



City of Roswell

38 Hill Street
Roswell, Georgia 30075

Meeting Minutes Mayor and City Council Zoning

Mayor Jere Wood

Council Member Rich Dippolito

Council Member Lori Henry

Council Member Kent Igleheart

Council Member Jerry Orlans

Council Member Becky Wynn

Monday, October 12, 2009

7:30 PM

City Hall

WELCOME

Present: 5 - Mayor Jere Wood, Council Member Rich Dippolito, Council Member Jerry Orlans, Council Member Kent Igleheart, and Council Member Becky Wynn

Absent: 1 - Council Member Lori Henry

Pledge of Allegiance

Staff Present: City Administrator Kay Love; City Attorney David Davidson; Community Development Director Alice Wakefield; Planning & Zoning Director Brad Townsend; City Planner Jackie Deibel; Community Information Coordinator Kimberly Johnson; Building Operations Technician Doug Heieren; and Deputy City Clerk Betsy Branch.

CONSENT AGENDA

1. **Approval of October 5, 2009 Council Brief Minutes.**
Administration

1. *Approval of October 5, 2009 Council Brief Minutes.*

Motion: Councilwoman Wynn moved to approve the Consent Agenda. Councilman Igleheart seconded. No further discussion. The motion passed unanimously.

A motion was made by Council Member Becky Wynn, seconded by Council Member Kent Igleheart, that this Item be Approved. The motion carried unanimously.

REGULAR AGENDA

Mayor's Report

1. **Approval of a Resolution supporting State Representative**

Wendell Willard's legislation to make loans available to stabilize dams.

1. *Approval of a Resolution supporting State Representative Wendell Willard's legislation to make loans available to stabilize dams.*

Mayor Wood stated this was a resolution he had submitted to support legislative action which Rep. Wendell Willard would present at the State Capitol this year. Rep. Willard is also the city attorney for the City of Sandy Springs and presented the legislation which created the City of Sandy Springs and opened the door for Johns Creek, Milton, Dunwoody, and Chattahoochee Hills.

City Attorney David Davidson conducted the reading of a RESOLUTION TO SUPPORT THE EFFORTS OF STATE REPRESENTATIVE WENDELL WILLARD IN ASSISTING CATEGORY 1 DAM OWNERS IN RECEIVING STATE FUNDING OR LOW INTEREST STATE LOANS FOR THE REPAIR AND/OR MAINTENANCE OF SUCH DAMS stating there exists within the City of Roswell several dams that have been categorized as Category 1 dams under the Georgia Safe Dams Act by the Georgia Environmental Protection Division (EPD) of the Georgia Department of Natural Resources (DNR); Some of these dams as originally designed and built did not qualify for such status. State law now requires Category 1 dams to meet heightened criteria for maintenance and repair, which is beyond the practical financial ability of most private dam owners. The Mayor and Council recognize the need for assistance in the repair and maintenance of such dams, but are prohibited by the State Constitution and other State laws from funding private entities for non-charitable purposes; the State has the ability to provide such assistance. State Representative Wendell Willard has indicated a willingness to introduce legislation in support of State assistance for repair and maintenance of private Category 1 dams. Mayor and Council support the introduction of State legislation to assist in the repair and maintenance of these Category 1 dams.

Council comment:

Councilman Orlans asked Rep. Willard if he had a chance to see the resolution. Rep. Willard replied that he had just heard the resolution but that it fit in with what he needed. He also stated that he had planned to discuss this legislation and his intentions regarding it during this meeting. Councilman Orlans thanked Rep. Willard and added that he would hold his questions and listen.

Mayor Wood asked Rep. Willard to explain what he hoped to introduce as legislation. Rep. Willard stated he would like to take credit for this but could not. This matter regarding Category Type 1 dams (large dams), was brought to him by Councilmember Becky Wynn, former Councilmember David Tolleson, and Fulton County Commissioner Lynn Riley. He said there are a number of these types of dams not only in Roswell, but also in other parts of North Fulton County and the metropolitan area, which are currently in problem stages in terms of repair or total renovation replacement. Generally, there are issues and litigation involving the problems with dams, lakes, and maintenance issues. He noted difficulty in having sufficient funding available and the difficulty in getting 50 or 100 property owners who say they will take their part of the responsibility. Rep. Willard said dams also serve a very vital resource to the community and the environment because many times they are major detention facilities holding large volumes of water from major rains. There is a public purpose to be sure that these dams are continued because we face the fear and expectation that if the dams are not repaired the state will come in and say it is now dangerous and cannot be continued and will be breached, leaving a "big mud hole." Rep. Willard said he was trying to look at a way to find assistance from a state level. This would not be for a handout but providing an opportunity to a local government, working with the citizens and the communities who surround that lake to

have funding borrowed from the state level through most likely, the Georgia Environmental Facilities Authority. He said he would like to have the funds coming as state bond proceeds, where the state borrows the money, for example, perhaps at 3.5% as opposed to the city or the local community at a substantial higher interest rate, and then have those funds loaned to the city; have the city in a position where it could work out a way with the local community either through covenants attached to the properties, other types of loan agreements that would permit that community to use those resources with the oversight of the city in doing the repair or renovation to the dam. The property owners would then pay back the city as the city would have the ultimate responsibility to the state. There would be security through the local community that is borrowing the funds that has that need, to pay back to the city and the city in turn will pay back to the state. Rep. Willard stated the benefit would be having a borrowing resource and the ability to secure the funds at a lower rate, and it would accomplish a very vital need for that community. Rep. Willard stated the Georgia Environmental Facilities Authority is probably the most likely source. He noted that he had conducted brief reading of the law and the statutes applying to that authority. Within that statute there is the right to use the funds for dam work. It also includes the right to loan money to cities and other local authorities. Rep. Willard stated the mechanism may already be in place. He stated that he spoke with Mr. Phil Foil, Director of the Georgia Environmental Facilities Authority, who was going to check further into this matter to be certain from his own counsel that this could perhaps be authorized. Rep. Willard explained that if it works out, we have the legislation. The main reason to have them look at it is to get the support of the authority, but certainly that of the Governor's office, to see if there can be an amount of money considered for borrowing through the state by appropriating it at the next session of the Legislature for cities to apply for this type of program.

Council comment:

Councilwoman Wynn thanked Rep. Willard for stepping forward to sponsor this legislation. She also thanked Fulton County Commissioner Lynn Riley, and former Councilmember David Tolleson for seeing the need for this type of legislation. Councilwoman Wynn noted that everyone became aware when Lisa DeCarbo, the president of the Martins Landing Lake Foundation brought forward the issues they were encountering regarding their lake. Councilwoman Wynn said "I want to apologize to the four of you. This is the first time that I have seen this resolution, so I know that you all have not had a chance to read it." Councilwoman Wynn said she had concern regarding the following of policy for getting resolutions out to citizens, Council, and staff; this is a very general resolution which states the city supports Rep. Willard in bringing this bill forward.

Motion: Councilwoman Wynn moved for Approval of a Resolution supporting State Representative Wendell Willard's legislation to make loans available to stabilize dams. Councilman Orlans seconded the motion. Public comment invited, none was heard. No further discussion or comments by Council. The motion passed unanimously.

Mayor Wood thanked Rep. Willard for sponsoring this bill and for all he does at the State Legislature.

A motion was made by Council Member Becky Wynn, seconded by Council Member Jerry Orlans, that this Item be Approved. The motion carried by the following vote:

In Favor: 4

Enactment No: RES R2009-10-53

Community Development - Councilmember Richard Dippolito

2.

CU09-01, Georgia Allstar Cheerleading, 3000 Northfield Place, Suite 100.

Presented by Bradford D. Townsend, Planning and Zoning Director

2. CU09-01, Georgia Allstar Cheerleading, 3000 Northfield Place, Suite 100. Planning and Zoning Director Brad Townsend stated the applicant is seeking conditional use for a cheerleading business providing instruction in various techniques related to specialized high level competition. The proposed site is within an I-1 zoning district which requires that schools are conditional use. The proposed cheerleading business would be located within an existing industrial building.

Recommended staff conditions:

1. Any expansion or relocation of the business within the City of Roswell must be approved by the Mayor and City Council.
2. The location of the business shall be limited to 3000 Northfield Place.

Mr. Townsend stated the Planning Commission recommended approval with two staff conditions. Staff recommended approval of this conditional use.

Council comment:

Councilman Igleheart stated that unless the cheerleaders were intending to make a lot of noise, he did not see any issue as to whether they stay here, move, or expand. He asked "Isn't it a little bit too much red tape to ask them to come back to us if they just want to move or expand." Councilman Igleheart noted that Planning Commission minutes indicated they had the same question. Mr. Townsend stated staff was dealing with the concern that "We ended up finding them after they had moved in." This condition was added in order to know where they might want to move to in the future before they had signed a lease for a site. Mr. Townsend said "Yes, it may be additional regulation but we think it was prudent in knowing how big they got or if they moved to another place. It was staff's recommendation." Mr. Townsend clarified that it is well within the Council's purview to not include that condition and could be removed. Councilman Igleheart stated he could understand some places where that would make sense but in this particular case he did not think that it was necessary in the I-1 zoning designation.

Councilman Dippolito stated the second condition regarding the business location is redundant with the fact that we are providing this conditional use for a specific location. Mr. Townsend replied that condition #2 could be eliminated.

Mayor Wood asked the applicant to come forward. Mr. Townsend noted that he did not see the gentleman who had attended the Planning Commission hearing in attendance at this Council meeting. Mayor Wood noted that it was not necessary to have the applicant present since a presentation of the request had been done at this public hearing. Mayor Wood invited public comments or questions regarding this request for conditional use. No public comment was made. No further discussion.

Councilman Dippolito stated he would like to make the motion with the understanding that staff's concerns about relocation but wanted to add some flexibility.

Motion: Councilman Dippolito moved to approve CU09-01, Georgia Allstar Cheerleading, 3000 Northfield Place, Suite 100, with a change to condition #1 to state: any expansion greater than twenty-five (25) percent of the current square

footage or relocation of the business within the City of Roswell must be approved by the Mayor and Council; and the elimination of condition #2. Councilman Orlans seconded.

Council comment:

Councilman Igleheart asked what the reason is for staff concern about where Georgia Allstar Cheerleading relocates. Councilman Dippolito replied that he was responding to the valid concern of staff in that we would just like to know where the location of this business is since it is not a use that we typically allow in I-1. Councilman Dippolito said he agreed that there is probably not much opportunity for them to be disruptive but at the same time he thought it necessary for the City to understand what is going on within this particular use. Councilman Igleheart noted that if this business moved to a location not approved then obviously they would have to come back in for a rezoning or some kind of change. If they moved to an area where their activity is approved, then it is under zoning and there would be no need for them to come back. Councilman Igleheart asked if it was not correct that this condition would say that they will be required to come back even if they move somewhere that is approved. Mr. Townsend stated staff would determine if it was a conditional use requirement. For example if it was for an I-1 location then it would come back; if it was for a permitted use in a C-3 location then it would not come back to Council. Councilman Igleheart asked if that would apply even based on this condition's wording. Mr. Townsend replied "Even based on the wording here." Councilman Igleheart replied he was okay with that. No further discussion.

The motion passed unanimously.

A motion was made by Council Member Rich Dippolito, seconded by Council Member Jerry Orlans, that this Item be Approved with Conditions. The motion carried by the following vote:

In Favor: 4

3. RZ09-09 Taylor House Salon, 66 Woodstock Rd, Land Lot 388.

Presented by Bradford D. Townsend, Planning and Zoning Director

3. RZ09-09 Taylor House Salon, 66 Woodstock Rd, Land Lot 388.

Planning and Zoning Director Brad Townsend stated the subject property is currently zoned C-2. A rezoning took place in 1999. As part of that approval, a condition was placed on the rezoning that limited the use to a hair salon. The applicant requests the removal of that condition to allow for other uses which are permitted in the C-2 zoning district. The structure contains approximately less than fourteen hundred (1400) square feet; parking area is gravel on the side and rear of the property; there are approximately sixteen (16) parking spaces. Adjacent property is zoned O-P. An investment office and an architectural office are located adjacent to this property. Mr. Townsend stated staff recommended approval of the application with one condition on the limitation on uses.

Recommended staff conditions:

1. All permitted uses in the C-2 zoning district excluding convenience stores without fuel pumps; and the personal service establishments shall be limited to a hair salon only.

Mr. Townsend stated the Planning Commission recommended denial during their September 15, 2009 hearing.

Council comment:

Councilman Orlans stated the original conditions included a five (5) foot brick sidewalk in the front. Mr. Townsend replied that a five foot brick sidewalk was included in the original rezoning but no brick sidewalks have been put down on Woodstock Road in this area; the City put in concrete sidewalks in the area.

Mayor Wood asked if the City is keeping with the idea of "a sort of extension of the historic district because it is the same character and same sort of adaptive use of buildings." Mr. Townsend replied, yes, we are trying to do that; there will be no exterior changes to the building. Mayor Wood asked if the applicant wanted to make exterior changes to the building would it be necessary to come back to Mayor and Council. Mr. Townsend replied that would be heard before the Design Review Board for approval of any exterior changes. The Mayor asked if the applicant would have to comply with the historic district guidelines; he views this area as an extension of the historic district, "Canton Street turning the corner." The Mayor said he would like this to be envisioned as an extension of the historic district with the same set of rules and not a sub-category; he asked if that was possible. Mr. Townsend replied that it is difficult knowing that it has never been included as part of the historic district under those guidelines; there are two different guidelines and different boards over those. The Mayor stated he thought something similar had been done with other properties in this area which were allowed non residential uses in this area. Mr. Townsend stated it was probably part of the rezoning applications as originally handled; probably stipulations in which the brick sidewalks were included with the desire or the requirement to not have paved parking in the front. He said the applicant's current request is related to that original rezoning and the limited use at the salon; that is the stipulation that the applicant says is to onerous at this point and would like relief from. Mr. Townsend replied the applicant requests retail uses and office uses; something other than salon.

Councilman Orlans stated that previously when this had come up he requested that it be considered as a total area either included as a historic district or not to achieve consistent zoning instead of by pieces of property. Councilman Orlans said all of it is O-P except for one or two spots and this may be the only one except on Canton Street. Councilman Orlans said he still thinks the entire area needs to be approached. He asked if Mr. Townsend knew of staff discussion in that direction, although he realized that Mr. Townsend was not here when this was originally rezoned. Mr. Townsend replied that in researching this application he saw that conversations took place regarding this area fitting into the feel of Canton Street. He noted that as it relates to the City's Comp Plan review, there could possibly be some opportunity to look at how areas are contiguous and how we want them to look and be developed into the future. Councilman Orlans noted that some residential still remains in this area; the property owners and residents on Woodstock Road need to be involved in all these issues. Councilman Orlans stated the application being considered tonight is a spot situation which needs to be considered in terms of where we are going in the future with it. Mr. Townsend thought that was why the Planning Commission had concern related to what this application would allow. Councilman Orlans stated he did not disagree with the Planning Commission's concern and asked for a list of C-2 uses. Mr. Townsend displayed the C-2 uses and noted each use line by line; business uses included accessory uses; adult centers; brokers; automobile broker (would be an office use and not have cars at its site); business services establishments; churches; daycare centers; exterminator businesses; financial real estate businesses; spas; conditional uses; institutional residential living; office; personal service establishments; semi public uses; restaurant without drive-ins or drive-thru; schools of the art. Councilman Orlans asked if staff has a list of uses which would be allowed or recommended. Mr. Townsend stated staff recommended the C-2 uses excluding convenience (stores) with the pumps, and control on personal service to salon use only; the definition of personal service in the City's code can be

broad.

Mayor Wood asked if there is a specific proposed use or a general set of uses for this site. Mr. Townsend confirmed the applicant was looking for a general set of uses. Mayor Wood stated he concurred with Councilman Orlans' opinion to take a bigger look at this piece rather than a piece at a time; he has always advocated that. Mayor Wood said he would like to see the applicant receive approval at this meeting and not be held up but preferred that it be limited in uses so that Council might come back and look at it. The Mayor said he would encourage this whole area to try to come into the historic district because most folks feel this area is an extension of it from an operational standpoint, a regulatory standpoint, and from the look and feel of this street. Mayor Wood said Canton Street has been a very successful project that could be extended to Woodstock Street. He suggested looking at this corridor and set of buildings to possibly come into the historic district; this is becoming a mixed-use district that includes residences, restaurants, and offices. The Mayor noted that he did not like creating a sub-category and spot zoning in this area.

Council comment:

Councilman Dippolito stated he agreed with what had been said and was concerned about this property backing up specifically to the houses on Nancy Trail because of potential noise from restaurants. He agrees with the concept of expanding the Canton Street feel down the street but did not think the City was there yet. Council could take a look at it as part of the comprehensive plan and talk with the property owners about expanding the historic district; the Historic Preservation Commission should be consulted as to whether that is appropriate.

Applicant:

Tara Taylor, Taylor House Salon business owner and owner of the subject property, asked that the condition be removed in order to incorporate a small amount of retail space to supplement her business. She currently operates a hair salon on this site which has nine rental spaces for hair stylists. Over the past year she has rented only one space; one more stylist will start next month. Ms. Taylor noted that she remembered Council conversation during the previous zoning for this property regarding the extension of Canton Street to this section of Woodstock Road. Ms. Taylor said she would like to be a part of the historic district; she won a restoration award through the historic society. Most of the area is zoned O-P. She spoke with her neighbors and there is no opposition to her rezoning request. She would like this business to remain a hair salon.

Mayor Wood asked Ms. Taylor if Council added to the uses, so that in addition to the hair salon it could include office professional use and retail use, would that be a broad enough category for her to carry out her plans. Ms. Taylor replied it absolutely would be broad enough since she wanted this to remain a hair salon but also allow the opportunity to sell antiques; local artists would like to decorate her walls; no changes would be made to the house structure; no traffic changes.

Council comment:

Councilman Dippolito said the art was easy enough to understand but he wanted a better feel for the type of retail Ms. Taylor wanted to do. He questioned if her intention regarding retail was for the sale of items which are ancillary to salon use. Ms. Taylor replied "A little of both. Right now I sell things that are related to the hair salon. It is a very small amount." She would like to sell antique items, artwork, and jewelry in a way to supplement her income without changing the entire business. Councilman Dippolito inquired if the salon was approximately 1,368 square feet. Ms. Taylor replied it is closer to a total of 1,600 square feet including the porch addition. He asked how much square footage would be retail space. Ms. Taylor replied it

would be a quarter or less of the total square footage and would be mixed in with the salon space. Councilman Dippolito said perhaps there is a way to have a limited amount of retail so that it does not include the entire use of the building which could become a type of retail use that would negatively impact the neighborhoods adjacent. Ms. Taylor responded that she understood. Mayor Wood asked how retail, if used in this building, would negatively affect residential on this street. Mayor Wood noted that Canton Street includes retail, office, and restaurant uses coexisting well and he was not aware of any residential objection to that retail and restaurant use. He clarified that he was not proposing restaurant use. He did not want to go beyond what is necessary to accomplish this and that is the reason for his suggestion of rather than parse this out as to what percentage is retail and what percentage is salon; both seem to be adaptive uses that are compatible in this neighborhood. In this neighborhood, retail backs up side by side residential on Canton Street; there have been complaints regarding restaurant operating hours but he has not heard of any complaints about retail. Mayor Wood said he wondered if retail needs to be limited but provide the applicant flexibility of use. Councilman Dippolito stated he did not disagree with the concept of the stores on Canton Street for this area on Woodstock Road, but Ms. Taylor may not own this building forever and we would want to be certain that we do not have a use there which requires a lot of trucks coming in creating noise for the residential properties adjacent; if there is a limit of retail, for example 500 square feet of retail should not require the need for trucks, large dumpsters, and those sorts of things. He said that he did not think that was Ms. Taylor's intent but ultimately she may sell the building and move on to something bigger and better.

Councilman Igleheart said he thought Council was in agreement with wanting to help Ms. Taylor. He noted his concern about adding restaurants into this area of Woodstock Road which is adjacent to residential properties, although Ms. Taylor's application is not for that type of use. Councilman Igleheart stated Council must be careful in what type of use is allowed there; he asked if there are ways that this could be parsed so that it makes sense for the current situation. He said some people might disagree that it should go through the Historic Preservation Commission.

Mayor Wood asked Planning and Zoning Director Brad Townsend to think about language which would satisfy the Council's wishes.

Councilman Orlans agreed with Councilman Igleheart in that Council wanted to help Ms. Taylor out with her use but this requires Council to proceed with caution in this situation since this basically is spot zoning; those people in the historic area have known for years what could be next to them if they are moving into a residential part of the historic area and why he suggested getting all the citizens on Woodstock Road involved in the discussions. Councilman Orlans suggested that Council proceed with caution opening up the uses, including potential retail use. Councilman Orlans noted that this property is zoned C-2 salon and asked staff if it was true that it could not be used for office use; he noted that Councilman Dippolito had earlier mentioned the possibility of office use there. Mr. Townsend acknowledged that he would look into it.

Planning and Zoning Director Brad Townsend stated it seemed that tonight, one of Council's major concerns is restaurant use. He noted that the applicant never intended that use for this site; it is possible that it is one of the excluded uses.

Mayor Wood suggested that Council consider office use and no more than a certain percentage of the square footage occupied by retail. Mr. Townsend stated that would be a reasonable limitation.

Councilman Dippolito asked if there is a way to craft that so that it is somewhat

enforceable. He inquired with City Attorney David Davidson if it would be best to make it an absolute square footage. Mr. Davidson replied that it would be difficult to have a square footage if Ms. Taylor is going to have small retail spaces set up throughout the salon. Mr. Townsend replied that he thought the simplest way would be to have a "number not to exceed." The structure is a total of 1600 square feet; a third of that would be 500 square feet. It could be enforced stating "Not to exceed 500 square feet of use." Mr. Townsend said particular locations holding business licenses are checked for compliance with the conditions.

Mayor Wood inquired with Councilman Dippolito regarding language for the motion.

Motion: Councilman Dippolito moved to approve RZ09-09 Taylor House Salon, 66 Woodstock Rd, Land Lot 388, to not include staff condition #1; and include C-2 limited to the use as a hair salon and for the sale of retail merchandise not to exceed 400 (four hundred) square feet, and for office professional use; to include the addition of condition #2 stating the applicant comply with the original zoning conditions of adding a brick sidewalk.

Council comment:

Mayor Wood asked if his conditions applied if she puts those uses in. Councilman Dippolito replied that the applicant ought to comply because that condition was applied ten years ago. Mayor Wood stated he was not sure it was appropriate tonight to make a decision from the dais regarding whether she is in compliance or not. He asked Councilman Dippolito if he was making a motion to pass a zoning, would the uses be conditioned upon her compliance. Councilman Dippolito said "I'm okay with that." Councilman Orlans asked if the condition was not already there. Mayor Wood further stated "I think you can say, in making a motion going forward, that if she wants to have retail or office, then it sort of repeats that condition." Mr. Davidson replied this would be changing the zoning and adding a new condition. He recommended that if Council wanted that condition included, it should be added at this time. Mayor Wood replied that he agreed that it should be included. He asked how much time she would have to comply because if she currently is not in compliance then she needs the time to go into compliance, whether or not she goes forward with the retail use. Mr. Davidson replied it would be a condition of getting the extra uses, so she would not have the extra uses until she installs the brick sidewalk.

Mayor Wood stated that as he understood Councilman Dippolito's motion, it states that the applicant is to have the additional uses of office professional and the limited retail on the condition that at the same time those uses come in, she installs the brick sidewalk; if she currently has the condition to install the brick sidewalk, that does not erase it. Councilman Dippolito replied yes; he added that the (retail) use is limited to 400 square feet.

Councilwoman Wynn seconded the motion. No public comment was made. Councilman Orlans asked to hear the motion stated again.

Restated Motion: Councilman Dippolito Councilman Dippolito moved to approve RZ09-09 Taylor House Salon, 66 Woodstock Rd, Land Lot 388, as C-2, limited to the use of a hair salon; the use of office professional and the sale of retail merchandise not to exceed 400 (four hundred) square feet; as a condition of the zoning, the applicant will provide a brick sidewalk along the frontage.

Council comment:

Councilman Igleheart said that by definition, it is C-2 conditional as opposed to C-2. He asked if would it be an issue on the zoning map as C-2, these conditions are specific. Mr. Townsend replied no.

Public comment invited once more; none were made. No further Council discussion.

The motion passed unanimously.

Mayor Wood noted for the record that Councilwoman Henry was absent with an excuse; he apologized for not making an earlier announcement.

Mayor Wood recommended to Ms. Taylor that if she and her neighbors, as a neighborhood group, wished to come into the historic district it would be a simple solution; that would prevent future rezoning hearings to have uses approved. As part of the historic district, they would have all of the uses and conditions available that are approved for the historic district as well as all of the benefits and burdens of the historic district. Mayor Wood stated that he presumed that if the applicant's neighborhood wants to come into the historic district as a "block" and it is contiguous with the historic district, this Council would look upon that favorably.

A motion was made by Council Member Rich Dippolito, seconded by Council Member Becky Wynn, that this Item be Approved with Conditions. The motion carried by the following vote:

In Favor: 4

4.

PV09-02, 11575 King Road, Marilyn Wankat - Sutton Country Day School, Ltd.

Presented by Bradford D. Townsend, Planning and Zoning Director

4. PV09-02, 11575 King Road, Marilyn Wankat - Sutton Country Day School, Ltd. Planning and Zoning Director Brad Townsend stated the subject property is within the Parkway Village District across the street from the Publix Shopping Center. It is adjacent to a shopping center and the Roswell High School property. An existing day school is located on the property.

The applicant has requested two variances:

- 1. The applicant would like to eliminate the required 40' streetscape as required by Section 12.2.3(a). There is an existing structure that cannot meet this requirement.*
- 2. The applicant would like to vary the maximum number of parking spaces allowed by Section 12.2.3 (c) from 29 to 43. This would allow for more parking for a day care as well as increase the marketability to include office uses.*

The day care site plan shows the existing parking is in front. The proposed application indicates the playground at the rear of the property, a driveway access along the southern property line, and additional parking to the rear of the property. When this property was initially proposed for day care use in 1988, it went through rezoning from E-2 to R-2, for that designation; the Parkway Village Overlay occurred subsequent to that. The day care business has not been in existence at this property for over three months which has left the applicant unable to go back into the day care center business. The applicant's request for two variances is a result of the property being marketed for different use. Surrounding properties are within the Parkway Village District. Roswell High School is located to the north. Mr. Townsend stated staff recommends approval of the proposed application and the site plan brought forward to Council at this meeting; this site plan was received on September 30, 2009. This application requires two variances for this use dealing with parking spaces and the streetscape along King Road. Mr. Townsend stated staff recommended approval of the small tract status for this application.

Council comment:

Councilwoman Wynn asked if the two recommendations (comments) made by Environmental Department staff would be included as conditions of zoning. Mr. Townsend replied yes. Councilwoman Wynn directed Mr. Townsend to confirm whether or not the applicant was agreeable to those recommendations.

Councilman Orlans asked if there has ever been a variance granted to the forty (40) foot Parkway Village streetscape. He thought the 40' streetscape had been a requirement on everything in Parkway Village and there has never been a variance for that requirement. Mr. Townsend agreed.

Mayor Wood said he shared the same concern Councilman Orlans had when the forty (40) foot Parkway Village streetscape variance was brought to his attention. Since this is not new construction, the variance in essence, is already in effect. He hoped the Council would consider the fact that the parking lot is already within the 40' buffer.

Councilman Orlans stated the applicant is asking for additional parking, so he thought the applicant was looking at redoing the parking since it is not being used as daycare any longer. He was waiting to hear the applicant's thoughts regarding these issues. Councilman Orlans noted that the streetscape is one of the main points of the Parkway Village district.

Applicant:

Brad Riffel, AEC, Inc., representing the applicant, stated they were unaware of the conditions Councilwoman Wynn had earlier referred to and requested an opportunity to review them. The Mayor allowed the applicant time to review those conditions and moved the public hearing on to agenda Item #5. Upon the meeting returning to PV09-02, the applicant had reviewed the conditions. Mr. Riffel stated they were agreeable to condition #1, regarding the use of porous pavement and noted they had planned to accommodate that condition, as their site plan indicated. Mr. Riffel in reference to condition #2 regarding a rain garden to the north of the building, stated "That is a portion of the playground being considered for the 150 square foot per child in this layout." He said the first variance request for the 40' landscape strip is quite obvious. The second variance request with the number of parking spaces is due to a greater market ability. Mr. Riffel added that many day care operators were saying "We simply can't operate with so few parking spaces." Mr. Riffel said they "decided to try to put as many parking spaces there as they could that would accommodate the daycare into the back; obviously the drive going to the back, knowing that we needed to accommodate so many square feet per child, and maximizing the number of square foot we could get, so they can as many children outside at one time." Mr. Riffel noted the owners and potential future day care operators request at least thirteen (13) spaces to the back. One reason for the up to forty-three (43) additional parking spaces was so that it could possibly be marketed for a doctor or a dental use. Mr. Riffel was not certain the rain garden condition could be accommodated because it is a playground area and is designated as such. He defined a rain garden as "A method to accomplish water quality from the runoff from either the building or the parking. It is depressed area with plant material and just a way to convey stormwater and cleanse the stormwater. Most of the time it is attached to downspouts from buildings." Mayor Wood asked if the applicant had considered pervious parking to the rear. Mr. Riffel responded yes; the site plan includes porous pavers but the drive to the dumpster does not because of the porous nature of those pavers. Standard asphalt would be necessary there. The remaining portion of the parking lot in the back would be a paver system or actual porous concrete.

Council comment:

Councilman Dippolito asked where the storm water is currently detained. Mr. Riffel referred to the site plan and stated the location is at the front southwest corner. Councilman Dippolito asked if a water quality facility currently exists there. Mr. Riffel replied no; when this building was constructed in 1989, there were no requirements for that. Councilman Dippolito asked if the rain garden is "an attempt to have some water quality." Mr. Riffel replied that the applicant intends to fully comply with all the requirements for detention and water quality, but he was not certain it could be accommodated in a rain garden. He said "the very fact of doing a lot of it in porous pavement will accommodate some of that but then we will have to find some other means in which to take care of the drive around the side." Councilman Dippolito stated that he had not previously seen the request for a rain garden. He asked staff if they had spoken with the Environmental department regarding it. Mr. Riffel said "The idea is good; however, since that is a playground, it wouldn't go very well, that application, with the playground." Councilman Dippolito asked how much area would be needed. Mr. Riffel replied that would depend on the contributing pervious area. It could be quite small or be a "decent" size, just depending on the contributing area. Councilman Dippolito asked if it would be possible to relocate it someplace else on the property. Mr. Riffel replied that it is possible, knowing what the current potential operators are looking for in terms of their parking needs; they are looking to do the back 13 spaces, which is the current plan. In essence, it would be removing a bay of 11(spaces) and a bay of 4 (spaces), and therefore the footprint of the playground could be increased. A space could probably be kept between the playground fence and the curb that establishes the drive to those spaces. Mr. Riffel said "It is quite possible that we could provide some very linear form of a rain garden, more of a bio-retention area as opposed to a rain garden. It would be more applicable as a bio-retention area." Councilman Dippolito asked if this is planned to be a school or a medical office, since Council has heard both. Mr. Riffel replied that it is currently set up as a day care; the applicant has received a letter of intent from the operators for day care use. However, others have looked at it for medical or dental use and so the applicant wanted to be sure that use could be accommodated as well.

Councilman Orlans also questioned whether the applicant was going for day care or medical office use. Councilman Orlans noted the Parkway Village streetscape and the forty foot streetscape setback which comes in the middle of the driveway which goes around the edge. He asked what the distance is to the front five parking spaces and if they came up to the curb of the driveway which goes around the south side, could it accommodate the removal of the five parking spaces and a shorter Parkway Village streetscape. Mr. Riffel referred to the site plan and stated the current landscape strip is approximately 10 feet and the parking space is about 20 feet, so in essence, it would be 30 feet. It could be accommodated but it would shift the five spaces to the back which would then require some manner of reconfiguration. Councilman Orlans stated the applicant was proposing so many additional parking spaces that maybe not all 28 new spaces will be needed. Mr. Riffel replied "Again, it is trying to get close to a medical-dental ratio of parking that the industry is desiring. In case the day care operation does not succeed, then they have the ability to market it to the medical or dental industry." Councilman Orlans stated he understood this is an existing place, but his concern was that this would set a major precedent for the whole Parkway Village area and why he was trying to find a compromise. Mr. Riffel replied that this is the district boundary; delineation of the line is next to the school. Councilman Orlans noted the applicant had designed the proposal to cover both daycare and medical-office use. For daycare use, the playground is needed and a few less parking spaces, for medical-dental office, more parking spaces are needed and no playground. He said that with the potential contract for daycare, if the five parking spaces were eliminated in the front, there would be enough spaces with 23

additional to cover the need. If in the future, this ended up as medical-dental use, the five spaces could be carved out of the unneeded playground area.

No further Council comments. Public commented invited; none was heard.

Motion: Councilman Dippolito moved to approve PV09-02, 11575 King Road, Marilyn Wankat - Sutton Country Day School, Ltd. with the first condition: porous concrete shall be replaced with porous asphalt or pavers; a second condition: to add a rain garden where appropriate to accommodate the flow from the roof of the building. The rain garden can be another structure as approved by the Environmental department. The property shall be developed in accordance with the site plan stamped "Received December 30, 2009 City of Roswell Community Development department" with the exception of the removal of the existing five spaces on the front of the property and with the following variances: Reduce the required forty (40) foot streetscape as required by Section 12.2.3(a) to thirty (30) feet; Vary the maximum number of parking spaces allowed by Section 12.2.3(c) from twenty-nine (29) to forty-three (43).

Applicant:

Mr. Riffel noted that one of the owners had pointed out that the front spaces are highly coveted for front door pick up and drop off of the children. Functionality of the daycare would be more difficult if there is elimination of the spaces; it would burden the parents by sending them all the way to the back requiring them to deal with a long circuitous walk to the front door.

Mayor Wood asked Councilman Dippolito if his motion stood. Councilman Orlans asked if there were not still eight parking spaces in the front for the purpose of drop off and pick up. Planning and Zoning Director Brad Townsend interjected for clarification purposes and stated "The variance was from the 29 spaces to 43. With the elimination of the five spaces in the front, that number should go to 38." Councilman Dippolito replied the intent was to follow Councilman Orlans' lead that they could reconfigure the parking lot to get the additional spaces and do it. Planning and Zoning Director Brad Townsend replied "In the back, if that is the clarification, that's fine, ok."

Mr. Allen Wankat, stated he and his wife are the property owners and have been in the child care business ten years. Mr. Wankat stated the morning drop-off and evening pick up is generally within a one hour period, by as many as 140 parents. Going behind the center and walking up the driveway adds "a huge safety issue and is somewhat fearful for an operator." No further comment. No Council comments or questions.

Mayor Wood asked Councilman Dippolito if his motion stood. Councilman Dippolito stated that based on the discussion he would suggest this be deferred for further study. He asked if that would be acceptable to the applicant. Mr. Wankat replied that since they reside in Jacksonville, Florida, a deferral would be somewhat of a hardship for them. Councilman Dippolito referring to the five parking spaces shown on the site plan said "The applicant had noted that a lot of children would have to walk down this asphalt but there is only fifteen (15) spaces in the front right now anyway. We are only eliminating five cars so there still would be a significant number of cars in the back. Wouldn't you accommodate a back entrance into the daycare?" Mr. Wankat replied that daycare is required by law to check children in and out and to make certain that an authorized person is who picks up the child. Councilman Orlans stated that based on what currently is there, the additional five spaces, and speaking about 140 parents picking up children, there will most likely still be people parking in the back. Mr. Wankat replied that they envision most of the back use as employee parking. Councilman Orlans asked if there still would not be some overload which

will require some parents to park in the back and walk back and forth. Mr. Wankat replied "At fifteen we are about the right number but pick-up and leaving happens in bunches based on commute time to and from work."

Councilman Dippolito stated "It seems to me that the flow of this is not working well, based on this discussion. I would like to see the applicant go back and take another look at the site plan for a way to get it to function better to address the concerns this Council has expressed and potentially get the layout to work better from a daycare standpoint, possibly running a drive around the building to provide better access." Mr. Riffel noted that he also had concern regarding the circulation. He said "This is only a one acre site so it is very tight and given we have to accommodate 150 square foot per child." They have tried to maximize the playground; the playground there right now is huge. Going around the building with another drive would require removal of two very nice oak trees. Mr. Riffel said three more front parking spaces at the front would probably be lost by virtue of the drive coming around to the side.

Councilwoman Wynn shared Councilman Orlans' concerns regarding the forty foot landscape strip. In addition, she had concern whether this would be daycare or medical-dental office use. She supported Councilman Dippolito's motion for deferral.

Mayor Wood stated the difficult issue for Council regarding this application is the attempt to accommodate two different uses on this very small lot. Council could come to a solution if the applicant could choose one or the other use.

David Hyman, potential operator of the future daycare business, stated the facility could be licensed for 140 children. All front spaces would be necessary for the pick up and drop off of the children. Bright From the Start, the daycare licensing organization in Georgia, will not license daycare facilities where children are "having to be moved up and down a drive." The parking spaces needed in the back will be just used for thirteen staff employees and his wife.

Mayor Wood asked if this property was made just for a daycare center and they were not trying to accommodate additional parking spaces for a potential medical office, how many of the parking spaces to the rear could be eliminated. Mr. Hyman replied they have to have thirteen in the back. Mayor Wood asked how many currently exist back there. Mr. Hyman stated there are currently more than that shown on the drawing. Mayor Wood stated he was trying to find a solution and perhaps if some of the parking spaces to the rear were eliminated, maybe Council would accept that. The Mayor further stated that if Council is saying picking one use or the other and so if daycare is selected, what could be changed on the site plan to make Council more amenable to accepting this site plan where the parking spaces are in front. Mr. Riffel stated "They wanted the back 13 spaces but they are also saying as a daycare, these five spaces are highly coveted."

Mayor Wood noted that he did not know what Council would accept but he was looking for what might be another alternative which could provide a solution tonight rather than a deferral. Mayor Wood asked how many parking spaces are to the rear. Planning and Zoning Director Brad Townsend replied there are 28. Mayor Wood asked if it would make a difference if there are 15 spaces to the rear. Mr. Hyman replied they could accept 20 spaces. Mayor Wood asked if that would make a difference to Council. No response was heard from Council.

Councilman Orlans suggested that it be looked at as a deferral so that staff could consider the application from a safety standpoint.

Mayor Wood asked the applicant to consider if Council eliminated only 3 parking

spaces on the front (those to the south) instead of 5 spaces, leaving the two on the front, would that be a compromise. Mr. Hyman replied that would be a compromise they could work with. Mayor Wood asked Council to consider that compromise.

Councilwoman Wynn replied that it was her understanding that the reason the motion was made to eliminate all 5 parking spaces was to take the landscape strip from 40 feet to 30 feet and at least have some type of landscape strip. She further stated that if the 3 parking spaces to the south are removed and the 2 parking spaces to the north remain, there would still be a landscape strip variance needed in that area. Mayor Wood replied that he was looking for compromises that Council would accept. He said he is a staunch defender of the Parkway Village District and the 40 foot greenbelt along that stretch but in this case, we are starting off with an existing 10 foot greenbelt; we are expanding it to 30 feet. The Mayor said there currently are a lot empty stores and businesses hurting in Roswell and he would like to see some empty spaces filled.

Councilman Orlans asked City Attorney David Davidson if he had any thoughts about a precedent being set regarding the future of the Parkway Village District and the three parking spaces. Mr. Davidson stated that because these spaces already exist and this use has previously been there, he did not think this would set any precedent in the Parkway Village District to allow them to stay or to remove three parking spaces. This is a very different circumstance than normally exists in the Parkway Village. The forty foot is required in most of the Parkway Village District along Highway 92. This property is off King Road so there is a little bit of a difference there. Mr. Davidson added there are reasons Council could do it although he did not know if Council wanted to.

Councilman Orlans stated that he also wanted to help the applicant as much as possible but wanted to consider both sides and how to protect the city as well. Councilman Orlans stated "If you could work it out with three spaces and we could use that to fulfill it to the driveway, coming from the shopping center on the corner, and it brings that streetscape straight up and then it doesn't jump over to the other two."

Mr. Hyman noted that the other front spaces are needed due to the smaller daycare busses which need the front space to maneuver; these buses handle the before school and after school business.

Mayor Wood asked Mr. Hyman if he could work with the elimination of three spaces rather than five spaces.

Councilman Igleheart stated he was concerned about the justifications of the parking spaces after this discussion of smaller busses needing the space to turn around which also would mean that parents could not park in there.

Helene Hyman, potential operator of the future daycare business, referred to the site plan and stated that one parking space would be removed where the drive is located. Two of the spaces are handicapped spaces which leaves 9 parking spaces. There will be 140 children in this daycare that parents will need to come in and pick up. A drive around the building will cause the children to cross the road, which Bright From the Start will not approve.

Councilman Dippolito stated it did not seem Council and the applicant could reach an agreement at this meeting. He did not recommend that the applicant to try to do this "on the fly." It also makes it difficult for staff to understand what is being accomplished.

Restated Motion: Councilman Dippolito moved to defer PV09-02, 11575 King Road, Marilyn Wankat - Sutton Country Day School, Ltd. until November 9, 2009. Councilman Orlans seconded.

Mayor Wood asked whether the applicant could make it on November 9, 2009. Mr. Wankat, stated he has a previous commitment that day and would not attend on November 9. Marilyn Wankat, his wife, will attend in his absence. Mrs. Wankat stated they had operated this daycare for eighteen years and were unaware the zoning was taken away. Their request is for a few parking places in the back. She said they have been working on the playground area and the per child square footage and have tried to do everything they could in order to comply; the playground should take a lot of the drainage and run-off. Mayor Wood noted the City appreciates all their efforts.

Councilman Dippolito noted this application was brought in as small tract for medical office use. He asked if it is used for daycare, and since it currently exists as daycare, does it even need to be rezoned or do they just have a site plan change under R-2. Councilwoman Wynn noted this is a non-conforming application.

No further discussion.

A motion was made by Council Member Rich Dippolito, seconded by Council Member Jerry Orlans, that this Item be Deferred and placed on the Mayor and City Council Zoning agenda for 11/9/2009. The motion carried by the following vote:

In Favor: 4

5. RZ09-10, Text Amendment regarding pawn shops and check cashing establishments within the city. Second Reading
Presented by Bradford D. Townsend, Planning and Zoning Director

5. RZ09-10, Text Amendment regarding pawn shops and check cashing establishments within the city. First Reading

Mayor Wood requested the reading of the ordinance before discussion. City Attorney David Davidson conducted the first reading of an ORDINANCE TO AMEND THE CITY OF ROSWELL ZONING ORDINANCE REGARDING PAWN SHOPS AND CHECK CASHING ESTABLISHMENTS WITHIN THE CITY OF ROSWELL: 1. Article 3, of the City of Roswell Zoning Ordinance, Section 3.1 Definition, is amended by adding new definitions to read as follows and deleting the existing definition of Pawnbroker:

Check Cashing Establishment: An establishment where an individual, partnership, association, or corporation engaged in cashing checks, money orders, or other drafts for a fee. Such fee may be payable in cash, in the form of exchange of value in excess of regular retail value, in the form of mandatory purchase of goods or services by patrons, or in the form of the purchase of catalog items or coupons or other items indicating the ability to receive goods, services, or catalog items.

Pawn: A pledge that means a bailment of personal property or title as security for any debt or engagement, redeemable upon certain terms and with the express or implied power of sale on default.

Pawnbroker: Any person engaged in whole or in part in the business of lending

money on the security of pledged goods, or in the business of purchasing tangible personal property or title on the condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time, or within this form of business purchasing tangible personal property or title from persons or sources other than manufacturers or regulated dealers as a part of or in conjunction with the business activities described herein.

Pawnshop: An establishment engaged in a business involving in any part of the pledge, pawn, or exchange of any goods, wares, merchandise, or any kind of personal property or title as security for the repayment of money lent thereon.

2. The Zoning Ordinance of the City of Roswell is further amended by adding as permitted uses to Table 6.1 "Pawn Shops and Check Cashing Establishment" to read as follows:

TABLE 6.1

USES PERMITTED IN OFFICE AND COMMERCIAL ZONING DISTRICTS

P = Permitted use C = Conditional use X = Not permitted

(*) = Specific use regulations apply

Zoning District

USE	O-P	C-1	C-2	C-3	I-1		
Pawnshop* (see Article 10)				X	X	X	P X
Check Cashing Establishment* (see Article 10)							X X
X P X							

3. The Zoning Ordinance of the City of Roswell is further amended by adding a new Chapter 10.40 "Pawn Shops and Check Cashing Establishment" to Article 10, Specific Use Requirements to read as follows:

Chapter 10.40 Pawn Shops and Check Cashing Establishments

In zoning districts and on sites where permitted, a pawnshop and/or check cashing establishment shall be subject to the following distance restrictions:

(a) No pawnshop and/or check cashing establishments shall be located within 5,000 feet of any other pawnshop and/or check cashing establishments.

Mr. Davidson noted that if approved, this would be the first reading of the ordinance.

Mayor Wood requested that Planning and Zoning Director Brad Townsend explain how the City's current law is being changed and what effect this text amendment will have. Mr. Townsend stated this will amend the current zoning ordinance to add four definitions; check cashing establishment, pawn, pawn broker, and pawn shop. The current definition of pawn broker will be removed because the definition being proposed more aligns with the current state requirement and state definition. This proposed text amendment includes pawn shop and check cashing establishments as a permitted in the C-3 zoning district if they comply with the proposed restriction of not being located within 5,000 (five thousand) feet of another pawn shop or check cashing establishment. Mr. Townsend displayed a proposed map showing the existing location of pawn shops and check cashing establishments which included the 5,000 foot buffer; he said any new establishments would have to be "out" of that

5,000 foot location from these existing ones.

Council comment:

Councilman Dippolito for clarification purposes stated these uses are currently allowed in C-3, this text amendment will restrict the uses. Mr. Townsend replied that was correct; these have been permitted in the past as retail establishments. This text amendment will clearly define pawn shops and check cashing establishments, indicating where they are located and permitted in zoning designation C-3.

Councilwoman Wynn for clarification purposes stated title exchange businesses will be under the classification of pawn shop.

A motion was made by Council Member Rich Dippolito, seconded by Council Member Becky Wynn, that this Item be Approved on First Reading and placed on the Mayor and City Council Zoning agenda for 11/9/2009. The motion carried by the following vote:

In Favor: 4

City Administrator's Report

6. Approval for the Mayor and/or City Administrator to sign the necessary documents to request a 120 day Fulton County Service Delivery Strategy Extension and approval of a mediator.

6. Approval for the Mayor and/or City Administrator to sign the necessary documents to request a 120 day Fulton County Service Delivery Strategy Extension and approval of a mediator.

City Administrator Kay Love stated the City has been working on negotiations with Fulton County regarding our Service Delivery Strategy agreement since the beginning of the year. Ms. Love explained that all eleven cities and the county are still not in agreement, the deadline is October 31, 2009. Several issues are still outstanding; water and wastewater are the largest two issues, followed by elections and roads. All the cities and the county have agreed to proceed with voluntary mediation. However, it is necessary for the City to request a 120 day extension with the hope that the Department of Community Affairs (DCA) will grant the extension and thereby, the City can have this heard by a judge to continue our local government status. Ms. Love said on October 31, 2009 when the Service Delivery Strategy has not been negotiated, the City will no longer be eligible for any state funding, any stimulus money, or any permitting from the State of Georgia, according to the ruling from the DCA. Ms. Love stated it is incumbent upon the City to move forward with an extension and have this heard by a judge. The cities and the counties have tentatively agreed on Judge Norman Fletcher to hear the mediation. Ms. Love said "We all will be sharing in the costs of the mediation. We have a meeting set for the 14th of October to begin those discussions and I will have an update about potential costs. At this time, I do not have any estimated cost of mediation, but it will be a requirement." Ms. Love stated a motion was necessary to sign the document to request the extension.

A motion was made by Council Member Kent Igleheart, seconded by Council Member Becky Wynn, that this Item be Approved. The motion carried by the following vote:

In Favor: 4

City Attorney's Report

7. Recommendation for closure to discuss personnel.

A motion was made by Council Member Becky Wynn, seconded by Council Member Kent Igleheart, that this Item be Approved. The motion carried by the following vote:

In Favor: 4

Adjournment

With no further business, the Zoning meeting adjourned at 9:13 p.m.