In The Matter Of:

The City of Doraville

State of Georgia

The City Council Meeting

June 29, 2009

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CITY COUNCIL MEETING

CITY OF DORAVILLE

STATE OF GEORGIA

SPECIAL-CALLED MEETING WITH PUBLIC HEARINGS

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Transcript of the proceedings 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 6:45 p.m. on Monday, June 29, 2009.

* * *

APPEARANCES:

Doraville City Council:

Hon. Ray Jenkins, Mayor

Councilmember Maria Alexander
Councilmember Brian Bates
Councilmember Robert Spangler
Councilmember Donna Pittman
Councilmember Bob Roche
Councilmember Pam Fleming

Murray J. Weed, City Attorney

Ms. Rhonda Blackmon, City Clerk

Scott Haeberlin, City Planner

P R O C E E D I N G S

MAYOR JENKINS: Meeting come to order. This is a special-called meeting and it will be -- each item, I believe all of them are public hearings. So what we're going to do, I'm going to have each applicant, give him five minutes to state his case, then Scott will take over, and when we open the public hearing, each person will get three minutes.

Scott?

MR. WEED: Well, Mr. Mayor, just to remind everyone, the Zoning Procedures Act requires a minimum of 10 minutes per side. So if someone is not able to complete all of the arguments they'd like to make and needs the additional or full 10 minutes, he will be allowed that time frame.

MAYOR JENKINS: Okay. You're saying 10 minutes for the applicant or 10 minutes for each side?

MR. WEED: It's 10 minutes per each side, sir.

MAYOR JENKINS: Okay. That's five pro and five -- is that correct?

COUNCILMEMBER FLEMING: No.

COUNCILMEMBER ROCHE: No. Ten.

MR. WEED: No, sir. I'm sorry. When I say ten minutes per side, I mean ten minutes per side of the argument. If an applicant wishes to make an argument in favor, they can have a minimum of 10 minutes. They don't have to use all the time, but that's the minimum time allowed by law underneath the Zoning Procedures Act. And if someone wants to make an argument in opposition, that time frame is also 10 minutes. That is reflected in our local Code --

MAYOR JENKINS: Okay.

MR. WEED: -- in 1604-A.

MAYOR JENKINS: I wasn't aware of that. Thank you. Ten minutes per applicant, then, rather than five, but we'll stick to three minutes on the audience and then it'll come -- the last item will come to the table.

COUNCILMEMBER FLEMING: Mr. Weed, is it not 10 minutes per side for the audience, and if there are five people, for instance, in agreement to, then that would be two minutes per person unless they waive it to the next person?

MR. WEED: It's the minimum time frame would be 10 minutes total per side of an issue.

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COUNCILMEMBER FLEMING: Minimum.
MR. WEED: That's the minimum. You can always give more.
COUNCILMEMBER FLEMING: Oh, I see. Thank you.
MAYOR JENKINS: Okay. What --
COUNCILMEMBER ROCHE: And I think the concern is just that we have a long . . .
MAYOR JENKINS: What about when you get into the public hearing with the audience? Same situation?
MR. WEED: In my opinion, Mr. Mayor, with regard to someone who is not . . .
What Title 36 indicates is it's 10 minutes per side. Clearly, the applicant, you know, they have at least a minimum of 10 minutes. With regard to, you know, comments in opposition, I think you could ultimately limit the whole thing to 10 minutes per side.
So the answer would be if you had 10 people who wanted to speak in opposition, arguably you could limit it down to one minute per person. But you're not going to know that in advance unless people have already signed up tonight, which they may have.

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MAYOR JENKINS: That's right.
Okay, Scott, get your first applicant, please.
MR. ANDERSON: Is there a sign-up sheet?
CLERK BLACKMON: I'm not handling this. I don't know.
MAYOR JENKINS: Excuse me?
CLERK BLACKMON: Did you do a sign-up sheet?
MR. HAEBERLIN: I do not do a sign-up sheet. Usually Luke does.
MAYOR JENKINS: Do what?
MR. HAEBERLIN: They were just asking on the issue of sign-up sheets. I said I do not do a sign-up sheet. Usually Mr. Howe does a sign-up sheet for the Mayor's office. So I don't now if one's been completed tonight.
MAYOR JENKINS: We do that on regular Council meetings. I didn't know we done it on public hearings.
MR. HAEBERLIN: Yeah. I don't recall, sir. I don't know.
The first item we have is Item 3 which is -- we recessed this from June 1st, 2009. In

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fact, we have recessed this a number of times, of course to date specifics as appropriate. And this is a zoning ordinance text amendment which is Sunset Provision on Variances, and I will be representing on behalf of the applicant, which is the City.
This was initially put forth by Councilwoman Fleming and Councilperson Bates, I believe, and it is kind of a management control for variances to encourage our applicants to be very timely in their implementation of the variances that they may receive from the City Council. The ordinance amendment puts some key items in there that are indicators of progress being made and allows some extensions to be granted by the Council, and also an application relative to a revocation process for basically the Council notifying the applicant that they are going to pull the variances because of no timeliness in making substantial progress on the item.
Like I said, there are some extensions. The draft that you have is a/o 25, March of '09, which does have bold highlighted areas and also, too, some strike-throughs that have been

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prepared by Mr. Weed's firm.
The Planning Commission, I believe it was back on April 9th, 2009, recommended approval of this draft and was in support of it.
The Planning staff, although initially somewhat hesitant on this item, again, I look at it as a management tool so I will support it in its current format.
COUNCILMEMBER BATES: Real quick question on page 4.
MR. HAEBERLIN: Yes, sir.
COUNCILMEMBER BATES: At the very bottom, it says, under the extensions, it's got a non-refundable fee. Has that fee been requested or opined or --
MR. HAEBERLIN: At the time, this has not been addressed by the City fee code, so we have not -- we don't have a number in mind yet. Hopefully we'll address that with our next fee schedule amendments.
COUNCILMEMBER BATES: Thank you.
COUNCILMEMBER ROCHE: Where are we procedurally with this?
MR. HAEBERLIN: Procedurally, I thought it was best, because it's been recessed so many

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1 times by the Council -- I don't recall
2 specifically a public hearing being held, and we
3 did advertise it tonight for public hearing. So
4 if there was no further questions from the
5 Council, we would open it to public hearing and
6 hear from those for and against the item since
7 it is a Zoning Ordinance text amendment.
8 MR. WEED: And Council, there already
9 has been a first reading of this.
10 COUNCILMEMBER ROCHE: Yeah.
11 MR. HAEBERLIN: Correct.
12 COUNCILMEMBER FLEMING: And I believe
13 that public hearing was on June 29th. I mean --
14 I'm sorry -- it was in April. I'm sorry I don't
15 have the date.
16 MR. HAEBERLIN: That was the Planning
17 Commission public hearing was April 9, 2009,
18 which at that time they recommended Council
19 approval. And we've just recessed this
20 continually as we've been waiting for some
21 members of the general public to be in
22 attendance, and they are obviously not in
23 attendance at this time, and those are some
24 particular business owners.
25 MAYOR JENKINS: Okay.

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1 MR. HAEBERLIN: At this time, the
2 public hearing will be opened.
3 MAYOR JENKINS: Who's coming to the
4 microphone first, Scott?
5 MR. HAEBERLIN: Those for the petition.
6 MAYOR JENKINS: Excuse me?
7 MR. HAEBERLIN: Sir, those for the
8 petition. Those who'd like to speak in favor of
9 the petition and then followed by those who
10 would like to speak against.
11 MAYOR JENKINS: Yes, that's what I'm
12 saying.
13 Who's first to speak for it? Come on
14 up.
15 MR. ANDERSON: Stuart Anderson.
16 This should have been passed a year
17 ago, and we would have been out of a lot of
18 trouble that we're in.
19 On page 4, third or fourth paragraph
20 down, 12-month period . . . make written
21 application . . . within 60 days, et cetera, 12-
22 month period. And we go to extension of the 12
23 months, and I recommend that that be six months.
24 And I guess I ask Scott about his
25 extension that I don't have here, for commercial

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1 properties and how we had that worded, but I
2 agree that commercial properties can be extended
3 out further.
4 But as far as residential, I think it
5 should be 12 months and a six-month extension
6 period. Thank you.
7 MAYOR JENKINS: Anybody else for it?
8 - - -
9 (No response)
10 - - -
11 MAYOR JENKINS: Opposed?
12 COUNCILMEMBER ROCHE: Mr. Hart.
13 COUNCILMEMBER PITTMAN: Mr. Hart.
14 MAYOR JENKINS: What?
15 COUNCILMEMBER ROCHE: Mr. Hart had his
16 hand up for it.
17 MAYOR JENKINS: I didn't see his hand.
18 MR. HART: I support it, but I had a
19 question. When you do these sort of things, are
20 copies of these pieces of proposed legislation
21 available on the web site? Because it's hard to
22 talk about something if you don't have a copy of
23 it and can't read it. Same way with the
24 proposed budget tonight.
25 I support it because we've had a lot of

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1 problems recurring especially in the commercial
2 buildings where things have been going to be
3 built and it's four or five years out, nothing
4 happens, and then things are automatically
5 renewed. Things that were -- old sets of laws
6 are being presented with projects that should
7 have been done or done away with five years ago.
8 So I support it. Thank you.
9 COUNCILMEMBER ROCHE: We did pass a
10 motion a couple of meetings ago to post proposed
11 legislation on the web site, so I don't know if
12 that's been happening.
13 MAYOR JENKINS: I have no . . .
14 How about it, Scott?
15 MR. HAEBERLIN: Actually, I believe
16 that this has been actually on your docket for
17 so long, that it was posted way back before
18 there was any motions relative to placing items,
19 and it was on the City web site, I think in
20 response to a business owner like Mr. Joe Frank,
21 I believe, and his attorney. And so I believe
22 it has been on the City web site for quite some
23 time, actually.
24 COUNCILMEMBER SPANGLER: Are you pretty
25 sure, Scott?

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MR. HAEBERLIN: I am 99 percent certain; however, a document has always been available for public inspection in the City Clerk's office.

MAYOR JENKINS: Anybody else for it?

- - -

(No response)

- - -

MAYOR JENKINS: Opposed?

- - -

(No response)

- - -

MAYOR JENKINS: Anybody else?

- - -

(No response)

- - -

MAYOR JENKINS: I'm going to bring it up to the table.

COUNCILMEMBER FLEMING: I'd like to make a motion to add Section 1405, Conditions to Variance Approval, to the City of Doraville Zoning Code of Ordinances.

COUNCILMEMBER BATES: Second.

MAYOR JENKINS: Any more discussion?

- - -

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(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 Pittman?

COUNCILMEMBER PITTMAN: Yes.

CLERK BLACKMON: Councilmember Roche?

COUNCILMEMBER ROCHE: Yes.

CLERK BLACKMON: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Yes.

MAYOR JENKINS: Thank you.

Scott?

MR. HAEBERLIN: The next item is a variance hearing that we've recessed from May 26, 2009, and this has as well gone to the Planning Commission for a recommendation, a nonbinding recommendation to the Mayor and Council, and their recommendation was denial.

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There is someone here from the applicant or his representative for Kingport Kuo, 3693 through 3695 Stewart Road, current zoning O-I, and I believe Mr. Tom Pye is representing that individual.

MR. PYE: Mr. Mayor, ladies and gentlemen of the Council, my name is Tom Pye. I represent the applicants in this matter, Raymond and Lou Kuo, who, through their business entity, Raymond and Lou Associates, Inc., the owners of the property.

The purpose of the variance application is to allow two metal storage containers to remain on the site of this property.

One might ask what they do, what they are. They are temporary metal storage units, "temporary" meaning they're not affixed to anything; they're sitting on two-by-fours. They are behind the headquarters building of the Tzu Chi Charitable Foundation on Stewart Road. They are not visible from the street unless one goes around to the side and looks for them. They are not connected to the building. They are screened by a fence at the rear of the property. They are used for storage, meaning that they are

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infrequently accessed; people aren't going in and out. And to our knowledge, there have been no complaints about these metal storage containers while they have been on site.

How did they get there? About five years ago, representatives of the owner came to City Hall and talked to Mr. Entsminger, told him that they wished to buy these storage units, and asked him if they needed a permit or anything of that kind, and he told them that they did not because they were not permanent. Based on that and in reliance upon that, my clients bought these two units at a cost of about $2500 and bought them and placed them behind the building occupied by the Foundation.

About a year ago, someone put graffiti in the area, and representatives from the City came around and directed that the graffiti be removed, but there was no objection made to these containers.

So they have been in place for about five years with the knowledge and, I suggest, the consent and without the opposition of the City.

A few months ago, a member of the

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1 Quality of Life Department of the Police
2 Department came around and issued a warning. My
3 clients were concerned about that, of course,
4 and somewhat surprised since they had been told
5 that they were allowed there.
6 They came to City Hall and spoke with
7 Mr. Haeberlin, and he said, well, you may wish
8 to apply for a variance. And so that was what
9 was done.
10 You know your ordinance far better than
11 I do, but reading it, it says that a variance is
12 applicable where a literal application of the
13 terms of the ordinance due to special circum-
14 stances would result in unusual hardship in an
15 individual case. The ordinance goes on to list
16 a half a dozen specific grounds. The language,
17 in my opinion, is probably ambiguous, but I
18 won't get into that at this point.
19 The special circumstances that we ask
20 the Council to consider are that we are asking
21 simply to be allowed to continue to do what we
22 were told we could do five years ago; that it
23 was not an isolated incident five years ago, but
24 the City through its employees has been aware of
25 the situation four or five years.

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1 Now let me talk about what these
2 storage containers are for. As I said, my
3 clients are principals of the Tzu Chi
4 Foundation. You may or may not be aware of
5 that. It is a charitable foundation formed over
6 40 years ago in Taiwan. It began with 30
7 members, ladies who saved two cents from their
8 grocery money to help the poor. It has
9 increased the membership worldwide of millions
10 of people.
11 The Tzu Chi mission focuses on giving
12 material aid to the needy and inspiring love and
13 humanity to both givers and receivers. In
14 addition to charity, the Foundation dedicates
15 itself in the fields of medicine, education,
16 environmental protection, international relief
17 work, and the establishment of the world's third
18 largest marrow donor registry. It promotes
19 humanistic values and community volunteerism.
20 In 1989, the Tzu Chi Foundation United
21 States of America was established in California.
22 It has more than 100,000 members in the United
23 States. My clients are the principals of the
24 Southeastern Region of Tzu Chi, consisting of
25 the states of Georgia, Alabama, Florida and

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1 Mississippi.
2 What do we need storage containers for?
3 Well, that's pretty simple. We collect for
4 distribution to the poor and needy, blankets,
5 clothing and other nonbiologicals, so we don't
6 have food or anything in there that could create
7 a health issue or a smell or odor issue. They
8 are distributed to victims of natural disasters.
9 My clients received commendations by the City of
10 Doraville, by the State of Georgia, by the State
11 of Mississippi, for their assistance in aid to
12 Katrina victims from these very storage
13 containers that are the subject of our variance
14 application.
15 My folks are good folks. They are
16 Taiwanese. They came here, been good business
17 people. They owned an old hotel that they were
18 going to destroy down on Buford Highway. The
19 police came to them and said, may we use that
20 for training, a training facility? And they
21 were happy to grant that permission.
22 The Kuo family are not only charitable
23 citizens through Tzu Chi but good business
24 citizens of the city of Doraville.
25 Lest you be concerned that if you

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1 approve this variance that some precedent will
2 be established, I suggest to you that it's
3 highly unlikely that another charitable
4 organization will come before you and tell you
5 that five years ago they were told they could
6 put a storage container behind their building
7 and ask for a variance. This will establish no
8 precedent, and I suggest to you that it will
9 establish a support for charitable
10 organizations, not an obstruction to charitable
11 organizations.
12 So we respectfully ask that you use
13 what Mr. Weed and I would refer to as your
14 equitable powers as opposed to the ordinance's
15 strict legal interpretation and grant the
16 variance to my clients to allow these containers
17 to remain where they are. Thank you very much.
18 COUNCILMEMBER SPANGLER: Mr. Pye, do
19 they have anything in writing from
20 Mr. Entsminger?
21 MR. PYE: No, sir, do not.
22 COUNCILMEMBER SPANGLER: It was all
23 verbal?
24 MR. PYE: All verbal. As I said, they
25 were told they didn't need a permit, didn't need

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to apply for anything. Back then, that was good enough.

COUNCILMEMBER ROCHE: Would your clients have any objections to someone from the City maybe taking a look and inspecting the contents?

MR. PYE: Not at all.

COUNCILMEMBER BATES: Any long-term plans of building a permanent facility?

MR. PYE: Did you hear that, Raymond?

Let me -- The building in front of which these containers are located is a brick house which is the headquarters for this region's Tzu Chi Foundation, and they have office staff there. That is their permanent headquarters, but they didn't -- they didn't have a facility to store blankets and clothes and coats and things like that. That's why they brought the containers in.

COUNCILMEMBER BATES: I'm sorry. Would there be any plans of constructing a permanent, attached facility for storage, warehousing, and replacing or eliminating the trailers?

MR. PYE: They're not trailers, respectfully. I don't know if you've seen the

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pictures. They are metal containers sitting on two-by-fours.

COUNCILMEMBER BATES: They're storage trailers.

MR. PYE: Well, I think of trailers as something on wheels or something that can be --

COUNCILMEMBER BATES: They're portable.

MR. PYE: They are portable.

[To Mr. Kuo] And do you have any plans for . . .

[To the Council] We do not.

COUNCILMEMBER BATES: Thank you.

COUNCILMEMBER ALEXANDER: There are approximately three storage facilities. There's one on Chestnut, there's one at the end of McElroy Road, there's one at the head of McElroy Road or -- I'm sorry -- on Longmire. Have they approached these storage warehouses to ask if they would be willing to donate space instead of using these items?

MR. PYE: No, ma'am. I believe they are hopeful that the status quo will remain. If it does not, obviously they'll have to do something. These are substantial storage containers, and if they are not allowed, well,

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they'll have to be moved somehow. But to date, they have not done that.

COUNCILMEMBER BATES: Are these storage vehicles conditioned? Are they conditioned space? I did notice there's an air vent off of the back of one them. Is that simply . . .

MR. PYE: They are vented, but "conditioned," as I understand that to mean --

COUNCILMEMBER BATES: Heated and cooled.

MR. PYE: -- heated and cooled, no, they're not. No need for that with blankets.

COUNCILMEMBER BATES: And is there power running to those units?

MR. PYE: No, no power.

They are as unnoticeable, unobtrusive structures as you can imagine. There's no electricity going to them, no plumbing going to them. They're just there to . . .

COUNCILMEMBER SPANGLER: Unless you're actually looking for them, you are not going to notice them just driving around Stewart.

MR. PYE: You are not. If you're standing in front of the building, you don't see them. You have to move to the left of the

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building and look down the driveway and you'll see the corner. And they are screened by -- screened on the rear property line and they're behind the building. So unless you're looking for them, you wouldn't see them.

I suggest either that they were seen and ignored for five years or not seen, either one being supportive of our application.

MAYOR JENKINS: I believe you said that Mr. Chuck Entsminger told them that it was not a permanent structure so it did not need a permit.

MR. PYE: Yes.

MAYOR JENKINS: Is that correct?

MR. PYE: That's what he told.

MAYOR JENKINS: He stated that it was not a permanent structure.

MR. PYE: It's not.

MAYOR JENKINS: I know, but did --

Well, we don't know what Mr. Entsminger talked about, but did he give him a time limit as to permanent, get it out in a certain time, or did he tell him that it would be a . . .

MR. PYE: No, sir. He -- he --

They asked if they needed any permit or permission or needed to do anything to place

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them there, and he said, because they are not permanent, you need nothing from the City; you may place them there.

He returned, I believe, with a police officer on the graffiti issue, someone noticed some graffiti and, as I understand it, notified the police officer that the graffiti needed to be removed but the structures, containers, trailers, did not.

COUNCILMEMBER BATES: That raises the point, though, of because it was at that time granted because it wasn't permanent, but there seems to be some permanence to the structures.

MR. PYE: Well, I suppose a casket in the ground is temporary. I don't want to argue vocabulary with you.

They are movable, they are sitting on two-by-fours, and if our variance application is denied, we will have to move them.

Sir, I was not there and I can't speak for Mr. Entsminger, but my assumption is that he was not dealing with how long they were going to be there but whether they were covered by the Code or not, and his interpretation of the Zoning Ordinance was if they are not permanent

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-- that is, if they're not affixed to the ground or affixed to another structure that is affixed to the ground -- they don't qualify as a permanent structure.

Thank you very much.

MAYOR JENKINS: Thank you.

Scott?

MR. HAEBERLIN: You've heard from the applicant, and what really was not fully addressed is even if these are not permanent structures or they're temporary structures, perfectly semantics, their placement is clearly in violation of multiple sections of the Zoning Ordinance, particularly with respect to accessory structures and, as well, buffering, et cetera.

Now, I am working essentially from the same code that Mr. Entsminger worked from, and I think it's very clear in Section 704 of the City Zoning Ordinance, temporary buildings are prohibited. Temporary buildings are only allowed in conjunction with construction and they must promptly be removed at the time the construction ceases; in other words, a certificate of occupancy. So I did want to make that self-apparent

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to the folks here.

Mr. Weed may have another Latin term that he may use to discuss the actions of the previous staff. However, again, I think that that interpretation of the Zoning Ordinance was clearly wrong and I think that was an application of experience held at other jurisdictions, particularly Dekalb County. I've heard that from multiple individuals. However, the City has always had a distinct zoning ordinance separate from that of the County.

So my basic premise, again, is that is a violation of the temporary buildings clause, and, quite frankly, this is no different than individuals who would like to put hot dog stands in front of the Home Depot or put mobile or modular buildings in parking lots and things of that nature. They're pretty much the same thing.

So under the Standards of Review, there is nothing particular here, in reviewing the zoning standards of review for variances, that makes this a unique or discernible situation. In fact in the last four or five months, the City has issued I believe between seven and ten

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citations for the same exact items. Those individuals have since removed those items. We have three remaining, I believe -- one on Central and two on King that the Code Enforcement officers are still dealing with, and that is to give those individuals opportunity and time to move these structures into warehouses --

COUNCILMEMBER SPANGLER: But --

MR. HAEBERLIN: -- to get them out of the public.

COUNCILMEMBER SPANGLER: -- my question to you, Mr. Haeberlin, did any of these people or these locations -- were they authorized to put these in by the building inspector at that time, at the time they put them in?

MR. HAEBERLIN: Yeah, I can't attest to that.

However, none of them applied for a variance. They had the opportunity as well to apply for a variance and they were counseled on that when they came into the City Planner's office.

Now, in my heart of hearts, do I really have a discernible decision on whether I think

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this is a prohibited item? I don't really even know, and I question myself still today, whether this should even be in the process as a variance. And when I'm saying that, I believe that it might just be a prohibited use throughout the city relative to it being a temporary building. So it is a gray area there, and I know Mr. Weed is kind of pondering that. However, since I did receive an application, I did process it. And like I said, that'll be a decision for the lawyers.

I believe what Mr. Weed normally refers to as an ultra vires, which is the action of a city employee in violation of the zoning ordinance, and that would be the relevant discussion that he may have with you tonight.

Again, I see nothing discernible in the Standards of Review that make this unique from any different situation in the city, and like I said, multiple tractor-trailer temporary-style buildings have been removed from the city in the last -- it's been three or four months. And this is a result of Code Enforcement activity.

Quite frankly, we have people trying to run businesses out of these. We've had some

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folks perhaps trying to live in them. We've had some pretty interesting activity with the property owners.

And like I said in the Standards of Review, one of the things that is crystal clear is that the applicant could build onto this building and they certainly could build an accessory structure that meets the code. So they do have the opportunities. We're not denying the person the ability to provide on-site storage; however, we are regulating that type of storage, and I think that's perfectly appropriate, and most communities and most communities with zoning do this.

So really there's no further comments from me other than to say I think Section 704 is very clear, this item should not be in the city limits.

COUNCILMEMBER ROCHE: You say they could build onto this building. Wouldn't they require some kind . . .

What about the setbacks there? If they remove these buildings and decided to build onto it, would they need any kind of variances?

MR. HAEBERLIN: Well, that's correct.

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They would have to meet all City Codes, you know, the impervious, the setbacks. I mean as they're sitting right now, they don't meet the codes. They are sitting in the buffer.

So yes, their ability is more limited; however, they can go multi-story on this site. There are other options other than merely maintaining the buildings as they are today.

COUNCILMEMBER ROCHE: I have a question for Attorney Weed. Does the actual use of the property -- I mean can we even consider that, I mean the fact that this is a charitable organization? I mean I'm trying to keep that separate. I mean it doesn't say that you get special treatment for one type of business as far as the Zoning Ordinance is concerned versus another type.

I mean we have to treat pawn shops basically the same way we treat charitable organizations as far as this is concerned; is that correct?

MR. WEED: I would agree with that. However, I do believe that the standards grant some latitude for the Council to determine what constitutes an extraordinary and exceptional

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condition pertaining to a particular piece of property in question.

There are limitations to that, though. It's got to be due to its size, shape or topography. So I would say, you know, between that and the second one, which is a literal interpretation of the provisions of the ordinance would deprive the applicant of rights commonly enjoyed by other properties.

You know, once again, I think ultimately the Council makes those decisions, but I think in this particular context there isn't a lot of difference between the fact that it's a charitable organization and one that might be commercial. So at the end of the day, although the Council will apply the standards to the facts here, I don't hear anything in the facts that would differentiate this organization from let's say for example a commercial organization with regard to the application of the standards to the facts.

MR. HAEBERLIN: And for the record as well, there were other charitable and nonprofit organizations who received similar warnings and citations.

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COUNCILMEMBER ROCHE: I'm sorry. That was my second question, is if we did grant this variance, would the other organizations who did remove their temporary accessory structures have any kind of recourse against us to say they were being treated any differently?

MR. WEED: Well, I think it would be dependent upon the individual facts. Did any of them file any sort of reservation-of-consti-tutional-rights letter? Did any of them . . .

You know, basically it'll come down to counting the days. How many days was it from the time that the removal occurred; you know, if they were aware that they needed to remove them, that might come into play, too, with regard to some sort of, you know, statute of limitations that might be applicable.

So it will really be dependent upon each individual case and what arguments they attempted to make, and then we'd look back at the time frame and see what did they do, what did they not do, and what were the time frames.

COUNCILMEMBER ROCHE: I mean they had the option of applying for a variance.

MR. WEED: Correct.

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COUNCILMEMBER ROCHE: Thank you.

MR. WEED: And in some cases, there might have been some code enforcement efforts. They might have pled guilty underneath the citation. Those things might -- we'd need to consider those things, too. I don't know. You have to look at each individual fact.

COUNCILMEMBER ROCHE: I'm just trying to understand any exposure we would have if we did grant the variance.

MR. WEED: I think the exposure would be greatly limited and it also would be very time sensitive.

COUNCILMEMBER ROCHE: Time sensitive?

MR. WEED: Based upon how long the period of time from when they removed the items, whether or not there were code enforcement citations that they might have pled guilty to or were otherwise -- you know, there was some sort of adjudication, because there are certain time frames or statutes of limitation with regard to appealing those decisions.

COUNCILMEMBER ROCHE: Okay. Thank you.

MAYOR JENKINS: Scott?

MR. HAEBERLIN: Yes, sir.

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MAYOR JENKINS: I want to double up on what Mr. Roche said. According to the setbacks here, would they be able to build on if they chose to?

In other words, I'm looking at the building, and it looks like there's no room in the back of this house, but, yet, could they come out to the front, you might say?

MR. HAEBERLIN: It is --

MAYOR JENKINS: Can they meet -- if they wanted to add on something similar to this size, could they do it there according to the setbacks?

MR. HAEBERLIN: It's limited and it would be difficult. However, I think that getting with an appropriate engineer to work on their site -- and there are some other Code issues they'd have to address -- that I think that they could create some additional space on the property. That might be vertical, sir; it might be going up. I don't know factually that it's going to be a horizontal development. But certainly they can go more than one story in O-I. They can go up to five stories.

MAYOR JENKINS: You mean use the same

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structure and go up?

MR. HAEBERLIN: Yes, sir. Or they could tear the existing structure down completely if that doesn't meet their needs.

MAYOR JENKINS: Answer my question.

MR. HAEBERLIN: Uh-huh.

MAYOR JENKINS: According to the setbacks, if they came to where the permanent, temporary structures are, could they build onto the house there according to the setbacks?

MR. HAEBERLIN: It would be limited. In other words, it wouldn't be near as big as what they have today, sir. It would be small, yes, sir.

MAYOR JENKINS: Okay.

MR. HAEBERLIN: At this time if there are no further questions, you can open the public hearings and hear from those for and against.

MAYOR JENKINS: Okay. Anybody for the structure, come up to the microphone, please. Come on up to the microphone, sir.

MR. ANDERSON: Stuart Anderson.

Several things. One that wasn't asked about is hardship. I think that something was

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said in the previous meeting about expenditure going vertical and building more buildings and stuff just takes money away from the charitable operation. It just puts money into infra-structure, doesn't do what the charity is supposed to be doing.

The buffer situation, like Scott says, you can go vertical, but they're close in the back to -- you might -- you probably wouldn't even get to use one of these things because of the buffers.

But really more importantly, reading 706, temporary building signs or a building used for connection with a construction project or land subdivision development shall be permitted on the land project only as construction, period.

These are not for construction. We don't have anything in the book that is keeping us from having temporary structures, period. The only thing that we've got here is 706, and that's buildings -- temporary buildings for construction.

This whole objection to these structures, we don't have an ordinance for it.

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The only ordinance we have is for temporary buildings for construction. This is not having anything to do with construction. It has to do with this charity storing blankets.

On a personal note, I went and looked at it. These things are unobtrusive. They're well painted. They don't stick out. They don't bother you. We don't have an ordinance against them, so I don't think you can really ordinance against them. 704 is for construction, period.

MAYOR JENKINS: Anybody else for it?

- - -

(No response)

- - -

MAYOR JENKINS: Anybody else for?

- - -

(No response)

- - -

MAYOR JENKINS: Okay. Against? Anybody against the structures? Come up to the microphone.

MR. HART: It seems we're getting more and more of these things where we converted an R-1 structure and trying to move it into an O-I or C-1/C-2. We found out that there's no room

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on the side, there's not enough buffer, there's not enough of anything. It's because it was a house and it met R-1 standards. That's what it's meant to be. And this is a house that's on the edge of a neighborhood, and I think there's a couple more of these things that will probably come up. It seems to be coming more and more rapid because it's a lot less expensive to buy a piece of property that's an R-1 structure rather than buying a piece in C-2 that's commercial, and then try to shave off the edges and put the square peg in the round hole.

You know, as far as these temporary structures, if you have a trailer in your yard or you have a motor home in your back yard, Code Enforcement's going to be all over that in R-1. But if you put these storage boxes, which are, you know, they're a railroad-transportable trailer or shipping container, if I put one of those in my front yard or side yard, I guarantee you I'd have Code Enforcement over there in about an hour.

So you know, it's a problem, again, with these R-1 houses being converted into other than what they were to begin with; that's R-1.

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And you know, they've owned other buildings in the city. Maybe they need to move, okay, if it doesn't meet their circumstances.

You know, you have to be even across the board in enforcing these laws in the city. Thank you.

MAYOR JENKINS: Anybody else against?

- - -

(No response)

- - -

MAYOR JENKINS: Nobody else?

- - -

(No response)

- - -

MAYOR JENKINS: Okay, Scott. Bring it up to the table.

MR. HAEBERLIN: I just would like to have an opportunity to reply.

To begin, I do agree that Section 704 of the Code is very poorly written; however, I disagree with Mr. Anderson's interpretation. And quite frankly, it would make it impossible for the city of Doraville to have any sort of architectural ordinances with these type of structures in the city.

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What has not been discussed is how does this meet the building code. And I certainly don't believe this meets the building code at all. If we were to have a high wind storm or a tornado in the city, I think you would certainly find these structures would not stay anchored to the ground for very long because they are not anchored, and this is the reason why the city does have building codes and zoning codes.

So I'm going to respectfully disagree with that interpretation and caution you that I think that these items in the city not only encourage, you know, the basic abandonment of building codes and zoning codes but as well will not work in terms of architectural.

I've heard the argument tonight that it's not seen. Well, again, that's not a valid argument.

Heard the argument that a previous staff member allowed this. Again, I don't believe that to be a valid argument. If the action of the previous staff was illegal, it's still an illegal act. And again, this is the same code that that individual or previous individuals worked from, that I work from today.

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It has not changed. So on that, my recommendation of denial stands.

COUNCILMEMBER SPANGLER: So what you're saying is Mr. Entsminger did an illegal thing when he authorized these people to put these modular or mobile utility sheds in place on their property.

MR. HAEBERLIN: That is for a court of law to determine, but in my opinion, that was an inaccurate reading of the City Codes. And I see this replete throughout the city as a continuous problem.

And again, we do not have that individual here tonight to defend himself, and so the comments made by the applicant are merely hearsay. We don't know.

COUNCILMEMBER SPANGLER: But my question was, was it illegal, what Mr. Entsminger did?

MR. HAEBERLIN: That is for a court of law to determine, sir.

COUNCILMEMBER SPANGLER: But in your opinion, you just stated --

MR. HAEBERLIN: In my opinion --

COUNCILMEMBER SPANGLER: -- that it was.

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MR. HAEBERLIN: -- that interpretation was improper; yes, sir. And I stand by that. And I think any other person who has worked in zoning and had to enforce the Zoning Ordinance for years would understand this.

And as you've heard lately, there have been numerous interpretations of the Zoning Ordinance that are completely way out there. And it's all over the place; it's not just this project. So I would respectfully disagree with his decisions.

COUNCILMEMBER ROCHE: As far as options, I mean is it possible to legally grant a variance with an end date with a situation like this? In other words, could a variance be -- using this as an example, could we say, well, we would grant you the variance and the variance would be good for three years or five years, at which time you'd have to remove the -- whatever we're calling them, storage devices or whatever?

I don't know if that's an option or not is my question.

MR. WEED: Well, my research indicates -- I did a lot of research on this topic

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generally when we were developing the conditional use sunset provisions, for the lack of a better term, and I think the current case law would indicate that yes, you could develop a piece of legislation that could include some sort of limitation on time with regard to a variance. I think the current cases that I read would indicate that that would be a realistic possibility.

I don't know that you could do that tonight, meaning I think you'd have to draft a piece of legislation that would allow such a thing to occur, and right now our Code doesn't provide that time frame to the best of my knowledge.

COUNCILMEMBER ROCHE: Well, I guess for instance if we granted the variance, then they could -- tomorrow they could move those storage devices out and then a year from now move two new storage boxes back in there.

MR. WEED: Well, my understanding would be that -- and based upon the recommendations of the Planning Commission and the recommendations of the Planner, that the variance would be for the particular items that are on the scene now.

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COUNCILMEMBER ROCHE: Right.
MR. WEED: I think you can clearly limit it to that. That's what the variance applied for; that's what the facts that have been presented to you dealt with. So I don't think what you're suggesting would be legally possible. You could certainly contest that if someone tried to do that.
COUNCILMEMBER FLEMING: So the motion cannot be made that we approve the variance with conditions?
MR. WEED: Underneath your current code, my opinion is there doesn't seem to be any leeway to grant variances with conditions.
Do I think you could draft a piece of legislation that might provide you that ability in the future? Based upon the cases that I've read, my answer to that question would be yes. However, underneath the standards that are currently in place, I don't know that you've got that option, looking at 1402.
COUNCILMEMBER BATES: Could we -- trying to come at it from a different angle. Could we deny the variance request with an enforcement date?

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MR. WEED: At this point, I don't believe you can . . . I don't believe you can condition the approval or denial of the variance request. In looking at the current code and its current wording, I don't see that you have that option. Currently, I believe you have an option to either grant it or deny it, but I don't see that you have any option to provide any kind of conditions or even delay enforcement of the condition. Unless, you know, one could argue that you want to grant them a reasonable time frame to remove the devices; but, you know, then reasonable would be in the eye of the beholder, I suppose. But I would be reticent to suggest that reasonable would be a month. I think reasonable could be a week.
COUNCILMEMBER FLEMING: We have some rezonings coming up in the next few minutes that are going to carry conditions --
COUNCILMEMBER ROCHE: Yeah.
COUNCILMEMBER FLEMING: -- to them. What is the difference between what you're saying that we cannot for a variance have conditions, versus rezonings that we are going to listen to conditions?

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MR. WEED: The main difference is the wording of the code, the wording of the legislation that you're operating under. The legislation for the Zoning Ordinance contemplates conditions to be applied to rezonings. That's actually built into the structure of the ordinance.
Please don't misunderstand me. Do I think you could create a piece of legislation that would give you the opportunity to do these things? Yes, I think you could do that. But does that legislation exist now? No, it does not. So my opinion is based upon the fact of you have what you have before you -- you know, what's in the book now. And I think that's very different than what you have before you with regard to the zoning code with regard to rezonings.
COUNCILMEMBER ROCHE: Well, I was hoping that we could do it that way. But even so, I think that -- I mean as Mr. Haeberlin has mentioned before, and there are other situations in other departments and et cetera, et cetera, where things just frankly weren't done right by the City at some point in time. And sometimes

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that's open to interpretation and sometimes it's not, I guess.
But I feel like that -- you know, I almost feel like we'd be penalizing someone for past actions, right or wrong. I would very much rather have made a motion to grant this variance and say that, you know, first of all, someone can inspect the contents; secondly, if you move it, it can't be replaced; but apparently that's handled; and then third, which would still be some kind of an end date and say, well, for three years or five years.
But if you're saying we can't do that, I'm going to make a motion that we grant the variance. I think that --
COUNCILMEMBER FLEMING: (Inaudible)
COUNCILMEMBER ROCHE: Oh, I'm sorry. Are we still in the public?
COUNCILMEMBER FLEMING: Are we not?
COUNCILMEMBER ROCHE: But we brought it back up to the table, didn't we?
MR. WEED: It's at the table.
MAYOR JENKINS: It's at the table.
COUNCILMEMBER FLEMING: My apologies.
COUNCILMEMBER ROCHE: Okay.

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If they move it away, they can't put it back, because that was one concern that I had.

These things are still going to be subject to appearance standards from Quality of Life -- they can always go back there if the paint starts chipping off or whatever or if they get graffiti on them -- and they still have to maintain them.

So I think that something that's been there for five years because someone here at City Hall told them that it was okay, I hate to penalize someone at this late date for this. You know, if I'm satisfied that we're okay; we're not exposing ourselves to other legal actions.

So I'll go ahead and make the motion that we grant this variance.

COUNCILMEMBER ALEXANDER: How could we legally turn a future petitioner down requesting these structures?

MR. WEED: You have to logically differentiate between the facts that were presented to you. You can always make, you know, different decisions in different circumstances based upon different facts. And as long

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as the fact pattern presented before you, if there's a clear, reasonable distinction between the facts presented by some other applicant and the facts here, then that's a defensible decision.

COUNCILMEMBER ALEXANDER: Because the other charitable organization that had one of these types of items, perhaps they didn't have the funds to apply for a variance. I don't know. I don't personally know their circumstances. But I don't want us to be seen as granting special privileges to one address and petitioner over anyone else.

I'm also concerned -- unlike Mr. Pye, I disagree regarding setting a precedent. I receive phone calls if a pod is in someone's driveway for more than two days, and I'm afraid that we would be setting a precedent here that may be hard to enforce, denying anyone else the same opportunity as this address has.

COUNCILMEMBER ROCHE: Well, I made the motion, and basically I made the motion based on the fact that, first of all, again, the structure has been there five years. I mean if someone calls to City Hall and asks a question

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from an employee and the employee gives you an answer and you act on that answer, I mean it just seems like you're put in an untenable situation because then later on they could say, whoops, the guy was wrong or the girl was wrong or whatever, so you never can count on anything.

Anyway, I'll leave the motion as stands. I mean go up or down.

COUNCILMEMBER FLEMING: I second.

COUNCILMEMBER SPANGLER: We're still in the discussion stage?

MAYOR JENKINS: Any more discussion?

COUNCILMEMBER ROCHE: Now we're in discussion.

COUNCILMEMBER SPANGLER: The only reason that I would be for it is strictly because and only because the building official at that time gave them approval to do this. The structures have been well maintained or painted. And I would like to -- I know they've already gotten their money's worth. If they only paid $2500 apiece for them, you've more than -- you've more than, you know, got your money's worth out of them. But I just hate to take those away since we did give them permission --

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even though that person's not here now, we did give them permission to put them in in the first place with no conditions.

MR. HAEBERLIN: Sir, if there was a record of that, a building permit, I would tend to more agree with you, but there has been nothing produced thus far.

COUNCILMEMBER SPANGLER: Well, Scott, you know, you're a little bit younger than I am. There are some older people out in the audience. Used to, a man's word was gold. Okay? So I don't doubt but what these people were told five years ago by a building official that they could do this, and there's probably other people throughout the city that have been told the same things: that they could do things that probably aren't legal now.

So you know, it's not fair to them, because they invested -- even though they've already gotten their money back out of these units, they have invested their time and their money and the maintenance on them, to have them, and I just don't think it's fair for us to up and make them move.

COUNCILMEMBER BATES: Mr. Weed, how

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long would it take to craft the legislation to grant conditions on a variance?

MR. WEED: Well, I can craft it in two days. And then of course you have to comply with the Zoning Procedures Act with regard to advertising it, you know, no less than 15 or more than 45 days before the meeting where you adopted that. And you have to have one meeting, but you could always waive the first reading.

So essentially you could get something together and have it adopted within 15 or 16 days from now depending upon when the ad would run.

COUNCILMEMBER FLEMING: For variances?

MR. WEED: Yes, ma'am.

COUNCILMEMBER FLEMING: Well, that's zoning code, is it not?

MR. WEED: That's what I was just saying. You have to comply with the Zoning Procedures Act.

COUNCILMEMBER FLEMING: Okay.

MR. WEED: That's why I mentioned the time frame that I did.

COUNCILMEMBER BATES: Personally, because I don't want to create undue hardship on

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the applicants but I don't want us to continue to go down this path, I would be much more inclined of tabling this on behalf of the applicant until we've had an opportunity to craft legislation that would allow us to put conditions on a variance and go forward with what Mr. Roche had suggested earlier about a time frame for removal. That would be my preference on the matter before us tonight.

MAYOR JENKINS: More discussion?

COUNCILMEMBER ROCHE: Well, even if the motion doesn't pass, I think that you can still do that. But my concern here is that I think the people deserve an answer up or down. I don't know how long ago they applied for this.

COUNCILMEMBER FLEMING: March the 10th.

COUNCILMEMBER ROCHE: March, April, May, June. I mean it's almost three and a half months. March, April.

MR. HAEBERLIN: That's correct; however, they recessed it by their own action, sir, not that of the City.

COUNCILMEMBER ROCHE: No, I understand.

MR. WEED: If I might make a suggestion just for advanced planning, you have a standing

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motion and a second, and if the motion fails, then the containers are going to have to be removed.

COUNCILMEMBER ROCHE: Right. I understand that.

MR. WEED: And eventually you could craft legislation that may very well allow the same containers to be put back in, but that would be at some point in the future. So just bear that in mind as far as your thinking.

COUNCILMEMBER ROCHE: And I guess even if we did craft -- you know, did the legislation, then there's nothing that says, okay, we grant the variance for five days or not grant the variance at all, et cetera.

MR. WEED: True enough.

COUNCILMEMBER ROCHE: I think we should definitely look at that regardless, you know, to give us a little more flexibility in our decision-making process going forward.

I just would hate to be the one that would have to force this organization -- you know, to put them through more. With everything going on out there with the economy and all that, you know.

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And see, I'm doing exactly what I said I wasn't going to do, which is consider the motion or consider the use, so I'll shut up with that.

MAYOR JENKINS: I will say that at the time that Mr. Entsminger gave permission for this, I don't think that he would have thought it would have been there in five years. My opinion -- I'm trying to think for him, no -- but I'm saying I believe that he probably said, well, they won't be here but two or three months or whatever. But that's beside the point.

COUNCILMEMBER ROCHE: I would be willing to rescind the motion if we can leave the status quo until the Council has time to come back around to this.

If I rescind the motion and we do not pass the variance, would there be any urgent reason for them to have to remove their structures in the meantime?

MR. WEED: Well, what you'd have to do, if you rescind the motion and you did table this item, if you're going to table it, you have to table it to a date certain.

In the meantime, you know, enforcement

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as a general rule is always discretionary. So enforcement, you know, could be enforced against them. Underneath the current standard, they could be issued a citation for every day that the objects are there, or not. And of course that's up to the Quality of Life unit, you know, not the Council, as to that.

COUNCILMEMBER FLEMING: But with pending application in hand, one would think that they would not be targeting that specific operation --

MR. WEED: I hope -- I always hope --

COUNCILMEMBER FLEMING: -- with pending --

MR. WEED: -- with regard to law enforcement that common sense prevails.

COUNCILMEMBER FLEMING: Okay.

MR. WEED: And sometimes it does and sometimes it doesn't.

COUNCILMEMBER FLEMING: Okay.

MR. WEED: But I would certainly hope reason and common sense will prevail in that circumstance.

COUNCILMEMBER ROCHE: And we do have a memo that someone has written about a similar

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situation elsewhere where enforcement has been asked to -- I believe they closed out the warnings and decided to hold off until the Council acts.

Would it be appropriate to ask the applicants a question at this point?

MR. WEED: I think you can do that. Depending upon if it's some new information, then I would advise you to let the applicants provide the new information but then you might want to -- and you may need to reopen it up for some response from the public as well to do what you can to provide fairness.

COUNCILMEMBER ROCHE: I guess we've got two options. One is to make a decision one way or another tonight, you know, flip a coin or whatever almost, but I mean it could go either way; versus, you know, putting it off yet another month or two to come up with a decision then that could still go against you, you know.

I know me. I would rather know I'm going to be shot in the morning than not know what's going to happen, frankly. Preferably, not shot in the morning, but --

MR. WEED: The only other thing I would

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like to add, I would like to just state for the record that I think you can give whatever weight you deem is appropriate to the facts that have been presented.

With regard to the law, the issuance of a permit or in this case the issuance of no permit at all by an employee which is done beyond the scope of their authority is what's called an ultra vires act, and that act cannot be held against the government. The government would not be estopped at some future point from enforcing the ordinance.

Having said that, you can give whatever weight that you deem is appropriate based upon the standards that are before you, underneath Section 1402, to that law.

COUNCILMEMBER ROCHE: Yeah, I understand the legal side. But there's the legal thing to do, then there's the fair thing to do, you know.

COUNCILMEMBER SPANGLER: I want to ask Mr. Weed a question.

You know, at what point do we not allow things that the Mayor or previous Council or previous building officials or city planner --

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at what point do we say no, they were not in a position to grant you that privilege or that variance or that conditional use or whatever? At what point do we say no, we can't -- we can't -- we're not going to go back, you know, 10 years ago when I was told I didn't need a permit to put those fixtures in?

Can you give me an answer?

MR. WEED: Well, the legal answer is it could be 50 years from now, it could be a hundred years from now. You know, philosophically, the government is forever; and therefore, that's the basic philosophy behind why the government can't be estopped at some point in the future from doing the right thing. The old adage that "There's a new sheriff in town" literally applies. Maybe the new person catches something the old person misses or there's a different interpretation, and as long as the new interpretation doesn't violate the law, as a general rule, estoppel doesn't work against the government.

Now, is that fair? Is that right? Fortunately, I don't -- I'm not in a position to make those judgment calls. The Council is. And

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as long as the Council applies the facts to the standards in 1402 and make your decision, whatever decision you make I get paid to defend.

But that is the law. There's no time frame.

COUNCILMEMBER ROCHE: Going forward -- I mean obviously if this was a new application, there's no way I'd say yes. But I think that we have to frankly draw a line at some point and say, okay, mistakes that were made in the past, you know, we have to live with, but going forward, we don't have to make those mistakes again. And because we may have made mistakes or whatever, differences of opinion, in the past, I don't think our citizens or organizations who choose to locate in the town of Doraville should have to suffer for old stuff: just wake up today and ta-da, guess what, you know? Your house is illegal, tear it down or something. You know, it's --

Like I said, I understand the legal -- I think I understand the legal theory but my sense of fairness doesn't sit well with this.

COUNCILMEMBER FLEMING: So make another motion.

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COUNCILMEMBER ROCHE: Well, I think I still have the same one here.

COUNCILMEMBER FLEMING: I thought you rescinded the motion.

COUNCILMEMBER ROCHE: No. I said I'd be willing to rescind this motion if I knew that we weren't going to -- they weren't going to be forced to haul away their storage units tomorrow.

COUNCILMEMBER FLEMING: Am I allowed to rescind my second?

MR. WEED: Yes.

COUNCILMEMBER FLEMING: I rescind my second.

MR. WEED: All right. You have a standing motion and it would require a second procedurally.

COUNCILMEMBER ROCHE: Well, I will then rescind the motion and hope that we can leave this -- I'll rescind this motion and I'll make another motion that we postpone this, table this to a date certain, say maybe two months hence.

Would that work?

COUNCILMEMBER SPANGLER: And could we add without any recourse to the applicant as far

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as --

MR. WEED: I wouldn't necessarily advise that. I'd stick to just rescinding -- I would stick to setting the conclusion for the hearing for another day and I'd leave it at that.

COUNCILMEMBER ROCHE: Do you have a date for us? Is two months enough?

MR. HAEBERLIN: The fourth Monday or the last Monday of August would be -- July 27th is the next --

COUNCILMEMBER FLEMING: August 24th is the fourth Monday, and then there is a 31st.

MR. HAEBERLIN: So that depends on -- is there anything else falling for the Council at that time?

CLERK BLACKMON: Not that I'm aware of.

MR. HAEBERLIN: So it could be either one. You just need to tell me, and I'll put it on that way. That's when we will have to have your public hearing -- special-called meetings.

COUNCILMEMBER ROCHE: And in the meantime, we can do this legislation to allow us to grant variances with conditions?

MR. WEED: My opinion is that would be

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an option.

COUNCILMEMBER PITTMAN: But what happens in the meantime with this?

MR. WEED: What happens in the meantime is --

COUNCILMEMBER PITTMAN: In the meantime, they are just going to have to move it?

COUNCILMEMBER FLEMING: No.

MR. WEED: No.

COUNCILMEMBER PITTMAN: Okay.

MR. WEED: They're under no --

COUNCILMEMBER PITTMAN: That's what I was --

MR. WEED: They're under no compunction to move it; however, they could arguably be cited for it but that doesn't mean to say that the citations -- that is a law enforcement function, not a Council function.

COUNCILMEMBER ROCHE: Well, the fact that they have a variance application pending --

MR. WEED: Once again, I would hope that common sense would prevail.

COUNCILMEMBER ROCHE: So that's my motion.

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COUNCILMEMBER FLEMING: Second.
COUNCILMEMBER ALEXANDER: I prefer August 24th if we can, please. I believe Ms. Fleming would, too.
COUNCILMEMBER FLEMING: Yes.
COUNCILMEMBER PITTMAN: Yes.
COUNCILMEMBER ROCHE: August 24th.
MR. HAEBERLIN: Okay. That will begin at 6:30, p.m. then.
MAYOR JENKINS: Are you going to make that in the form of a motion?
COUNCILMEMBER ROCHE: Yeah, I made -- I make a motion that we table this until the meeting on August 24th.
MR. WEED: And just --
MAYOR JENKINS: Okay. How are you -- how are you going to deal with the Quality of Life until that point?
COUNCILMEMBER ROCHE: Well, hopefully, like I said, we have --
MAYOR JENKINS: I'm just asking.
COUNCILMEMBER ROCHE: You, sir, wrote a memo the other day about someone else, you know, another -- a similar situation.
MAYOR JENKINS: We had another similar

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situation with a charitable organization pending the same as this.
COUNCILMEMBER ROCHE: Well, I was talking about the other organization -- not organization, but Ms. Greenway.
MAYOR JENKINS: Oh, well.
COUNCILMEMBER BATES: I'll second.
MR. WEED: The other thing I was going to just make mention of is that when you -- what you're essentially doing is you're recessing to a date certain.
COUNCILMEMBER ROCHE: Right.
MR. WEED: And at that time, I don't think you have to have a full-blown public hearing again. You've only closed that portion of the hearing and you're simply recessing until you can make your final vote. So I just wanted to clarify that for the record and make sure that was your understanding as Council as well.
COUNCILMEMBER ROCHE: Okay. And to summarize, what we're going to try to do, we would like to --
I am inclined to grant the variance but with conditions. Legally, we cannot make conditions on a variance, so we're going to look

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at maybe modifying our ordinances that would allow us to grant variances with conditions. That's going to take about a month or six weeks. So we're going to table this for now, and then on August 24th we may or may not have this new legislation and we'll deal with it then. So I hope that's -- that's the best we can do right now.
Did I say that correctly?
COUNCILMEMBER FLEMING: Yes.
COUNCILMEMBER ROCHE: Thank you.
COUNCILMEMBER FLEMING: First and second.
MAYOR JENKINS: You have a second?
COUNCILMEMBER FLEMING: Yes, sir.
COUNCILMEMBER ROCHE: Mr. Bates seconded.
MAYOR JENKINS: Okay. Call the roll, please.
CLERK BLACKMON: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
CLERK BLACKMON: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
CLERK BLACKMON: Councilmember Fleming?

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COUNCILMEMBER FLEMING: Yes.
CLERK BLACKMON: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
CLERK BLACKMON: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
CLERK BLACKMON: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
MAYOR JENKINS: Thank you.
Please turn your cell phones off. Thank you.
Scott?
MR. HAEBERLIN: The next item we have under new business is a condition use, and this is going to be located at the Plaza One Shopping Center, 5938 Buford Highway.
At this time, I would like the applicant to come forward and discuss the conditional use for that, acupressure.
ZHI YE: My name is Zhi Ye. In China, I was educated in medical school and here I was physician in charge.
After coming to America, I do the post doctor research fellow in Medical College of Georgia and, you know, Emory University. Three

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1 years ago, I work in the CDC, but my funding was
2 lost and so I start open my own business, do the
3 Chinese massage, Chinese medicine. All our
4 services help people release the pain, stress,
5 muscle tension. Dekalb County, two years ago,
6 three years ago, I was open business in North
7 Dekalb Mall, so up to now, we get a good
8 reputation with our services, so we're coming
9 for the people, relieve the muscle tension, the
10 stress. Now many people have neck, shoulder,
11 back pain. Our service, we have people relax,
12 solve that problem. So I want to open the
13 business in the Dekalb -- Doraville city.
14 COUNCILMEMBER SPANGLER: Are you a
15 licensed doctor now, ma'am?
16 ZHI YE: Chinese medicine, yes.
17 COUNCILMEMBER SPANGLER: But not --
18 ZHI YE: Yeah, not in --
19 COUNCILMEMBER SPANGLER: Georgia?
20 ZHI YE: -- Georgia. The Georgia not
21 required. Georgia state not required this
22 license. So we have the business license in
23 Georgia state.
24 COUNCILMEMBER SPANGLER: But you don't
25 have a medical degree.

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1 ZHI YE: I have a medical degree.
2 COUNCILMEMBER SPANGLER: Only in China.
3 ZHI YE: In China. But I was qualified
4 to do Chinese medicine in United State.
5 MAYOR JENKINS: You have another
6 business?
7 ZHI YE: Yes, I have the business.
8 MAYOR JENKINS: Where is it?
9 ZHI YE: In Dekalb County, Dekalb --
10 North Dekalb Mall. It's two years -- three
11 years ago we started this business.
12 COUNCILMEMBER SPANGLER: So would this
13 business be only for acupressure or --
14 ZHI YE: Acupressure, foot massage,
15 Chinese medicine, and herb to help people to
16 release the stress, even some who have the
17 deepest after our service, the problem is gone.
18 COUNCILMEMBER PITTMAN: It's acupres-
19 sure and massage?
20 ZHI YE: Yeah.
21 COUNCILMEMBER PITTMAN: So massage --
22 ZHI YE: It's for the -- for the body.
23 COUNCILMEMBER PITTMAN: The whole body.
24 ZHI YE: Yeah, the whole body, and foot
25 massage.

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1 COUNCILMEMBER PITTMAN: The foot
2 massage --
3 ZHI YE: Foot massage --
4 COUNCILMEMBER PITTMAN: -- is the whole
5 body also?
6 ZHI YE: No. The foot massage, you
7 know, that is Chinese medicine start with your
8 feet reflex with body's -- whole body's organ.
9 We work on your feet with that hand.
10 COUNCILMEMBER PITTMAN: Shoulders?
11 ZHI YE: That is different. This is
12 acupressure.
13 COUNCILMEMBER PITTMAN: Right, but do
14 you do that -- shoulders?
15 ZHI YE: Yes, yes, yes.
16 COUNCILMEMBER PITTMAN: Okay.
17 ZHI YE: Shoulder, neck, back. That is
18 for some people, so much stress. After our
19 service, that problem is gone and they feel much
20 more relaxed and we did good job.
21 COUNCILMEMBER ROCHE: How many years of
22 college did it take you to get certified?
23 ZHI YE: Oh, I was in the medical
24 college eight years.
25 COUNCILMEMBER ROCHE: Eight years?

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1 ZHI YE: Eight years.
2 In China, I was a physician in
3 charge --
4 COUNCILMEMBER ROCHE: Right, I under-
5 stand.
6 ZHI YE: -- of this. So after come to
7 America, I was post doctor research fellow.
8 COUNCILMEMBER ROCHE: What type of
9 work? What were you researching? What was
10 your --
11 ZHI YE: In America, it's how you say,
12 the scientific research.
13 COUNCILMEMBER ROCHE: I understand.
14 ZHI YE: By chemistry, biology, have
15 immunology, cancer research. Okay. It's
16 linguist. I don't know how to say that.
17 COUNCILMEMBER ROCHE: I understand.
18 COUNCILMEMBER ROCHE: Okay. That's
19 what we are doing.
20 COUNCILMEMBER BATES: Have you thought
21 about getting your medical degree here?
22 ZHI YE: Yes. Well, at first when I
23 come to America do research, it's language
24 issue. It's very difficult to communicate with
25 the patient -- sometimes I feel so stress if I

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1 face the customer or patient and several words I
2 cannot understand, maybe make big mistake. So
3 I'm qualified to apply the medicine, Western
4 medicine body examination, but at the same time
5 I'm so scared to apply that.
6 Now I'm almost 50 years old. Before I
7 start to pass the body examination probably take
8 five years residential, in a hospital, two
9 years, and prepare the examination. So after
10 that, you need to be the specialist, you have to
11 have another three to five years. I think it's
12 maybe too late to start that.
13 COUNCILMEMBER FLEMING: I notice that
14 your previous occupational tax permit with the
15 City of Doraville, you're listed as an herbalist
16 office --
17 ZHI YE: Yes and --
18 COUNCILMEMBER FLEMING: -- and a health
19 practitioner.
20 ZHI YE: Uh-huh.
21 COUNCILMEMBER FLEMING: Will you be in
22 the sales end of -- retail sales of herbals, of
23 herbs and --
24 ZHI YE: Yes. We -- for the specific
25 customer, like someone have the cardiovascular

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1 problem, some will have stomach problem, some
2 will have stress. We need to make the formula,
3 you know, the diagnosis, make herbal formula to
4 sell to the certain --
5 COUNCILMEMBER PITTMAN: Okay.
6 ZHI YE: -- okay, that kind.
7 COUNCILMEMBER BATES: And I'll
8 apologize. This may be an unfair question. How
9 does acupressure differ from therapeutic
10 massage?
11 ZHI YE: Okay. Mostly it is similar,
12 but acupressure more focus on your circulation.
13 We use the finger, hands, working on the
14 acupoint, like, you know, if you have stress,
15 the headache, we are working on this point, this
16 point, and there's several point we need to
17 working on that part.
18 But as Western medicine, therapeutics
19 massage is massage, relaxing, you know, the
20 muscle, relaxing massage. They're not like ours
21 is focused on the point. We are working on the
22 point.
23 COUNCILMEMBER BATES: Versus --
24 ZHI YE: People have the 14 channel,
25 you know, imagine so 365 point. We need the

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1 charts to work on your back to see which point
2 we need to be working for the more time, which
3 part. We mostly solve problem for the head,
4 neck, shoulder, back pain, the muscle tension
5 and stress.
6 MR. HAEBERLIN: There won't be that
7 much additional for the staff to add. This
8 comes to you as a result of Ordinance 2008-33
9 which lists this as a conditional use, and what
10 was applied for by the applicant was that of
11 acupressure. Plaza One, as you know, this would
12 be the initial tenant within the shopping
13 center. It is a multi-tenant facility and it is
14 currently constructed, and it's probably about
15 1200 square feet, a vanilla box, so obviously it
16 will need to be finished out for that of the
17 applicant.
18 If the City Council approves the
19 conditional use, the next step would be
20 permitting with that individual tenant space for
21 them to get occupancy and then of course the
22 issuance of the business license as well
23 contingent on the action of the Council.
24 Parking, no real problem because,
25 again, it's developed within the shopping

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1 center. The applicant would be required to get
2 signage permits from the City obviously prior to
3 installation.
4 Section 1501 really sets forth a
5 framework for conditional use and states that
6 the evaluation of conditional use requests and a
7 determination of the compliance shall be the
8 responsibility of the City Council. So there is
9 no very specific criterion for staff to apply in
10 rendering a recommendation to you.
11 So with that, I turn it back to the
12 Council, and we need to have the public hearing
13 as well.
14 COUNCILMEMBER SPANGLER: I would like
15 to ask you one thing, Mr. Haeberlin. Maybe you
16 can't answer this. But are they required to
17 have a health certificate and inspections from
18 the health department to have a massage parlor
19 business?
20 MR. HAEBERLIN: My initial thoughts
21 would be yes because anything that involved the
22 touching of the human body. You know, it's like
23 the preparation of food, you know, there's -- I
24 hate to say there's no limits, but what I'm
25 saying is these are situations where there could

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be diseases present. I know in the state of Florida, they require people to have current HIV/AIDS education and other items through the health department to partake in these type items like hair braiding and massage and stuff like that.

But the State hasn't really regulated this profession very well for us, so it's kind of ambiguous. But I think that as part of the tenant review, that the health department would be involved in that as well.

COUNCILMEMBER SPANGLER: And what about the acupressure? Wouldn't that be administered or shouldn't that be administered by a licensed physician or doctor, chiropractor?

MR. HAEBERLIN: Acupressure I think is appropriately determined by the State to be a profession. But acupressure is a very broad area and, as you heard tonight, there's many different interpretations about exactly what this is.

The Council would recall that in many of the moratorium hearing discussions that we had, the word "acupressure" continuously came about and so we became very concerned that we

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have some location in the city that will allow a valid business, and so we thought it would be appropriate to put that under conditional use to have the opportunity for the Council to review its particulars.

COUNCILMEMBER PITTMAN: So isn't this business --

COUNCILMEMBER SPANGLER: This business -- I'm sorry, Ms. Pittman. This business is more than just acupressure.

MR. HAEBERLIN: Now that I'm hearing this from the applicant, yes, I would say yes.

COUNCILMEMBER PITTMAN: And isn't the licensing process or requirement from the State, isn't that totally different if it's for the foot than when it starts full-body massage, I believe?

MR. HAEBERLIN: I generally agree. I think what has really been discussed is that of a massage therapist.

Now, the applicant has not stated affirmatively to me, "I am a massage therapist," and that's the key in Georgia. Okay. If I run an ad that says Scott's Massage Therapist, I must be licensed by the State of Georgia. That

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has not been affirmatively stated to me. And then of course there are massages that are not full-body massages that are not performed by licensed massage therapists, so we're really in a gray area here. The applicant has not stated to me or I'm not aware that she proclaims to be a licensed massage therapist.

COUNCILMEMBER FLEMING: Ms. Pittman, to answer your question, I e-mailed Mr. Weed last week and I asked him to do a little bit of research or to let me know where I could do some research about the State requirements for some of these issues that we're coming up with.

And did you find out anything?

MR. WEED: I did, and I sent an e-mail out today, so obviously you haven't gotten the benefit of that e-mail but I'll try to encapsulate what I've learned.

Obviously, you know, acupuncture is regulated by the State under 43-34-60. Acupressure does not appear to have a, you know, State code that deals with that.

Clearly I think underneath our local code and also the relevant State law that deals with massage, I think underneath the current

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reading of the State law and certainly our local code, that acupressure would equate to massage; and therefore, it's my opinion that the requirements that we have locally that would apply to a massage business will apply to what the applicant is, you know, putting forward for your consideration tonight.

COUNCILMEMBER FLEMING: Which is that they must have a certificate of health department or that they need to have a State-required certificate for schooling or --

MR. WEED: I don't happen to have our massage ordinance in front of me right now so I don't have a definitive answer to that question. However, our local massage ordinance is very clear about what's required, and the annotations refer to the appropriate State section of the code. Unfortunately, I didn't bring that tonight; however, I can give you that tomorrow.

COUNCILPERSON BATES: What we're having to deal with is a semantics issue. And while this particular applicant may be a doctor but not a doctor here in the United States, there may be an applicant that comes forth down the road using the terminology of acupressure that

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may not have any education or training, and the challenge then is going to be sifting through and differentiating between someone who may in fact be a legitimate acupressurist versus someone who may be doing something unforetold, and that's a very difficult position until the State starts to be more clear on what they regulate.

MR. WEED: I think you are safe, in my opinion, to treat the applicant's business as a massage business. I think you would be within your legal rights to do that.

COUNCILPERSON BATES: And that would require licensing from the State of Georgia in massage therapy.

MR. WEED: That is my understanding. I cannot give you a citation on that right now but I can first thing tomorrow.

COUNCILPERSON BATES: Thank you.

COUNCILMEMBER ROCHE: I was discussing this earlier this week with Councilwoman Fleming. I think the thing we're concerned about obviously is, you know, sex workers and that sort of thing and we want to make sure that we prevent that sort of thing from happening.

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And our understanding of Eastern medicine is not as big as -- you know, we lack that understanding and so we're naturally suspicious when someone says, "Well, foot massage, oh, my God," versus someone that -- you know, an American may call it reflexology and it's exactly the same thing but everything's fine.

I think Ms. Ye made the point, though, that the difference between massage therapy and acupressure is that acupressure is all about circulation, nerve endings, and they hit certain spots versus massage therapy is where you're actually working on muscles, and I think that is a -- I think it -- it is a very different thing.

And I'm not saying that I'm an expert on either one, but I am definitely satisfied that I don't think we're looking at another spa type situation or anything illegal or untoward here, and the fact that it's not regulated shouldn't penalize people.

And frankly, you know, I sat through these moratoriums, too, and we granted probably more than we should for the foot massage, where I don't know that anyone has to have any kind of real certification there at all, and that was

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kind of the whole point.

So I would be inclined to go ahead and allow this because I think that we're dealing with clearly a medical practitioner. Someone who wants to just open a -- you know, do something that's not quite legal or however you want to put that word is probably not going to spend eight years in college learning this.

COUNCILPERSON BATES: And the next applicant that comes before us and says that they spent eight years in training and can talk about circulation and pressure points but just read it on Wikipedia, how do we differentiate?

COUNCILMEMBER ROCHE: Well, they wouldn't have the certifications, they wouldn't have the documentation to present. This applicant does.

COUNCILPERSON BATES: There is one notice from the Chinese government regarding a license from 1992.

COUNCILMEMBER ALEXANDER: I also have concerns regarding market saturation. I mean we are 3.6 square miles. How many more of these businesses do we allow in our city limits? I mean again, I just have concerns about market

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saturation with one particular type of industry.

COUNCILMEMBER ROCHE: I don't think our foot massage places necessarily do acupressure.

COUNCILMEMBER ALEXANDER: Okay.

COUNCILMEMBER ROCHE: In fact, we made it very clear that they couldn't go above the ankle.

COUNCILMEMBER ALEXANDER: That's my opinion. It wasn't a debate point, Mr. Roche.

COUNCILMEMBER ROCHE: Yeah. Well, I'm just saying. So I'm not sure that we're talking about the same thing. I think we may be talking about two different things.

MR. WEED: And I don't have a legal opinion on that.

But my only remaining thing I wanted to add is that one of the uses the applicant seems to have applied for, at least based upon the evidence presented tonight, is massage. And my only opinion on this is that I think if you treat this establishment underneath the massage rules, underneath, you know, 14-18 -- pardon me -- 14-13-9, you can regulate that business locally. And if you do that, then you cannot go wrong essentially. If you apply those rules,

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which I think you can here, I don't think any harm could come of that.

Whether you grant it or not, of course I have no opinion whatsoever.

COUNCILMEMBER FLEMING: Well, even if we considered it a massage business, it would still be a conditional use in C-1. And since the Council are the only ones that are going to make a decision on conditional uses and we have no set criteria for conditional uses, I would be more inclined to postpone this to date certain until we get some conditional-use criteria set.

MR. WEED: Although I rarely disagree with my compatriot, Mr. Haeberlin, I actually do disagree with him on this occasion. I think there are criteria set out in 1501.

Clearly what Mr. Haeberlin has told you is not inaccurate, meaning the ultimate decision clearly is yours; however, in the latter part of that section, it does say that the City Council shall consider all the following prior to making a recommendation on conditional uses: One, the application and site plan submitted; two, that all specific conditions of this ordinance relative to the conditional use have been met;

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three, that the applicant has made a binding agreement for any specific limitations or conditions necessary to protect the public interest and assure the beneficial use and enjoyment of nearby properties or that no special limitations are necessary to protect the public; four, that the conditional use with specific limitations and design features as they have been required will further the aims of the land use plan and will not be unduly detrimental to nearby properties.

Now, those may be terrible conditions and we may need to completely rewrite them, but I think those are conditions, they are in the ordinance, they're in there now; and therefore, you can consider those conditions.

That does not diminish Councilman Fleming's point that maybe more conditions or different conditions may be or should be applied.

COUNCILMEMBER PITTMAN: Ms. Ye, do you have any other like documentation that talks about your medical background or maybe the work you did at Emory or certificates or diplomas or anything like that?

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ZHI YE: I have the license in the -- how say -- it's a working certificate in Emory. I was in 1996 working in Emory University, V.A. Hospital renal division doing the medical research.

COUNCILMEMBER ROCHE: Renal division?

ZHI YE: Yeah, renal division.

COUNCILMEMBER ROCHE: That's the kidneys, yeah.

ZHI YE: Kidney problem research, and we focus on the immunology system.

COUNCILMEMBER ROCHE: How long have you been open at your other place of business?

ZHI YE: That is three years ago.

COUNCILMEMBER ROCHE: Three years?

ZHI YE: Yeah.

COUNCILPERSON BATES: Will you be the person doing the acupressure or will you have employees doing --

ZHI YE: We do the both. We hire the people there is well trained.

I did it, and also we hire one or two people that is well trained massage therapy that have the license certification in the school, in massage school.

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COUNCILMEMBER SPANGLER: And who would be mixing the herbs that you -- I think you mentioned you're an herbalist.

ZHI YE: Okay. Like this lady next month will be graduated from massage therapy school, so she -- later we will hire her, cooperate working together for the massage, for therapeutics and for the -- Acupressure is mostly I did it.

COUNCILPERSON BATES: And do you have a massage therapy license from the State of Georgia?

UNIDENTIFIED SPEAKER: No, not yet.

UNIDENTIFIED SPEAKER: Not yet.

COUNCILPERSON BATES: Not yet.

ZHI YE: Next month she will graduate from massage school, so we hire the people always have the 500 hours training certificate people.

COUNCILMEMBER ROCHE: Thank you.

My only comment is that I'm satisfied that this is a legitimate business.

MR. HAEBERLIN: Public hearing portion, sir?

MAYOR JENKINS: Okay. Anybody want to

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1 speak for it?
2 - - -
3 (No response)
4 - - -
5 MAYOR JENKINS: Against?
6 MR. HART: We could put massages on the
7 web site.
8 I think the same comments were made
9 when we passed eight foot massage parlors in the
10 city, too: that we just didn't have enough of
11 them.
12 The whole time I was thinking, well,
13 maybe a couple of the City Council people would
14 allow this lady to demonstrate her massage
15 techniques.
16 I think we've already got enough foot
17 massage parlors and that sort of thing in the
18 city. I think that we need to develop a little
19 more businesses other than massage in the city.
20 It may be legitimate. I mean I'm
21 listening to the same arguments you-all are
22 listening to, that they were certified here and
23 they're certified there and then they have
24 people going to work for them. I don't think
25 the Council really knows the full scope of the

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1 business they're going to operate. I can see
2 that in y'all's faces. So I couldn't agree to
3 pass it. Thank you.
4 MAYOR JENKINS: Thank you.
5 Anybody else for or against?
6 - - -
7 (No response)
8 - - -
9 MAYOR JENKINS: Okay. We'll bring it
10 up to the table.
11 COUNCILMEMBER PITTMAN: Susan.
12 MAYOR JENKINS: Are you for it or
13 against?
14 MS. FRAYSSE: I would be for it with
15 the condition as we've discussed. It does sound
16 like there are some distinction between
17 acupressure and massage therapy, but what we're
18 more comfortable with here and what is
19 adequately regulated here is massage therapy.
20 So if you'd be willing to go along with
21 the standards and expectations of the State and
22 the County for a massage therapy business, then
23 I would be for it.
24 Otherwise, I think it may be a little
25 bit too nebulous to really know how you would be

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1 regulated appropriately. Your category of
2 acupressure is not in the State code for
3 licensing, but if you could conform and comply
4 with massage therapy, then that would be my -- I
5 would be supportive of that.
6 MAYOR JENKINS: Thank you.
7 Brian?
8 COUNCILPERSON BATES: No, sir. I need
9 to wait till it comes back up.
10 MAYOR JENKINS: For or against, Stuart?
11 MR. ANDERSON: For. Stuart Anderson.
12 Relative to certifications, I think
13 that that's the key word or consideration,
14 certifications.
15 And the other consideration is
16 Ms. Fleming is looking into how many businesses
17 we have of all sorts of kinds in our city, and I
18 think perhaps that would be appropriate. I
19 wouldn't want to delay the applicant, but we
20 need to find out how many businesses of all
21 sorts we have and indicate to ourselves how many
22 car shops we have and that sort of thing.
23 MAYOR JENKINS: Anybody else?
24 - - -
25 (No response)

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1 - - -
2 MAYOR JENKINS: Okay. Do we have a
3 motion?
4 COUNCILPERSON BATES: Yes, sir.
5 This question I think is going to be
6 for the Clerk or Mr. Haeberlin: Who would be
7 the responsible party for verifying
8 certifications?
9 Is that Quality of Life or is that the
10 Clerk, Mr. Weed?
11 MR. WEED: I can help with that. It's
12 really the Police Department. Underneath the
13 massage code, it's clearly the Police Department
14 in my opinion.
15 COUNCILPERSON BATES: So they would be
16 responsible for verifying active, current, valid
17 massage therapy licenses and certifications?
18 MR. WEED: That is my opinion.
19 COUNCILMEMBER ROCHE: So we would have
20 to -- you would be asking an acupressurist to go
21 and spend the 500 hours to get a massage
22 license? I think that's where you're going.
23 COUNCILMEMBER FLEMING: It all depends
24 on what they apply for.
25 And you know, herbalist office,

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1 miscellaneous health practitioner which Ms. Ye
2 has previously received from us, there are eight
3 of those here in the city based on this report,
4 and there's nine massage parlors.
5 You know, though she makes a wonderful
6 presentation -- and I didn't get into the health
7 people. Though she makes a wonderful
8 presentation of the acupressure, there are so
9 many other components that go along with
10 grouping acupressure and then we've got massage
11 and then we've got retail herbs and then we
12 might get into something else.
13 And I think at this point, I'm really
14 uncomfortable myself because I think the whole
15 city needs to be taken a look at and reclas-
16 sified is what I think.
17 MAYOR JENKINS: Brian, have you got
18 something?
19 COUNCILPERSON BATES: No, sir.
20 MAYOR JENKINS: Do I have a motion?
21 COUNCILMEMBER FLEMING: I'd like to
22 make a motion to postpone this particular
23 application for conditional use on property 5938
24 Buford Highway, Suite 105, until August 24th.
25 That might give us a little more time to look

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1 into our business listings as well as determine
2 whether any medical certificates are required.
3 MAYOR JENKINS: Second?
4 COUNCILMEMBER SPANGLER: Second.
5 MAYOR JENKINS: Anymore discussion?
6 COUNCILMEMBER ROCHE: Other than that,
7 it'll also give Ms. Ye more time to maybe
8 provide some more documentation, stuff like, so
9 that -- and maybe help us to understand better
10 the difference between the two different things
11 we're talking about. I think that calling it a
12 massage parlor would be misclassifying it. It
13 would be like classifying a chiropractor as a
14 massage therapist. They may be the same thing
15 sometimes but not always.
16 But that would allow you to provide
17 more information also.
18 MAYOR JENKINS: Any more discussion?
19 - - -
20 (No response)
21 - - -
22 MAYOR JENKINS: Call the roll, please.
23 CLERK BLACKMON: Councilmember
24 Alexander?
25 COUNCILMEMBER ALEXANDER: Yes.

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1 CLERK BLACKMON: Councilmember Bates?
2 COUNCILPERSON BATES: Yes.
3 CLERK BLACKMON: Councilmember Fleming?
4 COUNCILMEMBER FLEMING: Yes.
5 CLERK BLACKMON: Councilmember Pittman?
6 COUNCILMEMBER PITTMAN: Yes.
7 CLERK BLACKMON: Councilmember Roche?
8 COUNCILMEMBER ROCHE: Yes.
9 CLERK BLACKMON: Councilmember
10 Spangler?
11 COUNCILMEMBER SPANGLER: Yes.
12 MAYOR JENKINS: Thank you.
13 COUNCILMEMBER ROCHE: You understand
14 what we were --
15 MAYOR JENKINS: You said August when?
16 COUNCILMEMBER FLEMING: August 24th;
17 correct, Mr. Haeberlin?
18 MR. HAEBERLIN: That's correct.
19 COUNCILMEMBER FLEMING: August 24th.
20 MAYOR JENKINS: Okay, Scott.
21 Do we need a break?
22 COUNCILMEMBER SPANGLER: Yes, sir.
23 MAYOR JENKINS: Ten-minute break.
24 - - -
25 (Brief recess)

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1 - - -
2 MAYOR JENKINS: Ready, Scott?
3 MR. HAEBERLIN: Yes, sir. The next
4 item we have is 5891 New Peachtree Road. This
5 is a rezoning from O-I to C-2. We did advertise
6 these with concurrent variances just in case
7 again the City Council may need to consider
8 variances.
9 The applicant is Klopp Properties Joint
10 Venture but I believe we have another gentleman
11 representing them tonight.
12 MR. MUNOZ: Hi. My name is Alex Munoz
13 and I'm here to represent Klopp Properties and
14 I'm here to petition the rezoning of the
15 property from R-1 to C-2.
16 If everyone has read the staff report,
17 I think it's very complete in terms of exactly
18 what is happening with this property.
19 In short, it's a building that was I
20 guess originally designed really as a shopping
21 center. It's been there for 30 years, a little
22 over 30 years. Most of the tenants that are
23 existing are C-2 type tenants, and we are
24 surrounded on the west by C-2 property, on the
25 south side, C-2 property; and the north is O & I

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but it's sort of like it's an abandoned house, I believe.

The staff has recommended approval. Planning Commission has also recommended approval I guess with all the conditions that staff recommended.

My client is in agreement with every single one of the conditions that staff has recommended. And I believe that Planning Commission had an additional comment on one of them which had to do with the rear piece which had a little bit of soil erosion and they wanted us to address it, and I guess we are in agreement to addressing it as long as it is within our property line.

COUNCILPERSON BATES: I would ask you to consider if this is approved -- and if we get down that road, I'll make this in the form of the form of a motion -- there's fencing that ceases to exist along the back edge of that property.

MR. MUNOZ: That's the area. We will fix the fence and put a curb cut in there and we're also going to address -- a curb, concrete curb if necessary, to address drainage and high

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water flows.

MAYOR JENKINS: Oscar, where is this in reference to you? Is it next to you?

OSCAR PEREZ: No. We're in the front of the building and we don't have anything to do with the back.

MAYOR JENKINS: This is the back, though.

OSCAR PEREZ: Yes.

Across the street, we don't have -- we had C-2, and we want to continue the business that we're -- nothing to do with this one today.

MAYOR JENKINS: That is the complex. Where your store is in the front, is that the same complex?

OSCAR PEREZ: Yes. 5891. We're there, yes.

MAYOR JENKINS: Go ahead.

MR. MUNOZ: In case you have any questions, Scott --

MAYOR JENKINS: Any questions from --

MR. MUNOZ: -- can go through --

MAYOR JENKINS: -- the Council?

MR. MUNOZ: -- most of the details of his drafting of the different conditions

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necessary.

COUNCILPERSON BATES: I'm sorry?

MR. MUNOZ: Scott can go over all the different conditions if you wish. He has a pretty good rationale for them.

COUNCILMEMBER ROCHE: Do the public hearing? Do the public hearing or do we have to hear -- oh, you first.

MR. HAEBERLIN: Basically since becoming employed with the City of Doraville, I have become extensively involved in the occupational tax licenses, the issuance, and so essentially everyone who applies for a permit or gets an occupational tax within the city comes before my desk first. And it does look at the zoning and see the relevancy of your proposal on a site, if it's zoned properly, and that prevents people from investing lots of money that they may, you know, essentially lose by signing leases, et cetera.

So that's kind of my function and that's where I came into the situation. We just had continuous repeated requests for things that are really C-2 uses. And what I told Mr. Munoz is that perhaps they should take O-I and take

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C-2 and sit down and circle all those things that they would like to do and see which category provided them the most utility. That's usually what I would advise most folks: If the current zoning's not working for you, what zoning would work for you? And C-2 seemed to be the closest, and that's what they looked at.

So essentially that is the reason why they're here: because they have applicants who continuously come to the City for C-2 style uses. They're not really O-I uses. And so that is essentially how we got there today.

Now, again, you do have discrepancy with the Dekalb County Tax Assessors, but again, I'll certify, as Mr. Weed will tell us, the official City Zoning Map and now the previous one shows the property as O-I.

It really is developed as a shopping center. It should be C-2. I mean I just can't imagine why that zoning code allowed that development at that time; however, it did.

There are some codes issues on the site, and those are pretty well illuminated in the staff report. The key thing that kind of sticks out to you and particularly the Mayor

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because we've done a ride-about of the city is the dumpster enclosure requirements. And we have some serious issues with dumpsters in the city and we have codes in effect on the books today that are building codes that certainly need enforcement.

So with that in mind, we looked at some of the key items. Parking is deficient. I will tell you this: just going from the strict construction of O-I to C-2, parking is somewhat deficient. But remember as well, your code is very general. It says "shopping center." And what does that mean? Does that mean a restaurant, an office, et cetera? How many different uses comprise a shopping center?

So I think your code is kind of ambiguous, your code is also somewhat outdated, so I would certainly assert that in the future the City considers reducing the parking requirements, because essentially what we're doing is we're encouraging people to add lots of impervious surface within the city rather than green space, which may never be used.

However, the situation on the handicap parking, that's an immediate need. That's

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something that needs to be addressed as a general code violation.

So those are some of the items that I refer to within the initial preamble.

Now, under the Standards of Review, you'll ask me how does this fit the category in the comp plan as mixed-use redevelopment category. It doesn't completely, and I'll tell you why: because the City doesn't have a code really to allow mixed use, and I certainly hope at some point in the future we do. That would encourage people to live amongst commercial properties, maybe to live over stores, to have a professional office that they go downstairs in the morning but also reside on the top floor. Of course these properties would be built in compliance with codes that exist today.

This is a very difficult property to make it mixed use because of its age. It probably could not be converted to mixed use. And at some point in the future, probably the site would need to be demolished to provide mixed use if that is their true intent.

However, I will state that C-2 is much more broad in allowing professional offices and

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more commercial retail type operations, more walking traffic, more visitors, and so C-2 is certainly more like mixed use than O-I. O-I is really an office park.

Again, you have very extensive listing of the businesses that we know to be in the property. Some of them are not clearly C-2. They may have been C-2 under the old code. But it is very ambiguous, meaning that you may have some uses carry forward that again we'll consider to be legal nonconforming uses. Certainly some of these may fall off the table as businesses open and close, but certainly there are things in there that are not clearly C-2 so I wanted to make you aware of that.

But the suitability of the property is by way of the adjacent property which is C-2, and I arguably state to you that the City Council should consider all properties on this side of the street to be rezoned eventually to C-2. The O-I designation, I really don't understand what that came from and for what transitional buffer that O-I provides, because there's no residential here.

So that's the Standards of Review.

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Under the conditions of zoning and the recommendation, we did recommend approval of the rezoning.

The only thing that I'm recommending in terms of variances is a parking variance, and that will address the strict conversion from O-I to C-2. I did eliminate some uses in there that I thought would be inappropriate as we move forward on this district.

I did put forth a fairly extensive list of conditions. It's always difficult to structure conditions when you have a building that's already there, but we can look at ways to improve the usability and the aesthetics of that facility and so in that extent came forth with a set of conditions, the natural, human and built environments. Also I put a time span on these, and I'm not fixed on these.

This is just, again, general idea where I thought, you know, where we should be with the property as far as management and develop of it and investment by the property owner. And so there are provisions in there regarding improvements to the landscaping, the traffic circulation and the sidewalks and then also

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1 things again relative to signage and to the
2 dumpster enclosure as well. So these are some
3 long-term investments in the property that would
4 make the property more in keeping with the type
5 of development that is occurring within the
6 general vicinity of this because we're really
7 just several hundred feet from a brand new
8 shopping center under construction. So that is
9 the site of the former Atlanta Motel.
10 So with that, I turn it back to the
11 Council, and if there's any specific questions
12 I'd be happy to answer those.
13 MAYOR JENKINS: Scott, are you saying
14 is there anybody in there as we speak that would
15 have to move out?
16 MR. HAEBERLIN: No. By virtue of the
17 rezoning, the City is accepting the existing
18 legal nonconforming uses on the property;
19 however, those will still be governed by the
20 codes as we move forward. So of course they
21 would have to argue legal vesting if they came
22 in, based on a use that was like their use. In
23 other words, let's say auto glass is not allowed
24 under C-2. Then the next person would have to
25 argue that their vesting is by virtue of an

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1 existing auto glass or an auto glass within the
2 last six months. So it's a situation no
3 different than the wholesale operations. We'd
4 have to be very specific in our review.
5 COUNCILMEMBER FLEMING: And there are
6 several of them in that area. Delivery service
7 would be in where I believe is M-2 based on our
8 code. Also the labor pool shouldn't be in C-2.
9 And I believe defensive driving should be in M-1
10 as well.
11 MR. HAEBERLIN: Correct.
12 And remember again, your prior code was
13 so ambiguous that the staff made their best-
14 faith effort to place everything in a location.
15 And arguably, I would agree with you
16 there are a lot of uses at this site that
17 probably should have never been here.
18 COUNCILMEMBER FLEMING: And since the
19 Mayor approached Mr. Perez, you have a location
20 there in that as well as across the street?
21 OSCAR PEREZ: Yes, ma'am.
22 COUNCILMEMBER FLEMING: And you're
23 doing upholstery in both locations?
24 OSCAR PEREZ: No. I moved all the
25 upholstery across the street to 5872. There is

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1 no upholstery anymore at 5891.
2 MR. HAEBERLIN: So just for clarifi-
3 cation for staff, you have no business license
4 at 5891 now?
5 OSCAR PEREZ: Yes, I do.
6 MR. HAEBERLIN: Okay. What is that
7 occupational tax license for?
8 OSCAR PEREZ: I got CJP International.
9 It's truck parts.
10 COUNCILMEMBER FLEMING: So both Suite
11 101s that we have listed in this petition is CJP
12 and not Oscar's Upholstery.
13 OSCAR PEREZ: Correct.
14 MR. HAEBERLIN: We probably just need
15 to update our records. We may not have any
16 notification that that business has ceased
17 operation.
18 COUNCILMEMBER FLEMING: Okay. And I
19 realize that we're on 5891, but again, your
20 upholstery across the street now --
21 MR. HAEBERLIN: Is C-2.
22 COUNCILMEMBER FLEMING: -- is C-2, but
23 you literally -- you are indeed upholstering
24 furniture; correct?
25 OSCAR PEREZ: Yes, ma'am.

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1 MR. HAEBERLIN: Recall that the
2 upholstery shop is what the City believes to be
3 one of the businesses that survived the fire and
4 continued in operation at Mr. Perez's location.
5 I mean that's just for the relevancy of what
6 you're saying.
7 COUNCILMEMBER FLEMING: Okay. Thank
8 you.
9 MR. HAEBERLIN: So like I said, you
10 know, the staff does -- I support the petition
11 and then logically, again, I don't understand
12 how a shopping center was built under O-I, but,
13 again, I wasn't here at the time, so different
14 interpretations of staff, I guess.
15 MAYOR JENKINS: Okay. Public hearing?
16 MR. HAEBERLIN: Yes, sir.
17 MAYOR JENKINS: Anybody for it, come up
18 to the microphone, please.
19 Anybody against?
20 Excuse me.
21 MS. TOWUER: Did you say for?
22 MAYOR JENKINS: Yes.
23 MS. TOWUER: Alicia Towuer, Mayor;
24 (spelling), T-o-w-u-e-r; for.
25 I don't know. Maybe he's kind of new

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to Doraville, but this building has been forever doing business as an office and as industrial use. So until this year, Doraville, the City, having approved the license who has been there for many, many years in that area. And I don't see any problem. Like Scott and the representative of the building says, it's many businesses already, person doing business in C-2 or O-I, and I don't see any problem to continue to be like that. Thank you.

COUNCILMEMBER FLEMING: What business do you have, Ms. Towuer?

MS. TOWUER: A office, translations office.

COUNCILMEMBER FLEMING: Which suite number were you?

MS. TOWUER: It's 1 -- 115.

COUNCILMEMBER FLEMING: 115. Okay.

MAYOR JENKINS: Anybody against? Anybody against the zoning?

- - -

(No response)

- - -

COUNCILMEMBER FLEMING: Excuse me, I --

MAYOR JENKINS: Okay, Scott. We'll

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bring it back to the table?

MR. HAEBERLIN: Yes, sir.

COUNCILMEMBER FLEMING: Mr. Roche just pointed out there's two locations at 115. I mean there's two businesses listed at 115.

MR. HAEBERLIN: Yes. We've got Best Auto Glass listed and we have Servicious Livetad which is listed as an attorney.

Is that either one of yours?

MS. TOWUER: Yes.

MR. HAEBERLIN: Which one, ma'am?

MS. TOWUER: 115.

COUNCILMEMBER FLEMING: Ms. Towuer, but what type of business is yours?

MS. TOWUER: 115 is translations for a lawyer.

COUNCILMEMBER FLEMING: Okay.

MS. TOWUER: Translation service.

COUNCILMEMBER FLEMING: Okay. Thank you.

COUNCILMEMBER ROCHE: So there's not an attorney there. It's just translation services.

MS. TOWUER: Yes. The attorney comes once a month or every Wednesday. It depends.

COUNCILMEMBER ROCHE: Okay. So you

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install auto glass and you do translations.

MS. TOWUER: No. The auto glass, they have a contract with these people who rent the building for auto glass, and they agree to keep the windows there. Like since there is warehouse in the back, so they keep the things there. And since Doraville didn't approve the 104, 115 has been a -- the glass has been in 115 for four years?

MR. HAEBERLIN: I don't know.

COUNCILMEMBER FLEMING: So you have the front portion of the building?

MS. TOWUER: The front portion.

COUNCILMEMBER FLEMING: And Best Auto Glass --

MS. TOWUER: And Best Auto.

COUNCILMEMBER FLEMING: -- has the warehousing.

MS. TOWUER: The warehouse.

COUNCILMEMBER FLEMING: Okay, of 115.

MS. TOWUER: Yes.

COUNCILMEMBER FLEMING: Okay.

COUNCILMEMBER ROCHE: But this is listed as attorney, but you're not an attorney. You just do translation services.

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MS. TOWUER: Just translation.

COUNCILMEMBER FLEMING: Translation for the attorney.

MS. TOWUER: In the application, I put the translations.

COUNCILMEMBER ROCHE: That's fine.

MS. TOWUER: I just specify what it was they use for.

COUNCILMEMBER SPANGLER: Scott, I'd like to ask you. I went by there over the weekend, and there is warehouses in the back. So does each one of these offices or businesses, units, have a warehouse in the back also?

MR. HAEBERLIN: I've not been through the facility, but it's like a lot of facilities in Doraville -- there's not a very good distinction. But from what it appears to me, that they go straight through. It's kind of like there is office in front and there's a roll-up door in the back. That whole side which is the rear -- excuse me -- the side of the structure which is wear you circulate around the building is nothing but roll-up doors very similar to, you know, Pinetree Plaza and other locations that have roll-up doors on the back side.

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COUNCILMEMBER SPANGLER: There was one of those doors up when I drove by, and there didn't appear to be an entrance from the shop into the warehouse part.

MR. HAEBERLIN: Yeah. I'll be honest with you fully because, again, I've not been through the facilities with the Building Official when he's done an occupancy request. It's certainly a unique style building.

COUNCILMEMBER SPANGLER: It's actually -- it could be a double use, you know, rental on each side is the way that it looks.

MR. HAEBERLIN: I always look at it this way. Roll-up doors are not necessarily indicative of -- you know, people look at it as being industrial or they're working on a car. I mean flower shops have roll-up doors and they keep their service van in there. So the roll-up door to me is not indicative of anything in particular at this location. And it's pretty common in Doraville actually, with most shopping enters, to have roll-up functions on the back side.

I did want to add, the Planning Commission has illuminated in your action

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report, your PC action report which I've tendered to you tonight through e-mail did add the amendment to 1A regarding the drainage, the slope that was discussed earlier with Councilman Bates and the fence as well. So that's one of the recommendations they would like to put forth to you as well.

COUNCILMEMBER BATES: I'll make the motion to have the applicant's rezoning request from O-I to C-2 with conditions as set forth by the staff and amended or added to by the Planning Commission.

COUNCILMEMBER SPANGLER: Second.

COUNCILMEMBER FLEMING: For 5891 New Peachtree Road.

COUNCILMEMBER BATES: Thank you, Ms. Fleming. Yes.

MAYOR JENKINS: Any more discussion?

- - -

(No response)

- - -

MAYOR JENKINS: Call the roll.

CLERK BLACKMON: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

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CLERK BLACKMON: Councilmember Bates?

COUNCILMEMBER BATES: Yes.

CLERK BLACKMON: Councilmember Fleming?

COUNCILMEMBER FLEMING: Yes.

CLERK BLACKMON: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

CLERK BLACKMON: Councilmember Roche?

COUNCILMEMBER ROCHE: Yes.

CLERK BLACKMON: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Yes.

MAYOR JENKINS: Thank you.

Scott?

MR. HAEBERLIN: The next one that we have on the agenda is nonresidential rezoning. Again this is Mr. -- I'm going to mess up his last name -- Mr. Nguyen on 2536 Chamblee Tucker Road from $-1 to O-I with variances. And this is adaptive reuse because if it was rezoned, it would go from that of a house where people are allowed to live, to that of a business or a commercial venture.

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

MR. NGUYEN: Mr. Mayor and City

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Council, my name is Xavier Nguyen, a Doraville resident and a physician who has been practicing in Chamblee during the last 10 years and also the owner of 2536 Chamblee Tucker Road property.

And in June 2005, I bought that property with the intention to turn it into a business and remove my properties over there. And later on, because of the zoning issue and it has been delayed. And unfortunately, my house was vandalized by a lot of homeless people, and I did not realize my house was in a bad area until it was vandalized and those people, you know, came in and broke about 11 window and -- and stole all the copper water pipe and cut on the electricity line in the crawl space and stole the refrigerator, air conditioner, and damage on the heater appliance.

So at this point, my house is very bad condition that require a high cost to bring it back to a livable condition. But I realize that my property is the depressed one in the depressed area which needs improvement because I realize during the nighttime the street is pretty dark and a lot of homeless people walking around and they try to -- you know, try to

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1 vandalize some unoccupied house.
2 So in my situation right now I have a
3 couple options: whether I can leave the
4 potential buyer to renovate the house totally if
5 the house is rezoned to O & I, or if the
6 rezoning is unsuccessful, I will invest some
7 money to renovate it as a residential or I can
8 sell it at least.
9 But I have a reason. When I first came
10 to practice in this area and I saw the area and,
11 you know, the property was located in a very
12 good area, busy street, and it very feasible for
13 a commercial or at least O & I, and my business;
14 that if the City of Doraville open the oppor-
15 tunity for the investor to invest the money to
16 improve the area, such as, you know, if you can
17 have some amendment, you know, to change the
18 zone or to have some stimulus for the investor
19 or homeowner to improve the area. So under my
20 vision, that area right now is a bad one, but if
21 we improve it, it will benefit all of us, for
22 the community and for the people living
23 surrounding, and for the city, and also for the
24 owner, for the best interests.
25 So I just took this opportunity, you

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1 know, to take a chance. Even a lot of people
2 like not convince me because they know
3 traditionally the city of Doraville is very
4 conservative regarding about changing the
5 rezoning about from R-1 to O & I, and it seem
6 like it rarely happened in the past. But I just
7 take my chance, and hopefully, you know, I may
8 be lucky.
9 But I have some reason to motivate me
10 to make this request. First of all, I realize
11 the property is located next to Chamblee Tucker
12 Road and the road is very heavy -- have very
13 heavy traffic. And across the road from the
14 property is Chamblee's O & I property; so
15 therefore, I have seen the property is very
16 suitable for O & I.
17 And number two, among nine properties
18 along the road, including my property, four were
19 unoccupied and two unimproved lands and three
20 occupied by tenants. And I just found out among
21 the three occupied, one next to my property just
22 became unoccupied and with the sign "For sale by
23 owner." So that means we got only two occupied
24 left among nine property and no owner live -- no
25 owner live in those properties. So that reality

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1 reflect the idea that the current residential
2 zoning is not favorable by the current owners
3 because they don't want to live in it.
4 And number three, the area is billed by
5 many people as a depressed area for many years,
6 which need improvement. And during the last 10
7 years that I live here, I did not see any
8 improvement, to tell the truth. I didn't see
9 anything, I mean. And I don't know and I have
10 no idea how long it'll be improved. It may take
11 for many years from now.
12 So number four, I receive a letter from
13 a co-owner of the two unimproved lands next to
14 my property, and he supported my rezoning
15 request with a letter, and I quote this written:
16 "I am co-owner of the properties on the corner
17 of Shallowford and Chamblee Tucker Road and I
18 believe it to be in the best interest of all to
19 have adjacent property at 2536 Chamblee Tucker
20 Road rezoned to O & I. First of all, I believe
21 that the current residential zoning is not
22 appropriate because of the widening of the roads
23 and Chamblee's rezoning of properties in close
24 proximity," end of quote.
25 So number five, I have no doubt that

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1 after my property is rezoned successfully, the
2 owners of these two unimproved lands and the one
3 next to mine, whose house is now posted for sale
4 by owner, will apply for rezoning their
5 properties, and after that, potential buyers
6 will have the opportunity available for them to
7 develop the lands, and it would benefit the
8 community after that point.
9 And in my personal opinion, letting one
10 property at this time to be rezoned will be a
11 positive sign of opening the door for
12 opportunity for potential investor to invest the
13 money to improve the area, and the positive
14 change will come very soon instead of waiting
15 for 10 or more years to see the improvement.
16 I understand that insofar, City of
17 Doraville has been very conservative regarding
18 zoning issue; however, this is my thinking,
19 personal thinking. Our country is changing and
20 moving forward for the better, and I also
21 noticed that the city of Doraville is also
22 moving forward for the better but for the area
23 that I'm requesting for rezoning, it seem like
24 not -- I mean not in the list yet.
25 So in my reason, I would like to ask

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you, because you have power to change the city of Doraville for the better, to reconsider my request for the opportunity to improve the area, whether come up with the amendment for improvement or with stimulus for a citizen or to allow for rezoning. And I think with my good vision, you know, if that be allowed, then the good will come positively and it will benefit everybody involved, including community, owner and potential buyer and potential investor.

And thank you very much for your consideration and open-mindedness.

MAYOR JENKINS: Thank you.

MR. HAEBERLIN: Just to kind of refresh you, the Planning Commission did recommend denial of the request.

This is adaptive reuse; however, your Comp Plan is pretty explicit in this area and identifies this as a neighborhood preservation district of single-family detached dwellings.

Certainly the City Council could entertain an intermediate land use update, and that would need to be really essentially the whole triangle that we're looking at basically down to Bagley Drive, although I know that some

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of the properties on Bagley are not within the city. There's two of them.

So what you have in this situation, a very unique situation because you have an old right-of-way, which was Carroll Avenue, which separates this triangular area where these homes have been identified as, in the words of the applicant, as blighted or having some issues. And this is really not uncommon, so I'll tell you this: With most of our residential sub-divisions, because back then, the designed they used, they allowed houses to enter onto roads that were not local residential streets; that there are many areas of the city where we have frontage houses, and they are in similar situations, but we need to look at our Comprehensive Plan.

Certainly this area could be looked at as many different things. It could be looked at as office. I would also throw out there as well higher density residential. Certainly you could behind a large brick wall build single-family attached dwelling units. There's all sorts of opportunities that are not generally provided in the city that could be looked at in this area.

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And believe it or not, people will entertain these type locations for proximity to the interstate, and this is one location where it really does have good proximity to an inter-state.

So with respect to the comments from the staff in the report, there are some issues that I did address on codes. As you're aware from the report, it does look like there's kind of been maybe an illegal second-story addition done to the house, and the Building Official did investigate that with me. That was one of the key areas of concern for him, and he was very point blank in saying that the second-story addition and the rear deck would probably have to be removed. That's the only way we could return to the house to the necessary codes to make it nonresidential.

And so looking at the development factors, parking is always an issue, and in this situation there's really not a lot of space up front to put parking because literally we can't have people backing into the public right-of-way. So we're looking at people flowing around the building, to the rear, to be able to provide

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parking.

Your City Code requires for buffers where these dissimilar uses are provided, and to be honest with you, there's really no way to meet any buffers on either the left or the right side of the property. It's essentially impossible.

The applicant has discussed a traffic circulation pattern around the facility and that included a new curb cut onto Chamblee Tucker Road. I think that highly impossible that Dekalb County Department of Transportation would approve that because I think that is an accident waiting to happen given the location and the design layout of that intersection.

So when we looked at the quick perspective on the property as O-I, you see deficiencies in there. The major glaring deficiencies are buffers, and there's really nothing that we can really do about that other than granting variances essentially to zero.

Under the Standards of Review, the key item again is the Comp Plan. It just does not comport with the Comp Plan. That doesn't mean the Comp Plan cannot be changed. However,

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because this is a property sandwiched between residential properties -- it's not the last property or the corner property; it's literally between and would be adjacent to somebody living in the home. And if you look at the site plan, literally every car that comes down the driveway would be looking straight at the side of their home and also to the side of the dwelling. So it's not an ideal situation.

I did give you a very exhaustive list of the properties in the area. I don't disagree there are some serious problems. There are actually properties that are listed as nuisance abatement that need to be torn down; however, this is not necessarily indicative that the solution is simply to make things commercial. The solution may be for people to invest into their properties. And so the applicant has discussed that extensively with you.

Looking at the site plan, on the last page you see there is really only 11 feet between this house and the adjacent house. That makes for a very difficult time in converting this property to a nonresidential classification. The entire properties as a group would

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certainly be an appropriate discussion item for tearing them all down and taking the raw land in as a collective doing something with it.

But I think that you've just got some as-built conditions, the comp plan as well and the discussion on buffers that just mitigate at this time the ability for me to recommend this as nonresidential, so that I did recommend the denial consistent with the Planning Commission, for the rezoning.

MAYOR JENKINS: Thank you, Scott.

MR. HAEBERLIN: Yes, sir. And you also need to open the public hearing, sir.

COUNCILMEMBER BATES: I have a question for Mr. Nguyen prior to the public hearing if I may, sir.

MAYOR JENKINS: Yes.

COUNCILMEMBER BATES: Mr. Nguyen, are you planning on selling that property?

MR. NGUYEN: Yes. Actually, initially I intend to move my properties there, and because my plan was changed, so, and I have decided to join the U.S. Air Force Medical Corps and I was accepted. So I will start my commission, officer's training, on August 24th.

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So currently I have no chance, even if it's successful rezone, and my property is now for sale. And I hope if it's successful, then I can pass that opportunity to a potential buyer.

COUNCILMEMBER BATES: May I ask what it's listed for?

MR. NGUYEN: You mean the price?

COUNCILMEMBER BATES: Yeah.

MR. NGUYEN: Two twenty-five. So actually I sell at loss. But right now I concentrate on my upcoming duty, and I'm willing to sacrifice whatever. But this is just my chance, you know, to hope that I can pass that opportunity to future development.

COUNCILMEMBER BATES: Thank you.

MAYOR JENKINS: Okay. Anybody for it, for the rezoning? Anybody?

MR. ANDERSON: Stuart Anderson.

I consulted Dr. Nguyen a year or so ago about this property, and Scott has really summed it up very well. An assemblage is really what's needed there and the redevelopment of that area is what's needed there.

I asked Dr. Nguyen, I guess, if Mr. T and Miss Flores were willing to . . .

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I would have liked to have seen them come with you is what I'm saying. It would have helped with an assemblage decision by these folks.

But that's the best way or practically the only way to make this work. Dr. Nguyen's property is difficult because of the buffers and the narrowness of it. It's the smallest property of the whole group.

But I'm definitely for changing that area to O & I or C-1/C-2. The Carroll Avenue not cut through is the quote on the plat would be another way to make this work without having traffic onto Chamblee Tucker, which this neighborhood, this stretch of nine properties is after an apex of a corner, so they come roaring around that corner down this little straight-away, so traffic is going to be a problem. And like I say, there is a road allocated for, and it's back there, that would be one way to develop this so that you could have proper traffic control and stuff.

The best way is to for an assemblage or go for -- go for a zoning of this whole area. If the City was interested in urban renewal,

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1 perhaps they could try and contact these people.
2 I wrote potential letters and whatnot and did
3 get some response, and the responses I got were
4 all positive as far as the O & I. And Mr. T is
5 the two big properties next to Dr. Nguyen. He
6 was for it, but his brothers or whatever in
7 England were hesitant but apparently they've
8 changed their mind and are for it as well.
9 So it's an area that the City needs to
10 change and do something with is the best thing I
11 can say.
12 COUNCILMEMBER BATES: Mr. Anderson,
13 were you compensated by Mr. Nguyen?
14 MR. ANDERSON: Yes, yes.
15 COUNCILMEMBER BATES: So are you
16 speaking as his consultant or as a resident?
17 MR. ANDERSON: No, no. I consulted
18 with him a year or so ago, and he wished to go
19 off on his own, pursue this.
20 But I am a professional consultant and
21 I have a license here in the city.
22 COUNCILMEMBER BATES: Thank you.
23 MAYOR JENKINS: Anybody else for it?
24 - - -
25 (No response)

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1 - - -
2 MAYOR JENKINS: Against? Anybody
3 against?
4 MR. DOVI: Mr. Mayor and Council, my
5 name is Rick Dovi.
6 I am only against it because I don't
7 want to see it go to commercial. I'd like to
8 see it maybe changed to RCH, which would
9 accommodate something, you know, similar to
10 Chestnut, or possibly assisted living which I
11 think might be something that would preserve the
12 neighborhood.
13 I'm interested in preserving the
14 neighborhood. I live on the street just behind
15 there. I live on Addison. And I believe that
16 would be an encroachment, if it were to go
17 commercial, that would be deleterious to the
18 neighborhood. I believe it would at some point
19 cause people to start to migrate out of the
20 neighborhood on Addison Drive, and we already
21 have several problems on Addison right there at
22 the -- Shallowford and Addison just as you come
23 onto Addison.
24 So I'd only be against that for that
25 reason. I feel bad for this gentleman because I

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1 have accompanied the Police and the Quality of
2 Life in checking on the break-ins as you've
3 described. And we'd like to find maybe some
4 other kind of answer for you that would get you
5 out of your situation, and I also applaud you
6 for going into the service.
7 Thank you very much.
8 MAYOR JENKINS: Thank you.
9 MR. HART: When the Comprehensive Plan
10 was done, it was -- this was one of the areas
11 that was a bone of contention because it's right
12 next to a very important neighborhood in the
13 city, which is the Brook Park area, which is a
14 very stable neighborhood. It's beautiful and
15 it's quiet. And they have some problems on
16 Addison and whatever through traffic.
17 During this Comprehensive Plan, one of
18 the people that helped us with that with Roberts
19 & Company was a guy named John Ford who worked
20 at Dekalb County at the time they built -- they
21 widened Shallowford Road or Chamblee Tucker
22 Road. That was to ease the traffic off 285 over
23 to the IRS from south Dekalb. And when they did
24 that, he cautioned them about widening the
25 street like that without taking up the housing

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1 facing the street and not building a
2 thoroughfare with proper buffering between a
3 six-lane road and the neighborhoods. Because
4 what always happens, and you can see it in every
5 neighborhood that this has happened, that all
6 the houses facing the street deteriorate because
7 people can't live facing a six-lane road that,
8 you know, children and small pets and that sort
9 of thing.
10 So what they normally do in other areas
11 of the city, they build proper walls or
12 buffering against those roads and make the
13 access to those homes or those areas from the
14 interior of the neighborhood rather than
15 exterior.
16 More curb cuts on Chamblee Tucker Road,
17 Dekalb County or any of the transportation
18 agencies will not let you do that, particularly
19 at that intersection. They don't want any curb
20 cuts. They'd like to take them away from that
21 intersection.
22 So what needs to be developed there,
23 and I agree with Rick Davi, is that it has to be
24 a decorative wall or something to face Chamblee
25 Tucker Road with Carroll Avenue and Bagley and

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everything as the interior streets, that you access those homes and that development from the interior rather than from Chamblee Tucker Road.

In the Comprehensive Plan, we said it needed to be R-1 or it needed to be a neighborhood subdivision, that it's an opportunity for new homes to be built right there and to sort of shore up Raymond Drive/Brook Park area with new housing. And so the last thing you want to do is put O & I adjacent with no buffering in that neighborhood. It'll further deteriorate the whole neighborhood.

So I strongly advise you not to rezone this and to look at ways of buffering that neighborhood and putting new housing in there. Thank you.

MAYOR JENKINS: Thank you.

Anybody else?

- - -

(No response)

- - -

MAYOR JENKINS: Scott?

MR. HAEBERLIN: Yes, sir. You've seen many different viewpoints. I certainly encourage the Council to look at this area and

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to think about this in terms of our Comprehensive Plan.

But like I said right now, the request is not in conformity. There's just too many situations when we need to look at this place as a collective and make a decision on behalf of the City as to the vision of where this is going to move forward.

MAYOR JENKINS: Okay. Do I have a motion?

COUNCILMEMBER BATES: Well, I'm all in favor of the assemblage concept on that particular property for redevelopment on that. Unfortunately, Mr. Nguyen, I'm going to make a motion to deny the variance or deny the rezoning.

COUNCILMEMBER ROCHE: I'll second that.

MAYOR JENKINS: Any more discussion?

- - -

(No response)

- - -

MAYOR JENKINS: Call the roll, please.

CLERK BLACKMON: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

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CLERK BLACKMON: Councilmember Bates?

COUNCILMEMBER BATES: Yes.

CLERK BLACKMON: Councilmember Fleming?

COUNCILMEMBER FLEMING: Yes.

CLERK BLACKMON: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

CLERK BLACKMON: Councilmember Roche?

COUNCILMEMBER ROCHE: Yes.

CLERK BLACKMON: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Yes.

MAYOR JENKINS: Thank you.

Okay, Scott.

MR. HAEBERLIN: The last item of public hearing, 5D, is 3753 Longmire Way, LLC, James E.L. Peters, Jr. And this is at 3753 Longmire Way. It's C-1 to M-1. Mr. Peters is present, but also, too, his legal representative is present, so I invite those folks forward.

MS. DAVID: Hi. My name is Laurel David. I'm an attorney with Dillard & Galloway. Don't hold that against me.

I've got some aerials for you to look at. I'll just pass these out quickly.

This property was built -- rather, the

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building on this property was built in the early 1980s for an auto-body repair shop, and that has exited on that property since that time. And obviously with the rezoning that is taking place in Chamblee, it was rezoned to C-2 so it is now an existing nonconforming use.

Kelley Automotive was there. They vacated the premises in the end of December, and Mr. Peters now has a new tenant that wanted to move in. He tried to apply for a business license in May and was told that his zoning was not compatible for an auto-body repair shop.

So as I say, what we, after talking to Scott, agreed that we would like to go ahead and get it rezoned so it does conform with the City's zoning standards, and so we're asking for it to be M-1, and that would be for an auto-body repair shop.

And I understand Scott is recommending a conditional use for a wrecker service. We're sort of of two minds about the wrecker service because the only damaged vehicles that are towed to those premises are for repair. We don't salvage damaged vehicles and we don't store them there. But if the Council feels having a

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1 conditional use to be appropriate, we'll bow to
2 your better judgment.
3 I just want to point out that the
4 location -- you'll see on the aerial that the
5 north is the Keystone Tank Rental [sic] Company,
6 to the south is a self-storage. As you can see,
7 it kind of wraps around the back of the
8 property. There's also a retail center there
9 which is now vacant and Butler Tire Company.
10 It's also on the main thoroughfare to
11 the Citgo Petroleum terminal, so a number of
12 tankers do go backwards and forwards in front of
13 that property every day.
14 There's one existing curb cut on
15 Longmire Way, and you can't tell from the aerial
16 but the building does actually sit sort of below
17 the grade, and really, almost really from the
18 driveway, Longmire Way starts to go uphill. So
19 at one end of the property, the road is about
20 eight to ten feet above where the building sits,
21 so you can't really see the building that well
22 from the road. You can't see the cars that are
23 being repaired in the back of the building at
24 all.
25 There's parking in the front for

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1 customers, for their use. We have 88 spaces
2 altogether, so we do actually have ample
3 parking. We've got probably about 20 spaces
4 more than we need per Code. Practically
5 speaking, we probably have more spaces than
6 that.
7 Jim is here to answer any questions you
8 may have about how the business is conducted.
9 He's in agreement with the conditions that have
10 been recommended by staff, with one concern, and
11 that was the sidewalks. He's happy to put
12 sidewalks in front of the building, but as I
13 described the nature of the topography, we don't
14 think there's going to be enough room for a
15 five-foot sidewalk and a planting strip between
16 where the drop-off is on the property line and
17 the actual right-of-way. So we discussed this
18 with Scott and at the Planning Commission, and I
19 think we came up with the idea of having -- that
20 the sidewalks should be installed to those size
21 where possible. We can probably fit maybe a
22 four-foot sidewalk, but I mean those are the
23 details that we could work out later.
24 And I'll take any questions that you
25 have; but other than that, we'd ask for your

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1 support for the rezoning.
2 MAYOR JENKINS: Any questions?
3 COUNCILMEMBER ALEXANDER: I have a
4 question under Environmental. Evidently the
5 previous tenant had an issue with an oil
6 discharge into the storm drain?
7 MR. PETERS: Yes. I wasn't aware of
8 that until I actually come up here and we
9 applied for the license and they told me about
10 that also. I was concerned about that. I
11 didn't understand it. They said it was oil.
12 Usually a body shop deals more with paint
13 material, not necessarily oil, so I'm not real
14 aware of that. On the lease I had with them,
15 they were supposed to notify me as the landlord,
16 which they never did, so I can't answer a lot
17 about that.
18 COUNCILMEMBER ALEXANDER: So all the
19 paint booths and everything is still in the
20 building?
21 MR. PETERS: Yeah. To let you know how
22 it works is I actually owned five locations here
23 in metro Atlanta before. And the EPA is very
24 important. You actually have to contain all
25 your waste, you know, thinners and paint, in

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1 drums and you put a label on it from the
2 beginning whenever you start entering material,
3 and then they have to get picked up by a company
4 and they give us a manifest and we keep it. So
5 believe me, I've been in this business since
6 1973. You don't put oil in there. That's a
7 very big concern of mine, because before I
8 leased it to them, I did a phase one on the
9 property. I'm concerned about doing a phase one
10 now. A phase one is the beginning. You got
11 phase one, phase two, phase three.
12 But they seem to have supposedly
13 cleaned it up some. But I did talk to my
14 attorney that has the suit against Kelley
15 Automotive Group because it was a 15-year lease
16 and they only conformed to four years of it.
17 Plus the reason we're having this
18 problem was this has always been a body shop
19 there, and the license would have been fine but
20 they didn't close till December of '08 and there
21 was a new ordinance change here in the county so
22 I had five months to get a business started or
23 rented out; otherwise, the zoning would change.
24 Well, we come to find out that Kelly --
25 they used to have Kelley Buick, Pontiac and GMC

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on Peachtree Industrial. They sold that to Bickerstaff. And the only other dealership they had was Gwinnett Saturn, and they just recently sold it for the economic times, but they have several dealerships in Indiana, so I think they're keeping the ones in there and just got a place in Georgia.

So when they sold the dealership to Bickerstaff, he didn't want a body shop, so that kind of put the body shop out of position from having a source of work referral, and that's when they were having problems and they decided just to close it.

But you know, unfortunately, I wasn't real happy about what I read on the paperwork about that, because I mean that's my responsibility as property owner. So I have to look into that a little more, but I can assure you, obviously in this type business that's a taboo. You don't pour thinner out in the ground, you don't put waste. And I have two remaining businesses now, and at my businesses we keep -- we have to have an on-site manifest, and EPA actually comes in a lot of times, without knowing it, once a year. And we have

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special training and so forth.

So I can't explain their actions. That's uncalled for.

And as far as the towing she was talking about, the people that's actually renting the place, they're explaining they're not really doing a towing service like you have some towing yards go pick up cars. They're just having towing service to pick up their own customers.

Back when I actually operated that store -- I've owned it about ten years and I operated it for about seven years -- we had a tool and tow truck that would try and pick up cars for all of our locations. And from what I'm understanding and explained to him, that's all that they're going to do is to take care of their customers. Just a little bit more for the customer. Because if he operated a chemical shop or a body shop, half the time the cars aren't going to run, or if it's in a wreck, hit the radiator, it has to be towed in. So if it's a body shop, no matter what, they're either going to have to hire somebody to pick up their car that's at the accident or a tow yard to

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bring it to us. And that's everywhere, so that's normal. But it's not going to be used as a storage yard for a tow or a wrecker service.

COUNCILMEMBER ALEXANDER: I think I remember during the previous usage that there was no storage in the front. All the cars --

MR. PETERS: Oh, no. No.

COUNCILMEMBER ALEXANDER: -- were hidden. You couldn't see that.

MR. PETERS: Actually, this is known as one of the better shops in Atlanta, had a great reputation, that specializes more in high-line cars -- BMWs, Mercedes and so forth. Tommy Winters was the original owner of the property, and then Chuck Pethrus (phonetic) owned it and I bought it from him back in about '98. And I operated it for some few years, and my wife has some health issues so I started down-sizing. And I have two locations now, and my wife and I have a son and a son-in-law that's in the business.

COUNCILMEMBER ALEXANDER: Thank you.

COUNCILMEMBER ROCHE: Well, I know there's a lot of foot traffic up and down Longmire. I mean we're going to have to make

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sure we can get at least --

Where is Scott? Is he back there? Okay, sorry.

I mean four-foot sidewalks, can we do that at least? I prefer five, obviously, but I'm just concerned that we have, you know, a sidewalk.

MR. HAEBERLIN: I think we can get five in there, and I'll be honest with you. We may very well have to run it flush to the curb, and if that's necessary, that's why we're going to amend that condition to allow us some flexibility. Now, we're trying to put sidewalks in the city. They have a little wiggle in them, they're a little interesting, so it doesn't have to be a straight line lineal to the street.

MR. PETERS: I went by there before the meeting tonight to step it off. It's pretty close to get five foot. And the only concern is on the upper part, you were speaking to have a little greenery, grass on both sides, you're going to get tight there. So you could have less greenery on the top conforming to five foot or try to go with a two-foot portion, that's where you may have some problems. But I'm open

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to do the five foot, but where it drops off there may just be some areas that's going to be impossible to do unless you haul a lot of dirt in and try to change things around. But I agree with you.

COUNCILMEMBER ROCHE: Oh, I understand. I just want to make certain that --

MR. PETERS: Oh, yeah.

COUNCILMEMBER ROCHE: I mean there is foot traffic up and down there.

MR. PETERS: Normal would be five foot. I agree totally. So you know, I'll probably at that time have him or whoever look at it and we measure out and look at it and see what would be best for the position. I have no problem with that.

The only question I had, which is minor, I think they requested three handicap parking spots, and I don't know how they base that. The only thing I was wondering is their office space waiting area is only like 800 square feet. Did they base that off the square footage of the building, which is probably 22,000 square feet and it got mixed up?

MR. HAEBERLIN: It's just -- it's the

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City Code as it's constructed today. It's up to certain thresholds and it doesn't really look at very specific uses. It just looks at sheer parking spaces.

COUNCILMEMBER ROCHE: Right.

MR. HAEBERLIN: So many spaces require this.

MR. PETERS: In the front?

No, I didn't know if that was a mistake because I would think most locations have probably two. But I mean I don't mind trying to do it. That's really minor. I just didn't know how they came up with three.

COUNCILMEMBER ROCHE: Well, if they had a really bad wreck, I guess they'd need three --

MR. PETERS: You might be right, yeah.

COUNCILMEMBER ROCHE: -- when they come and get their car.

MR. PETERS: That's true.

COUNCILMEMBER FLEMING: Is there some flexibility there, Scott, in the handicap parking or no?

MR. HAEBERLIN: Right now, probably not because it's in the Zoning Code and it's very specific. But of course you know you guys could

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rewrite the parking requirements of the Zoning Ordinance, and we probably need to at some future time. It may very well be that we have an installed handicap, and in the future, that we allow them to take some of them away.

MR. PETERS: You have a lot of parking spots, from the front and back, probably 95. But you have probably 80 of them in the back and there are probably 15 in the front I would guess.

Did you count them?

MR. HAEBERLIN: Well, I did not count them but --

MR. PETERS: I would say probably about 15, you know. And most of those spots are where you've got cars that are put ready for pickup. So we have one line which might have eight cars for delivery, and we may average delivering five six cars a day if we're lucky, so, but that's not a big problem.

Any other questions?

COUNCILMEMBER SPANGLER: Question for you, Scott. What is the property, the old Neff Rental property zoned at right now? There's a tanker-truck operation there now.

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MR. HAEBERLIN: C-2 as well.

COUNCILMEMBER SPANGLER: It's C-2?

MR. HAEBERLIN: Yeah. So we've got some interesting land uses in there, certainly.

COUNCILMEMBER BATES: As is the tank farm on the back side of the property.

MR. HAEBERLIN: Yeah.

I'll go over my section at this time. C-2 to M-1. And Comp Plan shows this as tank farm industries, which would generally mean an M-2 zoning, so we're very lucky where this specific property sits. And I'll address the latter properties. The Code is so permissive as to allow it to be tank farm industries, so that's an M-2 zoning.

As you look at the zoning history -- and we've discussed this on a number of sites -- the old code was ambiguous at best in the automotive uses and the new code is a lot more specific, so you'll have the understanding as to why the item is here.

The adjacent properties, many of them need to be rezoned as well, and as Councilman Bates has illuminated, the tank-farm site, the mini-storage facility. We also have the vacant

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1 Butler Tire which is in a similar legal non-
2 conforming status and, again, kind of in a
3 holding pattern to lose that as well. So this
4 is something that we're going to deal with a lot
5 in the future.
6 The code compliance. Again, the
7 situation on the dumpsters.
8 Parking. The parking is generally
9 good. And I'll be honest with you: other than
10 the handicap situation, they do have tandem
11 parking, and in our code, basically a parking
12 space is a parking space. It doesn't matter
13 whether you store something in it or somebody
14 parks in it daily. So we've got some situations
15 that they could correct by re-striping. The
16 tandem space is simply a space that does not
17 have access absent another car being moved
18 behind you.
19 Landscaping is generally in pretty good
20 shape. So from a visual property perspective,
21 the property is in pretty good shape. Again,
22 it's a fairly recent property for the city.
23 The key factors in the Standards of
24 Review again is the Comp Plan, which I think
25 supports the situation. This is a street that

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1 has a lot of tanker traffic. This is not a
2 visible frontage on Buford Highway.
3 It seems one of the goals and
4 objectives of the City Council in addressing
5 automotive uses is to allow them. And we need
6 them. We need uses in the city. We need the
7 services for our residents, but generally not to
8 have them on visible property frontages. That's
9 why a lot of these type uses are conditional
10 uses today and they're limited in being allowed
11 in C-2 but moreso generally put in M-1. So the
12 good thing is the Comp Plan pretty much supports
13 this.
14 I did put forth my recommendation of
15 approval which is consistent with an
16 intermediate land use amendment to address these
17 properties along this entire frontage. And
18 certainly I believe that we might be getting a
19 rezoning application from one of the other
20 properties as well, applicant-initiated. So
21 certainly this stretch of the road consistently
22 as M-1 seems appropriate.
23 I did put forth some conditions.
24 Again, you know, you've got an existing facility
25 and you've got some Code situation which we've

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1 identified. The applicant is more than willing
2 to address those. We put a time frame in there
3 again to allow folks time and opportunity to
4 invest in the property. Certainly if they have
5 any issues on the time frames in the future,
6 they can address the City Council with a zoning
7 modification to extend those time frames. But
8 basically we're trying to encourage them to
9 invest in their properties, bringing the
10 properties up again to City Codes.
11 So with that, I did recommend approval
12 on the zoning.
13 I do want to address the item on the
14 conditional use. And I know that we addressed
15 this as a separate item, but before we enter
16 into the discussion on the motions. The
17 conditional use is actually a mistake on my part
18 because the code was transposed in my book. The
19 book that is available to the public is
20 pilfered.
21 So what happened is the M-2 page got
22 transferred into the M-1 and put in the
23 sequential order. And so in M-1, there is no
24 ability for a conditional use for a wrecker
25 service, but if you read the definitions in M-2

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1 on wrecker service, it really envisioned a
2 wrecker yard. So I am in agreeance with the
3 applicant tonight. That is not their desire,
4 and their sole purpose is not to own a wrecking
5 company or a towing company; their purpose is to
6 get their vehicles to the site and get them
7 repaired.
8 So the question would be to staff:
9 would you consider this to be a normal accessory
10 or appurtenance to an auto-repair facility? On
11 this type of facility, because it is a paint
12 facility and body repair, I would put forth as a
13 policy statement that this is a normal accessory
14 and therefore would not require conditional use.
15 Certainly the City Council can entertain in the
16 future rewriting the language of conditional
17 uses. Would I want a wrecker service at a gas
18 station? No. But for an automotive repair
19 facility like this that brings wrecked vehicles
20 in, it would seem again to be a normal
21 appurtenance or accessory to the business.
22 So at this time on behalf of the City,
23 I would withdraw the conditional use because
24 it's not a lawful conditional use for this
25 property. However, do I put forth as a policy

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1 statement if you decide to rezone the property,
2 that this would be a normal appurtenance, one
3 occupational tax license for this property
4 covering these multitude of items that they do,
5 I certainly think it's appropriate, and
6 hopefully we will address that in future codes.
7 I do apologize to the applicant and the
8 City Council, but sometimes the City Codes get a
9 little messy, and they had been pilfered, and I
10 transposed a couple pages. It does not
11 marginally affect the petition at all. It has
12 been properly advertised.
13 COUNCILMEMBER FLEMING: I have a
14 question about the sidewalks, and I didn't
15 really pay any attention.
16 I did look at all three of the
17 businesses right there, and I think they all
18 should be zoned M-1 actually at some point in
19 time.
20 But I didn't pay any attention to
21 sidewalks. Was there any problem to extend it
22 all the way to Butler Drive? I mean with the
23 exclusion of --
24 MR. HAEBERLIN: Recalling that street,
25 I don't think so. And when I structure it, I'll

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1 explain to you the condition. The condition is
2 very permissive and it allows the City -- it
3 allows the property owner to participate with
4 the City, because I certainly think we should
5 identify this area for sidewalks and maybe not
6 have Mr. Peters install but perhaps collectively
7 on behalf of the City, maybe with grant money,
8 et cetera, pursue the sidewalks. I mean he
9 could participate in terms of his contribution
10 for his frontage. So I imagine this to be a
11 process that we're going to look at over the
12 next five years.
13 I don't consider this to be the primary
14 that the applicant needs to install to get an
15 occupancy permit for this building, but it's
16 allowing us again -- Let's say we get down to
17 that situation where Butler, where he and
18 Keystone all have decided to participate and
19 maybe we on behalf of those property owners will
20 enlist somebody to build the sidewalks and then
21 to connect the pattern together. This is
22 definitely a location where I see foot traffic
23 all the time.
24 COUNCILMEMBER ROCHE: Right. I think
25 there's a sidewalk on the other side of the

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1 street.
2 COUNCILMEMBER BATES: I don't think
3 there is, no.
4 COUNCILMEMBER FLEMING: No, there
5 isn't.
6 COUNCILMEMBER BATES: Buford Highway
7 Farmers Market.
8 COUNCILMEMBER ROCHE: Well, maybe not.
9 COUNCILMEMBER FLEMING: No.
10 COUNCILMEMBER ROCHE: I picked up trash
11 there. I mean I should know.
12 MR. HAEBERLIN: Yeah. The topography
13 on the other side of the street is even more
14 challenging than the site.
15 COUNCILMEMBER ROCHE: Yeah.
16 MR. HAEBERLIN: And I do agree the
17 property owner that under that condition if the
18 Council entertains that we allow on his property
19 if necessary to basically go flush with the
20 curb, and we could put some wiggle into the
21 sidewalk in other areas.
22 COUNCILMEMBER SPANGLER: Didn't the
23 property owner just agree to fix the sidewalk in
24 front of his place of business?
25 MR. HAEBERLIN: They agreed to

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1 participate in installing one but they want a
2 little flexibility on having a green-belt strip
3 between the sidewalk and the curb.
4 My preference as a planner, again, is
5 to have that visual separation. But realis-
6 tically, there are places in the city where that
7 just cannot be done. And so like I said, our
8 sidewalks hopefully, because we don't have many
9 of them, will be more organic and they will not
10 just be straight lines in every place they're
11 installed.
12 In his situation with topography being
13 a situation we'll have to deal with, we may
14 still have to get an easement from him. We may
15 still have to build a little wall, retaining
16 wall, to accommodate the sidewalk. It seems
17 like the applicant is certainly amenable to an
18 easement if we get in a situation that requires
19 it.
20 COUNCILMEMBER BATES: Mr. Haeberlin,
21 talk to me about how we avoid the encroachment
22 of industrial into our commercial corridor
23 areas.
24 MR. HAEBERLIN: In this situation, I
25 think you look at an intermediate land use

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update for this area. And I think you're going to get this by way of not only Mr. Peters -- thank God, he does agree with the plan that is in effect today -- but as well the Butler Tire facility. And you set forth those parameters of what you envision this to be and you follow those parameters in your rezoning cases.

You know, these are legitimate businesses. You will provide them somewhere in the city. This seems to be a location where these businesses have good access to the inter-state. They were highly successful for a number of years. Doesn't seem like the buildings which are designed and built for very specific uses are going to disappear.

So my recommendation to you based on the policies you've adopted through your zoning ordinance is that you consider this area for amendment and then we follow through consistently with all those properties beginning at Keystone, for example.

COUNCILMEMBER SPANGLER: And then with Butler Tire.

MR. HAEBERLIN: And the good thing that's consistent about this -- and I'm not

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recommending to give everything M-1; absolutely not. I'm recommending to give the use they want and that's it. So if somebody else comes in and wants something that's an M-1, they can come back to the City Council. So it's almost better than a permissive C-2 which allows tons of things and conditional uses.

COUNCILMEMBER BATES: Is that -- I apologize if that's -- is that part of your conditions? I know you --

MR. HAEBERLIN: Yeah.

COUNCILMEMBER BATES: -- state rezoning is to allow only one use within M-1.

MR. HAEBERLIN: Uh-huh.

COUNCILMEMBER BATES: Okay.

MR. HAEBERLIN: Yeah. And again, that's methodology. Because you have to really look at this. If we were to rezone Colonial Storage next door, to M-1, which I think is certainly appropriate -- it should never have been in C-2; don't ask me why again, but it's there -- it's entirely appropriate that it be M-1 conditional to that of a self-storage facility.

And if the property owner ever decides

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to tear that property down, they can come back to the City Council and petition to allow more uses within the zoning category. But that allows you a very consistent control versus a broad spanse of what's now currently allowed in C-2. So they're getting what they want, and also, too, the City has a method of control on that particular use.

COUNCILMEMBER BATES: And we're allowed to do use restrictions on rezoning a particular specific property?

MR. WEED: Yes. Particularly if the applicant agrees to the condition or the restriction.

COUNCILMEMBER BATES: Okay.

MR. HAEBERLIN: And the reason, again, is because having recognized -- I mean this property really is extensively built just for this, and I'm sure we're going to encounter this in the future with the other legal nonconforming uses.

As heard from the applicant, he unfortunately did not benefit so well from some of his tenants, and it appears on its face and certainly from the information we received, the

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loss of legal nonconformity that either happened or was impending per the prior business had not had a business license or occupational tax license since 2007. So it's really questionable when they did leave. They hadn't been paying the fees to the City.

So with that, I guess if there are no further questions, we'll need to open the public hearing and then close that and then move for a vote.

Again, that is withdrawing conditional use. And I'll state on the record, a wrecker service is a normal accessory to that of the body shop.

MAYOR JENKINS: Public hearing.

Anybody want to speak for it?

MR. HART: The area around this body shop is Marathon Oil. You got Neff's Rental. If you look on the tax map for Dekalb County, they're zoned M-2. On our map, it says C-2. So the map needs to be looked at because that whole area right there is -- is M-1 -- is already M-2.

Marathon Oil didn't build those tanks on C-2 property, but on the tax records, they're paying as heavy-duty industrial M-2 property.

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So I believe our maps are incorrect.
But body shops, having worked and built cars and that sort of thing, a paint shop is heavily regulated. There's some shops in the city of Doraville that don't meet any of those regulations but for some reason they're still open.
But this facility meets all those regulations. They have sand traps in front of the doors. All the chemicals and everything else have to be closely regulated, and all their waste chemicals go and they're hauled off, and they have closed-ventilation hoods for painting the cars and that sort of thing. So a modern body shop is very technically, you know, put together so it doesn't cause problems.
I remember when the stormwater department had to deal with this oil spill. For some reason, these guys at the shop were changing their own oil. And you're actually paid to -- when you have these drums of oil, you're paid for that oil to haul it off. I mean they pay you, suck it out of the drums and take it away. But these idiots poured it down the storm drain. It wasn't the owner's doing. It

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was the people that rented the shop from him. And that's highly irregular.
But the problem with this property and all these properties that are M-2 adjacent to this, they're one block away from the MARTA station and so it's right on the edge of what we call the town center. And so it's M-2 around it but it's also in this area where there's a lot of pedestrian traffic. And so I support them putting a sidewalk in that area because I walk down there, and you're out in the middle of a street or out in the middle of a parking lot. And so you have to start somewhere, and putting a sidewalk in front of the place is part of allowing the zoning to be there, but it's --
You know, Brian was talking about the sensitivity about that area, what you're going to have there in the future. It is one block from the MARTA station. We'd hope that area would develop into a town-center sort of situation that maybe isn't so industrial.
Thank you.
MAYOR JENKINS: Anybody else want to speak for it?
- - -

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(No response)
- - -
MAYOR JENKINS: Anybody opposed?
- - -
(No response)
- - -
COUNCILMEMBER BATES: For the record, this is the first time that I have not seen Stuart Anderson get up to speak on or against.
MS. FRAYSSE: (Inaudible)
COUNCILMEMBER SPANGLER: No. He can get up and speak if you would like him to.
MR. ANDERSON: All right, I'll speak.
MAYOR JENKINS: Too late now.
MR. ANDERSON: Too late.
MAYOR JENKINS: Go ahead, Scott.
MR. HAEBERLIN: Like I said, you know, again I'm going to apologize to the applicant.
Things happened. My public access to the Zoning Ordinance that I provide for the community to come look at as well is pilfered, and I apologize. I don't think it's affected the petition.
I'm willing to stipulate that their wrecker service, again, is a normal appurtenance

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to this particular use but not every -- for example, car washes and gasoline stations, et cetera. So I think we've been adequately covered, so it's really a position statement that most directors would put forth, and I think it's appropriate in the situation.
So recommend approval with the stipulation changes relative to the wrecker service and also, two, the condition one under Human Environment allowing flexibility to have the sidewalk flush with the curb if necessary, the five-foot sidewalk.
MAYOR JENKINS: Okay. Do we have a motion?
COUNCILMEMBER FLEMING: I'd like to make a motion to rezone Parcel Number 3753 Longmire Way from C-2 to M-1 notating the condition of the sidewalk which may be butted to the curb in some areas --
MR. HAEBERLIN: Uh-huh.
COUNCILMEMBER FLEMING: -- and also that the wrecker service will be considered a normal accessory for this particular location.
COUNCILMEMBER SPANGLER: Second.
COUNCILMEMBER ALEXANDER: And allow the

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one use, automotive service and repair shop? To allow the one use, automotive service and repair shop? It's on page 8 under "Note."

MR. HAEBERLIN: You could just do with staff recommendations. I think that was the intent. I mean we could get clarification from Councilwoman Fleming.

This is with staff conditions including that item, if that's correct.

COUNCILMEMBER FLEMING: Staff recommendation.

COUNCILMEMBER SPANGLER: Second.

ATTORNEY WEED: Your motion includes the staff recommendations, and the motion is to second it; is that correct?

MR. HAEBERLIN: Correct; and she did amend and talk about the wrecker service as being normal accessory and then the sidewalk under Human Environment being able to be installed flush with the curb if necessary.

ATTORNEY WEED: And my one question about that is do you want to leave that vague? Do you want to make it subject to, you know, the Planner's approval where the sidewalk is going to be? I know it's going to be flush in some

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areas, but what does "some areas" mean?

MR. HAEBERLIN: How about with site-specific review?

ATTORNEY WEED: By the Planner's office?

MR. HAEBERLIN: The City Planner's office; fine. That's fine with me.

ATTORNEY WEED: Councilman Fleming, would you agree to that amendment?

COUNCILMEMBER FLEMING: Yes, sir, I surely would.

ATTORNEY WEED: Councilman Spangler?

COUNCILMEMBER SPANGLER: I still say yes.

ATTORNEY WEED: Thank you very much.

MAYOR JENKINS: Anymore discussion?

- - -

(No response)

- - -

MAYOR JENKINS: Call the roll, please.

CLERK BLACKMON: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

CLERK BLACKMON: Councilmember Bates?

COUNCILMEMBER BATES: Yes.

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CLERK BLACKMON: Councilmember Fleming?

COUNCILMEMBER FLEMING: Yes.

CLERK BLACKMON: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

CLERK BLACKMON: Councilmember Roche?

COUNCILMEMBER ROCHE: Yes.

CLERK BLACKMON: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Yes.

MAYOR JENKINS: All right. Thank you.

COUNCILMEMBER ROCHE: Motion to adjourn?

COUNCILMEMBER FLEMING: No.

COUNCILMEMBER ROCHE: We're through with the normal public hearing.

- - -

(Overspeaking)

- - -

MR. HAEBERLIN: We have Mr. Weed under Item No. 6, the adoption of City Personnel Policy ordinance.

ATTORNEY WEED: Very, very briefly, you've already adopted the policy but the policy refers back to an ordinance change. So I'd to respectfully ask you to waive first reading and

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just simply adopt the policy that you've already adopted, in the form an ordinance.

COUNCILMEMBER ROCHE: I make a motion that we waive first reading on the ordinance, the Employee Manual ordinance.

COUNCILMEMBER PITTMAN: Second.

MAYOR JENKINS: And we make it in the form of an ordinance. Is that what you're saying?

ATTORNEY WEED: Well, I think we should waive first reading first, then I'll ask for another motion.

MAYOR JENKINS: Oh, okay.

Second? Do you have a second?

COUNCILMEMBER PITTMAN: Uh-huh.

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: No.

CLERK BLACKMON: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

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CLERK BLACKMON: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
CLERK BLACKMON: Councilmember Spangler?
COUNCILMEMBER SPANGLER: No.
COUNCILMEMBER ROCHE: All right, now. This is a special meeting.
ATTORNEY WEED: Yes, it is.
COUNCILMEMBER SPANGLER: And was this on the agenda?
ATTORNEY WEED: Yes, sir.
COUNCILMEMBER FLEMING: Yes, it was.
ATTORNEY WEED: It was on --
COUNCILMEMBER FLEMING: It was on the agenda.
ATTORNEY WEED: -- the agenda.
During a special meeting, my memory is that the waiver would have to be unanimous. It's not; therefore, the policy will not go into effect.
COUNCILMEMBER SPANGLER: Motion to adjourn now.
COUNCILMEMBER ALEXANDER: Well, now what?
COUNCILMEMBER BATES: Nothing, now that

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it's . . .
MAYOR JENKINS: Call the roll.
CLERK BLACKMON: I didn't get either one of those.
COUNCILMEMBER SPANGLER: I made the motion to adjourn.
MAYOR JENKINS: Does anybody want to second it?
COUNCILMEMBER SPANGLER: Do you all want to stay here all night?
COUNCILMEMBER ALEXANDER: No. I just think we have some questions about . . .
So the personnel policy that we've told the employees is going into effect July 1 now is not?
ATTORNEY WEED: That is my opinion.
MAYOR JENKINS: Is that because we didn't get a --
ATTORNEY WEED: It's because it's --
MAYOR JENKINS: -- unanimous vote --
ATTORNEY WEED: -- the first reading, and I'll --
MAYOR JENKINS: -- on a special meeting?
ATTORNEY WEED: -- and I'll be glad to

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put it back on the next agenda.
COUNCILMEMBER FLEMING: No, sir. I didn't vote for the personnel manual, anyway, and that's the reason why I voted no.
MAYOR JENKINS: What was the reason that you said it -- This is a special meeting. Is that the reason you said we could not vote?
COUNCILMEMBER ALEXANDER: It had to be unanimous to waive first reading.
ATTORNEY WEED: Yeah. On a special meeting -- it's not a regular meeting -- then the waiver of first reading would need to be a unanimous vote, which it is not.
COUNCILMEMBER FLEMING: I don't know why we're having a first reading anyway when it's already been adopted.
ATTORNEY WEED: The policy has been adopted; however, the policy -- inherent in itself, you also have a corresponding ordinance in the Code of Ordinances in order to fully effectuate it legally.
To make all the four corners match, you would need to do both things. You need to adopt the policy, which you've done, but you also need to adopt it in the form of an ordinance.

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So it won't happen now. This would constitute first reading. I'll put it on your next regularly-scheduled agenda, and then it would be actually going to be effective if it passes at that point.
MAYOR JENKINS: Do I get a second on the adjournment?
COUNCILMEMBER SPANGLER: I rescind my motion to adjourn.
COUNCILMEMBER FLEMING: You say you're rescinding your motion to adjourn?
COUNCILMEMBER SPANGLER: Yes, ma'am.
COUNCILMEMBER FLEMING: Okay. Now --
COUNCILMEMBER SPANGLER: I was not aware that there still needed to be more discussion on the matter.
COUNCILMEMBER ROCHE: I don't know how we unring that bell, though. We made the motion and it failed. I mean we can't just make the motion over and over again, can we?
ATTORNEY WEED: Well, you can. I sure wish you would, but that's not up to me.
COUNCILMEMBER SPANGLER: My vote would still be no. I would still vote no.
COUNCILMEMBER FLEMING: Vote yes to

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1 waive the first reading?
2 COUNCILMEMBER SPANGLER: No.
3 COUNCILMEMBER ROCHE: Well, we're going
4 to have to make sure that whoever's doing the
5 budget -- you know, if we don't pass this, then
6 there may be an impact on the budget, so we need
7 a different set of budget numbers potentially.
8 ATTORNEY WEED: Well, until such time
9 as you actually adopt it by virtue of an
10 ordinance, you know, the existing policy will
11 continue in effect.
12 COUNCILMEMBER ROCHE: Okay.
13 MAYOR JENKINS: Motion we adjourn?
14 COUNCILMEMBER ROCHE: Is it appropriate
15 to ask at this point what the objections are to
16 the current version of the Employee Manual?
17 Since it's on the agenda, can we discuss it?
18 ATTORNEY WEED: I don't think the
19 Councilman is asking me.
20 COUNCILMEMBER ROCHE: No. I'm just
21 saying there's no reason why we can't discuss it
22 since it's on the agenda, right? So I think
23 it's a fair question to find out what the
24 objections are to the current version of the
25 City Employee Manual.

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1 MAYOR JENKINS: All right with me.
2 COUNCILMEMBER FLEMING: I don't mind
3 discussing it if he does want to hear my
4 objection.
5 COUNCILMEMBER ROCHE: Yeah, I would.
6 COUNCILMEMBER FLEMING: First of all, I
7 think the Mayor has -- the Mayor's position -- I
8 won't necessarily say Mayor Jenkins, but the
9 role of Mayor, I think, should have the
10 authority to authorize overtime when it is
11 necessary.
12 We've supposedly cut out overtime. I
13 feel that it would be more -- for accounting
14 practices, it would be better to be paying
15 overtime at time and a half than accruing comp
16 time for 80 hours and then banking it.
17 The other issue I had also is the use-
18 it/get-paid-for-it-by-December-31st or you lose
19 it, and I am totally opposed to that. And so
20 since there was no way to be flexible or no way
21 to be able to compromise on those issues, I'm
22 not going to compromise either and that's why
23 I'm voting no.
24 COUNCILMEMBER SPANGLER: You don't need
25 my thoughts on this. You've got Ms. Fleming's.

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1 That should be enough.
2 MAYOR JENKINS: You agree with her?
3 COUNCILMEMBER SPANGLER: Sir?
4 MAYOR JENKINS: You agree?
5 COUNCILMEMBER SPANGLER: I certainly
6 do. And I had some other concerns with the
7 Employee Manual also.
8 MAYOR JENKINS: Okay.
9 COUNCILMEMBER ROCHE: Like I said, I
10 have some concerns about the Employee Manual,
11 and part of it -- I mean my vision of the comp
12 time was that basically you cut it off at a
13 certain point and then you own that forever and
14 ever and you can take it or cash it out whenever
15 you want to in the future. I think that for our
16 employees to accumulate 80 hours of comp time
17 was a compromise between getting rid of comp
18 time completely, because a lot of people wanted
19 it, versus just what we have today, which is
20 basically unlimited comp time which creates
21 potentially a very large liability. In fact we
22 currently have a liability of unpaid comp time
23 which has several problems like you can
24 accumulate comp time and then 10 years later
25 cash it out at a higher dollar amount. You

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1 know, we don't really account for that liability
2 out there. We would have to figure out how to
3 account for it, et cetera, et cetera.
4 So no, it wasn't perfect in my mind,
5 either, but I felt like it was the best that we
6 could do at the time. And we did make motions
7 on these changes and passed these motions. And
8 again, if I was waiting for 100 percent on this
9 thing, on anything, I'd be frustrated, but, you
10 know --
11 COUNCILMEMBER SPANGLER: You can still
12 pass this at the next regular Council meeting.
13 Is that correct, Mr. Weed?
14 ATTORNEY WEED: Yes, sir.
15 COUNCILMEMBER SPANGLER: It does not
16 have to pass tonight.
17 ATTORNEY WEED: No. It will not be
18 effective July 1, though.
19 COUNCILMEMBER SPANGLER: No, but it
20 will be effective as of when it is voted on and
21 passed.
22 ATTORNEY WEED: Yes, sir.
23 COUNCILMEMBER SPANGLER: Okay. So it
24 shouldn't be a problem.
25 ATTORNEY WEED: Yeah. When we get to

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it at the next regular meeting, I will probably ask you to go ahead --

You know, I think you -- if you end up doing it and passing it by ordinance, then the previous motion where you adopted the policy and made it effective July 1 will become irrelevant because the ordinance will trump the original motion, so I'm fine with that.

So hopefully a majority of you will pass it whenever you pass it.

MAYOR JENKINS: Can some of the original things that were passed on be changed?

ATTORNEY WEED: Sure.

MAYOR JENKINS: Okay.

COUNCILMEMBER ROCHE: Yeah. And that's the other thing is that I mean, again, I could see bringing up things to make modifications to it already.

COUNCILMEMBER SPANGLER: Well, if the things were not changed originally when we first went over these items, what makes you think they're going to be changed now?

MAYOR JENKINS: I think they have thought about them since then, and it needs to be changed.

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COUNCILMEMBER SPANGLER: Well, yeah, there was a lot of things that needed to be changed. You know, the attorneys brought up some very good points that we didn't adhere to. So you know, we could have done a lot better on the Employee Manual, but as it is, I'm not ready to vote on it and approve it tonight, not with the conditions and concerns that I have.

COUNCILMEMBER ROCHE: That's fair.

MAYOR JENKINS: Okay.

COUNCILMEMBER FLEMING: So come July the 6th, is that correct, with the regular meeting --

CLERK BLACKMON: Yes, ma'am.

COUNCILMEMBER FLEMING: -- since we did not waive the first reading, we will be having the first reading?

ATTORNEY WEED: No. The first reading's been done. You just did that.

COUNCILMEMBER FLEMING: And we didn't waive the first reading.

ATTORNEY WEED: You didn't waive the first reading but you heard the ordinance, it appeared on the agenda. The first-reading standard has been met, and, therefore, it'll be

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on a regular meeting and you'll vote it up or down.

COUNCILMEMBER FLEMING: Okay. Thank you.

ATTORNEY WEED: And we never vote for first reading again.

COUNCILMEMBER ROCHE: And there's nothing preventing anybody from adding other items to that same agenda to modify the Employee Manual that just got passed, I guess --

ATTORNEY WEED: Absolutely.

COUNCILMEMBER ROCHE: -- assuming we pass it.

MAYOR JENKINS: But it can be amended at any time.

COUNCILMEMBER ROCHE: That's what I'm saying. Like I said, there are things in there I don't particularly like either.

MAYOR JENKINS: I didn't like it but I didn't have any sayso.

COUNCILMEMBER ROCHE: I'm finished.

MAYOR JENKINS: Okay.

COUNCILMEMBER ROCHE: I would like to make a motion to adjourn the meeting.

MAYOR JENKINS: Second?

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COUNCILMEMBER ALEXANDER: Second.

MAYOR JENKINS: Call the roll.

CLERK BLACKMON: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

CLERK BLACKMON: Councilmember Bates?

COUNCILMEMBER BATES: No.

CLERK BLACKMON: Councilmember Fleming?

COUNCILMEMBER FLEMING: Yes.

CLERK BLACKMON: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

CLERK BLACKMON: Councilmember Roche?

COUNCILMEMBER ROCHE: Yes. So there.

CLERK BLACKMON: Councilmember Spangler?

COUNCILMEMBER SPANGLER: I'm going to say no, too, because it's actually been adjourned about 15 minutes ago.

MAYOR JENKINS: Give me a chance to vote on that.

COUNCILMEMBER BATES: No, sir.

- - -

(Whereupon, the meeting was adjourned at 10:10 p.m. the same day.)

-oOo-

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 16th day of July, 2009.

_____
Theresa Bretch, CCR
Permit No. B-755

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