Staff Report
City of Doraville, Georgia
Planning and Zoning

Public Hearing(s):	PC Public Hearing August 19, 2010 @ 7:00 p.m. MCC Public Hearing August 23, 2010 @ 6:30 p.m.
Applicant:	Attorney Scott Peters for Peter R. Maltese
Request:	Rezone from O-I to M-1 with Zoning Variance(s) with Conditional Use for Billboard with Sign Code Variance(s)
Location:	Land Lot 310 of the 18th District, property situated at 6115 Peachtree Industrial Boulevard (Tax Parcel Identification #18-335-14-020)
Tract Size:	Approximately 4.42 +/- acres

Zoning Standards of Review (Section 1603):

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

The property is bordered on the west by Flowers Road and on the north by a portion of Peachtree Industrial Boulevard; however, the majority of the northern property line abuts Guilford Village Subdivision (Unit III) as zoned R-1 and developed as single-family detached residences. The eastern boundary of the site is also zoned R-1 (Guilford Village Subdivision Unit II) as developed as single-family detached residences.

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

The property has sat idle since 1982 as zoned O-I and has contained a stanchion pole sign. It would appear the property's intended use has been achieved.

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

The proposed M-1 designation further denigrates the recent efforts by the City to return a property in the immediate vicinity of the abutting northern property line (Lot 28), Guilford Village U-3, 2535 Garrett Circle, which was an isolated zoning designation (O-I) within a "Neighborhood Preservation District." The property was rezoned by the City on 8-24-09 to the prevailing zoning within the area of R-1.

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

There are undetermined hardships for all parties involved; however, Staff questions the efficacy of creating an isolated zoning district (M-1) within a residential neighborhood that carries a non-residential zoning other than O-I or C-1 as appropriate transition zoning.

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

The subject property should either remain O-I or be down zoned to some other higher density residential zoning classification such as R-SFA.

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

The site has been vacant since 1982 when the present owner rezoned the site. As illustrated in the City archival zoning files, the same owner's 1982 intention to build a new sales and manufacturing plant at the location has not panned out but signage has continued on the site. Obviously, the City should have taken heed of this situation pursuant to the zoning code and remanded the property back to its original R-1 designation due to lack of activity. The site is zoned O-I because past Council denied a C-2 request.

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

The subject request abuts properties zoned R-1. As a neighborhood experiencing revitalization and in-fill, the rezoning request is thus inconsistent and isolated within its area.

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

M-1 is an inconsistent and incompatible zoning within a residential neighborhood. As M-1 for the sole purpose of a billboard, the site will likely remain in its present undeveloped state.

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

The property has reasonable economic use as currently zoned; however, the owner has failed to avail himself of any development opportunity.

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

Streets and transportation facilities: no affect given as-built conditions of the site; however, a defined curb-cut ingress/egress would assist the site markedly with traffic circulation.

Utilities: no affect as presently developed.

Schools: no affect, no change. Petition reflects a non-residential use changing to another non-residential use.

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

The rezoning proposal is inconsistent with the land use plan.

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

Avery Park and Flowers Gate (both zoned R-SFA) demonstrate this corridor is more appropriate for medium density single-family attached development rather than industrial development which lend well to oddly configured lots.

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

The proposed rezoning could allow industrial styled uses within a residential neighborhood and possibly allow further non-residential encroachment. If the site is developed as nothing other than a billboard, the site would not likely improve markedly over the existing conditions.

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

The road infrastructure is existing and in use. Impact would generally be negligible absent the requirement through Conditions of Zoning for sidewalks to be installed by the Applicant and re-design of the ingress/egress point(s).

Rezoning Recommendation:

Staff recommends **DENIAL** of the requested rezoning from O-I to M-1.

Alternately, when reviewing a zoning request, the City Council may place a different zoning designation on the property other than that requested by the Applicant. This same styled outcome occurred in 1982 when Mr. Maltese previously attempted to rezone the property. Thus, Staff recommends approval of the site as R-SFA which will allow in-fill development of single-family attached, fee simple town homes, such as Flower's Gate, and the permanent removal of all illegal signage.

Without rezoning to M-1, all other hearing applications are a moot issue.

Zoning Variances Standards of Review (§ Section 1402 of Zoning Code);

NOTE: Two (2) zoning variances are requested:

(1) To reduce the rear building setback where abutting residentially zoned land from 250 feet as per Code to 50 feet;
(2) To reduce the side building setback where abutting residentially zoned land from 250 feet as per Code to 40 feet;

Zoning Variance Standards Continued…

(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. There are a number of properties within the immediate vicinity which are oddly shaped and these have been found to lend themselves better to residential applications rather than non-residential applications.

(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. Staff is unaware of any variances which have been lawfully granted that so severely diminish the district standards for distance from residential development.

(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. Even the City's Comp Plan denotes poor spatial separation and buffering as a hindrance to the vision of the "Plan."

(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. Even if a billboard is to be located on the present site, moving it closer to residential zoned land creates less continuity and further diminishes the likelihood of retaining adjacent residential properties because they are likely to be considered less desirable.

(5) ***The special circumstances are not the results of the applicant.*** False. The Applicant is presently before the Council because he patently violated the City sign code.

(6) ***The variances requested is the minimum variance that will make possible the legal use of the land, building or structure.*** False. To the extent that the present property has to be a non-residential classification, its building pad is diminished; however, there are other zoning classifications for the property which could be accommodated on the site.

(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.*** Item cannot be determined from available information. While industrial uses are accounted for by the proposed M-1 designation, the proposed billboard is not a use by right but rather a Conditional Use.

Zoning Variances Recommendation:

Staff recommends **DENIAL** of the requested zoning variances.

Billboard Conditional Use:

Conditional Use Standards of Review

(1) ***The proposed use at the specified location is consistent with the policies embodied in the adopted Comprehensive Plan.*** False. The area is delineated by the Comp Plan as "Neighborhood Preservation District" and as currently zoned O-I (or as proposed to M-1) is incompatible with that designation.

(2) ***The proposed use is consistent with the general purpose and intent of the applicable zoning district regulations.*** False. Although O-I is a non-residential zoning designation, the use of a billboard is not allowed without a rezoning to M-1 and a Conditional Use.

(3) ***The proposed use is compatible with and preserves the character and integrity of adjacent developments and neighborhoods, and includes improvements either on-site or within the public rights-of-way to mitigate development related adverse impacts such as traffic, noise, odors, visual nuisances, drainage or other similar adverse effects to adjacent developments and neighborhoods.*** The proposed billboard use provides no remedy to existing site conditions nor can it be viewed as anything but obtrusive due to its height and location relative to R-1 zoned properties.

(4) ***The proposed use does not generate pedestrian and vehicular traffic which will be hazardous or conflict with the existing and anticipated traffic in the neighborhood.*** Not affected. The proposed use is essentially a dead use which is reflective of the current condition of the property. Staff raises concerns that the existing conditions may remain in perpetuity if no development on the site is ever undertaken given a billboard sign could presumably be constructed first and no principal use thereafter constructed.

(5) ***The proposed use incorporates roadway adjustments, traffic control devices or mechanisms, and access restrictions to control traffic flow or divert traffic as may be needed to reduce or eliminate development generated traffic on neighborhood streets.*** False. The site currently has no improvements to address transportation, parking, loading needs nor do any seem likely to be constructed if a billboard is constructed prior to the remainder of the site being developed.

(6) ***The proposed use incorporates features to minimize adverse affects, including visual impacts, of the proposed conditional use on adjacent properties; and the proposed use meets the standards for the zoning district, or to the extent variations from such standards have been requested, that such variations are necessary to render the use compatible with adjoining developments and neighborhoods.*** False. It is uncertain how a billboard structure can be incorporated within a residential neighborhood given this would generally be considered to be an incompatible land use.

(7) ***The proposed use is based on a site plan in conformity with all space limits, buffers, parking and loading provisions, and other provisions of this article.*** False. Variances are needed from the zoning code to ensure placement of the billboard sign.

(8) ***The proposed use applicant has agreed to any specific limitations or conditions necessary to protect the public interest and assure the continued beneficial use and enjoyment of nearby properties or that no special limitations are necessary to protect the public.*** False. The Applicant is attempting to resolve an existing code infraction related to a stanchion (pole sign) on the property. The proposed billboard will be closer to residential than the stanchion sign which currently remains is.

Conditional Use Recommendation:

Staff recommends **DENIAL** of the Conditional Use request.

Sign Code Variance(s) (Sec. 14-16):

NOTE: Three (3) Sign Code variances are being pursued which were submitted as though they were independent applications.

(1) Increase the maximum height of a billboard from fifty (50) to eighty (80) feet;
(2) Allow a billboard to be less than 1,000 feet from another billboard – as requested 920 feet;
(3) Allow a billboard to be located within 500 feet of residentially zoned parcels – as requested 50 feet.

Sign Code Variances Continued…

Where a literal application of the terms of this chapter, due to special circumstances, would result in an unusual hardship in an individual case, a variance may be granted <u>where all the following conditions exist</u>:

(a) Exceptional conditions pertaining to the property where the sign is to be located as a result of its size, shape, or topography, which are not applicable to other lands or structures in the area. False. The property could be developed as O-I and the billboard use abandoned.

(b) The applicant would be deprived of rights that are commonly enjoyed by others similarly situated. False. The Applicant's property sits at a higher elevation than that of the adjacent road(s). The City sign code is very specific in treating billboard signs differently than stanchion signs.

(c) Granting the variance would not on the applicant any significant privileges which are denied to others similarly situated. False. Staff is not aware of any of these type variances within the City which has been lawfully granted by the sign code.

(d) The exceptional circumstances are not the result of action by the applicant. False. The Applicant chose to engage in altering a sign for which the sign permit application was clearly denied by the City and then chose not to avail himself of any appeal rights established by the sign code. Furthermore, any legal non-conforming rights which he may have been able to assert have been breached by his own actions in altering the sign.

(e) The requested variance is the minimum variance necessary to allow the Applicant to enjoy the rights commonly enjoyed by others similarly situated. False. Every billboard sign within the City could be viewed as non-conforming. These are not rights commonly enjoyed by others since no new billboard has been constructed since the passage of Ordinance 2008-23 (M-1/M-2) which further narrowed the available zoning categories in which to place billboard signs.

(f) Granting the variance would not violate more than one (1) standard of this chapter. False. Clearly, the requests are replete with violations of the basic standards.

(g) Granting of the variance would not result in allowing a sign that interferes with road or highway visibility or obstruct or otherwise interfere with the safe and orderly movement of traffic. Cannot be determined from the available information.

Sign Code Variance(s) Recommendation(s):

Staff recommends **DENIAL** of all sign code variance(s).