

also finds that the denial of rezoning to R-3a constitutes a violation of equal protection. While the Court is mindful that it lacks the power to zone, the City of Roswell is ordered to remedy the above findings and impose a zoning classification on the subject property that is not unconstitutional and that cures the equal protection violation. The Court shall retain jurisdiction to enforce its order under the guidelines of Alexander v. DeKalb Co. Mr. Ortiz said "Just to clarify, this motion in front of the Council is to rezone from R-2 to R-3, correct?" Councilman Dippolito noted there had not been a motion made yet, but agreed that was the application request. Mr. Ortiz replied "The properties would not have to go through a rezoning process, correct?" Mr. Davidson replied it would have to go through a site plan approval process but not a rezoning process and added "It will be rezoned R3-A, if they approve." Mr. Ortiz asked if it would go through "the land plan." Mr. Davidson replied, no, it will go through a site plan approval. Mr. Ortiz replied "okay, LDP process." Mr. Davidson replied, no, a site plan process. Mr. Ortiz replied "But, as R3-A properties." Mr. Davidson replied "On the zoning map it will be designated as R3-A, if the Council approves it." Mr. Ortiz replied that he wanted to make sure.

Councilman Dippolito clarified for the property owners that this process which had been referred to, is for the Design Review Board, Planning Commission, and City Council to review.

Public comment invited; none was heard.

**Motion:** Councilman Dippolito moved to approve **RZ09-03 Minhinette Place, LLC, 1266 & 1253 Minhinette Dr., Land Lot 410** with the recommended staff condition with the clarification that the site plan will go through the rezoning site plan approval process that is to the Design Review Board, Planning Commission, and to Mayor and Council. Councilman Tolleson seconded. No further discussion. The motion passed unanimously.

#### **Text Amendment:**

##### **5. RZ09-04 Text Amendment - Allowable Vehicle Signs. First Reading. Presented by Brad Townsend, Planning and Zoning Director**

Planning and Zoning Director Brad Townsend stated this is the first reading of this text amendment to allow automobile sales establishments to use a maximum of eight inch letters within ten inches of the roof of the vehicle, not to exceed 320 square inches; non-florescent white is the only color allowed in the ordinance. Mr. Townsend stated the Planning Commission reviewed the text amendment and recommended denial during their April 21, 2009 meeting. Mr. Townsend stated staff recommended approval of the proposed text amendment on first reading.

City Attorney David Davidson conducted the reading of an **ORDINANCE TO AMEND THE CITY OF ROSWELL SIGN ORDINANCE REGARDING ALLOWABLE VEHICLE SIGNS WITHIN THE CITY OF ROSWELL** stating pursuant to their authority, the Mayor and Council adopt the following ordinance:

Article 22, of the *City of Roswell Zoning Ordinance, Signs*, Section 22.11 (a) (6) Prohibited Signs; Ground Signs on Double Frontage Lots, is amended to read as follows:

- (6) Vehicles used for basic purpose of providing advertisement or products or directing people to a business activity located on the same or nearby property or to any other premises are prohibited.** New and used automobile sales establishments shall be permitted to display eight (8") inch vinyl letters professionally made not hand lettered, the price, model and year of vehicles for sale on the front windshield of said vehicles within ten (10") inches of the roof line, not to

exceed a total of 320 square inches of area in the color of non-fluorescent white and such display shall not violate this section.

Mr. Davidson noted that if approved, this would be the first reading of the ordinance. Mr. Davidson explained that the incorporated text would basically allow white letter on vehicles within eight (8) inches of the roofline, not to exceed three hundred and twenty (320) square inches.

Councilman Dippolito recommended that for clarification purpose, the additional word "indicating" after the words "hand lettered" to grammatically clarify how it is written; it would not change the meaning.

**Motion:** Councilman Dippolito moved to approve the first reading of **RZ09-04 Text Amendment - Allowable Vehicle Signs**, with the change, for clarification, the additional word "indicating" being included to the ordinance after "hand lettered" to grammatically clarify how it is written; it would not change the meaning. Councilwoman Wynn seconded.

**Council comment:**

Councilman Orlans noted that when this text amendment was initially discussed, which included a couple of auto dealerships and their attorney, he thought that Council had agreed to allow a certain couple of chosen colors. He further stated that he agreed with the Planning Commission in that it is over regulating when narrowed down to only white lettering. Councilman Orlans asked staff how this came about to white lettering. Mr. Townsend replied that was how the ordinance was originally initiated; there was a Committee discussion regarding a couple of other separate colors but the directive by Committee as well as for the initiation of the ordinance, was for the one non-fluorescent white. Councilman Orlans stated he would prefer a couple of color alternatives offered before the second reading.

Councilman Igleheart stated that in the process, he had always stated he was not concerned so much with the dealers that had been at the meetings, because they are from further up Alpharetta Highway and was "okay with helping them with whatever they need for the most part without going to the extreme that we have seen." He noted that his bigger concern is related to the other used car lots on the south side of Holcomb Bridge Road and on Alpharetta Highway. Councilman Igleheart said "They currently are not using a lot of this but when this is a requirement, we are going to see it pop up all the way up and down on that side" in the area where there they are trying to accomplish "landscaping and a re-do of that area." Councilman Igleheart said he thought Council had discussed whether there is a way to have it apply to some of those properties where it required a certain setback from the road, which most of those do not have; all the properties north of Holcomb Bridge do mostly have a fifteen to twenty foot off the right-of-way; the ones south of Holcomb Bridge Road which are all used car lots, are parked right up on the sidewalk, there is no setback, except for one or two. Councilman Igleheart said "I do not know if there is some way to make sure that we don't allow that there, because frankly, I am concerned that we are actually fostering that to begin in that process for those on the south side." He stated he did not know if it got lost in the discussion or we just decided that is not something we want to do, and requested that it be looked at that for the second reading.

No further discussion. No public comment.

The motion passed unanimously.

Mayor Wood suggested Councilman Orlans and Councilman Igleheart meet with staff to draft their proposed amendments, which could then be proposed as an amendment at the next reading of this text amendment.

**6. RZ09-06 Text Amendment to the Roswell Zoning Ordinance Section 15.2.8 regarding tree pruning. First Reading. *Presented by Brad Townsend, Planning and Zoning Director***

Planning and Zoning Director Brad Townsend stated this is an amendment to the Roswell Zoning Ordinance Section 15.2.8, related to tree planning regarding tree pruning and “topping” of trees. Mr. Townsend displayed a photograph which illustrated what staff is trying to avoid regarding tree pruning. He explained that the Legal department originally drafted language included in paragraphs (subsections) (a) and (b). Mr. Townsend stated subsection (c) was added “To help apply this Section only to lots of less than an acre in size, zoned residential, single family, or duplex.” He further stated that when the three sections are taken together, section (a) provides a standard in which a tree can actually be pruned properly; section (b) defines “topping” and that it cannot be done “anywhere” on the tree. Mr. Townsend stated “Section (c) provides the standard in dealing with the residential lots of acre or less.”

**Council comment:**

Councilman Dippolito noted that this ordinance had been amended to actually incorporate these standards; the ordinance has been in effect for a long time and never changed. He explained that during discussions with the Legal department, staff recommended a change for an allowance regarding lots under an acre in size within a residential area, so that this ordinance does not become a burden for the average homeowner. He noted this was a concern previously expressed by Council and members of the community.

Mayor Wood commented that he considered himself to be an average homeowner and commercial property owner, and supported the distinction between commercial and residential properties, and was comfortable with this restriction on commercial properties. On residential properties, the Mayor stated he believed the logic was if the tree could be cut down, why worry about imposing ordinances on trimming it. When it comes to the distinction between whether it is one acre or more or one acre or less, he wondered why we would be saying to the property owner who own five or ten acres, that he cannot trim his trees and is under a separate set of regulations. Mayor Wood inquired about the logic that a separate set of regulations applies for the property owner who has five or ten acres.

Councilman Dippolito stated the ordinance for cutting down trees contains the same language regarding the acreage. The thought process was to use the same language for the pruning that is currently used for the cutting down of trees “to make all things equal.”

Mayor Wood stated he understood the reason the property owner, who had more than one acre, was told that he was not permitted to cut down trees because the city was experiencing clear cutting prior to development. The Mayor noted that he was very much in support of the ordinance regarding clear cutting but when it comes to trimming trees, he did not understand the same reasoning there; we are not having a problem with someone who owns ten acres trimming all of his trees, it has never been a problem. Mayor Wood stated that as a property owner of ten acres, he either cuts it down or lets it go. He said he understood how this ordinance developed but as far as an affective reasoning behind it, he did not see a reason why a property owner who has ten acres and actually has a lot of tree canopy, and is doing more to support tree canopy than the average citizen, is going to be under more restrictive rules when trimming