

**REZONING**

**11-0755**

**RZ11-16. CV11-06**

**WARSAW ROAD EARLY CHILDHOOD LEARNING CENTER**

**1240 Warsaw Road**

**Land Lot: 525**

Jackie Deibel stated this was rezoning case RZ11-16 and concurrent variance 11-06. It is located at 1240 Warsaw Road. It is currently zoned R-3 and is being used as a daycare center. The applicant is requesting the C-2 neighborhood commercial zoning.

If one will look at the surrounding zonings, next to it on the west is zoned R-1. There is R-3 where the senior center is and R-4 and R-3 apartments across the street.

The request to C-2 is based on the removal of daycares from the R-3 zoning classification when the zoning ordinance was changed in 2003. Daycares were permitted uses by right at that time but then were removed and put into the commercial classifications. So, the applicant is requesting C-2 in order to bring it into conformity.

They are asking for four variances based on the fact that they are asking for C-2. The first one is for a 50-foot setback for a building when abutting R-1 and also for the 40-foot buffer. The building, Deibel believes is seen 28 feet from the property line abutting the R-1 zoning classification.

The third variance is a request from section 6.3.1 which indicates that no building in C-2 can have more than 5000 square feet and this is currently at 8883 square feet.

The last one is abutting the R...once they change to C-2, they will also be abutting the R-3 zoning classification and that requires a 50-foot setback with a 40-foot buffer.

The staff has recommended approval based on the conditions for the survey stamped and that they received on December 5<sup>th</sup> and the fact that the use of this property shall be limited to a daycare center.

Jackie Deibel asked the Commission if they had any questions.

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Harvey Smith stated that this is really just a technical aspect of the property. Nothing has really changed. Jackie Deibel stated that nothing is changing. Smith clarified that it was the same operation. He thought it might have changed ownership. It is purely to make it conforming. It is non-conforming right now. Jackie Deibel stated that was correct. A new owner purchased it last summer and they wanted to bring it into conformity and that is what they are going through. Smith thanked Deibel.

Bryan Chamberlain stated that as he recalls if the property was to, the current tenant was to not be there for as much as three months, under the current zoning they would lose the ability to continue on as daycare. And that is one of the reasons for bringing it into conformity. Jackie Deibel stated that was true.

Cheryl Greenway asked if there were any further questions.

Cheryl Greenway stated that she just wanted to clarify...her concern is changing the zoning to C-2. If they do close and so it is not a daycare now and something else comes in. Jackie Deibel stated that if they limit it to a daycare under the current zoning condition then someone would have to through the whole process to try something else because the city is conditioning it to be continued to be a daycare only. Greenway clarified that their options are they could leave it as is and give it a conditional use. Jackie Deibel stated that they could not do it as a conditional use. It is not allowed in R-3. Greenway asked Deibel what was the conditional use she was saying, a C-2? Say it is conditional only for the daycare. Deibel stated that it is a zoning condition that they put on the...if it is approved. The condition would be only that it remain as a daycare. Greenway asked Deibel if she sees a concern with it being changed without that condition. Deibel stated that if they don't put that condition on there and down the road five years something new could come in and yes, maybe a retail establishment opens up or something that is allowed by right in C-2. So if they put in the condition and leave it as a daycare then that is the only thing that they are allowed to have unless they bring it back through a rezoning process.

Cheryl Greenway stated that would give them protection in case somebody else moved in and later....Deibel stated that was correct.

Cheryl Greenway asked if there were any other questions for the city. Hearing none she asked the applicant to please come forward.

Trent Myers stated that he was an attorney with Sutherland, Aspbill and Brennan. Their address is 999 Peachtree Street, Atlanta GA. He has a quick presentation to kind of sum up a lot of what Jackie Deibel mentioned. First of all who they are.

Myers stated that his client is a non-profit organization, ELPM, Early Learning Property Management whose mission is to support and promote early childhood learning and development by providing adequate facilities where that learning

can take place. Over the past 12 years, ELPM has built or renovated 13 early childhood learning centers throughout metro-Atlanta. Warsaw Road Center is one of those and that center is being operated by Easter Seals as tenants. So, ELPM is a landlord. They lease it to Easter Seals. Under that lease Easter Seals pays them, the non-profit of below market rent and all of that rent is basically used to pay for operating expenses that are the responsibility of their non-profit under that lease.

Myers Stated that the property is one acre-and-a-third with a single one-story brick building that as Jackie Deibel mentioned is 8800 square feet. It also has an outside playground that is surrounded by a fence and parking facilities. Inside there are four classrooms for infants, three classrooms for three-year-olds, one classroom for pre-K and the center serves a total of about 100 kids between the ages of six weeks and four years old.

As Jackie Deibel mentioned, adjacent uses include the Fulton County Senior Center, multi-family residential apartments and directly to the west, single family residential. In fact, across the street is a very large apartment complex from which the center gets a lot of its enrolled students.

As the Commission knows from looking from a bigger perspective this area is also really close to Holcomb Bridge Road corridor and along that corridor one has a variety of C-3 highway commercial with a lot of mix of restaurant, retail, professional services. So their property is basically right in between a lot of residential area and the commercial area abutting the corridor of Holcomb Bridge Road.

So what is the applicant seeking? Myers stated that they are seeking a rezoning to C-2 because right now they are R-3 and as Jackie Deibel mentioned they are subject to the non-conforming use provisions of the Roswell ordinance. And as Bryan Chamberlain actually mentioned, under those restrictions if for some reason the property is vacant for more than three months or the tenant loses its license to operate a daycare center for more than three months or the building is more than 50 percent damaged or destroyed, the applicant basically loses their right to operate as a daycare center. And ELPM's mission as one knows is to operate a daycare center. So that is definitely a concern of theirs.

The applicant feels C-2 is a good fit for the location. C-2 is the least intensive commercial district in which a daycare center is an outright permitted use. Myers thinks it is also compatible with nearby and adjacent uses and he believed it was Bryan Chamberlain or someone mentioned earlier that they are not changing the use of the property. They are offering a daycare center there. They are not actually seeking out a more intensive use.

But, because it is a C-2 classification they need to also request several concurrent variances. One can see to the left on the screen that is the existing

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survey. They are seeking a variance from the 5000 square foot maximum building requirement. They are also seeking a variance for the northwest corner of the building, which at its closest is 28 feet to the western boundary of the property and as one could see from the bigger map, the western boundaries are where the R-1 Single-family residential homes are located. On the east side they are within 50 feet and they don't have a 40-foot buffer adjoining the R-3 district. Even though it is an R-3 district the Fulton County Senior Center is there and so they are also subject to that setback and buffer requirement.

Myers stated that he ran through that really quickly. He asked the Commission to let him know if they have any questions.

Cheryl Greenway thanked Myers and asked if there were any questions from the Commission.

Bryan Chamberlain clarified if to the best of Myers' knowledge have they had any complaints from any of the existing residents or senior center or tenants of the apartment complex across the street in all of the years that he has been in operation.

Trent Myers stated not to his knowledge and he sees his clients shaking their heads no as well. In fact, across the street he thinks several students actually live in the apartment complexes so it is pretty easy for them to walk. There are sidewalks adjoining the street so they are pedestrian friendly. He does not believe there have been any complaints.

Bryan Chamberlain stated that it is reasonable to assume that there has been a pretty symbiotic relationship with Myers' facility and the organizations that have been in it over the years. Myers stated that was correct. They bought the property in June of last year. Before that time it was a for-profit daycare center and he thinks it has been a daycare center since 1993. So basically, they are talking about almost 20 years of daycare center use. To Myers' knowledge there has not been any issues with that. It is kind of a nice addition to the neighborhood. One can drop his kids off at the daycare on his way to work.

Bryan Chamberlain thanked Myers.

Cheryl Greenway asked if there were any other questions for the applicant.

Greenway stated that she had one question. Does the applicant have any concerns or issues relating to if the Commission approves the C-2 but put the restriction on it that it can only be used for a daycare?

Trent Myers stated that he did not. He talked that over with his client before the meeting. They are fine with that recommendation. As one knows, ELPM is not in the development business. They are not a retail or commercial developer or land

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speculator. They are basically owning that property to operate and to lease the property to a certified daycare provider. As long as they can do that, they have no problem with that recommendation.

Cheryl Greenway thanked Myers and asked if there were any further questions from the Commission. Hearing non she thanked the applicant. Greenway asked if there was anyone in the audience that would like to speak in favor of the applicant. No one came forward. Greenway asked if there was anyone who would like to speak in opposition to the applicant. For the record no one came forward.

Cheryl Greenway stated that she would go back to the applicant. She asked if there was anything that Trent Myers would like to add. Trent Myers stated that he had nothing else to add. Cheryl Greenway asked if there were any other questions for the applicant or the city.

Mark Renier asked Brad Townsend if this daycare definition incorporate a learning component if they wanted to change this into at some point a learning center as well as daycare. Is that part of the definition of daycare?

Brad Townsend stated that the current definition includes any place operated by a person, society, agent, corporation, institution or group and licensed or registered by the state of Georgia and licensed by the city of Roswell as a group daycare home or daycare center wherein they receive for pay for group supervision and care of fewer than 24 hours per day, seven or more children, 18 years of age or under. Townsend believes the additional criteria; the learning component would not conflict with that definition.

Mark Renier thanked Brad Townsend.

Cheryl Greenway asked if there were any other questions. If not she asked for any discussion or if she heard a motion.

### **Motion**

Harvey Smith made a motion to approve this application, rezoning no. RZ11-16 with the concurrent variance, CV11-06. He moved that it be approved with the following conditions:

1. The property shall remain developed as shown on the survey stamped received, December 5, 2011, city of Roswell Community Development Department.
2. The use of this property shall be limited to a daycare center.

Joe Piontek seconded the motion.

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Cheryl Greenway called the question. The motion passed unanimously.

**REZONING**

**11-0765**

**RZ11-17, CV11-07, CU11-09**

**CROSSVILLE VETERINARY HOSPITAL**

**40 East Crossville Road**

**Land Lot: 407**

Jackie Deibel stated that this property is located at 40 East Crossville Road. It is zoned R-1. It is located in the Parkway Village overlay district. The request of the applicant this evening is to the OP (office-professional) zoning. The request is for them to rezone the property to OP in order to use it as a veterinary clinic. The surrounding zoning as one can see, the property is zoned R-1. The surrounding zonings are also R-1, however these uses over here, which is Slope's Barbecue does have the Parkway Village overlay and is used as commercial. On the other side of the property is a residential home that is currently being rented. Across the street is a church and to the rear is the Macy office complex.

The applicant is asking for three variances with this request. A variance to the 50-foot setback requirement abutting the northern property line, which is the property abutting the Slope's restaurant. With also a variance to the required 40-foot buffer along the southern property line from 40 feet to 10 feet. This will allow for the new proposed driveway to go along the existing structure to the rear. So the second variance is on this side of the property. The first one is over here on the side.

According to section 10.8 of the zoning ordinance animal hospitals and vet clinics, structures and activities have to be located at least 100 feet from any property zoned or used for residential purposes. The existing structure does not meet the 100-foot requirement along the eastern property line abutting the house. So, the applicant is requesting a variance to that section also.

The staff has recommended approval to the rezoning, concurrent variance and the conditional use requests with the following conditions:

1. In accordance with the site plan received February 10, 2012 the veterinary clinic shall be used for interior only. No outside uses are allowed.
2. All signage on the property must conform to Parkway Village requirements.
3. The applicant shall remove the asphalt drive on the western property line prior to receiving a certificate of occupancy for business.

Cheryl Greenway asked Jackie Deibel to go back to the date she mentioned on that first item. In her book it says December 6, 2011. She thinks Deibel said a

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