

The Zoning Meeting of the Mayor and City Council was held on Monday, December 10, 2007, 7:30 p.m., Mayor Jere Wood was presiding.

Councilmembers Present: Councilman Jerry Orlans, Councilman Kent Igleheart, Councilman David Tolleson, Councilman Terry Joyner, Councilwoman Paula Winiski and Councilwoman Lori Henry.

Staff Present: City Administrator Kay Love; City Attorney David Davidson; Recreation and Parks Director Joe Glover; Community Development Director Kathleen Field; Community Development Deputy Director Clyde Stricklin; Planning & Zoning Director Brad Townsend; City Planner Jackie Deibel; Economic Development Manager Jennifer Fine; Community Information Coordinator Kimberly Johnson; Building Operations Technician Doug Heieren; and Deputy City Clerk Betsy Branch.

Parkway Village Small Tract**3. PVST07-01, 300 East Crossville Rd., EDT Group Land Lot 447.**

Planning and Zoning Director Brad Townsend stated this application for the Small Tract Parkway Village consists of 1.94 acres. The applicant has proposed a one story office building with a total of 19,275 square feet of interior space. The site calls for a total landscaping area of 37,000 square feet with forty foot streetscape buffers and a forty foot rear scape buffer in conformance with Parkway Village requirements. Mayor and Council reviewed this application in 2005 and denied the request for a re-use retail and office building. The applicant subsequently amended the application requesting less square footage; Mayor and Council denied that application. East and west of the property are existing adaptive reuse buildings for a nursery operation and a proposed fencing operation. The applicant requested small tract status due to the existing uses and development and the surrounding property. Mr. Townsend noted a site plan for a single story office building was included in the Mayor and Council meeting packets. The proposed site design was intended to save the existing six specimen oak trees between the driveways. He noted that it has been determined by the landscape architect and the City's arborist that three of those specimen trees will probably be lost due to impact on their critical root zone by the proposed driveway; comments from the landscape architect and the Transportation Department were included in the meeting packets. Mr. Townsend stated Community Development staff recommended approval of the small tract status for this application and recommended that the site plan dated November 26, 2007 be part of the approval; staff recommended that as part of the approval the site should provide inter-parcel access as the property to the east is developed to cut down on locations dealing with curb cuts; a section of the Parkway Village guideline specifically relates to inter-parcel access.

Mr. Townsend reiterated that staff recommended approval of this small tract status request, subject to the following conditions:

1. The applicant shall select a revised tree selection from the City's Tree Species Selection List, and shall be approved by the Design Review Board.
2. The applicant shall coordinate with RDOT and GDOT regarding driveway design.
3. The development of the property shall provide inter-parcel access along the eastern boundary prior to the issuance of a land disturbance permit as required by the Zoning Director [*Section 12.2.3 (m)*].
4. The developer shall verify sight distance per AASHTO requirements upon submittal of Land Disturbance Permit/Development Permit documents.
5. The applicant is required to install sidewalk along Crossville Road.
6. Right-of-way may be required to encompass the deceleration lane, sidewalks and ramps.

Council comment:

Councilwoman Winiski noted the site plan was not included in the packet. Mr. Townsend referring the site plan on the overhead projector described the site plan, proposed access, landscape areas, specimen trees root zones.

Mayor Wood asked that City Attorney David Davidson read the standard to apply in making this decision. Mr. Davidson stated that upon a finding by the Mayor and Council that the tract cannot feasibly be combined with abutting property to create a larger tract of land, or development of the tract as proposed will result in a better land use than if the small tract were combined with abutting property, the petitioner shall receive approval to develop in accordance with section subject to the reasonable conditions as may be imposed by Council.

Mayor Wood asked Mr. Townsend to describe and show Council what the adjacent property will be used for. Mr. Townsend described the parcel being dealt with in this application; he described the existing landscaping business to the west and an existing home, which is under the same ownership as the property to the west, has been proposed for an adaptive reuse to be used for a fencing company; he stated there is an existing home farther to the east; four parcels are located in that general area.

Council comment:

Councilman Orlans inquired as to what the total acreage is of the pieces of property which remain available for assembly. Mr. Townsend answered 8.22 acres; that is the four parcels east of the stream.

Applicant:

Donald Rolader, 11660 Alpharetta Highway, stated he represented the applicant, EDT Group, who made application for the small tract status; Principal Kevin Attarha and General Manager Gary Stevens were in attendance. Mr. Rolader stated the 1.94 acre tract on Crossville Road is the former location of a rug company. He stated there were previous applications for this site pending before the City in 2005 which were unreasonably intense, ill suited to the development and the then proposed developer of the property had an acrimonious relationship with the City. Mr. Attarha and Mr. Stevens and their group are not related to that previous group of people, this is an entirely new proposal. The property east of the this property is proposed as a fence company; it was granted small tract status in 2004 (PVST04-02) and included variances to put the detention pond in the forty foot buffer and to allow parking in front of the building, which Councilman Orlans questioned at that time. Mr. Rolader stated the application was also subject to PVH04-01 regarding the variance matter. Mr. Rolader said to the west, is a landscape company, the owner of which owns the property to the east. He noted that the property to the east, this property, and the property to the west do not total seven acres; they total about 5.81 acres. Mr. Rolader stated Mr. Mason is the property owner to the east and owns the tract that would make this property total over 8 acres if it were assembled. Mr. Rolader stated that Mr. Stephens asked Mr. Mason, who has been here a long time, if there was any set of circumstances under which he would sell this property. Mr. Mason answered no, he would not sell his property, it is for his children and refused to have that put in writing. Mr. Rolader reiterated that three properties which Council is considering tonight together do not compose seven acres. He said they made every reasonable effort to make the required agreements under the small tract status to allow the applicant to go forward as an assemblage; it does not work that way. Mr. Rolader stated the north side of this property is the Greenway Country Club, an estate subdivision; there are three properties that partially or fully abut this property. Attempts to contact all of those homeowners were made and they have reached an acknowledgement of no objection to the medical building by two of the three homeowners: Mr. Creech and Mr. and Mrs. Samples. Repeated attempts to reach the third property owner have not been successful as he is in the military. Mr. Rolader stated that east of the property is the proposed fence company which also allows future construction of a fifty foot by fifty foot metal building. To the west of the landscape company and to the south is Crossville Road; across Crossville Road is vacant property for sale. Mr. Rolader stated this proposal is to build one office building 19,725 square feet; he clarified that it is a total of two stories and apologized for any miscommunication in the application letter which stated one building of two stories. Mr. Rolader stated the density is 9,638 square feet per acre; the target area strived by the City, although not codified, is not to exceed 10,000 square feet per acre. He stated this application does not exceed 10,000 square feet per acre. The site plan includes a forty foot front streetscape and a forty foot rear buffer, required under the Parkway Village District and under the Small Tract; it is not an issue to include those. He stated the applicant does not request that the detention pond be put within that forty foot buffer, which was granted on the property to the east. He stated the applicant does not request any variances. Mr. Rolader stated that two of the three properties owners to the north have provided written consent; the site plan meets all of the development standards listed in Table 12.2.1 and all of the requirements of Article 12.2 for the Parkway Village District. He stated that required landscape area for this site is 11,748 square feet; their landscape area is 37,706 square feet and is over three times the required area. The density is under 10,000 square feet per acre; the building is only two stories and comes no where near approaching the height limitation of the Parkway Village District. He stated the required parking spaces are a minimum of 2.5 and a maximum of 4 spaces per 1,000 square feet; this plan has 3.3 spaces per square foot which exceeds the minimum by thirty-two percent. The site plan saves all six specimen trees on the property. He noted there was some concern by the City's arborist regarding the critical root zones of three of those trees. The applicant responded to the arborist with a proposal and submitted a supplementary landscape plan with additional tree units. Mr. Rolader stated that it is their understanding that the proposed fully redrawn landscape plan is fully acceptable to the City arborist. He stated that the use as office is permitted under the Parkway Village District; the applicant has letters of intent from three doctors who wish to have their practices located at this property which would consume 13,500 square feet of the applicant's space and is well above fifty percent of the entire usage of the property if this small tract application is granted. Mr. Rolader stated this application meets all legal criteria for approval and eliminates a former retail use of a property. He stated the applicant has received a notice letter from the existing tenant, Mr. Mollagh, which states he will vacate the property as of January 1, 2008, at which this time the property will become a vacant, formerly residential unit last used as small retail. Mr. Rolader noted that City staff recommended approval of this application; the applicant accepts all staff conditions, including number three which he was not certain was legally enforceable, but states will allow interparcel access with the property to the east. Mr. Rolader stated that applicant is interested in doing a quality office development and quality medical product, is interested in being a good neighbor and happy to consent to that condition even though they question whether or not it is legally enforceable. Mr. Rolader stated that when the City previously considered this the concerns were the number of variances requested, the size of the project in excess of 30,000 square feet, the intensity of which it was done, the lack of concern for the landscaping, no indication that the applicant would save any of the trees. Mr. Rolader stated the applicant took all of these concerns under consideration and decided that the best thing would be the best job he could possibly do and contacted the neighbors and contacted proposed users and now has proposed medical office buildings. Mr. Rolader

stated that if Council approves this application it will enhance the values of neighboring properties, enhance use in the City, and eliminate a vacant eyesore. He stated that of all the uses proposed in the Parkway Village District, he thinks one of the most attractive is office because it is used from approximately 8:00 a.m. to 5:00 p.m. Mr. Rolader asked that Council consider this proposal and approve it; the applicant cannot assemble seven acres unless Mr. Mason dies. Mr. Rolader noted that Mr. Stevens would be willing to address Council if they wished to hear the conversation Mr. Stevens had with Mr. Mason. Mr. Rolader delivered copies of the letters of consent and acknowledgment to City Administrator Kay Love for Councilmembers to review and also to be entered into the record.

Council comment:

Councilwoman Henry asked if this property recently purchased by this new group of owners. Mr. Rolader stated the operating LLC was acquired by the group so rather than purchasing by deed transfer it was acquired by acquiring the ownership entity that had it. Mr. Rolader noted he had the owner names. Councilwoman Henry replied that she was trying to determine how this property changed hands but there was actually no sale of the property. Mr. Rolader explained that if the property is owned by a limited liability company which is a legal entity in the state of Georgia and if the membership interest is acquired in the legal limited liability company, then effectively, one hundred percent of the control of the property has been acquired; there would be no requirement that a deed of record be placed. A deed of record would be placed if the title of the property had been deeded to the property itself. Councilwoman Henry asked if this LLC had other holdings. Mr. Rolader replied that he did not believe that it does, it is a single entity.

Mayor Wood asked staff how the property to the west is zoned; was it developed in small tract adaptive use; under what provision was the property to the west developed. Planning and Zoning Director Brad Townsend stated it was an approved hardship in 1993 with an adaptive reuse of the existing house. Mayor Wood stated the property to the west is an adaptive reuse of the existing house and is where all the rear parking is. Mr. Townsend agreed. Mayor Wood asked if the property to the east was small tract or adaptive reuse. Mr. Townsend answered that it was adaptive reuse. Mayor Wood clarified that these are both adaptive reuse of existing structures. Mr. Townsend replied that was correct. Mayor Wood clarified that the intent of the ordinance is not in all cases to require an assemblage of up to seven acres, but to acquire as much assemblage as could be put forward; although Mr. Rolader could not assemble seven acres, if he could assemble one to two, that would be better than one, three is better than two, and so on. Mr. Rolader replied that he understood. Mr. Rolader stated that from the 2004 meeting minutes, it appears it was small tract status on the east side. Mayor Wood suggested that Mr. Rolader have a brief discussion with Planning and Zoning Director Brad Townsend to work that out; he preferred to have it resolved tonight because of its relevancy. Mr. Townsend stated that the property to the east, PVH 04-01 in May 2004 and PVST 04-02 were hardship and small tract involved in the utilization of the property, and approved in May of 2004. Mayor Wood asked if the applicant today is asking to be a small tract or an adaptive use. Mayor Wood stated he saw those as two different categories; is the applicant today seeking to small tract, tear the building down and replace it with a new one. Mr. Townsend stated that was correct. Mayor Wood asked if the property to the east was an adaptive reuse situation or a small tract situation. He asked did we find it was a small tract not feasible to assemble; which classification it entered under. Mr. Townsend noted the Mayor had asked the same question in 2004. Mr. Townsend replied that since the applicant proposed parking in the front of the existing house it was considered a hardship and a small tract status. Mayor Wood stated that the applicant tonight is also asking for small tract. Mr. Townsend stated that was correct. Mayor Wood responded that Mr. Townsend had answered the question and it was the same answer twice.

Councilman Tolleson while referring to the aerial photograph, stated the house, the structure, was not demolished or replaced, therefore the only reason for the small tract status was the parking; the structure did not change at all. Mr. Townsend stated Councilman Tolleson was correct.

Councilman Orlans inquired about Mr. Rolader's reference made to a metal building; he asked if a metal building had been approved for the lot to the east. Mr. Townsend stated he believed that was an existing building already on the site and said "the property to the east, as part of its approval, a proposed fifty by fifty metal building in the rear of the existing home; they have not built the building as of yet." Councilman Orlans stated that was part of the approval. Mr. Townsend stated that was correct.

Public comment:

Kevin Caldwell, 185 Hamilton Way, stated he and his wife own both adjacent properties; they have owned the property to the west since 1998; their business has thrived there; they purchased the property to the east to expand their business and possibly share some of that use by someone in a related business. He noted that the Parkway Village is a beautiful

area in Roswell and asked if Council will stay true with their intent for Parkway Village with a decision tonight on this item. Mr. Caldwell stated the Parkway Village district ordinance asks to assemble seven acre tracts wherever physically possible; it asks to maintain the character of the existing structures until such time assemblage can occur. He stated that while he understood the position of EDT Group, if Mayor and Council allow this rezoning to occur he believed Roswell would lose an opportunity to fulfill the intent of this district's overlay and it would set a precedent for spot development. This particular parcel has the physical capability to be combined or assembled with three other parcels which would allow a combined approximate eight acres. Mr. Caldwell noted that he did not know who could assemble these properties. He distributed an email to Council which he received from Properties of GA, LLC dated December 6, 2007, regarding the possibility of an assisted living home on all three properties and additional property of Mr. Mason. He said he has no reason currently to relocate his thriving business in Roswell; he parks cars at both properties. He stated that under his LDP approval he is not constructing a building on the back of his property. Mr. Caldwell stated the properties should be utilized until it is economical feasible for someone to buy these properties for assemblage. Mr. Caldwell said "according to Mr. Townsend's research, there are only two reasonably assembled groups of properties in this area, one being the eight acres combined in my area, approximately nine acres by Slopes Barbeque and two other properties across the street that could be potentially assembled, but they have extremely large buffer residential areas, there is another fifth property which contains a church and an additional site." He thought there are only two more areas for good assemblage in that area. Mr. Caldwell said the challenge tonight is whether Council wants to move forward with the original intent or do they want to do spot zoning; the existing building is not to be used as retail, the ordinance clearly defines that. He stated that he did not know about this proposed project until two to three weeks ago. Mr. Caldwell said that 280 Crossville Road (west property) is used under adaptive reuse; 310 Crossville Road is small tract, "that was due to the request for the parking out front, no set back on the east side of the property; I had a letter from the Masons to allow me to put a fence on a property and because of virtue of our own engineers, I was required, by our engineers and State DOT engineers to put a bio-retention pond in the front, in the right-of-way." He stated it was his intent to use those properties as adaptive reuse. The proposed rear building has been eliminated and has been documented in the LDP. Mr. Caldwell said he is ready to begin construction on his 310 East Crossville Road property. Mayor Wood asked if that is the east parcel. Mr. Caldwell stated that was correct. Mr. Caldwell asked that Council not approve this application; he was concerned about doing this right moving forward.

Phil Barnet, 11530 Bowen Road, inquired if this property has small tract status. Mayor Wood answered that it is called adaptive reuse. Mr. Bowen referring to the overhead projection of the site plan asked if it is a hardship or adaptive reuse. Mr. Townsend stated it is an approval for both; one is hardship for parking in the front. Mr. Barnet said "under Parkway Village a hardship allows any use in Parkway Village, as does 1400 Woodstock Road so that the property could be developed hard retail today; as long as it met all of the setback requirements under the hardship that property could be sold for retail." Mr. Townsend replied yes, with meeting the requirements. Mr. Barnet said this has already been spot zoned; he asked to be corrected if he was wrong. Mayor Wood responded that would be Mr. Barnet's conclusion and was a subjective definition of spot zoning. Mr. Barnet said this is a zoning that this property could be completely redeveloped under any use on Parkway Village because of the hardship that has been designated as already there; it would allow hard retail, office professional. Mayor Wood responded that is what he understands from Mr. Townsend right now. Mr. Barnet asked if it is designated small tract or small tract use. Mayor Wood responded that Mr. Barnet was now pointing to the adaptive reuse property and not the small tract use. Mayor Wood stated the western portion is adaptive reuse and not small tract status. Mayor Wood stated the east parcel is small tract. Mr. Barnet stated he worked hard on the small tract portion when he lived in Parkway Village and wanted to get this right. He said the City cannot force that property into an assemblage with the hardship; the City is no longer in the position to force an assemblage with that adaptive reuse. Mayor Wood stated he would be correct if his conclusion is that prior to development we cannot force him into an assemblage; he has been granted hardship to allow the current development as it currently stands. Mr. Barnet stated that if the City wanted an assemblage they could only go west and not for the east. Mayor Wood responded that the City could not hold it up but it does not mean that it could not be assembled if offered enough money. Mr. Barnet stated he understood. Mayor Wood responded that was correct. Mr. Barnet said he was looking for clarification since he heard the term small tract. Mr. Barnet said "these two properties are already positioned to do what they wanted to do if a hardship had been granted to both of them; a hardship and an adaptive reuse are two different things." Mayor Wood referred Mr. Barnet's questions to Mr. Townsend regarding the paragraph written in the ordinance regarding rights granted for a hardship under Parkway Village prior to small tract. Mr. Caldwell attempted to ask a question at which time Mayor Wood noted that Mr. Barnet still had his full opportunity to speak. Mr. Barnet referring to the site started to ask a question without the property addresses. Mayor Wood explained that it was his understanding that property to the west was not small tract but was adaptive reuse. Mr. Townsend responded that the Mayor was correct. Mr. Barnet pointing to an area on the map, asked why the small tract term continues to be used. Mr. Townsend responded that in the location Mr. Barnet pointed to it was never used there, not to the west. Mayor Wood stated it was adaptive reuse. Mr. Townsend stated to the east, "the application for 310 Crossville Road was for small tract status coupled with a hardship requirement for parking in the front as well as a forty foot wide landscape buffer requirement along the eastern property line to be reduced so they could put a fence on the eastern property line of 310." Mr. Barnet said "so then 310 is a small tract with a hardship." Mr. Townsend stated that was correct. Mr. Barnet responded "that this is now a small tract; so this in regards to the City, unless the owners, there is a feasibility, small tract has been granted." Mr. Townsend stated yes, for 310 that is correct. Mr. Barnet stated "no matter what the intention; this is not a hardship but an adaptive reuse; he cannot tear a building down and rebuild without a hardship, you cannot adaptive reuse without a new building." Mr. Townsend stated that was correct. Mr. Barnet stated there will be no new construction on this property. Mr. Townsend stated no building construction. Mr. Barnet referring to

the site plan stated small tract was for the area he pointed to. Mr. Townsend stated that was correct, for a single two story office building. Mr. Barnett stated he had been looking for clarification.

Public hearing was closed.

Applicant:

Mr. Rolader stated this application meets every single legal requirement contained within the Parkway Village District and the small tract district. He stated that the applicant feels that if it has been granted to the property to the immediate east boundary, and not granted for this one, then that it is not equal treatment; the applicant is looking to utilize his property in the best possible way as has been permitted for the property owner to the east and the west. Mr. Rolader stated that in this case, in utilizing this property one would be entitled, if combined or not combined, to any use allowed in the Parkway Village district; an office use would be a very desirable use within the Parkway Village district. Mr. Rolader stated that if the applicant is allowed to construct this two story office building, small tract with inter-parcel access to the east, there is absolutely no actionable occurrence against the other property owner because what is proposed is enhanced and would increase the property value to properties on either side. There is nothing to prevent that property owner in the future from developing his property office or retail and achieving inter-parcel access and obtaining the same result which that property owner is concerned with. Mr. Rolader stated he does not understand the argument since a two story medical office building enhances the property and the residential people behind it have no objection and support it. He stated that over half of the medical office space is committed.

Council comment:

Councilman Orlans asked Mr. Rolader if he was aware of the email which Mr. Caldwell distributed. Mr. Rolader responded he had not and then reviewed it; he stated that neither he or the applicant had seen this email and were not aware of any interest from any assisted living facility that involves their property. He noted there had been a meeting between the principal of the applicant's company and Mr. Caldwell several weeks ago and afterward another meeting was attempted. Mr. Rolader stated that a complete set of plans was delivered to Mr. Caldwell's place of business.

Councilwoman Winiski inquired about the buffer between the parking area and the property to the east and the building and the property to the west; she asked about the amount of buffer off that property line. Mr. Townsend stated the set back to the west from the property line to the building is 15.7 feet; the setback to the east is 5 feet.

Councilwoman Henry asked if the property at 310 Crossville Road which has the small tract status is tied to a site plan. Mr. Townsend answered yes. Councilwoman Henry asked if anything were to be done to that property that differs from what exists or has been approved would it come back to Council. Mr. Townsend responded that was correct, it would come back to Council.

Councilman Orlans noted that each time an application on Highway 92 has come in for approval there has been controversy along with different questions regarding adaptive reuse versus small tract. Councilman Orlans stated the question is how long or how much can one property be held to try to combine it with another, with a small tract on the other side.

Motion: Councilman Orlans moved for approval of **PVST07-01, 300 East Crossville Rd., EDT Group Land Lot 447, subject to all six staff conditions.** Councilman Joyner seconded the motion.

Council comment:

Councilwoman Henry stated Parkway Village is one of the most successful overlays in Roswell, based on creating villages and providing inter-parcel access; its goal is to protect Roswell from looking like Smyrna, Ga. where there are small tracts which have been developed individually and dotted with adaptive reuse as well as small projects on small lots.

Councilwoman Henry stated it is her understanding that there is still enough property in this overlay and that if we start creating these small tracts which are highly developed it could quickly turn this success story around. Councilwoman Henry noted she has real concern and had been told there are people interested in assembling. She stated that through ordinance, we are providing the property owners to use their property as adaptive reuse until such time it could be assembled; she said "I just don't see where this property can't be assembled."

Councilwoman Winiski agreed that the Council's goal was to try to create something better than individual small tracts which have no visual connection. Councilwoman Winiski expressed concern with the project itself and this site plan with fifteen feet of buffer one side and five feet on the other. Councilwoman Winiski said we are trying to put something on there which does not really fit and is why we are coming up to this wall to wall, east to west development. Councilwoman Winiski stated it is physically feasible to combine and develop the adjoining properties and in time this could easily combine into one very good project; she did not want that possibility cut off with this particular proposal.

Councilman Tolleson stated that at the beginning of this discussion, City Attorney David Davidson read the requirements which Council was to review. The first requirement was that the tract of land cannot be feasibly combined with an abutting property to create a larger tract of land. Councilman Tolleson said that just in looking at this aerial there is a lot of undeveloped land; if this were wall to wall already developed on either side it would present more difficulties. He said there is a lot of undeveloped land with an adaptive reuse to the west; there is small tract but tied to a site plan to the east, and a common owner which presents an opportunity. Councilman Tolleson said if Council had adopted an overlay similar to Parkway Village in some other areas of Roswell, perhaps there might be less of the issues which we are facing today in some areas because it has been chopped up into so many small areas rather than assembled. He said he believes that this property certainly has adaptive reuse at its disposal, but if we do not want to give up to early on the potential for assemblage here.

Councilman Igleheart stated that in review of the development standard for Parkway Village, it mentions there are no variances requested but once something is put into small tract status, all the buffers and set backs go down to zero as opposed to other buffer and setback amounts for other property types. He said that answers one of the questions as to how they get so close to the property lines; once it is called a small tract it basically wipes out all those safeguards. Councilman Igleheart said that technically the one piece is small tract, what has been submitted as a land disturbance permit does not involve a new building and does not involve actual use of that as a small tract; it pretty much keeps it as an adaptive reuse. Councilman Igleheart said that practically and long term, that property is still as it is and can be used as an assembly; if we allow the middle piece to be developed as small tract than we have wiped out any possibility for that in the future.

No further discussion.

Vote: The motion failed 4:2. Councilwoman Henry, Councilwoman Winiski, Councilman Tolleson, and Councilman Igleheart were opposed. Councilman Orlans and Councilman Joyner voted in favor.