

**CITY OF BERKELEY LAKE  
4040 SOUTH BERKELEY LAKE ROAD  
BERKELEY LAKE, GEORGIA 30096  
PLANNING & ZONING COMMISSION  
FULL MINUTES  
OCTOBER 10, 2023  
7:15 PM**

Those in attendance at the meeting were as follows:

Commission Members:                   George Kaffezakis  
  Rand Kirkus  
  Robin Sansone

City Officials:                            Leigh Threadgill - City Administrator  
  Thomas Mitchell – City Attorney  
  Rob Hiller – City Marshal

Citizens Present:                        26

**I. CALL TO ORDER**

Kirkus called the meeting to order at 7:15 PM. A quorum of the commission along with City Administrator, Leigh Threadgill, and City Attorney, Thomas Mitchell, were present at the meeting. Kirkus noted that the chair was not in attendance and the first order of business was to appoint a temporary chair for the meeting.

**Kaffezakis nominated Kirkus to serve as the temporary chair, Sansone seconded the motion. All voted in favor.**

**II. APPROVAL OF OR CHANGES TO THE AGENDA**

Kirkus asked if there were any suggested changes to the agenda.

**Sansone moved to approve the agenda as submitted. Kaffezakis seconded and all voted to approve the agenda.**

**III. MINUTES**

1. Minutes of August 8, 2023

**Sansone moved to approve the minutes of the August 8<sup>th</sup> meeting. Kaffezakis seconded and all voted to approve the minutes.**

#### **IV. OLD BUSINESS**

1. PZRZ 23-08, 4477/4487 Peachtree Industrial Boulevard – Rezoning from GC-A (C-1) to M-1 and PZV 23-09 associated concurrent variances as follows:
  - a. Elimination of the 75-foot buffer adjacent to residential property
  - b. Reduction of the M-1 district area minimum from 10 acres to 4.996 acres
  - c. Increase in the M-1 maximum height from 40 feet to 45 feet
  - d. Reduction in the M-1 75-foot front setback to 11.11 feet along a portion of the property where there is a jog in the Peachtree Industrial Boulevard right-of-way
  - e. Allowance of accessory retail sales in a stand-alone building

Kirkus acknowledged Threadgill to review the project and the status of the rezoning and variance applications. She provided background regarding the zoning of the property and an overview of the project.

Threadgill stated that the 75-foot buffer variance is now for a modification rather than an elimination of the buffer. However, there is some discrepancy between the site plan and the letter of intent. While the letter of intent notes that the 75-foot buffer is to remain undisturbed, the site plan shows 30 new 9-inch caliper trees and 80 shrubs to be planted in the buffer area. This is a concern because zoning and variance approvals are conditioned on development according to the site plan, and this proposed planting shown on the site plan will disturb the buffer which is supposed to remain undisturbed. In addition, the proposed buffer language as submitted by the applicant violates another provision of the city's ordinance by asking for trees within the buffer to be counted toward meeting the tree density requirement for the site.

Threadgill reviewed the request for the minimum M-1 district area to be varied and noted that the standard is somewhat confusing.

Threadgill reviewed the height variance request and stated that the applicant now has asked for the request to be tabled depending on the final building sizes. This is a concern because the building sizes should be decided through the zoning process and any zoning approval will be conditioned on development according to the site plan approved in the zoning action. It seems that a height variance is no longer needed, and the staff's understanding from the applicant is that buildings along with any roof-mounted equipment, including solar panels, will be able to meet the maximum height limit of 40 feet.

Threadgill reviewed the front setback variance request, which only appears to be needed for the accessory building at one corner. The use of that building has been questioned because originally it was planned for accessory retail sales but now appears to be planned to be used the same as the primary building. Threadgill questioned again the need for the additional building and associated parking and traffic circulation.

Threadgill reviewed the fifth variance for accessory retail sales, which the applicant now notes as tabled and has agreed to limit the uses within the building to those that are permitted through the rezoning process, with the addition of accessory retail sales if allowed by code. Staff would prefer not to authorize a future use in the event the code is changed to allow said

use but would instead recommend that if at some future point the code is changed to allow accessory retail sales, the applicant come in for a change in conditions to the rezoning.

Threadgill reviewed the zoning standards and staff analysis.

Will the rezoning permit a use that is suitable in view of the use and development of adjacent and nearby property – while it may be compatible with some of the adjacent and nearby properties, it is incompatible with the established residential area to the north/northeast.

Will the rezoning adversely affect the existing use or usability of adjacent or nearby property – the rezoning would have an adverse impact on adjacent or nearby residential property.

Does the subject property have reasonable economic use as currently zoned – this is difficult to answer absent a market analysis.

Will the rezoning result in a use that would cause excessive or burdensome use of existing streets, transportation facilities, utilities or schools – staff has circulated the application to Gwinnett Departments of Water Resources and Transportation. The applicant should comply with any comments that result from review by those departments.

Is the rezoning in conformity with the policy and intent of any land use plan in effect – the future land use map designates this property to be within the Peachtree Industrial District which allows some light industrial uses. Acceptable light industrial uses would closely adhere to the zoning and landscape standards of the city in order to make the industrial nature of the development harmonious with surrounding land uses.

Finally, are there other existing or changing conditions affecting the use and development of the property which provide supporting grounds for either approval or disapproval of the proposal – If development would result in tree removal inside the existing zoning buffer, that would create an adverse impact on the adjacent residential areas. In addition, this property sits directly upstream of a private pond and lake. Stormwater management is of the utmost importance. In addition to the offsite water that is carried through the 60-inch pipe, development of this 5-acres site and the associated addition of impervious surface will have a stormwater impact.

In light of the concerns mentioned, staff recommends denial of the application.

Kirkus recognized the applicant.

Wendy Kraby, land use attorney, is working with the applicant. She addressed the commission by saying that the site plan has been modified over time and provided a copy of the changes to the commission for their review. Since last here, the applicant has tried to address the issues that were identified at the last meeting.

The goal is to create something that is workable, good for the city, adds to the tax base and most importantly really addresses the stormwater issues in a professional way.

At this point, there is no plan to cut down trees adjacent to Holben's property.

Taner Baltici, Builderstone owner, stated that there has been a miscommunication or misunderstanding. There is no plan to cut trees in the buffer zone.

George Kyiamah, the applicant's civil engineer, stated that they will leave the buffer undisturbed. There is no infrastructure planned within the zoning buffer area to accommodate the adjoining property owner. The whole idea is that if there are holes in the buffer, they will plant additional trees to screen the development from the adjoining property owner. The existing survey that they have didn't pick up all but a few trees. They will have to do a detailed tree survey. The city tree density requirement has doubled to 40 tree density units, so if there are so many trees in the buffer, it would be good to take advantage of the trees in the buffer to count toward the requirement. They still have to plant a lot of trees. He noted that 40 tree density units is a lot, the worst he has seen is in Gwinnett County at 20 tree density units/acre. He stated that he received an email from the city engineer about access to the pond. The pond is ten feet deep, but where maintenance will be done is a little bit taller than ten feet so an access with a slope of 5:1 has been created to access the bottom of the pond. There was further discussion about the curve number and the discrepancy between 92 and 85. Kyiamah explained that bioretention isn't used for detention, but it does hold the water and allows infiltration and provides some attenuation of peak flows. It provides partial detention, and you can get credit for that.

Sansone asked about the tree density requirement and the change from 20 to 40 tree density units/acre. Threadgill noted that she was not on staff when the standard changed and could not speak to the intent behind the change but that the standard was implemented in 2014. Kyiamah was hoping that the trees within the required buffer could be used to count toward meeting the tree density requirement. Threadgill noted that rather than allowing credit for buffer trees, the acreage of the site used for the purposes of tree density calculation can be reduced by the amount in the required buffer. There was further discussion.

Sansone asked how many curb cuts were planned. The applicant's engineer stated that there are two curb cuts, although the site plan shows three. It was noted that the site plan needs to be revised to be accurate. There was no updated information from Gwinnett Department of Transportation regarding approval of the proposed curb cuts, but Threadgill noted that would be a condition of approval.

Kaffezakis complimented the revised plan and the positive changes, including moving infrastructure out of the buffer area and hearing tonight that the intent is to keep the buffer undisturbed. He asked about site grading. The finished floor elevation is 1054 which indicates that the majority of the building will be mostly in cut and will require fill where the accessory building and stormwater system are proposed. Kyiamah said that he would have to look at it, but that there will be a lot of fill which is why there are a lot of walls proposed. Kaffezakis noted the retaining walls appear to be 25-30 feet tall. Kyiamah confirmed that they are very high but they support the detention areas. The detention area itself is about 10 feet deep, so there will be a lot of backfill. It is a very steep site. Kaffezakis asked if there would be fill dirt added on top of the county's reinforced concrete pipe and whether the county had reviewed that. Kyiamah

stated there is about 30 feet of fill over the pipe, and noted his understanding that the county won't allow buildings over the pipe, but he wasn't aware if the county approved the proposed detention and associated walls over the pipe. In his experience when walls are built over a pipe the county requires an easement agreement. Kaffezais noted that the stormwater management system would be out of order if the county had to fix their RCP and is concerned about that and whether the lake would be protected. He further asked about stormwater control during the grading process and the cut/fill process. Kyiamah responded that BMPs will be put in place, and he recommends using an independent erosion control specialist due to the sensitivity of the area.

Kaffezakis asked about the building height is still being requested to be varied. Kraby stated that she wanted to preserve it as part of the record of what was originally submitted, but that the applicant has agreed to keep the building height including roof-mounted equipment within the 40-foot height limit. Kraby stated they aren't expecting a vote on that variance tonight but didn't want it taken out of the historical record.

Kaffezakis shared Sansone's concern that he is uncomfortable approving anything until a site plan is submitted that is nailed down.

Kirkus asked about the curb cuts and what was submitted to Gwinnett DOT. Kyiamah said he hadn't submitted to Gwinnett DOT. Threadgill noted that she submitted the original site plan that showed three curb cuts to Gwinnett DOT for review and comment but hasn't heard back. Kirkus asked if the applicant could live with two. Kyiamah said they could.

Kaffezakis asked about tree density and if it was possible to add that level of landscaping with both the primary and accessory building occupying a major part of the site. Kyiamah said it was possible but would have to plant larger trees to make up the numbers. Threadgill noted that there is a payment-in-lieu option for folks who aren't able to meet the tree density requirement through plantings on the site.

Kaffezakis asked about the retail sales as an accessory use request. Kraby responded that, like the height variance request, they are interested in the retail use request being tabled. The main building and the accessory building are to be used for the core uses that they have agreed in the conditions proposed – warehouse, wholesale, showroom, and office use, which is a limited use list within the M-1 district.

There was discussion regarding the procedure for the requests that the applicant has noted as tabled.

Kyiamah stated that he thought the engineer wanted to establish a threshold for detention with an increased standard for stormwater management to limit to 46% of pre-development flows. This is very stringent; he would suggest a 60% limit. He has never seen anything more stringent than 70%. To meet this, a huge pond would be required. Kyiamah asked the engineer to reconsider this point.

The BuilderStone owner, Baltici, stated that he will do what is best for construction and operation. He is focusing on developing a brand, following new technology, new trends, and

European design. He is opening a new warehouse in Nashville and Milwaukee and working in New Jersey. If there has been a misunderstanding or miscommunication, he will fix it. He will plant to meet the maximum tree density.

Kirkus opened the meeting to public comment.

Chris Holben, 325 Lakeshore Drive, stated he and his wife, Marlene, have lived here for 48 years. He invited David Huetter, with United Consulting, who has been involved with this property for years and years and years. Holben distributed an aerial photo of the subject site from about 8 to 10 years ago. He described the aerial that shows his house, the pond, the stream, and the buffer area and noted there are over 350 trees in the buffer. As long as the development stays out of the buffer, it protects his property from lights, buildings, and noise. The trees also protect the Lake. If the buffer remains intact, his biggest concern has been the impervious surface. It is five acres of rooftop and parking lot. The pond on his property was built because of the road, but not as a retention pond. Over the years, he has seen more and more water come into his pond. He is concerned about the impervious surface, the size of the detention pond, and he is most concerned about the land disturbance. Two developers have disturbed the site, and twice his pond has been filled with silt. Each time 20, 30, 40 dump truck loads of silt have filled his pond. Now he is concerned about impervious surface and silt getting into the pond. If it gets into the pond, it can get into Berkeley Lake.

David Huetter, United Consulting, distributed a copy of his comments. He has worked with Holben for a number of years regarding his pond. He is familiar with the property. Some of what has been listed in his comments has been addressed already tonight. The applicant has agreed to keeping all the trees. One of the big concerns is the impact of this on the pond both in terms of volume and water quality/sedimentation. It is a legitimate concern because it has happened before. Hopefully the applicant's engineer can design, both from an erosion control and stormwater management standpoint, a plan that protects the pond and the lake. The only other comment is about the hydro study. The design of the hydro study shows 2 different basins, one is 1.34 acres known as basin AC, and is shown to bypass the pond. There needs to be clarification about basin A2, where it is, and where/how that water is going to be treated so it doesn't go directly into the pond. The pond on top of the county's pipe is also a concern. He hopes that there can be a plan developed that works for everyone.

Kaffezakis asked Holben if he acknowledges that the property will be developed at some point. Holben stated he knows that and there was discussion that it needs to be done the right way.

Andrita Hammond, 267 Lakeshore Drive, asked how the site would be policed to ensure that no trees to be preserved are removed. There was further discussion.

Holben, 325 Lakeshore Drive, reiterated Hammond's point about tree removal.

Ginny Nevins, 116 Lakeshore Drive, asked if there could be stiff penalties for each tree removed. There was further discussion.

Kaffezakis noted that we are trying to prevent tree removal from happening in the first place. The plan needs to be clear from the beginning in terms of what is and what isn't being asked for

## Full Minutes

Planning & Zoning Commission Meeting

October 10, 2023

Page 6 of 9

and all the things that have been discussed. That plan needs to be presented for action rather than trying to make things fit during the meeting.

Thomas Mitchell noted that if the application were approved with suggested conditions, one of those is that the buffer would be required to be undisturbed except for supplemental plantings required by the preceding two conditions. In that case, if the buffer is cut, it would be a zoning violation and they couldn't proceed without rectifying it.

Kraby stated that this is usually a 2-stepped process, a zoning process and then a LDP process. She described what occurs during the LDP process, a tree count is done, a landscape plan will be done, a stormwater management plan, a stormwater maintenance plan, which may be recorded. It is highly regulated. She explained that some of the details, like a full tree count, of the design won't happen at this level. Taner isn't a developer, he is the owner that is going to have his business here for many years. He doesn't want the trees cut down either. Just because the prior developer cut trees that he wasn't supposed to cut doesn't mean that the applicant will do the same. Technically what is proposed is that for 75-feet from Holben's property, nothing can be removed, but plantings can be added. They are asking for the portion adjacent to the other R-100 property, J Ryerson's, to not have the same buffer standard. Kraby has noted that the tree ordinance has a lot of provisions. She noted that she didn't want there to be a concern that trees would be cut in the middle of the night.

Kirkus closed the comment period.

Kaffeidakis stated that the intent of the commission is to work with the applicant to iron out a workable plan that protects and allows for the development of the property. He indicated he would like a clean request that makes clear what is being requested. There was consensus among the commission that they were not prepared tonight to approve what has been submitted.

There was discussion about the next step procedurally and the commission requested the applicant come back with answers to the questions raised tonight.

Kirkus asked the status of the easement over the 60-inch pipe. Kraby stated that she talked to the county about their interests in the easements shown on the plan and shared with the county the site plan for the project. Kirkus asked if the county was aware of the backfill over the pipe. Kraby stated that they will have to coordinate with Gwinnett County, and they have talked to Gwinnett.

There was further discussion. Threadgill noted that there are recommended conditions for approval, and that one of those conditions is regarding coordination with Gwinnett County and the requirement for documentation of approval from Gwinnett County prior to LDP issuance.

Kaffeidakis asked if the county says no regarding the proposed plan which impacts their pipe. Baltici, the owner, said if the county has an issue, they would change their design to accommodate the county's comments. He stated that he has visited Mr. Holben twice about the design and that he cares about his thoughts and agrees and has changed the plan to

accommodate. He agreed to meet with representatives from the city to address the concerns that have been raised.

Kraby indicated that she would try to get something in writing from Gwinnett County and has talked to them personally.

Kraby asked for a list from the commission regarding what they need in order to be able to vote on the application.

There was discussion about the additional building that is proposed. Mitchell noted that the application is requesting two primary structures, which does not comply with the zoning ordinance.

Kraby stated that the applicant's argument is that it is an accessory building under M-1. It is meant to be a headquarters or a campus.

Kaffeidakis stated that if they can meet tree density, provide stormwater systems over and beyond, and DWR allows the detention facility to remain in place, he doesn't see a difference between one larger building and two separate buildings because it will be the same amount of impervious surface. He is mainly concerned with ensuring that everything else is met. He is mostly concerned about DWR agreeing to the stormwater management system as drawn.

Holben commented that there is an existing pond on the site which is in the location of the proposed accessory building. There was further discussion about the accessory building and moving the proposed pond forward to avoid putting it on top of the pipe. Baltici stated that he would like the two buildings separate for the operation of the uses and explained that the accessory building will have a showroom on the first floor and offices on the second floor.

Threadgill noted that the site plan and application need to be clearer. The plan that was submitted for tonight's consideration showed planting 9-inch caliper trees in the undisturbed buffer, which would disturb the buffer, and that is problematic.

There was further discussion regarding accessory structures in M-1. The M-1 permitted use list allows enclosed accessory buildings. The problem here is that the smaller building is not going to be accessory to the primary use, they are separate primary uses. There are some discrepancies in the code, but the building doesn't seem to be accessory to the larger building.

Sansone made a motion to continue consideration of the application pending a revised site plan.

**Kaffeidakis amended the motion to continue the application until next month so that the high-level decisions relative to the undisturbed buffer, stormwater management and landscaping can be addressed. Sansone seconded the motion. All were in favor and the motion passed.**

## **V. NEW BUSINESS**

Kirkus noted that there was no new business to be considered.

## **VI. CITIZEN COMMENTS**



There were no comments.

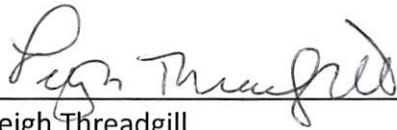
**VII. DISCUSSION**

There was no further discussion.

**VIII. ADJOURNMENT**

**There being no further business, Kirkus adjourned the meeting at 8:57 PM.**

Respectfully submitted,



---

Leigh Threadgill  
City Administrator

