



MEMORANDUM

To: Mayor and City Council

From: Michael Tuller, Community Development Director

Date: December 13, 2010

Subject: Text Amendment to City of Dunwoody Zoning Ordinance

BACKGROUND

At the August 9 Mayor and City Council Meeting, Councilmember Bonser initiated a text amendment to allow an applicant to apply for a Special Land Use Permit (SLUP) for package sales if the applicant cannot meet the city's requirement for a 200 yard separation from a single or two-family residence. Currently, pursuant to Chapter 4, §4-99 of the City Code, a business wishing to obtain a package license must maintain a distance of greater than 200 yards as measured by the most direct route of travel along the ground.

The text Councilwoman Bonser recommended to be introduced reads as follows:

- 1) In the event that an applicant does not meet the requirements of this provision, they may apply for a Special Land Use Permit from City Council under the following conditions:
 - a) More than 50% of the applicant's gross annual revenue is generated from food or pharmaceutical sales.
 - b) The request for license is for beer and wine package sales.

Community Council reviewed the text amendment at their meeting on September 9, 2010. The Council voted to approve the amendment, as noted in red lettering above, by a vote of 3-1. The dissenting vote felt that it was unnecessary to change the existing ordinance.

The Planning Commission originally reviewed this proposal at their regular October meeting. At that time, both the SLUP proposition and a new alternative, a Conditional Use Permit (CUP) proposition were introduced and discussed. Because neither city staff nor the Planning Commissioners were able at that time to delineate any acceptable criteria on which such a request should be compared and contrasted, the item was deferred for one month until the regular November meeting for further study and review.

At this time staff believes that the creation of a CUP process would be over-regulatory and cumbersome to develop and implement, so the best course of action would be to evaluate the text amendment as originally suggested by Councilwoman Bonser as a SLUP process, which is already in use in the existing Zoning Ordinance. In the specific instance of an



alcohol sales SLUP, additional criteria above what can be found in §27-1491 to include equal and alternative locations in the area, existing and proposed traffic conditions, how “residential” the area is (such as what is the ratio of commercial to residential properties in a certain radius) and what kind of alcohol permit specifically would be requested.

The item was reviewed again at the November Planning Commission Meeting. The Commission decided by a vote of 7-0 to support staff’s recommendation for no change to the ordinance. Their motion included the recommendation that if a change is made, the proposed language should be used.

DISCUSSION

Chapter 4, “Alcoholic Beverages,” is not currently a chapter of the Dunwoody Code of Ordinances that is governed by the Georgia Zoning Procedures Act (ZPA). The addition of a SLUP procedure will require changes to §4-99 of Chapter 4 to comply with the ZPA, including, but not limited to: amendments will be required to be sent through a full-cycle review in the zoning process, with legal ads being placed for each meeting, which is a nearly 14-week process. Additionally, if the applicant later comes forward with a request for a SLUP, s/he must hold a publicized pre-submittal meeting, and then attend the Community Council meeting, Planning Commission meeting and two reads by the Mayor & City Council. The current 10-day administrative review process would be lengthened to over four months with three public meetings and two Public Hearings.

Further, the number of properties emerging as potential sites for alcohol package sales is an unknown quantity at this point. That increase could be interpreted as a detriment to the community, not an asset.

Neighboring jurisdictions including Sandy Springs, Roswell, Alpharetta, John’s Creek, Milton, Norcross, Chamblee and Doraville do not have any provision in their respective alcohol ordinances that permit an applicant to seek relief from a distance requirement by SLUP. Applicants in those jurisdictions have to either comply with the alcohol code, or seek an alternative location for alcohol sales. Alpharetta does, however, make a limited provision for a variance to distance requirements for sales of on-premise consumption of alcoholic beverages. The allowable variance must meet an associated set of criteria for consideration of those requests.

ANALYSIS

In the case of creating a SLUP process as an alternative to compliance with code standards such as distance regulations, staff cannot calculate how this change will offer measurable benefit/detriment to all the stake holders in the city—the residents, the city as well as business & property owners at large. No other neighboring jurisdiction has instituted such a policy.

Perhaps a sound alternative planning process would be to establish minimum acceptable distance criteria, and then set that standard into code. If it is the intent of the policy to allow package sales within a certain proximity to single- and two-family residences, then making the change to the permissible distance -by right- would be the best course of action. The single detriment to this plan is that a change of this nature (after the August 2009 change that extended this exact required distance) may appear on its surface to some to be a reversal of previous policy.



The City Attorney's office has commented with the following:

"The Dunwoody City Council has the authority to amend certain distance requirements set forth in Chapter 4 "Alcoholic Beverages" of the Code of Ordinances of the City of Dunwoody Georgia. The Council does not have the authority to reduce any minimum distance requirement required by state law. O.C.G.A § 3-3-21 (a) prohibits the sale of: 1) any distilled spirits in or within 100 yards of any church building or within 200 yards of any school building, educational building, school grounds, or college campus, 2) any wine or malt beverages within 100 yards of any school building, school grounds, or college campus, and 3) any distilled spirits, wine, or malt beverages within 100 yards of an alcoholic treatment center owned and operated by this state or any county or municipal government therein.

"The prohibition of package sales for any place of business which is located within a set distance of a private single-family or two-family residence is not mandated by state law. Accordingly, any such restriction is determined as a matter of policy by the City Council. Therefore, the City Council has the authority to set such a distance requirement and has the authority to stipulate the requirements for a special land use permit which can lessen such distance requirements."

RECOMMENDATION

Staff would caution the Council to affect this change in a different manner. Set the distance from single- and two-family residences that is acceptable for package beer and wine sales, and then institute the code as a by-right privilege for applicants. Establishing SLUP requirements consumes valuable city resources and requires repeat maintenance for each new application that the city receives.

If approved without further review, however, the proposed amendments to Chapter 4, Article 4, §4-99, "Distance Requirements for churches, schools, etc." should read as follows:

...

- (c) No package license shall be issued for any place of business which is located within 200 yards of a private single-family or two-family dwelling in a zoning district that permits single- and/or two-family dwellings; provided, however, this prohibition shall not apply with respect to a private dwelling located in a zoning district in which alcoholic beverage outlets are authorized and which dwelling is on the same street as the premises for which a package license is applied.

(1) In the event that an applicant does not meet the requirements of this provision, they may apply for a Special Land Use Permit from City Council under the following conditions:

- a. More than 50% of the applicant's gross annual revenue is generated from food or pharmaceuticals sales.
- b. The request for license is for beer and wine package sales.



(2) In addition to the requirements in 27-1491, Special Land Use Permits applied for under these conditions may only be granted if satisfactory provisions and arrangements have been made concerning each of the following factors:

- a. Location. The location for which the license is sought, as to traffic congestion, general character of the neighborhood, and the effect such an establishment would have on the adjacent and surrounding property values, also identification of equal and alternative locations in the area that would not require a Special Land Use Permit;
- b. Impacts. Effect on the predominant land use(s) in the area, including existing ratio of commercial to residential properties within 2,000 feet of the proposed location; and
- c. Reputation, character. The applicant's reputation, character trade and business associations or past business ventures, mental and physical capacity to conduct this business; and
- d. Previous violations of liquor laws. If the applicant is a previous holder of a license to sell alcoholic liquors, whether or not he has violated any law, regulation or ordinance relating to such business; and
- e. Manner of conducting prior liquor business. If the applicant is a previous holder of a license to sell alcoholic liquors, the manner in which he conducted the business there under, especially as to the necessity for unusual police observation and inspection in order to prevent the violation of any law regulation or ordinance relating to such business; and
- f. Number of licenses in trading area. The number of licenses already granted for similar business in the trading area of the place for which the business is sought; and
- g. Previous revocation of license. If the applicant is a person whose license issued under the police powers of any governing authority has been previously suspended or revoked or who has previously had an alcoholic beverages license suspended or revoked; and
- h. Payment of taxes. If the applicant and business are not delinquent in the payment of any local or state taxes; and
- i. Congregation of minors. Any circumstances which may cause minors to congregate in the vicinity of the proposed location, even if the location meet the distance requirements herein; and



- j. Prior incidents. Evidence that a substantial number of incidents requiring police intervention have occurred within a square city block of the proposed location, if within the city or within the immediate area if in the unincorporated area of the county, during the twelve (12) months immediately preceding the date of application.
- k. Previous denial or revocation. The denial of an application, or the revocation of a license, occurring within the preceding twelve (12) months, which was based on the qualifications of the proposed location.

(3) An approved SLUP shall be a purely personal privilege of the applicant of record, and is not for any reason transferable to any other person/entity. Person/persons who desire(s) to continue the business of a prior approved applicant shall be considered a new applicant(s) and shall be required to re-apply for- and comply with- all provisions of this chapter currently in effect.

(4) All alcohol sales licenses associated with this permit must be obtained not later than ninety (90) days from the date of the approval of the application by the City Council, and, if not so obtained, the license shall be void.

(5) Approvals for alcohol related SLUPs shall expire with each major and substantive amendment to the City's Comprehensive Plan or every five years, whichever comes first. At that time the applicant of record, or a new applicant, must re-apply for the permit to continue the use. If no such renewal application is made within ninety (90) days of the adoption of the amended Comprehensive Plan, the use must cease and desist until the permit is renewed.

The additional criteria associated with line items #2 - #5 have been added to Councilwoman Bonser's original text at the suggestion of staff and by the request of the Planning Commission at their October meeting. The legal validity of a decision such as this will rest on the deliberate set of guidelines upon which to qualify the approval or denial. Without sound criteria, a decision could be regarded as arbitrary and capricious, and therefore have no merit.

AN ORDINANCE AMENDING CHAPTER 4 OF THE CITY OF DUNWOODY CODE OF ORDINANCES BY CREATING A SPECIAL LAND USE PERMIT PROCESS FOR EXEMPTIONS TO DISTANCE REQUIREMENTS

WHEREAS, the City of Dunwoody is charged with protecting the health, safety and welfare of the citizens of the City; and

WHEREAS, the City of Dunwoody has heretofore adopted an ordinance for Alcohol Beverages, as set forth in Chapter 4 of the Code of the City of Dunwoody (the "Code"); and

WHEREAS, the provisions of Chapter 4 currently prohibit any package licensed dealers from locating within 200 yards of a private single-family and two-family dwellings; and

WHEREAS, the Mayor and City Council have determined that in order to provide for economic development in the City, it may be prudent to allow certain exceptions to this distance requirement for package wine and malt beverage dealers through the Special Land Use Permit process.

WHEREAS, A First Read of this Ordinance has been held on December 13, 2010 and a properly-advertised public hearing and Second Read of this Ordinance has been held on January 24, 2011.

THEREFORE, Mayor and City Council of the City of Dunwoody hereby ordain as follows:

Section 1: Alcohol Beverages, Chapter 4 of the City of Dunwoody Code, Article IV (Location of Sales), Section 4-99(c), is hereby amended to read as follows:

ADDITIONS = UNDERLINE
DELETIONS =

Sec. 4-99. Distance from Churches, Schools, Etc.

...
...

- (c) No package license shall be issued for any place of business which is located within 200 yards of a private single-family or two-family dwelling in a zoning district that permits single- and/or two-family dwellings; provided, however, this prohibition shall not apply with respect to a private dwelling located in a zoning district in which alcoholic beverage outlets are authorized and which dwelling is on the same street as the premises for which a package license is applied.

- (1) In the event that an applicant does not meet the requirements of this provision, they may apply for a Special Land Use Permit from City Council under the following conditions:
- a. More than 50% of the applicant's gross annual revenue is generated from food or pharmaceuticals sales.
 - b. The request for license is for beer and wine package sales.
- (2) In addition to the requirements in Chapter 27, Sec. 27-1491 of the City Code, Special Land Use Permits applied for under these conditions may only be granted if satisfactory provisions and arrangements have been made concerning each of the following factors:
- a. *Location.* The location for which the license is sought, as to traffic congestion, general character of the neighborhood, and the effect such an establishment would have on the adjacent and surrounding property values, also identification of equal and alternative locations in the area that would not require a Special Land Use Permit;
 - b. *Impacts.* Effect on the predominant land use(s) in the area, including existing ratio of commercial to residential properties within 2,000 feet of the proposed location; and
 - c. *Reputation, character.* The applicant's reputation, character trade and business associations or past business ventures, mental and physical capacity to conduct this business; and
 - d. *Previous violations of liquor laws.* If the applicant is a previous holder of a license to sell alcoholic liquors, whether or not he has violated any law, regulation or ordinance relating to such business; and
 - e. *Manner of conducting prior liquor business.* If the applicant is a previous holder of a license to sell alcoholic liquors, the manner in which he conducted the business thereunder, especially as to the necessity for unusual police observation and inspection in order to prevent the violation of any law regulation or ordinance relating to such business; and
 - f. *Number of licenses in trading area.* The number of licenses already granted for similar businesses in the trading area of the place for which the license is sought; and

- g. Previous revocation of license. If the applicant is a person whose license issued under the police powers of any governing authority has been previously suspended or revoked or who has previously had an alcoholic beverages license suspended or revoked; and
- h. Payment of taxes. If the applicant and business are not delinquent in the payment of any local or state taxes; and
- i. Congregation of minors. Any circumstances which may cause minors to congregate in the vicinity of the proposed location, even if the location meets the distance requirements herein; and
- j. Prior incidents. Evidence that a substantial number of incidents requiring police intervention have occurred within a square city block of the proposed location, if within the city or within the immediate area if in the unincorporated area of the county, during the twelve (12) months immediately preceding the date of application.
- k. Previous denial or revocation. The denial of an application, or the revocation of a license, occurring within the preceding twelve (12) months, which was based on the qualifications of the proposed location.

- ~~(3) An approved SLUP shall be a purely personal privilege of the applicant of record, and is not for any reason transferable to any other person/entity. Person/persons who desire(s) to continue the business of a prior approved applicant shall be considered a new applicant(s) and shall be required to re-apply for- and comply with- all provisions of this Chapter currently in effect.~~
- ~~(4) All alcohol sales licenses associated with this permit must be obtained not later than ninety (90) days from the date of the approval of the application by the City Council, and, if not so obtained, the SLUP shall be void.~~
- ~~(5) Approvals for alcohol related SLUPs shall expire with each major and substantive amendment to the City's Comprehensive Plan or every five years, whichever comes first. At that time the applicant of record, or a new applicant, must re-apply for the permit to continue the use. If no such renewal application is made within ninety (90) days of the adoption of the amended Comprehensive Plan, the use must cease and desist until the permit is renewed.~~

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#1.6.

STATE OF GEORGIA
CITY OF DUNWOODY

ORDINANCE 2011-XX-XX

Section 2: This Amendment shall become effective immediately upon its adoption by the City Council, and incorporated into the Code of the City of Dunwoody, Georgia. This Amendment hereby repeals any and all conflicting ordinances and amendments.

SO ORDAINED, this ____ day of _____, 2011.

Approved:

Ken Wright, Mayor

ATTEST:

Approved as to Form and Content:

Sharon Lowery, City Clerk (Seal)

Brian Anderson, City Attorney