



DeKalb County Zoning Board of Appeals

330 Ponce De Leon Avenue, Suite 500

Decatur, GA 30030

(404) 371-2155 / plandev@dekalbcountyga.gov

Wednesday, February 10, 2021

Planning Department Staff Analysis

Case No.: N4

A-21-1244567

Parcel ID(s): 18-159-02-005

Commission District: 02 Super District: 06

Applicant: First Standard Construction, LLP

Owner: First Standard Construction, LLP

Location/Address: 3302 North Druid Hills Road

Request: A variance from Chapter 27 of the DeKalb County Code to reduce the off-street parking requirements from the required minimum of 18 spaces to 7 spaces.

Staff Recommendation: Withdrawal.

STAFF FINDINGS

Site Location and Property Description:

The subject property is a 37,462 square foot lot located approximately on the north side of North Druid Hills Road, a major arterial, between Lawrenceville Highway and Clairmont Road. The property is undeveloped. A branch of Burnt Creek runs along its northern (rear property line), and approximately $\frac{3}{4}$ of the lot is located in the 75-foot stream buffer. The property is irregularly shaped and is zoned OI (Office Institutional).

The applicant proposes to construct a two-story, 7,360 square foot day care center. Vehicular access to a surface parking lot would be provided by a curb cut on North Druid Hills Road. The site plan submitted with the application shows a surface parking lot with 14 spaces. Nine of the parking spaces are fully or partially in the stream buffer.

The applicant has decided to pursue a stream buffer variance instead of a variance from the regulations of the Zoning Ordinance, and has requested withdrawal of the application that is the subject of this staff report. Staff concurs with the decision of the applicant and recommends "Withdrawal".

**ZONING BOARD OF APPEALS APPLICATION FOR PUBLIC HEARING
(VARIANCES, SPECIAL EXCEPTIONS, APPEALS OF ADMINISTRATIVE DECISIONS)**

BOA No. _____

Applicant and/or
Authorized Representative Firststandard Construction, LLLP

Mailing Address: 1299 Lavista Rd. NE

City/State/Zip Code: Atlanta, GA. 30324

Email: Firststandard@gmail.com

Telephone Home: _____ Business: 404-456-8170

OWNER OF RECORD OF SUBJECT PROPERTY

Owner: Firststandard Const. LLLP

Address (Mailing): 1299 Lavista Rd. NE Atlanta, GA 30324

Email: Firststandard@gmail.com

Telephone Home: _____ Business: 404-456-8170

ADDRESS/LOCATION OF SUBJECT PROPERTY

Address: 3302 N. Duvall Hill City: Decatur State: GA Zip: _____

District(s): 18 Land Lot(s): 113 Block: _____ Parcel: 18 113 11 014

District(s): _____ Land Lot(s): _____ Block: _____ Parcel: PIN # 1056896

Zoning Classification: O & I Commission District & Super District: _____

CIRCLE TYPE OF HEARING REQUESTED:

☒ VARIANCE (From Development Standards causing undue hardship upon owners of property.) or

☒ SPECIAL EXCEPTIONS (To reduce or waive off-street parking or loading space requirements.)

☐ OFFICIAL APPEAL OF ADMINISTRATIVE DECISIONS.

Please see Letter of Intent

TO BE COMPLETED BY PLANNING AND SUSTAINABILITY DEPARTMENT:

Date Received: _____ Fee Paid: _____



DeKalb County
GEORGIA

ZONING BOARD OF APPEALS APPLICATION

AUTHORIZATION TO REPRESENT THE PROPERTY OWNER

I hereby authorize the staff and members of the Zoning Board of Appeals to inspect the premises of the Subject Property

I hereby certify that the information provided in the application is true and correct.

I hereby certify that I am the owner of the property and that I authorize the applicant/agent to apply for a hearing to the Zoning Board of Appeals for the requests as shown in this application.

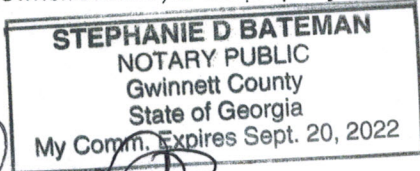
DATE: 11/7/2021

Applicant/Agent: Arsalan Khalili
Signature

TO WHOM IT MAY CONCERN:

(I/ ~~WE~~) First Standard Construction, LLC
(Name of Owners) By: Arsalan H. Khalili General Partner & CEO

being (owner/owners) of the property described below or attached hereby delegate authority to:



Stephanie D Bateman
Notary Public Stephanie D Bateman

Notary Public

N A

Notary Public

Arsalan Khalili

Owner

Arsalan H. Khalili

Owner

N A

Owner

ZONING BOARD OF APPEALS APPLICATION AUTHORIZATION OF THE PROPERTY OWNER

I hereby authorize the staff and members of the Zoning Board of Appeals
To inspect the premises of the Subject Property

I hereby certify that the information provided in the application is true and correct.

I hereby certify that I am the owner of the property subject to the application.

DATE: 1/7/2021

Applicant: ansalom wharib
Signature

DATE: _____

Applicant: _____
Signature

LETTER OF INTENT

and

Other Material Required by
DeKalb County Zoning Ordinance
for the Variance Application

of

First Standard Construction, LLLP

for

±0.90 Acres of Land
located in
Land Lot 242, 18th District, DeKalb County
Address: 3302 North Druid Hills Rd.

(1) To allow for ±1,828 square feet of impervious area within the 75' impervious surface setback and allow a temporary encroachment into the 50' undisturbed stream buffer for site prep, grading and installation of a fence; OR

(2) Alternatively, to reduce the off-street parking requirements from 14 spaces to 7 spaces.

Submitted by Applicant:

Arsalan 'RC' Khalili, Partner/CEO
Ardalan 'Eddie' Khalili, Partner
First Standard Construction, LLLP
1299 Lavista Rd. NE
Atlanta, Georgia 30324
404-456-8170
678-435-3118

I. REQUESTED VARIANCE(S)

This Application seeks variances from the (1) Dekalb County's Stream Buffer Protection Ordinance with respect to a ±0.90-acre vacant commercial lot zoned OI (Office-Institutional) and located at 3302 North Druid Hills Rd. (the "Subject Property"). The Subject Property is an irregular, wedge-shaped parcel measuring ±250 feet wide at the front (i.e., North Druid Hills property line) and narrowing at the rear (i.e., property line bordering stream). It is ± 207 feet deep. Furthermore, only ±0.31 acre is buildable due to a stream located at the back and topography is an issue as the site suffers from a significant grade change between the rear of the lot, where a stream is located, and the front. There are relatively few existing trees and natural vegetation on the Subject Property. The Subject Property is a vacant lot with no existing improvements (See Photos 1 and 2).

Applicant is seeking to construct a day care facility on the Subject Property. We believe a day care facility is an ideal use of the Subject Property given the constraints and limitations, and an ideal location and for a day care center being on a major throughfare in an area undergoing significant population growth and residential development (See Photo 3). We are seeking approval of 1 of 2 requested variances in order to provide the type of facility that the Daycare and community need.

The multiple site constraints, none of which were created by the Applicant, pose a significant hardship to the Applicant by severely restricting the Property's buildable area. The Property cannot be developed consistent with other commercial properties in the area neighborhood without the requested variance to reduce the County's stream buffer from 75 feet to 50 feet. Without approval of this variance, the Property has no viable economic value and the Applicant's constitutionally-protected property rights will be taken. The proposed variance is not contrary to the public interest as a literal enforcement of the Zoning Ordinance would result in unnecessary hardship and complete taking of the ability to utilize the Property. The proposed variance is in keeping with the spirit of the Zoning Ordinance, do not risk public safety or welfare, and accomplish substantial justice. Rather, it will allow for the construction of an appropriately sized day care facility in this community.

For these reasons, the Applicant requests that the Zoning Board of Appeals grant the proposed variance.

II. BASIS FOR VARIANCE REQUEST AND WRITTEN ANALYSIS

The Applicant satisfies all of the criteria for granting a variance request, as set forth in the DeKalb County Zoning Ordinance, Section 7.5.3:

1) By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic and other site conditions (such as, but not limited to, floodplain, major stand of trees, steep slope), which were not created by the owner or applicant, 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:

Regarding the variance (1) from Dekalb County's Stream Buffer Protection Ordinance, Applicant seeks to construct a day care building, driveway and off-street paved parking, among other improvements. As shown on the site plan (and Photo 6) submitted herewith this application, the day care building will not encroach into the 75' impervious setback. However, due to the severe limitations of the property, the required off-street parking will encroach by approximately 1828 square feet. Additionally, Applicant will require a temporary 20-24' encroachment into the 50' undisturbed buffer for site preparation, grading, and installation of 6-foot-high safety fence to protect visitors and users from animals and accessing the stream (See Photo 4 and 5). The proposed encroachment into the 50' undisturbed buffer is in an unlandscaped area with little to no natural vegetation. The encroachment into the 50' buffer is needed to allow for site preparation, grading, access around the proposed building during construction, and installation of the protective fencing. Considering the nature of the intended day care use, we feel a 7' high fence with a 6' exposure adjacent to the 25' stream setback is necessary to protect users from the stream and animals. Upon completion of construction, the encroachment into the 50' buffer will be completely restored and replanted to better manage stormwater upon completion of construction. Applicant also plans to plant the appropriate trees and vegetation along the safety fence around the 25' stream setback, or per County recommendations.

Furthermore, the impact to the 75' impervious setback will be mitigated through the installation of stormwater management measures. Currently, there is no stormwater management and the proposed improvements will mitigate impacts from 100% of the proposed impervious area on the site. As a result, the proposed conditions will improve the stormwater runoff and reduce downstream flows over the existing conditions.

The Dekalb County's Stream Buffer Protection Ordinance generally provides that in addition to the 50' natural vegetative buffer closest to the stream channel (i.e., the 50' undisturbed buffer), an additional 25' setback shall be maintained in which all impervious cover is prohibited, absent a variance (i.e., the 75'

impervious setback). The Stream Buffer Ordinance allows the County's Zoning Board of Appeals and Development Director to grant variances from this requirement for land development activities. The variance requested with this application is supported by a number of factors and is necessary to provide required off-street parking. For example, the proximity to the stream, and odd and confining shape of the Subject Property prohibits any practical development of the property. The Applicant will be installing modern stormwater management measures to mitigate impacts from the proposed development (as outlined in the preceding paragraphs or otherwise recommended by the County). Further, stream buffer variances have been routinely granted to property owners in the County, including many requests that go far beyond what the Applicant is asking for here.

The criteria to be considered by the Board as set forth in the Code are met. The Subject Property is pie-shaped, with approximately 2/3 of the lot lying within the protected stream buffer. Specifically, the stream buffer covers approximately 0.59 acres, or $\pm 66\%$, of the overall property. Further this variance (1) is being request in order to provide the required 14 space off-street requirement set forth in the Code. These Code-imposed limitations and the unusual shape of the Subject Property limit any practical development of the property, absent the grant of a variance.

As shown on the site plan, the stream is located at the rear of the property, with the centerline of the stream forming the rear property line. While the parking portion of the proposed development of the Subject Property will slightly encroach into the 75' impervious surface setback, however certain stormwater controls will be provided that are a net improvement over existing conditions and will mitigate any effects of the proposed encroachment. In contrast, the existing conditions have no stormwater quality or quantity controls to mitigate downstream runoff. This reduction in proposed stormwater flows will improve the water quality impacts on the Subject Property and surrounding properties.

Alternatively, and in the event the stream buffer variance (1) is denied, Applicant hereby seeks a variance (2) to reduce the off-street parking requirements imposed by the Code from 14 spaces to 7 spaces. For at least the reasons set forth above in support of the Stream Buffer Variance (1), the criteria for granting the variance (2) to reduce the off-street parking requirements are also met.

No alternative designs with the required 14 parking spaces are possible without variance. A day structure like the one proposed is comparable in size to others in the area and necessary to service the growing community. It simply cannot be built, however, without either an off-street parking requirements variance or stream buffer variance.

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:

The request to reduce the County's stream buffer is the minimum necessary to afford relief from the hardship caused by the stream buffers, and the minimum parking requirements. As an experienced builder, the Applicant has explored options to create the ability to build a day care facility home while asking for the minimum setback needed to construct a modest size day care building with the required parking. The approval of the variance will not constitute a special privilege. Rather, the denial of the variance would completely take the owner's ability to use the Property.

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:

The proposed variance will benefit the Property by allowing a previously empty and heavily-constrained property to be developed in accordance with the needs of the surrounding area. The variance is requested to allow development of day care facility, which will be beneficial to the public welfare.

4) The literal interpretation and strict application of the applicable provisions or requirements of this chapter would cause undue and unnecessary hardship:

The literal interpretation and strict application of the stream buffer requirements causes undue and unnecessary hardship to the Property due to the stream and the parking requirements. Without the granting of the proposed variance, the Property will remain undeveloped and the Applicant will be deprived of constitutionally-protected property rights. The Property has no reasonable economic value if the variance is not granted as requested by the Applicant.

5) The requested variance would be consistent with the spirit and purpose of this chapter and the DeKalb County Comprehensive Plan text:

The proposed variance is consistent with the spirit and purpose of the Zoning Ordinance and the Comprehensive Plan. Specifically, the spirit and purpose is to allow owners to utilize their property and the addition of a new day care facility in this neighborhood is completely in line with the goals of the County's Suburban Future Land Use designation. The proposed variance would allow the Applicant to construct a day care facility that conforms to the protection policies described in the Comprehensive Plan.

III. NOTICE OF CONSTITUTIONAL CHALLENGE TO UNDERLYING ZONING AND PRESERVATION OF CONSTITUTIONAL RIGHTS

A refusal to grant the requested Variance would be unlawful, arbitrary, capricious, irrational and a manifest abuse of discretion; all in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia.

A refusal to grant the requested Variance would discriminate unfairly between the owner of the Subject Property and other property owners similarly situated, in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia.

A refusal to grant the requested Variance would amount to a taking of property, in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia.

A refusal to grant the requested Variance would be unjustified from a fact-based standpoint and instead would result only from constituent opposition, which would be an unlawful delegation of authority in violation of Article IX, Section II, Paragraph IV of the Georgia Constitution.

A refusal to grant the requested Variance would be invalid inasmuch as the Zoning Ordinance of Dekalb County is unlawful, null and void because its adoption and map adoption/maintenance did not comply with the requirements of its predecessor ordinance and/or the Zoning Procedures Law, O.C.G.A. § 36-66-1, et seq.

The Zoning Ordinance of Dekalb County lacks adequate standards for the Zoning Board of Appeals to exercise its power to review and vote on this Application. The standards are not sufficient to contain the discretion of the Board and to provide the Courts with a reasonable basis for judicial review. Because the stated standards (individually and collectively) are too vague and uncertain to provide reasonable guidance, the Zoning Ordinance is unlawful and violates, among other things, the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States and Article I, Section III, Paragraph I and Article I, Paragraphs I and II of the Constitution of State of Georgia.

Any limitation on the time for presentation of the issues before the Zoning Board of Appeals is a violation of the guarantees of free speech under Article I, Section I, Paragraph V of the Constitution of the State of Georgia and the First Amendment of the Constitution of the United States. Further, said limitations are in violation of the right to petition and assemble, in violation of Article I, Section I, Paragraph

IX of the Constitution of Georgia and the First Amendment of the Constitution of the United States, as well as the Due Process Clauses of the Constitution of Georgia and the Constitution of the United States.

IV. CONCLUSION

For the foregoing reasons, Applicant respectfully requests approval of the Variance set out above.

This 6th day of January, 2020.

Respectfully submitted,

Arsalan 'RC' Khalili, Partner/CEO
Ardalan 'Eddie' Khalili, Partner
First Standard Construction, LLLP, Applicant
firststandard@gmail.com

Attachments – 3 sheets of photos, Floor plans, Site Plan

Photo 1 - Site



Photo 2 - Site



Photo 3 – New townhomes on North Druid Hills



Photo 4 – Proposed project looking from North Druid Hills Road. Showing the proposed 6' high fence and new trees at the 25' stream setback.



Photo 5 – Left side view of building and parking lot.



Photo 6 – Arial view of site showing that the building footprint is not encroaching in the 75' stream setback and the 6' high fence and new trees at the 25' stream setback.





NOW OR FORMERLY
LORITA BERNSTEIN
DEED BOOK 18113 11 01
ZONED R 100

SPRING CREEK ROAD
60' R/W

NORTH DRUID HILLS ROAD
100' R/W

100' R/W

SURVEY DATA.
TOTAL AREA: 37,889 SQ. FT. / 0.86 ACRES
(34,372 SF/ 0.78 AC TO TRAVERSE LINE)
ERROR OF CLOSURE PLAT: 104.817
ADJUSTED BY: LEAST SQUARES
EQUIPMENT USED: TOPCON GT-1003 TOTAL STATION
FIELD WORK COMPLETED ON MAY 6, 2020

This plat is a rectification of an existing parcel or parcels of land and does not subdivide or create a new parcel or make any changes to any real property boundaries. The recording information of the documents, maps, plats, or other records of the land is not to be used for any purpose other than to establish the boundaries of the land as shown on this plat. The recording information of this plat does not constitute an approval of any person.

LOCAL JURISDICTION, AVAILABILITY OF PERMITS, COMPLIANCE WITH LOCAL REGULATIONS OR REQUIREMENTS, OR SUITABILITY FOR ANY USE OR PURPOSE OF THE LAND. Furthermore, the undersigned land surveyor certifies that this plat complies with the minimum technical standards for surveying and mapping as set forth in the Georgia Surveying and Mapping Board of Registration for Professional Engineers and Land Surveyors and as set forth in O.C.G.A. Section 13-6-37.

J. SCOTT SMITH, PLS 3014

MAY 7, 2020

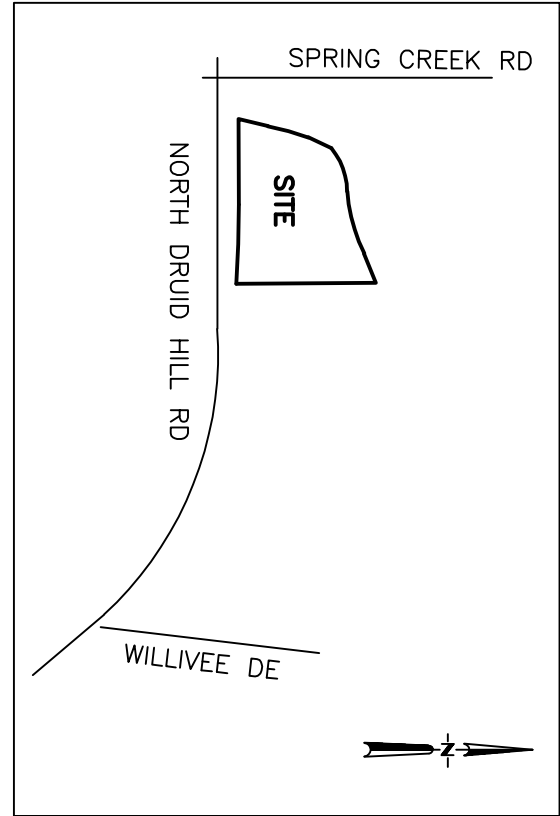
DATE



PROPERTY ZONED OI
SEE CASE NO. Z-72059
FRONT SETBACK: 20'
SIDE SETBACK: 20'
REAR SETBACK: 20'

LEGEND

R/W RIGHT OF WAY
WM WATER METER
B/L BUILDING LINE
F/L FIRE LINE
F/P FIRE PROTECTANT
V VALVE
W WATER MAIN
M MANHOLE
S SEWER
D DRAINAGE EASEMENT
SE SEWER EASEMENT
G GAS LINE
P POLE
N NAIL IN CAP
A ARROW
EE EXISTING ELEVATION
RE REPAIR
O.O.P. OPEN TOP PIPE
FES FLARED END SECTION
J BOX JUNCTION BOX
H HEADWALL
D DRAINAGE DIRECTION
H HOUSE NUMBER
I.P.F. IRON PIN FOUND
R RADIUS OF CURVATURE
C CATCH BASIN
S SINGLE WING CATCH BASIN
P.P.O. POINT OF BEGINNING
D.D. DROP INLET
I.V. INVERT
P.P. PROPOSED ELEVATION
P.O.B. POINT OF BEGINNING



LOCATION MAP
NOT TO SCALE

PARKING SPACE REQUIREMENTS

Child Day Care Center
1 space for each 400 sq. ft. of floor area required
PROPOSED: 7360 SQ. FT.
7360/400=18.4 OR 18 SPACES REQUIRED
PROPOSED SPACES = 14
APPLICANT REQUEST A REDUCTION OF 5 SPACES

BUFFER REDUCTION FOR PARKING AND LANDSCAPING

PROPOSED 1828 SQ. FT OF PARKING AREA
WITHIN THE 75' BUFFER
PROPOSED 3421 SQ. FT OF LANDSCAPE AREA
WITHIN THE 50' BUFFER
PROPOSED 2251 SQ. FT OF LANDSCAPE AREA
WITHIN THE 75' BUFFER

NOW OR FORMERLY
GLACIER PROPERTIES, LLC
DEED BOOK 19632, PG 273
18 113 11 015
ZONED M

NOW OR FORMERLY
GLACIER PROPERTIES, LLC
DEED BOOK 18113 11 127
ZONED M

3302 North Druid Hills Road
18 113 11 014

General Notes:

SURVEY AS PER IRON PINS FOUND, AND
DEED BOOK 27141, PAGE 259-261 AND OTEHR
REFERENCES AS NOTED HEREON.

SURVEY DONE WITHOUT THE BENEFIT OF A TITLE
COMMITMENT AND PROPERTY IS SUBJECT TO ALL MATTERS
OF TITLE.

A PORTION OF SUBJECT TRACT LIES WITHIN A 100 YEAR
FLOOD DISTRICT/FLOODWAY ZONE AE AS PER F.I.R.M.
PANEL NO. 13089C0058K, EFFECTIVE DATE 8/15/2019

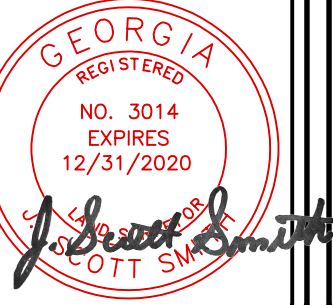
GRAPHIC SCALE

20 10 0 20 40 60

PROJECT NUMBER
18205
DRAWING NUMBER
SHEET 1 OF 1

DATE: 5/7/20
SCALE: 1"=20'
SHEET TITLE: Concept Plan

Concept Plan
RC Khalili
LAND LOTS(S): 113 DISTRICT: 18
DEKALB COUNTY, GEORGIA



DIVERSIFIED TECHNICAL GROUP, L.L.C.
LAND SURVEYORS - LAND PLANNERS
Land Surveying Firm License# 587
2700 BRASELTON HIGHWAY
Dacula, Georgia 30019
PH. 770-614-7095
EMAIL: DtgSurvey@yahoo.com

REVISIONS			
NO.	DATE	BY	DESCRIPTION