



**SPECIAL CALLED COUNCIL MEETING
4040 SOUTH BERKELEY LAKE ROAD
BERKELEY LAKE, GEORGIA 30096
FULL MINUTES
FEBRUARY 8, 2024**

ATTENDANCE

Mayor: Lois Salter

Council Members: Rodney Hammond, Scott Lee, Chip McDaniel, Bob Smith and Rebecca Spittler

City Officials: Leigh Threadgill - City Administrator, Thomas Mitchell – City Attorney
Jenni Olivo – City Engineer

Members of the Public: 32

Members of the Press: 0

CALL TO ORDER

Salter called the meeting to order at 8:03 PM. A quorum of council members was in attendance.

AGENDA

Salter asked to add an item under new business to recognize the creators of the Berkeley Lake LENS and to recognize and congratulate its first winner.

Smith made a motion to amend the agenda as suggested. Spittler seconded the motion. All council members were in favor and the motion passed.

PUBLIC HEARING

There were no public hearings.

CONSENT AGENDA

Salter noted the following as items on the consent agenda and solicited a motion:

- a) Minutes of January 18, 2023, Council Meeting
- b) Statewide Mutual Aid Agreement Renewal

McDaniel made a motion to approve all items on the consent agenda. Lee seconded the motion. All were in favor and the motion passed.

OLD BUSINESS

- a) O-24-251, Rezoning of 4477 and 4487 PIB from GC-A(C-1) to M-1 and concurrent variances as follows:
- a. Modification of the 75-foot buffer required between M-1 and R-1-00
 - b. Reduction of the minimum district area from 10 acres to 4.996 acres
 - c. Reduction of the front setback from 75 feet to 11.11 feet along the property line jog

Threadgill: O-24-251 is a proposed amendment to the zoning map to reclassify property located at 4477 and 4487 Peachtree Industrial Boulevard, Tax Parcel Numbers 6268 043 and 6268 044) from Gwinnett County – Annexed, Neighborhood Commercial to Light Industrial. In addition to the reclassification of property, three concurrent variances are sought for inclusion in the reclassification of the property. Those variances are as follows: 1) a modification of the required 75-foot undisturbed buffer between R-100 and M-1 to eliminate the buffer adjacent to tax parcel 6268 019 and impose a 25-foot building setback instead; 2) reduction of the 10-acre M-1 district area minimum to 4.996; and 3) reduction of the 75-foot front setback to 11.11 feet along approximately 49.53 feet of the Peachtree Industrial right-of-way jog into the property. Staff recommended denial of the request. The Planning & Zoning Commission recommends conditional approval of the request, and the ordinance is presented here tonight for second read consideration.

Lee made a motion to place O-24-251, an ordinance to amend the zoning map of the City of Berkeley Lake to reclassify property located at 4477 and 4487 Peachtree Industrial Boulevard from Gwinnett County – Annexed, Neighborhood Commercial to Light Industrial on second read. Hammond seconded the motion.

McDaniel asked the city attorney whether the bond could be extended to protect the lake. Mitchell responded he did not recommend it. The ordinance the condition is based upon is only intended to protect immediately downstream owners. If you go beyond that, especially across a public road, and into a body of water on another private property, it creates an issue.

McDaniel read a statement into the record as follows:

I have some concerns and questions:

Some of my concerns and questions might be answered with clear explanations – but I fully expect that some of these concerns will need to be addressed with changes to the site plan, the letter of intent, the application, the rezoning request, the variance requests, or some combination of those plans and documents. I would also like to preface my remarks by saying that this business seems to have the potential to be a good neighbor to our residents and to our lake. The city and our citizens would be wise to consider that there may be other possible businesses and activities at this site that have greater potential to harm our city, and some of those might not require any zoning changes or variance requests.

From my perspective, the applicant and team of architects and engineers have been stretching the absolute limits of the property and stretching the zoning and planning restrictions that are

in effect for the property. The site plan shows what appears to be the maximum possible warehouse building size that will physically fit on the property – and many variances are required to build to those dimensions. Furthermore, due to the magnitude of the plans, the grading effort to prepare the land for a building of this size probably represents the worst-case scenario for land disturbance and runoff during the site prep and building phase. The applicant also wishes to build two buildings on a single plot of land (against our ordinances) – and is seriously stretching the definition of “an accessory structure” instead of conforming to our ordinances. I would ask the applicant to consider if the scope and scale of the building plan can be reduced to any degree.

We have a very sensitive residential area to the NE of this property. With the applicant planning to build the largest possible collection of impervious surfaces allowed (in terms of the roofs, driveways, and parking lots), the volume of run-off from the property will go from near zero (today; from normal rain events) to basically shedding every drop of rainwater that hits this property into downstream waterways and thus into Berkeley Lake and thus into the Chattahoochee River. Even if all this water is crystal clear – the volume alone is enough to give me pause. Has the applicant and team of engineers considered converting any of these surfaces to pervious solutions?

Lastly, I'd like to address the bond and related arraignments that have been proposed. I'm not sure that a \$250,000 bond would be enough – even though I understand this amount was estimated by the city's engineer. We have had considerable inflation over the past year. And historically, transporting removed silt to “an upland disposal site” (if one can be found) has been remarkably expensive for both private Berkeley Lake homeowners and their association. On a positive note – I'm happy to see the proposal that the bond remain in effect until 3 years after the completion of construction. I am glad to see this longer period being agreed upon so that we can confirm that the site (and the new vegetation and run-off) has stabilized. We (the city and Builderstone) need to do all we can to protect the downstream pond, lake and river that will certainly be impacted by this ambitious development. I personally, would like to see a second opinion on the size of the bond, and would be in favor of seeing the bond amount increased.

Spitler asked the following of the petitioner:

- 1) Where will the stone to be stored at the warehouse be cut?

Taner Baltici noted that the customers will cut the stone, they won't be cut on site. Wendy Kraby, land use attorney, said the fabricator would buy the slabs and have them delivered to their site and then have them cut. This is a wholesale operation; stone will go to the fabricators who will cut them into final products.

- 2) These stone slabs are rather large. Are the stones coming in on 18-wheelers, and approximately how many will be coming in and out every day?

Baltici said there are 3 truck sizes, including 18-wheelers, each type just coming in once a day.

- 3) Why do you believe you need a variance modifying the 75-foot buffer adjacent to parcel 6268-019 to eliminate the 75-foot undisturbed buffer and imposing a 25-foot building setback in its place?

Kraby stated that the property to which the buffer is applied is a land-locked property owned by Ryerson. Ryerson said they didn't even know they owned the property. One of the reasons is to allow room to be able to plant trees in that area. There would be no building closer than 25 feet.

- 4) Spitler asked if the building could be shrunk to alleviate the need for the buffer variance.

Kraby stated that the applicant has gone to great lengths to make the site work. Because they weren't able to use the existing retaining pond area in the back that was originally planned, this is part of changing the site plan around to make everything work. If you saw the original plan, one of the issues is that there was a very large existing area for a retention pond. The applicant has agreed not to use that area and has agreed to put a bioretention pond outside of the area originally intended for retention. That creates a large 75-foot setback along Holben's property line. This is about doing the best they can with the space that's there and making concessions to the city for some of the things the city wanted. And the city really wanted a 75-foot setback along Mr. Holben's property.

- 5) Why do you believe you need a variance modifying the 75-foot M-1 front setback requirement to 11.11 feet along approximately 49.53 feet of the Peachtree Industrial Boulevard right-of-way jog into the property? Isn't that where the stormwater pipe and associated easement is?

Kraby stated that on some historical maps there is no setback. And on some there is a setback as if this was along the road right here. If you put in a gigantic setback, that takes a lot of the property. We've asked that the setback be moved back to be even with the setback along the entire property frontage, to remove the awkward setback that jogs into the property. It would create the same setback line across the entire length of Peachtree Industrial.

Lee stated that he serves as the liaison between the city and the homeowners association and at a recent meeting they had strong opinions. He asked Bill Lyons to come speak to those.

Bill Lyons, 127 Lakeshore Drive, as president of Berkeley Lake Homeowner's Association (BLHA) stated that on behalf of BLHA he would like to express concerns over the environmental impact this project potentially has on our community as Mr. Holben has extensively outlined, and unfortunately has experienced in the past on several occasions. We are particularly concerned about the compliance of volume of flow of water into municipal, county, state, and federal water ways. Additionally, they object to both a 30-foot retaining wall and 40-foot building height that will be visible from Lakeshore Drive have and will constitute a visual encroachment on our residential properties.

Smith acknowledged the support from staff, P&Z and citizens. This is an involved case. He appreciates hearing this detail tonight. This is a big decision.

Spitler asked the city engineer, Jenni Olivo with Keck & Wood, to come up to answer some questions.

Spitler asked how stormwater management is calculated and the difference between flow and volume. Olivo stated that the Georgia Stormwater Manual sets out requirements for stormwater management, one of which is volume reduction in the first one inch of runoff. The applicant should meet runoff reduction in their proposed bioretention area, which would remove 7,000 cubic feet of the runoff leaving the site. After that, everything in the manual has to do with flow rate reduction. There is nothing that requires a volume reduction after that. For example, if you have a wooded site, you may have 10,000 cubic feet of water running off at a certain flow rate. If you pave the site, you'll have more volume. You are required to hold the volume back and release it slowly over time, so the flow rate, the amount of volume over time, will be reduced. However, the total volume over the given period of time would be larger. The purpose of the pond is to hold it back in hopes that the peak flows from other areas would hit downstream waterways before the peak flows from the site being developed hits that water.

Spitler noted that the two properties in question appear to have challenging topography that may require significant earth-moving activity and asked Olivo for more information. Olivo responded that, based on the site plan, the area to the east of the main building where you have a truck turn and parking, will require a lot of fill behind a 40 to 50-foot retaining wall. They would either have to bring dirt from the northwest part of the site, which would be cut, or they may have to bring dirt in. There will be a lot of grading required to build the building.

Spitler asked about best practices to guide the threshold of a property to accept a certain capacity of development. Is there a difference between C-1 and M-1. Olivo says there are no requirements, but in the Georgia Stormwater Manual and other hydrologic manuals a commercial site is typically about 85% impervious, and industrial sites are estimated to be about 72% because generally industrial sites are larger. This site overall, including the buffers, is 62% impervious, but the developed portion of the site behind the retaining walls is 85%.

Spitler noted that she has one more question for Chris Holben.

Spitler noted that in past meetings Holben has indicated he has lived at this location for more than 40 years and in that time has seen a lot of development, including the widening of Peachtree Industrial and placement of truckloads of fill dirt on the subject property and has had his pond dredged numerous times. What is the process and effort required to dredge your pond.

Chris Holben, 325 Lakeshore Drive, responded the last three times they have used a mud-cat, which is about the size of a motor home. It has a drill bit and churns up the mud and water, but you have to have a holding pond somewhere, which has always been on the property

behind him. It's usually about two acres that is needed. The mud-cat pumps water and silt into this holding pond. The silt will settle to the bottom and the water will run out. But now there is really no way to have anywhere for this water to run out, so that would be a big problem. Choo Choo Dredging did it last time, about 12 years ago. It's expensive. They charge \$5000 to bring the mud cat and \$5000 to take it back. Georgia Power charged \$1000 to drop the power lines and \$1000 when they take the mud cat out and put it on a flatbed. Choo Choo Dredging brings in a big crane, but he doesn't know what that costs, though he is sure it's a lot. It's the only way to get the mud cat out of the pond. The detention pond is going to have to be over an acre, which may be a problem for the developer. It takes a long time to have the silt pumped into a pond, let the water run out, then you have to have a big backhoe in the back to scoop the silt out and then you have to have a place to put it. The other option would be to come in from the road with a big drag line and put the silt in trucks. It would be extremely expensive and messy for Lakeshore Drive. It's expensive no matter what you do. It also depends on how much silt. The first time it was around 32 dump truck loads, the last time it was over 50 dump truck loads. That was after the developer brought all the fill in.

McDaniel asked if Holben thought the \$250,000 bond would be enough to make him whole if there was a significant impact to his pond. Holben responded he thought it would probably be enough for his pond. If the silt gets into the lake, it really becomes a huge problem. It easily could get into the lake. It depends on how much it rains and how much land disturbance is done.

Hammond asked the city attorney what standard the city has to abate any risk of siltation to the downstream pond and the lake. Mitchell stated there are two answers to that. One is that conditions are appropriate in a zoning to ameliorate the impacts to public health, safety and welfare as long as they're related to the project and not the system. Those conditions can also be used to protect other properties. The second answer is that, in this case, the applicant has agreed to the bond condition.

Mitchell also wanted to correct the record that in last month's meeting someone represented that an increase in the bond amount would be de minimis once the bond is in place. That may be true in some cases when you have someone with significant bonding capacity and history, but that is not the case in this situation. In this case, the premium is a percentage of the bond amount. If the bond is doubled, it will double the premium borne by the applicant.

Smith asked what Holben thought about the visual impact of the project. Holben noted that he has some pictures of the property and circulated those to the Mayor and Council, and noted he thinks it will look like the face of the moon once it gets developed. It is a forest now. He understands the silt is coming. The property has been cleared twice before and twice his pond has been silted in. Holben noted that he has a team of people that work with him and advise him, and they say the same thing, it just depends on how much it rains and how much land disturbance there is. Holben noted that he works with a biologist, an engineer and an arborist on matters related to this site. He recently talked to a city planner who looked at this

plan and told him that they are putting too much on the site. He doesn't mind the property developing as long as it's done right. That's all he asks.

Holben noted he has already spent \$7,410 on this, but it's worth it to protect his pond and the lake. He will have to spend another \$3,500 for a baseline study, and another to do a study after the development. The property was in the county when it was last developed. He had 27 business cards of all the county employees he talked to about the property. The county tried their best but couldn't get the developer to do what he was supposed to do. With Salter's help, the EPD got involved, and heavy fines were levied against the prior developer. Holben noted that it is a complicated piece of property.

Kraby noted that there is a condition that the applicant will pay for the pre-development baseline study. To clarify, before earthmoving begins, the applicant will do a baseline study of Holben's pond, and then again after development, according to the conditions.

Baltici said that he has a lot of experience dealing with stormwater management. Part of what happened before with Holben's pond was all the fill that was dumped on the property. We can double or triple erosion control. We will over-design to address the concerns.

Kraby noted that there are a lot of details in the application and the hydrology study. This is not a developer but an owner that will become a neighbor to this community. The whole goal is that this be done right. This hasn't been done haphazardly. The engineer working on this is a former Gwinnett County engineer who designed water systems. This is not done halfway. It is done right. Every day, the applicant will be in the building, you will know where to find him. A lot of time and a lot of money have been put into this.

Kraby asked McDaniel if he wanted to have answers to his questions. He responded that he thought that answers would be in the form of changes to the site plan. McDaniel asked if the scope and scale of the building plan can be reduced to any degree? And can pervious surfaces be substituted for impervious surfaces? With all that he's heard tonight about the bond, he might be willing to let the question regarding the size of the bond go. It sounds like the \$250,000 figure has been recommended by competent people, although it seems low to him.

Kraby stated that she came on board a year ago. The site plan has gone through multiple changes. There have been multiple meetings with the engineers. This works for the property, works for Peachtree Industrial and works for the community. A lot of time and effort has been put into this site plan. Maximizing the space, you can, when you put in good stormwater management system. When you develop a property there will be a building and parking. It happens with every property in Georgia. In this case, the solution using the manual is to create an onsite bioretention basin and do it the right way. If you want to sit with the applicant and go through the site plan in detail to understand why things are the way they are, we could certainly look at doing that. If you have specific questions, we have it right here and we can go through it.

McDaniel asked if the buildings could be reduced. Kraby said they have been reduced and changed since the original site plan. To say that they haven't been would not be accurate.

McDaniel asked for confirmation from Threadgill. Threadgill responded that the smaller building has not been reduced. It started at 6,900 square feet, went up to around 11,000 square feet, and now it's around 7,250 square feet. She wasn't able to recall the changes in size to the warehouse building but will get those. She also wanted to correct an earlier statement regarding the condition relative to the baseline study of Holben's pond. That condition requires the applicant to pay for the baseline study before development, but not post development.

Mitchell confirmed that the developer was responsible for the pre-development baseline study and said that Holben had indicated he planned to do a post development study.

Marc Jacobson, 40 Lakeshore Drive, wanted to be clear about the business and asked Baltici if the slabs were going to be fabricated on site or elsewhere. Baltici responded they are not fabricated onsite but taken offsite for fabrication. Pollution will not be generated from cutting stones on site.

Threadgill noted the initial warehouse square footage submitted in June was 57,144 square feet and it is now around 61,000 square feet.

The applicant's engineer, George Kyiamah, stated that the impervious area on the site is not high for industrial development. It's 62%-65% which is lower than the average for an industrial site which is around 72%. One of the concerns is increase in surface runoff and peak flow. We aren't just detaining the minimum we are going above and beyond. We are attenuating flows to a greater extent than required by the state or the county.

Kyiamah asked how there could have been 50 truckloads of dirt in the pond before. There was further discussion about the prior siltation of Holben's pond. It is understandable if there is a 60-inch reinforced concrete pipe under about 60 feet of dirt, a lot of fill dirt was brought to the site before. If not controlled properly and there was heavy runoff, it could easily run into the lake. It seems the contractor at the time had some problems controlling sedimentation. We will be bringing dirt to the site. There will be best management practices in place that will ensure sediment is controlled on site. We will double the size of the sediment basins. We will double the silt fence. We will take suggestions from anyone, the city engineer, for how to improve erosion control measures; we are more than willing to listen. And also, there will be an independent monitoring company that will inspect erosion control measures throughout development, especially during rain events. We have talked about this in detail and are aware of the problems and we want to take every measure to control sediment on site as best as we can.

Salter noted that there is a motion and a second.

Lee stated that there was still a lot to think about and motioned to table the application for the time being. Hammond seconded the motion. All were in favor and the motion passed.

NEW BUSINESS

a) R-24-01 – Resolution Adopting 2024 Comprehensive Plan

Threadgill: I received notice from Atlanta Regional Commission that the Department of Community Affairs has approved the 2024 Comprehensive Plan Update. With this resolution, the city adopts the plan as its guide for future decision-making and implementation efforts over the next 5-year period when an update will once again be necessary. The document will be available to the public both here at city hall and on the city's website. It's also available through the Department of Community Affairs and the Atlanta Regional Commission and is up for adoption tonight.

Spitler made a motion to adopt R-24-01, a resolution to adopt the 2024 update of the Comprehensive Plan as presented. Smith seconded the motion. All were in favor and the motion passed.

b) Recognition of Berkeley Lake LENS creators and first winner

Mayor Salter said the following:

I want to thank a few people who have made major contributions to this project. Janine Brinton originally led the Arts Committee in a very effective way, until a huge tree landed on her house, necessitating a major redirection of her time and attention. Chris Kimberley has taken on the leadership role since then and helped to bring this project to fruition. The most difficult part of it all has been our desire to create an easy way for citizens to submit their photographs electronically, and for the committee members to collaborate and judge them on their computers as well. We are deeply indebted to Scott Brown, who worked for many months in a effort to get us to that point with his amazing technical expertise. Scott's passing left a huge hole, not only in our hearts, but in the whole community for all he had done as President of BLHA, and for his work on this committee.

I am so grateful for the intervention since then of Dov Jacobson, who in an effort to honor his friend Scott and help our city, picked up the complicated technical side of this project, built a whole website, and resolved every problem that arose. You'll see Dov's QR code on the door as you leave which will help you connect and perhaps send us your own fabulous photo. Special thanks are also due to Ginny Nevins who has not only served on the committee but has agreed to sponsor prizes for each month's winner in the form of \$50 donations to the charity of the winner's choice. This seems to me to be a very Berkeley Lake way of celebrating!

So tonight, we celebrate the first of our winners, Kim Berry, and you can see here her beautiful photograph that the arts committee has chosen. Thank you so much, Kim, and to each of the outstanding volunteers that I have just mentioned, as well as the other members of the Arts Committee: Britt Collins, Tom Merkel, and Jason Ouimette. You've made

something new and good in our community that I think will be a joy to all of us for many years to come. Congratulations and thank you!

PUBLIC COMMENTS

Ginny Nevins, 116 Lakeshore Drive, asked about the front setback variance and whether that was to the building or parking lot. Threadgill explained it is a building setback. She further explained that the property has a jog in it, but the plans do not indicate a need for a variance for either of the proposed buildings. This was requested in case buildings shift during the design and result in an encroachment into the front setback as measured from the jog. Nevins wanted confirmation that the buildings wouldn't be located 11 feet off the edge of the road. Threadgill explained they would not.

Karl Oroz, 4066 N Berkeley Lake Rd, asked about the traffic impact and how many daily truck trips to the site. Lee responded that the applicant had said three truck trips a day.

Marty Brinton, 498 Lakeshore Drive, asked how many 18-wheelers will be parked on the site at any one time. Baltici replied one truck will be parked inside the warehouse and not visible from the road.

Jacobson asked how many parking spots there are and how many of those can be made pervious. The applicant's engineer, Kyiamah, stated that they can convert many of the parking spaces to porous pavement. They will consider that, which will help bring down the curve numbers, peak flows and surface runoff generated from the site. It can't be in any areas of heavy truck traffic.

McDaniel stated that the site plan shows 58 spaces around the warehouse, at least half of those can't be converted. There are 15 spaces around the other building, which is the best place to convert to pervious pavement.

Kraby noted that they have the site plan for anyone who has questions. For instance, she explained that all loading and unloading is happening inside the building.

Janine Brinton, 498 Lakeshore Drive, reiterated McDaniel's point about the size of the buildings and reducing what they've proposed, not from the first iteration, but from this version. This hasn't been adequately addressed. She further asked the city attorney why the bond can't cover Lake Berkeley. Mitchell stated because of the size and magnitude of the lake, it would be much more difficult to enforce, the fact that it is privately owned and on the other side of a road, we're moving away from what might be amelioration of a project impact to what might be more of a system improvement. It would not be appropriate to try to impose a bond requirement. Brinton went on to say that because it's private is why it's important to cover. As homeowners our dues would have to go way up to cover that kind of clean up should it happen. Mitchell explained the conditions on this particular development were to

encourage the developer to do what they said they would do to maintain the silt on site. That and the requirement that the post-development flow be reduced was intended to provide as much protection as could be required under the law.

Delicia Reynolds, 3685 N Berkeley Lake Rd, asked what the recourse is if they don't do everything in the conditions or if it fails. Mitchell responded if they violate a condition of zoning, then it's a zoning enforcement action that would be taken by the city. Our inspector is diligent with regard to these types of things. There are any number of citizens that will be watching as well. A stop work order can be imposed.

Steve Shores, 326 Lakeshore Drive, asked about the noise, air and visual pollution. He asked if any of those issues have been addressed. Threadgill responded that there are conditions that have been put in place to address noise and light pollution. It was noted that trash pick-up and any type of deliveries are limited to occur between 7 am and 7 pm.

Ginny Nevins, 116 Lakeshore Drive, asked about the grading of the property. Is there any way to see what the building is going to look like to know the visual impact? There was discussion about a balloon test, which would help demonstrate what will be visible from different residential properties nearby.

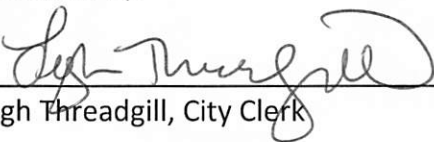
Lee noted that right now from Lakeshore you can see the billboard. If the building comes toward Lakeshore from the billboard, you will be able to see the warehouse building and the retaining wall from Lakeshore Drive.

ADJOURNMENT

There being no further business to discuss, Hammond moved to adjourn. McDaniel seconded the motion. All were in favor and the motion passed.

Salter adjourned the meeting at 9:14 PM.

Submitted by:



Leigh Threadgill, City Clerk

