

submitted prior to permitting. Brad Townsend stated that was fine. Geiger stated that was her motion.

Laura Light seconded the amended motion. The motion passed unanimously. This recommendation will go forward to mayor and city council in January 2010.

REZONING
09-0906
RZ09-16
ORCHARD VILLAGE
295 Rucker Road
Land Lot: 1282

Kenwin Hayes stated similar to the previous case the Commission just heard, the applicant is requesting that a previous rezoning condition be removed. When this property was rezoned in 2003, there was a condition by mayor and city council that no sit down restaurants would be allowed in this establishment. A minor revision rezoning occurred in 2004 and now Alpine Bakery specifically is expanding its business and would like to allow consumers to come in and sit down and enjoy their meal. Staff did get approval letters, support letters from the Saddle Creek homeowners' association, The Orchards at Crabapple homeowners' association and Edenwilde homeowners' association as well. Hayes believes at the time when the rezoning went through in 2003 there was concern that a restaurant would bring a lot of traffic. Since this shopping center shares an easement with The Orchards at Crabapple they were concerned about the traffic and safety of the residents there. Things have changed in six years and now the Alpine Bakery is doing well in the community and they would like that condition to be removed from the rezoning of 2003 to allow them to have a sit down restaurant there.

Laura Light stated that as she is looking at the history in here, in 2003, line 8, the property was limited to retail office, medical/dental clinic, pharmacy, bank and dry cleaners. Then in 2005 that was revised in no 2. Is that correct? Kenwin Hayes stated that it was. Light asked what category does the Alpine Bakery fall under then in either no. 8 of 2003 or no. 2 of 2005. Retail? Hayes stated that since there was no sit down, one just came in, purchased a product and then left. Light asked why the Commission would revise condition no.8 in the 2003 zoning and why wouldn't they simply revise condition no. 2 in the 2005 zoning. She is curious as to historically why they would pick one over the other since they are really bound by what is in 2005 not what was in 2003.

Brad Townsend stated that they probably would be amending condition no. 2 in 2005.

Light stated that by amending that the Commission is simply just going to add the word restaurants or can they assume that a restaurant is a sit down? She does not have her definitions in front of her.

Brad Townsend stated that the city of Roswell has one term and one definition of restaurant. It is either a restaurant that includes drive-through or a restaurant that does not include a drive-through. Those are really the only two use categories.

Light clarified that they would affectively change the staff recommendations to condition no. 2 from RZ04-28 shall be amended to allow restaurants. They do not need the word "sit-down" in there because they don't have stand up restaurants.

Karen Geiger asked if they would need to add without drive-through. She asked what the two definitions were.

Brad Townsend stated that the two definitions are restaurants that have drive-throughs and restaurants that do not have drive-throughs.

Geiger clarified that they should say restaurants without drive-throughs. Susan Baur stated that she thinks that is already covered with no. 6 in the 2004 revision. It states that drive-throughs shall only be utilized by banks, dry cleaning and coffee shop uses. Does Roswell have a definition of a coffee shop? Sarah Winner stated that it is not going to be the same as a Pizzeria/Bakery.

Brad Townsend stated that the two restaurant use line items are restaurants including outdoor seating areas but not including drive in or drive through facilities, which are permitted in the C-3, or restaurants including drive ins or drive through facilities, which is a permitted use in the C-3.

Sarah Winner asked Kenwin Hayes if there are any specific guidelines about restaurants and the number of parking spaces for restaurants. Hayes stated that if it was a stand alone restaurant. But when shopping centers are developed it takes into account all of the different uses that can go into one. So it is sort of developed maxed out to include if it was a restaurant or a coffee shop. Those are the parking calculations the city uses. They use the largest. Let's say if an entire shopping center was restaurants. Sarah Winner stated that when this was initially developed it wasn't designed for commercial. It was designed more for office. It didn't have...she is following up with Susan Baur. She is a little bit concerned about the number of parking places. The number of places there would conform currently with what they would have for the C-3 zoning.

Kenwin Hayes stated that was correct. Essentially there was an empty space, an empty bay and they are expanding into that bay so it is not like they are impeding or taking another tenant's parking spaces per se. There was an empty space and they saw an opportunity to expand so they are sort of getting those parking

spaces at will and not adding any more that will go over the maximum limitation based upon the gross square footage of the building area.

Cheryl Greenway asked Hayes if he knew the square footage that the soon to be restaurant would have with this expansion. Kenwin Hayes stated that looking at the current site plan the highlighted portion, the tenant spaces where they want to expand to currently they are the space to the right. Right now 1600 square feet and they will be adding an additional 1600 square feet. Greenway clarified that they would be looking at 3200 square feet. Hayes stated that was correct. Greenway asked if one had a free-standing building of 3200 square feet that was a restaurant, how many parking spaces would he need.

Kenwin Hayes stated that if it were a stand alone restaurant with a minimum of 125, one space per 125 square feet that would be 25.6 or 26 parking spaces.

Mark Renier stated that he had a question that might be for Alpine Bakery. Do they have any idea about how many seats they are planning on having in this restaurant? Kenwin Hayes stated that he was not sure and he is sure the applicant will be able to answer that. Renier stated that if he knows anything about Alpine Bakery and they cook as good as they do their baking; they will have a packed house especially at night time in this area.

Brad Townsend stated that he thinks that is one of the reasons that staff does not see a real concern having the insurance business, the dentistry and the other offices, which will be closed normally at night, which will be the overflow in their mind for if the restaurant is as good as the bakery.

Cheryl Greenway stated that one of her concerns is she agrees with what Brad Townsend is saying. She thinks there is a dentist, Edward Jones, other places there that would not have the evening customers that a restaurant might have. But in this same vein does the Commission need to be considering anything they need to be putting in a condition that if they allow the restaurant that there has to be a limit on square footage. Let's say the dentist and the Edward Jones people move out and now that other corner wants to be a restaurant. Then they would have a problem because there is just not enough parking spaces if the whole building became a restaurant.

Brad Townsend stated that the Commission could condition their approval on the plan that the applicant has submitted to staff that indicates that they are proposing to increase to the one bay, which is 1600 square feet as well as amending the limited kind of uses.

Cheryl Greenway stated that it was kind of a use limit per square foot thing. Brad Townsend stated that was correct.

Mark Renier stated that the Commission could also limit just the square footage. The shopping center could have a maximum square footage of 3200 square feet of restaurant. Brad Townsend stated that was correct.

Sarah Winner stated that she is not sure if staff will notice or the applicant will that on this plat where they show the proposed Dumpster pad, where is the Dumpster now and what hours of the day, she is assuming with the restaurant it is going to have to be emptied probably more frequently than once a week. She is wondering if that is going to be a noise concern and what hours of the day the Dumpsters are going to be banged up and down. Brad Townsend pointed out where it is currently located. Is it currently emptied early in the morning after 7 a.m.?

Cheryl Greenway suggested they ask these questions when the applicant comes up because it is not on the record. They can't hear.

Susan Baur stated that the Commission would hear from the applicant at this time.

Don Goodman with Equitable Management presented the application. He is representing M. Park, LLC. The proposed condition that they are asking to waive is as stated in paragraph no. 2. One thing Goodman would like to make a change on that is it should read RZ04-28 and he thinks it was left at RZ04-10. A couple of things that he would like to point out are if one reads condition no. 2 he will note that they did have a limit. One of those had a not exceeding 2500 square feet of gross floor area so obviously that is something that the Planning Commission could impose on this. The applicant is not opposed to that. The primary thing here is Alpine Bakery has become a mainstay of the community. Goodman et al went to the community and the community was now behind this and that is why he is standing here. Otherwise they would not be here at this point at all. All of the homeowners' associations that they went to wrote letters to them and to the council and in addition to the mayor. So they ended up getting those approvals. The main thing for the applicant being here is that Alpine Bakery, in order for them to compete in this environment needs to offer some seating. What they do now is all of the baking is done in a 10,000 square foot warehouse off site. They bring all of their baked goods into the store and then they sell them retail. So when one was questioning what they are, Goodman guessed that they are a retail merchant. They might dress the cakes differently there but none of the baking is done there. What has happened is everybody comes in, they want to have a cup of coffee and eat cake and there is no place for them. He is really providing a need to the community. This wasn't really for Goodman. It is for the tenant and the community. He added that the applicant is expanding to 1600 square feet however, only that portion really is going to be a restaurant use. The remaining portion that he still has is going to be exactly as it is now. As one walks in he is going to see basically his baked goods. They are not requesting that that be a sit down area so the impact on the parking is going

to be a lot less than the 3200 square feet that the Commission was talking about when Kenwin Hayes was before them. He does not know what the calculation would be based on 1600 square feet but it is going to be 15 cars rather than 25 cars.

Laura Light asked Goodman what the number of seats that...the number of people that he proposes to be able to seat. Goodman stated that he thinks that is going to be a fire department and a health department requirement, whatever they allow. There will be an occupancy permit. He does not know. The applicant is not going to be able to put anymore in than what is required. He does not know the exact zoning under that. 25 seats maybe?

Brad Townsend stated that a lot of it is going to depend on how elaborate of a kitchen they are going to have to put in. The restrooms are going to be pretty standard size. It is going to be the size of the kitchen as well as the service area. Townsend can't imagine that there is going to be more than 20 tables if that.

Mark Renier asked Brad Townsend if that first restaurant category...did it say it allowed for outdoor seating as well? Brad Townsend stated that he thought it allowed it. Renier stated that theoretically they can put up a patio outside on the sidewalk. Townsend stated that it would be pretty tight. The way the sidewalk and the parking lot fits they may be able to get a couple of tables outside if that under a couple of canopies. Don Goodman stated that the applicant just has some benches out there. That is about all that fits out there. One might be able to see it better on the aerial.

Cheryl Greenway asked Goodman if she could get him to shift a little bit so one can see the pizza restaurant. Is the pizza place closing and the applicant is going to expand into that? Goodman pointed out the area the applicant is going to keep. The plans right now are to move Edward Jones over to the end space as shown. The pizza area would then become here. He does not know how he is going to shift this over but somehow he would have to get his kitchen in and those plans would have to be approved by the building department and fire marshal and things such as that. Greenway clarified that Alpine Bakery was basically moving into the pizza location and the pizza is moving to Edward Jones and Edward Jones is.....Goodman stated that pizza was Alpine. It is Alpine Bakery and Pizzeria. Greenway stated that she was thinking that it was a separate building. Goodman pointed out that Alpine runs all the way across to this part right here and then there is Edward Jones. He is going to be expanding into the Edward Jones portion of the shopping center. Cheryl Greenway stated that the picture that the Commission had from the city was showing the expansion going the other way. Brad Townsend stated that they thought it was the other way.

Goodman stated that originally what happened is that was one of their thoughts. However, in order to do that they would have to move the cleaners to the drive-

through on this side. Then they would have to have the salon to the cleaners and then Alpine over. They were looking at spending hundreds of thousands of dollars. Edward Jones has agreed to relocate and since that is already adjacent to Alpine; it is a much lower cost just to move Edward Jones to the end cap.

Laura Light clarified that the salon will stay where it is. Goodman stated that was correct. It is not going to increase the square feet at all.

Cheryl Greenway clarified that the applicant was basically adding to Alpine 1,155 square feet. Brad Townsend stated that was correct. Goodman stated that is why they have to be a little bit broad in the square feet that they give to the restaurant because the Edward Jones space is smaller and this space here is 1600 square feet. So, Edward Jones is only going to have a portion of this space here and the applicant will probably add some bathrooms back there to used for Alpine.

Laura Light stated that they would be modern day outhouses because they won't be interior to the restaurant. Goodman stated that there was a hallway that goes back to the restrooms so it is actually inside the building.

Karen Geiger stated that her problem isn't with the request at all. It is with how to write this thing down. They are talking about 3200 square feet. Now she hasn't really got a good clear idea of how many hundred of square feet the applicant wants to be able to say are zoned for a restaurant because they can't use the plat. The site plan evidently is wrong. So they can't say just condition it to the site plan. How many square feet does the applicant want the Commission to....Goodman stated that they would be happy with 1600 square feet. Karen Geiger stated that if one had an open thing where he is buying his cake in one part and then moving over and sitting down it is all going to be considered a restaurant unless they are going to have people walk out the door and come in through another door that is just a seating area. The whole thing is going to be a restaurant. So if they say 1600 square feet, Alpine is not even going to be able to do what they are doing right now.

Brad Townsend stated that he thinks the tricky part of it is since the restaurant definition is so broad it is hard to...once the actual kitchen is put on site one usually draws a line for where the customer service area of a restaurant is at. They walk in the front door where the hostess greets them and then everything from where the tables are sitting to the wall...the tricky part of this is Alpine Bakery's current operation where they have a bakery has a large gathering standing, munching on cake spot. Does one include that or not include that? That is the quandary that he would have in trying to make a determination.

Karen Geiger asked how many square feet Alpine has right now. Cheryl Greenway stated that she went through and added this up and from looking at the space there is now plus adding the Edward Jones plus throwing in some

extra for a back hallway with bathrooms they are going to be around 4400 square feet for Alpine Bakery.

Laura Light asked if this is something the Commission needs to be discussing as opposed having it when the applicant is standing here and it is their time to ask him questions. Her question to the Commission is why do they even need to put a definition in terms of square feet? All the recommended staff condition is amend it so that one can have a restaurant. There is already a thing in there that says no establishment shall go greater than 2500 square feet.

Cheryl Greenway stated that if one....Karen Geiger stated that they are going to have to change that if they are 4400 square feet they have got to change that one too. That is part of the issue with this also.

Brad Townsend stated that it was a blurred line between Alpine Bakery as an establishment as a bakery-pizzeria as a restaurant. Taking them as one establishment they are going to exceed the 2500 square feet. But if one takes them as their individual parts they are all going to be less than 2500 square feet.

Karen Geiger stated that even if they took them as two separate things it is going to be more than 2500 square feet when they add the Edward Jones and the part that is truly cake. Brad Townsend stated that was correct.

Goodman stated that it seems to him, and he could be wrong but the way he reads this is that is specifically limited to a business service establishment and not the retail trade. It says the property shall be limited to the following uses, retail, trade establishments, office, etc. And then it says business service establishments not exceeding 2500 square feet. He thinks it is a different category. At least that is the way he reads it.

Cheryl Greenway stated that she was not trying to change the subject but she is feeling that this adds some history to what they are discussing. Originally, in the space where the dentist is now there used to be a sit-down restaurant. Right or wrong, it used to be there. Was there any issues that resulted from them having the sit-down part, traffic, parking, etc.? Laura Light asked Greenway if she was asking staff or was she asking the applicant? Greenway stated that she was asking the applicant.

Goodman stated that it was very interesting and one would have to go and look at some of the administrative variances that were given. That was called the Crabapple Creamery. They had an administrative variance and a business license that allowed them to sell pre-cooked items at the restaurant and eat there. But he still could not cook. What he would do is he would have cold sandwiches, it was almost like a Subway where he would have to go make his bread off site and he would have the sandwich packaged there. His use was he was allowed to serve sandwiches and biscuits or whatever he did and he served

them there and he was required to have public restrooms. If one looks at Alpine he will notice that there are no public restrooms in the bakery area so he is only allowed to sell there, but one cannot eat there. However The Creamery was given the ability to do that. And if one wants to go back to the Java Joe's they were able to serve coffee and they also had public restrooms and they also had a drive-through. Again, there were some administrative variances that were given throughout the time that kind of changed these things.

One other thing that Goodman wants to make a note of goes back to the square feet because he thinks that is important. The bakery is still going to be 3100 square feet. When he looked at Bill's drawings these walls that are with Edward Jones are going to remain there. The only thing that he might have there would be a back door for the servers to come through and a doorway connecting the too. But if one walks in the bakery it is going to look like the bakery looks right now and there would be maybe some type of French door that says pizzeria this way. But when one walks in it is going to look like two separate establishments. However the applicant is not knocking all of the walls down and opening this up into a large 4400 square foot facility. So Goodman feels comfortable that if the Commission says that the restaurant has to be limited to 1600 square feet including the kitchen and the dining areas and the restrooms he feels very comfortable that they could work within those constraints and provide a restaurant within that type of square feet.

Cheryl Greenway stated that in the past where one would go in to get his muffin and coffee and would stand around eating it, now he go in and sit down in the restaurant and order his coffee and muffin. Goodman stated that was correct.

Susan Baur asked if there were any further questions for the applicant. Hearing none she asked if there was anyone from the public would who would like to speak in favor of this application. No one came forward. She asked if anyone would like to speak in opposition to this application. No one came forward. Baur asked the applicant if there was anything else that he would like to say. Baur closed the public portion of the meeting and stated that the Commission will have a discussion.

Karen Geiger asked for a definition of what a business service establishment is.

Loren Conrad stated that he thinks if the Commission puts a limit of 1600 square feet on this, that entire building for a restaurant, then it eliminates concern that if someone else moves out and someone else wants to come in and do another restaurant, it would pretty well eliminate that possibility and the parking that would be a problem along with that. He would condition it to be amended to allow sit down restaurants not exceeding 1600 square feet. That would be the motion he would make.

Motion

Loren Conrad made a motion to allow sit down restaurants not exceeding 1600 square feet.

Karen Geiger stated that she did not want to second the motion because she thinks they should just not put the number of square feet. Cheryl Greenway agreed with Geiger. Geiger stated that they should allow restaurants without drive throughs. If someone comes into open space and they see that Alpine is using up all of the parking and that their people are going to have problems parking, they are not going to rent it. Just let it work itself out.

Brad Townsend stated that the request was a definition of business services establishments. Business activities engaged in support functions to establishments operating for a profit on a fee or contractual basis including but not limited to advertising service agencies, photo copying, blue printing, duplicating services, mailing agencies, commercial art and graphic design, personnel supply services and employment agencies, computer and data processing services, detective, protective and security system services, accounting, auditing, bookkeeping services, publications and business consulting firms, food catering, interior decorating and locksmiths.

Karen Geiger asked if they were going to have a problem with the food catering part. Townsend indicated that they will not.

Loren Conrad stated that if Geiger is saying that she is not concerned about protection for future actions that she thinks the market place will take care of it, then he is okay with that and will make the motion as it stands without the 1600 square feet.

Karen Geiger stated that she would second that.

Susan Baur asked Loren Conrad to restate his motion.

Loren Conrad stated that the motion would be to accept the action that they remove condition no. 2 from RZ04-28. It should be amended to allow sit down restaurants.

Karen Geiger stated that she would say restaurants without drive throughs since they don't have a definition of a sit down restaurant.

Conrad amended his motion to state that it would read restaurants without drive throughs. Karen Geiger seconded he motion.

Susan Baur asked everyone who is in favor of the motion to raise their hand. The record shall reflect unanimous approval of the recommendation and it will go forward to mayor and city council next month.

TEXT AMENDMENT

09-0971

RZ09-17

Text Amendment to amend the Zoning Ordinance regarding nonconforming signs.

Legislative History

11-09-09 Mayor and Council, Approved Zoning

Brad Townsend stated that this is a proposed text amendment that has been initiated by mayor and city council. It deals with the non-conforming section of the sign code related to structural changes and technology currently being used on signs. This language is being added in reference to litigation that the city of Roswell lost related to a billboard at 400 Holcomb Bridge Road when they removed the top of the billboard, took it to the ground and were doing structural changes, which the city felt were beyond the permit that was issued for that billboard. The just made the ruling that the language did not apply and the lawsuit was lost by the city.

Susan Baur asked if there were any questions for staff.

Sarah Winner asked if the language shown here had been in place at the time, would the illuminated billboard not have been allowed to be replaced. So is this designed to prevent other billboards in Roswell from becoming illuminated? Brad Townsend stated that was one of the objections of changing this section of the code.

Karen Geiger stated that she had a question just about the way that it is written. Why are they saying that they are deleting something and amending it in its entirety and then having strike-throughs?

Brad Townsend stated that was done by the legal department.

Cheryl Greenway stated that she happens to agree with Geiger because what was confusing her if they are going to do that then it should have been written as to what the whole original rule was and then crossed out and made changes. Whereas, what is here is different from the original and there are still cross outs in it.

Brad Townsend stated that for some reason the legal way of handling it, which he thinks is the...he went off the record. By eliminating it completely instead of putting the language in, strike through and underline. So, under the headings of