

City Council of Peachtree City
Minutes of Meeting
November 18, 1999
7:00 p.m.

The City Council of Peachtree City met in a regular session, Thursday, November 18, 1999, at 7:00 p.m. in the City Hall Council Chambers. Mayor Robert L. Lenox led those attending in the pledge of allegiance. Other Council members present were: Annie McMenamin, Carol Fritz, Jim Pace and Bob Brooks.

ANNOUNCEMENTS, AWARDS, SPECIAL RECOGNITION

Mayor Lenox presented the "Employee of the Month" award to Firefighter/Paramedic Andy Lee.

McIntosh High School Senior Class Vice-President, Brooke King, presented proceeds from the annual softball tournament to the Police Department to purchase a bulletproof vest.

Mayor Lenox recognized the Chairman of Recreation Commission, Earl Spell, for receiving the "Volunteer of the Year" award from the Georgia Recreation and Parks Association and proclaimed November 19, 1999, as "Earl Spell Day" in Peachtree City.

Richard Thompson made a presentation to Annie McMenamin and commented on Jitterbuggers Teen Club.

MINUTES

McMenamin made a motion to approve the minutes of November 4, 1999, as presented. Fritz seconded the motion. Motion carried unanimously.

OLD AGENDA ITEMS

There were no old agenda items.

NEW AGENDA ITEMS

Lenox said the first two items would be conducted as public hearings. He read the rules for conducting public hearings and set a time limit of fifteen minutes for each side to present its case.

11-99-08 Public Hearing – Variance – Lot 129 Kedron Hills Subdivision

Dennis Floyd, owner of Chadwick Homes, Inc., spoke on behalf of the applicant, Mr. Herrin. Floyd explained he was building a house and freestanding garage for Mr. Herrin at 1005 Laddington Lane. He said an error had been made in laying out the garage, and subsequently it encroached into the setback 3.3 feet. Mr. Floyd said he had been building in Peachtree City for over ten years and had never had to request a variance for making such a mistake. Floyd explained how the situation happened. He said after the site plan had been completed, the homeowner requested the building superintendent to turn the garage slightly because he felt it would look better from the curb. The

building superintendent complied with the homeowner's request, and consequently, the garage encroached into the building setback 3.3 feet.

Mr. Young Shuber, 176 Dogwood Trail, addressed Council and asked why the violation had not been discovered during the inspection process. Floyd said the encroachment was discovered when a foundation survey was submitted to the City. He said the City had not yet issued the final Certificate of Occupancy. Shuber expressed his feeling that the variance should not be approved. He felt the mistake could have been made deliberately. He felt there were rules in place and the builder should be made to abide by them.

Jim Williams, Director of Developmental Services, addressed Council and spoke in favor of the variance. He said Mr. Floyd had been building in Peachtree for a long time with no problems. He said Floyd was one of the best homebuilders in Peachtree City. Williams felt the encroachment was an honest mistake. Williams felt the Building Department did a good job in finding the mistake and in bringing it to the builder's attention. Williams recommended the variance be approved so construction could be completed.

Lenox asked if anyone else wanted to speak in favor of the variance. No one came forward. Lenox asked if anyone wanted to speak in opposition to the variance. Hearing no opposition, Lenox asked if there were any questions. Hearing none, Lenox called the public hearing to a close and opened the floor for Council debate. Lenox said the building community constructed several hundred homes a year in Peachtree City. He felt they did a remarkable job and made very few errors.

Brooks said the setback requirements were put in place to protect adjacent homeowners. He felt Mr. Shuber did not have any major objections to the variance, but was concerned with how the situation happened.

Brooks made a motion to approve the variance. Pace seconded the motion. Motion carried unanimously.

11-99-09 Public Hearing – Variance – Barrow, GA 74N

Don Cobb, architect for the project, presented the variance on behalf of the applicant, Mr. Barrow. Cobb said the original presentation of the project was a linear designed retail center, which would be parallel to Highway 74. A tree survey was provided to show the specimen trees located on the site. One tree was a 36" oak tree positioned in the northeast quadrant of the site. He said it was a very large tree with a canopy drip line of approximately 75-foot in diameter. The Planning Commission denied the original site plan because they wanted to save the tree. Cobb said he went back to the drawing board and came up with a new design. He said City staff was very helpful in working with him in designing the new plan.

He explained the new design consisted of two buildings, which would be built closer to Highway 74. He felt the new design met all of the requirements to save the tree, but by doing so, a variance would be needed to allow an encroachment into the buffer along Highway 74. He said the area of encroachment was a barren area and would not require the removal of additional trees. He said

landscape islands would also be provided in the parking area to preserve the trees that were currently on the site.

Cobb pointed out that Mr. Barrow was doing everything possible to save the tree. He said Barrow was doing things that were not normally required of a developer. Cobb felt Mr. Barrow was gladly making accommodations to save the tree, but he pointed out that there was a burden in doing so. He said there were additional costs involved in developing the site with two buildings, as well as additional costs involved in grading the lot because they could not grade the area near the tree. He said the southern end of one of the buildings would be out of the ground several feet because the lay of the land would not allow dirt to be moved. Cobb requested the variance be approved. He added that Mr. Barrow had agreed to provide additional landscaping, which would exceed the 30% requirement to mitigate the encroachment.

McMenamin asked how Cobb protect the tree during construction so that it would not be damaged and eventually die. Cobb said he had a similar experience with a tree he had tried to save that was located in front of the Sandy Creek High School. He said they did watch the drip line during construction, but there was a substantial amount of grading (three to four feet below the surface) that damaged the root system and caused the tree to eventually die. Cobb said would not be the case with Barrow's development. He explained that the finished floor of the building located closest to the tree would end at the bottom of the tree, right at the drip line. He said they would only be taking off the topsoil and putting a slab down, which would not cause the grading to be deep enough to damage the root system. McMenamin asked the age of the tree. Cobb felt it was well over one hundred years old. He also said that an arborist would be consulted to do everything possible to save the tree.

Brooks asked why both buildings had been moved up into the buffer instead of just the building closest to the tree. Cobb felt the buildings needed to be adjacent to one another to avoid problems with the parking lot design. He said they were also trying to preserve as many trees as possible on the site.

Fritz asked if something more significant could be installed to protect the tree other than the typical orange tree-save fence. Cobb said a wooden barrier could be installed. She said she would like to see it installed. Cobb said that would not be a problem. Fritz also asked Cobb to ensure that the area would not be used for storage of construction materials.

McMenamin asked Cobb about the dumpster and rear of the building. Cobb said the rear of most retail buildings were unsightly. He said Barrow planned to construct a complete masonry building so that the back of the building would have a nice appearance. He said they had considered placing a fence along the rear property line; however, that was not feasible because it would create an alley. He said they finally decided to screen each individual condensing unit and dumpster.

Fritz asked if an agreement had been reached concerning a central detention pond for the property. Cobb said that an agreement had not been reached, and it was currently under discussion.

Steve Fodor asked Cobb if using the terminology "linear retail center" was the same thing as saying

— “strip mall.” Cobb said that is was.

Jim Williams, Director of Developmental Services, spoke in favor of the variance. He said a better site plan had been developed as a result of the Planning Commission's decision. He said the purpose of the buffer ordinance was to try to preserve a strip of mature trees between the highway and the buildings. The ordinance required a 60-foot buffer along an arterial road such as Highway 74, but it also provided a way to reduce the buffer to 40-feet by increasing the landscaping budget for the site. He said the rationale was that if there were no trees within the 60-foot buffer, there was no real need to have a 60-foot buffer. He said Barrow's site was one of many along Highway 74 that did not have much vegetation. He said the architect had found ways to encroach into the buffer beyond 40-feet and save the trees that were currently in existence. Williams felt it was the best possible application of the principal of the ordinance. Not only was the large oak tree protected by moving the buildings forward, but the existing trees in the buffer area were also saved by creating islands in the parking area. He felt the new plan was a result of very serious attention by the architect and by the owner of the property. Williams felt the variance would fully accomplish the goal of the buffer ordinance as applied to the site, and at the same time it would be developed in a more creative fashion. Williams felt the new site plan was much better than the previous one.

— Geraldine Holt asked if Cobb had researched any information in preserving historic trees from experienced professionals. Cobb said he planned to consult with an arborist to preserve the tree. Lenox asked if there was anyone else who wished to speak in favor of the variance. Having no one come forward, Lenox asked if anyone would like to speak in opposition to the variance.

Ed Wyatt, owner of the Texaco Station adjacent to Barrow's property came forward to speak in opposition to the variance. He said he was not totally opposed to the variance, but felt there were some serious conditions and considerations that should be made. He felt the site plan was too intensive and that it had serious problems with water detention that had not been addressed. He also felt adequate parking spaces was not provided on the site.

Wyatt said the buffer in front of the Texaco Station was actually 50-feet, not 40-foot as shown. He said the gas pump canopy was actually located 10-feet farther back, putting it 85-feet from the Highway 74 right-of-way. The store was located 185 feet from Highway 74. He said he provided the dimensions to give Council an idea of what Barrow's development would do to the visibility of his store.

Wyatt also felt it was important to note that the plan was approved by the Planning Commission with a vote of 3-2. He felt since there was not a unanimous decision there were some concerns about the plan. He said opinions had been expressed at the Planning Commission meeting stating that it was not an improved site plan.

— He said there had been reference made to an overall master plan for Wyatt to share the detention pond with Barrow. He said there was no master plan. He explained that when he developed his site he had been asked to produce a drawing for the remainder of his land. He said he had no idea what would be constructed on the site, but he provided a hypothetical plan of what could have been developed. He said the City approved his site plan specifically stating that Wyatt would not be

bound by the hypothetical drawing.

Wyatt said he had sold Mr. Barrow one-acre of land located closest to the center driveway of the Texaco Station. Barrow purchased an adjoining one-acre from George and Norma Hill. Wyatt felt no obligation to handle their water runoff. He pointed out that the problem had been debated during the Planning Commission meeting. There was concern that the issue had not been resolved. He said the water detention was currently designated to be temporarily located in the center of Barrow's parking lot, subject to working out detention issues with Wyatt. He said three and a half weeks went by before he received a telephone call to discuss the issue.

He said the impervious area for the two-acre tract had grown from 53% to 73%. He said the water run-off was three times what would have originally come from one-acre.

He pointed out that the temporary detention pond was located on a two-way access easement provided access to Wyatt's additional three acres located behind the Barrow's property. Wyatt said he was not refusing to consider shared water detention with Barrow. He said he had originally suggested himself when Barrow purchased the property from him. He said Barrow considered it, but decided to purchase an additional .20 acre of land from him so they would not need to share water detention. Wyatt pointed out that he had made efforts to discuss shared detention with Barrow although he had no legal obligation to do so. He felt a shared detention pond made sense, but he objected to any inference that he was obligated to hold Barrow's water. He objected to any attempt to require or coerce him to do so.

Wyatt said Barrow's first site plan included a detention pond and a 15,000 square foot building. It also had a 40-foot buffer and 53% impervious area. He said the site plan was acceptable except that the tree would not be saved. The new site plan had two buildings totaling 18,000 square feet, a 20-foot buffer and 75% impervious area. Wyatt felt Barrow had gone through a lot of trouble to save the tree. He felt for Barrow and understood the position of being pushed and pulled in different directions. He wished Barrow success.

Barrow felt he could accept the variance to the buffer ordinance, but he wanted to point out the following considerations:

1. A 4,000 square foot building was proposed only 65-feet from the right-of-way, which was 20-feet closer to the right-of-way than Wyatt's gas pumps. He did not feel that was fair.
2. Wyatt felt the \$2 million investment he made to develop his site should be respected.
3. Wyatt expressed concern that the 4,000 square foot building would only have 21 parking spaces. He said he had heard there would be a restaurant located in the building and felt it would need additional parking spaces. He said his Texaco Store, which also has a bank tenant in the building, was 3,600 square feet and had 68 parking spaces. He said Barrow's entire site only had 59 parking spaces. He was concerned because he did not want Barrow's parking problems to spill over onto his property.

4. Wyatt said Council would not be doing Barrow a favor by allowing him to proceed with his site plan as presented that night. He felt Barrow would be making a huge financial investment that would fail. He wanted Barrow to succeed and said he did not want a failed business next door to him.
5. Wyatt said he did not mind if Council wanted to reduce the buffer to 20-feet in exchange for saving the oak tree. But, he pointed out he had a 50-foot buffer and he had planted over 700 trees, bushes, and shrubs on his site. He said he knew he was griping a little bit because he had spent a lot of money on landscaping. He wanted Barrow to realize he would be saving over half of a \$40,000 landscaping budget by preserving the tree. Barrow said he had invested over \$2 million to comply with and exceed the ordinance requirements.

Barrow requested Council to consider the following options if they wanted to approve the variance:

1. He suggested the buildings should be no closer than 85-feet from the Highway 74 right-of-way. Wyatt explained this was the same distance his canopy was from the right-of-way and that his building was 185 feet away. He felt this requirement would allow space for adequate parking and also protect the look of his own property. He felt Council had an obligation to protect his landscaping investment.
2. He suggested the second building be eliminated. He said it would hide the tree that the City wanted to save, and it was too close to the tree. He also felt it was too close to Highway 74 and it just did not fit.
3. He suggested allowing one 15,000 square foot building, which was the size of Barrow's first proposal.
4. He asked that Council not allow the water detention to be in the parking lot. He said having water in the parking lot would only compound the parking problem. He asked that Council require proper on-site water detention, or other satisfactory off-site water detention before allowing construction to begin.
5. He asked Council to require the masonry finish on the rear of Barrow's building. He said he knew that was Barrow's intention, but he wanted it to be made clear.

McMenamin asked Wyatt if there was any communication between him and Barrow. Wyatt said he had talked with Barrow many times, but he had concerns about the length of time it took Barrow to contact him after the Planning Commission meeting on October 25. He said the Planning Commission had approved the site plan with the condition that the water detention issue would be worked out, but he did not receive a telephone call from Barrow until three weeks later. Wyatt wondered whether Barrow had intent to work the issue out or if he just wanted to get his plan approved and never address the issue.

Steve Fodor spoke in opposition to the variance. He said there were two issues to be considered: the tree and the land development ordinance pertaining to buffers along arterial highways. He said the

ordinance was adopted over two years ago. He said it required a 60-foot buffer for arterial highways for any commercial development. He felt it was passed so that development along the highway would be more pleasing to the eye. He said the variance would result in a strip mall that would be 20-feet away from the arterial highway instead of 60-feet. He said the ordinance would allow the strip mall to be built 40-feet from the arterial highway based on certain landscaping conditions. He said it was Council's option to allow that reduction in the buffer, assuming Barrow met the additional landscaping requirements. However, he questioned why Council would want to allow a 20-foot buffer. He said Barrow purchased commercial property after the ordinance was passed and should have known what he was getting into. He said they were being asked to save a tree in exchange for giving up 20-feet of a buffer zone that was put in place to protect the City from having strip malls along side of its main highways. He also did not feel the situation met any of the requirements listed in the ordinance that were necessary for Council to grant a variance. He could see no way the variance should be approved.

No one else spoke in opposition to the variance. Lenox asked if there were any questions.

John Barrow, the property owner, addressed Council. He said he had jumped through hoops to save the tree. He said his initial plan called for a 15,000 square foot building with no intention of saving the tree. He said he was forced to save the tree unless he wanted to file an appeal of the Planning Commission's decision to City Council or file a lawsuit. He did not feel he had a legal requirement to save the tree. He said any one of six different reasons would allow him to cut down the tree, and his development met four of the six reasons. He said he still did not understand why the tree was an issue. He said he had spent more money to rework the plan and save the tree. He said he could have gone through the red tape of appealing the decision or hiring an attorney, but he decided to try and resolve the issue in the most timely manner. He explained that he had to pay interest on the property each day that he could not start construction.

He said it was ironic that in the beginning, he wanted to go out with a chain saw and cut the tree down, but now he wanted to save the tree. He said it was a beautiful tree. He could envision a nice seating area under it and he planned to use it as a focal point. He wanted to go to the farthest extent possible to save the tree with drip systems, a wooden barricade, consultations with an arborist, etc. He said saving the tree had now become an important issue to him. He believed his initial animosity toward the tree was because he was being forced to save it, and it was located in the middle of his \$400,000 piece of property. He was upset instead of tabling the issue or discussing it, the Planning Commission demanded the tree be saved.

Barrow said water retention was not an issue that needed Wyatt's approval. He said one of the conditions of developing his site was that he had to show he could retain water on his property. He said he may have to build a retention wall, but felt he could store the water on his property. He said he did not need a joint retention pond, although he agreed that it would be the best solution. He felt a shared retention pond was the most logical solution and believed that Wyatt wanted to share retention with him. He felt Wyatt's main issue was that his building would hide Wyatt's Texaco Station. Barrow said he would feel the same in Wyatt's situation, but he stressed that he was being forced to save the tree. He asked Council for guidance. He did not know what the City wanted from him. He said his building would be a solid masonry building with a traditional look. He did not

understand why the impervious surface issues were being raised because they complied with acceptable standards. He said there were no trees in the area that would encroach into the buffer. Don Cobb wanted to clarify a few points made by Wyatt. He said the parking issue met Peachtree City's requirements. He said the impervious surface was quoted at being increased to 75%, which is true, but also in keeping with other development in Peachtree City. He said he did not call Wyatt to discuss the water retention issue until after he had received the data necessary to study the issue. Cobb did not think the buildings could be moved to another location on the site and still save the tree. He also felt the development could be designed to accommodate water retention on site. Cobb also said that although the plan was approved with a 3-2 vote, it was approved through the democratic process.

Pace asked why the square footage was increased from 15,000 square feet to 18,000. Cobb said it was an economic issue and they needed to offset the additional cost incurred to save the tree. Brooks said he was very concerned about parking. He knew it met the ordinance requirements, but he felt that more parking spaces might be needed. Barrow said all of the prospective tenants that he had would use minimum parking. He said he would not lease to the types of business that would create parking problems because he would end up with unhappy tenants and customers. He said he was also considering the purchase of an additional five acres adjacent to his property, which would give additional space for parking and water retention. Barrow said that if the variance was denied, he would have to cut down the tree and would have wasted two months of time and a lot of money. He said the Planning Commission should not have demanded he save the tree in the first place.

Lenox called the hearing to a close and opened the floor for Council debate.

McMenamin said Mr. Wyatt had spent much longer than two months trying to work out his development issues and comply with the needs and desires of his adjoining neighbors and the Planning Commission. She had compassion for the money and time Barrow had spent, but she did not feel it was uncommon for developers in Peachtree City. She felt there were several unanswered questions. As a member of the Historic Preservation Society in Peachtree City, she said she certainly wanted to see the tree preserved. She said that was her major concern. She felt there needed to be more dialogue between Barrow and Wyatt. She did not feel Council needed to act quickly on the variance.

Lenox said he liked the original plan. He said he would love to save the tree, but if he owned the piece of property, he would feel he would have the right to cut it down and build his building. He commended Barrow for studying the alternative and trying to save the tree for the benefit of the community. He questioned whether it was worth saving. He said it would cost a lot of money to save the tree. He asked if saving the tree was worth giving up the buffer. He noted it was ironic that after the site would be developed, the tree could not be seen. He felt the City would be giving up a lot to save the tree and there was a very real possibility that it would die after a few years.

Brooks had a concern about granting a variance to the ordinance. He felt there was already a lot of flexibility in the ordinance. He was uncomfortable with the extent of the variance. He agreed that the situation did not qualify for a variance. He felt if Council approved the variance without merit, it could significantly reduce the City's ability to defend the ordinance in court. He respected efforts to

save the tree, but felt a variance would undermine the intent of the ordinance.

Fritz said she had wrestled back and forth with the issue. She liked the new plan better than the original plan; however, she also knew how difficult it could be to save trees. He questioned giving up the buffer although it did not have trees. She was concerned about setting a precedent.

Pace agreed with Brooks. He felt the development was too close to the street and too close to the right-of-way. He suggested trying to get a 15,000 square foot building on site and still try to save the tree. He could not support the variance. He felt it would set a bad precedent for the undeveloped property along Highway 74.

McMenamin suggested tabling the issue to see if some issues could be worked out. She asked if Barrow would have to wait six months before submitting another plan if the variance was denied. Lenox said he did not like to see any project go forward with a temporary retention system. He felt there needed to be more study by the Planning Commission, but felt they could use some guidance from City Council. He felt the Planning Commission should know that Council would not approve a significant variance in order to save a tree. He felt they needed to know that if nothing else could be worked out, the tree was a goner.

McMenamin did not agree. She felt the tree should be given serious consideration.

Lenox said the statement should be taken at face value. He said saving the tree was going to cost a lot of money. He said he had tried to save trees himself and he knew how difficult it could be. He said he could understand that the applicant needed to have more space because he had more money invested in developing the property. Lenox did not think the tree could be saved. He felt Barrow should build a 15,000 square foot building and make the project economically feasible. He said the bottom line was whether Council would trade the buffer for the tree. He said it was that simple. He said if Council was not willing to trade for the tree, they needed to send it back to the Planning Commission with a clear message to allow the tree to be cut down and to get the best site plan possible.

McMenamin said if Council gave up the buffer and the tree eventually died, there would be no benefit for the City.

Brooks had empathy for Barrow. He suggested that if he was seriously considering buying the adjacent property things could change dramatically. Barrow said he could not currently afford to purchase the property.

Lenox felt Barrow had done a wonderful job of trying to save the tree, but it may have been a waste of time. Barrow could not understand why he had been forced to spend all of the time and money he had spent to save the tree. Lenox said the Planning Commission felt saving the tree was the right thing to do. Barrow asked for direction on how to proceed. Lenox said Barrow needed to go back to the Planning Commission and work out the water retention issue. He said Council needed to send a clear message the Planning Commission that if the tree could not be saved, it could not be saved. Brooks made a motion to deny the variance. Pace seconded the motion. Lenox asked if the

Planning Commission needed more direction. Williams felt the Council's intent was clear. Lenox commended the Planning Commission for trying to save the tree, but felt it was not worth reducing the buffer. Motion carried unanimously.

11-99-10 Election Results

Lenox said 4,602 voters turned out for the recent municipal election, which represented approximately 28% of the registered voters. Mayor Lenox read the results for the election as follows:

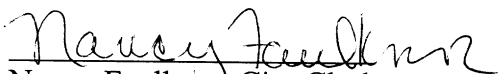
Council Post 1 -	James Melvin Ewing	1391	31.25%
	Annie W. McMenamin	3060	68.74%
Council Post 2 -	Chuck Lehman	1203	26.49%
	Bruce Perlman	1019	22.43%
	Dan Tennant	2319	51.06%

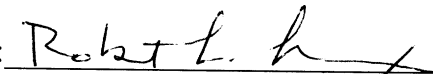
Lenox made a motion to accept the results. Brooks seconded the motion. Motion carried unanimously.

COUNCIL/STAFF TOPICS

There were no council/staff topics.

Lenox made a motion to adjourn the meeting. Brooks seconded the motion. The motion carried unanimously, and the meeting adjourned at 8:45 p.m.


Nancy Faulkner, City Clerk

Attest: 
Mayor