

**GAINESVILLE PLANNING AND APPEALS BOARD  
MINUTES OF MEETING  
APRIL 9, 2013**

**CALL TO ORDER**     Chairman @ 5:30 p.m.

**Members Present:**     Chairman Dean Dadisman, Vice Chairman Doyle Johnson and Board Members Dexter Stanley, Jane Fleming, Connie Rucker and John Snyder

**Members Absent:**     Board Member George Hokayem

**Staff Present:**         Community Development Director Rusty Ligon, Planning Manager Matt Tate and Recording Secretary Judy Foster

**Others Present:**       Council Members Myrtle Figueras, Bob Hamrick and George Wangemann, and Public Works Engineer Stan Aiken

**MINUTES OF MARCH 12, 2013**

**There was a motion to approve the Minutes as presented.**

Motion made by Board Member Fleming  
Motion seconded by Board Member Rucker  
**Vote – 6 favor, 1 absent (Hokayem)**

**NEW BUSINESS**

**A. Variance Request**

- 1) Request from **America's Home Place, Inc.** to vary the stream protection buffer requirement on a 25.11± acres property located on the east side of Dawsonville Highway across from Beechwood Boulevard, south of its intersection with Ahaluna Drive (a/k/a **0 and 1198 Dawsonville Highway, 1232 Ahaluna Drive, 1162 Lakeshore Circle**), having a zoning classification of General Business (G-B).  
Ward Number:             One  
Tax Parcel Number(s): 01-114-001-002A; 01-115-001-006 (Part), 007B (Part) and 055 (Part)  
Request:                     Future shopping center

**Staff Presentation:** Planning Manager Matt Tate gave the following staff presentation:

The subject property was recently rezoned to General Business (G-B) with conditions during March of 2013 for the future development of a 246,880 square foot shopping center. At this time the applicant is proposing to vary the 75' stream buffer requirements along a 290± linear foot portion of an intermittent stream located on the southeastern side of the property, which according to the applicant's concept plan, the encroachment would allow for land disturbance and a portion of the rear access drive and buildings to be constructed. An intermittent stream is a stream that flows in a well-defined channel during wet seasons of the year but not for the entire year.

- The first 25-feet closest to the stream is regulated by the state which in this case the applicant has already received approval from the Environmental Protection

Division (EPD) to encroach within the first 25-feet which totals an area of 17,612 square feet (0.40 acre) in size closest to the actual stream shaded pink.

- The second 25-feet (shaded green/yellow color) is a local buffer that is to remain undisturbed and cannot contain any impervious structures. The applicant is proposing to encroach within this area a total of 18,557 square feet (0.43 acre).
- The third outermost 25-feet (shaded blue) is the local buffer that can be disturbed but may not contain any impervious area. The applicant is proposing to encroach within this area a total of 21,110 square foot (0.48 acre).

As well, the project has received approval from the Army Corps of Engineers by the issuance of a Nationwide Permit to allow work within the stream. In order to offset the impacts to the overall basin, the applicant has paid for 1,204 stream mitigation credits to the Wauka Mountains Mitigation Bank to repair an impaired stream within the same Wauka Mountain basin. A copy of both permits has been included in the documentation provided to the Planning and Appeals Board.

The applicant is basing the hardship on the property's topography and the existing drainage in order to utilize the property. The applicant states the variance will allow for improved water quality drainage off the existing property and other adjacent properties which will be diverted into two large detention ponds. As well, the applicant states that proper pre and post on-site mitigation will be provided as required by EPD and the City of Gainesville.

The Ordinance states the Planning and Appeals Board may grant a variance where the shape, topography or other existing physical condition prevents land development, provided such variance requires mitigation measures to offset the effects of any proposed land development on the parcel. The Code also states that a variance shall not be granted as a convenience to the applicant or as a way to gain any advantage over similarly zoned properties.

Based on the topography and shape of the subject property, and the proposed storm water management plan, the Planning Division staff is recommending **approval** of this stream buffer variance request.

**Applicant Presentation:** **Jim Walters**, attorney representing America's Home Place, stated that the applicant erred in requesting a stream buffer protection variance prematurely before the property was rezoned and the development approved by the City Council, however, this approval has now been given. Mr. Walters explained that the stream is an intermittent stream or drainage ditch, noting it only has water in it during wet times and gets most of its water from Dawsonville Highway and other developments along the highway. He stated that the inlets for the detention ponds will be screened to keep out debris which will improve the quality of the water flowing into the lake and will regulate the water release. He stated that this is the last item to address before beginning construction of the retail center.

**FAVOR:** None

**OPPOSED:** **Michael Proulx** of Lakeshore Circle, asked for clarification regarding the process of the detention pond, noting there may be some environmental concerns. He stated that the Board could override EPD's approval of this variance request. He also commented on questions 6, 7 and 8 of the Statement of Hardship in the application as

follows: Question 6, he stated that alternative designs should be demanded; Question 7, he stated the operable word in that question is "long term"; and Question 8, he stated this question needed clarification if the water is running from the detention pond back into the stream, noting the stream is wet 6 months of the year. He suggested the Board ask for clarification about the release into the stream; on what basis were the answers for questions 6, 7 and 8 given; what data was used; and what studies were conducted.

**Rebuttal:** Mr. Walters clarified that the detention pond will have a pipe which will release a predetermined amount of water into the stream at one time, noting that the detention pond would not overflow.

**Planning and Appeals Board Comments:** Chairman Dadisman asked staff to address the questions posed by Mr. Proulx. Planning Manager Matt Tate stated that Mr. Walters addressed the first question regarding water flow into the stream and commented that the detention pond will release at the same rate as the current water flow, noting it cannot be increased. Mr. Tate stated that as far as the Statement of Hardship questions go, staff felt that the applicant had sufficiently addressed the questions. He stated that a Mitigation Plan was submitted along with the application and it has been reviewed extensively by both Public Works Engineering and Planning staff and offered it to the Board and Mr. Proulx for review. He stated that the applicant has already stated that the current site plan was the only option in order to make the balance of the project work.

Upon inquiry by Chairman Dadisman, Planning Manager Matt Tate stated that although they generally seek guidance from EPD and the Corps of Engineers, local jurisdictions do have the authority to approve, deny or approve with conditions any stream buffer protection variances.

Board Member Snyder stated that the applicant has completed their due diligence.

Vice-Chairman Johnson stated that EPD are not pushovers and he must rely on them and staff as experts.

**There was a motion to approve the request to vary the stream protection buffer requirement as requested.**

Motion made by Board Member Snyder  
Motion seconded by Vice-Chairman Johnson  
**Vote – 6 favor, 1 absent (Hokayem)**

## **B. Rezoning Request**

- 1) Request from **Foot Miller Properties, LLC** to rezone a 0.55± acre tract located on the northwest side of the intersection of McEver Road and Gould Road (a/k/a **2944 McEver Road**) from Neighborhood Business (N-B) to General Business (G-B).  
Ward Number: Four  
Tax Parcel Number(s): 08-022-000-009  
Request: Automotive repair facility

**Staff Presentation:** Planning Manager Matt Tate gave the following staff presentation:

The applicant is proposing to rezone the subject 0.55 acre property from N-B to G-B for an automotive repair facility. The subject property consists of two tracts of land located

at the northwest corner of McEver Road and Gould Road and is located within the Gateway Corridor Overlay and contains a 6-bay, self-serve car wash facility that is closed and was constructed in 1984.

The applicant states that the existing car wash facility will be demolished in order to construct an auto repair facility on a similar footprint as the existing building that will meet the Gateway Corridor Overlay Zone standards. The applicant's intent is to minimize site development cost while providing for adequate maneuvering and parking of vehicles. By choosing to orientate the building similar to the carwash, setback variances will be needed from Gould Road and from the side yard property line adjacent to the Hall County Fire Station property.

The adjacent land uses include Hall County Fire Station No. 4, McEver Elementary School, Free Chapel Worship Center and a gas station / retail strip center.

The Future Development Map of the 2030 Gainesville Comprehensive Plan places the subject property within the *Retail Commercial* land use category which includes commercial service activities such as grocery stores, banks, restaurants, theatres, hotels, and automotive related businesses.

According to the Character Area Map of the 2030 Gainesville Comprehensive Plan, the subject property is located within the *Suburban Residential* character area which is an area that is generally not a location for new business investment, except for property located along major corridors. Land uses allowed in the Suburban Residential are low-density residential, medium-density residential, multifamily residential, public / institutional, commercial, and parks / recreation / conservation, mixed-use.

It is staff's opinion the proposed use is consistent with the Comprehensive Plan and is similar to the existing use and nearby auto related uses. Therefore, staff is recommending approval of this rezoning request with the following five conditions.

#### **Conditions**

- 1. An automotive paint and body repair shop or auto sales facility is not an approved use for the subject property.**
- 2. There shall be no junk vehicles, vehicles used for parts or tires stored on the subject property.**
- 3. The applicant/owner shall orientate the proposed bay doors to the north and south as to not be directly visible from McEver Road. The applicant/owner shall have the option of orientating the bay doors toward McEver Road only if improved architecturally per the approval of the Community Development Department Director and in keeping with the Gateway Corridor Overlay Zone.**
- 4. All access point design to and from State Route 53 (a.k.a. McEver Road) shall be approved by both the Georgia Department of Transportation (GDOT) and the Gainesville Public Works Department. Any road improvements required for the proposed development shall be the financial responsibility of the owner/developer.**
- 5. An updated as-built boundary survey/plat of the subject property indicating all improvements required for the proposed development, shall be recorded prior to obtaining a Certificate of Occupancy.**

**Applicant Presentation:** **Steve Gilliam**, attorney located at 301 Green Street, Suite 200, stated that he represented Foote Miller Properties. Mr. Gilliam stated that it would save the applicant from \$30,000 to \$50,000 in construction costs by placing the new building in a similar footprint as the existing building. He stated that the applicant is amenable to all the conditions with the exception of condition 3, noting that the bay doors would be visible from McEver Road despite its orientation and asked that the first sentence of that condition be omitted. Mr. Gilliam stated that Planning Manager Matt Tate had sent him pictures of some examples of bay windows which would be better architecturally suited along the Gateway Corridor and the applicant is willing to work with staff to satisfy this condition. Mr. Tate presented copies of those pictures to the Board for their review. Mr. Gilliam stated that owners Butch Miller and Jim Foote are present to answer any questions the Board may have. He stated that this would be a good property exchange for both parties involved, noting the new building would be of a stucco-type finish with 3 feet of brick along the base and new bay doors that will be aesthetically pleasing so it can be oriented toward McEver Road.

**FAVOR:** None

**OPPOSED:** None

**Planning and Appeals Board Comments:** None

**There was a motion to recommend conditional approval of the request to rezone the subject property from Neighborhood Business (N-B) to General Business (G-B) with the following conditions, including the omission of the first sentence in condition 3:**

**Conditions**

- 1. An automotive paint and body repair shop or auto sales facility is not an approved use for the subject property.**
- 2. There shall be no junk vehicles, vehicles used for parts or tires stored on the subject property.**
- 3. ~~The applicant/owner shall orientate the proposed bay doors to the north and south as to not be directly visible from McEver Road.~~ The applicant/owner shall have the option of orientating the bay doors toward McEver Road only if improved architecturally per the approval of the Community Development Department Director and in keeping with the Gateway Corridor Overlay Zone.**
- 4. All access point design to and from State Route 53 (a.k.a. McEver Road) shall be approved by both the Georgia Department of Transportation (GDOT) and the Gainesville Public Works Department. Any road improvements required for the proposed development shall be the financial responsibility of the owner/developer.**
- 5. An updated as-built boundary survey/plat of the subject property indicating all improvements required for the proposed development, shall be recorded prior to obtaining a Certificate of Occupancy.**

Motion made by Board Member Fleming  
Motion seconded by Vice-Chairman Johnson  
**Vote – 6 favor, 1 absent (Hokayem)**

**ADJOURNMENT**

**There was a motion to adjourn the meeting at 6:08 PM.**

Motion made by Board Member Snyder  
Motion seconded by Vice-Chairman Johnson  
**Vote – 6 favor, 1 absent (Hokayem)**

Respectfully submitted,

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Dean Dadisman, Chairman

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Judy Foster, Recording Secretary