

Agenda Item

File ID: 2021-3160

Substitute

3/22/2022

Public Hearing: YES NO

Department: Planning and Sustainability

COMMISSION DISTRICT(S): All Districts

SUBJECT:

Application of the Director of Planning and Sustainability to amend Section 27-7.5.3 (A)(1) of the *DeKalb County Zoning Ordinance* to refine variance criteria for the Zoning Board of Appeals.

PETITION NO: TA-21-1245114 (2021-3160)

PROPOSED USE: N/A

LOCATION: N/A

PARCEL NO.: N/A

INFO. CONTACT: Brandon White, Current Planning Manager

PHONE NUMBER: 404-371-2155

PURPOSE:

Application of the Director of Planning and Sustainability to amend Section 27-7.5.3 (A)(1) of the *DeKalb County Zoning Ordinance* to refine variance criteria for the Zoning Board of Appeals.

RECOMMENDATION:

COMMUNITY COUNCIL: (Dec. 2021) CC-1: Approval; CC-2: Approval; CC-3: Deferral; CC-4: Denial; CC-5: Deferral. (Oct. 2021) CC-1: No Quorum; CC-2: Deferral; CC-3: Full Cycle Deferral; CC-4: Denial; CC-5: Approval.

PLANNING COMMISSION: (Jan. 6, 2022) Approval. (Nov. 4, 2021) Full Cycle Deferral.

PLANNING STAFF: Approval.

STAFF ANALYSIS: The Department is proposing to amend the language in the first criterion to provide clarity to applicants who are filing applications before the Zoning Board of Appeals as well as to aide members of the Zoning Board of Appeals in evaluating applications. The amendments to the first criterion clarify the basis for relief from the *Zoning Ordinance* in the form of an exceptional physical condition which justifies the need for a variance as compared to a favor or special privilege. Additionally, the concept and proposed nomenclature are consistent with local and national planning practice.

Jurisdictions	
Cobb County	"There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography;"
Fayette County	"There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography;"
City of Atlanta	"There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography;"
State of South Carolina	"There are extraordinary and exceptional conditions pertaining to the particular piece of property;"

PLANNING COMMISSION VOTE: (Jan. 6, 2022) Approval 9-0-0. Jana Johnson moved, Gwendolyn McCoy seconded for Approval, per Staff recommendation. **(Nov. 4, 2021) Full Cycle Deferral 8-0-0.** Gwendolyn McCoy moved, LaSonya Osler seconded for Full Cycle Deferral, per staff recommendation.

COMMUNITY COUNCIL VOTE/RECOMMENDATION: (December 2021) CC-1: Approval 4-0-0; **CC-2:** Approval 7-0-1; **CC-3:** Full Cycle Deferral 8-0-0; **CC-4:** Denial 12-0-0. The Board prefers to delete these phrases: "specimen tree(s)... or preservation of historic characteristics of the property" because the language's intent places an undue burden on the Zoning Board of Appeals to make determinations that the Board may not be qualified to make. The additions also allow both specimen trees and historic characteristics to be hardships for any property owner and can nullify the county tree ordinance and the role of the Historic Preservation Commission to exert influence over a particular property; **CC-5:** Deferral 9-0-0. (Oct. 2021) **CC-1:** No Quorum; members present voted for Full Cycle Deferral 2-0-0; **CC-2:** Deferral 7-0-0; **CC-3:** Full Cycle Deferral 8-0-0; **CC-4:** Denial 10-0-0; **CC-5:** Approval 8-0-0.

AN ORDINANCE

AN ORDINANCE TO AMEND SECTION 27-7.5.3.A1 OF THE DEKALB COUNTY ZONING ORDINANCE TO MODIFY CRITERIA TO BE CONSIDERED BY THE ZONING BOARD OF APPEALS IN EVALUATING AND DECIDING APPLICATIONS FOR A VARIANCES, AND FOR OTHER PURPOSES.

WHEREAS, the Zoning Board of Appeals is the designated body to hear and decide applications for variances from the strict application of the regulations of the *Zoning Ordinance* where the strict application of specific zoning regulations would result in exceptional and undue hardship upon the owner of such property; and

WHEREAS, the *Zoning Ordinance* currently prescribes five (5) criteria to which affirmative findings of facts are required to be grant relief from provisions of the *Zoning Ordinance*; and

WHEREAS, revising the variance criteria in a manner more consistent with adjacent jurisdictions and customary zoning practice shall enhance customer service and administration of the requisite processes; and

WHEREAS, it is critical for the integrity of the *Zoning Ordinance*, preservation of property development rights, and the public health, safety, and welfare to establish the presence of exceptional physical conditions upon properties that are presented to the Zoning Board of Appeals for variance consideration; and

WHEREAS, the proposed revisions seek to ensure that the granted relief is the minimum necessary and of a nature so specific that it does not constitute special privileges not afforded to others; and

WHEREAS, the proposed revisions shall take effect and apply to all complete variance applications submitted on or after April 8, 2022; and

NOW, THEREFORE, BE IT RESOLVED AND IT IS DECLARED BY THE GOVERNING AUTHORITY OF DEKALB COUNTY, GEORGIA, THAT CHAPTER 27, SECTION 27-7.5.3.A1 OF THE CODE OF DEKALB COUNTY, AS REVISED 1988, IS HEREBY AMENDED AS FOLLOWS:

PART 1. ENACTMENT

Chapter 27, Article VII, entitled “Administration” is hereby amended by amending Section 27-7.5.3.A1 to read as follows:

Sec. 7.5.3 Applications for variances; and criteria to be used by the zoning board of appeals in deciding applications for variances.

A. Variances from the provisions or requirements of this chapter other than variances described in section 7.5.4 shall be authorized only upon making all of the following findings in writing:

1. There is an extraordinary or exceptional physical condition(s) pertaining to the particular piece of property (such as, but not limited to, lot size, lot shape, specimen tree(s), steep slope(s), or preservation of historic characteristics of the property), which was not created by the current owner, previous owner, or applicant; by reason of a clearly demonstrable condition(s), the strict application of the requirements of this chapter would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district, as distinguished from a special privilege or convenience sought by the property owner.
2. The requested variance does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located.
3. The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located.
4. The literal interpretation and strict application of the applicable provisions or requirements of this chapter would cause undue and unnecessary hardship.
5. The requested variance would be consistent with the spirit and purpose of this chapter and the DeKalb County Comprehensive Plan text.

ADOPTED by the DeKalb County Board of Commissioners, this ____ day of _____, 2022.

ROBERT J. PATRICK
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, this ____ day of _____, 2022.

MICHAEL L. THURMOND
Chief Executive Officer
DeKalb County, Georgia

ATTEST:

BARBARA H. SANDERS-NORWOOD, CCC
Clerk to the Board of Commissioners and
Chief Executive Officer
DeKalb County, Georgia

APPROVED AS TO SUBSTANCE:

APPROVED AS TO FORM:

ANDREW BAKER
Director

VIVIANE H. ERNSTES
County Attorney

AN ORDINANCE

AN ORDINANCE TO AMEND SECTION 27-7.5.3.A1 OF THE DEKALB COUNTY ZONING ORDINANCE TO MODIFY CRITERIA TO BE CONSIDERED BY THE ZONING BOARD OF APPEALS IN EVALUATING AND DECIDING APPLICATIONS FOR A VARIANCES, AND FOR OTHER PURPOSES.

WHEREAS, the Zoning Board of Appeals is the designated body to hear and decide applications for variances from the strict application of the regulations of the *Zoning Ordinance* where the strict application of specific zoning regulations would result in exceptional and undue hardship upon the owner of such property; and

WHEREAS, the *Zoning Ordinance* currently prescribes five (5) criteria to which affirmative findings of facts are required to be grant relief from provisions of the *Zoning Ordinance*; and

WHEREAS, revising the variance criteria in a manner more consistent with adjacent jurisdictions and customary zoning practice shall enhance customer service and administration of the requisite processes; and

WHEREAS, it is critical for the integrity of the *Zoning Ordinance*, preservation of property development rights, and the public health, safety, and welfare to establish the presence of exceptional physical conditions upon properties that are presented to the Zoning Board of Appeals for variance consideration; and

WHEREAS, the proposed revisions seek to ensure that the granted relief is the minimum necessary and of a nature so specific that it does not constitute special privileges not afforded to others; and

WHEREAS, the proposed revisions shall take effect and apply to all complete variance applications submitted on or after April 8, 2022; and

NOW, THEREFORE, BE IT RESOLVED AND IT IS DECLARED BY THE GOVERNING AUTHORITY OF DEKALB COUNTY, GEORGIA, THAT CHAPTER 27, SECTION 27-7.5.3.A1 OF THE CODE OF DEKALB COUNTY, AS REVISED 1988, IS HEREBY AMENDED AS FOLLOWS:

PART 1. ENACTMENT

Chapter 27, Article VII, entitled "Administration" is hereby amended by amending Section 27-7.5.3.A1 to read as follows:

Sec. 7.5.3 Applications for variances; and criteria to be used by the zoning board of appeals in deciding applications for variances.

A. Variances from the provisions or requirements of this chapter other than variances described in section 7.5.4 shall be authorized only upon making all of the following findings in writing:

1. ~~By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic and other site conditions~~ There is an extraordinary or exceptional physical condition(s) pertaining to the particular piece of property (such as, but not limited to, lot size, lot shape, floodplain, major stand of trees, specimen tree(s), steep slope(s), or preservation of historic characteristics of the property), which were was not created by the current owner, previous owner, or applicant; by reason of a clearly demonstrable condition(s), the strict application of the requirements of this chapter would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district; as distinguished from a special privilege or convenience sought by the property owner.
2. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located.
3. The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located.
4. The literal interpretation and strict application of the applicable provisions or requirements of this chapter would cause undue and unnecessary hardship.
5. The requested variance would be consistent with the spirit and purpose of this chapter and the DeKalb County Comprehensive Plan text.

March 21, 2022

ADOPTED by the DeKalb County Board of Commissioners, this ____ day of _____, 2022.

ROBERT J. PATRICK
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, this ____ day of _____, 2022.

MICHAEL L. THURMOND
Chief Executive Officer
DeKalb County, Georgia

ATTEST:

BARBARA H. SANDERS-NORWOOD, CCC
Clerk to the Board of Commissioners and
Chief Executive Officer
DeKalb County, Georgia

APPROVED AS TO SUBSTANCE:

APPROVED AS TO FORM:

March 21, 2022

ANDREW BAKER
Director
Planning & Sustainability

VIVIANE H. ERNSTES
County Attorney
DeKalb County, Georgia