
This summary is provided as a convenience and service to the public, media, and staff. It is not the intent to transcribe proceedings verbatim. Any reproduction of this summary must include this notice. Public comments are noted and heard by Council, but not quoted. This document includes limited presentation by Council and invited speakers in summary form. This is an official record of the Milton City Council Meeting proceedings. Official Meetings are audio recorded.

The Regular Meeting of the Mayor and Council of the City of Milton was held on January 21, 2009 at 6:00 PM, Mayor Joe Lockwood presiding.

INVOCATION

Councilmember Tina D'Aversa led the invocation.

CALL TO ORDER

Mayor Lockwood called the meeting to order.

ROLL CALL

City Clerk Marchiafava called the roll and made general announcements.

Council Members Present: Councilmember Julie Zahner Bailey, Councilmember Bill Lusk, Councilmember Burt Hewitt, Councilmember Tina D'Aversa

Council Members Absent: Councilmember Karen Thurman and Councilmember Alan Tart were absent/excused.

PLEDGE OF ALLEGIANCE

Mayor Lockwood led the Pledge of Allegiance

APPROVAL OF MEETING AGENDA

Staff recommended the following changes to the meeting agenda.

1. Under Unfinished Business, remove from the agenda, item number one, An Ordinance Amending the Noise Control Ordinance within the City of Milton, Georgia.
2. Move items 2-6, under Unfinished Business, before the Zoning Agenda.

Motion and Vote: Councilmember Lusk moved to approve Agenda Item 09-771, Approval of the Meeting Agenda as amended. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously (5-0).

PUBLIC COMMENT

Mayor Lockwood read the rules for Public Comment.

- Public comment is a time for citizens to share information with the Mayor and City Council.
- To provide input and opinions for any matter that is not scheduled for it's own Public Hearing for today's meeting.
- There is no discussion on items on the Consent Agenda or First Presentation or from Council.
- Each citizen who chooses to participate in Public Comment must complete a comment card and submit it to the City Clerk.
- This is not a time to engage the Mayor or Council in discussion.
- When your name is called please come forward and speak into the microphone stating your name and address for the record.
- You will have five minutes for remarks.

There was no Public Comment.

CONSENT AGENDA

(Agenda Item No. 09-772)

1. Approval of the January 5, 2009 Regular Meeting Minutes.

(Agenda Item No. 09-773)

2. Approval of the Financial Statements for the period ending December 2008.

Motion and Vote: Councilmember Hewitt moved to approve the Consent Agenda. Councilmember D'Aversa seconded the motion. The motion passed unanimously (5-0).

UNFINISHED BUSINESS

Moved by motion and vote

City Clerk Marchiafava agenda item 09-774.

Approval of a Resolution Amending Resolution No. 09-01-66, A Resolution to Create the Milton Parks and Recreation Advisory Board and to develop the Milton Parks and Recreation Ordinance by appointing a member for District 2.

RESOLUTION NO. 09-01-72

Councilmember Zahner Bailey

- Her appointment is Curtis Mills.
- He brings a tremendous amount of experience and background.
- He was very involved in the Birmingham master planning initiative.
- He has two children that attend Kings Ridge.
- He has served in a number of director roles.
- He presently serves as Director for the Little Cumberland Island Association.
- He has been very involved with the conservation of land and green space as relates to the Georgia coast.
- He is the president of a consulting firm that serves the southeast.

Motion and Vote: Councilmember D'Aversa moved to approve a Resolution Amending Resolution No. 09-01-66, A Resolution to Create the Milton Parks and Recreation Advisory Board and to develop the Milton parks and Recreation Ordinance by appointing W. Curtis Mills, Jr. for District 2. Councilmember Hewitt seconded the motion. There was no Council discussion. The motion passed unanimously (5-0).

Mayor Lockwood:

- Curtis Mills could not be here tonight so we will administer his oath at another time.

Oath of Office for MGG Member

Mayor Lockwood administered the Oath for the Milton Grows Green Committee to Melissa Estes, who was previously appointed.

City Clerk Marchiafava read agenda item 09-775.

Approval of a Resolution Amending Resolution No. 09-01-67, A Resolution to Create a Committee to Serve as the Highway 9 Design Guideline Committee for Potential Revision to the Highway 9 Overlay District of the City of Milton Zoning Ordinance.

RESOLUTION 09-01-73

Councilmember Lusk:

- Nominated Tom MacPherson.
- He has been a resident of the City for approximately ten years.

Motion and Vote: Councilmember Hewitt moved to approve a Resolution Amending Resolution No. 09-01-67, A Resolution to Create a Committee to Serve as the Highway 9 Design Guideline Committee for Potential

Revision to the Highway 9 Overlay District of the City of Milton Zoning Ordinance by appointing Tom MacPherson for District 3. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously (5-0).

City Clerk Marchiafava read agenda item 09-776.

Approval of a Resolution Amending Resolution No. 09-01-68, a Resolution to Create a Committee to Serve as the Historic Preservation Committee for Development of a Historic Preservation Ordinance for the City of Milton by appointing committee members.

RESOLUTION NO. 09-01-74

Councilmember Zahner Bailey:

- Introduced Melissa Thomas-Dubois.
- She is keenly interested in historic preservation and made a commitment to be more involved in the community this year as she has in the past.
- She has been a North Fulton resident for more than ten years.
- She has been a parent volunteer through the Fulton County Schools and an officer of her Homeowners Association.
- She is committed to helping people protect, enhance and enjoy the places that matter the most.
- She is the owner and principal of Thomas Dubois LLC.
- She has a marketing communications firm.
- She is an award winning writer.
- She has various degrees including a Masters from the University of Detroit in Health Care Administration and Ethics.
- Her list of accomplishments goes on and on.
- She will bring tremendous value to this committee.

Motion and Vote: Councilmember D'Aversa moved to approve a Resolution Amending Resolution No. 09-01-68, a Resolution to Create a Committee to Serve as the Historic Preservation Committee for Development of a Historic Preservation Ordinance for the City of Milton by appointing Melissa Thomas-Dubois for District 2. Councilmember Hewitt seconded the motion. There was no Council discussion. The motion passed unanimously (5-0).

Councilmember Lusk:

- Introduced and nominated Brian Beach, who is also known as Coach Beach.
- He instructed and coached lacrosse for various organizations including Milton High School.
- He has experience in the State of Vermont with an organization that preserved historic buildings there.

Motion and Vote: Councilmember Zahner Bailey moved to approve a Resolution Amending Resolution No. 09-01-68, a Resolution to Create a Committee to Serve as the Historic Preservation Committee for Development of a Historic Preservation Ordinance for the City of Milton by appointing Brian Beach for District 3. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously (5-0).

Oath of Office

Mayor Lockwood administered the Oath of Office for the Historic Preservation Committee to Melissa Thomas-Dubois for District 2 and Brian Beach for District 3.

City Clerk Marchiafava read agenda item 08-753.

Approval of a Resolution Amending Resolution No. 08-12-62, A Resolution to Create a Stakeholder Advisory Committee for the City of Milton Transportation Plan by appointing member for District 1, 2, and 3.

RESOLUTION NO. 09-01-75

Mayor Lockwood

- Introduced Councilmember Thurman's appointment for district 1.
- He is a long time north Fulton resident.
- He graduated from Roswell High School and attended West Georgia College.
- Steve owns and operates Hometown Mortgage in Alpharetta.
- He currently serves on the North Fulton Community Charities Board and Alpharetta Public Safety Board.

Motion and Vote: Councilmember Lusk moved to approve a Resolution Amending Resolution No. 08-12-62, A Resolution to Create a Stakeholder Advisory Committee for the City of Milton Transportation Plan by appointing Steve Beecham for District 1. Councilmember Zahner Bailey seconded the motion. There was no Council discussion. The motion passed unanimously (5-0).

Councilmember Zahner Bailey:

- Introduced Nick Voigt as her nominee.
- He has been extensively involved in community issues.
- He is a professor at Georgia Tech of the practice for global, leadership, and innovation.
- He was a former faculty director for the Global Executive MBA program and all European and Latin American programs.
- Before his professorship he had a twenty eight year career with Hewlett Packard as a senior executive.
- He brings tremendous experience and background and leadership.
- He has many accomplishments and she is very pleased he is willing to step up to this task.

Motion and Vote: Councilmember Hewitt moved to approve a Resolution Amending Resolution No. 08-12-62, A Resolution to Create a Stakeholder Advisory Committee for the City of Milton Transportation Plan by appointing Nick Voigt for District 2. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously (5-0).

Councilmember Lusk:

- Introduced Doug Hand as his nomination.
- He is no stranger to the City or to Council.
- He is a Director of Business Development for Devin Properties.
- He has helped develop the Highway 9 corridor.
- He has close working relationships with GIRDA, ARC and other organizations involved in planning.
- He is a board member of the Perimeter Transportation Coalition.
- He is a member Perimeter Dekalb Community Improvement district, North Fulton Community Improvement District and is a class member of the North Fulton Chamber of Commerce.

Motion and Vote: Councilmember D'Aversa moved to approve a Resolution Amending Resolution No. 08-12-62, A Resolution to Create a Stakeholder Advisory Committee for the City of Milton Transportation Plan by appointing Doug Hand for District 3. Councilmember Hewitt seconded the motion. There was no Council discussion. The motion passed unanimously (5-0).

Oath of Office

Mayor Lockwood administered the Oath of Office for the Stakeholder Advisory Committee for the City of Milton Transportation Plan to Steve Beecham for District 1, Nick Voigt for District 2, and Doug Hand for District 3.

City Clerk Marchiafava read agenda item 08-754.

Approval of a Resolution Amending Resolution No. 08-12-63, a Resolution to Create a Citizen Advisory Committee for the City of Milton Concept Plans for the Intersections of Birmingham at Providence and Arnold Mill at new Providence by appointing committee members.

RESOLUTION NO. 09-01-76

Councilmember Zahner Bailey:

- Introduced Star Voigt as her nominee.
- She has voiced concerns over intersections for the last number of years.
- She is a key candidate to provide value to this committee.
- She has been very much involved with the community.
- She brings a long history of real estate background.
- She is a life long Atlanta resident.
- She has held senior positions in the community health industry and the mental health industry in Dekalb County.
- She has held organizational positions with the Indian Hill Civic Association.
- She was the treasurer of the Sentinel Late Comers Association and also the secretary of the state at Atlanta National.
- She has a long list of accomplishments.

Motion and Vote: Councilmember Lusk moved to approve a Resolution Amending Resolution No. 08-12-63, a Resolution to Create a Citizen Advisory Committee for the City of Milton Concept Plans for the Intersections of Birmingham at Providence and Arnold Mill at New Providence by appointing Star Voigt for District 2. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously (5-0).

Councilmember Lusk:

- Introduced Ronnie Rondem as his nominee.
- He lives approximately half way between these intersections so he is very aware of the issue surrounding these dangerous intersections.
- He was unable to attend tonight.

Motion and Vote: Councilmember Zahner Bailey moved to approve a Resolution Amending Resolution No. 08-12-63, a Resolution to Create a Citizen Advisory Committee for the City of Milton Concept Plans for the Intersections of Birmingham at Providence and Arnold Mill at New Providence by appointing Star Voigt for District 3. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously (5-0).

Oath of Office

Mayor Lockwood administered the Oath of Office for the Citizen Advisory Committee for the City of Milton Concept Plans to Star Voigt for District 2.

Mayor Lockwood:

- Thanked all of the volunteers.
- It means a lot to the community and staff.
- They make a big difference.

Recognition of Adam Coffee

- Recognized Adam Coffee who was in attendance and working on his Eagle Scout badge.

ZONING AGENDA

City Clerk Marchiafava read the zoning agenda rules.

At the second regularly scheduled meeting of the month, the mayor and City Council consider a Zoning agenda. These items include rezoning petitions, modifications of zoning, use permits, and associated concurrent variances, in addition to ordinances, resolution, and text amendments.

The petitions will be heard in the sequence listed on the posted agenda. I would like to acquaint you with some of the rules and procedures for this meeting.

The applicant, and all those speaking in support of an application, will be allowed a total of ten (10) minutes to present the petition. The applicant may choose to save some of the time for rebuttal following the presentation by the opposition.

The opposition will be allowed a total of ten (10) minutes to present its position. If time remains, the opposition will be allowed to rebut.

Since the burden of proof is upon the applicant, the applicant will be allowed to make closing remarks, provided time remains with the allotted time.

The City Clerk's staff will be keeping track of time and will inform you periodically of the remaining time for your presentation.

Those called to speak will be taken in the order that the speaker cards were received by the City clerk's staff prior to the beginning of tonight's meeting.

All speakers will identify themselves by name, address and organization, if applicable, before beginning their presentation.

The Planning Commission heard the rezoning agenda items and recommendations have been forwarded to the Mayor and City Council for consideration and disposition.

In addition, the applicant shall not submit material to the Council during the meeting, unless requested to do so. All material that you wish to be reviewed by the Council in consideration of your application should be submitted to the staff of the Department of Community Development, to be included in the normal distribution of packages to the Council.

When an opponent of a rezoning action has made, within two years immediately preceding the filing of the rezoning action being opposed, campaign contributions aggregating \$250.00 or more to a local government official of the local government which will consider the application, it shall be the duty of the opponent to file a disclosure with the governing authority of the respective local government at least five days prior to the Planning Commission meeting. A violation of the relevant state statute constitutes a misdemeanor. Therefore, if you have contributed \$250.00 or more to a Councilmember and you have not filed a disclosure prior to the Planning Commission meeting, the City Attorney strongly suggests that you have someone else speak for your point of view.

(Zoning agenda items typed verbatim)

City Clerk Marchiafava read agenda item 08-683.

ZM08-06/VC08-06 - 765 & 785 Mid-Broadwell Road by Sally Rich-Kolb to modify Condition 2.a. of Z05-072 to revise the site plan; 2) To delete condition 4.b. to remove the requirement that the owner

dedicate to Fulton County (City of Milton) the necessary right-of-way to provide a connector road from Broadwell Road to Mid-Broadwell Road prior to attaining an LDP, or as may be approved by the Director of Public Works; and 3) To request a concurrent variance to reduce parking from 58 to 39 spaces (Article 18.2.1). (This item was deferred on October 20, 2008.)

ORDINANCE NO. 09-01-33

Community Development Director Alice Wakefield:

As was stated, the applicant is requesting to revise the site plan, delete the condition for the unnecessary right of way for the connector road and a concurrent variance to reduce the required parking spaces. This matter was previously before the Mayor and Council on October 20, 2008. At this time I will ask Planner Robyn MacDonald to give you a detailed report on what has taken place since then. The recommendation of staff is approval of the revision for the site plan. Denial for the request to delete the condition related to the right of way dedication and approval of the concurrent variance to reduce the parking.

Senior Planner Robyn MacDonald:

As stated before this was before you on October 20, 2008. After that review and discussion the Mayor and Council voted to defer it until March for further looking into the situation with the right of way and possible alternatives as well as to have the Design Review Board review it, as it is not typical for the Design Review Board to look at modifications, on January 6th the DRB reviewed the proposed site plan and recommended the right of way should remain to help provide future connectivity. In addition they recommended that the parking configuration be placed as not to encroach into the city property at the Crabapple Center. In addition they wanted to make sure that trees located in the right of way would not be damaged by construction of the future buildings. Also basically there was the beginning of a study done but it was decided to hold off on it for further consideration once the transportation plan was started. Staff recommends still that the right of way remains for the applicant to provide to the city for future development when funds are available and that we do support the request to reduce the parking from 58 to 39 spaces.

Mayor Lockwood:

At this point I will turn this process to our Mayor Pro Tem Councilmember D'Aversa, just out of an abundance of caution. My wife is a tenant of this applicant so I am going to recuse myself from the discussion and the vote on this.

Mayor Pro Tem D'Aversa:

Thank you Mayor. First, we will hear from those in support of the zoning modification and request for a concurrent variance. Ms. Kolb...

Sally Rich-Kolb, 765 Mid-Broadwell Road, Milton, Georgia 30009:

Is it alright to request this? Do you have a quorum?

Mayor Pro Tem D'Aversa:

Yes, we have four.

Sally Rich-Kolb:

Thank you, I hate that Karen is not here though. She is of course in that area, but I would appreciate you approving this variance and modification requested. I have talked to the staff and they have informed me about going ahead with the request for the fifty foot dedication and I was hoping that we could get together between October and now to talk about maybe different placements or the dedication being so large and maybe having a compromise with that. If it is deemed that it is necessary to have the road there, the connector road, I would like for it to be thought about being decreased from fifty to forty which would allow ten feet to be on site parking which would create a little bit more parking. It would be on the road anyway, parking there at ten feet. Another ten feet of course would be used for the landscape and the sidewalk and then the two lanes would be the rest, twenty feet so that I think would be ample space and that might create more area that could be left natural. I am

still concerned about the funding not being there. If you have this as a condition, I would appreciate the City thinking about getting a loan and having this done this year. The estimates that I received on a one lane, about two years ago before the city was a city and I was dealing with Fulton County, it was about \$117,000 then for a one lane and this of course is two, so I would like you to think about doing that. This is a perfect time for me to build and I would hate to put it off. I know companies are wanting to and construction companies are hurting and I would like to help their business. Also the rates are down and it would help me out a great deal as far as doing it now. Of course with the parking, I appreciate you agreeing with me. We see that what we have there, we only need just a little more than just half of what is the parking requirements. I have about 18 hundred square feet now and on a good day we only need about six parking spaces right there. We want to create that walkability from shop to shop. I will reserve the rest of my time. Thank you.

City Clerk Marchiafava:

Madame Mayor Pro Tem that is all of the comment cards I have in support.

Mayor Pro Tem D'Aversa:

Is there anyone who would like to speak in opposition to this zoning modification?

City Clerk Marchiafava:

Mr. Buck Bell

Buck Bell, 13225 Bethany Road, Milton, Georgia:

Like last time I signed up for opposition because I am kind of on the fence with this whole petition. Sally I think has found herself in a very unusual position with the fact that she made a zoning request and received it based on a road being a particular area of her site plan, that the site plan was conditional that provide the building density as well as the allotted number of parking which was based on five per thousand square feet basic retail, not a restaurant, not an office but retail. Apparently Sally was approached during the years of Fulton County to remove this road from where it was proposed and put it in another location which involved a participation of another adjoining land owner which decided they did not want to participate and Fulton County basically has kept this road where it is and there was even some comment of trading that community center land in lieu of the land they were taking which would have been compensation for that. In turn, we are now the City of Milton, the road is where it stood with Fulton County, Sally is not being compensated for the amount of land she has given which she has determined to be somewhere between one third and one half of her total land mass. She would like to be rewarded by keeping the same amount of density and to do that, has to deduct 30% parking from this property to make it work and not because of any calculation, but strictly by the amount of room that they can put the amount of parking in. Additionally she has to forego the cost of an underground detention pond, which could range as high as two hundred thousand dollars. Being a land owner in Crabapple and have done a little bit of developing there myself, if I was faced with that same type of proposal it would be a hardship that I would not know how to deal with to come up with that type of money, so I oppose the fact that there is a road being taken without some immediate consideration to Sally so she can forego some of this hardship she is receiving, cost, the underground detention pond, because she wants to complete her project. She would like to do it now, but she is strapped by waiting for the city to fund the project so she knows what she is exactly dealing with. I find it unfortunate to want to develop your property to only half that you could deal with and not know what has happened to the other half. Of course I am opposed to a reduction in parking. A parking reduction of 30%, I think not only sets up her property for failure but it sets up Crabapple for failure. Sally is a big believer in park here and walk there type of concept. We all know Crabapple, it is spread out. I do not know how many of you would park at Sally's place or my place and walk all the way down to Jittery Joes for a cup of coffee and back. People are going to be more likely to drive, so that is why parking is a great consideration of Crabapple right now, so I think it is a risky proposition to start reducing parking by 30%. I think it will set a precedent for all that come before you that wants to build more density and less parking. I would just be considerate of that. I do not know what I am asking of you all here, I ask for a deferral last time, which was met so we could do more research. I do not see anything different coming out of it but I am concerned about the precedents being set and what Sally has to work with here. That is also a precedent setting with how land is exchanged and what I would call taken, which concerns me that I never want to faced with a similar situation. Thank you.

City Clerk Marchiafava:

That completes public comment. We do have time reserved Madam Mayor Pro Tem if the applicant wishes to speak again.

Mayor Pro Tem D'Aversa:

Would you like to make any additional comments Ms Kalb

Sally Rich-Kolb:

I cannot think of anything. Thank you.

Mayor Pro Tem D'Aversa:

I would like to ask a question of our City Attorney. We have received a letter that I am just seeing this evening from the City of Alpharetta with regard to this modification request. I am wondering if this would ok for us to have this read into the record.

City Attorney Ken Jarrard:

Is it from the City itself?

Mayor Pro Tem D'Aversa:

It is from the Mayor and the city.

City Attorney Jarrard:

I think that would be appropriate to read into the record.

City Clerk Marchiafava:

On the City of Alpharetta letter head, dated January 9, 2009. Mayor and City Council, City of Milton, the reference is ZM 08-06/VC08-06, Sally Rich-Kolb at 765 and 785 Mid Broadwell Road, Dear Mayor Lockwood and Council Members, it has been brought to our attention that the above noted public hearing case is scheduled to be heard on January 21, 2009 and we would like to comment on the applicants request to remove the following condition of zoning 4b. The owner shall dedicate the necessary right-of-way to provide a connector road from Broadwell Road to Mid Broadwell Road prior to obtaining an LDP or as may be approved by the Director of Public Works. A connector road at this location is an important part of the Crabapple Crossroads network plan approved in June 2003. We agree with the Milton professional staff's recommendation to deny the applicants request. When completed the enhanced roadway network which includes the roadway section at 765 and 785 Midbroadwell will result in a more connected community and a better pedestrian network. The long term solution to address the traffic and congestion at the intersection of Crabapple Road, Mayfield Road, Birmingham Highway, Midbroadwell and Broadwell Road is to provide more transportation roadway options. As stated in the Crossroads plan, widening existing roadways would destroy the historic setting of the area and increasing road capacity would attract more commuters into increasing traffic volumes. The enhanced road network within Crabapple creates a village type development and although the volume of traffic cannot be reduced, the smaller streets will share the volume of traffic providing routing options and at the same time allowing traffic which is essential for success of existing as well as proposed retail and office development. The City of Alpharetta has been very pro-active in implementing the Crabapple Crossroads plan. In the past the city has required properties within its jurisdiction to not only dedicate the right-of-way required for the connectors but also build the road portions. In fact the day care of Crabapple road within the City of Alpharetta was the first development required to build a portion of the roadway network with others to follow. The recently approved subdivision, Beragio at Crabapple, on Broadwell Road was also required to build a section of the roadway network in order to connect in the future to Gainesville Drive, See attached map and there is a map attached to this letter that I will circulate to the members of the Council. We have been fully committed to the roadway network outlined in the Crossroads plan and it's inception however our efforts and those of many other will have been wasted if the roads do not ultimately connect. We believe that every piece of roadway is a critical component to the traffic management

solution to Crabapple. Thank you for carefully considering our input regarding the future of this area which will benefit both Alpharetta and Milton citizens. It is signed by Mayor Arthur G. Letchas.

Mayor Pro Tem D'Aversa:

The public hearing is now closed and we will open it for Council discussion. I wanted to start our discussion.

City Attorney Jarrard:

Madam Mayor Pro Tem, may I just offer one comment?

Mayor Pro Tem D'Aversa:

Absolutely.

City Attorney Jarrard:

Given that the applicant was not aware of that letter either until hearing it just now, it might be appropriate if the applicant would like to say anything in response to that letter, to let her have that opportunity, just out of a sense of fairness.

Mayor Pro Tem D'Aversa:

Absolutely, would you like to comment Ms. Kolb?

Sally Rich-Kolb:

I appreciate it. I understand their concern and their need for a road right there but I also heard about connecting and of course this is going from Midbroadwell to Broadwell, just dead ending there, close to the intersection and that is the reason why we brought this up to see if this was the appropriate location for the road to begin with. I would like to comment that it is really not fair to me to just sit on a piece of property that cannot be developed waiting for the city to have funding for it, so if you keep this condition in, I would appreciate you finding funding as soon as possible, hopefully this year to build it and complete it this year even if it means having to take out a loan. I know I have to take out loans so hopefully you all can do that too.

Mayor Pro Tem D'Aversa:

Yes Ma'am thank you and thank you Mr. City Attorney for that recommendation. My comments were going to be along those lines, It is a struggle for us to make decisions like these because we are trapped between moving forward with our comprehensive planning and specifically our transportation plan which is scheduled to begin with our committee appointments just being finalized and our consultants being hired, scheduled to begin tomorrow night in fact. Our staff has worked diligently to get to a point of moving forward on the planning of all of the transportation of Milton but even specifically with regard to your property and I know that will be at the top of their list, so our challenge is making a decision now that would go against the current existing conditions of what your property are without having the guidance that we are now paying for with these consultants. I have to admit I am very impressed with the consultants thus far and what I know they are going to do along with our city staff and I would like to see us wait to hear from them but I understand your predicament in moving forward with your property. I really want hear from, especially with something like this where it is a 2003 condition made by the county that was managing the area at the time. It impacts another city, it impacts an entire development and overlay in Crabapple, so it is very difficult decision for us to make. I wanted to start with those and I do not want you to think that we would in any way shape or form take this lightly in the last few months, the reason I requested the deferral was to be able to ask some of these questions and unfortunately not being able to get to the transportation planning process during that time has been unfortunate. There is nothing we could have done or our staff could have done to move forward any quicker though and what I can offer is that I believe that we will move on this review of your property very quickly as the process unfolds. It may very well be that within this year we could act on it but there are no guarantees of that, so I would like to open it for the rest of Council to comment if they have comments.

Councilmember Zahner Bailey:

I was going to ask our staff to comment a little bit. If we could talk about a couple of different items, I think that on this particular site plan, there are a couple of things that I would like to address. Dan if you could speak to the recommendation from staff regarding the right-of-way and to confirm what your continued recommendation is from the Public Works perspective.

Public Works Director Dan Drake:

Based on our recommendation back in October, I believe it was when we had the meeting, we had no further information than a recommendation of a fifty foot right-of-way through there at this location stance.

Councilmember Zahner Bailey:

Ok, so public works had recommended that connectivity remain and Ms. Wakefield if you would comment from a community development perspective just to make sure that I am clear. Public Works recommended that remain, and separately community development recommended that road for connectivity remain as well.

Community Development Director Wakefield:

Yes, and community development looked at it from a Crabapple Master Plan standpoint.

Councilmember Zahner Bailey:

I guess that is my next question is that this method of connectivity was always contemplated as part of that master plan. Is that correct?

Community Development Director Wakefield:

It was contemplated in this area connecting those two roads, yes.

Councilmember Zahner Bailey:

Then I guess the other thing that was just read into the record was that letter from Mayor Letchas which indicates the City of Alpharetta which obviously abuts the portion of Crabapple, Milton Crabapple, they also obviously continue to recommend that point of connectivity and I would like to make a point. When it was mentioned that this would be perceived as a taking, my understanding was that when this case was originally rezoned and I may direct a question to our City Attorney just to verify this, it is my understanding that indeed it was not a taking but instead it was a condition of zoning and that it was in direct response to a request for density that was ultimately granted so the granting of that density was obviously a benefit to the applicant and the granting of that density was conditioned on this being a part of that site plan. I think that is very different than the comment that was made in terms of a taking, but could you speak to that briefly Mr. City Attorney.

City Attorney Jarrard:

Well right, as the zoning authority has the ability to affect conditions to ameliorate the impact of the zoning and if that was what the governing authority of Fulton County felt was appropriate to lessen the impact of the zoning at the time was to request and make the zoning condition upon the conveyance of right-of-way then that is a legitimate basis to make that request.

Councilmember Zahner Bailey:

Ok, I just wanted to clarify that. In addition, just looking at this site plan, because I know that we are here tonight looking not just at the right of way and the road, but in particular at the site plan and the fact that it is a zoning modification, there are two things from my edification, if we could talk briefly about the parking spaces, I know we have heard not just tonight but previously there have been concerns from the community and some current business owners about the reduced parking. I am typically a supporter of reduced parking, just for the record, because it obviously typically means less asphalt etcetera. I do note that when I look at this site plan, the majority of parking is anticipated to be gravel. Ms. Wakefield could you confirm that?

Community Development Director Wakefield:

That is correct.

Councilmember Zahner Bailey:

One of the questions that I have in looking at this site plan is that it reveals some encroachment into city owned property and in particular it is encroachment and I think we heard Ms. Wakefield mention this into the record that the Design Review Board had also noted this.

Public Works Director Drake:

I am not sure I want to use the word encroachment, but there are five parking spaces that are shown on this plan that require the vehicle to enter city property. I have not seen the site plan that did not show those five vehicles enter onto city property.

Councilmember Zahner Bailey:

From your perspective, would it be unusual to have city property that would have an encroachment of this nature from an adjacent development that is not city owned?

Community Development Director Wakefield:

I think the simplest way to answer is that, if this site plan is approved, when the applicant comes in for land disturbance, the staff would require that all parking spaces that encroach, that are not accessible through the applicants property be redesigned such that they comply with the ordinance.

Councilmember Zahner Bailey:

Ok, so as we go through this discussion, I just wanted to bring up, at least my concern with regards to encroachment, it sounds like community development has a similar concern, so depending on how this body continues, I would hope we perhaps consider a condition that would make no encroachment specific so that is not a question and in particular, I need to also ask, is this site plan still a concept site plan?

Community Development Director Wakefield:

We basically consider all zoning related site plans, unless it specifically says that it is not, as a conceptual plan because there are still many other hoops you have to jump through before you get your permit to build.

Councilmember Zahner Bailey:

Sure, thank you very much. Mr. Drake, going back to the road, and I am going to ask this question in context of the next topic that I would like to be able to address and that is the three specimen trees that are reflected on the site plan. To be consistent with my position about the importance of tree saves, we obviously have a Tree Ordinance Committee that is currently looking at how better we as a city can protect some of our specimen trees and with that in mind and knowing that through the years one of the things that we continue to hear from citizens is that we need to save more of our specimen trees, it concerns me that this site plan shows three specimen trees all of which are close to thirty inches in caliper being removed. Because this variance request is for reduced parking, part of my question, and Mr. Law, I may ask you a question as well, It would seem that perhaps there is an opportunity for the site plan to be adjusted slightly whereby we might have an opportunity to save if not all three, some of them and I believe probably Sally you are a supporter of trees, but Mr. Law could you just speak briefly to the fact. Have you seen a different site plan other than this that showed some different approaches for how we might save these trees?

Arborist Mark Law:

I have not seen an alternative plan showing an attempt to save the trees.

Councilmember Zahner Bailey:

Ok, and Ms. Wakefield, just in your discussions and over this deferral period, have there been any opportunities or site plans that might have been presented by the applicant that would have shown some adjustments to try to accommodate the tree save?

Community Development Director Wakefield:

No.

Councilmember Zahner Bailey:

Ok. Mr. Drake, my question for you and looking at this, obviously this current site plan which is conceptual shows the right of way and the roadway, knowing that this is not completely finalized in terms of what that lay out of the road would be, I am curious, is it possible that that roadway could potentially be shifted to accommodate the critical root zone whereby some or all of those trees in theory could be saved?

Public Works Director Drake:

There is a potential within the fifty foot right of way for the roadway to shift by x number of feet. The issue of whether it can be saved from the root zone is another issue that would need to be looked at in the preliminary and the final design depending on the amount of grading that needs to be done both for the roadway as well as for the structure that is right next to it on her property.

Councilmember Zahner Bailey:

Ok. Mr. Law, I know that you had gone out and looked at these particular trees and I know that you had shared with me earlier that you had done some preliminary measurements and that it looked like some of the critical root zone while not all of it in theory is there, it is just that it is not 100% there and could you just speak about that for a moment?

Arborist Mark Law:

Yes, I think it is listed as three pine trees, one of them is a sweet gum tree. The one nearest the road is a sweet gum and the other two are pine trees. Looking at the plan that is shown, even if the road were to be moved back a little bit that is going to be very tight area. There is probably maybe fifteen feet at the most of what the tree is going to have on this plan.

Councilmember Zahner Bailey:

So an existing fifteen feet based on this plan but not taken into account, I think what we heard from Mr. Drake, that there would be the potential for that road to be shifted.

Arborist Law:

That is correct. However, the thing to consider, these trees are plotted at the exact location. They are conveniently plotted within the street and the building and they are actually located in the correct vicinity, so that may even pose a problem there if the tree is not quite exactly located on this plan, here, if it is closer to the property line, then you have that road and it is still going to impact the tree.

Councilmember Zahner Bailey:

I guess that further emphasizes that this is a conceptual site plan since we are not sure if even the trees are properly located nor do we know if this road is going to be in this precise location. I think that actually emphasized the point that I would like to make. I would not tonight want to presume that these three trees that I think are important to the overall pedestrian walkable master plan always focus of having a wonderful walking area in Crabapple. I would hate for us to presume this evening that these three trees would necessarily be removed. I hear that there could be some flexibility, so again depending on what is the pleasure of this body, I would hope that we would also consider some ways to contemplate along with applicant, along with public works and along with our arborist to see how we might save those three specimen trees. I think that would be to everybody's benefit, the citizens, the business owners, people want to come and visit Crabapple and we still have some trees. I think we all are aware that we continue to receive commentary from citizens in Crabapple almost weekly that continue to be concerned about the loss of tree, not only specimen but also tree coverage in that area so I do think that each one of these specimen trees is important. The other thing that I would ask that we consider is that when it comes to recompense, should it be determined that these three could not be saved, is that I believe it is important that we require recompense on site and that we not always assume that recompense should occur elsewhere because again the premise is to help enhance the Crabapple area for the businesses and the citizens and not to try to detract from that so I would also hope that we would consider as a body consideration of recompense on site and along with that I would ask that beyond just a 4 inch caliper tree that we think about a blend of either

four inch as well as six inch. Not assuming that all recompense would have to be six but that some of them could be if there was a need for recompense on site.

Mayor Pro Tem D'Aversa:

Bill, do you have a comment?

Councilmember Zahner Bailey:

I have one other comment. I was just trying to get it all out there so we understand what at least my concerns were. Thinking about the community house and this goes back to the parking and encroachment issue, because this site abuts a city owned parcel, and I know that we are going to be having some more dialogue with our parks and Recreation Committee and other representatives, one concern that I have is making sure that that community house eventually has some availability to park and be able to use it and I believe that staff is going to provide us an assessment of how much parking would be available with the land owned by the city at that community house. Could you share that data, Mr. Smedley, I was not sure who on staff was going to have that information.

Public Works Director Drake:

We have not looked specifically as to how much, if you park the whole property, is that what you are asking?

Councilmember Zahner Bailey:

With the community, and again I am not speaking of the applicant but because it is adjacent to and it impacts that community house based on the encroachment, where the community house is, assuming that would be used for citizens and for the community, how many citizens could come and park on city owned property for the use of that community house.

Public Works Director Drake:

Again at this point, one of the things that we have been trying to do is to protect the existing property from any type of parking that is not within a corridor that is part of one of the issues on the north end of the property and try to assume that no other parking encroachment would happen because we do not know what the parks and rec committee is going to do with this property but as far as the number of spaces we have not looked at that and it could be a variable number depending on what happens with that property.

Mayor Pro Tem D'Aversa:

Ms Wakefield, you had made a comment that there was nothing in any ordinances or anything with regard to this property that gave specific requirements for parking.

Community Development Director Wakefield:

That is correct.

Mayor Pro Tem D'Aversa:

So Mr. Drake if I am hearing you correctly do you have a guestimate as to how many people that could park there currently?

Public Works Director Drake:

I do not.

Councilmember Zahner Bailey:

Can you clarify? When you were saying that there is nothing within our ordinance, did you mean for the community house?

Community Development Director Wakefield:

Yes, the community house if public property and the zoning regs exclude public property, so there is nothing in the ordinance that specifically says you need x number of spaces for this type of use.

Councilmember Zahner Bailey:

Thank you, generally do we think we could park ten cars there or five cars there, think if a girl scout troupe shows up and want to use, do we have enough parking there where cars can park on city owned property.

Mayor Pro Tem D'Aversa:

I think the important thing is if I am hearing this dialogue correctly is that we are not going to allow or prefer not to allow any encroachment on that property so this does not really have any bearing on this issue at this point.

Councilmember Zahner Bailey:

The second part of my question was whether or not we might want to think about shared parking. If we only have the opportunity to preserve a few parking spots with that community house, as curiosity, if we are going to contemplate reduced parking as a function of variance, whether or not we as a city would want to speak to this applicant about shared parking between the community house and that other.

Mayor Pro Tem D'Aversa:

And we are looking at nineteen parking spaces being reduced from the property.

Community Development Director Wakefield:

That is correct.

Mayor Pro Tem D'Aversa:

And how many parking places would that leave?

Community Development Director Wakefield:

Thirty nine.

Mayor Pro Tem D'Aversa:

Thirty nine parking places, ok, and if you had to make a guess for the community house, there is probably availability for at least, what?

Public Works Director Drake:

There is gravel on one side of the house. There is some gravel and a very large open area where the road is going to be, so there is a lot of potential on the other side, but I believe you are asking more toward the other side where Ms Kalb property is so just a guess would be ten maybe fifteen spots.

Mayor Pro Tem D'Aversa:

Ten spots on that side where Ms Kalb's property is but we have additional spots on the other side.

Public Works Director Drake:

Plus Mr. Statham has I believe about four or five spots that we are legally required to provide for him on our property based on a court order.

Mayor Pro Tem D'Aversa:

Alright, Bill do you have any questions or comments?

Councilmember Lusk:

Just a few comments and I agree with the comments that you made earlier. This is not a cut and dried easy issue to deal with. I think this is kind of like putting a puzzle together without having all of the pieces. We do not have the Comprehensive Land Use Plan completed. We have not gotten into the transportation on the one hand, I understand the condition that was set forth by Fulton County previously which dictated that this connector road be dedicated but on the other hand, I can empathize with Ms Kalb that she has been sitting on the piece of property too and it is a compelling reason to build at this time particularly in this market. I am torn about what exactly the right thing is to do here and I understand property rights and I understand the fact that we do not have our plans

completed for this whole area and it is difficult once you do something out there to reverse it. Particularly in the way of roads and structure. Those are my comments, thank you.

Councilmember Hewitt:

I have one question for Alice or Dan. I do not want to get into it too much but I do not know, of the five parking places, they are not necessarily encroaching on the community house but you have to travel across city property to access those parking spaces and this may not be able to be answered now but would there be any way to open up some other parking spaces for our community house by accessing or using some of the access on Ms Kalb's property. I do not know. The other thing is to echo Bill and Tina's comments, it is a difficult thing, we only have a couple of options at this point and that is to either vote on it or to defer it again. I do not know which way a vote would go. I do not know if the applicant is willing to consider another deferral until we can get some more information but those are my comments.

Mayor Pro Tem D'Aversa:

If I do not have any more comments from the Council, I guess we need a motion and I am prepared to make one, and I want to read it verbatim so if everyone will bear with me, I should have pulled it up already just to get the exact verbiage. I needed the comments from the Design Review Board and my motion will be exactly what staff has recommended.

Councilmember Lusk:

While you are looking I have one more comment. In addition to what I had said before, from an engineering perspective, really I do not think this is the best place to have a connecting road, however, the previous conditions set forth by Fulton County three years ago to make this connectivity out here. This is a congested area and with all of these roads coming to a common intersection, like a five point's situation, it is not an easy one to contend with and that is why I would like to see a transportation study or comprehensive study of this whole area.

Mayor Pro Tem D'Aversa:

Yes, and we are going to fulfill that request to do the transportation study. I guess I will ask a question before I make a motion. Ms. Kolb, would you prefer for us to defer this through the transportation process or would you prefer for us to make a decision tonight based on what you have heard of the Council members this evening?

Sally Rich-Kolb:

I think about a year or year and half ago, I was told that the comprehensive study would be completed by December 2008, so I do not know when that is going to occur.

Mayor Pro Tem D'Aversa:

The reason why I suggested and some of the other Council members suggested it is because we really have not had experts do the transportation study that is needed here and there may be other modes of connectivity that they uncover or they may not. They may continue to agree with Fulton County with the City of Alpharetta and with the Crabapple overlay that the connectivity and the road that your property provided for that connectivity is set and if that is the case we will have prolonged you moving forward and that is why we give you that option, because I would want to have that same option myself if I were in your position.

Sally Rich-Kolb:

Well, it is a very difficult situation with Midbroadwell being closed and it is very important that we do have the traffic there so I am kind of in a quandary here because it would be nice to have a road and yet I would like it to be funded now and then again we just do not know where the road is going to be so I cannot build. It is very difficult. If you go ahead with the vote and with what staff has said, is it possible to come back at a later time, if for some reason I haven't built of course and you have not done the road, to look at this again as far as where the road is?

Mayor Pro Tem D'Aversa:

Absolutely, I think there is a year time frame, if I am not mistaken. Is there any time specification?

City Attorney Jarrard:

If the Council approves it, I do not think there is.

Community Development Director Wakefield:

I think it is six months if it is denied.

City Attorney Jarrard:

That is if it is denied, but with approval I think they can come back.

Mayor Pro Tem D'Aversa:

Ok, we will go ahead with the decision then.

Motion: Mayor Pro Tem D'Aversa moved to take the opinion of our staff that the applicant's request to reduce parking and revise the site plan is in harmony with the development approved by the Board of Commissioners as well as the general purpose and intent of the Zoning Ordinance. I would agree and make a motion that we accept staff's recommendation to approve conditional ZM 08-06 to modify condition 2a and a request to reduce parking, given the discussion here tonight and concurrent variance VC08-06, but also have a condition added that we would save the three specimen trees, the two pines and the sweet gum. Based on staff's analysis regarding the deletion of 4b and other comments that we have heard here tonight that it would be inconsistent with the Crabapple Crossroads plan at this time and my motion would accept staff's recommendation of denial of the deletion of this condition.

Second: Councilmember Zahner Bailey: I will second this motion for the purpose of discussion and the hope that I could have an opportunity to make a statement.

Discussion on the Motion:

Councilmember Zahner Bailey:

I agree that the trees need to be saved. I do agree that we need to support staff's recommendation with regards to this right of way. As everybody has stated, it is a difficult situation. We were provided with a zoning that was approved under Fulton County. We have obviously received a letter from the City of Alpharetta that further supports that connectivity and the whole premise of the Crabapple Master Plan all along was based on a couple of things: transportation connectivity, historic preservation and actually in some cases, green space and in many cases that Crabapple Master Plan has not done that so I think we have an opportunity to be able to uphold those items. I appreciate the fact the Ms Rich-Kalb understands the fact that that right of way and road was actually a condition of zoning so I appreciate the fact that you understand the difficult position we are in. I would ask as a consideration that in addition to the motion that is before us that we would insert or at least that you would consider including a comment that would be something like the zoning modification site plan notwithstanding that no encroachment on the City of Milton property shall be allowed. While this could be handled through the LDP, I would be more comfortable if we addressed up front that none of the parking on the conceptual site plan would encroach on the City of Milton property and I think that is what I am hearing from everybody, it just had not been stated as a condition.

Mayor Pro Tem D'Aversa:

Is that something typical that is needed? Is it not obvious?

Community Development Director Wakefield:

It is typical that we would not allow the parking to encroach onto the City's property.

Councilmember Zahner Bailey:

If I could ask our City Attorney, because this is a site plan and because of the unusual circumstances that we had some things approved under Fulton County. We have some additional shifts that may occur, again while it may be A-typical, in this instance, I would be more comfortable if we stated that is the intent, is not to allow this encroachment so that when the site plan is modified it is quite clear and the applicant would be clear that the intent would not be to allow for any encroachment. Would that be a reasonable procedural approach to include?

City Attorney Jarrard:

It is perfectly appropriate. I think at this point you have a motion and a second pending on the floor. You would need to just make that in the form of an amendment to the primary motion.

Mayor Pro Tem D'Aversa:

Do we have to vote on the first motion first?

City Attorney Jarrard:

You do not. You need to make a motion to add that condition, second, and then vote on that amendment and then you will vote on the main motion with the amendment attached to it.

Amendment to the Motion:

Councilmember Zahner Bailey:

So if it be the pleasure of our Mayor Pro Tem, I would make a motion to simply make an adjustment to the original motion that would add language that would state, the zoning modification site plan notwithstanding, no encroachment on City of Milton property shall be allowed.

City Attorney Jarrard:

Councilmember Zahner Bailey, Dan Drake just mentioned, could we refine your motion to be no encroachment for parking purposes?

Councilmember Zahner Bailey:

Absolutely, no encroachment for parking purposes with the site plan notwithstanding, that no encroachment for parking purposes on the City of Milton property shall be allowed.

Second:

Mayor Pro Tem D'Aversa seconded the amended motion.

City Attorney Jarrard:

Now, we will need a vote on that amendment only.

Councilmember Lusk:

How about discussion?

Mayor Pro Tem D'Aversa:

Go right ahead.

Councilmember Lusk:

To address Julie's amendment, it seems to me it is redundant. I hesitate to make anything more complex than what it already is. I think any issue of property rights would apply and certainly you could prevent anybody from encroaching or taking over by adverse possession I guess. I think it is somewhat redundant.

Councilmember Zahner Bailey:

I appreciate the comment. I think that in this instance and the reason I feel comfortable is that I think we need to start being more clear with our applicants. I think tonight is an example where supposedly things were clear with Fulton County, fast forward a couple of years and there seems to no longer be some of the clarity. I think that this

case and the Crabapple Master Plan deserve that clarification. I am not hearing from our staff or our City Attorney that there would be anything procedurally inappropriate with that and in fact, Mr. City Attorney, I want to make sure I heard you correctly, could you just comment, would it be redundant or would it help to clarify the expectation for the conceptual site plan?

City Attorney Jarrard:

It is one of those situations, I will be very candid with you, and it would not be the first time that I have seen an governing authority make a part of a condition something that staff will address anyway. It happens and I think what I heard Ms Wakefield say is this is something she would catch anyway and would not authorize. You are simply trying to make it part of the motion. Is there some redundancy? Yes, if it is going to be caught, but there is no harm and it clarifies, certainly.

Councilmember Zahner Bailey:

Again, my intent is to clarify, not to be redundant, so I do understand. As one last point, we have had different people in the roll of some staff positions and I think this may again we cannot predict what decisions different people might make. I think as a result having clarity within our conditions is the best thing that we can do on behalf of our applicant so that nobody has any question as to what the intent was.

City Attorney Jarrard:

What I am used to seeing too is the zoning conditions go on the site plan so that would make it therefore be put on the site plan.

Mayor Pro Tem D'Aversa:

So we have a motion and a second.

Vote on the Amendment:

The motion passed 3-1-1, with Councilmember Hewitt opposed, and Mayor Lockwood recused.

Vote on Motion as Amended:

The motion passed 3-1-1, with Councilmember Lusk opposed and Mayor Lockwood recused.

Mayor Lockwood:

At this point, would the City Clerk please sound the next item.

City Clerk Marchiafava read Agenda item 09-763:

**ZM08-09 -13941 13943, 13945 Highway 9 North by Milton Organizers, LLC to modify Condition 2.a. of RZ07-010, to redesign site plan to eliminate septic and connect to sanitary sewer.
ORDINANCE NO.**

Community Development Director Wakefield:

This is a request to modify condition 2a which is the site plan to redesign the site plan to eliminate septic and connect to sanitary sewer. This piece of property as mentioned is located on Highway 9 and it is in an area that is within the inter basin transfer policy but because of the county and the issues dealing with the IGA it might be appropriate if the City Attorney would at least comment on this matter. I do have a sewer availability letter dated April 25, 2008 from Angela Parker the director of Public Works. Staff's recommendation is approval.

City Attorney Jarrard:

Anticipating that may be the case, this is an issue that involves obviously sewer and involves sewer along Highway 9 in an area that was covered by the No Inter Basin Transfer Ordinances. On the sewer

map approved by the City of Milton, I believe that this parcel is covered in blue so this is one of the parcels where it is anticipate that sewer can be provided by Fulton County. However, and I think we may have touched upon this at the last work session, at this point that intergovernmental agreement has not been approved by Fulton County therefore it is a proposal by Milton that has not been accepted and those negotiations as we discussed at the last meeting continue. Because there is no new agreement although Milton has certainly manifested it's intention, there is no new agreement so we are still under the existing IGA, which is the 2006 IGA that contains the map that we have referred to. It is not particularly or terribly precise, but we do know that it does not cover this area. The Council on October 6, 2008 did approve what we call or have referred to as developments in progress resolution to try and deal with some developments that were in various stages of permitting, to try and make sure that they could connect to sewer based upon various vesting arguments etcetera, there were three requirements. One was that they had to have an existing sewer letter from Fulton County prior to the day of adoption of that resolution. Two that they were colored blue in the September 15th sewer map by Milton and three that they were truly a development in progress and I believe as I have shared with a few of you, this one satisfies two of the three of those but I do not believe it is a development in progress because it does not have any permits that have been issued or that have been applied for. My recommendation for you however would be that to the extent that Milton wants to take action on this issue tonight, that you could simply approve it subject to the adoption of the IGA and map between Milton and Fulton County. Therefore you would have acted in furtherance of this request the applicant would then have certainly that they are done with the City Council and therefore the only last impetus would be for Milton and Fulton to agree on an IGA and that way at least we are off square one. I think my advice to you has been consistent that this is a constitutional issue. The Georgia code is very clear, the constitution is very clear that before Fulton can provide this service in Milton they have to have our permission, if you will, we both have to agree to it and I understand we are working hard toward securing that agreement but we are what we are and this is a way we could vindicate the city's interest in insuring that we in fact abide by the constitution while simultaneously trying to work with the applicant to make sure that all of our constraints are gone and the only thing left to do is for the IGA to be agreed to, that trigger is satisfied and they can comment. That is my recommendation.

Mayor Lockwood:

At this point, I am going to recuse myself sense I am a board member on the Milton Organizers so I will not participate in the discussion or vote on this matter.

Senior Planner MacDonald:

This zoning came before you in 2007 and 2008 and was approved by you with, at the time the applicant had submitted a site plan to utilize septic system. Based on at that time they were not sure they could be able to economically connect to sewer but since that point in time they have come to an agreement with the adjacent property owner to the south, which owns the property where CVS is located and so that makes a good connection to the sewer that is already there, that has been built since the time of the submittal in 2007 so overall in the revised site plan they are still preserving the three trees that you all required at the zoning. They are not increasing density at all, it is just asking for that transfer from septic to sanitary sewer. Other than that, staff recommends that this modification be approved per their new site plan to connect sewer and basically the buildings have been moved around a little bit but nothing in any significance. Again to be able to make this a better development. Thank you.

Mayor Pro Tem D'Aversa:

Thank you, and now we will hear from the applicant or those speaking in support of the zoning modification. Do we have any public comment on this?

City Clerk Marchiafava:

Mr. W. Roy Bennett

W. Roy Bennett:

I do not have any statements at this time, but I will be glad to address any questions.

City Clerk Marchiafava:

That completes public comment received.

Mayor Pro Tem D'Aversa:

So there is no one in opposition either to this modification?

City Clerk Marchiafava:

No Ma'am.

Mayor Pro Tem D'Aversa:

Ok, then the public hearing is closed.

Councilmember Lusk:

I would like to make a motion at this time if it is appropriate.

Mayor Pro Tem D'Aversa:

Let's have Council discussion, if there is any prior to a motion. I think is our protocol, if that is ok, so we will just go down the row again.

Councilmember Zahner Bailey:

I do appreciate the applicant's willingness to answer a couple of quick questions. Would you mind, if that is appropriate. Separate from the IGA issue and constitutionality issue, my question is, assuming that we resolve that at some point, just looking at the site plan and how the site plan might differ today versus what you first came forward with that we approved because you obviously at that point had a septic field with a primary and a secondary, my questions in particular are that with this site plan removing the need for a primary and secondary field for septic, would there be an ability for the site plan to be modified ever so slightly to save any more of those trees and you remember the discussion, obviously we all cared about those specimen trees and I think at the original time of that first rezoning request, obviously part of it was because of where the placement of the primary and secondary field needed to be so my first question would just be whether or not you had looked at in concert with others of the application at being able to potentially save some of those other trees and my other question is if you could speak to detention and whether or not that is still an above ground or if you are contemplating an underground detention facility.

Roy Bennett, 13920, Highway 9, Milton Georgia:

I am representing Milton Organizers. Councilmember Bailey, let me quickly address the last part because that is the easiest. It is an above, it is proposed as an above ground detention pond.

Councilmember Zahner Bailey:

And if I may just with that answer, I guess my question would be, knowing that sometimes obviously underground detention can appear more aesthetically pleasing and the fact that we have residents that

live in this area, have you contemplated the possibility of an underground detention facility now that there might be some more space on the site.

Roy Bennett:

No we have not. No additional development is proposed, density is proposed, it is significantly more costly to do so and we have not. Now with regard to specimen trees and your comments about the original proposal, I was not a member of the group back when that occurred. I joined much later and the property had been acquired at the time of zoning so I really cannot specifically comment or address the discussion of density because I was not a participant.

Councilmember Zahner Bailey:

I did not mean to imply that it was density specific but at the time the density was approved with septic versus sewer, because there are a number of specimen trees that are identified, my question really was, because this would contemplate removing a primary and secondary drain field, whether or not the configuration and placement on the site will allow you to save specimen trees.

Roy Bennett:

I cannot answer that specifically. If you will allow me to call Melissa Casteel who also represents us as our landscaping engineer design specialist. Information that I have indicates that the city's Mark Law has identified about six trees and three of those could be saved and have been provided for on the site. The additional three, I do not know if they could be saved, whether the proposed site plan can be altered to allow saving those trees. I believe those trees are of smaller diameter and I do not remember the exact number of inches. May I call Melissa to address those questions?

Mayor Pro Tem D'Aversa:

Yes sir, and Mr. Law would also come to the podium. Possibly you are able to address this as well, whether these were trees in that field area that was able to be saved. If I recall some of those trees were where the building was set to be.

Councilmember Zahner Bailey:

Just to clarify, if the fields go away, in theory that field offers the opportunity for a building to be shifted slightly so my only question is whether or not there has been any other consideration for additional shifts, not a reduction of density, that would allow for trees to be saved other than those first contemplated when it was initially considering septic which required a primary and secondary.

Roy Bennett:

If I might address that, while I am not a civil engineer, I wish our civil engineer were here but given the terrain of the property and the lay of the land and some fill that has to take place, I do not believe we have a very feasible option of shifting buildings. There is some fill that needs to happen and I do not think we have the ability to shift very easily, but I am not an engineer.

Mayor Pro Tem D'Aversa:

Let's address the tree save question.

Arborist Mark Law:

Your main question was if it was in the fill area?

Mayor Pro Tem D'Aversa:

My question is Councilmember Bailey's question for you. Can any trees because of the shift now to sewer from septic, can any of those other three specimen trees possibly be saved?

Arborist Mark Law:

Potentially number two, the pecan tree, the building may be able to shift around to avoid that tree. The other two pine trees which are in the upper quadrant there, those will be an issue from the plan that I saw there is not much room to maneuver around those. You have the two trees on the northern perimeter, the one tree on the southern perimeter which they are already saving and I do see where there might be a possibility of preserving that pecan tree.

Mayor Pro Tem D'Aversa:

Ms. Casteel, is that something that you would be able to address tonight.

Melissa Casteel, 209 Castleton Court, Woodstock, Georgia:

I am actually with Mundo Land Planning and Design on behalf of the applicant. Would you like me to answer the same question the Mr. Law just answered?

Mayor Pro Tem D'Aversa:

Yes, he is saying that it could possibly be saved and I guess I would like to hear it from you, can it be saved?

Melissa Casteel:

The pecan tree, I have to say on that one I do not agree with his opinion on because of the placement and just looking at how the proposed buildings are laid out. Also the pine in the rear which would have been probably the one that I would have said maybe had the most chance of being looked at, with the location on the site, it is unessential to the site so shifting that building one side or the other, I think you are still going to have grading that is going to need to be done that is going to affect either on that one side or the other side. The three that are being impacted, I think will still be impacted.

Councilmember Zahner Bailey:

A quick question for Ms. Wakefield again, is this also, because it is a zoning modification, just so I am clear, is this also still a conceptual site plan depending on what this body approves or makes a decision on?

Community Development Director Wakefield:

Yes it is.

Councilmember Zahner Bailey:

So in theory even though we might not have a definitive answer since it sounds like some of the folks involved in this application are not here, is it if we have the opportunity...

Councilmember Lusk:

I am not sure what we are talking about here. Can you clarify where we are headed with this?

Councilmember Zahner Bailey:

I would be happy to and that would be that as a condition of zoning depending on what we do with regards to the site, because there has been a change in the site plan that we have heard from our arborist that there is an opportunity to perhaps save an additional specimen so what I would like us to consider as a body is whether or not we could include that as part of our motion depending on what this body decides to do. That is the intent and that intent is consistent with the desire from citizens that we have heard over and over again that Highway 9 needs more specimen trees saved and that when we develop, we obviously want to look for those opportunities to keep some of those specimen trees when possible, which can be a win/win, not only for the applicant but obviously for citizens that live near and around these developments, so that is the intent of my inquiry.

Councilmember Lusk:

So, we are talking about one pecan tree, is that right?

Councilmember Zahner Bailey:

Well, I was asking whether or not any of these other potentially because the site plan has now changed, when you remove a primary and secondary septic field, you suddenly have space that before you did not have, so I think what I hear from Roy was that very candidly he was not involved in that site design and you guys do not have the site plan or as necessarily here that could address that but we as a body could surely ask that to be in concert with community development with the applicant and with our arborist that if there was that possibility, it could be indeed part of the motion that would precede this evening.

Mayor Pro Tem D'Aversa:

I am in the position to make that motion now. Thank you Ms. Casteel. We really appreciate your comments and Mr. Bennett as well. First of all I would like to make a motion and bare with me while I articulate this because it is as you have heard from our City Attorney, it is a little bit of a legal quagmire because of the situation that we face with Fulton County, but I am sure we are going to be through that situation in the short term.

Motion: Mayor Pro Tem D'Aversa moved to accept staff's recommendation to approve the modification to this property ZM08-09-13941, Highway 9 North by Milton Organizers LLC to modify condition 2a of RZ07-010 to redesign the site plan to eliminate the septic and connect to sanitary sewer. That approval is based on the September 15, 2008 revised IGA and sewer service agreement approved by the majority of the Milton City Council be adopted, approved, ratified by Fulton County. This approval would be conditional on the adoption and approval of the September 15, 2008 IGA and sewer service being approved by Fulton County. In addition, I would like to set a special condition that any modification to the site plan based on this change in conditions to allow the elimination of the septic and septic fields to connect to sanitary sewer require that the applicant review the additional three specimen trees and require them to try to save those trees since the drain fields will go away. That is my motion.

Second: Councilmember Zahner Bailey seconded the motion.

Discussion on the motion:

Councilmember Lusk:

Our City Attorney I think suggested that we make this approval contingent upon the IGA being approved in the future that is currently pending with the county and not necessarily the September 15, 2008...

Mayor Pro Tem D'Aversa:

That would be it, right?

City Attorney Jarrard:

That is the map that is currently in play.

Mayor Pro Tem D'Aversa:

And it makes a difference with regard to this. That is the one that has been approved by this body so I assumed that would be the one that this body would want approved by Fulton County.

Councilmember Lusk:

Well, essentially the letter from Fulton County earlier this month, they in essence were not going to sign that IGA the way that we had proposed with the map.

City Attorney Jarrard:

That is correct.

Councilmember Lusk:

So my point is I think based on your comment that we are going to make this conditional based on the ultimate document that is going to be signed between us and Fulton County. Is that what you had intended?

City Attorney Jarrard:

Yes, my statement was to and my recommendation to clear for constitutional concerns was to ensure that this approval is conditional upon the IGA that obviously would embrace this as appropriate for sewer service.

Councilmember Zahner Bailey:

I would like to clarify the question that Councilmember Lusk just asked about the IGA, can you confirm Mr. City Attorney that the IGA that is before Fulton County that was approved by a majority of this body, 4-3 if I recall that that majority at the time approved an IGA that is indeed the IGA that you and Mr. Smedley just recently took and presented to Fulton County, is that correct?

City Attorney Jarrard:

Yes ma'am.

Councilmember Zahner Bailey:

And we do not have a letter saying they will not approve that in fact the most recent development was that we had a very positive recounting of a meeting that our City Attorney and Mr. Smedley just recently had prior to our work session that indicated that Mr. Ramsey is in fact considering what is before him, so it has not been rejected but instead I believe the most recent information is as Councilmember D'Aversa stated and that is that what is before Fulton County for approval is what the majority of this body approved which was the September 15th intergovernmental agreement and I believe that if we were to have this motion with anything other than that specified we would be inconsistent with what the majority of this body said that they were willing to approve.

City Attorney Jarrard:

The only thing I want to comment on and I think my comments at the work session can be played for all to hear, but the meeting was positive but I do not want to lead anybody to think that Fulton said they were about to approve it. We made a pitch that it needs to be approved that as the will of this Council and if there were any continuing issues which Councilmember Lusk, you are correct, that letter is out there where they took exception to some of the parcels that we took off. You are both correct is my point. You are correct that there is a letter that took exception to what we provided and you are correct that the City Manager and I went down to Fulton County and petitioned them to approve what we had in fact approved September 15th.

Councilmember Lusk:

Technically, from what I gleaned from that letter is they were not going to approve the Resolution that we put forth on 15 September, so if they are not going to approve that and we make this zoning application contingent on approval of that Resolution that they have in essence have rejected, I do not see the primary logic in that. We do not have anything that is really signed by both governmental entities.

City Attorney Jarrard:

Except for the 2006.

Mayor Pro Tem D'Aversa:

Which would not allow for this applicant to have sewer so we are trying to get around that with this position.

Councilmember Zahner Bailey:

I think what we are trying to do is accommodate the applicant's desire to proceed. The other option obviously if we do not want to be specific and tie it specifically to what this entity has approved would be that we could either deny the request which is not what the applicant would see or we could defer it until...

Mayor Pro Tem D'Aversa:

Well, I have a motion and we have a second.

Councilmember Hewitt:

I have a comment. I am not for whatever reason am not as concerned about the specifics on the IGA, I have confidence that we will get it worked out, for whatever that is worth. On the tree portion of your motion, is that work hard to try and save it and if you cannot keep on trucking.

Mayor Pro Tem D'Aversa:

That is right and I will tell you why. We had a question of Ms Wakefield, is this set in stone and the answer is no, you might decide to shift the bank and put it way over or change the configuration of the bank for some reason and it may be possible to save these trees and I would like to make sure that it is a condition that if it does change that you would save these trees and I am confident that our staff would see to that if it is a condition of zoning so that is the reason for that being placed in there. Not to say go and shift the building but if you were to decide to change it.

Councilmember Zahner Bailey:

Mayor Pro Tem, may I ask one question? I think we are in discussion, because the applicant did respond that the detention facility is still above ground, could staff verify, and I am looking for consistency with other Highway 9 detention facility approaches, do the conditions from staff speak to the fact that this above ground detention facility would need to be, and it is standard language, earthen in nature and that it would also have the five foot four board black fencing with the internal wire. It is just the standard language and I am not sure that is currently in here and I would ask that we make sure that that be.

Mayor Pro Tem D'Aversa:

Did we not make sure that was part of our requirements a while back?

Community Development Director Wakefield:

Yes, that is condition 5b.

Councilmember Lusk:

I will beat this dead horse a little bit more. We talk about being consistent in one issue with putting condition on trees in one application here but I hear inconsistency in following the letter of the law on this issue with the IGA, and I would not want this approval be contingent on something that has not been approved by Fulton County now and I think it is a plan for rejection in the future, I think, so I think if we are going to be specific, I think we defer to the language that our City Attorney brought forth earlier about the ultimate signature of IGA between the two governmental entities. If we are going to be consistent or specific in one case, I think we need to specific in this case too.

Councilmember Zahner Bailey:

I could not agree with you more and I think the consistency is the fact that this body put forward a motion back on September 15th and was extremely explicit and that was that this parcel was indeed covered under an IGA approved by Milton so again I support the motion on the floor.

Councilmember Lusk:

A contract is an agreement between two parties and we do not have that contract at this time.

Councilmember Zahner Bailey:

Fortunately, we are the City of Milton and as opposed to being Fulton County so hopefully we will continue to have some leverage for our citizens.

There was no further Council discussion.

Vote: The motion passed unanimously 4-0-1, with Mayor Lockwood recused.

Mayor Lockwood:

Would the City Clerk please sound the next item?

City Clerk Marchiafava read agenda item 08-685.

RZ08-09 Text Amendment - To amend Article 22, Appeals of the City of Zoning Ordinance. (This item was deferred on November 17, 2008.)

ORDINANCE NO. 09-01-34

Community Development Director Wakefield:

This is a text amendment to Article 22 of the City of Milton's Zoning Ordinance as was mentioned it was deferred on November 17th. Staff was asked to revisit the portion of revision dealing with a variance consideration. That was basically because staff's recommendation was contrary to the BZAs. WE were asked to seek input from the Planning Commission and the Board of Zoning Appeals. On December 23rd staff met with the Planning Commission and in staff's report on page two is the revision as recommended by the Planning Commission. We then met on January 7th of 2009 with a work session between the BZA, the City Attorney and staff to discuss this matter and to basically look at the Planning Commission's recommendation. After a lot of discussion because the BZA as did the Planning Commission had some considerable heart burn over the word harmony, a revision to that document was developed and that is shown on page three of staff report. Because there were so many and to make it clear we have a clear, without any red lines on page four. Basically what this amendment entailed was to remove the harmony language and to rewrite a, to combine b and c, delete d, which nobody really liked, to re-letter e and f and to make variance consideration for signs separate section. There was no change to the sign language. That was agreed upon at the meeting on the 7th that is again Robyn will talk about it, a version that staff can support. It is clear, it is concise. Immediately the very next day on January 8th, I sent all three documents with this explanation to the Planning Commission and asked them to please advise if there were any comments or any recommendations or if they had any concerns regarding the version that we had developed during the work session with the BZA. I did not hear anything from the Planning Commission until today and it is not so much that they have a problem with the variance consideration. It is that they were under the impression that we were going to bring it back to the planning commission and that is not the way I heard the directions to staff. It was to seek input from both bodies and there were some other items that we want to point out and I will let Robyn point those out and tell you some changes that we do recommend approval and I do know that the Chairman of the BZA is here to speak on this.

Senior Planner MacDonald:

Obviously, this has been before you on previously just a lot of clean up stuff to the general article to change it from the Fulton County Zoning Ordinance. Another fairly major item is on page 22-6, primary variance heard by the Mayor and City Council. 22.7.1, a request for a variance from any zoning ordinance provision that involves more than five lots in a subdivision in accordance with section 22.3.1, that was, the original recommendation was to add or more than 10% of the lots when it was presented to the Planning Commission, they had asked for that section to be deleted but staff as well as the Board of Zoning Appeals would like for that "or more than 10% of lots" to remain in that statement both time or whichever is greater, I am sorry. Is that clear as mud? Basically, staff and the Board of Zoning Appeals support to add or keep in "or more than 10% of lots in a subdivision".

Councilmember Zahner Bailey:

Is it whichever is more or would it be whichever is less.

Community Development Director Wakefield:

The way that it is in the document is whichever is more but you and I had a conversation and I talked to Mr. Jarrard is that maybe it should be whichever is less so that if you get a ten lot subdivision you can only vary one of those lots by going to the BZA and that way all of the major lots, and again it would have to come to this body for those type of variances.

Councilmember Hewitt:

Not to interrupt, but with the heading of it being primary variance heard by the Mayor and City Council would it not be right if it said whichever is greater.

Community Development Director Wakefield:

You are right. That is good.

Senior Planner MacDonald:

I am sorry, I did not go over 22.2.2 which is on page 22.2 Board of Zoning Appeals, what is before them, which would be B, so it is opposite, so that was correct, I just skipped the first part, so going back to page 22-2, under Board of Zoning Appeals, their responsibilities would be to hear and decide applications for stream buffer variance request referencing our Chapter 14 Article 6, Section 5 of the Milton Land Development City Code that are not concurrent with the re-zoning use for inner mod and also what above is to hear and decide applications for, I am confused now too. Anyway, this is going to allow this to be up to five lots that you would hear any applications for the variances for stream buffers, not you, but the Board of Zoning Appeals would hear for primary variances which would also include the stream buffer if it was a stand alone variance that involves up to five lots. I am on page 22-2 under Board of Zoning Appeals B, which was struck out. Oh I get it, to hear and decide applications for primary variance request up to five lots in a subdivision or 10%.

Community Development Director Wakefield:

I think we said 10% or whichever is less.

Mayor Pro Tem D'Aversa:

You may have a five lot or ten lot subdivision, right?

Councilmember Zahner Bailey:

So in that case you would not want the five lots you would want the ten or less, so the or less is still the language.

Senior Planner MacDonald:

Whichever is less.

Councilmember Zahner Bailey:

So that is your suggestion that that would be 22.2.2a.

Senior Planner MacDonald:

But we combined it together instead of, we combined a and b, but in that new a it talks about the number of lots.

Councilmember Zahner Bailey:

And that is where you would suggest we would insert that language?

Senior Planner MacDonald:

Correct. Then we go back to the first page. I really skipped a lot because if you go to 22.2.1 to d, which switches over to 22-2 at the top of the page d, "to hear and decide application for variances from any zoning ordinance provision that involves more than five lots or more than 10% of lots in a subdivision whichever is greater pursuant to article 22." Ok now we are ok. That is the Mayor and City Council.

Councilmember Zahner Bailey:

So we are leaving that at five lots then?

Mayor Pro Tem D'Aversa:

That is how we make the determination.

Councilmember Zahner Bailey:

But to clarify, what is before me shows five lots and it shows deleted "or more than 10% of the lots in the subdivision whichever is greater."

Senior Planner Macdonald:

Well that is based on if you look at deletion recommended by PC, which staff and staff does not support and BZA supports staff.

Councilmember Zahner Bailey:

But the Planning Commission had recommended that be deleted. Can we just for a moment use an example that would at least help me.

Senior Planner MacDonald:

Ok, take a hundred lot subdivision, so lets...

Councilmember Zahner Bailey:

Lets take a real one, take Blue Valley on Birmingham Highway.

Senior Planner MacDonald:

Right that was one hundred lots, so to avoid it to have to go to the City Council, lets say if they wanted all of the lots or lets say fifty lots have variances, lets say to the front yard, ok they wanted to move the houses up to the front, if it is more than five lots or more than 10% of the lots in the subdivision, whichever is greater, then it would be brought back to you to be reviewed because in our, the way we look at that is almost like a re-zoning because you are re-doing a good portion of it.

Community Development Director Wakefield:

In the case of anything that size and the needed some relief on fifty of the lots, they need to re-zone to CUP where they can tailor their lots to match that.

Councilmember Zahner Bailey:

But in the case of the 10%, in your hundred lot example, if they wanted 10% of those or ten, it would not come back to us.

Community Development Director Wakefield:

It would because it is over five. Five is the magic number.

Councilmember Hewitt:

10% is the magic number too. So if it was nine lots...

Councilmember Zahner Bailey:

I think that the intent, when the Planning Commission deleted this and they came and they were at one of our meetings, I think their concern was that in those large subdivisions, the five, if somebody was

pursuing a percentage on a larger subdivision, with the “or greater” whichever was greater, in that case the ten, it would not come to us at the five, it would come to us only when it got to the number 11 plot. Correct? So in other words it would not be or greater. I think the intent of the Planning Commission because they were before us when they talked about this was that they wanted anything, even in a hundred lot subdivision, if it was more than five lots, they wanted it to come back to the Mayor and Council. If we go back and re-insert this language, it would not accomplish that, we would have to have an eleven lot request if it was a development of one hundred lots. Am I missing something?

Mayor Lockwood:

I think the intent was to obviously anything over ten percent is suppose to creep up into a major issue, so is everybody clear on the number five or the 10%, is it gross?

Councilmember Zahner Bailey:

So on the hundred lot it is not the five, it would only come to us at the eleven. I just want to make clear that is why the Planning Commission was concerned with this.

Community Development Director Wakefield:

I understand why they were concerned but my concern was if someone came in with nine lots then they could then go the BZA and vary five of those lots, which for me as a professional planner, that implies that you are in the wrong zoning district, if you need to vary the dimensional standards of a district, your re-zoning through the variance process.

Councilmember Zahner Bailey:

I could not agree with you more and that is why I originally and still support the five lot versus adding back in “or the 10% or more” because suddenly when you get into a larger subdivision, and this was the original dialogue is that, everybody that weighed in said that the five land lots, after five they wanted it to come back to Mayor and Council because some of these subdivisions can be much larger.

Councilmember D’Aversa:

What if you have a ten lot subdivision, then if its four lots, it is the equivalent of rezoning that entire subdivision.

Councilmember Zahner Bailey:

That is when we go back to this whichever is less versus or more and apply the same standard we are using for the other variance and apply it here as well.

Councilmember D’Aversa:

The need to be different. Different under Mayor and Council versus the other one. I thought that was what I was hearing.

Senior Planner MacDonald:

Yes, they need to be opposite to be able to be heard.

Mayor Lockwood:

I would like to have a little direction from staff. What is your thoughts on that Alice?

Community Development Director Wakefield:

My thoughts are and that is the reason why I supported the 10%, in this case for Council whichever is greater so that that would give the ability for Council to see those subdivision where they are asking for a large number of lots to be varied and where you talk about one or two lots, you can go to the BZA where they can look at it on an individual basis but to me it all gets back to if you have to vary that many lots, there is a problem that is beyond variance and using the variance process for something else.

Mayor Lockwood:

I see more of an issue with a small subdivision with ten lots and trying to vary five then a hundred lots trying to vary ten, so I think that is more concern there.

Councilmember Zahner Bailey:

I think that there have been some actual examples though where the 10% would allow more than five lots to be going to the BZA and that is counter intuitive to the discussions we heard from the Planning Commission and some of the discussions that we actually, and I am going to ask Mr. Jarrard to weigh in because this was something I know we were in dialogue all together.

City Attorney Jarrard:

I remember this actually coming from Councilmember Thurman. That is who I remember actually coming up for 10% and I was just trying to roll through the math in my head. You have a three or four hundred lot subdivision and 10% was the trigger, then you would be talking an upwards of thirty lots or before it comes to you. Going to Ms. Wakefield's comments, which I agree with, once you start talking about variances for that many lots, you are going to have a hard time convincing me of a hardship for thirty lots, you need to re-configure.

Councilmember Zahner Bailey:

And that is why, it is exactly that point and I do not mean to belabor this but we have all talked about the importance of getting this language correct, so knowing what Ms Wakefield just said and what our City Attorney just said, that leads me back to the version the Planning Commission brought before us which was to delete the 10% because if we allow the 10% or five lots or greater, it means that at subdivision that would be two hundred lots would allow for twenty lots or if it was three hundred lots it would be thirty and it would not come to us, it would go to the Board of Zoning Appeals and they would have the authority to review that which is counter to what I just heard our staff and City Attorney indicate that instead that it should come to us as a re-zoning as a community unit plan.

Community Development Director Wakefield:

Not necessarily a unit community plan that is just one option. You can also eliminate a few of the lots to meet it.

Councilmember Zahner Bailey:

My point is just that in terms of the sheer number that that 10% is not as specific as the five lots and that is what we were trying to deal with before is that at 10% because you do not know how large that subdivision is going to be, it send variances to the BZA that are of a larger nature than what the BZA would typically hear.

Community Development Director Wakefield:

The reason for the 10% is because not all subdivisions are the same size, so you would apply a percentage based on the subdivision.

Councilmember Hewitt:

Because you would be doing the same thing if it was a fifteen lot subdivision.

Councilmember Zahner Bailey:

Right but that is where the “or 10% whichever was less as opposed to whichever is greater and that is my concern is by having it in the section, whichever is greater, we are not addressing the issue that had been raised which was that we did not want large subdivisions going to the BZA when they were asking for multiple variances on multiple land lots. This language does not accomplish that.

Councilmember D’Aversa:

If you say whichever is less, it does, so change it back to whichever is less.

Councilmember Zahner Bailey:

That is correct.

Mayor Lockwood:

Does that affect the intent that staff had greatly or does that fit.

Councilmember D’Aversa:

Was it your intent that it would come before us if it basically impacted the equivalent of a re-zoning of that entire subdivision.

Community Development Director Wakefield:

I will tell you what I would do if someone walked in the door and they had a subdivision and they wanted to vary a large number of lots, I would not accept it as a variance application. I would direct them to submit for rezoning then they have the choice of disagreeing with me and appealing that decision but this is a catch all if I am not here and somebody wants to do this then that gives whoever else that is here some other ability to direct them one way or the other.

Mayor Lockwood:

Let me say one thing to make sure we are clear. If we do go with less than, then the bottom line is the max is five lots, so if there is a six hundred lot subdivision and they want to change six or seven then it has to come to Mayor and Council, so is that reasonable or is that typical or does staff usually have a little bit of lead way with say up to 10% or the BZA?

Community Development Director Wakefield:

I think we were just trying to give, if someone wanted to vary, if you had a six hundred subdivision which is pretty large, conceivably you could have quite a few lots that someone may need to get a variance. That may be one way of doing it without going through a full zoning process. I do not know, I would like to if you do not mind, if the Chairman of the BZA could weigh in on it because I know they had some concern about the five.

Mayor Lockwood:

Would it be better to complete the presentation.

Senior Planner MacDonald:

Then if there are any other comments the BZA has they can include it. Again on the second page the addition on 22.2.2b is for the Board of Zoning Appeals to hear and decide applications for stream buffer

variance request reference in chapter 14, article 6, section 5, the Milton Land Development City Code that are not concurrent with a re-zoning use permit or modification. This is the tool that we are using for all concurrent variances that are requested of stream buffer variances to be legally coming to you, concurrently. Right now as the code reads, with Chapter 14, once a Board of Zoning Appeals is established by the City Council, all stream buffers at this point and time are to be heard whether they are concurrent with zoning or not or whether they are a stand alone primary variance, right now they go the Board of Zoning Appeals, so this will be the big switch to legally allow you to hear concurrent variances to stream buffers that come concurrent with modification and re-zoning and use permits and I believe that is what you all had wanted as well as I think the Board of Zoning Appeals was in agreement to that.

Councilmember Zahner Bailey:

Mayor, is it your preference that I ask a question of clarity now or do we want to hold on.

Mayor Lockwood:

You can ask the question of clarity now while we are going through this.

Councilmember Zahner Bailey:

On section b where it talks about concurrent, at one point we had discussed a time frame and Ms Wakefield you and I also recently discussed this that there had been at one point a time frame associated with that concurrent. AS an example we might get a re-zoning that has a concurrent variance tied to stream buffer but what we were trying to mitigate was the risk that six months from now or even a year, even though the re-zoning might have come through the process, if nothing had yet occurred that without a time frame that applicant could still then go to the BZA because they could claim it was no longer concurrent, so I would ask for input either from our City Attorney or from Ms Wakefield, if we could go back address the time frame to define what is concurrent because we had addressed that before so when I went through this, I was perplexed that we no longer had a time frame associated with it.

Community Development Director Wakefield:

When this came up the last time before this body, there was a discussion about that but no one ever came up with something that would fit the time frame because it is really not concurrent if it is not a companion with a use permit or a modification. It is a primary variance.

Councilmember Zahner Bailey:

So maybe a question for Mr. Jarrard would be what language could we enhance this with to clarify the concurrent in addition to a variance that would come forward following a rezoning with an x time frame.

City Attorney Jarrard:

You could add some language that would provide some time frames that if there was a variance sought with an x number of months that that shall be deemed to be concurrent. You could simply declare that to be the case. That is one way to handle that.

Councilmember Zahner Bailey:

And I thought that was where we were heading so I appreciate that input. I think at one point we had talked not so much about months but as an example if it were to occur within one year and again we have examples where properties get rezoned and then nothing happens for a year or two years and I think we were simply trying to make sure that we mitigate the misuse of this process so that we do not have somebody that pursues a re-zoning, does not identify the potential of a stream buffer, does not pursue the actual development of that and then with six months or in a years says, oh you know what I

really now need a variance so I am going to go to the BZA, because that would be counter to what the intent of this language is.

Community Development Director Wakefield:

What my position is on that is if this body looks at a rezoning and for whatever reason because sometimes they are mistaken. You cannot see it when you do the initial site plan that the stream buffer is not shown and it gets rezoned. If during the course of the LDP, six months, two months, a year and they come in and they say, "oops to get a stream buffer, I need to get a variance, can I go to the BZA." I think the position then because this body would now have the ability to hear concurrent variance is that you would have to seek a modification to revise the site plan, to show the stream, because one of the requirements for a site plan is to show your streams so you would have to modify that site plan, show the stream, and seek a concurrent variance to the stream buffer to this body.

Councilmember Zahner Bailey:

I appreciate that clarification. Could Mr. Jarrard, between you and the input of Ms. Wakefield, could we clarify that within this language because for better or worse we do have some examples where that has occurred and I think that is what drove the need for this to ensure that we did not perpetuate that sort of situation in the future.

City Attorney Jarrard:

It is not uncommon for that to happen though, that someone, I know the situation that you are talking about but it is not uncommon for someone to get there zoning and then the difference between a conceptual site plan and an engineering site plan or an engineered site plan is when all of a sudden you find stuff that perhaps you had not seen before and that is all of a sudden, and I have even seen, talking with Ms Wakefield about this, where our local staff could not identify a stream up in Forsyth and EPD did so now all of a sudden a piece of property that did not need a stream buffer based upon county staff looking at it EPD said you did, so they were back in front of the board within six months saying I need a stream buffer variance.

Councilmember Zahner Bailey:

I guess that is my question is how would we language this so it is clear and it is not just up to obviously staff because I applaud Ms. Wakefield's point. How do we make sure it is in the language so that is very clear regardless of who happens to be reviewing?

City Attorney Jarrard:

It is up to Council how you want to frame it to the extent you want to address whatever concern you are having, but the point would be that you could take the position that a variance sought on a piece of property that was a subject of a rezoning within six months of the zoning approval shall be handled this way and you would set the corridor by which that has to be processed.

Councilmember Zahner Bailey:

Would another option, whether it be six months or a year also be to say that if the zoning had occurred under variance transpires without that time frame that it would be viewed as a zoning modification and therefore come back to council, would that be another...

City Attorney Jarrard:

Could you repeat that for me?

Councilmember Zahner Bailey:

If a zoning had taken place, subsequent to that rezoning a variance was going to be sought that rather than the BZA being that mode of variance on a property already re-zoned that the zoning modification process that Ms Wakefield outlined would be the process for that already zoned property.

City Attorney Jarrard:

Again though the question I would have is for how long. How long is that parcel then still attached to the zoning? Is it six months? Is it a year, because eventually if it is indefinite then you are going to put your BZA out of business.

Councilmember Zahner Bailey:

The intent is to make sure the language is clear so that the process is clear to the applicant as well as to our boards and to us. Anyway, as we proceed through, I do believe we need to clarify that language.

Senior Planner MacDonald:

Ok. Go to 22-4 which talks about the variance considerations that if you look at your memo, I believe Alice has already addressed those and this version that is in the big packet is what was brought to you by the planning commission and then subsequently we met with the Board of Zoning Appeals and so on. If you go to page 22-6, this is back to where I started. The primary variance heard by the Mayor and City Council and I guess we can address that more after the fact and we hear from the Board of Zoning Appeals Chairperson. In 22.9, a concurrent variances, we added some items or just modified it, "The Mayor and City Council shall consider a concurrent variance form any standards of the zoning ordinance or Chapter 14, Article 6, Section 5 stream buffers of the Milton Land Development City Code, which shall be filed simultaneously with re-zoning use permit or zoning modification request on the same property based on the conceptual plan submitted with the petition for the same agenda. The Planning Commission shall also hear and make recommendations of current variances filed with a re-zoning use permit or use permit applications. The Mayor and City Council shall consider such concurrent variance request in accordance set forth in Section 22.3.1. Public notification shall be in accordance with 22.13.9 and 28.3." In the next portion 22.9.1 we inserted this in. This is a brand new paragraph to address the variance considerations for stream buffers and again the next agenda item is that portion of Chapter 14 that will allow for the Mayor and City Council to hear concurrent stream buffer variances but let me say that these variance considerations are totally different than the variance considerations before you for primary variances that Alice discussed. These are variance considerations that are set up in the City Code and are only for stream buffer variances so this comes directly out of Chapter 14 to be consistent with, this is the same standards that the Board of Zoning Appeals uses when they have a stand alone primary variance for stream buffer so I guess I am kind of saying it is off limits in the since that this is what it is and it is the same in Chapter 14 and staff with consideration and discussions with our engineers and everything that this is what is in the state model ordinance and this is what we need to go by. This is what when we are reviewed by the state, this is what is expected, but we do need to include so that you all can use these considerations while you are considering the stream buffer variance as a concurrent variance.

Councilmember Zahner Bailey:

Are these all considered independent of one another or do they all go together? As an example, one of them has an and clause but they do not all have the and.

City Attorney Jarrard:

I believe these are considered collectively.

Councilmember Zahner Bailey:

If that is true, do we need to have an and at the end of a,b,d,e?

Councilmember Lusk:

I think the title spells out the following factors will be considered in determining whether to issue a variance. I think that addresses all of it. I am wondering if we should use the word shall instead of will. Is it that important?

City Attorney Jarrard:

We have had that discussion before. I am comfortable with either.

Councilmember Zahner Bailey:

I would be happy with shall but again the and, I think it does clarify because if we go back to the primary variances, whether it is an and or if it silent or it includes an or, it give a very different meaning. Mr. City Attorney would you just comment whether or not the and would provide that clarification so that we are sure it is accumulative consideration.

City Attorney Jarrard:

Could we move on and let me take a look at this and then we will revisit it.

Senior Planner MacDonald:

Ok, the next portion, 22.9.2 b there was a recommendation by the Planning Commission to be consistent with the re-zoning use permit regulations if you read, "such an application shall not be accepted by the Director of Community Development prior to the expiration of twelve months from the date of the Mayor and City Council's denial of the concurrent variance request." We are just being consistent with a re-zoning or use permit denial that you could not even be considered for twelve months so it is just cleaning up the language.

City Attorney Jarrard:

Councilmember Zahner Bailey, I have looked at it now and I do not believe that we need to include and because I do concur that sub roman numeral IV above is unequivocal that each and every factor must be considered.

Councilmember Zahner Bailey:

Ok and to your point, you would be comfortable with either the will or the shall and does the shall make it more definitive?

City Attorney Jarrard:

Yes, it is a more aggressive term.

Councilmember Zahner Bailey:

Then I agree with Councilmember Lusk insertion of that word.

Senior Planner MacDonald:

So your asking that we consider that? Ok as we continue on through the next page 22-8, again just making some typographical corrections and changes regarding going from the county regulations, the city just cleaning it up. Again the same thing on 22-9. Again on 10, just more correction, changes to change over to the city.

Councilmember Zahner Bailey:

I have a question on 22.13.10, and I think this had been one of the recommendations of the Planning Commission to verify what the different decisions could be. Where it says hold for further study, not less than thirty which is item d in that section. I know that at one point we were going to discuss deferral and knowing that we have not yet had that discussion.

Senior Planner MacDonald:

So you are looking at 22-13, page 2213?

Councilmember Zahner Bailey:

Is that where you were?

Senior Planner MacDonald:

No, I was not quite there yet.

Councilmember Zahner Bailey:

I am sorry when you said ten, I thought that was what you were looking at.

Senior Planner MacDonald:

No I am sorry, I was looking at the pages because sometimes they are little easier to look at. The next big section is public notification. For those application requiring a public hearing, primary variance, secondary variance, basically all of the variances, we do the normal public hearing, publication and a news paper of general circulation of at least fifteen but no more than forty five days. They will post the signs twenty days but not more than forty five days. When the Board of Zoning Appeals defers a petition the applicant is required to post an updated sign with a new hearing date. Dates twenty days prior to the next scheduled hearing date when the Mayor and City Council defers a petition an updated sign is not required. For zoning modifications all notices shall contain all of the items as above. Posting of a sign is not required when a secondary variance is not requested by the property owner or owner's representative.

Councilmember Zahner Bailey:

I am sorry, could you repeat that?

Senior Planner MacDonald:

The posting of a sign is not required when a secondary variance is not requested by the property owners or owner's representative, so I am assuming that if it was initiated by the Mayor and Council or by another party it would be required.

Councilmember Zahner Bailey:

The question within public notification is that why would we want to have a different standard?

Community Development Director Wakefield:

Because a secondary variance is an appeal of a decision so there is rarely a property that expense involved. For example you would have to get a re-zoning instead of varying every lot. I disagree, you take that to the Board of Zoning appeal so there is no property to post. It is an appeal of a decision.

Senior Planner MacDonald:

So it would still go to an advertisement.

Councilmember Zahner Bailey:

Even though that secondary variance could apply ultimately to a property when it gets to the BZA.

Community Development Director Wakefield:

Practice is if there is an appeal on a piece of property, we can post it but nine times out of ten it is nothing to do, it is a decision. Someone disagrees with my interpretation that is in the ordinance for example if a community person disagrees with a decision to do something then you appeal it. There is not a piece of property to post.

Councilmember Zahner Bailey:

I guess my general question would be on public notification are we both on the signage as well as the number of residents to whom we communicate, are we consistent with the other changes that we have made?

Community Development Director Wakefield:

No. this has not been changed and I think the zoning is up to seventy people.

Senior Planner MacDonald:

Basically if you do not have seventy five people within five hundred feet and the original was three hundred per state law, no matter how many people that is one or one hundred that we would keep on going out and out until we reach seventy five people and then we have done some data crunching.

Community Development Director Wakefield:

I will say, just to let you know that when you look at it all together it does increase your cost as far as advertising.

Councilmember Zahner Bailey:

I understand that and I would be concerned if we were going to diverge from measure consistency when we have changed our other notification processes for other zoning, modifications, special use permits and sometimes the variances that go before the BZA are very serious relative to citizens and as well as business owners etcetera that would want to have that opportunity to weigh in because it is a quasi judicial board I would be concerned if we did not ensure that this was consistent with our other public notification requirements.

Community Development Director Wakefield:

That is up to this body. I just thought it was our duty to advise you of the cost to do this and based on the time that we have been doing it we have not seen any significant increase in public participation

Senior Planner MacDonald:

We are talking about the rezoning portion. Even though you changed the rules we have been doing it almost from the very beginning and there really is not a significant increase in the amount of

participation. Now I also want to point out that while the first year we were a city we did quite a few rezonings, I think we did 18 or 19 and we are not up to that this year obviously or the end of last year but my counterpart planner, Angela has processed the last year 35 variances and that is very typical and she will probably keep on doing this year because there is more need for variances so if you think about that to multiply that out many many more time than the number of zonings or use permits we do.

Councilmember Zahner Bailey:

And I do understand that and maybe there are some that would require more notification than others. As an example depending on our discussion when we get to sign variances there are some things that are of a greater concern to our community than perhaps the person whose pool is going to encroach five feet and it really impacts the immediate neighbor. So I would ask that we consider which variances potentially need to be consistent based on the gravity being requested.

Community Development Director Wakefield

When that time comes I would ask Mr. Jarrard to weigh in because I think one of the charges we have to do is to treat people as you mentioned consistently.

Senior Planner MacDonald

So at this point this draft does not change any of the notice requirements for the notices to be sent out. They are still at 300 feet which is per state law. Now we are back to 22-13.10. The Planning Commission added an approval to withdraw, which we concur with.

Councilmember Zahner Bailey:

My question there is for Mr. Jarrard and or for Ms. Wakefield. At one point we had a work session where we said we were going to subsequently talk about deferrals. We have not yet had that conversation but here because item d says hold for further study not less than thirty days, do we at some point need to come back and if we modify our language about deferrals would we need to come back and make sure that this is consistent with our deferral process.

Community Development Director Wakefield:

Yes. If this body's decision is to limit themselves regarding deferrals.

Councilmember Zahner Bailey:

If we could make a notation that whatever we do tonight we can come back to that.

Senior Planner MacDonald:

Ok. Again, adding some capitalization to items. On page 22-14 on the bottom reconsideration of denied applications, if a variance or modification is denied by an authorized department, director, Mayor and City Council the Board of Zoning Appeals and application of the same variance or mod, item shall not be considered until, and if you skip over to B, new information pertinent to the subject not previously considered is submitted by the petitioner in the twelve month period is waived by the hearing body. Again to be consistent, even though it is a primary variance and it is not associated with a rezoning but they felt like it just would be consistent with what the zoning was.

Councilmember Zahner Bailey:

How do you define new information Mr. City Attorney? If you read that literally, any new information could trigger a waiver. Could we clarify that it needs to be significant, some word that would ensure that just any old information does not trigger a waiver.

City Attorney Jarrard

It would have to be new information that would actually have a bearing on the original decision, but yet you could clarify that language just a little.

Councilmember Zahner Bailey:

I would appreciate some clarity.

City Attorney Jarrard:

It is one of those things where you will have to defer to your staff to know and to separate the wheat from the chaff and know that which is important from that which is not.

Councilmember Zahner Bailey:

But if we could just insert because obviously it is not just new data. I think the intent is that it would need to be significant new information.

Senior Planner MacDonald:

How about new information that is significant and pertinent to the subject site.

Councilmember Zahner Bailey:

Whatever staff and Ken feels would help clarify that.

City Attorney Jarrard:

That would be fine with me Robyn.

Senior Planner MacDonald:

Ok. On the next page 22-15, time limitation on appeals to superior court, again the Planning Commission had recommended this new re-written second paragraph of that section. The City Attorney has reviewed it and he is fine with that. Upon notice by the Clerk of Superior Court to the director of the community development department of the filing of such and appeal the director of community development shall cause to be filed with the Clerk of Superior Court within thirty days of such notice a certified copy of the proceedings and the decision of the Board of Zoning Appeals. Basically it was re-wording. They were concerned that we cannot make superior court do anything. Appeals of decisions, secondary variances slash interpretation of the director of community development or the director of public works shall be brought within thirty days from the day of the decision. Membership on 22.14.1 on the same page, for the Board of Zoning Appeals, the planning commission recommended, the members shall serve terms concurrent with the terms of their respective appointed Council Member or Mayor that appointed them so they are just trying to clarify the way we do the appointments. Staff was in support of that.

Councilmember Zahner Bailey:

I am assuming that if there is a change and somebody is on there that they can no longer meet that obligation, this would not preclude us from replacing that individual as stated.

Senior Planner MacDonald:

Correct. That concludes staff's comments at this point. I do believe there are some people here for the public hearing.

Mayor Lockwood:

If there are no more questions for staff, I would like to open that up for public comment.

Joe Padilla, 110 Susobell Place, Woodstock, Georgia

I am here representing the Greater Atlanta Homebuilders Association. We have looked over and I know there was a lot of discussion of additional changes so what I originally planned to say may be mute at this point but none the less we did support the language in the variance criteria that staff had addressed per BZA and Planning Commission. The key here is making something that is clear and concise that your lay person can really understand. They can understand what is required of them as they go through the process and quite frankly the more latitude that you give your staff and your BZA and Planning Commission is really a duress, what goes where is critical. The issue with having a five lot cut off sounds good but if you are dealing with a nine lot subdivision it becomes a little problematic. The best way is allow Alice and the staff to really have management over where some of those go so that the obvious re-zoning will come to Council but some of these less weighty routine variances can go before BZA. Essentially the goal here is to maintain constitutional property owners constitutional right. Balance that with your need to really address land use and manage the land use process. Whenever you are dealing with a slightly conceptual non engineered site plan in the early phase there is always going to be the need to change that and modify that as you go through the full engineering process and to require a property owner to go through significant cost and time to come before the City Council for a minor variance is burdensome. There is no doubt about it so we would just ask that you try to maintain as much latitude and give your staff as much latitude to direct these applications where they need to go and ultimately have something that is going to be simplified, understandable and not burdensome for the average property owner in Milton.

Jahnee Prince 6500 Sugarloaf Parkway, Duluth Georgia

I am with the Council for Quality Growth. Joe Padilla said everything so great that I just wanted to follow up and say that we support the proposal that staff brought to you tonight. You can see what hard work and research went into it and we would really like for the city to maintain the flexibility because you never know what is going to come before you and you want to be able to approve something that you really like. Thank you.

Mayor Lockwood:

Are there any questions for Ms. Sandy Jones? I do have one. This document that we have before us and the BZA and you worked with staff, are you comfortable with this as a board?

BZA Chair Sandy Jones:

Yes it is. We worked with staff, our City Attorney and also the comments from the Planning commission and basically came up with the revised document that you have before you and we are very comfortable with it.

Mayor Lockwood:

Mr. Jarrard is this the document that you worked on and had input in and feel comfortable with?

Councilmember D'Aversa:

Ms. Jones I just want to make sure you feel comfortable, we went down a rather long path of discussion on the five lots or the ten percent. That difference on the five lots or ten percent less than or greater than does make a big difference and I would agree that it needs to be put in there. Would you have any problem with us adding that to the documentation or the article?

BZA Chair Sandy Jones:

Including adding the ten percent back in?

Councilmember D'Aversa:

Five lots, ten percent or whatever is less.

BZA Chair Sandy Jones:

That would be fine because that was the intent, whatever is greater would come before City Council was the way that we looked at it so we are saying the same thing.

Councilmember D'Aversa:

Just wanted to say congratulations on being appointed Chairman of the BZA last night.

BZA Chair Sandy Jones:

Thank you very much. Nobody else wanted the job.

Mayor Lockwood:

Are there any other questions for Ms Jones

Councilmember Zahner Bailey:

I have a question but I do not know if it is for Ms. Jones necessarily, so I do not know if we want to pause here, it is a question that has to do with on page 4, because we have not talked yet about section 22.3.1 which is the sign variance, so I do not know based on by questions or discussion.

Mayor Lockwood:

First let me close the public hearing since there are no more public comments. Do we have a motion and then we will have discussion.

Councilmember Zahner Bailey

Mayor, as a Point of Order, staff was giving us a review but we never heard comments about the sign variance portion and since we never had a work session could staff at least speak to this, because we have gone through the other sections.

Community Development Director Wakefield:

Basically, what we did when we came up with a variance consideration is, one I think in the previous document we inadvertently omitted the language dealing with signs so we definitely want to put that back but what is proposed here is to break variance considerations up so that you have the factors that have to be dealt with for any variance, then to make it clear in a separate section the consideration for sign variance. The language has not changed it is merely the formatting of the document. I know there has been an issue raised or some concerns that perhaps when the BZA or we look at sign variances that all of those factors should be looked at but I think signs are treated a little differently and I know that Mr. Jarrard can speak to that. I cannot think of a sign variance where you look at the size and shape of the property. It is usually the visibility of it, the lettering size, the square footage, the height and the need to read so I do not know what else I can add.

Mayor Lockwood:

There was a discussion between staff and Ken on the sign portion of it.

City Attorney Jarrard:

The only issue that I want to raise is that first of all that I concur that the technical language of this provision has not changed from the standpoint that even in the ordinance that exist right now, this is a stand alone provision pertinent to signage. Secondly, just be mindful that whenever you are in the realm of the first amendment and you start talking about variances, you need to be careful. What you do not want to do is get into a situation where you grant a public body or official to much discretion to grant a variance and then allow someone to speak, and when I say speak I mean by way of a message on a sign versus to not speak by way of the variance. The language as it reads right now restricts the granting of a variance to situations where an applicant has put their sign, or if they put their sign in a place that is consistent with what the code allows but you cannot read it because of foliage or structure then in those situations you would be entitled to a variance and ostensibly the variance would be to overcome by way of height or maybe placement is set back or another advantageous viewing point where you could be able to read and therefore could communicate whatever message it is that you want to communicate to the public. The language that is drafted I am comfortable with and I do believe that it is meant to operate as a stand alone variance.

Councilmember Zahner Bailey:

I appreciate that because it does help. A quick question, I am not sure based on what I have just heard that the sign variance in 22.3.1 is necessarily what has been utilized to this point. I heard Ms Wakefield say that some of this language had been inadvertently left out and this may lead to a question for Ms Jones. I want to make sure that we are clear and the BZA is clear is that this language that sign variances and based on the direction from our City Attorney means that sign variances can only be approved if it deals with existing foliage and structures. Have I heard you correctly Mr. City Attorney?

City Attorney Jarrard:

That is the way I read it because it is specific to signage.

Councilmember Zahner Bailey:

So those other that are they a through the d does not apply to signs.

City Attorney Jarrard:

That is the way I would read that provision.

BZA Chair Sandy Jones:

And the board concurs with that and that was our intent and the reason that we explicitly removed that and put it as a discreet separate item and where it is listed as one of the conditions and it can be confusing.

Councilmember Zahner Bailey:

So previously when it was not segmented, was that board only looking at those two elements or were they considering these other components?

BZA Chair Sandy Jones:

I cannot speak to the other board members and how they used the guidelines from the past, but all I can say is the intent and the reason that we have spelled this out and recommended to split the sign

ordinance is to make it discreet so that a sign variance is only applicable if it meets the requirements of the existing foliage or structures.

Councilmember Zahner Bailey:

Going forward, while you cannot speak to what may have happened before today assuming that before today, it may have been something other than what is presented here, going forward you are clear that your board would be aware that this would be the only basis in which a sign variance could be approved.

BZA Chair Sandy Jones:

Correct, that is why we spelled it out because signs are a special consideration.

Councilmember Zahner Bailey:

Mr. Jarrard, would the word only help because just again in the spirit of clarification, if you inserted the word only after relief to the sign ordinance may only be granted for existing foliage or structures because effectively when you were speaking I wrote down the word only because that is what you said and I am thinking it would not hurt to make that clear given that there was some confusion prior to today.

City Attorney Jarrard:

Yes, only would be fine. It would not cause me concern one way or the other.

Councilmember Zahner Bailey:

I would ask that we insert that word for clarity.

BZA Chair Sandy Jones:

From my perspective, it is your discretion to add it or not add it, but the fact of pulling it aside and making it a stand alone variance stipulation state what the explicit requirements are.

Councilmember Zahner Bailey:

Just based on some things that I read form other decisions that were made I think that some of these items prior, because it was not clarified so in the spirit of clarification, I will go back to Mr. Jarrard's point that the insertion of the word only would add clarity and it surely would not negate any of the things that are there so thank you very much, I appreciate it.

Mayor Lockwood:

Thank you very much and I would like reiterate what we just heard is that our BZA, our City Attorney, our staff have been working together an dare comfortable with the document as prepared. We have talked about some changes which may or may not be added.

Councilmember Hewitt:

I will start with the easy thing first.

Motion: I would like to make a motion that we approve text amendment RZ08-09, text amendment to amend article 22, appeals to the City of Milton Zoning Ordinance based on staff's recommendations and addition to a couple of things I have here. In section 22.9.1, change the word will to shall and then I will try and tackle these greater than and less than ten percents. I believe in section 22.2.2 letter a we want to include or insert or more than ten percent whichever is less and 22.7.1 we want to keep or more than ten

percent whichever is greater and in section 22.2.1 letter D, include or add or more than ten percent whichever is less. I would not mind somebody checking to make sure I got my less and greater's right.

Councilmember D'Aversa:

I do not think we need the more than. Just ten percent whichever is less, whichever is more.

Councilmember Hewitt:

That is fine.

Councilmember Zahner Bailey:

I thought we had concurred that in each of those sections for consistency it was the five land lots or ten percent whichever is less.

Mayor Lockwood:

Let's let him finish his motion and then go to discussion. Would you mind re-reading it for the record, at least on your 22.2.2a?

Councilmember Hewitt:

Let me just get to it so I can make sure that I am going... hold on let me just think out loud for a second. I am just trying to make sure I get this right. 22.2.2 so to hear and to decide applications for primary variances from any zoning ordinance provision that involves more than five lots or up to ten percent whichever is less? 22.7.1 under the heading Primary Variance heard by the Mayor and City Council, a request for variance from any zoning ordinance provision that involves more than five lots or ten percent whichever is greater in accordance because that is what is being heard by the City Council.

Mayor Lockwood:

Do you want to clarify that Alice?

Community Development Director Wakefield:

Yes, that is what gives the ability of Council to hear those larger subdivisions.

Mayor Lockwood:

We are getting away from our motion and then discussion.

Councilmember Hewitt:

Let me state it then someone second it then we can discuss it.

Motion restated:

Councilmember Hewitt:

22.7.1, Primary Variance heard by the Mayor and City Council. A request for a variance from any zoning ordinance provision that involves more than five lots or ten percent of the lots in a subdivision which is greater in accordance of section 22.3.1. Going back to section 22.2.2d, which is the heading also Mayor and City Council to hear and decide applications for variances from any zoning ordinance that involves more than five lots or ten percent whichever is greater.

Second: Councilmember D'Aversa seconded the motion.

Discussion on the Motion:

Councilmember Zahner Bailey:

I appreciate the effort to try and get that as we had discussed it and I am sure that it is me that is still confused. I think I heard Ms. Jones that the intent was that anything beyond five lots would come back to the Mayor and Council, for the example when you have a two hundred lot subdivision, if we include language that say or ten percent whichever is greater, it means that we will not see the case and that it would go to the BZA.

Community Development Director Wakefield:

The BZA says or less.

City Attorney Jarrard:

When we discussed the issue, I was not sure where we left it. I heard various things. What does the BZA say?

Councilmember Hewitt:

I will let the math teacher read it.

Councilmember D'Aversa:

Right now is that not what he said. I thought so. Greater than five lots or greater than ten percent, Mayor and Council but whichever is less, so if it is a three hundred lot subdivision, it is still five lots and then for BZA it would be less.

Councilmember Zahner Bailey

So it would be less, so we are going to modify the language to say or less. If would be five lots or ten percent whichever is less.

BZA Chair Sandy Jones:

Right, you have a hundred home site neighborhood, five lots, if you have an eight home site subdivision then it would be one and anything greater than that because then it is a zoning.

City Attorney Jarrard:

So a practical effect would be that in no event would the BZA ever hear a variance on five lots.

Councilmember Zahner Bailey:

So does the language need to say whichever is less in all three of those instances?

Councilmember Hewitt:

One is for us so it is greater.

Mayor Lockwood:

Is there any other discussion? Hearing none...

Vote: The motion passed unanimously (5-0).

City Clerk Marchiafava read agenda 08-682.

**Approval of an Ordinance to Amend Chapter 14, Land Development and Environmental Protection, of the Code of Ordinances for the City of Milton, Georgia.
ORDINANCE NO. 09-01-35**

Community Development Director Wakefield:

This is an amendment to Chapter 14 and the basic purpose is to cross reference what was just approved in article 22 so that we are clear that in addition to the BZA that this body has the ability to also consider variance or stream buffers now.

Senior Planner MacDonald:

At the previous meeting we dealt with some other issues on Chapter 14 that had to do with soil erosion control and the state ordinances and that has been done, thank you for that. These items are just some items that were deferred to the next meeting and if you go to page 2 under variance procedures, at the top of page 2 and it is in red with the little 3, when a variance request is concurrent with a rezoning use permit, or modification application it shall be considered by the Mayor and City Council and shall follow the process contained in article 22.9, concurrent variances of the City of Milton Zoning Ordinance. That gives you the ability to hear the stream buffer variances when they are concurrent with those items. The BZA had asked that on page 3, under the V, any variance approved shall be site plan specific, so staff also supports that issue as well.

Mayor Lockwood:

Do I have some questions for Ms. MacDonald?

Councilmember Zahner Bailey:

A quick question on page 2, it goes back to a question I had asked on the other, with regards to concurrent variances, as I understand the concurrent variance language that we have approved is that we are indicating that even if it is not at the same time, if a variance comes back on a zoning that it would come back to us as a zoning modification, is that correct?

Senior Planner MacDonald:

If somebody comes after the fact then it would be a zoning modification.

Councilmember Zahner Bailey

And we do not need to clarify that here?

City Attorney Jarrard

No Ma'am.

Mayor Lockwood:

Any other questions?

City Clerk Marchiafava:

There is no public comment on this item.

Motion and Vote:

Councilmember Lusk moved to approve agenda item 08-682 an Ordinance to Amend Chapter 14, Land Development and Environmental Protection, of the Code of Ordinances for the City of Milton, Georgia. Councilmember Hewitt seconded the motion. There was no Council discussion. The motion passed unanimously (5-0).

NEW BUSINESS

City Clerk Marchiafava read agenda item 09-777:

Approval of an Amendment to Professional Service Agreement with Kimley-Horn and Associates, Inc.

Public Works Director Drake:

- This will amend the agreement as approved by Council on October 20, 2008 and signed by the Mayor in November 7, 2008.
- The first component is to amend article 4.1-7, which talks about sub consultant insurance requirements.
- There is a difference in liability exposure for some of their smaller sub consultants have asked for a change so we put language in that would require reasonable insurance that is acceptable by the City.
- We are going to replace the existing exhibit c in the agreement which is the pre-negotiated rates.
- Staff asks for approval.

Councilmember Lusk:

- On the general liability insurance coverage, three hundred thousand aggregate is something that was used five or six years ago.
- The standard is up to around five hundred thousand.

Public Works Director Drake:

- The standards are reasonable insurance as acceptable by the city but we put a minimum cap on it.

City Attorney Jarrard:

- He does not disagree that it could be way higher, but if you set it to high you begin to take away subs that can be used who cannot afford that insurance.
- That was the concern presented to us, so we were trying to be mindful of that.

Mayor Lockwood:

- He thinks the City Attorney had a good point.
- He does not want to arbitrarily increase it if it may affect the availability of the people.

Councilmember Lusk:

- Asked if this just applies to this one sub-contractor.

Public Works Director Drake:

- It applies to all sub-consultants under the Kimley-Horn agreement.

Councilmember Zahner Bailey:

- So each of the sub-contractor even with this amendment, public works would still have to review as would legal?

Public Works Director Drake:

- Public Works, Purchasing and legal are taking a look at each of these and together evaluate them on a case by case.

Councilmember Zahner Bailey:

- Asked if this modification allow them to consider another consultant.
- We will have to have dialogue about the other data from another survey that might impact the transportation master plan and asked if there was anything in this amendment that would preclude them from considering some of their consultants to help with that additional data.

Public Works Director Drake:

- This is tied to the scope that is in their existing scope.
- If we believe there are different services that need to be done for a different amount we will come back for an amendment.

Motion and Vote: Councilmember Lusk moved to approve agenda item 09-777, an amendment to professional service agreement with Kimley –Horn Associates Inc. Councilmember Hewitt seconded the motion. There was no Council discussion. The motion passed unanimously (5-0).

MAYOR AND COUNCIL REPORTS

Councilmember D'Aversa:

- We participated with Hopewell Middle School in planting some seedlings that had been donated by the Milton Grows Green Committee.
- They were left over from the chipper program.
- We had about twenty five students that are part of the Echo Explorers Club as well as Junior Beta Students to volunteer and plant the trees.
- We had Bill Bailey from Bailey Farms and Gardens that offered to help dig the holes because the ground is hard right now.
- Mark Law and Allie Taylor also came out and participated.
- Councilmember Zahner Bailey was there also.

Councilmember Lusk:

- Last year we let a contract for resurfacing and bringing up to standard the gravel roads in the city and there have been some issues with them.
- He directed the Public Works Director to let us know what is going on so we can advise the people out there who have slush on their vehicles and what we are going to do about it.

STAFF REPORTS

Public Works Director Drake:

- We have a preliminary report from the engineer to find out what we can do with the poor material that is out there.
- Approximately half has been removed and half remains.
- With the weather conditions we have had it is not the optimal time of the year to be fixing these things.

- We have a meeting with the contractor and engineer to talk about what we are going to do and hopefully we will be out there Monday.
- We have been waiting for it to not freeze overnight and the temperatures to get above 40%.
- We will be sending letters to all of the residents of the four roads with the update status.
- Will send an e-mail to Council with an update and a time frame.

Councilmember Zahner Bailey:

- Asked to clarify that there would be no additional cost as a result of the sub-contracting that needs to be corrected.
- Would like to be comfortable that we have not born any additional liability.

ADJOURNMENT

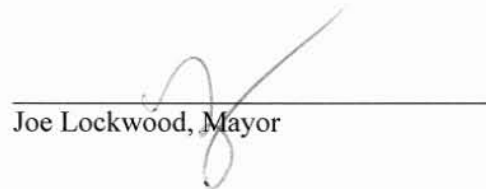
After no further business, the regular meeting adjourned at 9:38 p.m.

Motion and Vote: Councilmember Hewitt moved to adjourn the Regular Meeting. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously (5-0).

Date Approved: February 2, 2009



Jeanette R. Marchiafava, City Clerk



Joe Lockwood, Mayor