

**DALTON-WHITFIELD COUNTY PLANNING COMMISSION
503 WEST WAUGH STREET
DALTON, GA 30720**

MEMORANDUM

TO: City of Dalton Mayor and Council
Kim Witherow
Jason Parker
Gandi Vaughn
Jean Price-Garland

FROM: Jim Lidderdale
Chairman

DATE: December 3, 2019

SUBJECT: The request of Anish Govan to rezone from Estate Residential (R-1) to General Commercial (C-2) a tract of land totaling 1.7 acres located at 108 Kinner Court, Dalton. Parcel (12-235-02-003) (City)

The most recent meeting of the Dalton-Varnell-Whitfield County Planning Commission was held on November 25, 2019 at 6:00 p.m. at the Wells Fargo Building fifth floor Whitfield County Commissioner's Chambers, 201 S. Hamilton Street. A portion of the agenda included a public hearing concerning the above matter. A quorum of four members of the Planning Commission was present. All legal requirements for advertising and posting the public hearing were met.

The petition was represented by Daniel Laird, with power of attorney on the petitioner's behalf.

Public Hearing Summary:

Mr. Calhoun oriented the audience to the subject property and summarized the staff analysis which was in favor of the requested C-2 rezoning with the conditions cited within the staff analysis. Chairman Lidderdale affirmed with Mr. Calhoun that the grade of the subject property was downward. Scott DeLay asked Mr. Calhoun if there was an example of a similar rezoning anywhere in the City of Dalton. Mr. Calhoun was not able to provide an example to Mr. DeLay of a previous rezoning with a similar character. Mr. DeLay went on to ask Mr. Calhoun if there would be other properties along Walnut Avenue where a similar rezoning would be acceptable. Mr. Calhoun stated that he felt as though the uniqueness of the subject property make it such that the commercial character could be effectively mitigated by the existing topographical variation, existing tree cover, condition of no access to Kinnier Court, and the additional required buffer. Mr. Calhoun went on to state that the subject property is likely the only property that staff could give a recommendation to approve along the Walnut Avenue residential to commercial border. Chairman Lidderdale asked if any of the other adjacent properties owned by the petitioner would be suitable for a commercial rezoning. Mr. Calhoun stated that he believed further commercial rezoning of properties other than the subject property along Kinnier Court could not be effectively buffered and would have noticeable negative impacts on the neighboring residential properties. Mr. Delay asked Mr. Calhoun if there is an example in the City of Dalton where C-2 had encroached into an R-1 neighborhood. Mr. Calhoun was unable to provide an example to Mr. DeLay.

Daniel Laird represented Mr. Govan with power of attorney. Mr. Laird began by stating that the petitioner's desire is to re-invest in the vacant and deteriorating building on the subject property to attract a new business. Mr. Laird went on to state that the business the petitioner is in hope of

attracting would be an Olive Garden. Mr. Laird stated that the petitioner requested this rezoning in order to utilize the subject property for additional parking to serve the proposed business due to the fact that Olive Garden corporate requires a minimum of 150 to 180 parking spaces per restaurant. Mr. Laird stated that the petitioner's plan is to place a fence along the north, east, and west boundaries of the subject property as well as evergreen vegetation to mitigate visual impact to the Dickson Acres neighborhood. Mr. Laird added the fact that Mr. Patel, the petitioner's father, has the other two residential estates along Kinnier Court under contract with the intent to further buffer the Dickson Acres neighborhood from the proposed rezoning. At this time a video presentation, provided by the petitioner, was projected onto screens for the members of the Planning Commission as well as the audience to observe a conceptual design of the subject property. Mr. Laird stated that 108 Kinnier Court is the only property up for rezoning and, Mr. Laird restated that the other residential estates along Kinnier Court under contract with Mr. Patel are intended to create further buffer to reduce impacts to Dickson Acres. Mr. Laird continued by stating that the conditions recommended in the staff analysis were already part of the petitioner's design for the subject property and stated that there is no issue with satisfying said conditions. Scott DeLay asked Mr. Laird how many parking spaces exist on the adjacent commercial property and Mr. Laird stated eighty spaces. Mr. DeLay then asked how many spaces are proposed for the subject property and Mr. Laird stated that they will need to create at least 70 spaces for the prospective business to satisfy corporate requirements. Mr. DeLay confirmed that the petitioner owns the empty adjacent property along Walnut Avenue and asked why it was not considered for parking expansion. Mr. Laird stated that the property along Walnut Avenue adjacent to the former O'Charley's building was not large enough for the necessary parking, had a lower elevation than the former O'Charley's building, and that the petitioner had plans for another new business for that property. Chairman Laughter confirmed that the dwelling on the subject property was not blighted and was in good condition. Mr. DeLay asked Mr. Laird if he was aware of another location in the City of Dalton where C-2 had created a wedge into an R-1 district. Mr. Laird stated that he was unaware of an exact example of this scenario but, gave the example of the commercial and residential boundaries related to the Steak and Shake property along Walnut Avenue that was rezoned for additional parking in the past.

Jeff White, 121 Ella Lane approached the Planning Commission to speak in favor of the C-2 rezoning based on the fact that he was not concerned that his property would be negatively impacted based on the conceptual site plans and stated that he is in favor of the proposed rezoning. Dr. White made note of a long-standing stormwater issue that affects his property unrelated to the rezoning. He went on to state that the lack of the twenty-feet buffer between his property and Walnut Avenue commercial property add to his stormwater issue. Dr. White believed that the large buffer proposed by the petitioner would help reduce stormwater impacts to the Dickson Acres community.

Drayton Sanders, 102 Ella Lane resident of Dickson Acres of 34 years stated that the Dickson Acres residents collectively and strongly oppose the proposed C-2 rezoning of the subject property. Dr. Sanders went on to give a thorough sixty-five-year history of the Dickson Acres community from its time as a farm to the current day. He pointed out that Dickson Acres residential community pre-dated the interstate and modern-day Walnut Avenue commercial development. Dr. Sanders pointed out that protective covenants were created and recorded in the courthouse since the community's creation. He went on to state that investment has continued in Dickson Acres with both re-investment, home sales, and new construction to the current day, despite the community's age. Dr. Sanders noted that he had been the chairman of the Dickson Acres Home Owner's Association for fifteen-years. He pointed out the other HOA members Craig Tidwell, John Didier, and Charles Maret unanimously oppose the 108 Kinnier Court rezoning. He pointed out the three estates along Kinnier Court that are owned or under contract by Mr. Patel as well as noting the location of Dr. White's estate along Ella Lane. Dr. Sanders stated that he believed the proposed C-2 rezoning would be considered a wedge into the Dickson Acres community. He went on to cite a conversation he had with Mr. Patel in the past that led Dr. Sanders to

believe Mr. Patel's intention to develop the other residential properties along Kinnier Court to commercial as well. Dr. Sanders then stated per his communication with Mr. Patel that he understood that Mr. Patel intends to request that Kinnier Court be closed as a City street. Dr. Sanders went on to further state that in his prior conversations with Mr. Patel that Mr. Patel had made claims to develop the other properties along Kinnier Court with restaurants and a hotel at a later time. He then pointed out long-standing stormwater issues along McClellan Creek inside Dickson Acres and believed that this rezoning, if approved, would worsen the existing issue.

Craig Poteet, thirty-five-year resident of Dickson Acres residing at 129 Ella Lane, points out that his property faces the subject property with a clear lane of sight. Mr. Poteet stated that he was concerned that Mr. Patel had purchased such a substantial amount of property along Kinnier Court and believed that this rezoning, if approved, would have a substantial negative impact to Dickson Acres and the City of Dalton. He went on to state that, since the 2015 adoption of the Unified Zoning Ordinance, that not a single instance had occurred where a property had been rezoned from R-1 to C-2. Mr. Poteet pointed out on a large zoning map the straight and consistent boundary of C-2 and R-1 in this area and how the proposed rezoning would create a commercial wedge into Dickson Acres. He stated that he felt that the demolition of a conforming R-1 property for the expansion of a parking lot would be a poor land use decision. Mr. Poteet points out on another set of large maps the amount of contiguous commercial property the petitioner owns along Walnut Avenue that, in total, exceeds seven acres. He then pointed out the other contiguous properties owned or under contract by Mr. Patel along Kinnier Court and stated that he believed this rezoning would constitute an entering wedge into Dickson Acres. Mr. Poteet stated that he believes the petitioner could utilize other vacant contiguous commercial properties already zoned C-2 for the proposed parking lot rather than compromising the residential integrity within Dickson Acres. He pointed out former residential to commercial rezoning along the Walnut Avenue corridor where the City of Dalton purchased property to create a boundary and buffer.

Steve Farrow, lifelong resident of Dickson Acres, passed out a typed opposition countering the points of the staff analysis with an opposition to the proposed rezoning. Mr. Farrow stated that he believed the proposed rezoning would be blatant commercial intrusion as an entering wedge with long-term negative affects to the residential character of Dickson Acres and, did not believe the benefit of a corporate commercial enterprise would outweigh the negative impacts imposed on the residential community. Mr. Farrow again pointed out the clear and long-standing boundary of C-2 and R-1 along this portion of Walnut Avenue to illustrate the point of an entering wedge and, he went on to state that this boundary is much more easily preserved than other areas within the City where residential and commercial boundaries converge.

Craig Tidwell, 129 Huntington within Dickson Acres, passed out a petition along with several letters to Chairman Lidderdale that opposed the proposed C-2 rezoning. Mr. Tidwell felt as though the proposed rezoning was in conflict with the vision statement of the Whitfield County Joint Comprehensive Plan based on the fact that it would encroach upon an existing residential community.

David Archer, attorney hired by the Dickson Acres architectural committee passed a copy of the Dickson Acres 1955 covenant recorded in the Whitfield County courthouse and points out that they are still viable to the Dickson Acres community. Mr. Archer points out that the covenants strictly prohibit any other use than residential within Dickson Acres. He continued to read another point from the covenants that states the need for a majority of Dickson Acres residents in order to exempt a property from the covenants. Mr. Archer stated that no such act had occurred, to date, exempting the subject property of the Dickson Acres covenants. Mr. Archer stated, on behalf of his clients within Dickson Acres, that if this application is approved it would be arbitrary and capricious action and in violation of the United States Constitution. He went on to state that certain aspects of the procedures and standards of the public hearing were in violation of the Georgia Zoning Procedures Act. Mr. Archer asked the

Planning Commission not to recommend approval of this rezoning.

Daniel Laird rebutted by stating that when the previously mentioned Dickson Acres covenants were amended in 2009 the 108 Kinnier Court, subject property, did not sign the amended covenants. He went on to state that because 108 Kinnier Court had not signed the amended Dickson Acres covenants that the property is not bound by such restrictions. Mr. Laird noted, per the staff analysis, that the requested rezoning is a unique property where said rezoning could be appropriately mitigated by the conditions listed within the staff analysis. Mr. Laird closed by stating he believed that the requested rezoning should be approved despite the concerns regarding other properties owned by Mr. Patel.

With no other comments heard for or against this hearing closed at 8:19

Recommendation:

Chairman Lidderdale sought a motion on the requested C-2 rezoning. Mr. DeLay stated that he felt as though the requested C-2 rezoning would be an entering wedge given the long-standing boundary of commercial and residential zone districts in this area. Mr. DeLay went on to state that he believed the entering wedge of C-2 would weaken the integrity of the adjacent neighborhood. Mr. Sanford, in agreement with Mr. DeLay, noted the age of the Dickson Acres community and its integrity as an estate neighborhood. Mr. Thomas stated that he appreciated the intent of the petitioner to invest in the community but, he then noted that the petitioner purchased the subject property as it was zoned along with the restrictions attached to the longstanding covenants from the 1950's. Mr. DeLay then stated that he believed this rezoning, if approved, would set a precedent for more commercial encroachment since no similar examples could be provided showing a similar situation yielding no adverse effect to a neighborhood in the City of Dalton. **Mr. DeLay then made a motion to recommend a denial for the C-2 rezoning. Mr. Thomas seconded the motion and a unanimous recommendation to deny the requested C-2 rezoning followed, 3-0.**