



**CITY OF FAIRBURN
City Council
Special Called Meeting
City Hall
56 Malone Street
Fairburn, GA 30213
October 16, 2014
6:30 P.M.**

The Honorable Mayor Mario Avery

The Honorable Ron Alderman
The Honorable Alex Heath
The Honorable Marian Johnson

The Honorable Lydia Glaize
The Honorable Elizabeth Hurst
The Honorable Hattie Portis-Jones

City Administrator:
City Clerk:
City Attorney:

Mr. Tom B. Barber
Mrs. Brenda B. James
Mr. Randy Turner

I. MEETING CALLED TO ORDER: By Honorable Mario Avery.

II. ROLL CALL: All Members of Council were present with the exception of Council Member Hurst which constituted a quorum. Council Member Johnson arrived late.

III. PUBLIC HEARING:

1. Adoption of the Ordinance to Amend Chapter 74- Landscaping, Article 11-Tree Protection, Landscaping and Maintenance, by Adding Section 74-44 and Section 74-45 in Order to provide a Tree Variance Procedure and Variance Considerations

Mayor Avery opened the Public Hearing and asked to hear from those were in favor of the Text Amendment.

Spoke In Favor:

No one came forward.

Mayor Avery asked to hear from those who were in opposition of the Text Amendment.

Spoke Against:

No one came forward.

After hearing no comments, Mayor Avery closed the Public Hearing.

Council Member Heath made a motion to approve the Adoption of the Ordinance to Amend Chapter 74-Landscaping, Article 11-Tree Protection, Landscaping and Maintenance, by Adding Section 74-44 and Section 74-45 in Order to provide a Tree Variance Procedure and Variance Considerations with Council Member Alderman providing the second.

Jahnee Prince, a consultant with the Collaborative Firm gave an overview of the Text Amendment. She said the Landscaping Ordinance is separate from the Zoning Ordinance and the Zoning Ordinance has a variance procedure written into it with the standards you would consider. She said the Landscaping Ordinance does not have that so they added provisions and they are the exact same standards as the Zoning Ordinance, however; the only difference is they do not have to post signs on the property and we do not have to run legal ads. Ms. Prince said there are 2 provisions which are listed as follows:

- 1). If this is granted, does it undermine the intent of the ordinance; and
- 2). Is there a hardship based on the size, shape or topography of the land.

Council Member Heath asked if this would affect future commercial properties or would they have to apply for a variance. Ms. Prince said yes, this would mean they have an option to apply for a variance.

Mayor Avery asked if the variance will first come to the Planning and Zoning Commission. Ms. Prince said the way they have the ordinance written, it will first come to the Mayor and Council. Ms. Prince said in the future it could change. **After discussion, the motion carried.**

IV. AGENDA ITEM:

2. An Ordinance to Approve a Tree Variance-Trammell Crow Distribution Center on Spence Road

Ms. Prince gave an overview of the Tree Protection, Landscaping and Maintenance Ordinance. She said Trammel Crow is requesting a variance for a Tree Protection, Landscaping and Maintenance Ordinance and referred to a staff memo listed in the Council Package. She went over the standards under Section 74-34 which shows the number of trees that can be planted. So what would be required is 703 units of trees. She said the next Section is 74-39 which shows the size of the tree and the rules for planting the trees which are 2 ½ inches thick and 1 ½ inches thick for an understory tree. She said the third Section is 74-40 - Tree Bank and this is used when the developer does not want to use the trees onsite. She said this normally happen with a retailer and they would request to contribute to the Tree Bank. She said there are two things to consider granting an ordinance and they are listed as follows 1). Is the

request with the intent of the ordinance. 2). Is there a hardship of the land. She said the Landscaping Plan shows there is not a lot of room to plant trees. So they could plant 212 trees in areas where they can grow. She said she believes there is a hardship of the land and she does not believe the applicant is trying to undermine the intent of the ordinance. She said there are three staff recommendations listed on page 5 as follows:

- 1). Section 7434-Tree density minimum standards of Tree Protection, Landscaping and Maintenance Ordinance - Approve to allow the applicant a variance to plant a total of 212 trees or 250 tree units, whichever is greater.
- 2). Section 7439-Tree replacement after development- Denial of the requested variance Tree replacement regarding the size of the trees and where they are planted. There is no hardship and the applicant is proposing 2 inch trees and our minimum requirement is 2½ inch trees. Recommendation by staff is to go with the standard requirements.
- 3). Section 7440-Tree Bank -Approve the requested variance given that there is a hardship of the land and this is something that is outside of the developers' control. Staff recommends approval of the requested variance.

Council Member Glaize asked what should be given to the Tree Bank for Section-7440. Ms. Prince said no contribution should be given to the Tree Bank because there is a genuine hardship of the land.

Council Member Portis-Jones asked if the term hardship could be defined for the record. Ms. Prince said yes, hardship is defined as the application of the particular provision of the Tree Protection, Landscaping and Maintenance Ordinance to a particular piece of property, due to extraordinary and exceptional conditions pertaining to that property because of its size, shape or topography, would create an unnecessary hardship for the owner while causing no detriment to the public.

Council Member Portis-Jones asked for clarity regarding why we would not require replenishing if not all a percentage of the 491 of the 703 tree density units. She said there is a recommendation of 212 trees listed on the graphics provided to them which would be 491 units that would not be replenished. Ms. Prince said with the floodplain and stream buffer that is onsite that is undisturbed. She said they cannot plant trees there per State Law. So all the trees that are there will remain onsite and they would remain growing. They have the tree protection areas onsite that is listed on the plan that are going to be protected during construction and left alone undisturbed and continued to grow. There is a hardship on this property because of the Georgia Power Utility Easement and because of the stream buffer. She said they cannot plant there it is not possible. She said this is something that is not a preference and was an act or decision for the developer. These limitations came with the land outside of the developers' control. Council Member Portis-Jones said she understands and from her perspective she thinks it is an advantage to them. So if those issues were not there they

would be required to replace all 703 units. She said there should be some contribution to the Tree Bank. Ms. Prince said yes, you can require that and this is a staff recommendation; and Council can vote however they chose.

Council Member Johnson asked about the 2 ½ inch trees on page 4 and will that be changed. Ms. Prince said yes, the staff recommendation section shows that the applicant provides a revised Landscaping Plan to staff within five business days.

Mayor Avery asked if the 2 ½ inch trees would be a requirement and would this require three different votes. City Attorney Valerie Ross said no, there would be one motion stating the different parts approving part 1 and part 3 if that is how Council wants to vote.

Council Member Glaize asked if the intent of the Tree Bank is an opportunity for the City to have a monetary input into a fund where trees that could not be placed on a property due to whatever reason and we have an opportunity to put these trees other places within the City. Ms. Prince said yes, the idea is to get the same number of trees overall and the same tree canopy because it helps prevent the urban heat island effect. She said what is customary, this is something that is offered by the developer during the planning process it is not something that is a part of the hardship process; and it is not the law. Council Member Glaize asked if our Tree Bank is the law and would it apply to this. Ms. Prince said it does prior to establishing the variance process the developers had no choice but to contribute to the Tree Bank. Council Member Glaize said the variance process can now be taken into consideration that every variance we receive but the intent of the Tree Bank is to make sure that the canopy still has a minimum effect within the City if not on that property then somewhere else in the City where the City deems is helpful. Ms. Prince said yes, that is correct.

Mayor Avery said taking under consideration of the power line easement, there are conditions that the vendor has no control over. He asked what is the maximum contribution to the Tree Bank. Ms. Prince said it is based on the cost of the trees and the cost to plant them. Mayor Avery asked if we have identified an alternate location for the trees. Ms. Prince said she is not sure.

Council Member Alderman asked if there is a time limit on the Tree Bank. Ms. Prince said that is not spelled out in the ordinance and she would have to look to the City Administrator for that information to see how it has been handled in the past.

Council Member Johnson said it is identified on page 3.

Mayor Avery asked if this is an addition to the recommended motion and that is to contribute to the Tree Bank. Attorney Ross said yes.

Council Member Alderman made a motion to approve the Variance Application Part 1, deny Part 2 & approve Part 3 with Council Member Johnson providing the second.

Council Member Glaize made a substitute motion to approve the Variance Application Part 1 and deny Part 2 and Part 3 so we can have a Tree Bank with Council Member Portis-Jones providing the second. **The motion failed with Council Members Heath, Alderman and Johnson voting “No”. Council Members Glaize and Portis-Jones voted “Yes”.**

The original motion passed to approve the Variance Application Part 1, deny Part 2 & approve Part 3 and with Council Members Heath, Alderman and Johnson voting “Yes”. Council Members Glaize and Portis-Jones voted “No”.

V. ADJOURN COUNCIL MEETING:

Council Member Heath made a motion to adjourn the Meeting at 7:05 pm with Council Member Alderman providing the second. **The motion carried.**

Brenda James City Clerk

Mayor Mario Avery