City of Dunwoody Zoning Board of Appeals
Thursday, July 2, 2009 – 7:00 PM
41 Perimeter Center East, Dunwoody GA

Call to Order / Roll Call:
The meeting was called to order. All were present except for Joe Tuttle and Gerri Penn.

Approval of Meeting Minutes:
Susan Mitchell motioned to approve the April 27, 2009 special called meeting minutes with the correction to be made that Ardy Bastien was in attendance. The vote carried unanimously (5-0). A motion was made to approve the June 4, 2009 meeting minutes. The vote carried unanimously (5-0).

Old Business:

ZBA09-052: Richard Brown of 1471 Carnaby Court, Dunwoody, Georgia 30338, owner/applicant; requests a variance to the City of Dunwoody Zoning Ordinance, §2C-6, sub-section (e), to decrease a required rear yard setback from forty (40) feet to twenty-four (24) feet, a reduction of 40%, to re-build a deck. The subject property is located at 1471 Carnaby Court, Dunwoody, Georgia 30338, at the western terminus of Carnaby Court. The tax parcel number is 18 375 01 017: On behalf of Richard Brown, Steve Cobb is the attorney representing Mr. Brown and the legal firm requested a move for a continuance due to an unexpected conflict. Terri Wright stated that she adamantly does not want a continuance to re-build the deck. Ms. Braswell and Bob Lundsten are in opposition of allowing a continuance and feel that the applicant should be present to state his case if it is on the agenda. The opposition should have a right to speak. Bob Lundsten stated that Ms. Braswell has been receiving threatening phone calls. The legal counsel representing Mr. Brown said that he has not been informed of any threatening phone calls made to Ms. Braswell. Susan Mitchell motioned to not approve the deferral. The motion was seconded. The vote carried unanimously (5-0).

Terri Wright stated that she received a 3 page letter from Mr. Brown stating his reasons to want to build a screen porch and a large deck that would extend 17feet within the setback of her property. Ms. Wright told Mr. Brown that she would have no problem with him building a smaller porch and deck. Ms. Wright and Mr. Brown could not reach an agreement. Legal counsel spoke on behalf of Mr. Brown saying that his letter included several compromises and that he would plant evergreen trees and he stated that it is 25feet within her property, not 17feet. Mr. Brown also stated that he did build a deck adjacent to the sunroom without a permit. When he did obtain a permit from DeKalb County, he received 2 stop work orders and after the second stop work order he was then told the permits transferred to the City of Dunwoody. Discussion followed.

A motion was made to deny the setback variance for the porch and deck addition. The vote carried unanimously (0-5).

DRAFT

New Business:

ZBA09-061: Dunwoody Village Place, LLC, owner; represented by Rich & Peggy Kernan of 210 Scotney Glen Circle John's Creek, Georgia request the following variance: (1) to the City of Dunwoody Land Development and Environmental Protection Ordinance: §11 of Article 2 to encroach into an undisturbed state waters bufferyard; The subject property is located at 1536 Dunwoody Village Parkway, Dunwoody Georgia 30338. The tax parcel number is 18 366 06 065. ***This request was previously assigned case number ZBA09-053*****:** The Kernan's presented their variance request on the subject property located at 1536 Dunwoody Village Parkway case number ZBA09-061. They would like to open a day school in the City of Dunwoody and remove a large portion of the asphalt parking lot. They met with counsel representing the two parties and investigated various ways to resolve their issues. Granting this variance request only provides the Kernan's with the ability to apply for a land disturbance permit.

Lisa Mooreshower – legal counsel representing Dunwoody Commons spoke on behalf of Dunwoody Commons and adjacent businesses that are strongly opposing the variance request. She states that this is a stream variance request and the applicants need to meet the requirement listed in the Dunwoody Land Development and Environmental Protection Code and they do not believe they have set forth the criteria in their application for this type of variance. In addition, the applicants must seek a variance with the State and they have not done so.

Discussion of those in opposition of the variance request continued. The playground variance was deferred until the July 22, 2009 meeting in order to determine whether the EPA has waived their rights and for the Board to study all materials. The vote carried unanimously (5-0).

ZBA09-062: The Branches Club, Inc.; represented by Bryan C. Hutchinson, President; of 1318 Winding Branch Circle, Dunwoody, Georgia; requests the following variance: a change of DeKalb County Board of Zoning Appeals conditions to add lights to an outdoor tennis court; The subject property is located at 1318 Winding Branch Circle, Dunwoody Georgia 30338. The tax parcel number is 18 365 03 031: Bryan Hutchinson presented his case regarding variance request ZBA09-062 at the subject property located at 1318 Winding Branch Circle. The tennis courts at The Branches Club have become overcrowded and a request is being made to add lights on 3 of the 4 courts to accommodate everyone who would like to play tennis. The Branches Club is the only tennis club in the City of Dunwoody that does not have lights on their courts. 175 club members have signed a petition in favor of lights on the tennis courts. He also stated that the league teams cannot participate without lights on the court once it is dark therefore they are required to drive to other courts in order to play. Those in opposition of adding lights on the tennis courts oppose because the additional hours of light will bring longer hours of noise and traffic. There will be a timer set on the lights. Discussion followed.

A motion was made to approve the variance request for the addition of lights on the tennis courts. The motion was seconded. The vote carried unanimously (3-2).

ZBA09-063: Seaman Development Corporation, of 400 Perimeter Center Terrace, Suite 800 Dunwoody, Georgia 30346; represented by Carl E. Westmoreland and Jessica L. Hill, of Seyfarth Shaw LLP; request the following variances:

(1) **Variance from Chapter 27, Section 2Y-10 to increase the lot coverage permitted from eighty percent (80%) to ninety-one percent (91 %);**

(2) **Variance from Chapter 27, Section 4-21 to eliminate the landscaping requirements for parking lots and permit the existing landscaping;**

(3) **Variance from Chapter 27, Section 2Y-7 to eliminate the 50 foot transitional buffer along the west property line where the site abuts the R-150 zoned cemetery property to permit existing conditions to remain.**

(4) **Variance from Chapter 27, Section 2Y-6(c)(2) to eliminate the five foot landscape strip required within the west interior side yard setback;**

(5) **Change of previous DeKalb County Zoning Board of Appeals condition to reduce the required parking from 4.5 spaces per 1,000 square feet of retail as granted through a previous variance to 4.15 spaces per 1,000 square feet;**

(6) **Change of previous DeKalb County Zoning Board of Appeals condition to reduce the required loading spaces from seven 12'x35' spaces to zero 12'x35' spaces; and**

(7) **Variance from Chapter 14, Section 14 to permit the existing non-conforming water quality measures to remain in lieu of implementing the current City of Dunwoody requirements.**

The subject property is located at the southwest corner of Ashford-Dunwoody Road and Hammond Drive. The tax parcel number is 18 348 02 001: Carl Westmoreland presented his case regarding variance request ZBA09-063 for 'Rooms To Go' at the subject property located at the southwest corner of Ashford Dunwoody Road and Hammond Drive.

Jim McCarthy- Director of Real Estate for Home Depot strongly supports moving forward with the requested variances. He stated that Home Depot is aggressively trying to back fill tenants and avoid vandalism of the property due to vacancy.

Discussion followed. Susan Mitchell motioned to approve ZBA09-063 with all seven variance requests. Ed Godshall suggested one condition to implement an improved landscape plan that is consistent with what was discussed by tonight's meeting. The motion was seconded. The vote carried unanimously (5-0).

ZBA09-064: Seaman Development Corporation, of 400 Perimeter Center Terrace, Suite 800 Dunwoody, Georgia 30346; represented by Carl E. Westmoreland and Jessica L. Hill, of Seyfarth Shaw LLP; request the following variances:

(1) **Variance from Chapter 21, Section 12(b) to permit a 150 square foot wall sign on the Ashford Dunwoody Road side of the existing retail building;**

(2) **Variance from Chapter 21, Section 12(b) to permit two additional wall signs on the Hammond Drive façade of the existing building to permit each tenant in the building to have its own sign identifying the main entrance of each store;**

The subject property is located at the southwest corner of Ashford-Dunwoody Road and Hammond Drive. The tax parcel number is 18 348 02 001: Carl Westmoreland presented his

case regarding variance request ZBA09-064 at the subject property located at the southwest corner of Ashford Dunwoody Road and Hammond Drive. Discussion followed.

A motion was made to approve the two variance requests of ZBA09-064. The motion was seconded. The vote carried unanimously (5-0).

ZBA09-065: Jack D Hudson of 1984 Dellfield Court Dunwoody, Georgia 30338; requests the following: Variance from Chapter 27, Section 2L-6(b)(2) to permit a building addition and remodeling on the rear of an existing single family home. The subject property is located at the northern terminus of Dellfield Court, north of its intersection with Dunwoody Club Way. The tax parcel number is 06 341 01 112: Jack Hudson presented his case regarding variance request ZBA09-065 at the subject property located at the northern terminus of Dellfield Court, north of its intersection with Dunwoody Club Way. He is requesting to build an addition to close in the screen porch due to his wife's medical issues and they are no longer able to use their screen porch. Discussion followed.

Howard Koontz, City Planner, stated that after reviewing the survey plat there are two concerns; 1) whether or not the wooden deck should have ever been permitted in the first place; and 2) whether or not the expansion can be lawfully permitted. He said there is a 10 foot drainage easement off of the back of the property and the proposed expansion would intrude into the 10 foot drainage easement. If the pipe were to fail, the ground would have to be excavated and we do not have the means to allow anyone to build into, across, or over the easement and there is no means to permit the project if the variance is approved to move forward. Mr. Koontz said the expansion cannot be permitted.

The Board advised applicant to withdraw application to work out a solution before re-applying for a variance due to not being able to intrude on a pre-existing easement. A motion was made to allow the applicant to withdraw the application. The motion was seconded. The vote carried unanimously.

ZBA09-066: Steven J. Campbell, President of the Dunwoody Court Condominium Association, of 306 Dunbar Drive, Dunwoody GA 30338; represented by Doyle P. Jones of Capitol Community Management; requests the following: variance to Chapter 14, the City of Dunwoody Land Development and Environmental Protection Ordinance: §11 of Article 2 to encroach into an undisturbed state waters bufferyard to permit the replacement/reconstruction of an existing retaining wall. The subject property is located at 1010 Dunbar Drive, Dunwoody GA 30338; The tax parcel number is 18 344 08 001: Legal counsel representing Mr. Campbell and the Home Owner's Association at Dunwoody Court presented the case regarding variance request ZBA09-066 at the subject property located at 1010 Dunbar Drive. The applicant is proposing to replace the retaining wall which is more than 30 years old. Staff informed the applicant that they have met all requirements except for one condition. The retaining wall would be located inside a current stream buffer and although there is another way to repair this retaining wall, it would require drastic dangerous procedures. The main difference is 24 inches. Discussion followed.

Bill McCahan motioned to approve the variance request to intrude an additional 24 inches into the wetlands to replace the retaining wall and to see the erosion drawings. Ed Godshall seconded. The vote carried unanimously (4-1).

Items for discussion not otherwise addressed by this agenda:
There were no other items for discussion.

Adjourn:
A motion was made to adjourn. The motion was seconded. There being no further business the meeting was adjourned.