

Regular Meeting of the Sandy Springs City Council was held on Tuesday, September 18, 2012, at 6:00 p.m., Mayor Eva Galambos presiding.

INVOCATION

Reverend Joe B. Martin, Mount Vernon Presbyterian Church, offered the innovation.

PLEDGE OF ALLEGIANCE

Mayor Eva Galambos led the Pledge of Allegiance

CALL TO ORDER

Mayor Eva Galambos called the meeting to order at 6:03 p.m.

ROLL CALL AND GENERAL ANNOUNCEMENTS

City Clerk Michael Casey reminded everyone to silence all electronic devices at this time. Additionally, those wishing to provide public comment during either a Public Hearing or the Public Comment segment of the meeting are required to complete a public comment card. The cards are located at the back counter and need to be turned in to the City Clerk.

City Clerk Casey called the roll.

Mayor: Mayor Eva Galambos present

Councilmembers: Councilmember John Paulson, Councilmember Dianne Fries, Councilmember Chip Collins, Councilmember Gabriel Sterling, Councilmember Tibby DeJulio, and Councilmember Karen Meinzen McEnery present.

Mayor Eva Galambos invited Hunter Hill to the front.

Hunter Hill, Candidate for Georgia State Senate, stated he ran for State Senate in a portion of Sandy Springs and won the Republican primary. His name will be on the ballot in November to represent a portion of Sandy Springs in Districts 4, 5, and 6. He is thankful to be moving forward in the general election in November.

(Agenda Item No. 12-229)

APPROVAL OF MEETING AGENDA

Motion and Vote: Councilmember Fries moved to approve the Regular Meeting agenda for September 18, 2012. Councilmember Sterling seconded the motion. The motion carried unanimously.

CONSENT AGENDA

(Agenda Item No. 12-230)

1. Meeting Minutes:
 - a) September 11, 2012 Regular Meeting
 - b) September 11, 2012 Work Session

(Michael Casey, City Clerk)

Motion and Vote: Councilmember DeJulio moved to approve the Consent Agenda for September 18, 2012. Councilmember Fries seconded the motion. The motion carried unanimously.

PRESENTATIONS

1. Proclamation for 225th Anniversary of Ratification of American Constitution to Daughters of the American Revolution (DAR)

Mayor Eva Galambos stated this presentation is a celebration of the Constitution of the United States. She asked the Daughters of the American Revolution (DAR) to come to the front. She is a proud honorary member of the Sandy Springs Chapter of the Daughters of the American Revolution. She read the proclamation which states, "The Constitution of the United States, the guardian of our liberties, is a product of reflection and choice, embodying the principles of limited government in a Republic dedicated to rule by law. September 17, 2012 marks the 225th anniversary of the signing of the Constitution of the United States of America by the Constitutional Convention. It is fitting and proper to accord official recognition to this memorable anniversary, and to the patriotic exercises that will commemorate the occasion. Constitution Week was officially declared by President Eisenhower on August 2, 1956. Public Law 915, guarantees the issue of a proclamation each year by the President of the United States of America designating September 17 through September 23 as Constitution Week." She proclaimed the week of September 17 through September 23, 2012 as Constitution Week in the City of Sandy Springs.

Lynn Brackey, Member of the Daughters of the American Revolution, stated many members of the chapter worked with City employees to organize documents that were taken to the University of Georgia.

Charlotte Goulding, Member of the Daughters of the American Revolution, thanked the Mayor for recognizing this holiday.

Mayor Galambos stated the special collections library at the University of Georgia has the documents relating to Sandy Springs in a special exhibit case.

PUBLIC HEARINGS

City Clerk Michael Casey read the rules for the Public Hearings section of the meeting.

Rezoning

(Agenda Item No. 12-231)

1. **RZ12-007/CV12-010** - 4579 Roswell Road, *Applicant: Community Funeral Service, LLC*, To rezone the subject property from O-I (Office and Institutional District) conditional to O-I (Office and Institutional District) conditional, with Concurrent Variances, to allow the location and operation of a funeral home in the former church building

Manager of Planning and Zoning Patrice Dickerson stated this item was heard at the August 21, 2012 City Council meeting and Council deferred the application at that time to allow staff to review the revised documents presented by the applicant. At this time staff is recommending approval conditional of the request. The Planning Commission heard the item at their July meeting and recommended denial.

Councilmember Dianne Fries stated this item did not go back before the Planning Commission following the revised submittal.

Brooks Cowles, 4200 Northside Pkwy, Bldg Two, Suite 200, Atlanta, GA 30327, stated he is the manager of Community Funeral Services, LLC. This area is an ideal location for the proposed funeral

home. He and his family are long time residents of the Sandy Springs area. He hopes to establish a smaller and more affordable funeral home currently not available near this area. He would like to clean up the property, including clearing the parking lot. He has obtained an arborist plan to sustain and protect the two large trees fronting Roswell Road. There are also plans to add a dense landscape screening to provide a meaningful buffer for the neighbors in the townhomes to the rear of the property. The business will employ anywhere from three to ten people to include part-time attendants to work public functions. The business will provide a perfect transition between the neighbors and the large project recently proposed across Roswell Road. The funeral home is a good addition to a live/work neighborhood, especially in comparison to the current use. Any potential claim that the proposed business will reduce property values of the neighbors' homes does not factor in the current condition of the location. The proposed business would be very low impact and the marketing studies say 100 to 150 families may be served a year. Half of those families may choose cremation with no public function at all. Half of the customers may choose to have visitation services elsewhere, such as at graveside, church, country club, or at home. The remaining twenty-five percent of the customers may choose a visitation and a funeral at the facility, for a total of 50 to 70 public events a year. The shared parking provisions have been crafted to provide that the funeral home and the gallery will not have public events that might require the full use of the parking lot simultaneously. The applicant's conditions have been refined to provide more parking than is required. Fewer cars are expected for visitation the night before or preceding a service. Larger visitations would be scheduled for evening hours, typically 6:00 p.m. to 8:00 p.m. As required in the proposed conditions, shared parking arrangements have been agreed to with the animal clinic and Dale Mathey Insurance to allow the use of their lots for overflow during their nonbusiness hours. Like every funeral home, this business is required to judge events that may be too large for the facility and work with the family to direct them to another venue, such as a church. His business partner owns a funeral home in Newnan, GA and is available to answer any questions regarding the sizes of funerals or how funeral homes fit into neighborhoods.

Ellen Smith, Holt Ney Zatzoff & Wasserman, representative of the applicant, stated she represents Community Funeral Service. The applicant has a desire to own a business in Sandy Springs at this particular location. Since the application was last before Council, a number of changes have been made to reduce the variance the applicant is seeking for parking. Currently, the applicant is providing 106 parking spaces, which is eight more spaces than what is currently required of the auction gallery. The applicant has met with community members regarding this application. The community gave the applicant a list of thirteen items and more than 2/3 of those items are now included in the staff conditions. The applicant is more than willing to deal with the parking and buffer issues. If more parking is added, it will reduce buffer size, but not necessarily buffer screening. Plantings can be added to provide more of a screening. The townhomes to the rear of the property do not have a single window that faces the property. None of the residents will have a direct view from their townhome to the back of the property. She asked that Council approve the application with the conditions approved by staff.

Mayor Eva Galambos called for public comments in support of the application. There were no comments from the public. Mayor Galambos called for public comments in opposition to the application.

Jane Kelley, 4590 Windsor Park Place, stated she is in attendance on behalf of the High Point Civic Association. The Association believes this rezoning should be denied for inadequate parking, inadequate buffers and diminished property values. The Association feels this new proposal is worse than the last one, because it takes away buffers and greenspace and adds commercial parking visible from two residential streets. Gallery 63 can use twelve parking spaces, even on funeral days. With ten employees there would be maybe two spaces left for customers. This site is not currently managing the parking needs for one business. The applicant has agreed to not schedule funerals on the same days as auctions. No such agreement has been made for the days when the television show "Auction Kings" is being filmed. Paul Brown stated the show films nonstop for four to five weeks. No agreement has been made

concerning the full week of preview days prior to each auction. Preview days often generate dozens more cars than the twelve spaces reserved for Gallery 63 on non-auction days when funeral services can also be scheduled. One day she counted thirty-eight cars, six vehicles and two watercraft. The next day, a preview day, there were forty-seven vehicles plus a large trailer taking up multiple parking spaces. This past Saturday's preview there were thirty-nine vehicles in the parking lot plus the others for sale. With two auctions a month and two previews weeks, there could be overflow parking fourteen days a month. The shared parking proposal only protects the neighborhood twenty-five out of 365 days a year. A Planning Commission member stated these two businesses sharing parking was like trying to squeeze eight pounds of nails into a five pound bag. The Planning Commission voted unanimously to deny the application. Sixteen of the new parking spaces are in buffers or greenspace that buffer the property from the residential area. A couple of years ago a business owner on Windsor Parkway behind Walgreens was not allowed to have his parking lot visible from Windsor Parkway. She asked why the rules should be different for a property right across the street. The buffer for the townhouses has gone from an original fifty feet down to twenty feet. The current buffers are narrow and now the applicant is asking to turn the buffer into sixteen parking spaces. The buffers are extremely important to the neighborhood. The applicant stated he would hold large funerals at a larger venue. There is no accurate way to predict funeral attendance. There is massive overflow parking at this location during auctions on the right-of-way, Windsor Parkway, and additional streets. This is in addition to parking arrangements made with other businesses. Gallery 63 had no idea how popular a business they would become. The neighborhood expects the same to occur during a funeral or visitation for a person that is more popular than anticipated. The neighborhood is against this rezoning as overflow parking with spill into the neighborhood even more than it does now. This business would not only be an increased burden on the neighborhoods, but could turn a gateway into Sandy Springs into a shameful reflection on the City. The property is currently underparked and Council has the potential to compound the problem. At the June 2012, City Council meeting some Councilmember regretted prior variances for underparking at churches. In 1995, Fulton County rejected the establishment of a funeral home in a building two doors away for insufficient parking. She asked that Council protect the neighborhood and deny this application.

Mike Hinson, 282 Windsor Parkway, stated he is the HOA President of Windsor Place townhomes. He would like to discuss the gateway, buffers, and real estate values. Roswell Road and Windsor Parkway is the most prestigious gateway in the City. This area is the introduction to Sandy Springs from Buckhead. This area should be pristine, vibrant, and full of life. The neighborhood's vision of the gateway is mixed use that includes live/work/play. The Planning Commission voted unanimously to deny this application. Since the last City Council meeting, the applicant made changes to the plans, but asked for this item to not be sent back to the Planning Commission, because the applicant thought it would be denied again. That is a huge red flag. If Council believes they will vote in favor of this item, it should be sent back to the Planning Commission to review the changes to the conditions. He asked what is the purpose of the Planning Commission, if Council votes against the Planning Commission's denial. The neighborhood is being cheated out of the buffer area and greenspace. In 2007, in negotiating with Paul Brown the neighborhood was promised the buffer. The neighborhood does not want the buffer reduced to allow additional paving and parking. Currently, the neighborhood has a thirty-five foot buffer. The applicant is requesting a variance that would decrease the buffer from thirty-five feet to twenty feet. If the applicant feels the buffer is such a hardship, the applicant should not be allowed to open his business at this location. A reduced buffer would be a hardship on the neighborhood. The current landscape buffer is inadequate. Contrary to what Ms. Smith stated, the residents can see the parking lot from the windows of their homes. In all the years he has been a realtor, he has never been asked to find a house that is near a funeral home. People state they wish to live next to a park or golf course, but never a funeral home. A recent news article stated power plants and funeral homes reduce the value of surrounding homes by 15%. Anyone that refuses to live near death reduces the buyer pool, which further reduces the neighborhood's property values. He asked that Council deny this application.

Mayor Galambos closed the public hearing.

Mr. Cowles stated he does not see how a public library or restaurant would be a better fit for this property. The current buffer ranges from thirty-two feet to over fifty feet. The applicant is willing to make a more dense and suitable buffer.

Ms. Smith stated the City's O-I category already considers that funeral homes are a permitted use for this location. The building on the property was a church for more than 100 years and funerals were held at this location. She asked that Council consider this information as well.

Councilmember Chip Collins asked if Mr. Brown would currently have the authority to use the building for church services.

Councilmember Fries stated she believes that building was permitted only for the auction gallery.

Ms. Smith responded no.

Councilmember Collins asked what activities are currently allowed in the church building.

Manager of Planning and Zoning Dickerson stated the use is limited to auction and gallery use.

Councilmember Tibby DeJulio stated a comment was made about changing the variances that were approved when the auction use was approved. He asked if a buffer requirement was given and now the buffer requirement is being changed. That does not seem fair if the neighborhood was given a buffer and now the buffer is being changed.

Manager of Planning and Zoning Dickerson stated in 2007 the neighborhood did have a larger buffer area adjacent to the townhomes. Under the plan the applicant resubmitted, additional parking has been added that encroaches into the buffer area. However, staff conditions would require the applicant to plant to buffer standards to ensure the buffer is thick enough.

Councilmember DeJulio asked if the current owner planted to buffer standards.

Manager of Planning and Zoning Dickerson responded yes, but she is not sure the buffer has been maintained since 2007.

Councilmember DeJulio asked whose responsibility it is to ensure the buffer remains at buffer standards.

Manager of Planning and Zoning Dickerson stated the buffer standards are enforceable by the City. Unless the City is notified, staff does not check every buffer to make sure it is being maintained.

Councilmember DeJulio asked what the logic is in changing a buffer the City already agreed to.

Manager of Planning and Zoning Dickerson stated the logic was the request for additional parking and the concerns about traffic during the auction times. While providing a buffer that will be replanted and monitored, additional parking would be allowed on the property.

Motion: Councilmember DeJulio moved to deny Agenda Item No. 12-231, RZ12-007/CV12-010 - 4579 Roswell Road, *Applicant: Community Funeral Service, LLC*, To rezone the subject property from O-I (Office and Institutional District) conditional to O-I (Office and Institutional District) conditional, with

Concurrent Variances, to allow the location and operation of a funeral home in the former church building. The motion failed for lack of a second.

Motion and Second: Councilmember Fries moved to approve Agenda Item No. 12-231, RZ12-007/CV12-010 - 4579 Roswell Road, *Applicant: Community Funeral Service, LLC*, To rezone the subject property from O-I (Office and Institutional District) conditional to O-I (Office and Institutional District) conditional, with Concurrent Variances, to allow the location and operation of a funeral home in the former church building, with staff conditions. Councilmember Meinzen McEnery seconded the motion.

Staff conditions:

1. To the owner's agreement to restrict the use of the subject property as follows:
 - a. To a Funeral Home, Art/Auction Gallery and accessory uses in the existing buildings at a density of 10,869.57 gross square feet per acre or 22,500 gross square feet, whichever is less.
2. To the owner's agreement to abide by the following:
 - a. To the site plan received by the Department of Community Development dated August 20, 2012. 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. The applicant shall be required to complete the concept review procedure prior to application for 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. The owner/developer shall submit to the City of Sandy Springs a combination plat, which will be filed with the Fulton County Tax Assessor's Office and recorded with the Clerk's Office of the Superior Court of Fulton County 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, to the City of Sandy Springs, sufficient right-of-way along the Roswell Road frontage of the subject property to accommodate driveway reconstruction pursuant to the T-0019 capital improvement project plan adopted on (date). Said right-of-way dedication shall be recorded prior to the issuance of a Certificate of Occupancy/Certificate of Completion for the building remodeling and shall be subject to the approval of the Public Works Department.
 - b. The owner/developer shall dedicate thirty (30) feet of right-of-way or ten and one-half (10.5) feet from back of curb, whichever is greater, from centerline of Windsor Parkway along the entire property frontage to the City of Sandy Springs.
 - c. The owner/developer shall dedicate twenty-five (25) feet of right-of-way or ten and one-half (10.5) feet from back of curb, whichever is greater, from centerline of Hedden Street along the entire property frontage to the City of Sandy Springs.
 - d. Prior to issuance of an LDP, the owner/developer shall attempt to provide interparcel access with the properties to the north and south. Should the owner/developer not come to an agreement on interparcel access at this time, the owner/developer shall provide documentation of such. In addition, if an interparcel access agreement is not obtained, permanent easements shall be recorded allowing for future inter-parcel access, prior to the issuance of an LDP.

- e. To reduce the required forty (40) foot front setback along Hedden Street to thirty-four (34) feet to allow the existing 12,000 square foot building to remain (CV06-032).
- f. To change the required twenty-five (25) foot buffer and ten (10) foot improvement setback to a two (2) foot landscape strip abutting property zoned R-4 (Single Family Dwelling District) along property line S00°57'44"E 147.73' (CV06-032).
- g. To delete the required twenty-five (25) foot buffer and ten (10) foot improvement setback abutting property zoned R-4 (Single Family Dwelling District) along property line S86°05'11"E 50' (CV06-032).
- h. To reduce the required twenty-five (25) foot buffer and ten (10) foot improvement setback abutting zoned TR (Townhouse Residential District) along property line S05°45'01"E 162.71' to twenty (20) feet. Buffer shall be replanted to buffer standards subject to the approval of the Sandy Springs Arborist. Buffer shall be replanted prior to the issuance of the certificate of occupancy (CV12-010).
- i. To delete the required twenty-five (25) foot buffer and ten (10) foot improvement setback abutting zoned TR (Townhouse Residential District) along property line S81°45'02"E 90.75' (CV06-032).
- j. To delete the required five (5) foot landscape strip abutting property zoned C-1 (Community Business District) along property lines S82°31'34"W 106.65', S50°39'13"W 138.88', and S78°43'49"W 133.55' to allow the existing paving and parking to remain (Section 4.23.1, Minimum Landscape Strips and Buffers) (CV06-032).
- k. To allow the existing monument sign to encroach into the required ten (10) landscape strip along the Roswell Road (SR 9) frontage (CV06-032).
- l. To delete the required five (5) foot landscape strip abutting property zoned C-1 (Community Business District) along property line N84°23'53"E 193.52' to allow the existing driveway, paving, and parking to remain (CV06-032).
- m. To delete the required five (5) foot landscape strip abutting property zoned C-1 (Community Business District) along property lines N07°50'57"E 46.30' and N00°32'03"E 151.82' to allow the existing driveway to remain (CV06-032).
- n. To reduce the required number of parking spaces from 119 to 106 (CV12-010) subject to the following conditions:
 - i. The 12,000 square foot building (Gallery) shall have exclusive right to use twelve (12) marked spaces immediately in front of the Gallery building between the hours of 8:00 AM and 5:00 PM.
 - ii. The 10,500 square foot building (Funeral Home) shall have exclusive right to use three (3) marked spaces.
 - iii. All other parking spaces on the property shall be shared spaces pursuant to the conditions noted below:

1. The Gallery shall have use of shared parking spaces for auction events up to twelve (12) Sundays per calendar year, between the hours of 11:00 AM and 7:00 PM, but not more than once every three (3) weeks for; and
 2. The Gallery shall have use of the shared spaces for up to thirteen (13) specific weekdays (Monday-Friday) per calendar year, between the hours of 4:00 PM and 9:00 PM, but not more than once every three (3) weeks.
- o. The owner/developer agrees to ensure that the dumpster will remain in a location central to the property and not in close proximity to the residential uses to the east of the property as shown on the site plan received by the Department of Community Development dated August 20, 2012.
 - p. The owner/developer agrees to prohibit access to the property from Hedden Street except for the access of the two (2) pervious paver overflow parking spaces.
 - q. The owner/developer agrees not to have any display of "for sale" items on the property within view of Roswell Road (SR 9).
 - r. To allow parking within the forty (40) foot front yard setback (CV12-010).

Councilmember Collins stated the issue is the concern of inadequate and overflow parking in the neighborhood. He asked what the City is doing about the overflow parking caused by the auctions.

Police Chief Terry Sult stated the Police Department will work with the Community Development staff. Parking on the grass is the responsibility of Code Enforcement and parking on the street is the responsibility of the Police Department. In the past, there has been an off duty police officer to assist with the traffic during auction events. The officer has to enforce City codes and not just coordinate traffic. The Police Department staff and Code Enforcement staff will have a meeting to ensure all involved understand the enforcement of City ordinances.

Assistant City Attorney Cecil McLendon stated if events regularly impact traffic, they would be subject to the City's special events ordinance, which requires a permit.

Councilmember Collins asked how often a special event permit can be obtained.

Assistant City Attorney McLendon stated the requirement for an event permit is if the event will overflow into the street.

Councilmember Gabriel Sterling stated if the rezoning is not adopted, the current owner could be open regular business hours on any given day. The proposed use for this property appears to be extremely low impact compared to what could potentially be located there.

Councilmember Karen Meinzen McEnery stated she shares Councilmember Sterling's views that the proposed use for the property is low impact. This area of Roswell Road is the gateway to Sandy Springs. The streets should not be overloaded with traffic. The City will enforce the City ordinances on this property site. She supports this application because it is a good use for the neighborhood.

Councilmember John Paulson stated the Planning Commission denied this application because the parking would not support both uses. He asked if staff is satisfied with the application, since the conditions list that both businesses cannot operate at the same time.

Manager of Planning and Zoning Dickerson responded yes.

Councilmember Paulson asked about the use of the property not being consistent with the City's Comprehensive Land Use Plan.

Manager of Planning and Zoning Dickerson stated the Planning Commission discussed whether the auction use and the funeral home use are consistent with the live/work neighborhood category of the Comprehensive Land Use Plan. The plan does not address what specific uses are acceptable; it just states a mix of uses.

Mayor Galambos stated she drove by the property this past Sunday. She did see the overflow of parking. She agrees that the proposed use is a good use for the property. The City has not done a good job of enforcing the parking ordinance. The City will work towards doing a better job enforcing this ordinance. She asked that the neighborhood notify the City if they see code violations.

Councilmember Fries stated the City has not received any parking complaints for this area. If there are complaints citizens should call the Call Center phone number to have these complaints on the record. If citizens have made complaints with the Police Officers, City staff does not always receive this information.

Councilmember Collins asked which staff condition addresses that both businesses cannot operate at the same time.

Manager of Planning and Zoning Dickerson stated condition 3.n. addresses the reduction in the required parking number. Condition 3.n.i. addresses the use of the gallery. Condition 3.n.3. addresses the specific times the gallery can hold auctions.

Councilmember Collins stated there was an existing traffic problem and the proposed use for the property does not add to it. The funeral home will be low impact. A restaurant would cause more problems than a funeral home.

Vote on the Motion: The motion carried 5-1, with Councilmember DeJulio voting in opposition.

Ordinance No. 2012-09-30

(Agenda Item No. 12-232)

2. **RZ12-008** - 100 North River Drive, *Applicant: Silver Tree Investments, LLC*, To rezone the subject property from A (Medium Density Apartment District) conditional to O-I (Office and Institutional District) to allow office use in the existing building

Manager of Planning and Zoning Patrice Dickerson stated this item is a request to rezone the existing building from apartment to office institutional. The building was originally a part of the Avalon Townhomes that was converted into condominiums. The building is no longer used as a leasing office. The applicant is requesting to rezone to O-I and maintain the existing building. Staff recommends approval and the Planning Commission recommended approval conditional.

Scott Feld, 6255 Barfield Road Suite #103, stated he is the buyer of the property. He owns a residential cleaning service that has been located in Sandy Springs for nine years. The intended use of the property is to relocate his residential cleaning service to the existing structure. The building has been vacant for many years. There are plans to make repairs to the existing structure and make it useful for business purposes. There will be company vehicles that will be parked on site at night and on the weekends. He does not expect any significant traffic issues at all. He asked that Council approve the rezoning of the parcel located at the corner of Dunwoody Place and North River Drive.

Mayor Eva Galambos called for public comments in support of or opposition to the application. There were no comments from the public. Mayor Galambos closed the public hearing.

Motion and Vote: Councilmember Fries moved to approve Agenda Item No. 12-232, RZ12-008 - 100 North River Drive, *Applicant: Silver Tree Investments, LLC*, To rezone the subject property from A (Medium Density Apartment District) conditional to O-I (Office and Institutional District) to allow office use in the existing building. Councilmember Sterling seconded the motion. The motion carried unanimously.

Ordinance No. 2012-09-31

(Agenda Item No. 12-233)

3. **RZ12-009/CV12-011** - Northeast Corner of Spalding Drive at River Exchange Drive, *Applicant: Dunwoody Place Venture, LLC*, To rezone the subject property from C-1 (Community Business District) conditional to A-L (Apartment Limited District) to allow construction of a senior apartment building, with concurrent variances

Manager of Planning and Zoning Patrice Dickerson stated this item is a request to rezone a vacant parcel at the corner of Spalding Drive and River Exchange Drive to allow for a 130 unit senior living development. Staff recommends approval conditional of the request and the associated concurrent variances. The Planning Commission also recommended approval conditional.

Kevin Curry, 1100 Spring Street Suite #550, Atlanta, GA stated he owns the property and will be going into a joint venture with a senior living development firm. He asked Council to defer the application for thirty days. He is still trying to secure financing for the development. There is currently an offer letter and work is being done to finalize the details.

Motion and Second: Councilmember Paulson moved to defer Agenda Item No. 12-233, RZ12-009/CV12-011 - Northeast Corner of Spalding Drive at River Exchange Drive, *Applicant: Dunwoody Place Venture, LLC*, To rezone the subject property from C-1 (Community Business District) conditional to A-L (Apartment Limited District) to allow construction of a senior apartment building, with concurrent variances, to the October 16, 2012, City Council meeting. Councilmember Fries seconded the motion.

Councilmember Gabriel Sterling asked if thirty days will be enough time for the applicant.

Joe Rogers, 6689 Peachtree Industrial Blvd. Ste. B, Norcross, GA stated he feels this is an adequate amount of time. The owners do not want to rezone the property to be site specific. He is currently working with staff regarding the application.

Mayor Eva Galambos called for public comments in support of or opposition to the application. There were no comments from the public. Mayor Galambos closed the public hearing.

Vote on the Motion: The motion carried unanimously.

UNFINISHED BUSINESS

There was no unfinished business.

NEW BUSINESS

(Agenda Item No. 12-234)

1. Consideration for Approval of Settlement Agreement Regarding Outdoor Advertising

Assistant City Attorney Cecil McLendon stated Attorney Laurel Henderson, who represented the City in litigation pertaining to this matter, is in attendance and will present this item.

Attorney Laurel Henderson, Representative of the City of Sandy Springs, stated she will give a brief background regarding this case, the proposed terms of the settlement agreement, and why they are recommended at this time. The City has been involved in billboard litigation for an extended period of time. The initial litigation with Sandy Springs involved four companies and twenty-three sign locations within the City. With the exception of one of those sign locations, all the desired locations for new billboards were on Roswell Road. There were already twenty-three billboards on Roswell Road. The addition would have almost doubled the existing number of signs. That was not Council's desire with the redevelopment plans for the Roswell Road area. The City inherited this situation and did not create it. The billboard companies had previously applied to Fulton County. Some of the permits dated back to 2003. In 2005, there was a large number of billboard applications submitted to Fulton County. Many of the applications were denied and some had no action taken. There was an earlier lawsuit involving Boardworks that made it to resolution in the Georgia Supreme Court. The Supreme Court declared that Fulton County's sign ordinance was unconstitutional and that Boardworks had the ability to erect two signs one of those signs is located at Roberts Drive and Colonel Drive and the other is at the intersection of I-285 and Roswell Road. Under the proposed agreement, those two signs would be allowed to convert upward for a limited time. For instance, from a static face to a tri-vision face, if allowable by the State. Those two signs are treated differently from everything else in the agreement. There were six lawsuits in total and some did not involve Sandy Springs, but involved the cities of Milton, Johns Creek, and Alpharetta. Those cases were consolidated by the Superior Court into one case. The City lost at the trial level and Fulton County was the main defendant. The decision at the trial level was adverse to the cities and Fulton County. The cities appealed that decision to the Georgia Supreme Court and the Georgia Supreme Court ruled against the cities. The effect of the ruling is the twenty-three signs were vested and have a right to exist within the cities. Therefore, the trial judge ordered that the signs be allowed to be erected. The City has been in negotiations with the billboard companies for over a year to lessen the impact upon the City. An agreement was reached on the number of signs. In addition to the two signs currently under construction, up to eight more signs are to be erected in the City. There are restrictions on where the signs can be located. Instead of the signs being located along Roswell Road, the sign companies have agreed to ten designated nodes around the City. Council's requested that the signs not be located near Roswell Road and be kept along the interstate or at the periphery of the City. The ten nodes around the City are facing the interstate and some nodes are at the north, northeast, and west areas of the City. The sign companies initially provided City staff with twice as many locations. Staff, in conjunction with Council, drove by every location that was proposed. Some locations were totally unacceptable and others have restrictions to protect Council's intent and to protect the neighboring residents. In the settlement there is a release of claims against the City. There would be no further claims. Entitlements to those signs would no longer be considered by Council. In the settlement there is a free use provision that would allow the City use of signs twice a year for up to seven days for up to five signs. The free use of the signs would be for particular community events. The billboard heights will be dictated by the agreement with a maximum height. Each will be on a case-by-case basis with a City staff member driving by each location with a billboard company representative using balloons to test heights. There is a time limit of forty-two months from the date of the agreement within which the signs have to be erected or the right to erect them is forever forfeited. Staff anticipates the companies will try to meet the full quota of allowable signs, which will be eight signs in addition to the two. If the companies do not come up with that many signs and obtain permits within the forty-two months, those rights would also be lost. With the exception of the two signs currently constructed, no other signs can be converted when constructed. If the sign is constructed as a static face sign, it will remain as a static face sign. Those are the basic terms of the agreement.

Councilmember Dianne Fries asked if there are eight possible new signs including the additional two.

Attorney Henderson stated there are a total of ten signs. This is a fifty percent reduction from the initial twenty-three signs requested.

Councilmember Karen Meinzen McEnerny asked how many of the signs can be LED signs.

Attorney Henderson stated all of the signs can be LED. There are restrictions on the brightness of the signs. The requirements state the brightness must be dimmed for night driving, gray days, and rainy days. The ambient light level controls how bright the signs can be.

Mayor Eva Galambos asked about the monument signs in the agenda package.

Attorney Henderson stated one of the sign locations is within the PCID and is owned by MARTA. A sign that is erected within the PCID requires a monument style to be used. These signs will be a brick format or stacked stone. There are thirty locations within the ten nodes that the billboard companies can choose from to erect a sign. If the companies cannot arrange for the signs within the thirty locations, there are no additional locations for consideration.

Motion and Vote: Councilmember Sterling moved to approve Agenda Item No. 12-234, Approval of The Settlement Agreement Regarding Outdoor Advertising. Councilmember Fries seconded the motion. The motion carried unanimously.

REPORTS

1. Mayor and Council Reports
2. Staff Reports

There were no Mayor and Council or staff reports.

PUBLIC COMMENT

There were no public comments.

EXECUTIVE SESSION

There was no Executive Session.

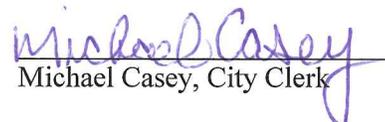
(Agenda Item No. 12-235)

ADJOURNMENT

Motion and Vote: Councilmember DeJulio moved to adjourn the meeting. Councilmember Paulson seconded the motion. The motion carried unanimously. The meeting adjourned at 7:16 p.m.

Date Approved: October 2, 2012


Eva Galambos, Mayor


Michael Casey, City Clerk