

**PLANNING & ZONING COMMISSION MEETING
CITY OF BERKELEY LAKE
4040 South Berkeley Lake Road
Berkeley Lake, GA 30096**
March 6th, 2007
Full Minutes

Those in attendance at the meeting were as follows:

Chairman: Bob Herb

Commissioners: Craig Belt, Rodney Hammond, Dan Huntington and Frank Lombardi

City Administrator and P&Z Secretary: Leigh Threadgill

Deputy City Clerk: Sandy Rosenberger

Citizens Present/Guests: None

CALL TO ORDER:

Herb opened the meeting at 6:35 P.M. on March 6th, 2007 at 4040 South Berkeley Lake Road.

Welcome to Frank Lombardi, the newest Planning & Zoning Commission member.

OLD BUSINESS:

a.) Minutes from the November 28th, 2006 P&Z meeting

Minutes: Commissioner Belt motioned to approve the minutes for the November 28th, 2006 meeting. Commissioner Hammond seconded the motion. Hammond, Huntington, Herb, and Belt were in favor.

Lombardi abstained because he is newly appointed and was not in attendance at the last meeting.

The motion passed.

b.) Administrative Variance at 164 Bayway Circle

Herb informed the commission that he approved an administrative variance for 164 Bayway Circle for an expansion to an existing, non-conforming dock that was 10 feet 8 inches vs. 12 feet 6 inches from the side property line. The expansion did not result in any increased non-conformity.

NEW BUSINESS:

a.) Election of P&Z Chairman and Vice-Chairman

Belt nominated Bob Herb for P&Z Chairman. Herb accepted. All were in favor.

Herb nominated Rodney Hammond as vice-chairman. Hammond accepted. All were in favor.

b.) Decide how best to schedule P&Z meetings for 2007

Herb introduced the topic of scheduling regular meetings. Huntington expressed that he likes it the way it is and that it works.

Herb stated that there has been a lot of concern from council about not having a regularly scheduled meeting. However, he acknowledged that for most members, business trips would likely take precedence over regularly scheduled P&Z meetings.

Lombardi asked if they could call a special meeting if the regularly scheduled meeting couldn't be held because of lack of a quorum.

Belt asked to clarify the purpose of advertising meetings. It was stated that advertising is required for P&Z meetings because they are not regularly scheduled, and in addition, any time a public hearing is held, advertisement is required.

Huntington noted that because of busy travel schedules, it will be difficult for P&Z members to make regularly-scheduled meetings.

Members stated that the current practice for scheduling meetings is more responsive to citizens because it is possible to schedule meetings in order to have the majority of the members present, and it would be difficult to have more than three members at a regularly scheduled meeting. In addition, meetings can be scheduled faster to respond to citizens' needs.

Consensus of P&Z commission is to leave the meeting schedule on an "as needed" basis and to change the ordinance to reflect that.

c.) Discuss possible modification to 3-601, Planning and Zoning Responsibilities

Herb recommended that Section 3-601.5 be amended to reflect commission chair salary. All members except chairman will serve without compensation. The chairman shall be compensated based on an amount determined by council.

P&Z recommended that section 3-601(6) be changed to reflect a meeting schedule on an as-needed basis.

Change 3-601.7.d to change the wording from "to prepare and recommend..." to "to recommend..."

Huntington moved to approve those changes. Hammond seconded the motion. All were in favor. Motion passed.

Planning and Zoning Commission appointed Leigh Threadgill as secretary to the P&Z

d.) Discuss modifying wording of 39-1401 Application for, Procedure and Notification

Herb submitted written changes to Section 39-1401 to clarify the variance procedure for existing, non-conforming structures to be consistent with Planning & Zoning Commission practice.

Changes to Section 39-1401 are as follows:

- 1.) To amend Section 39-1401.1 to state “All applications for variances of existing, conforming structures and new structures shall be submitted initially, in writing, to the Planning Commission of the City of Berkeley Lake...”
- 2.) To add Section 39-1401.2

“All applications for variances of existing non conforming structures shall be submitted initially, in writing, to the Planning Commission of the City of Berkeley Lake, which shall consider these requests at its next regularly scheduled meeting. The Planning Commission may authorize such variance from the terms of this Zoning Ordinance as will not be contrary to the public interest. The spirit of the Zoning Ordinance shall be observed, the public safety, health and welfare secured and substantial justice done. Such variances may be granted in individual cases if the Planning Commission finds that:

- a.) The variance is for a conforming change and such change does not increase the impact of the existing structures non conformance aspects, and
 - b.) The application of the Ordinance to this particular piece of property would create an unnecessary hardship, and
 - c.) Such conditions are peculiar to the particular piece of property involved, and
 - d.) Such conditions are not the result of any actions of the property owner, and
 - e.) Relief, if granted, would not cause substantial detriment to the public nor impair the purposes or intent of this Ordinance, and
 - f.) The variance is granted for a use of land or building or structure that is not prohibited by this Ordinance.
- 3.) To amend the last sentence before 39-1401.3 to add “variance” before “hearing.”
 - 4.) To renumber the remaining sections appropriately.

Lombardi questioned renumbered Section 39-1401.4 and the meaning of that section. It is confusing and may need to be amended to clarify the intent. There was much discussion. It was determined to rename the section heading to “Expiration of Approved Variances.”

Lombardi motioned to amend section 39-1401 as recommended by Chairman Herb and to amend new section 4 heading to read “Expiration of Approved Variances”. Huntington seconded the motion. All were in favor. The motion passed.

Herb discussed abstention from voting and posed the question, "Is an abstention a vote?" He stated to the commission members that the City Attorney said that it did count as a vote. Members discussed the need to disclose why they have abstained and that members should vote unless there are valid reasons for abstaining. If at all possible, members are encouraged to vote.

Lombardi motioned to adjourn the meeting at 7:50. Hammond seconded the motion. All were in favor. The motion passed.

(Respectfully submitted by Leigh Threadgill, approved by P&Z May 23, 2007)

**PLANNING & ZONING COMMISSION MEETING & PUBLIC HEARING
CITY OF BERKELEY LAKE
4040 South Berkeley Lake Road
Berkeley Lake, GA 30096**

May 23rd, 2007

7:30 P.M.

Full Minutes

Those in attendance at the meeting were as follows:

Chairman: Bob Herb

Commissioners: Craig Belt, Rodney Hammond, and Frank Lombardi

City Administrator and P&Z Secretary: Leigh Threadgill

Citizens Present/Guests: None

I. CALL TO ORDER:

Herb opened the meeting at 7:40 P.M. on May 23rd, 2007 at 4040 South Berkeley Lake Road.

II. OLD BUSINESS:

a.) Minutes from the March 6th, 2007 P&Z meeting

Herb asked for changes to the minutes.

Belt asked about amending paragraph 6 on page 2 to say “Belt asked to clarify the purpose of advertising meetings.”

Commissioner Lombardi motioned to approve the minutes for the March 6th, 2007 meeting with the suggested change. Hammond seconded the motion. All were in favor. The motion passed.

b.) Update from May 17, 2007 City Council Meeting

Herb asked Lombardi for an update about the report that he delivered at the May 17th Council meeting. Lombardi stated that he came away with three main points that council was trying to make. 1) Council wanted P&Z to look at having regularly scheduled meetings to be more in line with what other cities do. Lombardi responded to council that as-needed meetings are more responsive to citizens. 2) Council raised a concern that business that came to P&Z did not always come back in the time frame that council wanted it. Lombardi suggested to council that the reason that may have happened was because of a lack of communication regarding a deadline. He asked council to communicate what they need and when it is needed by. 3) Council may be looking for some business to be handled via email to get a consensus of P&Z commissioners on some items. Lombardi questioned whether this was even legally possible. He also understood

that council was interested in hearing what each individual commissioner thought when they voted.

Herb clarified that the end result is that meetings will continue to be scheduled on an as-needed basis.

Hammond stated that the benefit to this is that now council will communicate more specific information when they have time-sensitive business and provide deadlines for when they would like feedback from P&Z.

Belt stated that he couldn't attend the council meeting on May 17, but that he had read the minutes and felt that Lombardi had communicated P&Z's position quite well.

Belt asked about the one piece of business that had been delayed being something about driveways. It was clarified that council gave an example that Chapter 39-807 *Driveway Water Runoff Control* was one that wasn't forwarded to council in a timely manner. Herb responded that what happened with that was due to citizen comments. Herb stated that P&Z changed it twice and submitted it to council. A citizen didn't agree with it and that citizen was invited to come to P&Z and represent his opinion, but the citizen never came.

Belt stated that he wasn't aware that P&Z had delayed any council business, but that he didn't see any reason why it would be a problem for P&Z to meet council's deadlines.

Lombardi stated that council agreed to communicate the need for P&Z to address city business, including the nature of the business with a required response date.

Hammond stated that he understood the point that every other city holds regularly scheduled meetings, but the reality is that it doesn't work for us because of the volume here.

Lombardi stated that there were only 5 meetings last year, so they would have cancelled 7 meetings.

Herb stated that meetings have been scheduled on an as-needed basis at least as long as he has been involved with P&Z, which has been for the past 12 years.

Commissioners thanked Lombardi for being at the last council meeting to represent the opinions of P&Z members.

III. PUBLIC HEARING

There were no citizens to comment at the public hearing.

IV. NEW BUSINESS:

a.) Consideration of Municode Changes to the Zoning Ordinance and Adoption of the new Zoning Ordinance, Chapter 78

Herb explained that the intent was to take the existing code and drop it into a new format. Threadgill responded that it was her understanding that the zoning ordinance didn't undergo any substantive changes in the process with Municode, but that the ordinance was reformatted to become uniform with the entire city code.

Herb asked if P&Z could change any errors that were noted in the new Municode version. Threadgill responded that she understood that it would be alright for P&Z to do that.

Herb noted an error on page 13 in Section 78-89(a), which says that accessory structures should be set back 12.5 feet from any lot line. Herb suggested amending it to say "should be set back 12.5 feet from any side lot line, and not less than 40 feet from the rear lot line."

Lombardi asked if this regulation would apply to a boathouse. Herb responded that this didn't apply to boathouses because there is a separate section which applies to boathouses.

Belt asked about how significant it is that this change wasn't picked up in the Municode version and whether there is cause for concern about other substantive regulations having been modified. Herb stated that the verbiage he has suggested isn't in the existing code either, but he is recommending that it be added at this point because that is the way that the code has been applied.

Belt asked about the origin of the new Chapter 78. He asked if it was the same as our existing code just moved and renumbered. It was clarified that this is not just boiler plate code.

Lombardi asked about requiring things like accessory structures such as tool sheds to be required to be setback 40 feet from the rear lot line. Is that the intent? Herb said that that is the intent.

There was further discussion.

Herb's next correction was to page 20, Section 78-200. He stated that Chapter 78 needed to be updated with the ordinance that had been adopted on December 21, 2006, which was not incorporated into this section. Threadgill explained that when Municode went through this process, it began close to a year ago to the best of her understanding from prior staff members. Therefore, there are changes to the code that have been made that were not incorporated into the new Municode version of the city code because they were made after Municode began its process.

Herb asked if P&Z could just make the recommendation now that these changes are made to incorporate codes that had been passed during the time that Municode was working on the existing code and that weren't included in the new Municode version. Threadgill stated that she thought that would be appropriate.

It was noted that the code change that had not been incorporated was Section 39-807, and Herb wanted to replace 78-200 in the new Municode version with 39-807, which was adopted December 21, 2006.

There was further discussion.

Herb's next correction was to page 30. He noted that there were several places where the Ordinance Enforcement Officer is referenced but the Building Inspector is not referenced. Herb noted that those duties had been split. He suggested that Building Inspector be added anywhere it says Ordinance Enforcement Officer.

Hammond asked whether the duties of the Ordinance Enforcement Officer and Building Inspector should be separated out so it's clear who is responsible for doing what.

Herb responded that we could come back to clarify that, but that the change he's suggesting is that the ordinance just be changed to be inclusive to allow both to have the responsibility for enforcement.

Threadgill explained that this section of the ordinance 78-317 – 78-321 was another example of a code change that hadn't been incorporated in the Municode version and that Chapter 78 needed to be updated with the code change that took place in October. On October 19, 2006 Section 39-1201 was incorporated into the existing code, but had not been included in the new Chapter 78.

After much discussion, it was determined that Section 39-1201, Adopted October 19, 2006, would replace Section 78-317 and that Sections 78-318 – 78-321 would be removed.

Herb's next correction was to page 33, Section 78-366. He stated that the change Municode made when this section was reformatted changed the intent. The Municode version removed the word "and" after each condition that is required to be met for a variance to be granted. He suggested that the way it now reads is that an applicant would only have to meet one of the conditions enumerated in this section, 78-366(a).

Herb suggested the following changes to Section 78-366(a). 1.) Add "and" at the end of paragraphs 1 - 5. 2.) Drop "and" at the end of paragraph 6. 3.) Move paragraph 7 so that it is incorporated into the paragraph heading *Applications for variances* before the last sentence beginning with "such".

Herb's next correction was to page 34, Section 78-367. Section 78-367(a)(2) should be changed to place a period where the semicolon is currently and remove the word "and."

Section 78-367(a)(3) should be removed and 78-367(a) should be amended to incorporate the verbiage of 78-367(a)(3). Section 78-367(a) will now read “Such variances must meet one of the following conditions and the chair of the planning commission must conclude that the request would be granted if heard by the full planning commission (and subject to all requirements for variance consideration).”

Herb’s next correction was to page 35 Section 78-369(a) to add “building inspector” after “ordinance enforcement officer” throughout that entire paragraph.

Belt asked if we could do a search throughout the document to find if we needed to add building inspector in other places where ordinance enforcement officer is listed. Herb responded that he thought he had caught them all. Threadgill offered to double check that as well, but noted that she did not have an electronic version of the work done by Municode yet.

Lombardi asked if the city had always had a position for the building inspector. Herb described that there was not always a building inspector position in the city and explained why we now have a building inspector. Lombardi asked if the changes being suggested would give the building inspector authority beyond what he has been given by the code. Threadgill noted that there were other sections of the code that discussed the authority of the building inspector.

Belt asked what is being done to ensure that nothing that has been adopted in the last year is being left out of the new Municode version. Threadgill responded that she was working to try to ensure that this version of the code incorporated all those changes that may have been passed. Threadgill explained that she understood that this had also already been considered by the attorney and council.

Belt asked when the Municode version was begun and how many months of ordinance changes aren’t represented in the code that Municode sent the city. Threadgill responded that she thought the process was begun some time last summer. Herb thought that it had been about a year ago that this was begun.

**Lombardi motioned to adopt Chapter 78 with the changes outlined above.
Hammond seconded the motion. All were in favor. The motion passed.**

b.) Changes to Chapter 78-366, Variances; application for, procedure and notification.

Herb explained that this change came about because he was trying to change the code to be consistent with how P&Z has handled variances for non-conforming structures. He noted that it was the old Section 39-1401 and stated that P&Z is now going to change the zoning ordinance they just passed, Chapter 78-366.

Herb drew a distinction between what is required for a non-conforming structure to be granted a variance compared to all other requests. He stated that for a non-conforming structure the applicant does not have to meet the first requirement that there are

extraordinary and exceptional conditions pertaining to the particular property in question because of its size, shape or topography. Herb stated that P&Z has never required this, but has only required that the non-conforming structure isn't becoming anymore non-conforming and that the other conditions for a variance are being met.

Herb noted that P&Z had also discussed at their last meeting the wording of the last paragraph in this section 78-366(c) *Reapplication to planning commission* and the section had been given a new title "Expiration of Approved Variances."

There was further discussion about how to format the changes discussed above to fit in with the Municode format. Threadgill stated that she would determine how to format the changes and circulate a draft to the commission members for their review.

Lombardi asked whether or not the Municode change to planning commission from Planning & Zoning Commission was significant and whether that would confuse people. The consensus of the commission was to revert back to the original title of Planning and Zoning Commission.

Lombardi motioned to approve changes to Section 78-366 as discussed. Belt seconded the motion. All were in favor. The motion passed.

c.) Changes to Section 78-317, *Building Permit Required*.

Herb recommended a review of Section 39-1201, which will be the new Section 78-317 once Chapter 78 is updated with code changes made since the Municode process began.

Herb explained that the city hasn't been requiring permits for every structure that is erected. The key to what is required to have a permit is the definition of structure, and that definition includes anything that attaches to the ground. City practice is not consistent with how the code reads. We need to either require the ordinance enforcement officer and building inspector to do what the code says or change the code to be consistent with our practice.

Belt asked whether lamp posts would be required to get a permit because they technically meet the definition of a structure. Herb responded yes.

Herb recommended that some of the language from the International Residential Code be adopted here to provide a list of structures exempt from needing a building permit.

Herb recommended that the second paragraph of Section 78-317 beginning "This ordinance does not apply to ordinary maintenance" should be replaced with a new section entitled "Work Exempt from Needing a Building Permit."

Building Permits shall not be required for the following:

- 1.) Ordinary maintenance and repairs to existing structures;
- 2.) Fences not over 6 feet high;

- 3.) Retaining walls that are not over 4 feet in height, measured from bottom of footing to the top of the wall;
- 4.) Sidewalks and driveways;
- 5.) Patios not attached to a structure;
- 6.) Yard water features.

There was discussion about this change.

Belt asked if this change has come up because of a structure that has been built in the city. Herb said that this has come up because he realized that in the past and currently no permit has been required for things that according to our code should have been permitted.

Lombardi asked about a yard water feature and other permits that may be required, such as electrical. He expressed concern that the message to residents may be that no permit is required. He desired to add something in here to put citizens on notice that other permits may be required.

There was further discussion.

A question came up about whether mailboxes should require permits. Herb stated that he believed mailboxes should require permitting because the code has required no stone mailboxes and they are still being built.

Threadgill stated that some of the things that are being discussed do not warrant a building permit because they do not fall under the purview of the building code and will not be inspected by the building inspector.

There was discussion about whether to return to having a use permit or some other kind of zoning permit for those things which don't qualify for a building permit, but need some kind of zoning authorization.

There was further discussion.

Herb suggested that maybe the ordinance enforcement officer would be responsible for issuing zoning permits for some of these things, like flagpoles and mailboxes.

Herb stated that one of the problems is that it isn't clear who has responsibility for what between the ordinance enforcement officer and the building inspector.

There was further discussion.

Herb said that, in this meeting, we may not be able to fix the problem about things that require some kind of zoning approval, but don't qualify for a building permit, but we can provide some exemptions from building permits.

Lombardi asked if it would make sense to raise a flag to the reader that other permits may be required. He referred back to the yard water feature example, which may not require a building permit, but would require an electrical permit.

There was further discussion.

It was determined to add “Note: Electrical, plumbing, and grading permits may be required.”

Lombardi motioned to approve changes to Section 78-317 as outlined above. Belt seconded the motion. All were in favor. The motion passed.

V. ADJOURNMENT

Hammond motioned to adjourn the meeting at 9:10 P.M. Belt Seconded the motion. All were in favor. The motion passed.

(Approved by the Planning and Zoning Commission, July 16, 2007)

**PLANNING & ZONING COMMISSION MEETING & PUBLIC HEARING
CITY OF BERKELEY LAKE
4040 South Berkeley Lake Road
Berkeley Lake, GA 30096**

July 16th, 2007

7:30 P.M.

Full Minutes

Those in attendance at the meeting were as follows:

Chairman: Bob Herb

Commissioners: Craig Belt, Frank Lombardi, and Dan Huntington

City Administrator and P&Z Secretary: Leigh Threadgill

Citizens Present/Guests: Arthur Salus, Donna Salus, Kieth McJenk, Ronnie Pridemore, Rob Pridemore, Joe Voyles and Irvin Gunter

I. CALL TO ORDER:

Herb opened the meeting at 7:36 p.m on July 16th, 2007 at 4040 South Berkeley Lake Road.

II. OLD BUSINESS:

a.) Minutes of the May 23rd, 2007 P&Z meeting

Lombardi motioned to approve the minutes. Belt seconded the motion. All were in favor. The motion passed.

III. NEW BUSINESS and PUBLIC HEARING:

a.) Variance to Section 39-804-5 of the zoning ordinance for 3805 Berkeley View Drive to reduce the required rear setback from 40 feet to 34 feet

Herb explained that just one corner is encroaching into the required setback and the applicant is looking for a 5'7" variance for the required rear setback of 40 feet.

Salus introduced his application. He stated that he has lived in Miramont since 1996, and that he got into this addition to his home because of a major sinkhole in his back yard.

He showed pictures of the sink hole and of the construction. He stated that he pulled a permit on April 16, 2007 from the city. Six weeks later the ordinance enforcement officer issued a stop work order because the structure encroached into the rear setback requirement along Ridge Road. He stated that he was about 80% complete when the stop work order was issued, and he is asking for the variance to finish the addition. The only portion of the addition that encroaches is one corner representing about 4.7% of the addition. All other requirements are met. He stated that if he had known that the structure encroached he would have reduced the size of the addition.

Salus presented an inspection card signed off by the building inspector that indicated a pre-footing sign-off. He stated that the plans submitted to the city for approval with the permit application did not show the detail of the new structure, but now he has certified plans. He indicated that the rear property line is actually beyond the fence at the rear of the lot.

Lombardi asked if the setback request included the drip line of the structure. Herb stated that it did and that he has a very small roof overhang. The drip line only comes out about 6 inches.

Lombardi asked if the initial plans submitted for the permit application indicated the distance of the addition from the rear property line. Salus stated that the plans did not.

Herb stated that it doesn't matter if the structure is complete when the violation was noticed, even if the plans submitted showed everything, the homeowner is ultimately responsible. Herb stated that there is a committee looking at ways to ensure that city staff catches these kinds of things during the plan review of the building application.

Herb stated that the irregular shape of the subject property was sufficient to allow the variance to be heard. The other key part is that only a small percentage of the structure is encroaching into the 40-foot required rear setback.

Belt asked about the undisturbed buffer requirement along the rear of the property. Salus stated that that was a 25-foot requirement from the rear property line, which is noted on the plans.

Salus stated that the county would have measured the distance to the rear property line on right angles from the rear of the structure because of the curve in the rear property line, and the relationship of the subject corner to the rear property line.

Belt asked Salus to confirm that there is no structure encroaching into the required undisturbed buffer, and Salus stated there was no encroachment into the required buffer.

Huntington asked how far the rear property line is off of Ridge Road. Herb stated that the road is very close to the rear property line. Salus stated maybe three to four feet.

Salus stated that the city should require a certified plat for any building permit application.

Lombardi asked about the foundation inspection. Salus stated that the building inspector did not come out to do that inspection, even though it was requested. He stated that the building inspector inspected the footings but said that he didn't need to return until the electrical work was ready for inspection.

Herb stated that a citizen committee is looking at requiring a survey to be performed at two points of the construction, the initial phase and at the end of the project because right now there is no way to verify that what is built is consistent with the plans that are submitted with the building permit application. Essentially, this committee is looking at requiring an as-built, but if a survey is required earlier in the project, the hope is that any zoning violations will be noted then.

Lombardi motioned to approve the variance to change the required rear setback from 40 feet to 34 feet for 3805 Berkeley View Drive. Huntington seconded the motion.

Herb called for discussion. Lombardi asked for past history regarding approvals of the variance in situations such as these when structures have already been under construction.

Herb stated that you have to think about the request as if no construction had occurred. It doesn't matter that the addition is almost complete. Herb stated that he thinks this variance would have been granted under the conditions, even without the addition having been built.

All were in favor. The motion passed.

b.) Variance to Sections 39-804-4 and 39-401-1 at 766 Lakeview Lane to reconstruct a detached accessory garage in the front yard and reduce the required front setback from 65 feet to 60 feet.

Herb provided some background information about the variance request. He stated that the variance was to reconstruct a detached structure that was destroyed by the storm. He stated that the reconstruction is essentially irrelevant, that they need to meet the requirements. The variance is for 5 feet from the 65 -foot setback required from the edge of the road along the front of the property. Herb stated that he looked at this to see if there was any way to meet the setbacks and attach the structure to the house, but stated that the topography of the land did not lend itself to that. He added that the front height will be a bit taller than before to allow some attic space for overhead storage. The front height will be 23 feet and the maximum permitted height is 35 feet. Herb stated that typically the planning and zoning commission considers whether the height has been reduced to mitigate the impact of the structure being located closer than the required front setback. In this case, the height is quite a bit lower than what is permitted.

Joe Voyles, agent for the applicant, introduced the project and stated that the intent is eventually to connect the garage to the house, but they are not ready to do that yet. He stated that if the structure is pulled back to meet the front setback requirement, the building would encroach into the side setback at a greater proportion and would have an impact on the neighboring property. He indicated that the plan is to keep the structure on the original footprint and eventually tie the two structures together with a European cottage theme.

There was further discussion.

Lombardi asked for clarification about why this couldn't be processed as an administrative variance. Herb stated that an administrative variance couldn't be granted because this variance includes a request to permit an accessory structure in the front yard, which can't be varied administratively. Herb further stated that he was going to be proposing later in this meeting that the code be amended to allow detached enclosed accessory garages to be located in the front yard when certain conditions are met because the planning and zoning commission has historically been approving them by variance. The way that the code currently reads would not allow, even by variance, an accessory structure to be located in the front yard, but that has been the practice, and Herb wants to amend the ordinance to be consistent with the way that it has been applied.

There was further discussion.

Lombardi stated that the way the code is written now requires that we deny this, but Herb stated that the code hasn't been applied that way in the past.

Lombardi asked if the text amendment to the zoning ordinance would require council review. Herb stated yes, and that it would be three or four months before it was approved and enacted.

Belt asked if the new structure would be taller than the original. Voyles responded that it would be about 8 feet taller than it used to be.

Belt motioned to approve the variance as requested. Huntington seconded the motion.

Lombardi asked about the application of the code in the past, which was not in accordance with the code but with common practice. He stated that he would have preferred that the Planning and Zoning Commission had just applied the code based on the way that it is written in order to have consistency. Herb stated that that is the goal and that he is trying to work on the code to get the application and the wording of the code to be consistent.

Huntington asked about what the past practice has been. Herb stated that if the accessory structure is enclosed, used for parking cars, and meets or only slightly varies from required setbacks, the planning and zoning commission has been granting approximately 90% of variances to allow them to be located in the front yard.

Herb stated that variances should be to dimensional requirements, but that has not how the code has been applied in the past, which is why he is recommending changes to the code later in the meeting.

Lombardi asked Herb if based on past history his recommendation would be approval. Herb stated that he would recommend approval.

Huntington asked Herb if he would have granted the setback variance administratively if the garage had been attached. Herb responded yes, if the garage had been attached, this would probably have been granted as an administrative variance.

All were in favor. The motion passed.

The applicant, Mrs. Pridemore, asked if they were required to attach the garage to the house. It was stated that that was not required. It was further clarified that if the garage is at some future point attached to the house there would be no requirement for another variance to be issued regarding the front setback of the garage.

Voyles asked for clarification about boathouses and the area limitation. Is the boat slip part of the maximum permitted square footage? Herb responded that it was. Voyles asked if the decking is attached to more decking on the shore, does the decking on the shore count toward the total square footage. Herb responded yes.

There was further discussion about the requirement that docks and boathouses not project more than 25 feet into the lake.

Voyles went on to ask about a hot tub insert at a retaining wall on 186 Lakeshore Drive. Near the water's edge, the owner is planning to put a portable hot tub within about 10 feet of the property line. Voyles asked if it would be considered a structure. Herb responded that he didn't think that this would be considered a separate structure. Herb stated that a structure has typically been defined as something with a roof over it.

c.) Consideration of changes to the zoning ordinance, including, but not limited to, changes to Section 39-401 (78-89 of municode), Accessory Structures.

Herb reviewed the existing language of the code and stated that, with the municode changes recently approved, the commission revised the language to require a 12.5 foot setback from side lot lines and 40 feet from the rear lot line. Herb stated that he was now proposing additional changes. He read the proposed new language into the record to insert into the existing code following "...and setback 40 feet from any point along the rear lot line."

The proposed amendment is as follows: "Due to the topography and the shape of the lots adjoining Lake Berkeley, an enclosed accessory garage, which has as its primary purpose to park cars inside its structure, may be permitted in the front or side yard of those lots that adjoin Lake Berkeley if it is determined by the planning and zoning commission that the shape and topography of the lot creates a hardship to locate the accessory garage in the rear yard."

Herb stated that this kind of construction would be treated the way that the planning and zoning commission handles the addition of a second kitchen into dwellings.

Huntington asked about the lots not adjoining Lake Berkeley and whether this exception should be provided for other lots, especially if the applicant will have to get approval from the Planning and Zoning Commission. Huntington stated that if other residents who do not live on the lake have strange shape or topography creating a hardship, then perhaps they should be given the same consideration.

Herb went on to explain that he wanted to limit the scope and that the zoning ordinance already provides exceptions for those lots adjoining Lake Berkeley regarding minimum lot area and minimum lot depth.

There was further discussion.

Lombardi asked if we could broaden the language to say that the structure must be used to park motor vehicles. It was agreed that this change would be made. It was discussed that there is no way to prevent homeowner's from converting a garage into a workshop once they've received approval to construct it in the front yard.

Herb stated that he wanted to provide for this exception because this is how the planning and zoning commission has been applying the code in the past.

Huntington stated that he would change the wording around somewhat because it seems like what has been presented is somewhat redundant when topography and shape are mentioned in two places. He suggested changing the wording to the following: "If it is determined by the planning and zoning commission that the shape and topography of the lot creates a hardship to locate an enclosed, accessory garage in the rear yard, an enclosed, accessory garage may be permitted in the side or front yard. This enclosed, accessory garage must have as its primary purpose to park motor vehicles within its structure and must meet the following setbacks..." There was further discussion about rewording the proposed amendment.

Lombardi asked if minimum square footage or minimum dimensions should be specified to determine that the garage is large enough to accommodate the parking of motor vehicles.

There was further discussion.

Herb and Lombardi agreed that the words need to match what the practices are and they need to be enforceable and applicable.

There was further discussion about allowing accessory structures in the front yard and why it may be best to limit the exception to lots adjoining Lake Berkeley.

Lombardi stated that at first it seemed too restrictive to limit the exception to lots adjoining the lake, but he sees some merit to doing it this way.

There was further discussion about making this change, which represents a loosening of the code, but provides the language to be consistent with the common practice in the city.

Huntington stated that he thinks this provides special treatment for those who live on the lake, and he thinks there would be others who didn't live on the lake that may have circumstances that would deserve consideration. He stated that he hesitates to grant something special to just those who live on the lake.

Lombardi asked if the six requirements for a variance would still apply. Herb stated that this change would create a special exception that would no longer require a variance, but applicants would still need to obtain approval from the planning and zoning commission. Threadgill suggested that language be added to clarify the process by which an applicant would go about obtaining approval from the planning and zoning commission.

Herb suggested adding a bullet to Section 39-1201 under the other circumstances, such as when applicants are trying to install a second kitchen, in which building permits require review by the planning and zoning commission.

Threadgill was asked to read the proposed amendment as she understood it. She read the following: "If it is determined by the planning and zoning commission that the topography and shape of the lot creates a hardship to locate an accessory garage in the rear yard, an enclosed, accessory garage may be permitted in the front or side yard (it was determined to eliminate the restriction that this exception would apply only to lots adjoining Lake Berkeley). This enclosed, accessory garage must be set back not less than 12.5 feet from any point along the side lot lines and not less than 65 feet from any point along the edge of the front road and shall have as its primary purpose to park motor vehicles within its structure."

It was stated that the garage being enclosed is critical because carports have not been given variances in the past.

Threadgill stated that she would add a bullet point in section 39-1201 that she will circulate for review.

Herb stated that we could not just continue to do what we've done in the past in dealing with detached garages in the front yard. If the code remains as is, then the practice would need to be modified to be consistent with what the code states, which would not allow accessory garages in the front yard.

It was determined that Threadgill would circulate these changes with the minutes to provide Hammond, who was absent at the meeting, the opportunity to review what was discussed and suggested. In addition commissioners expressed a desire to have Sipe's review and comment on the proposed changes. It was decided that the planning and zoning commission could consider these changes at their next meeting.

V. ADJOURNMENT

Lombardi motioned to adjourn the meeting at 8:40 P.M. Huntington seconded the motion. All were in favor. The motion passed.

(Respectfully submitted by Leigh Threadgill, approved by P&Z August 14, 2007)

**PLANNING & ZONING COMMISSION MEETING & PUBLIC HEARING
CITY OF BERKELEY LAKE
4040 South Berkeley Lake Road
Berkeley Lake, GA 30096**

August 14th, 2007

7:30 P.M.

Full Minutes

Those in attendance at the meeting were as follows:

Chairman: Bob Herb

Commissioners: Frank Lombardi, Rodney Hammond and Dan Huntington

City Administrator and P&Z Secretary: Leigh Threadgill

Citizens Present/Guests: Joe Voyles, David Aldoretta, Michelle Aldoretta, Dov Jacobson, and Judy Jacobson

I. CALL TO ORDER:

Herb opened the meeting at 7:38 p.m. on August 14th, 2007 at 4040 South Berkeley Lake Road.

II. OLD BUSINESS:

a.) Minutes of the July 16th, 2007 P&Z meeting

Lombardi motioned to approve the minutes. Huntington seconded the motion. Herb, Lombardi and Huntington were in favor. Hammond, having not attended the July 16th meeting, abstained.

III. NEW BUSINESS:

a.) Variance - 624 Lakeshore Drive: 24-foot variance to the required 100-foot minimum lot width at the building line, i.e. the lot is 76 feet wide at the building line of the proposed house. (39-804-3)

Herb introduced this variance request to allow a new home to be built on a lot where the lot width at the building line does not meet the minimum 100-foot requirement. He stated that other lot requirements, such as lot area and lot depth, are not applied to lots around the lake, and Herb stated that the lot width requirement was similar to those, but for some reason had not been included. The other things in place are minimum setbacks and a maximum lot coverage of 15% for the building footprint which seems to hold everyone in check regardless of the lot size.

Voyles introduced the project. He stated that the former house was non-conforming and not able to be renovated for many reasons. The house was about 60 feet set back from the front and 6 feet from the left side lot line. The house was not able to be repaired. He

stated that the lot is what it is. It is an extreme lot. It took a little over five months to get the septic system designed and approved, which was inspected four different times as it was installed.

The new structure going in will be conforming in all aspects in terms of height, setbacks, and lot coverage. The only thing that it doesn't meet is the required 100 foot lot width at the front building line. The lot is a registered lot so he didn't think this would be an issue.

There was some discussion about the survey submitted and the location of the proposed house on the lot with relationship to setback requirements.

Huntington asked if the former house had been demolished. Voyles confirmed that it had been.

The new home will be set back further on the lot and will meet all the required setbacks.

Herb stated that there are a lot of discrepancies with the measurements in the information that was submitted, but that he will not get hung up on that, because P&Z can just condition the variance to meet all the applicable requirements.

Hammond stated that the issue is what can be fit on the lot to meet the zoning requirements. Voyles stated that there is no way to meet the 100-foot lot width at the front building line because the lot is existing.

Huntington asked how wide the fishing lots are around the lake. Herb stated that it depends on the definition of a fishing lot, but that he would define it such that you couldn't meet the setback requirements. Huntington asked how many more lots would be like this one, too narrow at the front building line. There was further discussion.

Herb stated that most cities have stipulations for existing lots of record. Herb stated that the main control for keeping the house from being too large on a lot is by imposing the 15% maximum lot coverage requirement and all the setback requirements.

Hammond asked for confirmation that the variance was just for the reduced lot width at the front building line, but that all other setbacks and zoning requirements would be met. Voyles confirmed that that was true.

Huntington asked why there is a minimum lot width. Threadgill stated that the minimum lot width is required to regulate the creation of new lots.

Ms. Jacobson stated that she understood each lot to be 40 feet across and that you need three lots to build. She stated that there is another place where there is just 80 feet, comprised of two 40-foot lots. Herb stated that there is no code requirement that you would need 3 40-foot lots to build. She stated that this lot is 76 feet from edge of property to edge of property and then 25 feet comes out of that to meet the required side

setbacks. She went on to discuss the location of the septic system. Herb stated that environmental health approved that.

Herb reminded the commissioners that for a variance to be granted there are certain conditions that have to be met. He went through the conditions, which are enumerated in the code. The first is the big hurdle, which is that there are extraordinary or exceptional conditions relative to the size, shape or topography of the lot which make the variance necessary. Herb stated he believes this application meets that and all other conditions.

Hammond asked if this was a case where the whole structure could be looked at and additional requirements could be imposed to mitigate the impact on neighboring properties since this is such a small lot.

Herb stated that in other cases P&Z has allowed a variance, but would impose a more stringent requirement in other areas to minimize the impact of the variance. The example that he used was when variances to front setbacks are granted, the maximum height is reduced to mitigate the impact.

Huntington stated that, in this case, the impact to neighbors should be no different if the setbacks are still being met.

Herb stated that the difference is that most people don't just adhere to the minimum setbacks on the side, they easily double them. Huntington stated that if it is really beneficial to have greater setbacks, then we should make that the rule. If 12.5 feet is sufficient, then we should allow that.

Lombardi stated that this is a small lot, but that he agrees with Huntington that if the setbacks are being met, then that's all that matters.

Voyles went on to say that the house will end up posturing similarly to 186 Lakeshore Drive in terms of the front yard and how the house sits on the lot. It won't dominate on the street side.

Huntington sees this as being quite a bit different than if someone was trying to subdivide the lot to make the lot too small.

Herb stated that he still didn't know why we shouldn't require greater setbacks to mitigate the impact.

Huntington stated that when the house is imposing, he understands setting more stringent requirements, but in this case, he doesn't see that this is necessary.

Ms. Jacobson said that this house will impose a lot more on them because it is a big house and much more visible on a small lot and what was there previously was a much smaller house.

Huntington said that it isn't more imposing than what would be allowed if the lot had been 100 feet wide at the front building line.

There was further discussion.

Huntington asked if the lot happened to be 100 feet wide at the front building line, then couldn't the same house be put on this lot. If so, then how is this any more imposing?

Mr. Jacobson stated that one thing that hasn't been discussed is the position of the house. This house is going to be down at the lake when most of the other houses are set up toward the street. It will be visible from the lake and from his house looking down at the lake. He stated that there is no concept of registered lots in the ordinance but there is the concept of grandfathering, which is that the house should be rebuilt on the same footprint.

There was further discussion.

Herb noted that the position of the house is being dictated by the city's zoning requirements.

There was further discussion about the issue of grandfathering and it was discussed that what is proposed is conforming to the zoning regulations.

Lombardi said then it seems we would be approving a variance for a non-conforming lot and that we would be setting a precedent to open the door to allowing variances for structures to be built on other non-conforming lots.

Herb stated that variances are not precedent setting, but that each variance is individual.

Herb reiterated that if lake lots were exempt from lot area and lot depth, then he questioned why is width being imposed? He believes this was an oversight in code and possibly an error in lot width not being exempt.

Herb stated that it all stays in check and in proportion because of the other requirements such as lot coverage, setbacks, etc.; in addition, the P&Z can impose greater restrictions.

There was further discussion.

Herb stated that as a condition to this variance he would recommend that a certified survey needs to be provided prior to certificate of occupancy. If the survey indicates any requirements not being met, then the c.o. will not be issued. Herb suggested that surveys also be done at the time of the footers. With this one being so close, then it is all the more significant to ensure that requirements are being met.

Hammond asked about the impact of the location of this house on the neighboring properties. Ms. Jacobson stated that a lot of trees had been removed, it's hotter and there is less privacy. She expressed concern about runoff. In addition, there are boards and dirt

on her land. She is concerned about how that is going to be cleaned up and how the drainage is going to work. She is also concerned about the stability of the hill. It is a very steep hill. In addition, one of her trees was loosened and is now leaning severely.

Hammond stated that he asked this in terms of the guidelines that the P&Z is supposed to follow when granting the variance.

Herb stated that the decision should be made about the impact on the public in general, not the homeowners that are here at the time. The spirit is to worry about the community at large.

There was further discussion.

Hammond stated that we do need to consider the public good.

Huntington stated that he does care about the point in the conditions for a variance to be granted which states “relief if granted would not cause substantial detriment to the public.”

Huntington motioned to approve the variance as requested with the following conditions: 1.) the maximum height on the front is met; 2.) the maximum height on the rear is met ; 3.) the front setback is met; 4.) the rear setback is met; 5.) the side setbacks are met; 6.) that the maximum lot coverage is met such that the square footage of the buidling footprint including all decks and roof overhangs would be within the maximum square footage of 15% of the total lot area and 7.) before a c.o can be issued, an as-built survey shall be provided proving that the structure meets all these zoning requirements . Huntington asked if we can simplify that to say that all ordinances other than lot width will be met.

The motion was amended to approve the variance as requested with the following conditions: 1.) all minimum and maximum requirements stated in 39-804, *Area, Yard Coverage, Height and Supplementary Regulations*, shall be met, except the minimum lot width and 2.) before a certificate of occupancy can be issued, an as-built survey must be submitted proving that the structure meets all zoning requirements per condition 1. Lombardi seconded the motion.

There was further discussion. Lombardi stated that this variance has no bearing at all on the design of the house. He asked Voyles how many bedrooms it was approved for by Environmental Health. Voyles responded 2 bedrooms.

Herb stated that the deck shown on the plans will not be permitted because it will exceed the maximum lot coverage of 15%. His calculations show that the house already exceeds that requirement. In addition, if the roof overhangs are 16 inches over then that should be included. Voyles asked if the footprint for the purposes of determining the maximum lot coverage of 15% included the roof overhangs. Herb stated that it does, it is the bird's eye view. Voyles stated that he didn't realize that.

Mr. Jacobson asked about all the other 80-foot lots. Herb stated that there is no precedent because every other variance is individual and independent. However, there is nothing that would prevent those lots from coming in for a variance.

There was further discussion.

Huntington stated that he understood the Jacobson's concern, and that if the variance was for an encroachment into the setbacks that would be different.

Lombardi added that the 15% maximum lot coverage was also keeping things in check.

All were in favor.

b.) Consideration of changes to the zoning ordinance, including, but not limited to, changes to Section 39-401 (78-89 of municode), Accessory Structures.

Herb stated that some of the changes are coming from the Building Process Review Committee which is looking at what is required at the time of permit application.

The commission went through the draft changes one by one.

Herb stated that the accessory structure code needed to be reformatted to move the (a) after the first paragraph. There was further discussion. Threadgill stated that she would work on formatting that section of the code and circulate proposed changes to the P&Z.

There was discussion about enclosure of boathouses. It was discussed that no walls could be solid, and this needs to be captured in the code. In addition, there was discussion to add that the furthest point of the enclosure couldn't be further than 10 feet from the shore.

There was further discussion about boathouse enclosures and how to write the code to achieve the intent.

Herb went through the changes to the building permit requirement section of the code.

Lombardi raised some concerns about what is being required especially with regard to septic locations. In some cases, the location of drain fields is not easy to find, even with a survey. The field lines would have to be dug up to determine their location.

Lombardi asked if the county would require different information to be submitted than the city. Lombardi asked about the costs involved to provide information to the city.

There was discussion about the setback notations and the need to change the code to state that setbacks must be met from all points along the applicable property line.

There was discussion about the requirement of a survey and how to word these changes so that it wouldn't be implied that a new survey showing all of this information would be required.

There was discussion about changes to the variance sections of the code.

Lombardi motioned to approve the changes with the modifications discussed here. Hammond seconded the motion. All were in favor. The motion passed.

Threadgill will circulate proposed changes with the modifications discussed to P&Z for their review and approval.

IV. CITIZEN COMMENTS

V. ADJOURNMENT

Huntington motioned to adjourn the meeting at 9:20 p.m. Hammond seconded the motion. All were in favor. The motion passed.

(Respectfully submitted by Leigh Threadgill, approved by P&Z October 8th, 2007)

**PLANNING & ZONING COMMISSION MEETING & PUBLIC HEARING
CITY OF BERKELEY LAKE
4040 South Berkeley Lake Road
Berkeley Lake, GA 30096**

October 8th, 2007

6:30 P.M.

Full Minutes

Those in attendance at the meeting were as follows:

Chairman: Bob Herb

Commissioners: Craig Belt, Rodney Hammond, Dan Huntington and Frank Lombardi

City Administrator and P&Z Secretary: Leigh Threadgill

Citizens Present/Guests: Walter Anderson, Julia Distlehurst, Kathryn Robsinson, Linda Craig, Jim Gilpatrick, Lydia Gilpatrick, Eric Johansen, and Fred Victor

I. CALL TO ORDER:

Herb opened the meeting at 6:35 on October 8th, 2007, at 4040 South Berkeley Lake Road.

II. OLD BUSINESS:

a.) Minutes of the August 14th, 2007 P&Z meeting

Lombardi motioned to approve the August 14th minutes. Hammond seconded the motion. All were in favor. The motion passed.

III. NEW BUSINESS:

a.) Consideration of Proposed Berkeley Village Preliminary Plat condition revision pertaining to hours of operation

Eric Johansen of Crescent Development introduced this project. He stated that he is the developer of Berkeley Village at the corner of Peachtree Industrial Boulevard and North Berkeley Lake Rd, which is currently under development. There has been a request from Snap Fitness, a potential tenant, to change one of the preliminary plat conditions regarding hours of operation. The request is limited to retail uses. Snap Fitness has set hours of operation and after those business hours the business is self-sufficient and would allow clients to have key card access and everything in the building would be automated. It isn't manned during a 24-hour period, but is available for use for a 24-hour period.

Johansen introduced Fred Victor from Lavista Associates who represents the landlord that brought the tenant to the development. Johansen went on to say that he estimates less than 5% of the people that utilize this facility will utilize it during these odd hours, but this is Snap Fitness's business model. It is a new concept coming to Georgia, and Johansen believes they would be an attribute in this location. He stated that he had

worked with the City Attorney to draft the proposed language and is now submitting it for consideration by P&Z. He directed the attention of the commissioners to the amended language on the preliminary plat.

Herb stated that the purpose of zoning is to regulate land uses. Theoretically, it is used to segregate some uses from others and it ends up being used as a permitting system in practice to prevent new development or development changes from harming residents and surrounding citizens.

Herb gave the background of the preliminary plat condition regarding hours of operation and stated that there were specific businesses legislated to be permitted in this development. Originally, the hours of operation were limited to 6a.m. to 12 midnight. It was meant to prevent all-night drinking facilities and uses of that nature. The proposed Snap Fitness use was never envisioned when the original condition was applied

Herb read the wording of the amended condition into the record. "The normal hours of business operation shall be limited from 6 a.m. to midnight for all retail uses with the exception of an automated fitness facility. The automated fitness facility shall be allowed to operate as a 24-hour business provided the staff hours of operation do not exceed the normal hours of operation previously approved for the development."

Hammond asked about security when there is no attendant. Victor stated that he does not represent Snap Fitness but represents the landlord for the property. He went on to say that access will be limited, and a key card will be used. In addition, there will be sufficient exterior lighting and a security system on the premises. All of those are thought to be sufficient for the landlord's purpose. Johansen added that there are cameras that can be accessed remotely showing who is using the facility. The onus is on the owner to be sure that security is tight because that will ensure continued use of the facility. Johansen stated that he can not answer a question about what happens in the parking lot. He stated that he would let Gwinnett police know about the use. Huntington added that it may help keep suspicious activity from occurring in the parking lot if adults are going up to use the facility.

Huntington asked if there are any concerns. Herb responded that he doesn't see anything wrong with it. He doesn't think that it will harm any of the citizens that were meant to be protected by the original conditions. From a noise, light, and traffic impact, it doesn't seem to have any further impact than what was originally intended.

Huntington asked do we even need the clause that we will not allow them to staff it from 12 a.m. to 6 a.m. Johansen stated it was worded that way to avoid opening a can of worms so that other users wouldn't have the argument that they deserve a 24-hour operation.

Lombardi stated that he has a concern that other businesses may want extended hours to their facility if we amend this condition.

Herb noted that it would be up to P&Z to approve each one on an individual basis. Lombardi stated that there is nothing to say that it stops here and the original intent of limiting the hours was serving some need, some purpose, some concern. Herb added that that was to reduce noise, traffic and light. Lombardi believes that other businesses may approach us if we approve this change. Herb stated that he doesn't know how many other businesses would have a business model similar to this.

Walter Anderson, 551 Lakeshore Dr., asked to clarify the distinction between the hours of operation and the fact that janitor services, for example, could be provided after hours.

Johansen says that we have already limited the businesses that can go into this development.

Hammond motioned to approve the amended condition to the preliminary plat as submitted. Huntington seconded the motion.

Lombardi asked if retail was limited to certain area on the development. Johansen stated the distinction between retail and office uses was noted on the plat. Lombardi asked if this amendment only applied to that portion of the development for retail uses, and it was answered that that was correct, the amended condition only applied to the retail portion of the site.

Lombardi asked if council would review this. Herb stated that it would go before council for approval.

Lombardi noted that one of his concerns would be an increased cost of police patrol of the proposed use.

Huntington, Hammond, and Belt voted in favor. Lombardi abstained. The motion passed.

b.) Consideration of changes to the zoning ordinance, Section 39-811.2, Home Occupation Exemptions

Herb stated that Anderson would be going through these wording changes. Herb reiterated the purpose of zoning to permit appropriate uses that don't harm the citizens. In addition, we should enforce the code that we have and be sure that the practice and the code are consistent.

Anderson began by giving some history on this topic. He stated that council had heard an appeal to a citation two meetings ago, which council denied. Council assigned the City Administrator, Threadgill, and Council member Anderson to look at the home occupation code and to determine if there were appropriate changes that could be made to the code to address some of the home businesses that exist in the city. It became apparent fairly quickly that this is an example where we have code in place that hasn't been enforced. This does become a question of how we want the city to treat certain classes of home

businesses. Up until now, they've been treated by looking the other way. Anderson stated that he and Threadgill researched other municipalities and considered the relationship of the changes to the community in Berkeley Lake. Anderson noted that 39-811.2 (4) adequately summarizes the conclusion he and Threadgill came to regarding the nature of these kinds of uses and the positive impact they have on the community. To summarize, within specific limits, child care and educational activities are exempt, which includes daycares up to a limited size, tutoring, piano instruction and so forth. The only section of current code that these uses violate is that there would be added traffic coming to these businesses. The real impact is to determine what limits are reasonable and what would be an acceptable additional burden of traffic. None of the other restrictions on home occupations have been permitted with this code change, but just the increased traffic. What we have is something that would permit us to enhance our community to allow things that are a benefit to our neighbors and ourselves. The net impact would not be harmful to the community in terms of added traffic. The number of students or the number of kids in daycare is a knob that P&Z can turn as well as hours of operation in considering this change. The limits we came up with here are what we think are reasonable in terms of the operation of the business but would also reduce the side impacts on neighbors.

Herb stated that there are some additional sections of current code that would be violated by the home occupations proposed in this change. The first is 39-811.1(2) which requires the home occupation to be conducted within an existing dwelling unit or enclosed accessory structures. Daycares will be operated at least some of the time outside of the home, which would violate this subparagraph. In addition, it would violate 39-811.1(6) that customers and clients can not come to the premises.

Herb stated that the original intent was for home businesses to be invisible to the neighbors. The area that is difficult for this amendment is that these uses may not be invisible. Herb stated that a previous council heard a request to put a school in a residential district, and it was turned down. The daycare use has become an issue because of a complaint that was received by city hall.

Herb stated a concern that we may end up with an influx of daycare uses in a concentrated area, which would have a traffic impact. We weren't built to handle that kind of traffic. How do you prevent these from lining up next to each other on a street? Everyone would recognize that we don't want that to occur, but you have to think of that worst case scenario.

Belt asked about what size daycare would require state licensing. Anderson responded that he and Threadgill are researching how many kids would warrant that registration or licensing. He went on to say that the registration and licensing requirements do change depending how many children are in the daycare.

Kathryn Robinson, 4710 Berkeley Walk Point, stated that you don't have to be licensed to keep children. One of the reasons that she moved into Berkeley Lake is because it's like a small town and finding child care around the corner is hugely beneficial. If you

change this then you are changing things that are vital to the community. If you can take your child to piano teachers and to a neighbor for child care, then she can be at home. She added that this amendment should not be denied just because of the worst case scenario happening. She stated that she hopes that this won't be taken away. She also drew a distinction between in-home daycares and schools.

Lydia Gilpatrick, 4614 Briar Hill Cove, stated that she is running a home day care and is not licensed with the state.

Anderson noted that that is something that we are asking for as part of a requirement for family day care homes. Anderson stated that the correct word may be registering and not licensing, but we're still looking into that. The suggested code change makes a clear distinction between a daycare situation and a tutor or piano teacher in terms of the number of children at the home. In the tutoring situation you would be permitted up to 2, but the daycare use permits up to 6. Anderson stated that we are differentiating between the daycare use and the educational use.

Anderson stated that there is already an exemption for certain businesses to receive clients at their home. The list is limited, but that door is already open. He is not aware that that has been abused by anyone in the city. We would also not permit any of the new exemptions to abuse the limits placed on them.

Huntington asked if there were citizens with opposing viewpoints or further input.

There were no citizen comments to this request.

Herb stated that p&z has to answer first the question of should these type of businesses in some form be allowed and if the answer is yes, then we should go down the rabbit hole of determining what boundaries to put around such exempt businesses. Further, if we decide to go down this hole, p&z needs to do everything it can to make these businesses as invisible as possible. Herb stated we we're here to protect citizens who bought a home and they want the area they live in to keep the feel of a residential neighborhood.

Hammond wanted to hear more about the research that was done to arrive at the proposed code changes. Threadgill stated that she looked at codes from nearby cities, but particularly at codes from Duluth, Sugar Hill and Roswell because they had more specific verbiage dealing with these kinds of uses. In addition, she and Anderson tried to craft language to deal with some of the specific concerns that were voiced about the use.

Hammond asked about the number of children permitted for daycares. Threadgill stated that six was the number that she saw in other codes. Anderson stated that he researched in-home daycares across the nation. He found that they were either consistent with what Threadgill stated or that they were similar to our current code and that the municipality turned a blind eye to enforcement against these uses.

Lombardi asked if these changes would address the concerns of the neighbor who complained. Anderson stated that he could not answer that. He stated that the complaint was anonymous so it was not possible to follow up with the complainant to determine whether we were addressing his concerns.

Herb asked about the email from Mayor Salter and what that stated about the anonymous complaint. Commissioners acknowledged that they had received an email from Salter with the concerns from the neighbor that were essentially the increased traffic and noise from outdoor play.

Herb reiterated that P&Z needs to answer the question about whether we want to allow these types of businesses first and then we should do down the rabbit hole to define the boundaries for such businesses.

Huntington stated he has a hard time legislating based on the thought that the absolute worst case scenario is going to come true. The concern about having one after another coming in seems unreasonable. If we realize that we've made some mistake, we can come back and change the code to limit daycares to a certain density. He stated that he thinks it's highly unlikely that we will have that problem. Whatever we do, we can come back and revisit it later.

Lombardi asked if there is any permit requirement for home-based business. It was discussed that that could be added to the code, that these businesses could be registered with the city, but home occupations are not currently required to be registered. Threadgill added that it may be something that can be captured in the occupation tax and business license process, once we get that process begun.

Lombardi stated that the intent of this section of the code is to have invisible businesses. Herb stated that the current code was put in place as it was realized that several undesired businesses wanted to come into the residential neighborhoods. The current code was changed along the way as it was realized that businesses wanted to come in to residential neighborhoods. This was drafted to prevent some of the businesses that were trying to start up in homes in the city.

Julia Distlehurst, 235 Lakeshore Drive, stated that she is a piano teacher. She stated that she bought property in the 70's and before they closed on their home they asked if she needed an SUP to teach piano in the home. They were told no, it was a service to the community. She stated that she has taught in her home for many years. Historically, some time in the early 90's, Berkeley Lake went through this exact same thing. It was huge and hit the news. It was resolved. Her memory isn't clear as to who was on council at the time, but in the resolution of it Gwinnett Daily Post took pictures of Julia teaching in her home. Julia did not know that she was operating illegally until the issue with the daycare came up. She was shocked to find out from City Hall that the resolution from the early 90's unfortunately no longer existed. She encouraged the code to be written to resolve this so this doesn't come up again. This is something that needs to be solved and put in writing so every resident is aware of it. Teaching piano is a protected cottage business. In

addition, piano teaching has historically been taught in the home and been protected as a cottage business because that's the norm for delivery of service. Music teaching is like tutoring and considered an educational service. She has no more than 2 cars at her home at any time. It's a student coming and one leaving. Noise never can be an issue. She owns one piano, and only two people can sit there at once. Julia knows all about her clients and families, so she knows that the people coming to her house are safe. One of the people that has always been very vocal about this is George Sipe. His daughter was on the waiting list for Distelhurst for 7 years, and she ended up referring them to the piano teacher she's taking from now who works in a neighborhood in Duluth. For piano teaching, this came up in 2000 in Dekalb County. It was well documented and was in the news. Someone complained about the piano teacher and she won her case. The code was re-written in Dekalb County as a result of her case. Music and tutoring are protected in Dekalb County as a provision of educational services rather than being considered a business.

Distlehurst asked Linda Craig to come to speak on her behalf and has two letters from others in support of her services. She noted that her piano teaching is her sole income, and if she were cited she would have to sell her house. Distlehurst submitted the letters to P&Z for their review. She stated that way back when she was told that she was safe as long as she kept her nose clean, but did not know that some time after that the code dealing with home-based businesses was re-written.

Linda Craig, 569 Lakeshore Drive, stated that this has been educational. She is surprised that there is no provision for this kind of business because of the benefit to qualify of life and enrichment of the community for this kind of use to exist. She sees that there is a difficulty in trying to write verbiage for uses such as piano lessons as well as daycares. If you need to deal with them on a case-by-case basis then you can do that so that you can have the enrichment but still regulate these businesses. She can't imagine living in a community that doesn't allow provisions for these kinds of businesses. We're an intelligent enough community to make these provisions and get the language in the code and not compromise our residents.

Lombardi stated he was very comfortable recommending Section 39-811.2 (4)(a). There was discussion about the distinction between the educational services and the daycare uses.

Belt stated that he is not sure that these kinds of businesses are illegal. He is not convinced that the current code prohibits them.

Lombardi stated that this is like a delivery of service exemption and could be added to 39-811.2(3). There was discussion.

Huntington stated that some of the other conditions related to that then would have to be changed. Herb added that we probably do need to treat the educational services as a separate class of business because they are different from architects, attorneys, etc., which are already covered under the code.

There was further discussion.

Belt stated that by specifying the uses someone may perceive that we are trying to crack-down and harshly limit these businesses, even if our intent is to somewhat loosen the code. Lombardi stated that adding businesses would be seen as loosening the code, however tight the restrictions are perceived.

Herb noted that there is consensus to do some verbiage changes for the educational uses such as tutoring, arts, music, and dance.

Herb asked about the daycare use. Lombardi stated that he has a big problem with it because of the impact on the neighborhood.

Jim Gilpatirck, 4614 Briar Hill Cove, stated that they have run their daycare for a number of years and had no idea they were in violation by running it. They are willing to deal with whatever restrictions the city would put them under. You can't drive by and know that anything is going on there. The total number of customers is very small and they depend on this business for income to support the family. He doesn't know that he sees a great deal of difference between tutoring and the daycare use.

Herb asked how many customers the Gilpatricks serve. Lydia Gilpatrick responded 2 full-time kids and one part-time.

Huntington stated that he is in favor of all of it and doesn't see a difference between the uses in terms of traffic. There was further discussion.

Several commissioners stated that they aren't comfortable with six, but that they would be more comfortable with fewer kids for a daycare use.

Huntington asked where the number 6 came from. Threadgill stated that that is the norm in the research that she reviewed in other jurisdictions codes and believes it comes from the state definition of a family day care home.

There was discussion about the registration requirement for family day care homes with the state and whether the city would want to require registration with the city.

Distlehurst asked why we wouldn't consider the number 6 if that's what the research supports. She noted that she deals with a lot of families that have lots of kids who would make noise. Herb and Anderson responded about the significance of the number 6. The state probably draws the line at 6 for a couple of reasons. One is for enforcement and how many resources the state wants to designate and the other is for ratios of adults to kids.

Huntington noted that even for a daycare, all the kids are not going to be dropped off at the same time.

Huntington motioned to approve the code amendment exactly as written.

There was discussion.

**Huntington amended his motion to approve the code amendment as written.
Lombardi seconded the motion.**

Hammond and Lombardi noted they had no objection to 39-811.2(4)(a). Herb stated that we should amend condition 3 because there is no other way to meet that. Herb stated that it could be amended to add the specific requirements that do not need to be met, which are paragraphs 5 and 6 of 39-811.1. There was discussion.

Herb asked for discussion about the daycare use. Hammond asked which cities stipulated 6 kids. Threadgill stated that everyone that she remembered reviewing did that. She stated that Duluth, Roswell and Sugar Hill all reference 6 kids. Threadgill added that Duluth limited the number to 6 including the provider's own children. Hammond added that by comparison we wouldn't be as restrictive with the amendment as proposed.

Belt asked if someone is babysitting one child do they need to be licensed.

Gilpatrick added that you can't register if you have 2 or fewer children, but you can be registered with more than 2, although registration isn't required.

There was discussion about whether the city should register these businesses.

Belt stated that the noise is the only thing that would seem objectionable to him with the home daycare.

It was determined to remove subparagraph 4 which states that the use must meet zoning requirements after discussion about the intent behind this restriction.

There was further discussion about the number of children. Gilpatrick added that they have never kept more than 4. After additional discussion, commissioners came to a consensus that they would reduce the number of kids permitted for daycare uses from 6 to 4.

There was discussion about the hours of operation and it was determined to amend them to be 7 a.m. to 7 p.m.

There was discussion about the hours of outdoor play and it was determined to amend them to be 10 a.m. to 7 p.m.

There was discussion about eliminating 39-811.2(b)(4) and 39-811.2(b)(5). It was determined to eliminate both paragraphs.

It was suggested to add a paragraph “all other requirements of 39-811.1 must be met with the exception of subparagraphs (2), (5) and (6).

The motion was amended with the following changes: 1.) Section 39-811.2 (4)(a)(3) is amended to include at the end of the sentence “except subparagraphs (5) and (6).” 2.) Section 39-811.2 (4)(b) is amended to reduce the number of children from 6 to 4. 3.) Section 39-811.2 (4)(b)(2) is amended to allow hours of operation to be from 7 a.m. to 7 p.m. 4.) Section 39-811.2 (4)(b)(3) is amended to allow outdoor play time to occur from 10 a.m. to 7 p.m. 5.) Section 39-811.2(4)(b) is amended to remove subparagraphs (4) and (5). 6.) Section 39-811.2(4)(b) is amended to include a new subparagraph (4) stating that “all other requirements of 39-811.1 must be met, except subparagraphs (2), (5) and (6).” Hammond seconded the motion.

The approved text amendment is as follows:

4. The following uses are permitted for the care of children, and for both adult and child educational purposes in recognition of the benefits that child care and educational home occupations provide to the community at large.
 - a.) Instruction in music, dance, arts and crafts, or tutoring services within an enclosed building, but limited to two pupils at one time, is permitted subject to the following:
 1. Clients are permitted between the hours of 7:00 a.m. and 9:00 p.m.
 2. Off-street parking must be provided and utilized.
 3. All other requirements of 39-811.1 must be met, except subparagraphs (5) and (6).
 - b.) The care of not more than four (4) children for compensation is permitted subject to the following:
 1. Off-street parking must be provided and utilized.
 2. The hours of operation shall be limited to 7:00 a.m. to 7:00 p.m.
 3. Outdoor play shall be limited to occur between the hours of 10 a.m. and 7:00 p.m.
 4. All other requirements of 39-811.1 must be met, except subparagraphs (2), (5) and (6).

Belt stated he would like to go on record that he is not in favor with this much detail that he would take a different approach. He would leave it a lot less defined. He would include babysitting, tutoring and music teaching in the exemptions already provided in the current code. He believes it will be difficult to enforce at the city level.

There was discussion about hours for educational services and whether they need to be changed. It was decided to amend the hours of operation for educational services to be 7a.m. to 9 p.m.

Huntington amended the motion again to include all the above amendments as well as to amend 39-811.2(4)(a)(1) to change the hours of operation to be 7 a.m. to 9 p.m.

Hammond, Huntington, and Lombardi voted in favor. Belt voted in opposition. The motion passed.

c.) Consideration of proposed text changes to Section 39-1401, Variances; Application for, Notice and Procedure

Herb introduced this text amendment and explained that the recommendation is to add a paragraph 3 in Section 39-1401, municode section 78-366. This amendment outlines what documentation applicants are to provide when they apply for a variance. Herb read the proposed language into the record: "All applications for variances shall be accompanied by all the building permit documentation that is detailed in Section 78-317 (d). In addition, applicants shall demonstrate to the planning and zoning commission how the subject property meets all the conditions detailed in Section 78-366 (1) items (A) through (F) or Section 78-366 (2) items (A) through (F), whichever pertains to the application under consideration."

Lombardi asked what it means to demonstrate. There was discussion about what needs to be submitted with a variance application.

Huntington motioned to approve the text amendment. Hammond seconded the motion.

There was further discussion about the definition of "demonstrate."

All were in favor. The motion passed.

IV. CITIZEN COMMENTS

There were none.

V. ADJOURNMENT

Huntington motioned to adjourn the meeting at 8:50 p.m. Lombardi seconded the motion. All were in favor. The motion passed.

(Respectfully submitted by Leigh Threadgill, approved by P&Z on December 4, 2007)

PLANNING & ZONING COMMISSION MEETING & PUBLIC HEARING
CITY OF BERKELEY LAKE
4040 South Berkeley Lake Road
Berkeley Lake, GA 30096
December 4th, 2007
7:30 P.M.
Full Minutes

Those in attendance at the meeting were as follows:

Chairman: Bob Herb

Commissioners: Craig Belt, Frank Lombardi, Rodney Hammond and Dan Huntington

City Administrator and P&Z Secretary: Leigh Threadgill

Citizens Present/Guests: Irene and Wayne Gowens and Jennifer Lombardi

I. CALL TO ORDER:

Herb opened the meeting at 7:38 p.m. on December 4th, 2007 at 4040 South Berkeley Lake Road.

II. OLD BUSINESS:

a.) Minutes of the October 8th, 2007 P&Z meeting

Belt motioned to approve the October 8, 2007 minutes. Huntington seconded the motion. All were in favor. The motion passed.

III. NEW BUSINESS:

Herb stated that item (b), which is an appeal of the Ordinance Enforcement Officer's interpretation of the sign ordinance, should be taken out of the purview of P&Z and changed to be a council function since this is not code that was authored by P&Z and doesn't fit into the zoning ordinance.

a.) Variance - 537 Lakeshore Drive:

Irene Gowens, 537 Lakeshore Drive, introduced the variance application. She stated the existing house has a small deck off the back of the kitchen. They would like to expand that deck lengthwise to be the full length of the back of the house. The space back there is unusable. It is a natural, leafy groundcover. The goal is to install doors from the dining room out to the expanded portion of the deck to update the house, improve the house, and expand usable space. It's just a deck and not an addition.

Herb stated that the first criteria for P&Z to hear this request is to be able to prove that there is something unusual about the size, shape or topography that prevents the proposal from adhering to the code. Herb stated that he can't see that there is anything that prevents them from adhering to the required 40-foot rear setback requirement.

Herb reiterated that on any property there has to be something unusual about the size, shape or topography in order for a variance to be heard. This request is to make the situation even worse than it is today. P&Z can not approve a variance request if they don't agree with you that there is something unusual about the lot. P&Z can only make exceptions to the code requirements when there is a situation that makes it impossible from someone to meet the requirements of the code. Herb stated that he can't see that they meet that hurdle.

Herb stated that we are in the process of changing the code, which is proposed to say that on non-conforming properties, you don't have to meet that hurdle of size, shape and topography, but you would not be permitted to increase the nonconformity. In this case, the proposal would increase the non-conformity. Either way the application doesn't meet the requirements of the current code or the proposed changes to the code.

Irene Gowens stated that there is a 40-foot buffer behind them and that they are at a disadvantage because the house was originally built so close to the rear property line and it is non-conforming. Having the 40-foot buffer behind the house helps in terms of the impact on the neighbors. The only thing that will change from the perspective of a neighbor is a wood deck would exist instead of a leafy cover. They aren't trying to add-on a room. She stated that this project will update the house and increase the value of the property and the aesthetics of the property. She stated that it will look nicer in the backyard with this improvement.

Wayne Gowens stated that it is virtually unusable space there now. He added that Commissioner Hammond had been to the site to examine the situation.

Hammond stated that the code is clear and the practice has been to uphold the code unless there has been unusual hardship. As much as he is sympathetic with the intent to improve the property, he doesn't see how P&Z can approve this variance and uphold the responsibility that P&Z has with the existing codes.

Huntington asked if the 40-foot buffer was part of Miramont. Ms. Gowens responded that the buffer was not on her property. Herb stated that It is likely owned by the Miramont HOA. Herb stated that the 40-foot buffer was required to be in addition to the 40-foot rear setback. Herb stated that the code doesn't allow them to consider the buffer.

Lombardi asked about a discussion that occurred in P&Z regarding a fence in a buffer zone. Lombardi stated that the ordinance was changed to allow fences in the buffer zone. He recalled the discussion that if it was in the buffer and unobtrusive then the fence would be permitted. Maybe the conditions for a fence might apply to this.

Hammond stated that as the code stands now, there are not grounds for granting a variance.

Lombardi asked about the installation of hardscape if it weren't attached to the house. Belt and Herb stated that that could be done without a variance. The key is to not attach the hardscape to the house so it doesn't become part of the structure.

Ms. Gowens asked if for a variance to be granted the applicant would have to demonstrate extreme hardship. Herb responded that they would have to demonstrate that there was something unusual about the size, shape and topography of the property.

Herb stated that if the deck was hardscape and not attached to the house, then that would be permissible without a variance. It would just require a permit.

Belt stated that the house is very near to the rear lot line as is.

Threadgill read the section of the code related to exemptions for fencing in buffers, which is Section 78-368.

There was discussion about whether the applicant would withdraw their application.

Ms. Gowens asked about the procedure for variances and the conditions that had to be met regarding hardship.

Hammond stated that certain conditions have to be met for an application to be made. Even if the conditions have been met, it is a deliberative process as to whether or not granting the variance would create an undue hardship on the applicant.

Herb stated that variances are typically granted for 10%, 15% or 20% of the requirement and the request before P&Z now is for 80%.

Hammond stated that in general P&Z tries to get properties more in line with the code. If there is some way to do that with any particular variance request, that is helpful.

Herb stated again that there is an option for the Gowens to do the hardscape if not attached to the existing structure.

There was further discussion about the hardscape option and whether or not steps could be protruding off the side of the existing deck.

Lombardi stated that there is nothing that says they can't build a new wooden deck at the same elevation as the existing deck as long as there is a quarter of an inch from the existing house and existing deck.

Herb went on to state that that is not in the spirit and intent of the ordinance, but that would be permissible.

The Gowens chose to withdraw their variance application.

b.) Appeal of Ordinance Enforcement Officer's Determination regarding definition of "construction sign", Section 62-2.

Herb recommended that Lombardi recuse himself from consideration of this agenda item due to a conflict of interest. Lombardi agreed to do so.

Jennifer Lombardi stated that the way staff interpreted the ordinance didn't cover the kind of contract that she has with homeowners. The way staff interpreted the code and the mechanisms they had at their disposal to enforce the code was to use existence of a valid permit to determine whether construction was proposed or existing. She stated that she may have a contract with a homeowner to design the building for up to 12 months before needing a building permit. She contests that she should have a right, like a real estate agent may have a house on the market for 6, 9 or 12 months, to have a sign while a house is being designed. Lombardi stated that she would provide a contract.

Herb asked Threadgill what code was interpreted to make this determination. Threadgill stated that it was the definition of "construction sign" that was considered.

There was a short recess while Threadgill researched other code pertaining to the regulation of construction signs. Threadgill read the additional code related to construction signs, but stated that the issue was at what point the sign could be erected, and that determination was based on the definition of a construction sign.

There was further discussion and it was determined that if there is a contract then that would be sufficient evidence of proposed construction and the sign could be erected.

Huntington asked about work that would not require a permit but for which a contractor would want to erect a sign such as a house painter. We don't want such contractors to have to get a permit in order to put up a sign.

Jennifer Lombardi stated that if the city staff wanted to verify that there was a contract then the homeowner could provide a letter stating that there is a contract without the actual contract needing to be provided to city hall. She continued that it may not be useful for contracts to be stored at City Hall, but staff would need proof of the contract.

Huntington asked whether or not it would be burdensome for city staff to call and ask for a contract.

Herb stated that this is one instance and P&Z is responsible for hearing the appeal on the staff interpretation.

Threadgill stated that once P&Z makes its interpretation, such interpretation will provide a guide for staff moving forward for how they will handle these types of signs.

Huntington motioned to grant the appeal under the existing code with proof of a contract that there is proposed construction.

There was further discussion about whether this was just for one property.

Hammond stated that he is uncomfortable granting the appeal but would like to grant some temporary relief on this situation until such time the code is changed and revised as needed.

There was further discussion.

Hammond asked about how ordinary citizens would know that a contract would be needed to erect a construction sign.

Threadgill stated that the P&Z ruling on this appeal would become a policy guide for how to interpret this code from this day forward and that would be documented in City Hall.

Belt asked for the motion to be read back.

Belt seconded the motion. Belt, Huntington and Herb voted in favor. Hammond voted in opposition. The motion passed.

Herb recommended that the city council be the appeals body for disputes regarding sign-ordinance interpretations rather than the Planning & Zoning Commission and that the code be changed to reflect that. Hammond endorsed that to be included in the minutes.

c.) Consideration of text amendment application to change section 78-201, Building restrictions on city right-of-way

Herb read the current wording of the ordinance. "No structures, including walls or fences, shall be erected on the city right-of-way. Parking pads are specifically prohibited under this article. Mailboxes are permitted, but their construction shall be limited to the traditional stake and arm design only." He then gave some background information on the request from the homeowner to amend the code. The applicant wants to amend the code to allow break-away mailboxes of a composite material which have been tested to meet Federal Highway Administration Standards. The Federal Highway Administration now allows break-away mailboxes that are designed to look like brick or stone mailboxes provided they comply with certain standards for highway safety.

Herb stated that the applicant had made a recommendation regarding proposed language, which Herb and staff had reviewed and edited slightly. The amended language has been proposed to P&Z. The following language was read into the record... "No structures, including walls or fences, shall be erected on the city right-of-way. Parking pads are specifically prohibited under this article. Stake and arm mailbox designs and any structure which supports a mailbox and/or decorative covers for mailbox supports which

are approved by the Federal Highway Administration (FHWA) to be used on the National Highway System (NHS) right-of-way are permitted. For all mailbox designs other than the traditional stake and arm design, the homeowner shall provide a letter to the city from the structure manufacturer or directly from the FHWA that states the structure installed meets the guidelines outlined in the National Cooperative Highway Research Program (NCHRP) Report 350. Any modifications to an approved pre-manufactured structure shall require a letter from the manufacturer or the FHWA stating that the modified structure meets the guidelines outlined in the NCHRP Report 350.”

Huntington stated that he liked using the work of others for this rather than re-inventing the wheel.

Hammond asked the intent of the original ordinance and whether it was for safety. Herb confirmed that it was. Hammond confirmed that the safety issue is moot with the new technology that exists for construction of these types of mailboxes. This amendment is to revise the code to allow construction that meets safety standards as long as there is documentation of it.

Hammond asked if staff was satisfied with the proposed language. He asked if there were any possibility that this language could not be easily interpreted. Threadgill responded that she didn't have any expectation that the language would be difficult to apply.

Lombardi stated that if you want a stake and arm mailbox you don't have to do all this other stuff and that isn't clear in the proposed language. He suggested to make a separate sentence for stake and arm mailboxes first and then say “In addition” or “Any other structure..” to begin the next sentence regarding the other types of design.

Herb recommended that the proposed language be modified to state that “Stake and arm mailbox designs are permitted. In addition, any structure...”

There was further discussion.

Hammond motioned to support the revisions in code as discussed. Huntington seconded the motion. All were in favor. The motion passed.

IV. CITIZEN COMMENTS

There were none.

V. ADJOURNMENT

Lombardi motioned to adjourn the meeting at 8:35 p.m. Hammond seconded the motion. All were in favor. The motion passed.

(Respectfully submitted by Leigh Threadgill, approved by P&Z March 3, 2008)