Staff Report
City of Doraville, Georgia
Planning and Zoning

Public Hearing(s):	PC Public Hearing December 9, 2010 MCC Public Hearing December 13, 2010
Applicant:	Yeshiva High School, Rabbi Eric J. Paul
Request:	Zoning Variance(s): Accessory Structure (Dumpster Enclosure) – Code Sections 601, 703, and 903.
Location:	Parcel ID 18-296-06-008, 3130 Raymond Drive
Tract Size:	Approximately 9.63 +/- acres

NOTE: A sixty (60) foot right-of-way exists for the public street known as Raymond Drive. The dumpster is clearly not within the paved travel way of Raymond Drive. The right-of-way shoulder or reserved right-of-way owned by the government, and not the high school, appears to be the location of the existing/proposed dumpster. By virtue of its use of the un-built portions of the right-of-way, the high school has by no means acquired an interest to, or title thereof, of a public right-of-way. Staff did field measurements which attest a high degree of precision that the dumpster is sitting on public property.

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.*** False. The site has significant acreage to be able to locate its accessory structure/use on its own property and within a rear yard. A suitable location within a side yard could even should be entertained given a variance has been advertised. Schools located within residential districts, while not uncommon in Doraville, are still a commercial styled use and should generally be as least obtrusive as possible while providing a needed common good. NOTE: School has two (2) fronts – Raymond and Fairlane Drive.

(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.*** False. Unilaterally, locating a structure within a right-of-way (other than a United States post box) is forbidden by City Codes.

(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. Staff knows of no other location within the City where a dumpster is allowed to be located within a public right-of-way owned by the government.

(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 dumpster location is clearly visible and within a public right-of-way and would not generally to be found as harmonious to the neighborhood given the potentially objectionable odors and views to neighboring single-family dwellings. The ability to control unauthorized dumping is particularly hampered by the location given a dumpster on public property might be found to be a public good with unrestricted use by the general public.

(5) ***The special circumstances are not the results of the applicant.*** False. The dumpster location is an existing Code violation and is located in the same unimproved section of the Raymond Drive right-of-way as recent "sidewalk/parking improvements" which the Doraville City Council has been mediating with the Applicant. Opportunity has been afforded by QOL for the dumpster to be relocated and has been suggested by Staff.

(6) ***The variances requested is the minimum variance that will make possible the legal use of the land, building or structure.*** Staff cannot determine from the available information supplied to the City. The legal use of the property detailed in seven (7) below is at question.

(7) ***The variance is not a request to permit a use of land, buildings, or structures which is not permitted by right in the district involved.*** False. The principal use of the site now being a private school and not a BOC DeKalb County School was arguably a Conditional Use and not a use permitted by right at the time of its inception (see Section 902). DeKalb County had no authority to transfer its sovereign sister immunity, a privilege reserved for governments, to a private establishment in 1986. The 1986 City of Doraville Zoning Ordinance, Section 902, as adopted November 3, 1986, mandated a Conditional Use for this facility. No archival evidence has been found to suggest the City Zoning Code was followed if the private school began after November 3, 1986. If the facility predates November 3, 1986, the 1971 zoning ordinance allowed the use within R-1 by right. Perhaps, an argument for legal non-conforming use could be made upon the examination of the facts. Today, R-1 does not provide for schools to be a Conditional Use (see Ordinance 2009-26) nor does Section 902 exist in its prior capacity. The site would have to be rezoned to O-I with a Conditional Use as per Ordinance 2009-01 given the forgoing assumptions. The outcome is inconclusive without more facts.

Recommendation:

The Department recommends **Denial** of the requested accessory structure variance(s) in its present arrangement for the property situated at 3130 Raymond Drive.