Staff Report
City of Doraville, Georgia
Planning and Zoning

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

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

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

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

Location: Parcel ID's 18-297-10-023; 18-297-10-024; and 18-297-10-025 for properties described as "0" Raymond Drive – Rear" and being a portion of the former Northwoods Subdivision Lots 11, 10, and 12, Block "C", Unit 6 respectively – 18-297-10-023 (Lot 11); 18-297-10-024 (Lot10) and 18-297-10-025 (Lot 12) such properties having been previously/presently addressed as 3484 Raymond Drive (Lot 10), 3488 Raymond Drive (Lot 11), and 3492 Raymond Drive (Lot 12)

Tract Size: Approximately 0.114 +/- acres in total all three separated non-compliant R-1 lots being used in commercial capacity. The lots are also undergoing C-2 rezoning.

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

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

(2) ***A literal interpretation of the provisions of this Ordinance would deprive the Applicant of rights commonly enjoyed by other properties of the district in which the property is located.*** There has never been blanket variances within this jurisdiction of the magnitude

being requested here (without further accommodation of the City's needs as well) that Staff is aware of. As a planner, the recommendation to the legislative body is that, absent a true hardship, the entire C-2 district must first be re-written if it is the desire of the Council to waive all existing regulations when the purported hardship(s) of the Applicant could be so easily remedied by lot consolidation. Other colleagues (e.g. the present City Attorney) have presented the same argument before the Council in public meetings. The basis of zoning is the application of district requirements on a per lot basis and not averaged across many contiguous lots - only one (1) lot of which appears to pre-date zoning and none which have been applied for rezoning from R-1 to C-2.

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

(4) ***The requested variance will be in harmony with the purpose and intent of this Ordinance and will not be injurious to the neighborhood or to the general welfare.*** False. The present Ordinance does not facilitate the continued recognition or advancements of these lots absent mediation with the City.

(5) ***The special circumstances are not the results of the applicant.*** False. Even when the lots were created by the Applicant, the then board (Board of Zoning Appeals) charged with granting relief to the district requirements would have been barred by Ordinance from granting the R-1 variances. Today, zoning variances go first to the municipal Planning Commission (as a non-binding recommendation) and then to City Council for variance public hearings. The Applicant has acknowledged fully within several correspondences to the City that they have been aware of the disparate zoning and have proceeded with development and re-development of the property time and time again.

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

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

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

(7) ***The variance is not a request to permit a use of land, buildings, or structures which is not permitted by right in the district involved.*** True. Assuming the property has been rezoned coincident with these variance action(s), C-2 will allow the commercial dumpsters and driveways which presently occupy the property in much of the locations where transitional buffers should exist.

Recommendation(s):

Based on the fact findings presented in the rezoning case and the variance criterion contained herein, the Department recommends **Denial** of all the requested variance(s) discussed herein for the properties identified as 0 Raymond Drive – Rear and being DeKalb County Tax Parcels 18-297-10-023; 18-297-10-024; 18-297-10-025.