

**Regular Meeting of the Sandy Springs City Council**

**Tuesday, August 19, 2008**

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**Regular Meeting of the Sandy Springs City Council was held Tuesday, August 19, 2008, 6:00 p.m., Mayor Galambos presiding.**

**Invocation**

Dr. Terry Quick, First Baptist Church of Sandy Springs offered the invocation.

**Call To Order**

Mayor Galambos called the meeting to order at 6:00 p.m.

**Roll Call and General Announcements**

**City Clerk Rowland** reminded everyone to silence their cell phones and pagers at this time. Additionally, those wishing to provide public comments, either during a public hearing or at the conclusion of the meeting under the public comment section, are required to complete a public comment card. They are located at the back counter and need to be turned in to the Clerk.

**City Clerk Rowland** called the roll.

**Councilmembers Present:** Councilmember Doug MacGinnitie, Councilmember Dianne Fries, Councilmember Paul, Councilmember Ashley Jenkins, Councilmember Tibby DeJulio and Councilmember Karen Meinzen McEnery.

**Pledge of Allegiance**

Mayor Galambos led the Pledge of Allegiance.

**Approval of Meeting Agenda** *(adds or remove items from agenda)*

**Motion and Vote:** Councilmember Paul moved to approve the Meeting Agenda. Councilmember Fries seconded the motion. There was no Council discussion. The motion carried unanimously.

**Consent Agenda**

1. Meeting Minutes:
  - a. June 17, 2008 Regular Meeting
  - b. July 8, 2008 Work Session Meeting
2. Approval a Resolution to approve an amendment to the Department of Natural Resources Project Agreement for Ridgeview Park to reflect the City of Sandy Springs as the holder of title and grant sponsor for the Park with respect to a federal grant used to assist in the development of the Park.  
**Resolution No. 2008-08-36**
3. Approval of a Variance for Night Work for the 2009 Capital Paving Contracts and the 2008 Local Area Resurfacing Program (LARP) Contract.  
**Resolution No. 2008-08-45**
4. Approval of the Acceptance of the Right-of-Way at 5901 Peachtree Dunwoody Road in Land Lot 19 of the 17th District.  
**Resolution No. 2008-08-37**
5. Approval of the Acceptance of the Right-of-Way at 1005 Crestline Parkway in Land Lot 19 of the 17<sup>th</sup> District.  
**Resolution No. 2008-08-38**

6. Approval of a Resolution authorizing the Mayor to sign a letter to the Transportation Planning Board regarding the Regional Transit Vision Plan  
**Resolution No. 2008-08-39**
7. Approval of a Resolution approving the Revised GDOT Project Framework Agreement (PFA) Project No. STP000-6-00(727), Fulton County, P.I. # 0006727 for the SR 9 Advanced Traffic Management System (ATMS) Project (T-0013).  
**Resolution No. 2008-08-40**
8. Approval of and authorization for the City Manager to sign a Permit for the installation of a traffic signal at Riverside Drive and the Interstate 285 Westbound Ramp.  
**Resolution No. 2008-08-46**
9. Approval of a Resolution to Embrace the concept of a Water Conservation and Re-use Program.  
**Resolution No. 2008-08-41**
10. Approval of **AM08-002**, 1705 Winterthur Close, *Applicant*: Neil Sodemann, To reduce the required twenty-five (25) foot side yard setback as outlined in the original letter of intent of Z66-0006 by reference to the R-1 zoning classification to ten (10) feet for the construction of a 2-car garage.  
**Ordinance No. 2008-08-31**
11. Approval of **AM08-003**, 7720 Marsh Court, *Applicant*: Stacey J. Schacter, To modify condition 3.a. to reduce the required sixty (60) foot front yard setback along North Mill Road to fifty (50) feet for the construction of a sunroom and a deck.  
**Ordinance No. 2008-08-32**
12. Approval of **AM08-004**, 145 Cliftwood Drive, *Applicant*: Kronberg Wall Architects, To modify condition 2.a. to amend the approved site plan to allow for the construction of a carport.  
**Ordinance No. 2008-08-33**  
(*Nancy Leathers, Community Development Director*)
13. Approval of a Resolution amending the City's purchasing policy as it relates to surplus goods.  
**Resolution No. 2008-08-42**

**Motion and Vote:** Councilmember Paul moved to approve the Consent Agenda. Councilmember Fries seconded the motion. There was no Council discussion. The motion carried unanimously.

### Presentations

#### **Presentation of the Certificate of Achievement for Excellence in Financial Reporting**

**City Manager McDonough** recognized the finance staff for being awarded for the second time in less than three years the Certificate of Achievement of Excellence in financial reporting for the Comprehensive Annual Financial Report. The Certificate of Achievement for Excellence in financial reporting is presented from the Government Finance Officers Association of the United States and Canada to government units and public employer retirement systems for annual reports that achieve the highest standards in government accounting and financial reporting.

#### **Presentation of Life Saving Awards**

**City Manager McDonough** reported the results of action taken by Shift C, Station # 3, on June 12, 2008. Quint 3 responded to a report of an unconscious male person and upon arrival found he was unresponsive and not breathing. The crew acted quickly and began the appropriate treatment. The patient was found to be in cardio rhythm. The patient became conscious and transported to Northside Hospital. The patient was stabilized as a result of the actions of the individuals here this evening.

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The Life Saving Awards were presented to: Firefighter Dereko Robertson, Fire Rescue Technician Gregory Campbell, Fire Rescue Technician Edward Gadrix, and Fire Rescue Technician James Dycus.

**Public Hearings**

**City Clerk Rowland** read the zoning rules.

**Motion and Vote:** Councilmember Fries moved to waive the rules of procedure regarding time limits for this hearing and allow a twenty (20) minute time limit for U08-005/CV08-007, 5757 Long Island Drive, 5730 Lake Forrest Drive, Long Island Drive (PIN 17 0123 LL096), & 0 I-285 (PIN 17 0123 LL090), *Applicant: Holy Spirit Preparatory School*  
Councilmember Meinzen McEnerny seconded the motion. The motion carried unanimously.

**Zoning**

**U08-005/CV08-007, 5757 Long Island Drive, 5730 Lake Forrest Drive, Long Island Drive (PIN 17 0123 LL096), & 0 I-285 (PIN 17 0123 LL090), Applicant: Holy Spirit Preparatory School, A use permit for the development of athletic fields, a field house, and an administrative building for Holy Spirit Preparatory School, with concurrent variances.**

**Ordinance No. 2008-08-34**

**Senior Planner Ruffin** stated that this is a use permit request from Holy Spirit Preparatory School for the development of a football and soccer field with bleacher seating to accommodate 400 people, a 15,000 square foot field house and administrative office building, a swimming pool and tennis court. Additionally, the applicant is requesting four (4) concurrent variances.

Staff is recommending denial of the use permit request and the concurrent variances. The Design Review Board heard the petition at the February 26, 2008, March 11, 2008 and July 8, 2008 Design Review Board meeting. The Board recommended denial of the request.

The applicant was also heard at the July 17, 2008, Planning Commission hearing. Mr. Boyken recommended approval subject to staff conditions as amended and as outlined in the staff report. The motion failed because there was a 2-1 vote and since a majority of the voting members present did not vote to approve the motion. The conditions recommended by the Planning Commission can be found in the staff report.

**Den Webb, 1230 Peachtree Street, Smith, Gambrell, & Russell, LLP** introduced Garrett Genner, President of Holy Spirit and Scott Walls, Vice President & Director of Development. Holy Spirit has assembled a very impressive technical team throughout this process. Mr. Webb introduced the member of the team.

The folks that support this application live in the neighborhood right next to this project. They live in the neighborhoods that immediately surround this project. They live in the district in which this project is located and they live all over Sandy Springs. Some have students at Holy Spirit, some do not.

Holy Spirit is a private, Pre-K through 12<sup>th</sup> grade Catholic School. It is the only Catholic High School in Sandy Springs. The lower school campus (K-6<sup>th</sup> grade) is on Long Island Drive. The upper campus, Mt. Paran on Northside Drive is where Pre-K, 7<sup>th</sup> through 12<sup>th</sup> grade goes to school. Neither one of these campus's has adequate field space now. The only field at the lower school campus is the playground. The playground serves as a recess yard, soccer field, a multi-use field that is used for everything but soccer.

The school now has an opportunity to buy the property near both campuses. The property is eight (8) acres. The subject property is adjacent to and south of Interstate 285 and bounded by Lake Forest Drive on the east and Long Island Drive on the west. The subject property zoned as the Community Unit Plan District is currently vacant and has been for decades. This property is also adjacent to non residential properties right now. West of the proposed field site is the First

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Montessori School. It is about seven (7) acres and at least 50,000 square foot of buildings. To the east and directly across the street on Lake Forest Drive is a property City Council recently rezoned to the O&I category. It was 1.3 acres and is now allowed to build out at 22,000 square feet of office space.

The primary purpose for this proposal is to build a soccer and football field. The hope is that the school can allow their kids to play soccer in two tentative seasons on this field. The students play their games on Saturday between 9:00 a.m. and 4:00 p.m. and practice there during the week.

The hope is that the school can also use this facility for Varsity Football. The Varsity Football Team would like to practice there one day a week on Thursdays during daylight hours. The JV Varsity Team would like to be able to play football up to 12 nights per year at this site. Games would occur between 7:30 p.m. and 10:00 p.m.

The school has requested the opportunity to light the field and to use a small PA system. Those are the only nights they are asking to do that. The remaining 353 days of the year the light system and PA system will not be used. Holy Spirits Football Program is small time. There are 17 boys on the team right now; with three on the DL, the total team is 20. The average attendance based on the numbers submitted in request, last season was 184 people.

To the east of the field Holy Spirits hopes to build a four lane lap pool. It is just there for practice and will not be lit. To the east of this, Holy Spirit hopes to build two (2) tennis courts which will not be lit. The courts are only for practice and no matches will be held there.

In the middle of the site there is a building on the property. It is proposed to be two stories with a basement and it is effectively a multi-use space. First, it will operate as a field house. It will have the typical things one expects from a field house, like concession stand, locker rooms, ticket booth and the like. There is also hope to build a small mini space and a chapel from that building. Holy Spirit does not build a campus without a chapel. The space would be used for spiritual retreats, on average, once a week for 24 weeks the school is in session. Kids will be bussed to and from the property to engage in spiritual exercise under the direction of the Chaplain who is actually based out of that property. The school would like to host up to 12 college receptions in the evenings on this site and also have up to six (6) parent/teacher conferences in this multi-use reception space.

The hope is that the school can relocate twelve (12) administrative offices to the site. There is simply a need for administrative space. The expectation is that they could move some of the functions that are not essential on existing campuses to this space. There is no expectation or no plan to put classrooms in this building.

The parking area is on the west of this site and is accessed by a curb cut on Long Island and lines up with an existing curb cut of the First Montessori School. There is a significant hill that leads on to the site from the Long Island side. The parking area you would see would be elevated and out of view. The school has submitted a landscape plan indicating that there will be significant trees and bushes planted along Long Island Drive. They have also agreed for the neighbors to install an eight (8) foot stacked stone/rod iron fence along the frontage, all to isolate that site from Long Island. The parking spaces are provided as the ordinance requires. According to the staff report, they are supposed to have 145 and the school has 150 spaces. The entire parking area will be a pervious surface, made of pervious concrete and almost all of the parking spaces are made of a substance called grasspave, a product that looks just like grass. When it is all said and done, 90% of this site will be considered a pervious surface.

Holy Spirit has had eleven (11) neighborhood meetings from the time they first filed in February. As a result of the meetings, they have provided a significant amount of information at the request of the neighbors. They have made a significant number of changes to the site plan. The biggest change is removal of the second building. The initial plans showed two buildings. A house of 14,000 square feet that sat on Long Island Drive has been removed from the site plan. The applicant has also taken the field house which originally was on the Lake Forest side and moved it to the interior of the site and out of view. It will be situated on a low point and will be at least 250 yards in either direction of Long Island Drive and Lake Forest Drive. They have found a way to provide adequate parking which was not the circumstance in the beginning. They have developed a light system that will light the field up to the 12 nights that the football games are

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played there. They have demonstrated the modeling testing that the proposed lights meet the ordinance requirements and have done the same with the sound system. They have reduced the number of bleachers from the original proposal 500 to 400. The applicant has also done a traffic study. The traffic study was modeled on the two uses that were identified by the City; Friday night football games, Saturday soccer games and the 12 or so administrative office workers. The traffic study demonstrated that the proposed uses do not degrade existing roadway network around this property.

In addition to the traffic study, they put together an event management plan to make sure that they can get folks on and off this site quickly during the football games. The applicant made a number of changes to ensure protection of the environment; parking lot surface, submitted a stream buffer mitigation plan demonstrating the schools plan demonstrating the schools plan to plant trees, bushes and grasses along the existing stream along the site to ensure the water that flows into the site and is quality water and is at a normal pace. Initially, the retaining walls on the site were designed to be masonry. They choose every retaining wall to be the full trex living wall material, essentially a grass surface which is like a stream bank. From an environmental standpoint, this product could set a new benchmark for the City of Sandy Springs.

The applicant has put together a set of conditions. Over the course of the meetings, the applicant has made a number of representations and has agreed to a number of things the neighbors have asked for like restrictions on the night games, restrictions on the light, and restrictions on the sound system. The applicant has submitted a number of conditions that should be a part of the City Council packet.

As a result of the applicants seven (7) month effort of having meetings, there are many changes in the site plan, proposal and conditions. The applicant has won the support of many. The applicant also knows that there are some that still do not support him.

The last point to address is a point City Council will hear tonight and that is that the proposal is not consistent with the Comp Plan. The applicant disagrees whole heartily. The Comp Plan says, school uses just like the one the applicant is proposing are allowed in most, if not all, residential zones in the City of Sandy Springs. The zoning ordinance indicates that school uses are allowed in every single residential zoning district in the City of Sandy Springs. This proposal is consistent with the Comp Plan. The applicant also believes that as it has been revised the last seven (7) months, it has demonstrated the applicants respect for the people who are within and around this property; and it has demonstrated the applicant's respect for the environment. The applicant hopes City Council will support his request with the conditions as proposed.

Mayor Galambos called for public comment in opposition of the petition.

**Brad Skidmore, 5530 Long Island Drive**, stated that over 90% of the households within ½ mile of this site oppose this petition. He requested that the people that live within ¼ and ½ of a mile of this site to stand. He spoke in opposition of the Holy Spirits plans to invade the area that is called home. With a lighted sports and office complex that not only violates the quiet and pastoral nature of his neighborhood but also the fundamental principals that many of the council campaigned on and were elected. The plan also violates the City Comprehensive Land Use Plan and he could not disagree more with Mr. Webb's contention that it is consistent. Protected neighborhoods is one of the primary reasons the residents of Sandy Springs voted unanimously to create the City of Sandy Springs and neighborhood protection is identified in that plan as "over arching principal". The Comprehensive Plan states that Sandy Springs will continue to be characterized by residential neighborhoods of predominately single family to patched homes as low densities. The City will strive to ensure that existing single family neighborhoods will continually be characterized by large lots, substantial tree coverage and low vehicular traffic. The Comprehensive plan also adopted specific character areas known as protected neighborhoods and Long Island Drive, in fact, is one of those protected neighborhoods. As such "no uses other than the attached single family residences and supporting institutional recreational facilities serving the immediate neighborhood shall be permitted. The business and recreational use proposed by Holy Spirit clearly does not meet that standard. To spite these clear and unequivocal restrictions Holy Spirit claims this proposed use is not only permitted but allowed and consistent with the Comprehensive Land Use Plan. It claims the intended use, but what has been submitted is that it will operate as a school. That raises two critical points; first, this is not a school. This is a sports facility and a very high level of intense use as planning staff have stated in their report to City Council. Second, the suggestion that this facility serves

the immediate neighborhood is nothing more than semantics. It is the intended use or purpose of the facility that determines whether it truly serves the immediate neighborhood, not some holy offer of nasality use to the local residents.

Given the level of intense use and the schedule that Holy Spirit has submitted to staff and the Council, it is hard to see where any use would come in to the local residents. As for the site suitability for residential development, sometimes it is what somebody does not tell you that is more important than what they do tell you. Mr. Skidmore thinks this is clearly the case.

Holy Spirit has characterized this property as unfit for residential development claiming that the owners have been trying to sell it for 22 years. That is not the whole story. The previous Fulton County Land Use Plan designated this property as only zero to one residential units per acre. The Sandy Springs new Comprehensive Land Use Plan that was approved nine (9) months ago allows for three (3) to five (5) units per acre on the majority of this property which makes it far more valuable for residential development. Indeed, there were three (3) residential developments that came before Fulton County and they were either rejected or abandoned if the plan was seeking the exact same density that Council now allows on this property. Even worse, the Georgia Department of Transportation sounded the death nail for this property several years back when it issued a memo to Fulton County stating that it was interested in this site for condemnation for highway use. It was only within the last year that the Georgia Department of Transportation notified the City's Mayor that it no longer intended to use this property. Simply put, the property was held hostage by the Georgia Department of Transportation for many years. That is the rest of the story.

**Mr. Skidmore** questioned if you could build and sell houses next to I-285 and answered absolutely yes. There are thirteen (13) documented within subdivisions backing up to I-285 and all within one half mile of this site have been resold within the last three years. He questioned if this site was any different, and answered absolutely not. There are challenges as with any other property and given the density, it now allowed the neighbors to think that the appropriate residential development like the one that was approved by Fulton County three years ago when the property was rezoned to its current condition with all of the restrictions. Wondering what happened; he can not answer that and does not believe the school can answer that. It is a matter of time. He believes that it was only rezoned three (3) years ago and that it has only been under the Comprehensive Plan for nine (9) months, it can not go either way. The neighbors are eager to bring the appropriate residential development to this site because they believe it can happen. This exact same plan was not appropriate for Holy Spirit at its much larger upper school campus in the City of Atlanta and local neighbors voted no and they could not build it. Mr. Skidmore questioned how it was any different in Sandy Springs, a city which was founded on neighborhood protection. Consistent with the Planning staff, denial recommendation, consistent with the repeated review by the Design Review Board and its recommendation of denial, the local neighbors of this protected neighborhood request that City Council deny this application.

**Bruce Snyder, 115 Grosvenor Place**, addressed the four variances requested. He stated that protected setbacks, buffers and landscape strips are being completely eliminated. This makes it clear that this proposed complex is too large for this property. He stated that the school wants to light the complex to play twelve (12) night football games per year. He explained that the sky glow would be 3 to 5 times brighter than an automobile dealership. This would not be acceptable in a residential area. He questioned why this is being proposed in a residential neighborhood. He feels this might set precedence for other schools. He questioned if this was the correct place for this complex.

**Ron Beerman, 5625 Long Island Drive, Atlanta**, stated that noise is already an issue in this area because of I-285. Removing trees will make this worse. He stated that the crowd noise, whistles from the field, and the PA system would be excessive. This will produce a high increase in traffic. He stated that the school plans to relocate its administrative offices to this location. He explained their traffic engineer's report for this site. He stated that the applicant's traffic study was flawed in that the Montessori school across the street was closed during the traffic count.

**Chuck Berk, 5681 Long Island Drive**, stated that the Montessori school is very concerned about the traffic. He stated that the neighbors have been very supportive of the Montessori school. He stated that Holy Spirit is a very well respected school in Sandy Springs. They have needs and they have wants. He stated that they do need more office space but this is not the location for it. This is a protected neighborhood according to the Comprehensive Plan. He stated that they want a

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football field but there is no need for night games. He stated that the school could use other facilities. He stated that the school wants a place for the children to play soccer but they have a location at their lower campus. He stated that the school contends that the field does not hold up and is in poor shape by the end of the year. He suggested artificial turf.

He stated that they believe the reason for this application is because the City of Atlanta would not allow lights and night games at the lower campus. He requested that the Council protect the homeowners.

**Brian Daughdrill, Esq., 15 Lenox Pointe, Atlanta**, stated that this property is zoned CUP which is restricted to ten (10) acre parcels. This will be illegal under the City's Zoning Ordinance.

**Bill Comer, 5650 Eden Roc Lane, Atlanta**, stated that numerous people have attempted to develop this property. He is of the opinion that the Holy Spirit project is in the best interest of this property. The traffic, lighting, and noise conditions are right for this neighborhood. He requested that the Council vote in favor of this application.

**Amy Bubes, 575 Chestnut Rose Lane, Atlanta** stated that she and her family lives at the intersection of Mt. Vernon and Glen Erol. She stated that she is present to show support for this application. She stated that this property has been for sale for twenty two (22) years and this is the best use of the property. She stated that these fields will be landscaped to blend in with the residential community. Holy Spirit will adhere to the established nighttime hours of operation. Holy Spirit will have traffic control to keep traffic moving in the morning and afternoon.

**Kurt Oppermann, 6160 River Chase Circle**, stated that he works and lives in Sandy Springs. His children attend Holy Spirit and play on the school football and soccer teams. He stated that Heard's Ferry Elementary and Riverwood High School have extensive sports activities going on throughout the year. Although they have to drive by these schools to get to and from their home they have never been inconvenienced by the activities.

**Carmen Toledo, 5775 Long Grove Drive**, stated that she is the mother of two children who attend Holy Spirit Prep. This school is why they live in Sandy Springs. The diversity of the uses of property in Sandy Springs is one of the reasons they moved here. She supports this development.

**Den Webb, 1230 Peachtree Street, Smith, Gambrell, & Russell, LLP** asked the Council to take a step back and see what is being asked for. He stated that when the emotions are removed, what Holy Spirit is asking for is to take a dead piece of property and bring it to life. This will be an area for kids to grow and learn both physically and spiritually. He stated that he finds it hard to believe that 90% of the homeowners within a half mile radius signed a petition in opposition. He explained that there were 313 names on the petition. According to City staff, there are 1,500 home owners within a half mile radius. This is one in five.

Mayor Galambos stated that she would like to hear from Mr. Genner.

**Gareth Genner, President of Holy Spirit Preparatory School**, stated that someone had heard that Life University had offered the use of their facility. This offer has since been withdrawn. He stated that he had heard that there would be two other offers from other schools to use their facilities. He explained that North Springs has no availability for football at this time. He stated that Morgan Falls is a public park. They have been told they could use it as long as it does not infringe upon its primary purpose. He stated that they would not be allowed to play in the park when it rains as this may make the fields unusable for the Saturday game.

Councilmember Paul stated that the attorney for the opposition raised a point that may need to be addressed. He requested that he explain this. Mr. Daughdrill stated that the CUP zoning was based on there being three parcels of land combined equally sixteen acres. He explained that a minimum acreage for CUP zoning is ten (10) acres. He stated that if this parcel is pulled out, that development plan falls apart. He stated that Council is not authorized to provide a variance of lot size. This will cause an underlying zoning violation.

Den Webb responded that this is not an issue. City Attorney McLendon stated that he had requested any dispositive case law to support this position. None was provided.

**City Attorney McLendon** stated that the three properties composed to come up with the underlying CUP zoning will all still remain in that zoning classification. He stated that the use permit is applicable in all zoning categories. He stated that the other property owners will have to come forward for rezoning in order to find an appropriate use. Quoting the Zoning Ordinance, Mr. McLendon stated "unless otherwise specified, standards, conditions, stipulations attached to a use permit by the City Council shall supersede conflicting zoning conditions approved on the same site. He stated that the fact that the City's Ordinance has a discretionary component allows the Council to review the zoning conditions and determine if they are appropriate.

**Community Development Director Leathers** concurred with City Attorney McLendon and added that the use permit is on top of the zoning therefore all sixteen acres remain as CUP.

Councilmember Jenkins questioned if the other parcels would have to come back for rezoning. City Attorney McLendon stated that is correct.

Councilmember Meinzen McEnery stated that the opposition's attorney stated that the special use had to comply with the zoning district. She questioned if the City Attorney agreed with this. Mr. McLendon stated that the recommendations made by staff apply to the relevant underlying zoning conditions. He further stated that if it is a condition that has been put in place as a condition of zoning such as the driveway, it can be changed in this process.

Councilmember Meinzen McEnery requested that Mark Moore provide his findings from Friday's analysis and findings regarding the traffic plans submitted by the applicant and the opposition.

**Transportation Planner Moore** explained that he reviewed both traffic plans. He stated that if soccer, tennis, and swimming let out at the afternoon peak time, it could be as much traffic as a football game. This is approximately 113 to 145 cars. He stated that the 113 number is most likely. He stated that Long Island Drive at Mt. Vernon was not studied during peak times. The football games would be in the evenings, past the afternoon peak time. He stated that Long Island Drive is a side street stop controlled intersection that comes in at a 70% skew. He stated that a hand traffic count was done the prior week. He stated that there are approximately 140 cars in the entire afternoon peak time traveling north on Long Island Drive. He stated that this is on the cusp of a service level E. Adding 20 cars drops it to a service level F.

He stated that the school's traffic study estimated that approximately 70 percent of the traffic leaving the site would make it to this intersection. Seventy percent of 113 cars make this a level of service F and the controlled delay becomes 119 seconds on average. He stated that, in his professional opinion, 50% of the 113 cars going north is more realistic. This would still drop the level of service to F but the controlled delay would be 89 seconds. He explained his reasoning for this.

He stated that based on the 2008 soccer schedule, all of the traffic would not be leaving in the peak hours. He stated that it is staggered between 4:00 p.m. and 7:00 p.m.

Councilmember Jenkins questioned if there were any changes that could be made to this intersection regardless of this application. Mr. Moore stated that staff is reviewing at this time and plan to include this in next year's budget.

Councilmember Meinzen McEnery questioned if the traffic count included the Montessori School. Mr. Moore stated that it did not because they have not started yet.

Councilmember Meinzen McEnery clarified that Mr. Moore's study indicated that the additional traffic reduced the level of service from an E to an F, tripled the controlled delay from 48 seconds to 119 seconds, and tripled the queue length at that intersection.

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**Den Webb** explained that an early dismissal of the Montessori School would not affect the calculations for the morning peak times. He stated that the soccer schedule referred to is the soccer schedule for the lower school which is already on Long Island Drive and therefore would be no additional cars.

Councilmember Meinzen McEnerny questioned if Roswell Road and Lake Forrest Drive would also carry a significant amount of traffic that currently travels to the lower school. Mr. Webb stated that some but not all of the traffic would use those roads.

Councilmember Fries stated that there have been double studies on traffic and noise. The noise and light study went both ways and was difficult to evaluate. The light study did not reference the particular lighting the applicant is going to use. The applicant's noise study did not mention the crowd that the other study did. She would like to hear more about the buffers on the southern end of the property. The recreational setback is supposed to be 100 feet and the applicant is requesting 35 feet. The southern buffer is supposed to be 25 feet and the applicants request is zero (0) feet. She questioned why the applicant could not give at least five (5) feet.

Mr. Webb stated that only one set of studies was submitted by the applicant. Only one group performed a technical analysis. What was received from the opposition were three separate opinions. The property to the south is owned by Fred Foils. A stream bisects his property almost entirely from east to west. There is 75 feet of buffer to the south of that. The applicant has asked that a retaining wall be put in. One the purposes they seek to build is within two (2) feet of property line. It is easier to put a living wall 20 feet from the southern property line and will be a pervious surface. The high point of the living wall is 18 feet and the average is about ten (10) feet. If you stand in the middle of the stream now and look up, you look up a 30 foot embankment. Once the project is built if you look up the same embankment it will be replicated by the living wall and the height would be 25 feet. They are actually dropping the view slightly in the amount of five (5) feet from the southern property boundary. The area on both sides of the retaining wall will remain a pervious surface. They are also requesting the ability to locate the edge of the field 100 feet south of this property is unbuildable. There is 75 feet from the edge to the single line of the stream and at minimum there is additional 50 feet of undisturbed buffer on the south side. No matter what happens with that property at any point in the future in whatever goes on this site, it will never be located 125 feet at the edge of the field. There is a similar situation with the pool and the edge of the tennis courts. This is the reason for the variances.

Councilmember Fries questioned if there was anything more they could do to make it feel denser or more green added in there.

Jermain Thurman stated that the living wall system behaves just like a regular retaining wall. The only difference is that it is living green material. This is basically like a sock that is planted with seed. They stack these together in such a way that they form a retaining wall system. It is environmentally friendly and will not be an eye sore. Once you plant this and it grows quickly and has the same net effect. In the changing of the season the color will change. Different seeding can be chosen to have it look the way you want.

Councilmember Fries questioned if the buffers would have any additional evergreens. Mr. Webb stated that this is a stream buffer mitigation plan and trees will be added.

**Motion:** Councilmember Jenkins moved to approve 005/CV08-007, 5757 Long Island Drive, 5730 Lake Forrest Drive, Long Island Drive (PIN 17 0123 LL096), & 0 I-285 (PIN 17 0123 LL090), Applicant: Holy Spirit Preparatory School with staff conditions and the following amendments to staff conditions. The hours of operation shall be limited to the following: Monday through Friday, 7:00 a.m. to 8:00 p.m., Saturday 8:00 a.m. to 7:00 p.m., Sunday, 11:00 a.m. to 7:00 p.m. The closing hour on Friday evenings during the months of August through November shall be extended to 11:00 p.m. for Varsity and Junior Varsity football games only, up to twelve (12) times per season. The gates along Long Island Drive shall be closed and locked within thirty (30) minutes of the required closing hour of the facility. The lighting system for the football field design consistent with the "Musco Illumination Study"; the sound system designed consistent with Alternative "Sketch 2" Use of subject property or facilities shall be limited to activities conducted by the Holy Spirit Community. This condition shall not prohibit the owner from allowing the subject property to be used without charge

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(except recovery of any expense incurred) by civic and community groups designed to serve the interests of the citizens of Sandy Springs, including but not limited to persons, organizations and agencies affiliated with the government of the City of Sandy Springs or prevent Holy Spirit itself from offering recreational opportunities to children resident in Sandy Springs that may not be members of Holy Spirit. The owner shall install eight (8) foot all Security fencing around the entire perimeter of the property. Councilmember DeJulio seconded the motion.

1. To the owner's agreement to restrict the use of the subject property as follows:

- a. Restrict the use of the subject property to one (1) football/soccer field with a maximum of 400 bleacher seats, two (2) tennis courts, and one (1) swimming pool.
- b. Field house, concession stand, administration offices, athletic department staff and associated accessory uses at a density of 1,878.52 square feet per acre or 15,000 square feet, whichever is less. There shall be no classrooms for students permitted in the building. *(Clerk's note: This motion was amended by reconsideration at the October 7, 2008 Regular Meeting)*
- c. The maximum height of the field house/athletic department staff administrative office building shall be forty (40) feet.
- d. The hours of operation shall be limited to the following:

Monday through Friday            7:00 a.m. to 8:00 p.m.

Saturday                                8:00 a.m. to 7:00 p.m.

Sunday                                  11:00 a.m. to 7:00 p.m.

Exceptions:                            The closing hour on Friday evenings during the months of August through November shall be extended to 11:00 p.m. for Varsity and Junior Varsity football games only, up to twelve (12) times per season.

The gates along Long Island Drive shall be closed and locked within thirty (30) minutes of the above required closing hour of the facility.

2. To the owner's agreement to abide by the following:

- a. To the site plan submitted to the Department of Community Development dated received June 20, 2008. Said site plan is conceptual only and must meet or exceed the requirements of the Zoning Ordinance and these conditions prior to the approval of a Land Disturbance Permit. Unless otherwise noted herein, compliance with all conditions shall be in place prior to the issuance of a Certificate of Occupancy.
- b. To the Long Island Drive street frontage elevations received by the Department of Community Development dated June 20, 2008. Said improvements shall be subject to the approval of the Design Review Board.

3. To the owner's agreement to provide the following site development standards:

- a. The owner/developer shall dedicate thirty (30) feet of right-of-way from centerline of Lake Forrest Drive along the entire property frontage or ten and one-half (10.5) feet from back of curb, whichever is greater, to the City of Sandy Springs.
- b. The owner/developer shall dedicate thirty (30) feet of right-of-way from centerline of Long Island Drive along the entire property frontage or ten and one-half (10.5) feet from back of curb, whichever is greater, to the City of Sandy Springs.

- c. No more than one (1) exit/entrance on Long Island Drive or as may be approved by the Sandy Springs Traffic Engineer. Curb cut location and alignment are subject to the approval of the Sandy Springs Traffic Engineer.
- d. Outdoor lighting of the recreation fields shall be permitted on Friday evenings during the months of August through November ending at 11:00 p.m. for Varsity and Junior Varsity football games only, up to twelve (12) times per season.
- e. To a sound system designed consistent with Alternative "Sketch 2" as detailed in the Noise Study submitted to the Department of Community Development dated received August 8, 2008. Said sound system shall be directed away from the southern property line and toward the interior of the property facing north to I-285. The sound system shall be attached to and suspended from a structure (e.g. truss or roof) over the bleacher seating and the bleachers shall be designed with a wall that will shield any noise spillover into adjacent residential properties. The sound system shall only be permitted on Friday evenings during the months of August through November ending at 11:00 p.m. for Varsity and Junior Varsity football games only, up to twelve (12) times per season.
- f. No parking lot lighting shall be installed within 50 feet of the south property line.
- g. Parking lot lighting installed shall be no taller than 20 feet from finished grad.
- h. All outdoor light fixtures, including but not limited to parking lot lighting and security lighting, shall be baffled or diffused in a manner so as to prevent light spillover onto the neighboring residential properties.
- i. To a lighting system for the football field designed consistent with the "Musco Illumination Study" submitted to the Department of Community Development dated received May 29, 2008. The lighting system for the football field shall only be permitted on Friday evenings during the months of August through November ending at 11:00 p.m. for Varsity and Junior Varsity football games only, up to twelve (12) times per season.
- j. Musical bands, orchestras, marching bands, etc. shall be permitted to play or perform on the property on Friday evenings during the months of August through November ending at 11:00 p.m. for Varsity and Junior Varsity football games only, up to twelve (12) times per season.
- k. The swimming pool shall be a lap pool for practice only. No swim meets or competitions shall be permitted.
- l. To construct an eight (8) foot tall, decorative fence with a gate along the Long Island Drive frontage. Said fence design shall be subject to the approval of the Design Review Board.
- m. The owner/developer shall provide streetscape including sidewalks, street trees, pedestrian lighting, and landscaping consistent with the Urban District standards of the Sandy Springs Overlay District along the Lake Forrest Drive and Long Island Drive frontages of the property. Said streetscape improvements shall be subject to the approval of the Design Review Board.
- n. Trash collection shall be limited to between the hours of 9:00 AM and 4:00 PM Monday through Friday. All trash receptacles shall be screened from view from the adjoining residentially zoned property to the south.
- o. Delivery hours shall be limited to the hours of 7:30 AM to 7:30 PM Monday through Friday. Deliveries shall be prohibited on Saturday and Sunday.
- p. Grounds maintenance shall be limited to the hours of 9:00 AM to 5:00 PM Monday through Friday and 9:00 AM to 4:00 PM on Saturday. Ground maintenance shall be permitted on Sunday under only one or more of the following exceptions, subject to the approval of the Director of Community Development:

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- i. The inability to conduct any grounds maintenance work during four (4) of the preceding six (6) days due to inclement weather;
  - ii. Emergency situations;
  - iii. The cleaning or repairing of storm damage.
- q. The owner/developer shall submit a written parking and busing plan to the Public Works Department prior to the issuance of a Land Disturbance Permit for this site. The plan shall include an analysis of parking needs and transportation options for participants and spectators to the facility. The applicant shall install additional signage, markings, or modifications called for in the plan at their expense concurrent with development. The plan is subject to the approval of the Public Works Department and all work called for must be completed prior to issuance of any Certificates of Occupancy.
- r. To delete the required twenty (20) foot landscape strip along the north property line for a distance of 880 feet adjacent to I-285 as shown on the site plan received by the Department of Community Development dated June 20, 2008 (CV08-007).
- s. To reduce the required twenty-five (25) foot buffer and ten (10) foot improvement setback around the proposed retaining wall along the south property line adjacent to property zoned CUP (Community Unit Plan District) to a twenty (20) foot landscape strip as shown on the site plan received by the Department of Community Development dated June 20, 2008 (CV08-007). Said landscape strip shall be replanted where sparsely vegetated, subject to the approval of the Sandy Springs Arborist. The proposed retaining wall shall be designed as a Filtrexx Living Wall system as provided in the detail received by the Department of Community Development dated May 29, 2008.
- t. To reduce the required 100 foot outdoor recreation area setback to thirty-five (35) feet adjacent to residentially zoned property to the south received by the Department of Community Development dated June 20, 2008 (CV08-007). Said setback shall be replanted where sparsely vegetated, subject to the approval of the Sandy Springs Arborist.
- u. To allow encroachments into the required twenty-five (25) foot impervious surface setback as shown on the site plan received by the Department of Community Development dated June 20, 2008 (CV08-007). Runoff that drains to the stream buffer from developed areas of the site, including athletic fields, shall pass through a water quality device that facilitates infiltration of the water quality volume into the soil. The water quality volume shall be calculated as specified in Section 1.3.2.1 of the Georgia Stormwater Management Manual.
- v. Leasing or renting the subject property and/or the facilities thereon to others shall be prohibited. Use of the subject property and/or the facilities thereon shall be limited to activities conducted by the Holy Spirit Community. These conditions shall not prohibit the owner, however, from allowing the subject property to be used without charge (except recovery of any expense incurred) by civic and/or community groups located within the City of Sandy Springs and/or civic and/or community groups designed to serve the interests of the citizens of Sandy Springs, including but not limited to persons, organizations and/or agencies affiliated with the government of the City of Sandy Springs or prevent Holy Spirit itself offering recreational opportunities to children resident in Sandy Springs notwithstanding that they may not be members of the Holy Spirit community.
- w. All driveways, paths, and/or parking areas shall be constructed of pervious surfaces.
- x. The owner/developer shall install eight (8) foot tall security fencing around the entire perimeter of the property, except for the area described in condition 3.l. above. Said security fence design and location shall be subject to the approval of the Sandy Springs Arborist.

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**Substitute Motion:** Councilmember Meinzen McEnery moved to deny CV08-007, 5757 Long Island Drive, 5730 Lake Forrest Drive, Long Island Drive (PIN 17 0123 LL096), & 0 I-285 (PIN 17 0123 LL090), Applicant: Holy Spirit Preparatory School. Motion failed for lack of second.

**Motion and Vote:** Councilmember Paul moved to suspend the use of Roberts Rules of Order, that a motion not require a second in order for Councilmember Meinzen McEnery to make a statement. Councilmember Fries seconded the motion. The motion carried unanimously.

**Discussion on the motion:** Councilmember Meinzen McEnery stated that she is not against a school but a use that is intrusive into the City's neighborhoods when a school has enough room or could accommodate on their administrative needs and their night ball fields at some other location. She has to rely upon the facts and the facts are that the professional planning staff indicated that there are three major areas in which this special use which has a higher review standard than a rezoning. It is against the City's Comprehensive Land Use Plan and is inconsistent. The applicant is requesting setbacks, variances in four different areas and that is because the intensity of the use is so great that they need to relax the buffers. That, by itself, is inconsistent with the neighborhood protection portion of the City's vision statement in Chapter One, of the City's Comprehensives just approved by City Council a few months ago. The vision statement does say that Sandy Springs will continue to be characterized by residential neighborhoods that are predominantly single family detached family homes at lower density. The City will strive to ensure that existing single family neighborhoods will continue to be characterized by large lots, substantial tree cover and low vehicular traffic. In addition to Chapter One, the comparison of the character area identified out of the eleven character areas as protected neighbors and the over reaching principal that was sited in that character area was neighborhood protection. The intensity of this use is going against the City's Comprehensive Land Use Plan. She believes that there is a better solution to the applicants needs to grow their school than bring this intensive use with the traffic it brings in. The neighborhoods are being let down and need to rely on a Comp Plan that protects them.

**Motion to Amend:** Councilmember Fries moved to amend the main motion by adding that there be no student classrooms, applicant shall work with the City Arborist on Evergreen plantings on the southern property line and work with the City Arborist on the living wall.

**Second and Vote:** Councilmember DeJulio seconded the motion. The motion carried unanimously.

**Vote on Main Motion:** The motion carried 4-2, with Councilmember Meinzen McEnery and Councilmember MacGinnitie voting in opposition.

**U08-009/CV08-013, 5655 Lake Forrest Drive, Applicant: Hamzeh R. Monfared, A use permit to convert the existing single family residence into a church, with concurrent variances.**

**Senior Planner Ruffin** stated that this is a use permit request and the applicant is requesting to convert the existing 3,100 square foot single family residence into a church. The applicant is also requesting four (4) concurrent variances. The petition was heard at the May 27, 2008 Design Review Board meeting. The Board recommended denial of the request. The petition was heard at the July 17, 2008 Planning Commission hearing. The Commission also recommended denial of the application. Staff is recommending denial of the application and the concurrent variance request.

**James Drew, Attorney Representative** stated that the applicant wishes to use the existing structure as a church facility. This property is located on Lake Forrest Drive. The property consists of 3.148 acres rectangular tract and 220 front feet on Lake Forrest Drive and goes back 620 plus feet to the rear of the property line. The applicant wishes to place 17 parking spaces but only needs six (6) spaces and would be approximately 60 feet back from Lake Forrest Drive. There is a 20 foot landscape buffer that the applicant would like to leave and would like to make improvements with a beautiful landscape. The church would only operate a few times a week, usually on Sunday. There would be no more than 20 people attending the church service. The church service is primarily designed for Christian Iranians in the Sandy Springs area. The applicant would conduct the church service. There would be no outside events to cause noise or out door lighting. The property to the north is zoned commercial and is used for apartment houses.

Mayor Galambos called for public comment.

**Susan Yeosock, 785 Lake Summit Drive, President, Lake Forrest Summit Committee Association**, representing 35 homes. This proposal is inconsistent with the Sandy Springs Overlay District Standards and future land use which is R-2 to 3. The property does not allow for proper transition into the residential area along Lake Forrest Drive as recommended by the policies of the Comprehensive Plan and will change the residential character of this portion of Lake Forrest Drive. This property has residential structure surrounding on the north, south, east and west. Variance, if granted will diminish the protected screen adjacent to neighboring resident's property and would encroach into a natural stream buffer. In addition, the applicant has not proposed any additional landscape screening along the property frontage in front of the proposed parking area. The City Manager, the Department of Community Development, Design Review Board and the Planning Commission have all recommended denial. Neighbors are respectively requesting City Council denial with nine (9) to fifteen (15) letters in Council packet from her neighborhood. The neighbors take issue with the application for this use permit in violation to the Tree Conservation Ordinance in which this property owner has been taken to court twice for. If denied, she requested that City Council require the applicant to bring the property back to the standards of the International Property Maintenance Code. She has personally contracted Code Enforcement as this applicant has violated 302.4, had leaves in access of ten (10) inches. Presently, this property is no where near the standards of Sandy Springs.

**Joel Blackford, 40 Marchman Drive**, stated that he is an ordained minister, retired last October from eleven (11) years of servicing his calling. He absolutely thinks that churches belong in the community where people can walk to church. He has served several churches and there was always adequate parking. The subject property has a very small front yard and the backyard drops off into a gully. In an earlier meeting it was asked what size community does this ministry serve and was told that there is approximately 30,000 people in this community. The applicant is only requesting 17 parking spaces and no potential to grow other than park all through the neighborhood for any kind of major worship. It is his understanding that this facility will also serve as a residence. This would set a precedent and anyone in Sandy Springs could request spot zoning, neighborhood and church zoning because they are currently holding worship services. This piece of property is not suitable for the use of a church and request that City Council deny.

Councilmember DeJulio questioned if the property had sewer or septic tank. There was a serious problem in his neighborhood where not only did the septic tank over flow because of the excessive use beyond that of a residence but it also seeped into the house of the property next door. The sewage went into their home and they had to evacuate the house. This type of property is not intended for heavy use like you would get by having a church there.

Councilmember Fries questioned if approved to become a church facility would the applicant remain living on the property. Mr. Drew stated that the applicant would for a short time. Councilmember Fries questioned staff if this was appropriate for this use.

**Director of Community Development Leathers** stated that is not the request before City Council. The request before Council is a church. In the conditions, should City Council choose to approve it as a church it does not include residents and staff did not evaluate it in terms of both as a residence and a church. If that is the case it would have to be dealt with differently. There are conditions in the report that would bring the building up to code because this is a place of public assembly. There are a number of improvements that have to be made.

Councilmember Meizen McEnery stated that this particular use is not consistent with the City's Comprehensive Land Use Plan and application was denied at every stage of the review process. It is coupled with the problem that Councilmember Fries just identified. The applicant needs to live there and this application does not allow living within a church.

**Motion and Vote:** Councilmember Fries moved to deny U08-009/CV08-013, 5655 Lake Forrest Drive, Applicant: Hamzeh R. Monfared, A use permit to convert the existing single family residence into a church, with concurrent variances. Councilmember Meizen McEnery seconded the motion. There was no Council discussion. The motion carried unanimously.

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**U08-010, 7700 Spalding Drive, Applicant: Clearwire U.S., LLC, A use permit to extend the height of an existing cellular tower/antenna.**

**Ordinance No. 2008-08-35**

**Senior Planner Ruffin** stated that this is a use permit to extend the maximum district height to allow the existing 205 foot cell tower to remain so that the applicant can co-locate on the tower. The existing tower was approved under the Fulton County administrative permit process to be constructed at a maximum height of 200 feet. The tower was ultimately constructed at the 205 feet, which causes the applicant to have to come through the use permit process.

Staff is recommending approval conditional of the request.

The petition was heard at the July 17, 2008 Planning Commission hearing. The Commission recommended approval of the application subject to staff conditions. The Commission also recommended that the Council consider a text amendment to clarify that lighting rods and other lighting fixtures required by federal law will be included in the overall height for a cell tower.

**Kiersten Lurer Baran, 807 S. Candler Street, Telecom, Representative**, stated that the applicant is here to co-locate equipment at the 135 foot level but due to the tower not being in compliance would request to bring into compliance to make use of the existing structure opposed to erecting a tower.

Mayor Galambos called for public comments. There were no public comments.

**Motion:** Councilmember Fries moved to approve U08-010, 7700 Spalding Drive, Applicant: Clearwire U.S., LLC, A use permit to extend the height of an existing cellular tower/antenna subject to the following staff conditions:

1. To the owner's agreement to restrict the use of the subject property as follows:
  - e. To a maximum height of two hundred five (205) feet for the cellular antenna/tower (U08-010).
2. To the owner's agreement to abide by the following:
  - a. To the site plan received by the Department of Community Development dated May 12, 2008. Said site plan is conceptual only and must meet or exceed the requirements of the Zoning Ordinance and these conditions prior to the approval of a Land Disturbance Permit. Unless otherwise noted herein, compliance with all conditions shall be in place prior to the issuance of a Certificate of Occupancy.

**Second and Vote:** Councilmember DeJulio seconded the motion. There was no Council discussion. The motion carried unanimously.

### **Zoning Modification**

**ZM08-008, 4465 High Grove Point, Applicant: Frank Pologruto, To modify condition 3.g. of Z88-0047 to reduce the rear yard setback from 35 feet to 25 feet to allow the construction of a screened-in porch addition on the rear of the existing residence.**

**Ordinance No. 2008-08-36**

**Senior Planner Ruffin** stated that this is a request to modify the conditions of Fulton County zoning case Z88-0047 to modify condition 3.g. to reduce the required thirty-five (35) foot building set back along the north property line to twenty-five (25) feet. The applicant intends to extend the existing deck and to construct a screened in porch on the rear of the property. The total deck area at completion will be 14 feet x 22 feet.

**Frank Pologruto, 1060 Medlin Street, Decks & More**, stated that the owner of the property Joe and Janet Moan would like to build a nice screened in porch on the back of their house.

Mayor Galambos called for public comment. There were no public comments.

**Motion:** Councilmember Fries moved to approve ZM08-008, 4465 High Grove Point, Applicant: Frank Pologruto, to modify condition 3.g. of Z88-0047 to reduce the rear yard setback from 35 feet to 25 feet to allow the construction of a screened-in porch addition on the rear of the existing residence subject to the following staff conditions:

1. To the owner's agreement to restrict the use of the subject property as follows:
  - a. Single family detached dwellings and accessory uses and structures.
  - b. No more than 17 total dwelling units at a maximum density or 3.14 dwelling units per acre based on the total acreage zoned.
  - c. The minimum heated floor area per dwelling unit shall be 2,200 square feet.
2. To the owner's agreement to abide by the following:
  - a. To submit to the director of Public Works for his approval prior to the approval of the Land Disturbance Permit, a revised Site Plan based on the certified boundary survey of the entire property zoned, incorporating the stipulations of these conditions of the zoning approval and meeting or exceeding the requirements of the zoning resolution.
  - b. To submit to the Director of Public Works for his approval prior to any defoliation or alteration of the site, a Land Disturbance application which shall include a grading plan including phasing, a hydrological study, a separate soil sedimentation and erosion control plan, and proposed provisions for permanent storm water retention.
  - c. To submit to the Director of Public Works for his approval prior to the approval of a Land Disturbance Permit, a detailed landscape and/or tree protection plan for all required buffers, landscape strips, and tree protection zones. Said landscaping for each phase of development shall be in place prior to the recording of the final plat for each phase of development.
  - d. To the site plan submitted to the Department of Community Development for Lot 7 dated received June 2, 2008. Said site plan is conceptual only and must meet or exceed the requirements of the Zoning Ordinance and these conditions prior to the approval of a Land Disturbance Permit. Unless otherwise noted herein, compliance with all conditions shall be in place prior to the issuance of a Certificate of Occupancy (ZM08-008).
3. To the owner's agreement to the following site development considerations:
  - a. Provide a 4 foot high landscape earthen berm with a maximum slope of 3 to 1 and/or a minimum 6 foot high 100% opaque solid fence or masonry wall or a minimum 25 foot wide natural undisturbed buffer subject to the approval of the Director of Community Development and the Sandy Springs Arborist along the entire length of Windsor Parkway (except for approved access crossing), said improvements to be located outside of any public right-of way) and interior to any required landscape strips and/or buffers. The finished side of said fence/wall shall face the exterior property line.

- b. Any exterior illumination on the site shall not exceed 1.2 foot-candles on any property line adjacent to a residential use or zoning district, nor will the light source be directly visible from adjoining residential properties.
  - c. No more than 1 exit / entrance on Windsor Parkway. The location and alignment of said curb cut is subject to the approval of the Sandy Springs Traffic Engineer.
  - d. The exterior of all concrete blocks shall be coated with an architectural treatment (e.g., epoxy, stucco, brick veneer, etc.) or an alternate solution as may be approved by the Director of Community Development.
  - e. Provide and maintain off-street parking on the subject property during the entire construction period.
  - f. All recreational facilities shall be located internal to the subdivision or subject to the approval of a special Use permit.
  - g. All lots abutting Derby Hills subdivision shall have a minimum set back of 35 feet.
4. To the owner's agreement to abide by the following requirements, dedications and improvements:
- a. Dedicate at no cost to **the City of Sandy Springs** along the entire property frontage, prior to the approval of a Land Disturbance Permit, sufficient land as necessary to provide a minimum of 45 feet of rights-of-way from the centerline of Windsor parkway, and dedicate at no cost to the City of Sandy Springs such additional right-of-way as may be required to provide at least 10.5 feet of right-of-way from the back of curb of all abutting road improvements, as well as improve said road 14.5 feet from center of road to back of curb along the entire property frontage, and further to allow the necessary construction easement while the right of way is being approved.
  - b. Provide a deceleration lane for a distance of 200 feet and a 50 foot taper from the protect entrance or as may be approved by the Sandy Springs Traffic Engineer.
  - c. Prior to the issuance of a Land Disturbance Permit, pay into an escrow account at least \$2,380 as a pro-rated share of the cost of improving Peachtree Dunwoody Road and Windsor Parkway for 2 bridges over Nancy Creek. The final amount shall be determined according to the engineering news record index from the approval date of this petition, subject to the approval or the Director of Public Works.
  - d. Connect to metropolitan water and public sanitary sewer available to the site as well as pay all required tap-on fees, front footage assessments and the pro-rated share of the cost of public utility extensions and the Nancy Creek sewer relief system as determined by the Department of Public Works.
  - e. Provide designated fire lanes adjacent to all structures and provide water mains, fire hydrants and access for fire-fighting equipment as required by Sandy Springs Fire Department.
  - f. Design required on-site storm water detention facilities such that they are not located within any required buffers or landscape strips.
  - g. Construct sidewalks along entire property frontage within the right-of-way of Windsor Parkway. Said sidewalks for each phase of development shall be in place prior to the recording of the final plat.
5. To the owner's agreement to abide by the following:
- a. To contact the Director of Public Works, prior to the application for a Land Disturbance Permit to arrange with the City Arborist an on-site evaluation of existing specimen trees/stands, buffers, and tree protection zones within the property boundaries.

To maintain as a minimum, the tree density requirements as prescribed by the Sandy Springs Tree Conservation Ordinance, either through the retention of existing trees, or tree replacement, in perpetuity.

**Second and Vote:** Councilmember DeJulio seconded the motion. There was no Council discussion. The motion carried unanimously.

### **Rezoning**

**RZ08-013/U08-007/CV08-011, 6120 Peachtree-Dunwoody Road, Applicant: Hilton Suites Perimeter, To rezone the subject property from O-I conditional to O-I to maintain the existing hotel and to add a permanent tent for outdoor events, with concurrent variances and a use permit to exceed the maximum district height. Ordinance No. 2008-08-37**

**Senior Planner Ruffin** stated that the applicant is requesting to rezone the subject property from O-I conditional to O-I to maintain the existing hotel and add a permanent tent for outdoor events, with two concurrent variances and a use permit to maintain the existing height of the hotel.

Staff is recommending approval conditional of the rezoning, concurrent variances and a use permit request.

The petition was heard at the July 17, 2008 Planning Commission hearing. The Commission recommended approval subject to staff conditions amended to require three (3) year expiration and annual fire and building inspections.

**Trav Carter, F-304, 1579 Monroe Drive, Representative,** stated that the applicant is requesting a tent facility at the rear of the property, 4,000 square foot, heated, air conditioned and that it be made a permanent structure. It has been there since 2002 and is used for overflow capacity, parties, and various meetings. The applicant is requesting two variances. One is to reduce the parking from 280 parking spaces to 202. The applicant operates an airport shuttle service and many of the hotel guests do not drive cars to the hotel. Rarely is the parking lot filled. The applicant has an agreement with the property across Peachtree Dunwoody Road to allow for any overflow parking if needed. The applicant is also requesting a reduction of five (5) feet from the improvement setback because the tent as it is now built sits five (5) feet in that improvement setback. The applicant respectfully request that City Council approve application without that condition. The applicant has to add a sprinkler to this tent and it is a substantial cost. The applicant must weigh that cost verses if for some reason this is denied in three (3) years, the applicant will only have a three year investment.

The applicant has met with the Dunwoody Springs Homeowners Association and the Garden's Homeowners Association and is here tonight in support of this application.

The Planning Commission did add a condition that the applicant's property that must be reviewed in three years.

**Robert Belmonte, 6120 Peachtree Dunwoody Road, General Manager, Hilton Suites Hotel,** stated that he has been at this property since 2003. The pavilion tent is something that the hotel put up at the end of 2001, right after 9-11 to supplement the income of the hotel at very tough times. Over the years it has developed into a meeting overflow facility of the hotel. This gives the hotel the ability to offer clients a relative low cost facility because there is not a tremendous amount of overhead to build it. In the seven (7) years the hotel has not received any type of noise violation. Fulton County's condition was that it closes by midnight. The hotel took it upon themselves to close at 11:00 p.m. for neighboring concerns but primarily for the hotel in their purpose of selling rooms and getting good nights sleep because it is critical to the hotels survival. The pavilion serves to facilitate to the local corporate entities having day meetings that they could not otherwise facilitate at their operation. Hilton has done a total of seven (7) evening events and will probably have three (3) in December. The rest of the business occurs in the day time or early evening meetings, although there is one event in October that they are very proud of, the Sandy Springs Junior Tennis Tournament. Hilton is committed to keeping the tent up and maintain as a well run property. They already met up with the Building Department last week and have been in consultation with the Fire Marshall to work up specifications to come to code. Hilton is committed and will

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do this one way or another and make the investment which will be significant for them. This is a valuable piece of property for Hilton and has done well.

Mayor Galambos called for public comment.

**Gary Russell, 703 Garden Court, Dunwoody Springs Community Association**, spoke in support of the application.

**John Fonk, 706 Garden Court, The Gardens Condo Association**, spoke in support of the application.

Mayor Galambos called for public comment in opposition of the applicant's request.

**Mary Nakhshige, 913 Garden Court**, stated that she has trouble with the definition of tent and allowing it to be permanent. The permit for the tent is for the property and should Hilton decide to sell the property to any other owner, she questioned if the tent could remain.

**Assistant City Attorney McLendon** stated that it would depend on the terms if City Council grants it. If approved, it would go toward the ownership of the property. The conditions that City Council would put on it at approval would go with the ownership of the property.

**Ms. Nakhshige** stated that the other properties near her neighborhood do not have a desire to put up a tent, she questioned if this would set a precedent with the other hotels in Sandy Springs.

Mayor Galambos stated that the City would look at each one separately.

Councilmember Meinzen McEnery stated that Hilton needs a variance on their parking because they put a tent on top of their parking. Ms. Ruffin stated that Hilton would need a variance without a tent because they do not have enough parking as it currently exist. Councilmember Meinzen McEnery stated that with the tent it further acerbates the parking requirements. Ms. Ruffin stated that was correct.

**Motion:** Councilmember Fries moved to approve RZ08-013/U08-007/CV08-011, 6120 Peachtree-Dunwoody Road, Applicant: Hilton Suites Perimeter, to rezone the subject property from to O-I (Office and Institutional District) conditional to O-I (Office and Institutional District) and subject to the staff conditions, and adding a condition that should the property be sold to a franchise other than the Hilton Hotel Corporation the tent facility shall be removed:

1. To the owner's agreement to restrict the use of the subject property as follows:
  - a. A 224-room hotel (with a restaurant) and associated accessory uses.
  - b. The maximum building height shall be 6 stories. (U08-007).
  - c. A 4,000 square foot outdoor tent facility.
  - d. The hours of operation for the outdoor tent facility shall be 8:00AM to 11:00PM.
  - e. The owner/developer shall resubmit a petition to renew the use permit (U08-007) for the tent after five (5) years from the date of the Mayor and City Council approval August 19, 2008.
  - f. Should the property be sold to a franchise other than the Hilton Hotel Corporation the tent facility shall be removed.
2. To the owner's agreement to abide by the following:
  - a. To the site plan received by the Department of Community Development dated May 6, 2008. Said site plan is conceptual only and must meet or exceed the requirements of the Zoning Ordinance and these conditions prior to

the approval of a Land Disturbance Permit. Unless otherwise noted herein, compliance with all conditions shall be in place prior to the issuance of a Certificate of Occupancy.

3. To the owner's agreement to provide the following site development standards:
  - a. The owner/developer shall dedicate fifty-five (55) feet of right-of-way from centerline of Peachtree-Dunwoody Road along the entire property frontage or ten and one-half (10.5) feet from back of curb, whichever is greater, to the City of Sandy Springs.
  - b. To reduce parking spaces from 280 spaces to 202 spaces. (CV08-011)
  - c. To reduce the required ten (10) foot improvement setback along the north property line to five (5) feet. (CV08-011).
  - d. To bring tent into compliance with proper building codes pursuant to Chapter 105, Buildings and Building Regulations, of the Code of the City of Sandy Springs.
  - e. To bring tent into compliance with proper fire codes pursuant to Chapter 22, Fire Prevention and Protection, of the Code of the City of Sandy Springs.
  - f. The tent will be inspected annually by the City of Sandy Springs department of Community Development and Fire Department.

**Discussion on the motion:** Councilmember DeJulio stated that three (3) years is too short to advertise Hilton's investment and questioned how many years would be sufficient to advertise their investment. Mr. Carter stated that it would be for five (5) years. Hilton is committed to stay either way. Councilmember DeJulio questioned Councilmember Fries if she would accept the friendly amendment of five (5) years. Councilmember Fries stated that she would change it to five (5) years and renewal every three (3) years after the first five (5) years.

**Point of Order by Councilmember Paul:** Councilmember Paul proposed an alternative motion as to flip the time schedules and give Hilton a three (3) year test trial and to be renewed five years there after.

Councilmember Fries stated that she has a reason for why the five (5) years is too long. She gave the five (5) years because she understands the cost and believes the three (3) years is better than the five (5). Her concern is how the tent maintains itself. There will be wear and tear and she does not want it to look bad. She does not believe the Hilton would allow that but she would like to put something in place for protection.

Councilmember Meizen McEnery questioned if the City really wanted to encourage tents to be considered permanent whether at three, one or five years. She questioned why Council would encourage reducing parking requirements so that tents can be built and maintained in the Sandy Springs community. Council needs to be very careful with the precedent being set for any other use, hotel or otherwise, to request permanent tenting in Sandy Springs. She can not support this application.

**Second and Vote:** Councilmember Jenkins seconded the motion. The motion carried 5-1, with Councilmember Meizen McEnery voting in opposition.

### **Text Amendments**

**Consideration of approval of RZ08-022, an Ordinance to Amend Article 3, Definitions, of the Sandy Springs Zoning Ordinance.**  
**Ordinance No. 2008-08-38**

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**Assistant City Attorney McLendon** stated that this is three suggested zoning modifications to the Zoning Ordinance and two of the permitting Ordinances that primarily impinge on the issue of Adult Entertainment. In addition, prior to the meeting he submitted a substitution of some text language to change the definition of government buildings to include government buildings which are either owned and/or occupied so it would include the distant requirements attached to lease property of the government. The other substitution was for Section 26.25 of the permitting ordinance and it is a wholesale substitution of what was in the original packet and adds more requirements which have been suggested by the City's police department and has been cooperated with the attorneys who represent the City on coming up with that code section.

Mayor Pro Tem DeJulio called for public comment. There were no public comments.

**Motion and Vote:** Councilmember Fries moved to approve RZ08-022, an Ordinance to Amend Article 3, Definitions, of the Sandy Springs Zoning Ordinance including change in language; government buildings owned and/or occupied by such government. Councilmember Paul seconded the motion. There was no Council discussion. The motion carried unanimously.

**Consideration of approval of RZ08-023, an Ordinance to Amend the Regulations of the City of Sandy Springs Adult Entertainment Ordinances.  
Ordinance No. 2008-08-49**

**Assistant City Attorney McLendon** stated that this is a provision that will modify the zoning ordinance related to adult book stores as indicated and has been reviewed by the City's attorney's as well as other experts for clarification.

Councilmember Paul questioned if it was in the City's ordinance and regulating book stores that there should be no breach between the walls of those book stores so that there can not be any kind of interaction between the customers. He requested that it is to have Code Enforcement to check the existing facilities in this City to make sure that they are complying with the Code.

**Motion and Vote:** Councilmember Fries moved to approve RZ08-023, an Ordinance to Amend the Regulations of the City of Sandy Springs Adult Entertainment Ordinances including change in language; government buildings owned and/or occupied by such government. Councilmember Paul seconded the motion. There was no Council discussion. The motion carried unanimously.

**Consideration of approval of an Ordinance to Amend Chapter 26, Article 2, Adult Entertainment, of the Code of the City of Sandy Springs.  
Ordinance No. 2008-08-40**

**Assistant City Attorney McLendon** stated that this is in the permit section of the Code and not a zoning ordinance. This is basically the rules and regulations for individuals that work in these establishments. It sets forth definitions and then imposes the required permits including the substituted language put forward prior to the meeting which would set forth the process for people to come in, make their application and have appropriate background checks and permits be issued.

Mayor Pro Tem DeJulio called for public comment. There were no public comments.

**Motion and Vote:** Councilmember Fries moved to approve Ordinance to Amend Chapter 26, Article 2, Adult Entertainment, of the Code of the City of Sandy Springs with additions of Section 25 and Section 26, Adult Establishment Work Permit in total as presented by City Attorney. Councilmember Jenkins seconded the motion. There was no Council discussion. The motion carried unanimously.

**Eminent Domain**

**Consideration of approval of a Resolution to Authorize the Mayor and the City Council to approve the appropriation of the property located at 43 Abernathy Road through the Use of Eminent Domain Process.  
Resolution No. 2008-08-43**

**Director of Public Works Parham** stated that this property was deemed necessary for the acquisition as part of the Abernathy Road Linear Park Project. Negotiations have reached an impasse.

Mayor Pro Tem DeJulio called for public comment. There were no public comments.

**Motion and Vote:** Councilmember Paul moved to approve a Resolution to Authorize the Mayor and the City Council to approve the appropriation of the property located at 43 Abernathy Road through the Use of Eminent Domain Process. Councilmember Meinzen McEnery seconded the motion. There was no Council discussion. The motion carried unanimously.

**Alcoholic Beverage Applications**

**Consideration of approval of Alcoholic Beverage License Application for Carro De Boi at 8612 Roswell Rd Sandy Springs, GA 30350. Applicant is Ancuta Valcu for Consumption on premise Wine and Malt Beverage.**

**Interim Director of Operations Patterson** stated that this application did meet the administrative requirements of the City and was advertised. However, the applicant has decided to close the business. Staff recommends to postpone indefinitely.

Mayor Pro Tem DeJulio called for public comment. There were no public comments.

**Motion and Vote:** Councilmember Paul moved to postpone indefinitely Alcoholic Beverage License Application for Carro De Boi at 8612 Roswell Rd Sandy Springs, GA 30350. Applicant is Ancuta Valcu for Consumption on premise Wine and Malt Beverage. Councilmember Meinzen McEnery seconded the motion. There was no Council discussion. The motion carried unanimously.

**Consideration of Approval of Alcoholic Beverage License Application for The New York Butcher Shoppe 6949 Roswell Rd Ste 215 Sandy Springs, GA 30342. Applicant is John Robert Dillon IV for Retail Package Wine and Malt Beverage.**

**Interim Director of Operations Patterson** stated that this application is relative to a new business and has been reviewed and has met the administrative requirements of the City. The public hearing has been advertised as required. Staff recommends approval of this application.

Mayor Pro Tem DeJulio called for public comment. There were no public comments.

**Motion and Vote:** Councilmember Fries moved to approve Alcoholic Beverage License Application for The New York Butcher Shoppe 6949 Roswell Rd Ste 215 Sandy Springs, GA 30342. Applicant is John Robert Dillon IV for Retail Package Wine and Malt Beverage. Councilmember Jenkins seconded the motion. There was no Council discussion. The motion carried unanimously.

**New Business:**

**Consideration of approval of a Resolution adopting the Transportation Master Plan.  
Resolution No. 2008-08-44**

**Transportation Planner Moore** stated that staff has made the changes that were recommended by City Council in the Work Session and has distributed the pages that were edited. He has compiled all the comments received directly from the community. Included is a general narrative statement on road widening that reflected the opinion of staff.

**Transportation Planner Moore** explained the changes made to the Transportation Master Plan. D2 as written would change to include the current cost estimate for the Intersection Improvement Projects at Peachtree Dunwoody and Abernathy Road. This was included in the short range which reflects the current amounts spent to date on the Concept Plan for Peachtree Dunwoody. D6, D9 and D10 would only change to show increase for the inflationary value to push them out to the long range years. D7 would change to reflect the current cost estimate for the initially preferred alternative which was the least aggressive of the three (3) for the Dunwoody Project. This was included in the mid range.

Councilmember Jenkins stated that she had one comment in D2, she would like to pull out “construct intersection improvements of Spalding Drive and Abernathy Road intersections” and put in B6 in the short term range. The T-026 Project will go down from \$20,000,000 to \$3,500,000. It originally said \$20,000,000 for the Peachtree Dunwoody.

**Transportation Planner Moore** stated that the construction for the intersection improvements is in B2, under short range. Councilmember Jenkins stated that it should go into Intersection Improvements under B6. Mr. Moore questioned if she wanted that removed from the construct intersection and removed completely from B2. Councilmember Jenkins stated that is correct and she would like to have the construct intersection improvements at Spalding Drive/Peachtree Dunwoody/Abernathy put in B6. Mr. Moore stated that staff would add the current cost estimates in the B6 numbers.

Councilmember Jenkins stated that in D5 it still indicates mid range. She understands that staff put it there to match up with GDOT’s long term. She would like for this to be long range. She does not care what GDOT says.

**Motion and Vote:** Councilmember Jenkins moved to approve a Resolution adopting the transportation Master Plan with the following changes: Page 5-4 added note to indicate legislative intent on road widening projects, Table B1.B – B6 included Peachtree-Dunwoody at Spalding and at Abernathy intersections, cost estimates adjusted to reflect changes listed, Table B1.D – D5 changed implementation time period from Mid to Long, D6 changed project description to clarify current design scope of construction, D6 changed implementation time period from Mid to Long, added note to indicate that D5 reflects GDOT’s long range plan, added note to indicate legislative intent on road widening projects, cost estimates adjusted to reflect changes listed, Table B1.E – remove project and line item, cost estimates adjusted to reflect changes listed. Councilmember Meinzen McEnerny seconded the motion. There was no Council discussion. The motion carried unanimously.

**Consideration of approval of an Ordinance amending Chapter 38, Offenses and Miscellaneous Provisions, by adding Article VII to be titled Litter Control.  
Ordinance No. 2008-08-41**

**Assistant Director of Code Enforcement Kellum** stated that the Litter Control Ordinance is the model code that was requested by the North Georgia Litter Plan District to adopt. This ordinance will protect the water quality and to enforce litter control in the streets of Sandy Springs.

Councilmember DeJulio questioned if this would protect the City from people blowing grass into the sewers. Mr. Kellum stated that the City has this provision in its current ordinance.

**Motion and Vote:** Councilmember Jenkins moved to approve an Ordinance amending Chapter 38, Offenses and Miscellaneous Provisions, by adding Article VII to be titled Litter Control. Councilmember Fries seconded the motion. There was no Council discussion. The motion carried unanimously.

**Consideration of approval of an Ordinance amending Chapter 9, Building Codes as it relates to height.  
Ordinance No. 2008-08-42**

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**Assistant Director of Building and Permitting Wesserling** stated that this is the three (3) amendment changes to the height definition that was requested by the Mayor, City Council and the Planning Commission.

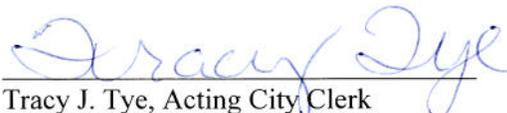
**Motion and Vote:** Councilmember Fries moved to approve an Ordinance amending Chapter 9, Building Codes as it relates to height. Councilmember Jenkins seconded the motion. There was no Council discussion. The motion carried unanimously.

**Adjournment**

**Motion and Vote:** Councilmember Paul moved to adjourned meeting. Councilmember Fries seconded the motion. The motion carried unanimously. There was no Council discussion. The meeting adjourned at 9:02 p.m.

Date Approved: October 21, 2008

  
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Eva Galambos, Mayor

  
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Tracy J. Tye, Acting City Clerk