

Mayor Pro Tem Joyner invited the Mr. Rolader to respond; Mr. Rolader declined. Mayor Pro Tem Joyner reminded everyone that there would also be opportunity to speak when this item comes back to Council, if it is deferred tonight.

Councilwoman Winiski stated she wanted to provide a date for the deferral and noted she would ask this be scheduled for the next Mayor and Council Zoning Meeting on May 14, 2007.

Councilman Igleheart asked the City Attorney if it is appropriate to ask the applicant why they wished to defer and if there are plans to come back with some major changes, it would be helpful to know.

Applicant:

Mr. Rolader responded that he would be happy to answer and explained first, there are several matters regarding the public's perception that are unsettled. Secondly, they have been in discussion with Mr. Jain and his attorney and that discussions continue regarding a number of matters. Third, there was initially a signed written agreement with the City Engineer defining where the developer would put the cul-de-sac in order to minimize the impact on any kind of waters within this property. Mr. Rolader explained that City Engineer has since left the City and we understood prior to the last Planning Commission meeting, that perhaps the City was changing its mind and maybe that written agreement wasn't the right agreement anymore. Mr. Rolader stated that they are in discussion with the City Engineer to determine the proper place to locate the cul-de-sac so that the developer in fact does minimize the impact of this development. Mr. Rolader noted that those three matters give him reason to think that progress is to be made between now and May 14.

Council comment:

Councilman Igleheart stated that he certainly agreed with those things as Mr. Rolader discussed, and also suggested that some of the other items brought up such as screening, landscaping and other things like that should be looked at during this interim as it would be helpful for everyone, as a hint for perhaps future thoughts.

Councilman Orlans asked if there was a second. Mayor Pro Tem Joyner replied there was a second.

Vote: The motion passed unanimously to defer this application until May 14, 2007. Mayor Pro Tem Joyner encouraged the developer and homeowners to work a little bit closer together in the next few weeks to resolve some of these issues.

At this time, the meeting recessed for ten minutes and reconvened at approximately 9:40 p.m.

4. RZ07-03, CV07-01, Blake Properties Investments, LLC, 365, 375, 395 Rucker Rd., FC-A (Fulton County Annexed) to R-3A (Multi-Family Medium Density District) Land Lot, 1281

Planning & Zoning Director Brad Townsend stated the Rucker Road community project is approximately 5.98 acres, it is FC-A, Fulton County Annexed which was originally AG-1, Agricultural designation. The proposed rezoning is to R-3A, Multi-family residential, for the development of nineteen (19) single family lots. Mr. Townsend stated that the developer has requested two variances: 1) reduce the front yard setback from thirty (30) feet to twenty (20) feet; and 2) reducing the buffer area requirement along the southern property line from fifty (50) feet to thirty (30) feet. At this point, the Comprehensive Plan designation for the property has not been identified. When it was annexed from Fulton County, it was 2-3 dwelling units per acre. The proposed rezoning is 3.2 dwelling units to the acre. To the north across

Rucker Road are a single family home, vacant property, and Crabapple Registry which is at 3.1 units per acre. To the south is a single family home on approximately 10 acres. To the east is the Cottages at Crabapple on approximately 5.7 acres with a density of 3.28 units per acre. To the west is the Reserve at Crabapple on approximately 8.4 acres with a density of 4.4 units per acre. The proposed nineteen (19) single family homes with the R-3A designation, has a minimum lot size of 9,000 square feet; the proposed site plan provided to the City has an average lot size of 11,326 square feet. There were two variances requested. Staff recommended the following conditions:

RECOMMENDED CONDITIONS

It is recommended that this application and the concurrent variance for the rear buffer/setback be approved, and the variance for the front setback be denied. The rezoning shall be approved subject to the owner's agreement to the following conditions or as may be amended by the Mayor and City Council.

1. The owner/developer shall develop the property in accordance with the site plan prepared by DGM Land Planning Consultants stamped "Received December 28, 2006 by the City of Roswell Community Development Department.
2. There shall be a total of seventeen (17) lots in the subdivision.
3. The owner/developer shall install an eight (8) foot tall fence along the southern property line behind lots ten (10) through fifteen (15) to shield the single family home located to the south.
4. There shall be a ten (10) foot no access easement along Rucker Road. No lot shall have direct access to Rucker Road as required by the Roswell Department of Transportation.

Mr. Townsend stated "staff recommended the variance to the south but did not recommend the variance for reducing the front setback." The Planning Commission reviewed the application on March 20, 2007; the Planning Commission's conditions are as follows:

Planning Commission Recommendation

The Planning Commission recommended approval of this rezoning and variances during their March 20, 2007 hearing with the following conditions.

1. Staff conditions 1, 3, and 4.
2. Delete condition number 2.

Council comment:

Councilwoman Winiski asked for clarification regarding the current zoning. Mr. Townsend replied that the current zoning is Fulton County Annexed AG-1. Councilwoman Winiski asked if that is "1 to an acre and a residential category." Mr. Townsend replied that was correct. Councilwoman Winiski stated "the land use plan shows 2-3 per acre." Mr. Townsend replied that was correct, in Fulton County, it is called Fulton County Land Use.

Applicant:

Laurel David, attorney with Dillard and Galloway and representing the applicant, stated the applicant is requesting nineteen (19) single family detached homes at a density of 3.18 units per acre. That is less than what is to the east and to the west of the property. To the east, at Cottages at Crabapple, it is 3.28 units per acre with minimum lot sizes of 6,000 square feet. To the west is the Reserve at Crabapple, which is 4.4 units per acre with a minimum lot size of 4,200 square feet. The applicant is proposing 3.18 units per acre and an average lot size of 11,326 square feet. Ms. David noted that Council packets include

pictures of the homes envisioned for the property. The applicant has not yet signed a contract with the builder so these pictures are still considered conceptual but provide an idea of the types of homes to be built there. The homes will be an average of 3,000 square feet of heated floor area, which is probably 3-4 bedrooms, 2.5 to 3.5 baths, and average lot of size a little over 11,000 square feet. The applicant has requested a variance to the fifty foot rear setback and a forty foot buffer for Lots 10 through 15. The property to the south is presently zoned FC-A, Fulton County Annexed, which converts to the City's E-2 zoning requirements. It consists of one house on ten acres. Referring to the site plan, she stated that they do not think that reducing the buffer on this side of the property will have any negative impact on the adjacent property and they have agreed to put in the fencing, as requested. The applicant has also requested a variance to the front setback from thirty feet to twenty feet for all lots. Ms. David noted that the site plan submitted to the City contains a typo which states there is a sixty foot right-of-way; it is actually fifty (50) feet. This can be calculated with a scale and it will show that there is actually only a fifty (50) foot right-of-way being provided for. She believed staff felt that the applicant had ten (10) feet to spare and so therefore did not need the front setback variance. Unfortunately, the applicant does not have ten (10) feet to spare, they are in fact showing the correct right-of-way. One of the main reasons for the front setback variance is to be able to pull the houses closer to the street to create a friendly pedestrian streetscape and create a sense of community similar to old neighborhoods with front porches and sidewalks, the "new urbanism" now. Ms. David stated that it also will provide the applicant the flexibility for a large buildable area allowing him to position the house in a way to permit side and rear entry garages. Staff has recommended seventeen (17) units instead of nineteen (19). This is based on the Fulton County Land Use Map recommendation for the property, which is 2-3 units per acre. She emphasized that neither of the adjacent properties to the east and the west are 2 or 3 units per acre, they are all above that. She noted that the applicant is proposing less than what is to the east and west of the property.

At this point, the computerized recording equipment failed a second time. It was brought back up to begin recording again approximately 2.5 minutes later while Ms. David was still speaking.

Ms. David noted there was "some" fault with the curb and gutter system on Rucker Road, the applicant has pledged to work with the Reserve at Crabapple to fix this problem with the City. She stated the water is being channeled onto this property, dumping on the property, and somehow manages to find its way through the Spencer's back yard. That is the low point of the property and is also where the detention pond will be located. They believe that with proper engineering they will be able to eliminate that problem. Ms. David reiterated that the applicant has agreed to staff conditions calling for the fence on the southern property line, a ten (10) foot no access easement along Rucker Road, and developing the property in accordance with the site plan the applicant submitted which shows nineteen (19) lots and the fifty (50) foot right-of-way. She thanked Council and asked for their support.

Council comment:

Councilman Orlans stated that he noticed there was no condition from staff on the issue of the drainage and the correction of it. He asked Ms. David "is that something they would have to take care of in doing this piece of property, or not, or do they have an agreement with the Reserve at Crabapple to do it." Ms. David replied that there are two issues. She stated that the first issue "is the detention pond, which will be on our property which will alleviate the problem to the Spencer's backyard, which is The Cottages at Crabapple. There is also a curb and gutter problem on Rucker Road that is not on our property, that is actually on the property for The Reserve at Crabapple. We will put in the requirements along Rucker Road as we are required to and we have said they while we were doing that, we would work with The Reserve at Crabapple and help them to get the rest of the road fixed." Councilman Orlans asked if they were going to work with them to put in the curb and gutter all the way to connect with them. Ms. David

stated that she believed that was the City's responsibility and suggested that should be the first step -- to find out whose responsibility that is. Councilman Orlans stated she had made the statement that the applicant had made agreement with them. He asked her to clarify what they were going to do or not going to do. Councilman Orlans stated "so you are not necessarily going to fix that problem for them. I just wanted to get that understanding."

Public comment:

Ann Spencer, no address provided, stated she had originally moved to the North Point subdivision in Roswell over thirty years ago. They have now chosen to retire in The Cottages at Crabapple, a higher density area. She expressed her concern regarding the water issue and the retention and detention ponds. She stated there is a storm sewer in the middle of her property which handles the water from her subdivision as well as from the property behind her. They have lived there one year and have spent thousands of dollars on landscape restructuring in their backyard because of what the developer failed to do and from tornado damage last year at this time. Ms. Spencer stated that she hoped the City would approve the plans for this subdivision but is concerned that construction of the retention pond and the drainage for it will cause them landscaping damage and financial loss. She asked for the support of the City, the City Engineer, and the developer to make sure that their retirement home investment is maintained during this process.

Dale Nesbit, 11950 Nesbit Ferry Road, stated that they way Fulton County would end up with the 2-3 units per acre was most likely due to what it was built out at and not necessarily due to what it was zoned at. Over time, that would be how they got to the different classifications and what makes it the same down through there. It is up to Council whether there will be nineteen or seventeen homes. The adjacent neighbors are what is most important. Ms. Nesbit stated that variances are supposed to be for a hardship but not hardship due to dislike but due to topography, etc. There is no hardship over the fifty feet other than they do not want to give the fifty feet. She could not think of anytime in Fulton County within the last ten years where there was a variance given to the fifty feet of where there was a property that was a large property with a home on it; it is protection so that those folks can continue to live that way. Ms. Nesbit thought that it is a good policy to follow in Roswell. If it is not a hardship, it does not need a variance. Minimums should be looked at it. There should be an articulated reason as to why a variance should be needed. She did not think that the fifty feet should be varied in this application or have that precedence put on it. Ms. Nesbit noted that she supports the staff recommendations.

No further discussion or public comment heard.

Applicant:

Ms. David stated that the figures she gave earlier regarding the densities for the properties to the east and the west is actually what is on the ground. Fulton County, for whatever reason, zoned those higher than the Land Use category that is being designated for this property. She stated that there is a shape to the property that necessitates the variances given the configuration of the road and offered to have the engineer explain that to Council. Ms. David noted that the applicant has the support of the adjacent neighbors, including the property to the south, which would have the new setback.

Council comment:

Councilwoman Winiski stated that the Planning Commission minutes noted that Mr. Costen is affiliated with the Reserve at Crabapple; she asked if he was speaking on behalf of their HOA. Ms. David replied that Mr. Costen is the Treasurer of The Reserve at Crabapple HOA and he did speak on behalf of their HOA.

Councilman Orlans noted that he also had a problem with the variances and noted that "they seem to be using shoe horn to squeeze into a smaller shoe."

Motion: Councilman Orlans moved to approve RZ07-03, CV07-01, Blake Properties Investments, LLC, 365, 375, 395 Rucker Rd., FC-A (Fulton County Annexed) to R-3A (Multi-Family Medium Density District) Land Lot, 1281 without approval of the variances, including staff conditions #1, 3, and 4.

Council comment:

Councilwoman Winiski asked Councilman Orlans if he was eliminating the recommendation for seventeen (17) lots because he was not sure how many lots we will have once those variances are eliminated. Councilman Orlans responded that was correct; with eliminating the variances the property should take care of itself. Councilwoman Winiski stated she felt very strongly about the Land Use Plan as it comes in from Fulton County in these annexed areas because people in the area have agreed to that land use plan. That seems to be quite a jump to R-3A; R-2 allows for a twelve thousand (12,000) square foot lot, very similar to the average square footage on the lots proposed. That would allow 3.63 units per acre which is above the 3.2 that the applicant is asking for. She stated the reason she would like Council to consider that is because it is more in keeping with the land use plan and does not set a precedent for R-3A, which one could point to from every one of those other undeveloped lots. Councilwoman Winiski stated an R-2 zoning designation would be a more compatible zoning with the Future Land Use Plan.

Mayor ProTem Joyner asked Councilwoman Winiski if that was an amendment to the motion. Councilwoman Winiski responded yes, she would move that forward.

Amended Motion: Councilwoman Winiski moved to amend the motion to approve this at R-2 and it would need to have a new site plan submitted either way whether it goes R-3A with no variances or R-2. Councilwoman Henry seconded the motion.

Council comment:

Councilman Orlans stated he would not vote for the amendment because he felt that his motion was the best for this particular situation after having previously considered what Councilwoman Winiski brought up and discussions with the City Attorney and staff members.

Councilman Tolleson asked City Attorney David Davidson if he had anything he cared to weigh in on regarding this discussion. City Attorney David Davidson responded that R-3A is a multi-family designation; this is a single family development which they are proposing. The R-3A is based on the density that they want to get on this. He thought that the density calculations in R-2 would be close to the same but was not certain how many lots they would actually get. Mr. Davidson thought it would be appropriate to rezone this to either R-3A or R-2 because the current use of the property is not economically feasible; either one of the two would be an economic use to the property.

Mayor Pro Tem Joyner invited other questions. None were heard. He requested Council's vote on the amended version.

Vote on the Amended Motion: The amended motion passed 4-1 with Councilman Igleheart, Councilman Tolleson, Councilwoman Winiski, and Councilwoman Henry in favor; Councilman Orlans opposed.

Council comment:

Councilwoman Winiski asked for clarification, if the amendment included the original conditions and the request for a revised site plan as originally stated. Councilwoman Winiski said "I amended his motion which had the conditions in, so those stayed, is that correct, and the request for the revised site plan." Councilwoman Winiski stated that she wanted to be certain.

Mayor Pro Tem Joyner repeated that this amended motion was approved.

Councilman Igleheart clarified that Council voted to approve the amendment and asked if Council actually voted to approve the motion. Mayor Pro Tem Joyner answered no. Councilman Igleheart responded "now we have an amended motion that we now need to approve." Mayor Pro Tem Joyner called for a Council vote "on the original R-2 zoning motion as amended." Councilman Orlans stated "the main motion is to approve it with R-2 with conditions 1, 3, and 4." Mayor Pro Tem Joyner added "And a revised site plan." Councilman Orlans agreed. Councilwoman Winiski asked if the revised site plan would be brought back to Council. Councilman Orlans said "If anybody does a plan that fits into the zoning, the site plan doesn't have to come back to us normally, right?" City Attorney David Davidson responded that site plans are a condition of all of our zonings, under our current ordinances any revision to a site plan would come back to Council for approval. Councilman Orlans responded that right now we have no site plan approved. Mr. Davidson agreed.

Mayor Pro Tem Joyner invited other questions. None were heard.

Mayor Pro Tem Joyner requested a vote on the Motion.

Vote: The motion passed unanimously.

Planning & Zoning Director Brad Townsend asked for clarification on the action just taken. Mr. Townsend stated that Condition #1 should not apply because it references the site plan. Councilman Orlans stated that was true. Mr. Townsend stated "you just voided it out because it doesn't conform to the R-2 zoning." Councilman Orlans agreed. Mr. Townsend stated that conditions #3 and 4 could apply to a revised site plan.

Mayor Pro Tem Joyner asked that the motion be restated.

Restated Motion: Councilwoman Winiski stated "Regarding RZ07-03 & CV07-01, I move that we rezone the property to R-2 and include staff recommended conditions #3 and 4 and that a revised site plan be brought to Council, back to Council for final approval." Councilwoman Henry seconded the restated motion.

Council comment:

Councilman Tolleson asked if Council was approving any variances. Councilwoman Winiski responded that for clarification purposes it should be included that the variances are denied. Councilman Tolleson agreed. Councilwoman Henry seconded.

Mayor Pro Tem Joyner called for another vote.

Vote on the Restated Motion: The restated motion passed unanimously.

Planning & Zoning Director Brad Townsend confirmed for Mayor Pro Tem Joyner that he had the necessary clarification.

Text Amendments:

5. RZ07-06 Text Amendment to consider an amendment to the Zoning Ordinance by adding the use of Farm Produce Markets, and amending Chapter 3.2 "Definitions", Article 7, Table 7.1 "Mixed Use Zoning Districts, Article 10 "Specific Use Requirements," and Chapter 10.26 "Outdoor Storage." (1st Reading)

Planning and Zoning Director Brad Townsend stated that this text amendment would allow for the use of a farmer's market in the historic district and adds the definitions of "Farm Produce Market," "Farm Produce" and addresses "Outdoor Storage." Mr. Townsend stated this text amendment has been discussed in Committee several times with the specific request for this use to be conditionally allowed in the historic district.

City Attorney David Davidson conducted the first reading of an *Ordinance to Amend the Zoning Ordinance of the City of Roswell, Georgia*. This ordinance amends Chapter 3.2 of the Zoning Ordinance of the City of Roswell, Georgia by adding to the list of definitions in Chapter 3.2, Definitions, the following definitions of "Farm Produce Market" and "Farm Produce;" Chapter 10.26, Outdoor Storage; Article 10, Specific Use Requirements, Chapter 10.19.5 Farm Produce Market; and Article 7, Mixed Use Zoning Districts, is hereby amended by adding to Table 7.1.

Council comment:

Councilwoman Henry noted that she supported the idea of a farm produce market in this historic district. She noted that her concerns were with the wording of the text amendment. Councilwoman Henry asked what part of our Code, prior to this text amendment, allows many Christmas tree sales lots to pop up around the City during the Christmas season. Mr. Townsend responded that it would be necessary to look that up but he did not think that this ordinance would prohibit that from happening. Councilwoman Henry noted she had questions regarding the wording of this text amendment that could possibly be addressed since this is the first reading. This text amendment states: "Farm produce market shall mean the sale of fruits, vegetables, and other similar produce including seasonal items and associated products outside of a structure...such as associated products such as trees, wreaths, and/or flowers." Councilwoman Henry was concerned as to what is considered a seasonal product and whether it could be Christmas trees, pools, boats, lawn mowers, picnic tables, all of which are seasonal items. Councilwoman Henry interpreted that this text amendment meant a farmer's market type "produce stand" for seasonal produce such as pumpkins and Christmas trees. She noted that she was trying to avoid a loophole in which someone could have an outdoor display of lawn mowers, picnic tables, oak trees, maple trees, thereby ending up with a nursery in this produce center as well as a seasonal rotating flea market. Councilwoman Henry asked that Mr. Townsend take another look to tighten the wording, find out what in the Code allows the City to sell seasonal items such as Christmas trees and wreaths, and if that wording is actually necessary in this type of text amendment. Mr. Townsend responded that he would check on that.

Councilman Orlans asked if in this situation the items have to be taken in at night. Mr. Townsend responded yes. Councilman Orlans stated that if they had Christmas trees for sale or any other items, they would have to find some way to get every one of those trees and items inside, every night. Mr. Townsend responded that was correct.

Motion: Councilman Orlans moved to approve RZ07-06 Text Amendment to consider an amendment to the Zoning Ordinance by adding the use of Farm Produce Markets, and amending Chapter 3.2