

MINUTES

City of Milton Board of Zoning Appeals Regular Meeting November 18, 2008 7:00 PM

BOARD MEMBERS PRESENT Sandy Jones
Todd Chernik
Gary Willis
Scott Kilgore
Marcia Parsons
Walt Rekuc
John McRae

CITY STAFF Angela Rambeau, Community Development

AGENDA

- 1) Call to order and pledge
- 2) Introduction of Board members
- 3) Approval of the October, 2008 meeting minutes
- 4) V08-022, 2985 Manor Bridge Drive, The Manor
- 5) V08-23, 2570 Mountain Road, William Ellis
- 6) V08-026, 13065 Highway 9 North, Sembler Atlanta, Deerfield Place
- 7) V08-028, 13065 Highway 9 North, Sembler Atlanta, AT&T, Deerfield Place
- 8) V08-029, 1785 Dinsmore Road, Alpharetta Athletic Club
- 9) V08-030, 13045-13099 Highway 9 North, Sembler Atlanta, Deerfield Place
- 10) V08-031, 16355 Birmingham Highway, W. Curtis Mills
- 11) V08-032, 550 Blue Heron Way, The Lake at North Valley
- 12) Other Business
- 13) Adjournment

CALL TO ORDER Chair Sandy Jones called meeting to order.

PLEDGE OF ALLEGIANCE

STATEMENT OF THE BYLAWS OF THE BOARD OF ZONING APPEAL

Read by the Chair Sandy Jones.

BOARD INTRODUCTIONS

APPROVAL OF MINUTES

Motion and Second: Sandy Jones made a motion to approve the October 2008 meeting minutes. The motion was seconded by John McRae. There was no discussion. Vote: 7-0. The motion unanimously carried.

Chair Sandy Jones

- Requested Staff read the first agenda item, **V08-022**

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Staff Angela Rambeau

- Read agenda item **V08-022**, 2985 Manor Bridge Drive, Elliott Smith for Anthony Pergola
- To allow an accessory structure (a storage shed) to encroach into the rear yard setback (Article 5.1.3.I)
- Staff requested an additional 30 day deferral until the next meeting
- Anticipates case being withdrawn
- If information need is not provided in two weeks applicant has been notified that staff will be withdrawing application on basis of the site plan being incomplete

Motion and Second: Walt Rekuc made a motion to defer V08-022. The motion was seconded by Sandy Jones. There was no discussion. Vote: 7-0. The motion unanimously carried.

Chair Sandy Jones

- Requested Staff read the next agenda item, **V08-23**.

Staff Angela Rambeau

- Read the next item on the agenda, V08-23, 2570 Mountain Road, William C. Ellis
- To allow a cul-de-sac to encroach into the 50 ft. stream bank buffer and the 75 ft. impervious setback (Chapter 14, Article 6, Section 5,a,I,ii).
- Requested a 30 day deferral until the next board meeting
- Still working with applicant and progress is being made
- If not accomplished in two weeks will issue a notice of violation and proceed through the courts

Motion and Second: Walt Rekuc made a motion to defer V08-023. The motion was seconded by Marcia Parsons. There was no discussion. Vote: 7-0. The motion unanimously carried.

Chair Sandy Jones

- Stated next agenda item was, **V08-28**
- Stated Board was going to insert V08-026 in conjunction with V08-030
- Brian Snelling will present both at same time.

Chair Sandy Jones

- Called the next agenda item, **V08-028**, 13065 Highway 9 North, AT&T, Deerfield Place

Motion and Second: Sandy Jones made a motion to move this agenda item to after agenda item V08-032. The motion was seconded by Todd Chernik. There was no discussion. Vote: 7-0. The motion unanimously carried.

Chair Sandy Jones

- Called the next agenda item, **V08-029**, 1785 Dinsmore Road

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Staff Angela Rambeau

- Read the next item on the agenda, V08-029
- To allow a pool and its deck to be located less than 100 feet from an adjoining property line (Article 19.3.12B.2.b)
- To allow a pool and its deck to encroach into the 25 foot buffer and 10 foot improvement setback (Article 4.23.1, B & E)
- Staff's Recommended Conditions: (1) applicant shall plant 10 feet on the club property and 15 feet on the Quesada's property as shown on the site plan date September 26, 2008, (2) final approval of plantings shall be per the City Arborist, (3) easement shall be recorded to protect the 15 feet of buffer planted on the Quesada's property, and (4) applicant shall obtain all required land disturbance and building permits.

Chair Sandy Jones

- Called for questions for staff
- Requested applicant present case

Applicant Dan Mason, 81 Woodstock Road, Roswell, GA

- Representing Tom Ridge of Alpharetta Athletic Club
- Presented case to the Board
- Want to expand their pool for their swim meets and have a children's play area
- Pool currently too small and narrow
- Do not have a kids pool for their members
- Need to slid the buffer onto the Quesada's property
- Have the Quesada's approval
- Asking variance be granted

Walt Rekuc

- Confirmed with applicant that agreement with the neighbor was in writing and signed

Applicant Dan Mason

- Stated that was correct and Staff had a copy

Walt Rekuc

- Working being done in conjunction with pool or earlier for plantings?

Applicant Dan Mason

- Would plant before the end of Spring
- Want pool open before Summer starts

Scott Kilgore

- Number of neighbors within 100 feet of the edge of the deck?

Applicant Dan Mason

- Just the Quesadas
- They have 5 acres
- Rest of neighbors are about 500 feet away

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Marcia Parsons

- Maintenance of plantings on easement?

Applicant Dan Mason

- Probably superintendent of the golf course would monitor the plantings
- Existing fence and gate neighbor wants to keep open and we are fine with that

John McRae

- When was pool constructed?
- Were meets envisioned at that time?

Applicant Dan Mason

- Do not know

Tom Ridge

- Stated existing pool was put in 1996 and in 2008 married Crooked Creek Golf Club in Milton and Alpharetta Country Club and expanded membership from 550 members to over 1100 members
- Property was purchased in October 2006

Applicant Dan Mason

- Neighbors we spoke to were all in agreement
- Members of club and want this to happen
- Have letter but no legal document
- Could have club lawyers draft something

Chair Sandy Jones

- Called for public comment
- No public comment
- Closed public hearing

Motion and Second: Walt Rekuc made a motion to approve V08-029 based on the preexisting condition that a pool is there and applicants are doing nothing more than expanding an existing use in the same area and also that it would be in harmony due to the agreement that has been worked out with the adjoining neighbor. Would like to condition the approval to request three items: (1) that the applicant shall plant 10 feet on the club's property and 15 feet on the Quesada's property as shown on the site plan dated September 26, 2008. Final approval of the planting shall be per the city arborist, (2) an easement shall be recorded to protect the 15 feet of buffer planted on the Quesada property, and (3) the applicant shall obtain all required land disturbance and building permits. Also, under item (1), that the buffer shall be maintained by the club. The motion was seconded by Sandy Jones.

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Discussion on motion:

John McRae

- Discussed under Standards of Consideration, Part 1
- "In harmony with the surrounding environment"
- Not Board's purview to make it in harmony with the surrounding environment
- Should be in harmony with the intent of the resolution.
- Site plan is dated September 15th and received on September 26th

Walt Rekuc

- No problem with making the change of the date to September 15th and received on September 26th.

Scott Kilgore

- Noted the variance number was V08-029 and not V08-009 as was stated.

Walt Rekuc

Amended his motion under item (1) to state that the site plan would be dated September 15, 2008 and received by the staff on September 26, 2008

There was no further discussion. Vote: 7-0. The motion unanimously carried

Chair Sandy Jones

- Called the next agenda item, **V08-026**, a deferral item from the October meeting, 13045-13099 Highway 9 North
- Requested staff present case

Staff Angela Rambeau

- Read the next item on the agenda, V08-026
- Part 3 is a deferral from the October meeting
- To allow window signs to exceed the 5% of aggregate window area allowance (Chapter 33, Section 26.K)
- To allow multiple tenants to have window signs
- "Lifestyle" graphics by the developer
- Opaque window film showing different pictures on certain walls of the stores
- In front of walls typically used for racking or storage
- Staff had no considerations to add to case

Brian Snelling, 1450 Johnson Ferry Road, Atlanta, GA

- Representing Sembler
- Same discussion and presentation as last month
- One of tenants, Mattress Firm, requested use of this window film
- Fenestration required a lot of glass around buildings
- Some tenants have to have areas that need to be covered up
- Need to block studs and installation of certain walls
- "Lifestyle graphics have been used in several other developments

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- Reviewed sample pictures of "lifestyle" graphics with Board
- Other option would be plain, white, gray or green opaque film
- Does not believe in falls into the category of a sign because no tenant name appears on it

Walt Rekuc

- Could potentially be approving signage along all glass windows if approved by board
- Would it be possible to create a shadowbox behind the window?
- Signage could be behind it in the shadowbox as well
- Looking at potential problems that could occur
- Board cannot approve content
- Can approve location and size
- Asked about their tenant covenants
- May need more information to show board to help understand how it would operate
- Try to come up a solution that may or may not work

Applicant Brian Snelling

- All leases have a sign criteria attached to them
- Sign variances in leases must meet criteria of the city code
- Also operation and easement agreements in lease
- Would prefer this be treated other than a sign
- Do not consider it a sign in accordance with the sign ordinance
- Just a window graphic
- Whether plain or not it is just window film
- Milton also dictates a certain distance inside of tenant's space
- Have stated specifications on type and color of film
- Not all tenants would want to use the "lifestyle" graphics
- Would have to write different things for different tenants
- Case-by-case basis as relates to a lease
- Tenants come to us to get approved if they want this
- Trying to work with the tenants like Firehouse Subs and Mattress Firm
- Want to make sure everything fits in and works for everyone
- Mattress Firm put them up not considering them signs and city ruled them to be signs
- Not sure how to resolve this issue

Gary Willis

- When Sembler is finished and done who will control approval of the window signs?

Applicant Brian Snelling

- If we retain property, we retain management of property
- If sold to new owner, they would handle it
- Leases still carry over
- Requirements still carry over
- OEA carries over to new ownership
- Same mechanisms will be in place

Gary Willis

- If approved would be giving you an open book to put whatever on the windows
- Board cannot control the content
- Concern about what could be on the graphic film

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Applicant Brian Snelling

- Have the right to tell tenant they must be compliant with the code

Todd Chernik

- Concerns about not having specifics or guidelines
- Do not know what content requirements would be under your guidance versus another owner's guidance
- May have different opinions as to what "acceptable" content may be
- Becomes very subjective
- It is a feature of the building
- Something should have been discussed in more detail with the Design Review Board
- Need guidelines indicating what you will enforce and what is applicable and not applicable for location as well as content
- Need case-by-case examples
- Do not feel comfortable approving at this time anything other than plain gray or black film without specific cases
- Too ambiguous to hand out that authority to Sembler without it
- Covenants may be something to consider in going forward with your properties

Applicant Brian Snelling

- Would need perhaps a work session to discuss specifically what Milton wants for specific tenants
- Would not know how to write something into a lease
- May need to contact an attorney
- Still do not believe this is a sign according to the sign ordinance definition

Chair Sandy Jones

- Discussion with Mr. Snelling about their covenants

Applicant Brian Snelling

- Every property is different
- Each plan may be different
- Sign ordinances for Sembler differ from city to city
- Do not believe for this project window film was addressed in lease

Chair Sandy Jones

- Questioned staff on obtaining guidance from the Design Review Board

Staff Angela Rambeau

- DRB does not review signs
- **Read the definition of a general sign from the City of Milton's Sign Ordinance**
- Community Development Director made the determination that the graphic film would fall under this ordinance

Todd Chernik

- Way being presented currently is too subjective and ambiguous
- Believe these fixtures are conveying a message through graphics which constitute a sign

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Walt Rekuc

- Signs have to be a certain distance away (1 ft) from a window

Board Discussion with staff about the sign window definition under Article 3 of the ordinance, 3.31

Staff Angela Rambeau

- Question tonight is he allowed to have the window signs
- Request is the signs would only be put into specific location areas
- **Read to Board from the variance request the specific areas**

John McRae

- Question to applicant about possibility of reconfiguring partition walls to avoid necessity of visible walls through the vision glass

Applicant Brian Snelling

- Some cases it would be possible
- Others have glass around all four sides
- Depends on construction and interior needs of tenant

Chair Sandy Jones

- Called for public comment
- There was none

Todd Chernik

- Asked staff if the Board is left with having to request of the city attorney in regard to clarification of the sign ordinance for "lifestyle" graphics

Staff Angela Rambeau

- Advised Board that would be the next step if they were not comfortable with this request

Chair Sandy Jones

- Closed public hearing

Motion and Second: Todd Chernik made a motion to deny V08-026, Part 4. The motion was seconded by Sandy Jones.

Discussion on Motion:

John McRae

- Understands applicant is in a difficult position
- Do not see how the Board could guarantee the variance request would meet the harmony aspect of the Board's consideration factor

Staff Angela Rambeau

- Cautioned Board that they cannot deny the variance based on the content
- Tenants can apply after six months individually

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Todd Chernik

- Too ambiguous
- Chief concern is leaving up to developer

Staff Angela Rambeau

- It has already been determined that the graphics are signs
- They can currently put a 5% window graphic up
- The Board would have been determining whether they could have larger ones on the specific areas

Chair Sandy Jones

- Do not want to make a global decision for this development regarding window graphics
- Would have to be on a case-by-case basis for the individual tenants
- Prefer not to tie the hands of the tenants for 6 months and hinder their businesses

Staff Angela Rambeau

- Would have to discuss this with the Director

Gary Willis

- Colors of film allowed by Milton?

Staff Angela Rambeau

- Sign ordinance does not control color of the sign
- We have allowed plain gray opaque film
- Do not consider that a sign

Applicant Brian Snelling

- If tenant is not going to use a graphic film, we ask they use a gray similar to the glass there.
- Darker smoke gray

Vote in favor of denial of V08-026, Part 4: 4-3, with Todd Chernik, Sandy Jones, Scott Kilgore and John McRae voting for denial and Walt Rekuc, Marcia Parsons and Gary Willis voting against denial. The motion for denial carried.

Chair Sandy Jones

- Called the next agenda item, V08-030, 13045-13099 Highway 9 North, Deerfield Place, Phase 1 and 2

Staff Angela Rambeau

- Read the next case, agenda item, V08-030
- Variance is to allow multiple banners per lot (Article 33, Section 26.1.J)
- 47 acres located in State Route 9 Overlay District
- 428,000 sq. ft. of commercial and retail space
- Staff recommended conditions: (1) each tenant is allowed one 24 sq. ft. banner for 10 consecutive days at a time for a total of 40 days per calendar year, and (2) tenant shall obtain a sign permit for each 10 day period that the banner is up

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Chair Sandy Jones

- Questions for staff?

Walt Rekuc

- Asked staff about location of sign or banner references

Staff Angela Rambeau

- Sign ordinance controls location

Todd Chernik

- Asked staff how location was defined for multi-tenant or mixed use developments
- Anywhere along Highway 9?

Staff Angela Rambeau

- Allow them to hang them on the fence
- Put them out on green area as long as 10 ft. back from right-of-way
- Above their space

Walt Rekuc

- Would location not be referenced on their application for a permit?

Staff Angela Rambeau

- Stated they do
- Allowed to do so for 40 days
- Each lot or development is only allowed one banner
- Applicant is requesting each tenant be allowed one banner
- Time limit would remain the same

Brian Snelling, 1450 Johnson Ferry Road, Atlanta, GA

- Presented V08-030 to Board
- Request variance to change the word "lot" to "tenant" in this case
- Have 40 plus tenants at Deerfield Place built by Sembler
- Want all of their tenants to be able to use a banner as they open, etc.

Chair Sandy Jones

- Size of banner?

Brian Snelling

- Limited to the 24 sq. ft. that is currently in ordinance
- Not asking for size increase
- Asking to change the word "lot" to "tenant" in this case

Marcia Parsons

- Does Sembler have a limit to where banner can be placed in agreement?

Brian Snelling

- Do not have a preference
- Would like for it to be placed on the fence
- Most visible place and draws customers

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- People do not know who is currently open
- Third of site is still under construction
- Usually put up banner for grand opening
- Cycling at different times so would not be all at same time
- City would have some control of location of the banners

Scott Kilgore

- 40 tenants across both or per lot?
- Total acres?

Brian Snelling

- 40 across both phases
- Total have about 35-40 spaces for whole shopping center
- Two being Target and Kohl's which are on their own lots
- 47 total acres

Todd Chernik

- Concerns about clustering of signage or banners at major intersection areas
- Any restrictions or guidance you would impose on tenants as to placement of signs?
- Willing to entertain some restrictions (i.e., 100-200 ft. of entrance ways)

Brian Snelling

- Currently have not devised a plan to do that
- Tenants in rear prefer signs to be up on road

Scott Kilgore

- Idea on number of tenants wanting to use banners during a holiday season?
- Intent of ordinance is to avoid clutter of signs
- Believe we need to limit amount of signs to a number of some sort

Brian Snelling

- Do not know what business in development would need to advertise more during holiday season.
- How would you discriminate
- Perhaps staff could determine that
- Will be a natural cycle depending on when business opens and for special seasons
- Do not anticipate all 40 businesses putting up signs
- Would come down to a city enforcement issue

Todd Chernik

- Is issue primarily coming from grand opening of the tenants?

Brian Snelling

- Stated it was
- All tenants need a grand opening banner to advertise their new business
- This is the primary purpose

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Scott Kilgore

- Feel there needs to be a cap on number of banners
- Believes ordinance perhaps overlooked a multi-tenant situation
- Concerns about how many banners could go up at once

Board discussion with staff about number of banners and permitting process

Staff Angela Rambeau

- Right now it is first come first serve
- We try to keep track
- Already had to cite one tenant because another tenant already had a banner and they needed one as well
- Trying to avoid that situation
- Was not looking at this to limit the number of tenants that could have one at a time

Walt Rekuc

- How could it be controlled so there would not be one continuous banner all along the street?
- Some standard of placement of the banners
- Problems with existing businesses
- Perhaps a sandwich shop and a pizza shop with side by side business
- Could say no banner shall be within 30 ft. of the corner of a building
- Difficult with development of this size to try to define something to accommodate everyone

Brian Snelling

- Might say banners have to be 10 feet apart
- Necessary for the success of new business to be able to draw business in

Walt Rekuc

- Asked about a color guidelines
- Background colors, etc.
- Trying to come up with a good solution

Brian Snelling

- Probably with this limitation is tenants that may have a national branding color

Chair Sandy Jones

- Called for public comment

Peter Gacek, 424 Farmwood Way, Canton, GA (AT&T Representative)

- Defeat purpose of using banners if all the same color
- Just see one row of same color banners and would not show your branding for the business

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Sonya Shaeffer, 13105 Commonwealth Pointe, Alpharetta, GA (no public comment card turned in) (Opposition)

- Appears they would just be using the fence as a billboard

Chair Sandy Jones

- Called for other public comment
- Called for additional questions

Walt Rekuc

- Asked about requirements for monument signs regarding colors

Brian Snelling

- Staples has read background with white letters
- Petco has white background with blue and red dog and cat logo and red Petco letters
- Target has white background with their different red color
- Kohl's in Phase 2 will have a burgundy background with white letters
- Do not know about other tenants based on their trademark colors and their branding
- Fence if 5 or 6 feet

Chair Sandy Jones

- Called for additional questions for staff

Todd Chernik

- Applicant stated this is primarily an issue with regard to grand openings
- Asked Staff if they could condition their motion to restrict use of banners to grand openings?
- Also could a condition be imposed to say for a time period like over the next two years?

Staff Angela Rambeau

- Like temporary signs would have to be careful how it was worded
- Cannot condition what the banner says
- May be able to come up with time periods
- Not certain about limiting for one or two years
- City allows the use of banners on the fence with the setback allowance
- Overlay does not address hanging signs on fences at all
- Height restriction is 5 feet tall

Additional Board Discussion with Staff about possibilities of different conditions

Chair Sandy Jones

- Closed public hearing

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Motion and Second: John McRae made a motion to approve Petition V08-030 based on the fact that relief, if granted, would be in harmony with or could be made in harmony with the general purpose and intent of the zoning resolution. Would also like to recommend the following conditions: (1) each tenant is allowed one 24 sq. ft. banner for 10 consecutive days at a time for a total of 40 days per calendar year, and (2) the tenant shall obtain a signed permit for each 10-day period that the banner is up and to conform with any other conditions specified by the applicable sign ordinance. The motion was seconded by Gary Willis.

Discussion:

John McRae

- Stated his reason for the conditions in the second part of his motion is to reinforce the fact that the sign ordinance is what prevails in this case.
- In order to make this variance request in harmony with the spirit of the ordinance itself, the ordinance is discussing not keeping a permanent sign in place for an entire calendar year.
- It does not deal with stand-alone versus large commercial developments.
- Think we are reading too much into it by trying to specify exactly what they can and cannot do within this development.
- Believe there is a flaw in the language where it is more related to the stand-alone side of business signage and this variance can be made in harmony with the intent of restricting it to 10 days in a row, four times a year.
- Not doing so would create an unnecessary hardship on those tenants based on the fact that they are in a shopping center.
- They should be treated like any other business if we are going to interpret the ordinance as it is.
- It is up to the property manager to de-conflict between the tenants and hopefully create an aesthetically pleasing environment for the local citizens and for the business owners.
- They want it to be an attractive appearing area and hopefully that is what brought them to Milton, not a tacky sign facia all along Highway 9 being all interrupted banners.
- A lot of our discussion has been what can we do to avoid a certain aesthetic appearance and we are to vote on the merits of the variance being requested so by virtue of that, if we put further restrictions on what is essentially an aesthetic issue of a continuance sign, that would be outside of our purview.

Todd Chernik

- Implications of allowing multiple signs has an aesthetic impact
- Feel should impose some guidelines for this complex that would not be restrictive to their ability to have multiple banners but protect community
- Discussed not having signs all grouped together
- Discussed not having signs all clustered at entrance way
- Gave development variances on size of their monument signs
- Personally have issue with Highway 9 Overlay and DRB required development to install fencing that it did
- Now would be allowing fencing to be used as a billboard

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Chair Sandy Jones

- Asked Staff if Board allowed request and if ordinance is changed to address multi-tenant usage of banners, would this ruling be grandfathered and exempt from that

Staff Angela Rambeau

- Advised Board's ruling would supersede any future changes to the ordinance

Walt Rekuc

- Agree with concerns of turning fence into a billboard of continual banners
- Not sure some of tenants would like this as well
- Not sure how to possibly address this
- Perhaps no banner shall be within 50, 75 or 100 ft. of the edge of a driveway or right-of-way of a street
- Some buildings are right next to the intersection
- Do not want to preclude banners from being allowed on top of the sign or building
- Need to be clear that tenants cannot put a banner in front of other tenant's business
- Put a condition that there has to be a gap between banners

Discussion with Board and Staff regarding possible solutions for placement of banners and distances

Gary Willis

- Creating a nightmare for the code enforcement for the City of Milton by adding all these conditions for banners
- Been in business for 22 years and have never put a banner out yet

Todd Chernik

- If we approve this and should City Council change the ordinance, what we do supersedes anything City Council would do to change that.
- Charting new territory and it is along Highway 9
- Think it is important to time-box this issue
- Primary a grand opening issue
- Heard development should be built out in 2009
- Could give ourselves a two-year window to allow the multiple banners and then it would expire
- Then allow City Council to address multi-tenant sign ordinance or come for another variance

Chair Sandy Jones

- This is largest commercial retail establishment in the City of Milton
- Highway 9 is the gateway into Milton
- Need to consider the aesthetics
- Multi-tenant developments do need to be re-looked at in the ordinance
- Understand needs of the new businesses

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Todd Chernik made a **friendly amendment** to John McRae's motion adding the conditions: (1) that the approval would stand for a period of two years from today's date, at which time it would expire, (2) that the signs not be located within 100 ft. of entrances and (3) that signs not be affixed to the fence. The friendly amendment was seconded by Scott Kilgore.

Discussion:

Gary Willis

- Tenant after two years would then have to come and apply for another sign variance?
- Consider changing 100 feet to 30 feet

Lengthy Board discussion amongst themselves regarding possibility of specifying time periods, distances and how and where to affix banners.

Todd Chernik *withdrew his friendly amendment*

Scott Kilgore *withdrew his second*

Todd Chernik made a new **friendly amendment** to condition that the allowance of this variance would stand for a period of two years from today's date, that the banner shall not be located in front of any buildings unless it is the tenant's building, and banners shall not be affixed to the fence. The friendly amendment was seconded by Sandy Jones.

Vote on friendly amendment: 5-2, with Marcia Parsons, Todd Chernik, Scott Kilgore, Walt Rekuc and Sandy Jones voting in favor of the friendly amendment and Gary Willis and John McRae voting in opposition to the friendly amendment. The friendly amendment passed.

Chair Sandy Jones called for a vote on the original motion to approve V08-030

Vote: 7-0. The motion unanimously carried.

Discussion with applicant, Board and Staff regarding the banners now having to be behind the existing fence with applicant going to dais to look at site plans with Board

Staff Angela Rambeau

- With banners having to be behind the fence, they will not be able to be seen

Todd Chernik

- With plan before them, it is unclear where the actual fence is located

Chair Sandy Jones

- Made a motion to amend the friendly amendment for V08-030

Motion and Second made a motion to not include the statement of not allowing the banners to be affixed to the fence. The friendly amendment will consist of two criteria: (1) allowing the banners will be enforceable for two years from today and (2) shall not be located in front of any building unless it is the tenants' occupied buildings. Seconded by

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Marcia Parsons. There was no discussion. Vote: 5-2, with Walt Rekuc, Marcia Parsons, Sandy Jones, Todd Chernik and Scott Kilgore voting in favor of the friendly amendment and Gary Willis and John McRae voting in opposition. The motion carried.

Chair Sandy Jones

- Stated she wished to go to V08-032 next

Motion and Second: Sandy Jones made a motion to amend the agenda to next hear V08-032, 550 Blue Heron Way. Seconded by Todd Chernik. There was no discussion. Vote: 7-0. The motion unanimously carried.

Chair Sandy Jones

- Called for Staff to present V08-032

Staff Angela Rambeau

- Presented V08-032
- Variance is to allow encroachment into the 75 foot impervious setback (Chapter 14, Article 6, Section 5,a,I,ii)
- Lot is located at The Lake at North Valley Subdivision
- Existing home has recently been demolished except for the garage
- Home will be replaced with a larger single family home and series of swimming pools
- Removal of any trees will require recompense
- Applicant had knowledge of the buffer requirement prior to the demolition of the house
- Staff's recommended conditions: (1) the pool and decking shall be constructed per the site plan dated October 8, 2008, (2) the construction shall include an infiltration system, and (3) the existing 688 sq. ft. patio shall be removed and demolition work shall be done by hand

Chair Sandy Jones

- Called applicant to present

Daryl Cook, 3694 Orchard Street, Norcross, GA (Applicant Representative)

- Presented case to Board
- Agent for the applicant
- Wanted a deferral of this case but was able to get all the exhibits and other information to Staff
- Home previously was going to be remodeled
- Realized in planning that existing house would not work with the remodeling
- Do not believe owners were aware of the buffer problems when they purchased the existing homes
- After became aware of the buffer requirements had to redesign the home completely
- Reviewed some aerial photos with the Board at the dais
- Have signed affidavits of the homeowners on both sides of the property
- Presented the signed affidavits to the Board for their review
- Stated topography was another issue as well as the lake on the property
- There are also state buffers and the city's buffers
- Requires a septic field and health department does not like septic fields on steep slopes
- There is less than one quarter of the lot available to actually build on
- Location indicated is only place that is suitable to build on

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- Discussed soil, rock and building area for the basement
- Old house had a patio, walkway, barbeque pit and other impervious areas already existing in the impervious setback
- Also a good amount of area within the 50 ft. setback required by the city
- Believe there is a hardship due to all of these reasons
- Discussed stormwater issues with Board and proposed mitigation
- Reviewed all other exhibits/drawings with the Board

Walt Rekuc

- Asked if lake behind property was a soil conservation lake
- Any buffers or easements there based on elevation on property
- Septic fields location

Applicant Daryl Cook

- Stated it was
- Buffers fall within the 25 foot state buffer
- House elevation will be well above the lake
- No plans to put any septic fields in the rear of the property

Chair Sandy Jones

- Asked about specimen trees had been impacted in construction of new home

Applicant Daryl Cook

- None known of
- Arborist reviewed the tree situation
- Do not believe any trees will be impacted from new construction

John McRae

- Septic fields seem to be one of main issues
- How were calculations done for septic field?

Applicant Daryl Cook

- Five bedroom home
- Percolation data comes from county health department data for sq. ft. of drench needed based on number of bedrooms
- County health department also requires 100% primary or initial system and 100% reserve system
- Need to demonstrate this requirement can be met

John McRae

- Erosion control measures shown on any plans?

Applicant Daryl Cook

- Show areas on original plan
- Underground systems
- Jimmy Sanders wants to have some input as well as plumbers, etc.
- Plan date is 11/15/08

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Marcia Parsons

- Asked Staff about any changes that had been made from the October 9th to the November 15th plan

Applicant Daryl Cook

- Essentially the same
- Moved the house just slightly forward
- Wanted to get to the 3-1 plus ratio

Chair Sandy Jones

- Called for any other questions for the applicant or staff
- Called for any public comment

Applicant Brian Askew, 850 Blue Heron Way, Milton, GA

- Owner of property
- Made promises to daughters to build the house and pools
- Discovered all the buffers and setbacks after the fact
- Had to find a solution in remodeling process
- Wanted to fulfill the city requires and also promises to his family
- Hired the best people to try to solve the problems
- Asked the Board to seriously consider his variance requests

Discussion:

John McRae

- Question for Staff about arborist's conditions

Staff Angela Rambeau

- Provided arborist's new conditions to Board that were provided to her this evening

Chair Sandy Jones

- Called for any further questions
- There were none
- Closed the public hearing

Motion and Second: Sandy Jones made a motion to approve V08-032 with the following conditions: (1) The pool/decking shall be constructed per the site plan dated November 15, 2008, (2) The construction shall include an infiltration system, designed to catch run off from the roof, the pool and the pool decking, (3) The existing 688 square foot patio shall be removed, (4) The demolition work shall be done by hand, (5) This area shall be replanted to buffer standards, (6) The applicant shall make improvements to the side drainage swale, and (7) The applicant shall comply with all applicable erosion control measures. The motion was seconded by Todd Chernik. There was no discussion. Vote: 7-0. The motion unanimously carried.

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Chair Sandy Jones

- Called the next agenda item, V08-031, 16355 Birmingham Highway, Curtis Mills
- Asked Staff to present case

Staff Angela Rambeau

- Presented V08-031 to Board
- Requested variance is to eliminate the minimum 50 foot spacing for a new public or private street from any property line adjoining AG1 and residential property (Article 14.34.5.7
- Staff's recommended conditions: No conditions

Walt Rekuc

- Asked staff purpose of this in the ordinance

Staff Angela Rambeau

- To protect adjoining property owner
- Had letter from adjoining property owner requesting case be deferred until next month
- Stated nobody had contacted her regarding buying a piece of the property
- Applicant stated to the contrary
- Neighbor is currently out of town and not able to be present this evening

Applicant Curtis Mills, 16355 Birmingham Highway, Milton, GA

- Staff covered most of what he was going to state this evening
- Discussed purpose of the 50 foot spacing
- Tests are hardship and no detriment to the community
- In this case the community is adjoining property owners
- Believes both of these tests have been met
- Developer that has been helping him is out of the country or would have been present to answer questions
- Only reason site plan has 3 parcels is for just that.
- Engineer and developer suggested they be cut up
- Lot in question is the back lot
- Have any intention of leaving the rest contiguous
- Have no plan to developing that or doing anything else with it
- Did not want to cut big piece of land up into 3 pieces.
- Hardship is due to topographical reasons
- Drain field is in the front of that lot and PERC test have already tested it out
- Cannot push a road further north on the lot without losing the lot
- Currently moved as far as it can be without losing a building lot
- Had engineers and new water samples done
- Wanted to make this a win-win situation regarding everyone involved including neighbors
- The developer, Richard Wernick, had a long-time friend of the property owners who agreed to contact the adjoining neighbor to see if they would be willing in discussing a property sale or swap to make this amenable to all
- Was told that that contact had been made
- Contact Mrs. Quay, one of the two neighbors regarding any questions

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- Mrs. Quay stated she was not aware of this and had been on vacation
- Forwarded her an electronic copy of the information, including the letter and all attachments including maps, etc.
- She indicated she was surprised and that she was contacted and requested she give the land away for free
- I saw the letter written to Staff regarding this
- There appears to be some confusion regarding this contact but the people that can verify this could not be here this evening
- Not sure relevant
- Believe it should go back to the detrimental impact tests
- Got a call from a family member on Saturday who stated they were afraid there may some diminished value should the road go past that corner
- Some suggested that some amount of money for the diminished value, not for a land sale, might gain support for the project
- Was to get a call on Sunday and did not and have not been able to reach the family member back
- That amount of money was in the neighborhood of 7-10 times the property value for the area in question
- Want to do what is right, but not what is unreasonable
- This was not for purchase, but just for support
- Test is whether this would be detrimental or not
- Do not see any diminished value
- Asked Board to look at the survey diagram of his property
- Discussed diagram photos including the aerial photo with the Board

Todd Chernik

- Appears you are caught in middle of "he said," "she said" situation
- If deferred did applicant feel he could reach some resolution with the neighbor in next 30 days?

Applicant Curtis Mills

- Gut reaction and experience says no, but not certain of that
- Believes that was offered already
- Two weeks about with his conversation with Mrs. Quay on phone
- That was first contact with the neighbor
- They no longer live there and property has been for sale
- Would be open to doing that but understanding is that is not an option
- What was discussed was support in exchange for a monetary amount of money

Walt Rekuc

- Asked applicant about the 20 ft. access easement on his property
- Not sure why that is there
- Opposite the Quay's property

Applicant Curtis Mills

- Stated the Quay's had a detention pond down there
- That is for new access to that
- It was not there previously

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Walt Rekuc

- If you did have to build a road still would be looking at an encroachment for the front or the rear?
- Had a similar situation
- Told his neighbor he would give them an utility easement giving them access to water, gas and power and not have to go all the way back to the road to get it
- Gave them a 10 ft. utility easement and a water meter at their cost at that location
- Could probably push road further down the hill but do not know the detriment coming up
- Only other option is to not have the road and just a driveway
- That would require another variance

Applicant Curtis Mills

- No intention of requesting a variance on the front side
- Simply constrained on the front side as it is
- Did not occur to him 9 years ago may want to do something on the back
- This was before Kingsley Estate was there or there would not be an issue
- Front part did not change, but the back part did
- Believed it would add value, not diminish it
- They have the same creek going north and south
- Believes all dialog has been done
- Will do whatever it takes

Board discussion about granting access or utility easement to neighbor

Applicant Curtis Mills

- Not talking about 500 ft.
- It is a black and white situation
- Will do whatever needs to be done to get on with the program

Chair Sandy Jones

- Called for any other questions of the applicant

John McRae

- Asked about time period stated of 18 months
- Letter from adjacent property owner is dated November 12th
- Asked about the chronology

Applicant Curtis Mills

- Referred to his laundry list of what has been done to make this work
- Stated this current round has been around 4 months
- Had also considered putting the house on the very front of the property to leave everything contiguous
- Did speak to Mrs. Quay and tried to buy part of the property that fronted Birmingham so would not have the driveway constraint

Walt Rekuc

- Asked Staff if notices are sent to people via certified mail

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Staff Angela Rambeau

- Stated they are sent regular mail

Chair Sandy Jones

- Called for any other questions
- Called for public comment

Wiley Hendrix, 16235 Birmingham Highway, Milton, GA (Opposition)

- There has been no discussion in the last two months at all
- Original discussion was about a sliver of land
- If about driveway would not be an issue
- This is about subdividing
- This is about a putting in a road
- Need at least 30 days to evaluate the impact
- Believes total untruths have been told here tonight

Walt Rekuc

- Nothing was discussed on the back side?
- Impact is that small triangle on the corner

Wiley Hendrix

- Nothing discussed except in the last couple of days
- Did not know this was coming up
- Had no notice of this
- Wanted to look at the impact
- Prudence on our part
- Wanted to look at this for 30 days before we agreed to anything

Chair Sandy Jones

- Called for any other public comment
- There was none.
- Called applicant up for rebuttal

Curtis Mills

- Wanted to address the topic of subdivision
- When he and Mr. Hendrix first talked on the phone, he thought a variance would not be needed
- Thought I could just put a driveway there
- I believed I made it clear that the lot did not have frontage of 45 ft. required street frontage on the road coming from Kingsley Estates
- A lot has to have 45 feet of street frontage
- Subdivision is not my agenda
- Not trying to say anything that was construed as not being truthful or offensive

Scott Kilgore

- Could a driveway be done instead of a road?

Curtis Mills

- No way to muscle 45 feet of road frontage without pushing the road there

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- Have to pay for the road extension off of the existing cul-de-sac to get it back there and do not want to do that
- Could not get a right-of-way because there is no frontage
- Had to construct it so there would be 45 feet of frontage on a road
- Existing cul-de-sac comes 50 feet from the property line

Staff Angela Rambeau

- Stated it has to be right-of-way
- Cannot have two houses on one lot
- He would have to carve out that 6 acres and create its own lot
- Will require road frontage as stated

Chair Sandy Jones

- Called for any other questions
- There were none
- Closed public hearing

Motion and Second: John McRae made a motion to defer Petition No. V08-031 for 30 days to then next regularly scheduled meeting of the Board of Zoning appeals. The motion was seconded by Sandy Jones.

Discussion:

Walt Rekuc

- Want to make sure the Quays and the Hendrix's understand that the hearing was scheduled to be heard today
- Board could make a decision tonight and not give additional time
- Motion is on the table to defer
- Believes there is a hardship involving this matter
- Does not see a detriment to the other property
- Everybody needs to work at getting this resolved if case is deferred

There was no further discussion. Vote: 6-1 in favor of deferral, with Gary Willis voting in opposition. The motion carried.

Chair Sandy Jones

- Stated the Board would adjourn for a brief work session to discuss the next case, V08-028 to discuss information with Staff they did not have previous to the meeting

Board recessed to go into a work session at 10:45 p.m.

Chair Sandy Jones

- Reconvened the meeting at 10:56 p.m.
- Asked Staff to present V08-028, 13065 Highway 9 North, Rob Stephens and AT&T Deerfield Place, Phase 1

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Staff Angela Rambeau

- Read Petition V08-028 to Board
- To allow window signs to exceed the 5% of aggregate window area allowance (Chapter 33, Section 26.K)
- Staff's recommended conditions: (1) No rotating, blinking, neon or changeable copy signs shall be allowed, and (2) Tenant shall be allowed to install 3, 12 sq. ft. light boxes

Applicant Rob Stephens, 1437 Custis Court, Atlanta, GA

- Presented case to Board
- Asking for way to accommodate some of the design standards that Milton required in order to elevate the aesthetic value of many of the developments in the city
- Primarily the amount of glass that is part of the exterior of their building
- Feel site is in a good site
- 3 sides of their space have glass on them
- Design of store is controlled on a national basis on several fronts
- Want to clarify their specific requests
- Sign ordinance states to put these up have to be at least 5 feet away from the window
- If within 5 ft. it can only be 5% of the aggregate of the window space
- Presented drawings to Board for their review
- Variance request is for 3 12 sq. ft. light boxes
- Do not want to give up too much sq. footage
- Did not want to create corridors that do not go anywhere
- All space needs to be utilized to be profitable for AT&T
- Discussion with Board from drawings
- Introduced Peter Gacek, the store manager at the Milton AT&T location

Peter Gacek, 424 Farmwood Way, Canton, GA (AT&T Representative)

- Brand new store
- 17 employees underneath him
- Market is very competitive
- With new store need every bit of eye-catching as they can get
- Not adding more signs
- Need shadowboxes and believe they fit in with the surroundings

Jason Anderson, 2230 Lakewood Manor Drive, Athens, GA (AT&T Representative)

- Two types of interior signage
- This signage is for pedestrians not for drive-by traffic
- These shadowboxes conveys our colors and to state we are open
- No blank unlit wall
- Not planning to change this signage out
- It will only contain the AT&T branding
- Shadowboxes is very conservation and tastefully done
- Dead end corridors were the biggest issue
- The design here dictates the layout of the store
- The ceiling is a two-tiered ceiling and cannot be shifted over
- Reviewed layout of building from photos with Board

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Scott Kilgore

- Asked applicant if the shadowboxes were right behind the glass

Applicant Rob Stephens

- Two feet off of the glass mounted on the wall

Scott Kilgore

- Asked Staff about clarification of the ordinance
- So only considering the 5% for the variance tonight

Chair Sandy Jones

- Asked applicant if they would be considering the lifestyle graphics

Peter Gacek

- They prefer this option over the lifestyle graphics
- Lifestyle graphs are too hard and expensive to maintain
- Have use them in Raleigh, NC
- The cost was around \$4,000
- Images have to be printed and installed
- Those graphics are usually swapped out more frequently than what we are asking for

- Brandings do not ever change
- 5% is 2.5 and graphic is 1.8
- Each window would allow 2.5 sq. ft.
- There are actually 4 windows

Scott Kilgore

- Total is 5%
- If 3 windows and 1.8 sq. ft. x 3 is more
- If restricted to 5% then they could not do it

Chair Sandy Jones

- Asked staff for clarification on percentage

Staff Angela Rambeau

- 5% of the total window area
- Can break the 5%

Applicant Rob Stephens

- Calculations were done by taking the sq. ft. of all windows in store minus doors
- Are allowed 16.85 sq. feet of graphics or signage aggregate
- Asking for total of 1.8 x 3
- Would be far under what is allowed by code

Chair Sandy Jones

- Called for any other questions
- There were none
- Closed public hearing
- Opened floor up for a motion

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Motion and Second: Walt Rekc made a motion for approval of V08-028 to allow the window sign to exceed the allowable 5% of the aggregate area with the recommended conditions of staff as follows: 1) No rotating, blinking, neon or changeable copy signs shall be allowed, (2) Tenant shall be allowed to install 3, 12 sq. ft. light boxes, and (3) That the diagram would be based on the picture taken on October 29, 2008, labeled page 12 of 13 in the Board of Zoning Appeals case package. The motion was seconded by Sandy Jones.

Discussion:

Scott Kilgore

- Would like to see this limited to this tenant
- Also like to limit the logo in the lettering to the 1.8 sq. ft.
- Wants background color to be a solid color
- Want to keep it in harmony

Chair Sandy Jones

- Mr. Rekc conditioned it to the specific information and pictures contained in the BZA packet dated October 29, 2008

Staff Angela Rambeau

- Not sure it can be limit it to this tenant
- Variance goes with the property

Todd Chernik

- If another tenant came in they would have to come before the Board for another variance

Chair Sandy Jones

- No further discussion, a vote will be taken.

Vote: 7-0. The motion unanimously carried.

Chair Sandy Jones

- Called for any new or old business

John McRae

- Reminder about an issue under consideration in December for the amendment to the BZA Bylaws and scope per Council's comments
- Would like to have that information before the December meeting.
- Council wants to see it again in January

Chair Sandy Jones

- Need to make sure the Planning Commission has had their final say before it goes to Council

Discussion with Staff about number of cases on next meeting agenda and possible work sessions

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ADJOURNMENT

Motion and Second: Sandy Jones made a motion to adjourn. The motion was seconded by Todd Chernik. There was no discussion. Vote: 7-0. The motion unanimously carried.

Meeting adjourned at 11:28 p.m.

Date Approved: _____

Approved By:

Francesca Ivie
City Clerk's Office

Sandy Jones, Chair
Board of Zoning Appeals

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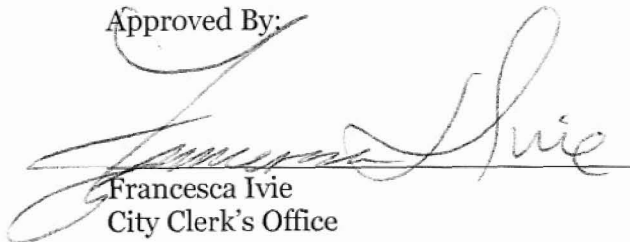
ADJOURNMENT

Motion and Second: Sandy Jones made a motion to adjourn. The motion was seconded by Todd Chernik. There was no discussion. Vote: 7-0. The motion unanimously carried.

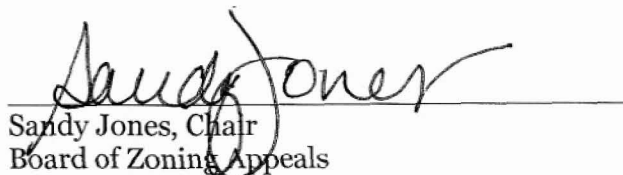
Meeting adjourned at 11:28 p.m.

Date Approved: 12-10-08

Approved By:



Francesca Ivie
City Clerk's Office



Sandy Jones, Chair
Board of Zoning Appeals