMBER PACHUTA: Yes.

CLERK BLACKMON: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

MAYOR JENKINS: Okay, Scott.

MR. HAEBERLIN: At this time, we'll invite the applicants to come forward.

MR. BROWN: Bill Brown, Halpern Enterprises. I guess we're back at the beginning. Obviously we've gone through this process once before. This time, I believe all the proper advertising has been -- has been handled.

We are proposing to place this ATM in the front of the parking lot on existing asphalt. We're not taking up any existing parking spaces, with no additional impervious surface added to the site. The entire structure is less than 200 square feet of surface area, and best of all, we've got a national tenant that is still willing to lease, and that is Chase Bank. I believe they're still out of New York.

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In the staff comments, there's a concern about the pass lanes as we've designed them.

As we discussed last time -- and this is the same layout that was approved by Council the last time -- the layout we propose is the one that we feel is the most practical due to the flow of the shopping center drive. Basically, we've got a driveway up here along the front, and cars will drive this way heading from north to south and be able to slip into the ATM in a stacking lane and then come out in the same drive (indicating).

If we were to reverse it, I believe, as staff has proposed, basically, traffic will have to come from south to north, cross oncoming traffic, use the ATM, and then exit onto oncoming traffic as well.

Safety is a mutual goal for both us as well as staff. Chase is convinced that this is the correct layout for the ATM, and that's how they do them all over the country.

Also, I believe, based on the Council's actions last week, diminimus changes to the shopping center would, I believe, make the tree ordinance review as far as the next item no longer applicable, but I guess I'll let our attorney talk about the legal aspect.

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MR. WEBB: We'll just touch on two things regarding the CUP application. Again, my name's Den Webb.

Everything about this request is the same as it was in June when you approved it four months ago including the location of the pass lane. This is effectively the exact same survey with some minor, nonsubstantive changes.

The second point I'd like to raise is that Bill mentioned that it considers the location of the pass lane practical. But there really is a lot more to this. You know, there have been a couple engineers who were involved in designing that portion of the site and locating the pass lane, and they did so based on known studies and traffic patterns.

And you know, it's been my recommendation to Halpern from the beginning when we've considered options -- it's been my recommendation that they defer to the experts. You know, this is serious business involving traffic, and there are folks out there who do this for a living, and that's what they've chosen to do here.

And that's simply what we'd request that the City Council do as well. Thank you.

MAYOR JENKINS: Scott?

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MR. HAEBERLIN: As the applicant has illuminated, we definitely are in concurrence now that this is the location for the ATM on 5197, not as has been previously applied for. We have this correctly advertised. As you see, the site is covered over with signage to meet the requirements for notification.

And so based on the conditional use standards of review that were in the code, I did recommend approval of the ATM. And again, this is based on your comp plan, which is moving the site more towards uses which are retail and service oriented uses on the property. So it really is -- this is a first step in implementing the comprehensive planning for the city which is embodied in your Comp Plan.

I still make my recommendation, again, with reservations because of the pass lane variance. And again, that is correct, we can defer to the experts. I bring it to the attention of the Council because I think it's, again, a concern. It's a valid concern.

But you know, the conditional uses, it can be reviewed on a yearly function by the Council. And that's the way the code is set up now, and that's Ordinance 2009-28, which allows the City Council or -- excuse me -- the staff is to notify the City Council approximately one month prior to the anniversary of

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the conditional use. So throughout the duration of this site -- and I consider this to be a long-term investment in this site -- the Council will still have opportunities on a yearly basis to revisit this item.

So with that, I did recommend approval.

Are there any questions?

MAYOR JENKINS: Thank you, Scott. Go ahead and open up the --

MR. HAEBERLIN: Okay. There's no questions, and we'll open the public hearing at this time.

The Mayor has opened the public hearing. Those who would like to speak in favor of the ATM, please raise your hand. I have -- (counting) two, three -- three. Please come forward and state your name and your address for the record.

MS. FRAYSSE: I'm Susan Fraysse. I live at 3971 Spanish Oak Drive in Oakcliff Estates.

And I think this would be a wonderful development for Pinetree Plaza and I support it. I've heard about it several times in several meetings.

And I think we've got all the details and issues worked out, so I hope the Council will consider approving this. Thanks.

MAYOR JENKINS: Thank you. Next?

MR. BIRNBREY: My name is David Birnbrey. I

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live at 705 Langford Lane in Atlanta, Georgia. I'm the CEO of a company called The Shopping Center Group. I don't know if you're familiar with us, but we're headquartered in Atlanta, and we represent national retailers such as Costco and Bed Bath & Beyond and Sports Authority.

And I'm here really for two reasons: number one, to endorse the integrity of the structure of the building and of Chase and to tell you of their sincere interest in locating in the city of Doraville; and number two, just to validate and reinforce Halpern Enterprise's dedication to getting national retailers like Chase to the city of Doraville.

We're constantly in contact with Halpern Enterprises, with all the leasing people in Halpern Enterprises, and we consider Doraville to be a serious target for most of our national retailers.

MAYOR JENKINS: Thank you.

MR. HAEBERLIN: Next person?

MR. ANDERSON: Stuart Anderson.

I agree with the previous two people. The placement of the ATM would be an enhancement to the Pinetree Plaza shopping center and will help them fill it with quality people, and I see no problem with it.

Thank you.

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MAYOR JENKINS: Thank you.
MR. HAEBERLIN: I think that was those for.
Those who would like to speak against the petition, please raise your hand, anybody who'd like to speak against.
MS. CRAWFORD: I just have a question. I don't know if I'd be for or against.
MR. HAEBERLIN: Well, this -- we're in the public hearing right now, so it would be either for or against.
Okay. Guess not.
At this time, we return it to the Mayor and Council.
MAYOR JENKINS: Okay. Bring it up to the table.
COUNCILMEMBER FLEMING: I don't mind hearing Susan's question since she wasn't sure whether she was for. Is that permissible?
MS. CRAWFORD: I'm not clear. What is this development? I thought it was a machine. Is it --
MR. BROWN: You're correct.
MS. CRAWFORD: Okay. Thank you.
MR. HAEBERLIN: Bank teller machine, drive-up.
MR. HAEBERLIN: It's returned to the

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Council.
MAYOR JENKINS: Questions?
COUNCILMEMBER FLEMING: So as I understand it, this particular item is on our agenda this evening because of the passing lane variance that it's needing?
MR. HAEBERLIN: Well, it's on the agenda because it's been misadvertised on the wrong parcel a couple times, or attempted to be, and also too because of the variance. So both items can be handled as well together.
COUNCILMEMBER FLEMING: Okay.
MAYOR JENKINS: More discussion?
Maria?
COUNCILMEMBER ALEXANDER: Just a minute.
- - -
(Brief discussion off the record between Councilmembers Alexander and Bates.)
- - -
COUNCILMEMBER BATES: And the reason why there's a request for a variance for the pass lane, is that because of location? space?
MR. WEBB: Well, I could tell you from our standpoint, the only reason we requested it is because the City told us to do it. They said technically to

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validate the decision you guys took back in June, there should have been a request for a pass lane variance. So just to clean that up and allow you to approve what you've already approved, that was the suggestion.
I thought it was because there was some concern about the DOT ultimately coming in and taking right-of-way between the ATM and --
MR. HAEBERLIN: No. That's just --
MR. WEBB: I don't know what it --
MR. HAEBERLIN: It's the way that it's listed, Councilman Bates, in 2008-33, which is C-1/C-2. Where this is listed as a conditional use, there's other clarifying language which requires pass lanes and stacking lanes.
Now, certainly they have a stacking lane because that is people queuing up to get into the teller. They will not physically have a lane in which they can pass around the stacking lane.
MR. WEBB: Well, the only point I want to make is this is exactly what you approved before with or without the variance.
COUNCILMEMBER BATES: Make a motion to approve the conditional use with a variance regarding the pass lane.

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COUNCILMEMBER ALEXANDER: Second.
MAYOR JENKINS: Second?
COUNCILMEMBER FLEMING: For the ATM.
COUNCILMEMBER BATES: For the ATM, yes, ma'am.
MAYOR JENKINS: Any more discussion?
- - -
(No response)
- - -
MAYOR JENKINS: Call the roll.
CLERK BLACKMON: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
CLERK BLACKMON: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
CLERK BLACKMON: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
CLERK BLACKMON: Councilmember Pachuta?
COUNCILMEMBER PACHUTA: Yes.
CLERK BLACKMON: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
MAYOR JENKINS: Thank you.
COUNCILMEMBER BATES: And are you guys withdrawing the tree ordinance variance request?
MR. WEBB: I think we are, but I need some clarification because apparently something's happened

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1 since the time we filed and tonight.
2 As I understand it, there's been a change to
3 the existing tree protection plan that would no longer
4 create a situation in which a request for an LDP for a
5 minor modification like we are seeking here would
6 trigger the tree protection plan.
7 If that's true, then I'm --
8 COUNCILMEMBER BATES: Well --
9 ATTORNEY WEED: Well, it is in part. I mean
10 it -- I'd like to turn to Mr. Steve Strickland who's
11 the city arborist.
12 Would you address this, Steve? I think the
13 question is whether, under the circumstances presented
14 tonight, if the applicant still requires a variance
15 from the tree ordinance or was the triggerpoint of the
16 tree ordinance recently raised to where they don't
17 have to comply at all?
18 MR. STRICKLAND: Well, I mean, I understand
19 that the -- that they could use the new amendment to
20 the tree ordinance, but I don't -- I guess I don't
21 know. They've applied for a variance, so I don't know
22 if we have to, you know, address that formally with a
23 public hearing or I -- I don't know what the process
24 is for them to withdraw the request or if we, you
25 know, discuss it and allow Council to approve it or

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1 disapprove it.
2 ATTORNEY WEED: Well, let me ask a question,
3 which is: Under the current terms of the current tree
4 ordinance, would the applicant, with their proposal,
5 would they comply with it or would it be irrelevant to
6 them because the trigger was raised high enough where
7 it wouldn't affect them?
8 MR. STRICKLAND: Well, it's my understanding
9 they could use the new amendment.
10 ATTORNEY WEED: Okay.
11 MR. STRICKLAND: The changes that we did to
12 the tree ordinance which allow for certain exemptions.
13 ATTORNEY WEED: And how many -- well, if
14 this is applicable, how many trees and/or the tree-
15 bank equivalent thereof underneath the application of
16 the current amendment would the applicants have to
17 contribute to the city, if any?
18 MR. STRICKLAND: I think they would have to
19 contribute three trees planted on site or make a
20 contribution to the tree bank.
21 ATTORNEY WEED: Mr. Webb, does your
22 applicant -- does your client want to seek exemption
23 from the provision of three trees and/or the
24 equivalent monetary contribution of the three trees on
25 that site?

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1 And if your answer is no, then I would
2 suggest that you withdraw this and provide the three
3 trees or the monetary equivalent thereof. If you
4 withdraw it, the Council doesn't hear it.
5 MR. WEBB: We're in agreement. Actually, we
6 offered to provide three trees under the current
7 request.
8 There's only one other element to our
9 request for variance from the existing tree protection
10 plan, and that was some land disturbance that occurred
11 in the past.
12 You know, looking forward, what I understand
13 you're saying is that our request to add an ATM
14 pursuant to the activities tonight would simply
15 require us to provide three trees or the monetary
16 equivalent thereof.
17 ATTORNEY WEED: That is my understanding
18 from the arborist.
19 MR. WEBB: All right.
20 ATTORNEY WEED: Is that correct,
21 Mr. Strickland?
22 MR. STRICKLAND: (Nods head)
23 MR. WEBB: And certainly we can withdraw --
24 ATTORNEY WEED: He nodded.
25 MR. STRICKLAND: Yes.

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1 MR. WEBB: We can withdraw that part of the
2 request.
3 But there was some issue raised when we met
4 early on, that we also need to seek a variance from
5 the tree protection plan for activities that occurred
6 some months ago.
7 ATTORNEY WEED: Then, I suggest you not
8 withdraw and you have the Council hear your request
9 with regard to those issues.
10 MR. WEBB: All right. Let me try and wrap
11 this up.
12 I just indicated, there were really two
13 elements to the request for a tree variance. Number
14 one was the position we just discussed, which
15 apparently now is moot. We can basically build the
16 ATM without -- or under the newly-adopted tree
17 protection plan subject to the terms we just
18 discussed.
19 But there was a second component to the tree
20 protection variance we requested. That is some time
21 back, a small structure in the front of Buford Highway
22 was taken down. It was taken down to the existing
23 asphalt grade below, it was ground, restriped, and
24 returned to parking in a corner of the parking lot.
25 There was a question raised as to whether or

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not that action triggered some kind of compliance with the tree protection plan, and that's how this whole concept of what the City Council was considering now at least was introduced to us.

I think it may have been Halpern that created the situation, but there was a sense that a minor modification like taking down that structure, like adding an ATM shouldn't trigger the full requirements of the tree protection plan.

So we were counseled to include that as part of our request for a variance, and we have. Our solution was taking the total disturbed area including the land disturbance from a couple months ago plus what we envision would result from the ATM and applying that to the required recompense, and we came up with a need to provide three quarters of a tree, basically. But since that didn't make sense, we offered to actually provide a monetary amount of $200 per tree for three trees or 600 bucks. So that would be our request tonight, to deal with, again, sort of a legacy issue.

COUNCILMEMBER BATES: Would this be in addition to the ATM requirements?

MR. WEBB: Well --

MR. STRICKLAND: Mr. Webb, can you verify

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the total disturbance, the total acreage of both?

COUNCILMEMBER FLEMING: No. Individually, please. Individually.

MR. WEBB: It is in our statement of intent. I can look it up real quick.

ATTORNEY WEED: Mr. Webb, while you're looking that up --

Mr. Strickland, the other modifications of the tree ordinance as I recall was the elimination of a demolition. That was removed from triggering the tree ordinance to begin with.

MR. STRICKLAND: Right.

ATTORNEY WEED: If that is true, is it not true that that makes this second part of the variance moot because as long as they're going to give us three trees and/or the equivalent thereof to the tree bank --

MR. STRICKLAND: Yeah. I would -- I would agree with that, and they'd just -- What I was getting at is they could disturb up to an acre, and I don't think they've got anywhere near an acre.

MR. WEBB: No.

ATTORNEY WEED: Mr. Webb, are you going to give us three trees or the equivalent thereof which is about $600?

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MR. WEBB: If we can go home and do away with our tree protection plan issues, then we will give you three trees or $600.

ATTORNEY WEED: Then I would suggest to you, although I can't give you advice, that you withdraw your request for a variance to the tree ordinance at this time.

MR. WEBB: I accept your suggestion.

ATTORNEY WEED: Members of Council, the applicant's withdrawn their request. There's nothing for you to hear; we can move on.

Thank you.

MR. WEBB: Thank you.

MR. HAEBERLIN: We're now at VIII-G, which is public hearing, conditional use request for auto repair and auto body for First Class Auto Service at 5791 New Peachtree Road.

You recall this property is zoned C-1, and there's been code amendments that allow these type items to be considered as conditional uses under C-1.

At this time, we'll invite the applicant to come forward.

MR. WERBIN: Sam Werbin. I represent the applicants. 3508 Broad Street, Chamblee, Georgia. If it's okay with Council, I'm going to speak and then my

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clients will be available for any questions you have.

COUNCILMEMBER BATES: If you can hold on for one moment --

Mr. Weed or Clerk, could you ask them to take that outside, please.

Thank you.

My apologies. Thank you.

MR. WERBIN: This is a request for a conditional use at 5791 New Peachtree. There are two buildings right together there.

The next request would be the one as you're facing them on the right. This one's the one on the left. It's called First Class Auto.

This business has been operating for approximately 15 -- over 15 years there. The center itself, which is called Roland Center, we believe was built -- I traced it back in the records into the sixties. We believe it was built even before the apartments that were next door, and I'll show you how the apartments had put their own little buffer.

But what I'd like to do is just deal with the staff's comments, which I didn't see until Friday. Mr. Haeberlin may have sent them to me Thursday, but I just didn't get them until Friday and I haven't had a chance to even discuss them with him.

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But one of the things he says is that these gentlemen, Mr. Kwon and his son Young Kwon, they operate the business, the manager and the owner. And the staff has said that auto body work, you know, does not necessarily fit into the category.

But we believe that feasibility-wise, if you know the area, that it does. It's next door to another auto repair shop, which is our -- which is our next case.

And then they had a question about this particular one does auto body work, and they said there are potentially objectionable odors and airborne particles.

Well, I do want you to know that, number one, all auto body work is done inside the building, and there is a paint -- all the painting is done inside a covered area that has an exhaust and a filter to filter out any particles. Nothing goes into the atmosphere.

I don't know if you want to see that, but that's the inside of the building (presenting).

No particles will go out of that building. No work will be done outside that building. If you want to make it -- you know, make it a condition that, you know, no work be done outside in granting the

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conditional use, that's fine, because they don't do it anyway.

One of the other concerns was buffering, and I did want to let you know that there is a natural buffer which are trees.

And I'm going to give you this one too. This might show it a little bit better, from the ground all the way up. There's a natural buffer (presenting).

We believe the apartments have put the buffer in, and we believe they came later, because there is a substantial buffer between the next conditional use request and the apartments.

So you've got no particles, no paint coming out of the building; all the works done inside; you got a natural buffer.

There are also some raised berms, whatever, you know, like dirt that cover -- that shield the apartments also, and I don't think I have a picture of that. I'm sorry.

One of the other concerns that they had was sidewalks, thinking with a lot of apartments nearby that you do need sidewalks.

And I'll show you these photographs. There are sidewalks. The property does have sidewalks. No

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one has to walk, you know, through the parking lot. There are -- there are sidewalks (presenting).

Another concern, traffic being generated into neighborhood streets. We don't believe there are really any what would be determined neighborhood streets. You've got New Peachtree and then it runs into Shallowford, so these are not neighborhood streets. You don't have residen- -- there's not residential. So we don't believe there's going to be any traffic generated there.

And last but not least, it's a family business. Father, son, and I think his mother does their bookkeeping and things like that. It's a family business. They've been there over 15 years. They've kept a very -- and you can see from the pictures, they keep a neat and orderly business. They rely on, you know, clientele are pretty much Asian clientele that knows them and knows where they are. They're in an area where they want to be, Doraville, which is of course, you know, quite a bit Asian, and they would ask that be allowed to continue in business.

And they're available for any questions if you want to ask them.

COUNCILMEMBER BATES: What percentage of the work is composed of the body shop and the auto

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painting?

MR. YOUNG KWON: I'd say it's about 50/50.

COUNCILMEMBER BATES: And based upon your Exhibit D, the letter of intent, your hours are 9:00 a.m. to 6:00 p.m. Monday through Friday and 9:00 a.m. to 5:00 p.m. on Saturday?

MR. YOUNG KWON: Yes, that's correct.

COUNCILMEMBER BATES: And are there any outdoor storage of vehicles that are being worked on?

MR. YOUNG KWON: We have some cars outside, but they're all cleaned up. We don't keep any cars outside any more.

MR. WERBIN: If there's concern, I have a picture of the inside, and they can store six or eight cars inside the building. Will that allay your concerns on that? You can see that. In the interest of time, I didn't send it to you. Did you want to see that, Councilman Bates?

COUNCILMEMBER BATES: I'm good. Thank you.

MAYOR JENKINS: Maria, do you have anything?

COUNCILMEMBER ALEXANDER: Have you had any issues with the State regarding hazardous waste or any infractions like that regarding your paint --

MR. YOUNG KWON: No, we haven't --

COUNCILMEMBER ALEXANDER: -- and chemicals?

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MR. YOUNG KWON: -- had any.
COUNCILMEMBER BATES: Do you recycle oil or other?
MR. YOUNG KWON: Yeah. We have a waste oil service provider who picks up the waste oil and any waste that we have.
MAYOR JENKINS: You don't wash any vehicles?
MR. YOUNG KWON: Occasionally we do.
MAYOR JENKINS: Okay. Do you have facilities to wash them?
MR. YOUNG KWON: We usually wash in the back of the shop.
MAYOR JENKINS: Do I have a motion?
COUNCILMEMBER BATES: No.
COUNCILMEMBER FLEMING: No.
COUNCILMEMBER PITTMAN: No.
MAYOR JENKINS: Oh, wait a minute. I'm getting ahead --
COUNCILMEMBER ALEXANDER: You're getting ahead of yourself.
MAYOR JENKINS: -- getting ahead of myself. I wouldn't be getting in a hurry, would I?
Public hearing, Scott.
COUNCILMEMBER BATES: Scott's turn.
MAYOR JENKINS: Want to come on up.

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MR. HAEBERLIN: Yes, sir. I just noticed that there is a typo in the report under "Request. Conditional Use per Ordinance 2010-24 on property zoned" C-1. Excuse me. This is C-1. Okay?
Here is the map right here. This is the location right here. There's two petition requests including this one. They are part of a larger parcel zoned C-1.
These are the apartments over here, the Shallowford Road Apartments. Kind of gives you proximity. This is the old Seaboard Oil site, Brown Wrecker Service, Cobalt Cars. You know, we're basically coming out of the city limits.
And the reason why this request is here is because in the prior code C-1 only allowed an automotive service station, and by definition, that was a place that sold gas, and a place that sold gas, that did minor repair work. It did not include body shops and it did not include the concept of doing repair without having gas sales.
Now, we've corrected that in our new code, and obviously now C-1 per the actions of Council allows this to be considered as a conditional use.
I'm still not as comfortable in this location with that type use, based on your

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Comprehensive Plan that you have in existence right now. My preference would be that body shop not be a component of this type of district and that we could have considered as well the M zoning of the property.
Now, you do have M-2 here across the street as well, and so we would have been looking at perhaps a zoning line on this property here as M-1. But be that as it may, it's going forward today as C-1.
So I do have reservations about that, particularly what is envisioned for this quadrant on your Comp Plan. It's a mistake that has happened. Regrettably, it's a mistake that has allowed the individuals to be here since 1991.
My recommendation was denial, and again, my reservation is about having an auto body component as part of a redevelopment area that's really supposed to be more mixed-use oriented.
So are there any questions from the Council?
COUNCILMEMBER BATES: My question to you, Mr. Haeberlin, is based upon the staff report for the next item, which is adjacent to this one, your recommendation was approval with reservations --
MR. HAEBERLIN: Yes, sir.
COUNCILMEMBER BATES: -- based upon the potential redevelopment, correct me if I'm wrong, but

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if that lot is to be redeveloped, would it not make sense that both properties would be redeveloped on the lot?
I mean I can't -- I can't imagine that someone would purchase Nice Car Auto Repair and split the lot and redevelop vertically, because they wouldn't have the setbacks, they wouldn't be able to do the buffers. They would need to purchase the lot in total and redevelop it as a whole.
Would that be a safe assumption?
MR. HAEBERLIN: Correct. I'm looking at the redevelopment of the whole site.
Now, whether that site eventually gets split up or not is another decision. Now, certainly they could maintain one of the businesses on the property while they redevelop the remainder and then exit that business into a finished suite or location on the property and then redevelop the remaining quadrant.
My reservations, the auto repair shop, certainly I see that as a neighborhood function. And I think we do need some places where folks living in a mixed-use or medium-density residential area need to go and get their car fixed now, but the body shop component of it is what concerns me.
So my recommendation was denial on this one

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1 including the body shop but approval with reservations
2 on the one that is really just the neighborhood
3 mechanic, and that's how I see it.
4 COUNCILMEMBER BATES: Thank you.
5 MR. HAEBERLIN: Uh-huh.
6 If there are no further questions, we will
7 need to open the public hearing.
8 - - -
9 (No response)
10 - - -
11 MR. HAEBERLIN: Okay. At this time, the
12 Mayor has opened the public hearing on the conditional
13 use for 5791 New Peachtree Road.
14 Those who would like to speak in favor of
15 the conditional use, please raise your hand. I do
16 have (counting) one, two.
17 Please come forward and state your name for
18 the record as well as your address.
19 MS. HOFFMEISTER: Bonita Hoffmeister, 3948
20 Spanish Oak Drive in Oakcliff Estates.
21 Once again the city is sitting here with
22 something that was done before the present City
23 Council. You cannot take a person's business or
24 value. I would recommend that you find some way to
25 grandfather in or condition this for a certain set of

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1 period or as these people own this business.
2 Thank you.
3 MAYOR JENKINS: Thank you.
4 MR. HAEBERLIN: The next person?
5 MR. ANDERSON: Stuart Anderson. I agree
6 with Bonita.
7 We seem to have zoned this business out from
8 under them, as it were, and I'll just make that as a
9 comment. But I also understand Scott's position as
10 far as trying to zone the area or for development
11 purposes in the future.
12 The fact that it's next to Nice Car and has
13 been in existence would seem, if not a taking, at
14 least unfair to deny them, so I'm for it.
15 Thank you.
16 MR. HAEBERLIN: Okay. Next person? Was
17 there another one speaking for?
18 - - -
19 (No response)
20 - - -
21 MR. HAEBERLIN: Okay. Those who would like
22 to speak against the petition, please raise your hand.
23 Those who would like to speak against.
24 Seeing none, return it to the Council.
25 MAYOR JENKINS: Thank you, Scott.

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1 COUNCILMEMBER PITTMAN: If we allow them to
2 continue, if they go away or go out of business, that
3 does not allow the same thing to go back in there; is
4 that correct?
5 ATTORNEY WEED: Well, we've talked about
6 this before, and this is what I think.
7 A conditional use permit is zoning. You
8 have to comply with the Zoning Procedures Act. You're
9 making a zoning decision pursuant to Title 36 of the
10 Georgia Code. Once that land is zoned whatever it is,
11 you can always change the zoning; however, you've got
12 to go through the same formal process.
13 So my feeling on it is unless you review it
14 as you can at the end of the year and take away -- for
15 example, they start painting cars outside and it's a
16 clear violation of the conditional use permit, unless
17 you have a hearing to take it away via that mechanism,
18 my position is it travels with the land.
19 So that's where I come on that. I believe
20 Mr. Haeberlin might have a different point of view.
21 But I think it's zoning and I think it travels with
22 the land.
23 COUNCILMEMBER BATES: But doesn't a
24 conditional use, if the property is sold, doesn't the
25 transfer of ownership trigger a new conditional use

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1 hearing?
2 ATTORNEY WEED: In my opinion, it does not.
3 COUNCILMEMBER FLEMING: Could we not make
4 that a condition on this?
5 The reason why I'm asking that, Mr. Weed, is
6 for some of the hearings that I've sat through at
7 Dekalb County and they have had, you know, special
8 land-use permits, and they have made conditions -- and
9 I don't know case law or anything, but they have made
10 conditions that the SLUP would not -- the SLUP cannot
11 be sold to another owner.
12 ATTORNEY WEED: I think you can do that if
13 the applicants agree. If they are in concert with
14 that decision, then that's -- then yes, my opinion is
15 you can do that. If they don't agree, I think that's
16 a problem for the City.
17 But ask them. If they agree, they agree.
18 COUNCILMEMBER ALEXANDER: If we issue a
19 conditional use and then the business ceases to exist
20 and a six-month time line passes, in your opinion,
21 another body shop could open up after the six-month
22 time passes?
23 ATTORNEY WEED: Yes.
24 COUNCILMEMBER PACHUTA: They would make a
25 conditional use permit; correct? They would just make

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their own conditional use permit?
ATTORNEY WEED: No. Well, we have --
Do we have a six-month or 12-month rule?
MR. HAEBERLIN: On zoning decisions, it's 12 months.
ATTORNEY WEED: Okay. All right. So if the use were -- let's say that it closed and was abandoned for 12 months and a day, then I think the next candidate would have to apply for a conditional use permit.
COUNCILMEMBER FLEMING: Well, would it not revert just like in our zoning? It reverts back to what it was originally before it was -- At 12 months and a day, doesn't it automatically revert back to the initial zone it was before we put the condition on there?
ATTORNEY WEED: I think at this time that's a reasonable position to take.
But a good solution to this would be that the applicants agree that if they leave, that one of the conditions of the issuance of the conditional use permit is that they understand and intend that it does not go into their bundle of rights that would travel with the land. And if they're willing to agree to that, well, that's a win/win situation.

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COUNCILMEMBER ALEXANDER: But they're tenants, not owners, so it's not --
ATTORNEY WEED: I assume that they have the permission of the owner to seek the conditional use permit.
Now, they need to go back and maybe clarify that the owner agrees with that position, because unless they have the permission of the owner, they couldn't seek -- they couldn't have sought this CUP in my opinion. They had to fill out that form.
MR. HAEBERLIN: Correct. They're authorized applicants for the owner.
ATTORNEY WEED: That's a great question, though, and they may need some time to go back and make sure that the owner of the land agrees.
MR. HAEBERLIN: I believe the attorney may represent the owner, so let's hear from him.
ATTORNEY WEED: Right. Okay.
MR. WERBIN: I do represent the owners. I don't know that I have permission to agree to what you said.
But I would like to point out that if you put such a condition on it, you make the business completely unsalable because the new owner says, you know, I can't operate the business there. And I mean

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that's --
ATTORNEY WEED: And your clients don't have to agree. Apparently they said no, so you can go on.
MR. WERBIN: Well, I'm just saying I don't have the owner's permission. He's not here tonight. But yeah.
ATTORNEY WEED: Would you like more time to get it or is it your position that you're not interested in taking that back to the owners or --
MR. WERBIN: Well --
ATTORNEY WEED: And I'm not --
COUNCILMEMBER FLEMING: I'm not really --
COUNCILMEMBER BATES: I'm not particularly interested in putting that particular condition.
I am, however, inclined to put if there's a 12-month non-operational -- if it ceases to exist for 12 months plus a day, that the conditions go away and it just reverts back to C-1 flat.
MR. WERBIN: That's understood. I mean almost every city, that's -- I mean that I've been involved with, it's either six months or 12 months, yeah, but it does revert.
ATTORNEY WEED: However, we have to put on the record your clients would agree to that as a special condition.

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MR. WERBIN: Yes.
ATTORNEY WEED: Very good.
MR. WERBIN: The owner will agree to that, yes.
COUNCILMEMBER BATES: I'll make a motion to approve the conditional use for 5791 New Peachtree Road for auto repair shop/auto body repair with the condition that if the property becomes vacant for 12 months plus a day, that all conditions become null and void and the property reverts back to C-1.
COUNCILMEMBER FLEMING: Second.
MAYOR JENKINS: Any more discussion?
- - -
(No response)
- - -
MAYOR JENKINS: Call the roll.
CLERK BLACKMON: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
CLERK BLACKMON: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
CLERK BLACKMON: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
CLERK BLACKMON: Councilmember Pachuta?
COUNCILMEMBER PACHUTA: Yes.
CLERK BLACKMON: Councilmember Pittman?

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COUNCILMEMBER PITTMAN: Yes.
MAYOR JENKINS: Thank you.
Scott?
MR. HAEBERLIN: Okay. The next one is VIII-H, public hearing, conditional use request. Again, auto repair. This is Ricahula Corporation d/b/a NiceCar Auto Repair, 5785 New Peachtree Road. Again, this is on the same property, same zoning, C-1.
At this time, we'll let the applicant speak first.
MR. WERBIN: Same as before. This one does not do body work, and all the same reasoning -- I know it's late -- all the same reasoning applies.
If you have any questions for the client, he's here.
ATTORNEY WEED: That was the most brilliant presentation we've heard in a while.
MR. WERBIN: How was that?
MR. BARBERAN: Jose Barberan.
COUNCILMEMBER BATES: And based upon the Exhibit D of the application, hours, 8:30 a.m. to 6:00 p.m. Monday through Friday and then 8:30 to 3:00 on Saturday?
MR. BARBERAN: Correct.
COUNCILMEMBER BATES: And the same request,

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you guys do recycling and appropriate disposal of fluids?
MR. BARBERAN: Correct, we do.
COUNCILMEMBER ALEXANDER: And you do all your work inside?
MR. BARBERAN: Yeah, we do all the work inside, use the lifts for it.
COUNCILMEMBER FLEMING: And how long have you been there? Or not you, but the business.
MR. BARBERAN: The business I believe started back in '99, and we acquired it in 2007.
MR. WERBIN: There was a similar business since 1979. The same business since 1979, that this owner, the present owner, has been there since '79.
MAYOR JENKINS: Any more questions?
- - -
(No response)
- - -
MAYOR JENKINS: Scott?
MR. HAEBERLIN: Very similar situation. Again, it was just improper application of the zoning ordinance. There's a definition here. It really behooves staff to read that definition. Unfortunately that did not occur.
However, as we see it today as a conditional

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use, again, I looked at it as the concept of having a neighborhood mechanic. I think that is an important component of mixed use.
This one I did recommend approval because, again, I felt that more standards were met than not met, and, again, I thought this is more of a component of a neighborhood development because it did not have the auto body shop component of it. I did recommend approval.
Do you have any questions on this one? If not, we'll go to the public hearing.
MAYOR JENKINS: Go ahead, Scott.
MR. HAEBERLIN: Okay. At this time, the Mayor has opened the public hearing.
Those who would like to speak in favor of the condition use for 5785 New Peachtree Road, please raise your hand. We got one?
Come forward and state your name and address for the record.
MS. CALVERT: Ginny Calvert. I live at 4082 English Oak Drive, Doraville.
I would like to be very sure that they are not going to be working with other car sales lots that are in Doraville. I would hate to think that we would end up with a chop shop right in our midst.

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Have to excuse me. I can't talk. Getting laryngitis.
Okay? But I like the idea of a repair shop but not if it could possibly end up as a chop shop.
MR. HAEBERLIN: Okay. You've heard those who wanted to speak in favor of the application.
Those who would like to speak against the application of the conditional use for 5785 New Peachtree Road, please raise your hand.
Again seeing none, I return it to the Council.
MAYOR JENKINS: Okay. Bring it back up to the table.
Motion?
COUNCILMEMBER ALEXANDER: I make a motion that we approve the conditional use for 5785 New Peachtree Road to be a car repair shop with the same condition as the previous motion, in that the operation ceases to exist for a year and a day, it reverts back to the previous zoning.
COUNCILMEMBER PITTMAN: Second.
MAYOR JENKINS: Any more discussion?
- - -
(No response)
- - -

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MAYOR JENKINS: Call the roll.
CLERK BLACKMON: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
CLERK BLACKMON: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
CLERK BLACKMON: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
CLERK BLACKMON: Councilmember Pachuta?
COUNCILMEMBER PACHUTA: Yes.
CLERK BLACKMON: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
ATTORNEY WEED: Does your client agree to that condition as well?
MR. WERBIN: Same condition. We agree to same condition as everything else.
ATTORNEY WEED: Thank you.
MAYOR JENKINS: Thank you, sir.
MR. WERBIN: Thank you.
MAYOR JENKINS: Have a good evening.
MR. WERBIN: Hope y'all get out early.
MR. HAEBERLIN: The next item is VIII-I. This is a public hearing for a conditional use for a pawn shop. Again, this is another code amendment that allows conditional uses for pawn shops to be considered in C-2. This is Fast Cash Title, LLC, at

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5351 Buford Highway, zoned C-2, 0.264+/- acres.
At this time, we invite the applicant to speak.
MR. SOLSRUD: My name is Greg Solsrud.
Councilmembers, Mayor, thank you for staying so late and listening to my petition for a conditional use permit.
My name is Greg Solsrud and I own Fast Cash Title. I started Fast Cash Title about three and a half years ago here in Doraville. And interestingly enough, the main reason why I started Fast Cash Title was Mayor Ray.
I went to three different locations. I went to Chamblee, because I live right over here just on the outside of Dun- -- just on the outside of Doraville and Dunwoody. I went to Chamblee and I went to Norcross, got two different places I was going to rent there.
And then I came here to Doraville, and I walked in the front door, and Mayor Ray greeted me like I was an old friend and said, "Welcome to Doraville. We look forward to new businesses." So that's actually why I got started, because I just started the business here.
Built up the business slowly over time, and

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got -- still have got my original license. And as Scott explained, things changed a little bit, and that's why I'm here you before today to grant a conditional use permit.
Why do I cover this? Because I think it's very important. I'm a small business owner. I depend on this business for my livelihood. I have three children. One goes to Piux and two goes to OLA, Our Lady of Assumption. In addition, I employ a local person who actually lives just on the border between Chamblee and Doraville.
I service a community of about three miles radius around this area. Most of my clientele comes from this community, within the area.
Again, pawn shops have a lot of -- Or title pawn. I'm not a pawn shop. Nothing wrong with pawn shops, but I operate underneath the pawn shop laws where I just do title loans. So if you came into my office on one day, you'd see two desks, me sitting there with another young woman. We don't do things with musical instruments, we don't do guns, we don't do anything like this. We just do car lending, basically.
A large percent of my business is actually doing car financing. For people that can't find

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financing, in other words, they'll come to me for a car loan to actually purchase a vehicle. So it's built up a nice little niche.
To give you an idea, because there's a lot of things about traffic in the -- After I met with Scott, he gave me a whole list of there's about seven criteria, and it was a big concern about traffic. I don't have a lot of control over the traffic on Buford Highway. But from our location, I'll give you an idea, we have three to five new customers a week. Not a lot of traffic comes in. We probably have maybe about one to two walk-ins a day, people coming along Buford Highway looking for a title loan. So I don't think our business really is like a draw where we're adding a lot of traffic that isn't already here on Buford Highway.
The other thing we do is most of our payments, people don't come in to make payments on their title pawn loan in our particular store. We work with Sun Trust, where they'll deposit direct into Sun Trust, and we all use ACHs. So even once a customer does get a loan, they typically don't come back to our place except to receive their title.
I just want to hit about three or four points. I believe that our use is sort of in design

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of what Buford Highway -- I went over the comprehensive master plan. And I would call ourselves sort of a limited office, I mean, with two people working in it, limited people coming in. We're sort of maybe the character of business that provides the buffer between a residential area behind us. And again, I'm not the owner of the property. We rent the property. It's 800 square feet.

With that, I wanted to cover one thing I asked Scott, is there one thing that I could address to you that may be a concern?

One concern was is storage of vehicles, sale of vehicles on the premises. When we first got started, we were like any small business. We were just trying to make a living and going, and, luckily, we've had some success. So what we do with all our vehicles now is I actually have a storage location which is located not technically in Doraville but it's on Oakcliff, where we rent 25 spots for vehicles that, unfortunately, sometimes we do have to take possession of. We use a professional repo company called Midnight Repo, so none of the vehicles are brought back to our property.

And we do not -- no longer, as of for the last several months, have any vehicles on our

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property. We don't expect to have any vehicles either to store or for sale. We use another company called Manheim-Bishop Brothers Auction. Auction prices have come back tremendously over this last year, so that's typically where we resell our vehicles. So I wanted to specifically address that after I met with Scott and did this proposal.

With that, I'll just end my comments, but I'll throw in a little fact. I looked at my Quick Books today, and I gave to 71 different groups this year alone, charitable donations. So I don't know if you've ever been involved with groups, different groups looking to sell popcorn or looking to get a few little ads in the local magazines or on calendars, I'm one of those small businesses that do all that.

So I think our particular business, even though we may in general have a bad reputation, our small business tries to run a very good business and tries to support the community. Thank you.

MAYOR JENKINS: Thank you.

Scott?

MR. HAEBERLIN: Okay. Up on the map, you guys have an idea of where this is.

I apologize. No matter where I stand, I'm going to block somebody.

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This is Oakmont and Buford Highway right here. This is the location right here. I believe there was a recording studio, I think, next to this property at one point in time, maybe one of the few historical/of-interest properties in the city of Doraville. I have not verified that, but that's my understanding.

Again we're here because there was a use allowed on the property that was not previously allowed in the zoning ordinance, and this is here before you tonight as a conditional use as the result of changes to the C-1/C-2 ordinance that allows this as a conditional use in C-2.

And you see in my reports -- and this is quoted throughout all the reports, as I'm quoting to you the Comp Plan. And the Comp Plan, for lack of a better term, doesn't have a very good feeling about Buford Highway and it makes some pretty detrimental comments about how Buford Highway looks. And certainly, we are working on improving that. That's a long-term goal.

But this site, what really concerns me is -- and I don't know how this ever got Commercial 2, but it's next to residential, so it's a huge component of this neighborhood that exists there.

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And I do make some recommendations in there just for you to consider long-term is that the City Council should actually consider closing the street. And that's because the horizontal and vertical alignment at this location is horrible. And that area could be turned into a small pocket park, which would be a buffer for this neighborhood.

And there's plenty of entrances and exists into this neighborhood. So this would close off this neighborhood from the impacts of Buford Highway but it's not going to really address the situation on the buffering because there really isn't any buffer there. And that's just the situation we have to deal with. That's a long-term situation, and that's one of my greatest concerns.

And you see in here I'm kind of 50/50 because how this got here is really, again, a past situation. We don't have any real buffering. Maybe this property is not appropriately zoned C-2. That's a decision of the Council.

You know, this business has been here since September 2007. Again, you're lucky again because the conditional use ordinance allows you to review this on a yearly basis.

And the concerns that the gentleman raised

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1 regarding the storage of vehicles on the site and
2 basically operating an automotive sales lot has been a
3 big concern of mine, and I've had a lot of interaction
4 with the code enforcement department, who has been
5 actively looking at these sites to make sure that
6 they're not selling cars. So I think that is an
7 important component.
8 Again, if the conditional use is approved,
9 it has to go through the regulatory functions that
10 involve the police department and the city clerk's
11 office.
12 With that, are there any questions at this
13 time?
14 COUNCILMEMBER FLEMING: Would you do me a
15 favor --
16 MR. HAEBERLIN: Uh-huh.
17 COUNCILMEMBER FLEMING: -- and go to your
18 right and show it to me?
19 MR. HAEBERLIN: I apologize. This is the
20 site right here, and this is the street which is
21 Oakmont. So you see here we have two residential
22 components that line up on a C-2 location.
23 It's an unusual site. The site that's part
24 of it, that's part of the master piece of the
25 property, was at one time a tattoo parlor which is

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1 abandoned.
2 COUNCILMEMBER FLEMING: Thank you.
3 MR. HAEBERLIN: So if there are no further
4 questions, we'll go to the public hearing phase.
5 - - -
6 (No response)
7 - - -
8 MR. HAEBERLIN: Okay. The Mayor at this
9 time has opened the public hearing.
10 Those who would like to speak in favor of
11 the proposed conditional use, please raise your hand.
12 Seeing two, please come forward and state your name
13 and address for the record.
14 MS. HOFFMEISTER: Bonita Hoffmeister, 3948
15 Spanish Oak Drive, Oakcliff.
16 Again, I disagree with taking of a person's
17 property which, in this case, is his business.
18 However, I looked at pawn shops also have other legal
19 issues and tendencies.
20 I would like to recommend that the City
21 Council look at amending our code so that we
22 differentiate between title pawn shops and regular
23 pawn shops. And basically I'm pretty neutral on this
24 because of the -- you know, the connotations of a pawn
25 shop.

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1 I do like Scott Haeberlin's recommendation
2 for the future use of the land. I would like to
3 recommend that if the City does have the opportunity
4 to purchase this, to turn it into a park.
5 I will say this, from talking with other
6 cities about their development, I have to disagree
7 with Scott on closing the road. One of the problems
8 we have here in Doraville is connectivity. A lot of
9 our businesses, and for that matter, a lot of Atlanta,
10 does not even know that a residential area exists
11 here, and therefore, they do not consider this a
12 viable market. So I would encourage keeping the
13 street open in the future. Thank you.
14 MR. HAEBERLIN: Okay. The next individual?
15 MS. CRAIG: Mayor Jenkins, Council, my name
16 is Vera Craig. I live at 1515 Valley Club Drive in
17 Lawrenceville. I'd like to thank you for the
18 opportunity to be here.
19 I've been an associate of Greg Solsrud at
20 Fast Cash Titles since he opened. I occasionally have
21 situations. I'm a disabled environmental scientist
22 and veteran, and I've been fighting for a number of
23 years for my disability.
24 At a point when I was no longer able to work
25 because of service-connected disabilities, I had some

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1 hardships that came about rather abruptly. I ended up
2 losing my home to foreclosure because the VA was very
3 slow in granting those funds that I was -- or I should
4 have gotten.
5 And fortunately, I met Greg and was able to
6 go to Fast Cash Title here. I had the right documents
7 for my title loan. He approved it. He's just a warm
8 and great family person. It says he has operative
9 under the pawn shop laws; however, there are no such
10 things as you would normally see in a pawn shop. It
11 is title loan. And he does check to make sure that
12 you have all those things to abide by the law.
13 And it's a quick turnaround, usually
14 monthly, whatever the loan is. But for people such as
15 I that have foreclosures on them and don't have the
16 other avenues that used to be available to me but
17 still have the necessities that the family will
18 require at such times. Like if I adopt a new dog that
19 I'd just found abandoned and abused, and I have to get
20 three or four hundred dollars out to get the operation
21 done, to the vet, I can count on him to be open to
22 that because he knows that's my passion. To know that
23 I have a granddaughter, and she'll call and say,
24 "Nana, we got to do this, I've got to --" She's got a
25 $250,000 scholarship granted to her, but she needs to

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1 have such amount of dollars, and Nana doesn't get paid
2 till the first. So I go to see Greg, and again, he
3 has an open heart and an open ear -- strictly
4 business, but a great heart. He has a great family,
5 and he's just -- for those such as I, I know that he
6 provides a great service.
7 And I ask that you grant him the business
8 license to continue. I know that those people that
9 may walk in off of the street have never seen anything
10 that will be a disparity to Doraville and any
11 associations with him. And going in and being around
12 there, there's usually he and Ms. Sondra, the lady
13 that works for him that also lives here, and it's
14 easily to get to through her, those concerns. But I
15 know that he contributes a lot financially to the city
16 and to whomever that he can help.
17 And I just say thank you very much for
18 allowing it in the past, because had it not been for
19 his business, I can't tell you the tears I would have
20 cried because I couldn't have on -- my old credit
21 gone, you know, and it's helped me to sustain.
22 So I pray that you will see it in your
23 hearts and minds and know that that is a valuable
24 business, that it is an asset that we need, especially
25 with the economy today, and I thank you again for this

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1 opportunity.
2 COUNCILMEMBER FLEMING: Thank you.
3 MR. HAEBERLIN: Those who would like to
4 speak against the proposed petition, please raise your
5 hand.
6 Seeing one, please come forward, state your
7 name and address for the record.
8 MR. CRAWFORD: Ben Crawford, Oakcliff
9 Estates, and hopefully I'll be allowed the same amount
10 of time.
11 I moved to Doraville in 1987. I have three
12 wonderful daughters that went to school here. I have
13 a daughter that graduated as a lawyer from Emory, and
14 I can go on and on.
15 I do believe this gentleman is probably a
16 very nice gentleman, and I believe the lady that works
17 for him is probably a very nice lady.
18 MS. CRAIG: I don't work for him.
19 MR. CRAWFORD: Title pawns -- or associate
20 -- title pawns are something that have very high
21 interest rates, and they're not a good thing to have
22 in the city. We've already got many pawn shops and
23 many title pawns in this city, and I think this is
24 something that should be looked at by City Council and
25 put some conditions on it. And I think it's things

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1 that -- I'm a very nice person. So how about
2 considering my interests or the residents that live in
3 Doraville? You should consider us too.
4 And maybe one thing that could be posted on
5 the side of the business if it's a condition is to put
6 down what the interest rate is for the people that
7 come in.
8 Because if you go around the country, states
9 are coming in and they're looking at title-pawn
10 businesses and how they affect like the military.
11 They put them right outside of military bases. And
12 soldiers and, you know, men and women that serve our
13 country, you know, they get sucked into where they
14 don't have a lot of money, and hey, guess what? There
15 goes the car. Maybe the wife can't work her job.
16 I mean there's consequences, yes. But I
17 mean there's two sides to this picture, and I hate for
18 you to just look at one. And I'm saying consider the
19 nice people that live here for a change, too. Thank
20 you.
21 MR. HAEBERLIN: Okay. Return it to the
22 Mayor and Council.
23 MAYOR JENKINS: Bring it back to the table.
24 Got any questions of Scott or anybody?
25 COUNCILMEMBER FLEMING: I have a question

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1 for Mr. Weed in regards to Ben -- Mr. Crawford's
2 question about posting the interest rate. And I
3 believe that's something that's been discussed on this
4 table with Council before. So could you address that
5 for me, if that's a legal -- is that a condition we
6 can set or is that a legal thing that allows for us
7 to ...
8 ATTORNEY WEED: I don't opine that it's any
9 kind of taking.
10 COUNCILMEMBER FLEMING: I'm sorry?
11 ATTORNEY WEED: Since I don't believe that
12 it's any kind of taking, I think that's a condition
13 that you can set.
14 COUNCILMEMBER BATES: We had talked about
15 including that as part of the pawn shop regulatory
16 ordinance itself and being included in and applied to
17 all the pawn shops, title pawns in the city.
18 So I concur that that is something that
19 should be addressed. I don't know that I would want
20 to apply that as an individual condition upon each
21 applicant, but across the board once we pass the
22 revised pawn shop regulatory ordinance.
23 COUNCILMEMBER PACHUTA: I agree. I think
24 we're in the process now of revising the pawn shop
25 regulations because it's been a long time, and we've

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1 asked Mr. Weed to look at regulations for title pawn
2 also that we can implement. So my preference would be
3 just to address any -- those suggestions in the
4 regulations, not on a zoning condition.
5 COUNCILMEMBER BATES: I make a motion to
6 approve the Fast Cash Title at 5351 Buford Highway
7 with the following conditions: no storage of
8 vehicles, no selling of vehicles on the property; and
9 like we did with the previous, if it goes vacant for
10 12 months plus a day, it reverts back to the original
11 zoning.
12 COUNCILMEMBER PACHUTA: Second.
13 MR. HAEBERLIN: May I ask for a
14 clarification?
15 COUNCILMEMBER BATES: Yes, sir.
16 MR. HAEBERLIN: This conditional use would
17 apply to businesses which exceed the realm of title
18 pawn? Is staff to believe that it would -- if this
19 person were to disappear, would another pawn,
20 traditional pawn shop, be allowed at that site?
21 COUNCILMEMBER BATES: No. This would be
22 applicable to pawn, period.
23 COUNCILMEMBER PACHUTA: Pawn or title pawn?
24 COUNCILMEMBER BATES: Both. Pawn, title
25 pawn. If title -- if this business leaves for 12

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1 months, I don't think any pawn should go back in.
2 MR. HAEBERLIN: Okay.
3 ATTORNEY WEED: However, if the business
4 wanted to sell it to a traditional pawn shop, that
5 would be fine with you.
6 COUNCILMEMBER PACHUTA: If it was within the
7 twelve.
8 ATTORNEY WEED: Not you personally but as a
9 concept.
10 COUNCILMEMBER BATES: I guess because pawn
11 is being treated as one type under our ordinance, that
12 based upon your conversation from the auto repair,
13 that we couldn't restrict that.
14 ATTORNEY WEED: Yeah. I'm not -- I'm not
15 advising you not to feel that way. I just wanted to
16 clarify that that's what you meant.
17 COUNCILMEMBER BATES: I mean --
18 ATTORNEY WEED: So that the answer to my
19 question would be yes, in the future, another -- a
20 title pawn or a standard pawn shop, both regulated by
21 the State code, could go into that location.
22 I'm just confirming that's your
23 understanding.
24 COUNCILMEMBER BATES: Yes, and I'm
25 processing it so --

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1 ATTORNEY WEED: Okay.
2 COUNCILMEMBER BATES: -- give me a moment.
3 At 10 o'clock my wheels turn a little slower.
4 ATTORNEY WEED: I understand completely.
5 MR. HAEBERLIN: Understand. That's the
6 reason why staff asked the question, just so I know in
7 the future as well.
8 COUNCILMEMBER BATES: Hypothetically, if we
9 passed the new pawn shop ordinance with the distance
10 requirements in it, would that come into play with the
11 selling of a business -- of an existing business?
12 ATTORNEY WEED: No. It would come into play
13 for anybody who came in afterwards.
14 COUNCILMEMBER BATES: Okay. From a selling
15 to another business, are those conditions that we can
16 put on this? because my -- and correct me if I'm
17 wrong, but what I heard when we were dealing with the
18 auto repair was that we couldn't put restrictions on
19 the conditions until after a 12-month period of time.
20 Are you telling me now that we can?
21 ATTORNEY WEED: No, sir.
22 COUNCILMEMBER BATES: Okay.
23 ATTORNEY WEED: What I'm saying is -- or
24 this is my opinion based upon the code. 36-66-3,
25 Subsection (4) Subsection (E) deals with the granting

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1 of a special permit. Clearly that's now a zoning
2 decision.
3 If it is a zoning decision, it requires
4 advertisement underneath the Zoning Procedures Act,
5 and that leads me to think that it is a -- after you
6 grant the zoning, it travels with the land until such
7 time as the conditions fail, you have a hearing and
8 you take it away from a person or this Council or some
9 future council changes the zoning.
10 Now, bearing all that in mind, that -- that
11 opinion hasn't changed. What I do think is that the
12 current applicant, with the permission of the owner if
13 they are not the owner and they're simply renting the
14 property, could agree to a condition that would be
15 that the condition would not travel with the land;
16 rather, that they understand that it's a condition for
17 a period of time.
18 They can always agree to that. If they
19 chose not to agree to it, then they chose not to agree
20 to it, and I think you'd go back to the baseline of
21 the State law.
22 COUNCILMEMBER BATES: Anybody else follow
23 that?
24 COUNCILMEMBER ALEXANDER: And the owner of
25 the property is not here. He's gone.

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1 MR. HAEBERLIN: I think what elicited that
2 question is, was your conditional use specific to the
3 concept of title pawn or would any other concept of
4 pawn be allowed? And that's -- just staff wanted
5 clarification in case he closed tomorrow and a
6 traditional pawn shop came in. Was that your
7 intention?
8 ATTORNEY WEED: Under State law, the answer
9 would be yes because they are currently regulated by
10 the same statute. That's just how I read it.
11 COUNCILMEMBER BATES: Yes to what?
12 ATTORNEY WEED: Yes, they would both be
13 interchangeable at this time unless you make a
14 condition that you wanted to differentiate them.
15 COUNCILMEMBER ALEXANDER: But a new pawn
16 shop would have to submit themselves to the regula-
17 tory code, because they would have to go through the
18 background checks and the permitting for the
19 employees.
20 ATTORNEY WEED: I would agree, but --
21 COUNCILMEMBER ALEXANDER: So --
22 ATTORNEY WEED: -- once again, that may be
23 different, meaning we've differentiated between
24 zoning, the allowance of zoning. Just because a
25 person gets a zoning, they may never open because they

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1 can't meet the regulatory standards. And we've always
2 differen-tiated between the two.
3 COUNCILMEMBER BATES: So the question from
4 staff is whether or not the motion would allow them to
5 sell to a pawn shop, not a title pawn.
6 ATTORNEY WEED: Correct.
7 COUNCILMEMBER BATES: And the question to
8 counsel is, could we restrict that in the motion?
9 Could we restrict the sale of the business from title
10 pawn to regular pawn?
11 ATTORNEY WEED: My opinion is, if they
12 agree, yes.
13 COUNCILMEMBER BATES: Okay.
14 ATTORNEY WEED: However, if they do not
15 agree, I think that is problematic. And the reason
16 why it's problematic is because under the State law
17 they are grouped, they are lumped together --
18 COUNCILMEMBER BATES: Gotcha.
19 ATTORNEY WEED: -- as a single thing
20 currently.
21 COUNCILMEMBER BATES: I'm withdrawing my
22 motion so we can start afresh.
23 COUNCILMEMBER FLEMING: Okay. But don't
24 make the motion yet.
25 In our discussions of the pawn shop

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1 regulation, we have made the discussion of having pawn
2 shops and title pawns separate even though they may be
3 under the -- regulated under the same State code, so,
4 and to correct it in the zoning ordinances to indicate
5 that as well. Was that not everybody's understanding,
6 so that we would have a two-line-item item rather than
7 lumping it together as one?
8 COUNCILMEMBER BATES: We've talked about
9 separating them --
10 COUNCILMEMBER PACHUTA: We have.
11 COUNCILMEMBER BATES: -- but I think we
12 didn't move down that path because of the regulatory
13 requirements that would be then treating them
14 differently, and we didn't want to do that.
15 COUNCILMEMBER FLEMING: Okay. And so back
16 to the selling of, I think all of this question of
17 additional conditions relies on a future ordinance
18 change, that we're getting ready to create an
19 ordinance, or correct the ordinance or update the
20 ordinance. So I'm concerned about putting conditions
21 on a piece of property and we haven't even gotten to
22 correcting the ordinance yet.
23 COUNCILMEMBER BATES: But I think it's
24 appropriate, though, under this particular instance,
25 to put conditions on the storage and selling of

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1 vehicles.
2 COUNCILMEMBER FLEMING: I agree. I agree.
3 But I want to now readdress the placard for
4 the percentage --
5 COUNCILMEMBER BATES: Sure.
6 COUNCILMEMBER FLEMING: -- because if we
7 don't -- let's say that we don't get around to pawn
8 shops and title pawn regulations for two or three
9 months from now. At least we've started ensuring
10 those patrons or clients of these businesses, that the
11 percentage rates are being -- have been established
12 and have been advertised prior to us passing the
13 ordinances.
14 COUNCILMEMBER BATES: And then my concern is
15 because we haven't talked about how big should the
16 placard be and what size lettering and what -- I mean,
17 because we need to -- we need to disclose and control
18 -- "control" is not the right word, but we need to
19 ensure that if our intent is to make sure that anybody
20 going into the business is well aware of, you know,
21 the potential interest rate, then I think we need to
22 make sure that it's in a visible manner and it's, you
23 know, not less than X. And I don't know that we're
24 ready to get into that discussion.
25 Trust me, I think that is absolutely

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1 something that we need and will do but we'll need to
2 have that debate --
3 COUNCILMEMBER FLEMING: Okay.
4 COUNCILMEMBER BATES: -- down the road.
5 COUNCILMEMBER FLEMING: Part of the
6 regulatory code?
7 MR. SOLSRUD: Can I just make -- for
8 Councilwoman Fleming? There's a Federal regulation
9 called the Truth in Lending Act, which we follow,
10 because I mean I want to run a very clean business.
11 And so every part of my pawn contract and I think
12 every part of any good pawn, title pawn business, in
13 the actual contract is exactly what you're talking.
14 I'm not saying don't change your
15 regulations, but to give you some consolation that,
16 you know, we're just not operating unregulated; that
17 every contract shows exactly what the interest rate
18 is, goes and drops back to the annual percentage rate
19 just like any other finance contract in the United
20 States. So our contract has it.
21 COUNCILMEMBER BATES: And not -- because
22 it's not really relevant to this hearing, but how long
23 is the contract? How many pages?
24 MR. SOLSRUD: Mine's just two pages, and
25 then I actually put a special -- if you really want to

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1 know how far I go, I actually have a special notice
2 that the person signs.
3 Really, if I could share with Ms. Craig, she
4 pays three percent a month. So when you hear about
5 big interest rates, yes, you possibly could charge
6 them, but you'd drive your clients out of business, to
7 be perfectly honest with you; you'd bankrupt everyone.
8 So there's a lot of misconceptions about the
9 title pawn industry. Yes, you can charge big interest
10 rates, but I don't need the cars back. I want good
11 clientele that can pay these interest rates.
12 So I would love to work with you if you want
13 to take my business card and you want to have somebody
14 in the industry actually help you draft realistic
15 regulations, I would love to help you do it, but it's
16 not -- Yes, there's violators of the law, but there's
17 also people that steal and rob also.
18 COUNCILMEMBER BATES: Thank you.
19 COUNCILMEMBER FLEMING: Thank you very much.
20 I appreciate that.
21 COUNCILMEMBER BATES: You ready?
22 MR. HAEBERLIN: Like the signage you guys
23 were discussing, it's just like the City's liquor
24 codes, which say today that they're supposed to be in
25 certain lettering, the alcohol license on the window

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1 of those establishments. Again, that's -- it's an
2 enforcement issue. So once you decide that, it's
3 going to be a big enforcement issue.
4 COUNCILMEMBER BATES: Yeah, and I want to
5 get into that when we --
6 COUNCILMEMBER FLEMING: That's fine, go
7 ahead.
8 COUNCILMEMBER BATES: -- do the pawn shop.
9 MR. HAEBERLIN: Okay.
10 COUNCILMEMBER BATES: Make a motion to
11 approve --
12 ATTORNEY WEED: Okay. There was a second.
13 COUNCILMEMBER BATES: I withdrew it.
14 ATTORNEY WEED: You have to withdraw the
15 second.
16 COUNCILMEMBER PACHUTA: Was that me?
17 CLERK BLACKMON: Yes.
18 COUNCILMEMBER PACHUTA: Okay. I withdraw
19 the second.
20 CLERK BLACKMON: Okay. Thank you. Sorry.
21 COUNCILMEMBER BATES: All right. Everybody
22 ready?
23 CLERK BLACKMON: Ready.
24 MR. HAEBERLIN: Yes.
25 COUNCILMEMBER BATES: I want to make a

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1 motion to approve Fast Cash Title LLC 5351 Buford
2 Highway, with the following conditions: that there's
3 no storage of vehicles on site, there's no selling of
4 vehicles on site, and that after 12 months and one day
5 of non-operation, that the site zoning reverts back to
6 the original C-2.
7 COUNCILMEMBER PACHUTA: Second.
8 MAYOR JENKINS: More discussion?
9 - - -
10 (No response)
11 - - -
12 MAYOR JENKINS: Call the roll.
13 CLERK BLACKMON: Councilmember Alexander?
14 COUNCILMEMBER ALEXANDER: Yes.
15 CLERK BLACKMON: Councilmember Bates?
16 COUNCILMEMBER BATES: Yes.
17 CLERK BLACKMON: Councilmember Fleming?
18 COUNCILMEMBER FLEMING: Yes.
19 CLERK BLACKMON: Councilmember Pachuta?
20 COUNCILMEMBER PACHUTA: Yes.
21 CLERK BLACKMON: Councilmember Pittman?
22 COUNCILMEMBER PITTMAN: No.
23 ATTORNEY WEED: So I'm going to ask the
24 applicant, do you agree to these conditions?
25 MR. SOLSRUD: Oh, yeah. I would have to say

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they're part of your zoning code that you put into place on August 30th.

It states right there under conditional uses, you don't want the sale, just what you talked about. So it's not a non-issue [sic] for me whatsoever.

COUNCILMEMBER BATES: We're just making sure.

MR. SOLSRUD: Yeah, that's perfectly fine. Thank you.

MAYOR JENKINS: Thank you.

Scott?

MR. HAEBERLIN: We're on to VIIIJ, public hearing - conditional use request. That's another pawn shop. Ordinance 2010-24, which allows it. E. Michelle Rothmeier, attorney for TitleMax of Georgia, 5679 Buford Highway, 18-320-01-029, zoned C-2.

This is the location which -- for lack of a better description of where it is, it's next to Baldino's. So that gives everybody a good reference point, near Clover Plaza.

So at this time, I invite the applicant's attorney to come forward and present the conditional use portion of her case.

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MS. ROTHMEIER: Good evening, Mayor and Council. My name is Michelle Rothmeier. I'm an attorney with the law firm of Mahaffey Pickens Tucker. We're located in Lawrenceville at 1550 North Brown Road, Lawrenceville, Georgia 30043.

I do want to mention that my client, Title Max, has two applications that will be before you this evening, and I didn't know if in the interest of time you'd like for me to combine my presentation. The properties are similarly suited, but of course I'll certainly defer that decision to you if you'd like for me to combine.

COUNCILMEMBER PACHUTA: I'm fine combining.

COUNCILMEMBER ALEXANDER: I'm fine also.

COUNCILMEMBER FLEMING: Combining is3Title

MS. ROTHMEIER: Okay. I'll certainly make distinctions where necessary, but I will go ahead and combine, then.

So we are here tonight. I'm here on behalf of my client, TitleMax. We have a couple of representatives from TitleMax here with us this evening. We are here to request two separate conditional use permits in order to accommodate the use of a title loan facility.

The two separate tracts -- one's about

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a .6 acre tract located at 5679 Buford Highway, and the business that runs the operation there is under the name of TitleMax. And then we've got our second tract, which is about .2 acres located at 5310 Buford Highway, and the business operates at that location under the name of TitleBucks. Similar -- or exactly the same businesse as run by TitleMax of Georgia.

Both of the properties are zoned C-2 and both of the properties have been operating in those locations since about two -- somewhere around 2008. They have been operating as title loan facilities since that time.

Both locations have also been issued an occupational tax licenses. Both of them had tax licenses that went through the end of 2009. The current status as of course we all know is that the City sent a letter to both businesses, basically notifying them that in order to receive their renewal, you know, occupational tax license, and of course, in effect, the 2011 license, that we would need to go through this conditional use permit. And of course that was accommodated by the -- the zoning text amendments that you guys did in August of this year, which of course permits now a pawn shop as a conditional use under the C-2 designation.

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So that's why we're here tonight. We're under the C-2 designation and would certainly like to continue the use of the title loan facilities.

It's our opinion that the requested use is consistent with the character of the adjacent developments off of Buford Highway. Of course it's a very heavily commercial, you know, district. These two properties are not directly adjacent to any residential or sort of transitional region. In fact, the TitleBucks location is almost located completely within another shopping center which is mainly commercial and office.

It's also our position that our requested use is consistent with the policies and intent of the zoning -- zoning district regulation about C-2. C-2's purpose and intent from the ordinance is, you know, to include commercial activities including retail uses, highway business uses, office uses, all to be located off of arterial or major collector streets and at such a location appropriate for community and regional commercial areas.

In my position, that's exactly what we're looking at here.

We are asking for a use that would continue to enable the use and economic development of the

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1 property. We are not seeking to introduce an
2 incompatible use, but rather we're simply requesting
3 to continue a use that has been -- you know, that had
4 been permitted on the property over the last several
5 years.
6 With that said, I request that you approve
7 our request for the two conditional use permits, and
8 I'll be more than happy to answer any questions if you
9 have them. Thank you.
10 MR. HAEBERLIN: Taking, I guess, the two
11 reports together, the other location is going south on
12 Buford Highway on the right-hand side, passing
13 Monterrey's Restaurant on your right. You're going to
14 come up on a billboard site, a large billboard on the
15 right-hand side of the property, and this property is
16 immediately behind -- the TitleBucks is immediately
17 behind that billboard.
18 Again, the qualm is in addressing the
19 Comprehensive Plan and what it envisions as
20 appropriate businesses. Unfortunately, the
21 Comprehensive Plan never tells me what that is other
22 than to say commercial, which there are a lot of
23 different definitioAnyway limited office/professional,
24 and public/institutional.
25 Again, you know, the Comprehensive Plan

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1 doesn't say very many qualifying positive items about
2 Buford Highway corridor.
3 The applicant is correct. There's no
4 directly-affected residential properties. These
5 properties are similar in nature because they're both
6 standalone, so that's an interesting component of your
7 review tonight. The previous pawn applicant was a
8 standalone. Now we're having two subsequent pawn
9 applications which are standalone.
10 Again, I couldn't reconcile the fact that,
11 you know, pawn's been in place here and regulated
12 without zoning since 1981. So since 1981, what have
13 we been doing with these businesses? You know, I just
14 -- it's a big concern of mine.
15 I did make the recommendation of no
16 recommendation on both of these petitions. You guys
17 are aware conditional uses come back to you guys in a
18 year's time, certainly, and, you know, this action
19 tonight is not changing the action which will now need
20 to occur, which is the review of the occupational tax
21 placard and the attendant city regulatory codes that
22 involve the city clerk and also too the police
23 department.
24 Are there any questions?
25 MAYOR JENKINS: What's your recommendation?

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1 MR. HAEBERLIN: I have no recommendation,
2 sir.
3 So at this time, we open the public hearing.
4 The Mayor has opened the public hearing.
5 Those who would like to speak in favor of
6 the petition, please raise your hand.
7 Seeing none, those who would like to speak
8 against the petition, please raise your hand. One?
9 Please identify your name and address for the record.
10 MR. CRAWFORD: Ben Crawford, Oakcliff
11 Estates.
12 Using the attorney's analogy, we have a
13 vacant building across the street from a strip club
14 and we also have a -- which is unincorporated Dekalb;
15 I realize it, but it brings in money. And it's
16 compatible with the strip club across the street, so,
17 hey, why not go for it, you know?
18 When are we going to start saying no? I
19 mean this is three pawn -- three title pawns,
20 excessive interest rates, poor people. It's where
21 poor people go to when they don't have money. A lot
22 of them lose their cars.
23 I'm saying think about the community. How
24 many pawn shops and title pawns do we need? You have
25 a chance tonight to say no. Why can't you say no?

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1 You're the City Council. When was the last time you
2 said no on a conditional use?
3 I don't agree with having so many pawn shops
4 and title pawns. This is an area of our city with our
5 Comprehensive Land Use Plan that we want to develop
6 for a better tomorrow. How is that going to happen?
7 Thank you.
8 MR. HAEBERLIN: Please come forward, state
9 your name and address for the record, please.
10 MR. HART: I've already gone downtown and
11 had a good time and y'all are still doing the same
12 stuff. Anyway -- That's Atlanta, that is.
13 I'm echoing what Ben is saying, that we
14 don't really need a City Council. Y'all need to just
15 get a rubber stamp. Okay? It would save everybody
16 hours of work. Just roll in through the door, stamp
17 it all and then leave. Okay? We could be in and out
18 of here. We could go back downtown Atlanta.
19 I hear this from this Northwoods group and
20 all these other groups, all the stuff about quality
21 development. I hear this constant drone. And when
22 you come to the Council meeting, the same people that
23 are being supported by this Northwoods group sit
24 there, and one thing after another, it's okay, just
25 okay.

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So get a big stamp that says okay. We can save three -- you know, two meetings a week, five meetings a month and just stamp it okay. Whoever rolls in the front door, except the individual home owner that you want to give tickets to or the small builder or small business that can't defend themselves, go beat them up. Okay? But everybody else gets a free ride.

So get the okay stamp out and just rubber stamp everything that comes through here. But there is an election in November of next year, and if you add up all the votes, it's pretty clear what needs to happen. Thank you.

MR. HAEBERLIN: At this time, the Mayor has closed the public hearing.

Just a point of clarification, Murray. Since the applicant's attorney has agreed to do these together, do we need to have two separate hearings for each one or was that combined -- combined was fine?

ATTORNEY WEED: My understanding from the Council is that that was --

MR. HAEBERLIN: Okay.

ATTORNEY WEED: -- one hearing, so I --

MR. HAEBERLIN: I just want to make sure that I'm in concert with that. Okay.

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ATTORNEY WEED: I would turn to the audience to say and remind you that the hearings were combined at the request of counsel, the permission of the counsel with an "s" and also the agreement of Council with a "c," and I would tell you that if you had anything further you wanted to add with regard to the second petition, now would be your time to do so.

MR. CRAWFORD: No, we understood they were combined.

MR. HAEBERLIN: Okay.

ATTORNEY WEED: Or if you agree that your comments by both Mr. Hart and Crawford were combined?

MR. HART: That's fine.

MR. CRAWFORD: I'm fine.

ATTORNEY WEED: Thank you.

MR. HAEBERLIN: Okay.

COUNCILMEMBER PACHUTA: I have a question. Do they do any storage of the vehicles on the property?

MS. ROTHMEIER: There are no storage of the vehicles on the property. Only the actual title, you know.

COUNCILMEMBER PACHUTA: So there's no sales, either?

MS. ROTHMEIER: That's correct.

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MAYOR JENKINS: More questions?

- - -

(No response)

- - -

MAYOR JENKINS: Do I have a motion?

COUNCILMEMBER PACHUTA: I make a motion that we approve the conditional use of --

Should I do them both, Murray, or do them separately?

ATTORNEY WEED: You can do them both together; whatever is convenient.

COUNCILMEMBER PACHUTA: Okay. Approve the conditional uses for TitleMax of Georgia at 5679 Buford Highway and TitleMax/TitleBucks of Doraville at 5310 Buford Highway with the condition that there's no sale of vehicles or no storage of vehicles on site, and if the business remains non-operational for 12 months and one day, the zoning would revert back to C-2.

MAYOR JENKINS: Do I get a second?

COUNCILMEMBER ALEXANDER: Second.

MAYOR JENKINS: Any more discussion?

- - -

(No response)

- - -

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MAYOR JENKINS: Call the roll.

CLERK BLACKMON: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

CLERK BLACKMON: Councilmember Bates?

COUNCILMEMBER BATES: Yes.

CLERK BLACKMON: Councilmember Fleming?

COUNCILMEMBER FLEMING: Yes.

CLERK BLACKMON: Councilmember Pachuta?

COUNCILMEMBER PACHUTA: Yes.

CLERK BLACKMON: Councilmember Pittman?

COUNCILMEMBER PITTMAN: No.

ATTORNEY WEED: Counsel, do your clients agree to those conditions?

MS. ROTHMEIER: Yes.

MR. HAEBERLIN: We're down to VIIIL. And VIIIL and VIIIM are the same person, but they're two different conditional uses. One is that of a pawn shop and the other is a precious metal dealer.

If Mr. Weed is okay with combining these presentations and hearings in the same fashion that we've done with the other individuals and the applicant agrees?

ATTORNEY WEED: As long as the applicant agrees.

MR. HAEBERLIN: Okay, great.

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At this time, lets bring Ms. Lockamy forward as the applicant and she can talk about both conditional uses, and then you'll hear from staff.

The location on Buford Highway is near the big sign of -- it's probably the most appropriate location to tell. I'll try to show it on the map.

MS. LOCKAMY: Hello, I'm Janet Lockamy. I've been in business -- I came to Doraville in 1989, and so I've been in business here for 21 years. I think I'm not only the oldest pawn shop but one of the oldest businesses still left here in Doraville. I came here because it was a small town and that's where I wanted to be.

In 1993, I bought the building that I'm in because I wanted to stay there until I retired. I'm a small business, I'm not a chain; I have one operation.

My average customer base is not that large. I do an average of four to six loans a day. I have cooperated with the Doraville Police Department for those 21 years, with Lieutenant Parham. She started out at the same time I did, and I cooperate with her fully. She calls to ask if I had something that I need to place on hold. If it's six months past the due date and I still have it, I keep it for her. I even used to sponsor the Doraville softball team when

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you had it.

I'm current on -- I carry guns. I'm current on all my FFL licensing, all my State licensing. I do my daily reports every day. We fax them in every day at 6 o'clock when we close. And like one of the other gentlemen said, our interest rates and everything is on our paperwork. When they come in to sign it, we explain it to them. When they take out a loan, we tell them how much it is, how much it will cost to pick up, and go over the forms with them.

We employ two employees, and I'd really like to stay in the city. I like Doraville.

MAYOR JENKINS: Thank you.

MR. HAEBERLIN: Again, the same comments were consistent with the other petitions.

This is the site right here, this small sliver of property. It's extremely small. There is archival evidence that suggests this building actually predates zoning since the lot configuration is indicative of something very unusual, certainly.

This does abut R-1. And again you've got a location here, but the building is significantly away from the R-1 zoning. And you know, this entire boundary here, whether there is existing vegetation or not, property by property changes drastically.

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Sometimes it's kudzu; sometimes it's something more.

But the Comp Plan does discuss the concept of incompatible land uses and buffering, and it really cautions us to address that. So I think we're honestly going to have to address the concept of buffer at a later date in the zoning ordinance and provide some alternatives to what constitutes buffers if we're going to proceed with our Comprehensive Plan as it is today.

Again, we have had these regulation. Precious metal regulation has been in effect since 1980 -- that's a significant period of time -- and pawn since 1981. Again, still no zoning which allows these in the city of Doraville.

It is a difficult situation dealing with existing business and the makeup of what they provide to the city. Again, I'm conflicted. I offered no recommendation. You know, this business has been there since 1989. I do recognize this was the only pawn and precious metal dealership that you heard tonight together, and I suspect that some of those who did not apply for conditional uses are also precious metal dealerships that we will hear in the future.

Again, this is a situation the conditional use can be reviewed on a yearly basis and the Council

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will have the ability to make a decision as to whether the business is operating in accord with the conditional use ordinance.

Are there any questions?

Okay, seeing none, the Mayor at this time has opened the public hearing for both the pawn shop and precious metal dealership conditional use at 5133 Buford Highway. Those who would like to speak in favor of the petition, please raise your hand.

I see two. Please come forward, state your name and address for the record.

MR. HART: This is the only business or presentation tonight that deserves a conditional use. It practically defines grandfathering, the building meets the codes, and it's the only one presented tonight that actually meets the code. So I support this one. Okay.

The rest of it was you guys are making it up as you go along. But this building doesn't encroach on the neighborhood, it's been there since the beginning of time, okay. They've run the business here for 20-plus years. Okay. These other people just rolled into town and you give them the same deal.

So I fully support these people, and they should be grandfathered in without a conditional use.

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Thank you.
MR. HAEBERLIN: Next person?
MR. CHAMBERS: He said everything I needed to say.
MR. HAEBERLIN: Okay. Those who would like to speak against the petition -- I mean for?
MS. HOFFMEISTER: Actually, I'm either way.
MR. HAEBERLIN: We were going to do against. You can come forward either one.
MS. HOFFMEISTER: Bonita Hoffmeister, Oakcliff Estates.
Tonight is a little overwhelming. Please address the ordinances concerning the pawn shops, gold and silver, rifle sales and title. Divide them if you have to, but please let's get this addressed so that we can start having ...
One reason why you do a comp plan and you do zoning is so that what you have that you don't want -- yes, you cannot take their value away, but you want to pave the way to remove what you don't want and build what you do want. So please address this issue.
Thank you.
MR. HAEBERLIN: Okay. Anyone else? Okay. None. Return it to the Mayor and Council.
COUNCILMEMBER BATES: Make a motion to

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approve 5133 Buford Highway, which is the pawn shop and precious metal dealer.
COUNCILMEMBER PACHUTA: Second.
COUNCILMEMBER BATES: Sorry. The Buford Highway Pawn Shop is the legal name.
MAYOR JENKINS: Is that all your motion?
COUNCILMEMBER BATES: Yes, sir.
MAYOR JENKINS: Do I get a second?
COUNCILMEMBER PACHUTA: Second.
MAYOR JENKINS: Any more discussion?
- - -
(No response)
- - -
MAYOR JENKINS: Call the roll.
CLERK BLACKMON: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
CLERK BLACKMON: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
CLERK BLACKMON: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
CLERK BLACKMON: Councilmember Pachuta?
COUNCILMEMBER PACHUTA: Yes.
CLERK BLACKMON: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
MAYOR JENKINS: Thank you.

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MS. LOCKAMY: Thank you.
COUNCILMEMBER FLEMING: I make a motion we turn off the --
MAYOR JENKINS: Motion we adjourn?
COUNCILMEMBER PITTMAN: Yeah.
COUNCILMEMBER FLEMING: -- air conditioning.
MAYOR JENKINS: Second?
COUNCILMEMBER PACHUTA: Second.
ATTORNEY WEED: Mayor, before you do --
MAYOR JENKINS: Call the roll --
ATTORNEY WEED: -- that, are you going to hear public comments tonight?
MAYOR JENKINS: We have no public comments tonight, sir.
COUNCILMEMBER FLEMING: I said motion to turn off the air conditioning.
COUNCILMEMBER PACHUTA: Motion to adjourn.
MAYOR JENKINS: Second?
COUNCILMEMBER PITTMAN: Second.
CLERK BLACKMON: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
CLERK BLACKMON: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
CLERK BLACKMON: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.

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CLERK BLACKMON: Councilmember Pachuta?
COUNCILMEMBER PACHUTA: Yes.
CLERK BLACKMON: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
- - -
(Meeting adjourned at 10:25 p.m.)
- - -

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 18th day of November 2010.

_____
Theresa Bretch, CCR
Permit No. B-755

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