



DeKalb County Zoning Board of Appeals

330 Ponce De Leon Avenue, Suite 500

Decatur, GA 30030

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

Wednesday, April 7, 2021

Planning Department Staff Analysis

Case No.: A-21-1244709 **Parcel ID(s):** 15-140-03-018 & -020

Commission District: 03 **Super District: 06**

Applicant: Thomas Dannemann, Kimley-Horn

Owner: 3757 Floyd Rd Property, LLC

Project Name: Cook Road Multifamily

Location/Address: 2128 & 2170 Cook Road

Requests:

- 1) A variance from Sec. 27-5.4.5 of the *DeKalb County Code* to allow encroachment of “Perimeter Retaining Wall No. 2” to a distance of 11 feet and encroachment of “Perimeter Retaining Wall No. 4” to a distance of one foot into the 50-foot transitional buffers that are required along the north and east property lines, and allow temporary tree removal and replanting in said transitional buffers.
- 2) A variance from Sec. 27-3.33.10(C) of the DeKalb County Code to allow required public open space to be private open space that will be accessible only by residents of the proposed multifamily residential development.
- 3) Variances from Sec. 27-5.4.3 Table 5.1, Sec. 3.33.13, Section 3.33.14, and Section 5.4.4(D) to eliminate the required 10 foot sidewalk, the required 10 foot landscape strip, required light poles, and required street trees, and to allow a row of surface parking spaces to be constructed without the required continuous hedge, berm, or short wall with landscaping thereon to be constructed between said parking spaces and an adjoining public street (Cook Road).
- 4) Variances from Sec. 27-5.4.3 Table 5.3 to allow non-tiered retaining walls to exceed the allowed maximum height of six feet when adjacent to a residential district or use, and to be located less than ten feet from the required property lines and without landscaping between the property line and the wall, as follows:
 - a. Perimeter retaining wall No. 2: a 22-foot high, non-tiered wall located 3 – 5 feet from the west property line;
 - b. Perimeter retaining wall No. 3: an 18-foot high, non-tiered wall on the north side of the property;
 - c. Perimeter retaining wall No. 4: a 20-foot high, non-tiered wall on the east side of the property; and
 - d. Perimeter retaining wall No. 5: a 22-foot high, non-tiered wall on the south side of the property without landscaping between the property line and the wall.

Staff Recommendations:

Variance No. 1: Approval.

Variance No. 2: Approval.

Variance No. 3: Denial.

Variance No. 4:

a) Perimeter Retaining Wall No. 1: Approval

b) Perimeter Retaining Wall No. 2: Approval.

c) Perimeter Retaining Wall No. 3: Approval.

d) Perimeter Retaining Wall No. 4: Approval, with the condition that the wall shall be located such that required streetscaping shall be provided.

The following conditions shall apply (overall) to all approved variances:

1. Evergreen trees shall be planted at a minimum of 50 feet on center along the west, north, and east property lines to screen views of the proposed development from adjoining properties, subject to approval by the County arborist.
2. The following information about these variances shall be noted on any site plan prepared during the permitting process for the proposed development: case number, approval date, type of variances, and variance conditions, if any.

STAFF FINDINGSSite Location and Property Description:

The subject property is an 11.9-acre tract located on Cook Road, a two-way, dead end, local street. A stream, located in a relatively flat plain approximately 20 feet below the grade at the top of the stream bank, traverses the northeast corner of the property. To the southwest of the stream, the property is cleared; to the northeast along the stream and to the northeast of the stream, it is wooded. In addition to the sloping stream bank, steep slopes are located along the edges of the property and at the northwest and southwest corners of the property.

Cook Road runs parallel to an off-ramp from I-25. A ten-foot high solid metal wall has been erected between the south edge of the Cook Road pavement and the off-ramp. In addition, concrete barriers have been placed on Cook Road to block vehicular entry to the portion of the road on which the property fronts.

The adjoining property to the west is developed with an apartment complex, called The Flats at East Atlanta, which consists of two-story buildings. The Tilson Ridge and Tilson Forest single-family subdivisions are located to the north and the Highland Park single-family subdivision is located to the east.

On March 26, 2019, the Board of Commissioners approved, pursuant to CZ-19-1235305, a major modification from conditions that the Board had approved for the site in 2005. The major modification was not conditioned on a site plan, but Condition No. 1 of the eight approved conditions specified that a site plan would need to be reviewed and approved by Planning staff prior to issuance of a land disturbance permit. Staff has made the applicant aware that review of the site plan in accordance with Condition No. 1 might necessitate additional variances. Other relevant conditions are No. 2, which requires that 20% of the units be priced as "workforce housing," and No. 7, which requires streetscaping.

The property is zoned MR-2 (Medium-Density Residential-2) and is designated as part of a town center activity center on the *2035 Comprehensive Plan* Future Land Use Map.

Surrounding Zoning and Land Use:

Direction	Adjacent Zoning	Adjacent Land Use
North	R-75	Single-Family Residential
Northeast	R-75	Single-Family Residential
East	R-75	Single-Family Residential
Southeast	N.A.	I-20
South	N.A.	I-20
Southwest	N.A.	I-20
West	MR-2	Multifamily Residential
Northwest	MR-2	Multifamily Residential

Analysis of Variance Requests

Variance No. 1: A variance from Sec. 27-5.4.5 of the DeKalb County Code to allow encroachment of Perimeter Retaining Wall No. 2 to a distance of 11 feet and encroachment of Perimeter Retaining Wall No. 4 to a distance of one foot into the 50-foot transitional buffers that are required along the north and east property lines, and allow temporary tree removal and replanting in said transitional buffers.

1. By reason of exceptional narrowness, shallowness or shape of a specific lot, or by reason of exceptional topographic conditions, 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:

The topography of the site is exceptional. Steep slopes located along edge of the stream buffer and along the edges of the property reach as high as 40%. Strict application of the requirements of this chapter may deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district, whose properties don't have topography that necessitates retaining walls to allow for the development that is contemplated by their zoning classification.

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 requested variance may not go beyond the minimum necessary to afford relief. The walls are positioned only where necessary. A short distance of Retaining Wall No. 2 encroaches only enough to allow Building 1 to have the same footprint as neighboring, Building 2; they are the smallest buildings in the development. Replanting of trees would mitigate the effects of the construction of Retaining Wall No. 2. Retaining Wall No. 4 does not encroach into the transitional buffer, but would necessitate disturbance in the buffer during construction.

The adjoining MR-2 property does not appear to have retaining walls that may be compared with those proposed by the applicant; thus, it is not possible to determine whether the requested encroachment would be considered a grant of special privilege.

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:

Granting of the variance may 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. Encroachment of Retaining Wall No. 2 is minimal. Disturbance in the buffers and temporary tree removal during construction would be mitigated by post-construction re-planting of trees that had been removed.

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

The strict application of the applicable provisions and requirements of this Chapter may cause undue and unnecessary hardship for the applicant. Without the retaining walls to protect the buildings proposed to be located along the perimeter of the development area, the number of buildings that could safely be constructed would be dramatically reduced. It would not be necessary to impose this hardship because the requested variances don't conflict with the purposes and intent of the MR-2 district, the I-20 Overlay District, the Zoning Ordinance as a whole, or the policies of the Comprehensive Plan.

5. The requested variances would be consistent with the spirit and purpose of this Chapter and the DeKalb County Comprehensive Plan Text:

The proposed variances would be consistent with the purposes and intent of the Zoning Ordinance; specifically, they would "promote, in the public interest, the wise utilization of land" (Sec. 27-1.1.3(C)), in that they would facilitate development of a property for a type of residential use that has been proposed, in one form or another, since 2005. In addition, it would "provide for and promote housing for all income groups and all citizens within the county", consistent with Section 27-1.1.3(O).

The requested variances would be consistent with Housing policy No. 5 of the Comprehensive Plan, which states, "Provide workforce housing in appropriate activity centers in the County."

Variance No. 2: A variance from Sec. 27-3.33.10(C) of the DeKalb County Code to allow required public open space to be accessible only to residents of the proposed multifamily residential development.

This variance is not necessary. After the application was filed, staff determined that this regulation requires that open space within a residential development be accessible only to all the residents of the development, not to the general public. The impracticality of providing open space in a multifamily development for use by the general public is obvious: not only would such a regulation erode the privacy and security of the residents, the members of the public who are using the open space wouldn't share the expense of maintaining it.

Variance No. 3: Variances from Sec. 27-5.4.3 Table 5.1, Sec. 3.33.13, Section 3.33.14, and Section 5.4.4(D) to eliminate the requirement for streetscaping (landscape strip, sidewalk, street trees, and light poles) and to allow a row of surface parking spaces to be constructed without the required continuous hedge, berm, or short wall with landscaping thereon to be constructed between said parking spaces and an adjoining public street (Cook Road).

This request for variances from the streetscaping requirements is invalid. Condition No. 7 of the zoning conditions that were approved pursuant to CZ-19-1235305 states, "Development standards (sidewalks, landscaping, streetscape, etc.) unless required in the I-20 Overlay District, shall comply with Article 5 – Site Design and Building form standards of the DeKalb County Zoning Code." A major modification from this zoning condition, subject to approval by the Board of Commissioners, is required to eliminate the streetscaping requirements of Article 5 and of the I-20 Overlay District.

Variance No. 4: Variances from Sec. 27-5.4.3 Table 5.3 to allow non-tiered retaining walls to exceed the allowed maximum height of six feet when adjacent to a residential district or use, and to be located less than the required property lines and without landscaping between the property line and the wall, as follows:

- a) Perimeter retaining wall No. 2: a 22-foot high, non-tiered wall located 3 – 5 feet from the west property line;
- b) Perimeter retaining wall No. 3: an 18-foot high, non-tiered wall on the north side of the property;
- c) Perimeter retaining wall No. 4: a 20-foot high, non-tiered wall on the east side of the property; and
- d) Perimeter retaining wall No. 5: a 22-foot high, non-tiered wall on the south side of the property without landscaping between the property line and the wall.

5.4.7(E)(2) Retaining walls standards for development under a land disturbance permit. The zoning board of appeals shall consider the following in making a decision:

- a. Grading changes necessitated for gravity flow and sewer connections.
- b. Grading changes necessitated to meet chapter 14 road construction standards.
- c. Extremely steep slopes, [i.e.] greater than three (3) to one (1) topographical changes on [the] site as compared to [an] adjacent existing subdivision.
- d. Structural engineer's sealed and signed statement of their evaluation of the consequence of retaining wall failure and recommendations for reducing the consequence and risk of failure in the event of failure. This may include increasing the required factors of safety for sliding, overturning, bearing capacity, and global stability. The applicant shall provide a plan of action to include additional setbacks from both sides of the retaining wall, frequency of inspection, and maintenance practices.
- e. Whether the wall height is necessary to address life/safety.
- f. A variance to increase height granted by the ZBA may result in an increased setback.

The applicant, who holds a professional engineer's license (P.E.) has submitted a letter which states, "significant existing grade change throughout the site" necessitates the height of the walls. A few quick calculations prove this to be the case. For example, the slopes along the west property line are as high as 40%. In contrast, the topography of the adjoining property to the west is, for the most part, more level. According to the *Americans With Disability Act*

website, the standard for the slope of a parking space is 20% in all directions; for a walkway, the standard is no greater than 12.5%. The proposed retaining walls would enable grading to meet the ADA safety standards. To reduce the amount of grading necessary to construct safe interior walkways and parking lots, the design of the site incorporates several retaining walls within the interior of the site.

The lack of tiers for the retaining walls would not be aesthetically objectionable to existing neighbors on adjoining properties, because the walls for which variances are requested face either the interior of the site or the stream that runs across the northwest corner of the site, not the neighbors' properties. The walls are proposed to be located either behind proposed buildings or along parking spaces. To soften the appearance of the walls from within the development and to minimize the creation of heat islands from sun reflecting off the walls, staff recommends that Perimeter retaining wall Nos. 2 and 5, which are proposed to face the site rather than the stream, be planted with vines at distances that are expected to achieve continuous cover within five years.

STAFF RECOMMENDATIONS:

Staff concludes that Variance Nos. 1 and 4 meet the criteria for approval, provided that they are conditioned as specified below. Staff concludes that Variance Nos. 2 and 3 are not necessary and invalid, respectively. Therefore, the Department of Planning and Sustainability recommends the following:

Variance No. 1 (Allow Perimeter Retaining Wall No. 2 to encroach into transitional buffer): Approval.

Variance No. 2 (Allow open space to be private): Withdrawal.

Variance No. 3 (Eliminate Streetscaping): Withdrawal.

Variance No. 4 (Allow non-tiered retaining walls to exceed maximum height)

- a) Perimeter retaining wall No. 2: Approval, subject to the following condition:
 1. The interior side of the wall (i.e., the side that is proposed to face the site) shall be planted with vines at distances that are expected to achieve continuous cover within five years, subject to approval by the County Arborist.
- b) Perimeter retaining wall No. 3: Approval.
- c) Perimeter retaining wall No. 4: Approval.
- d) Perimeter retaining wall No. 5: Approval, with the following conditions:
 1. The wall shall be located so that it doesn't interfere with required streetscaping.
 2. The interior side of the wall (i.e., the side that is proposed to face the site) shall be planted with vines at distances that are expected to achieve continuous cover within five years, subject to approval by the County Arborist.

The following conditions shall apply to all approved variances:

3. Evergreen trees shall be planted at a minimum of 50 feet on center along the west, north, and east property lines to screen views of the proposed development from adjoining properties, subject to approval by the County arborist.
4. The following information about these variances shall be noted on any site plan prepared during the permitting process for the proposed development: case number, approval date, type of variances, and variance conditions, if any.



Flats at East Atlanta apartments (on adjoining property to the west)



Subject Property, looking east



Single-family homes to the northeast, viewed from Cook Road across subject property

Drawing name: K:\atl_civil\13592003_cook_road_dekalb_variances\Plans\CAD\C2-00 - SITE PLAN.dwg C2.00 SITE PLAN May 05, 2021 12:54pm by: Tyler Bishop

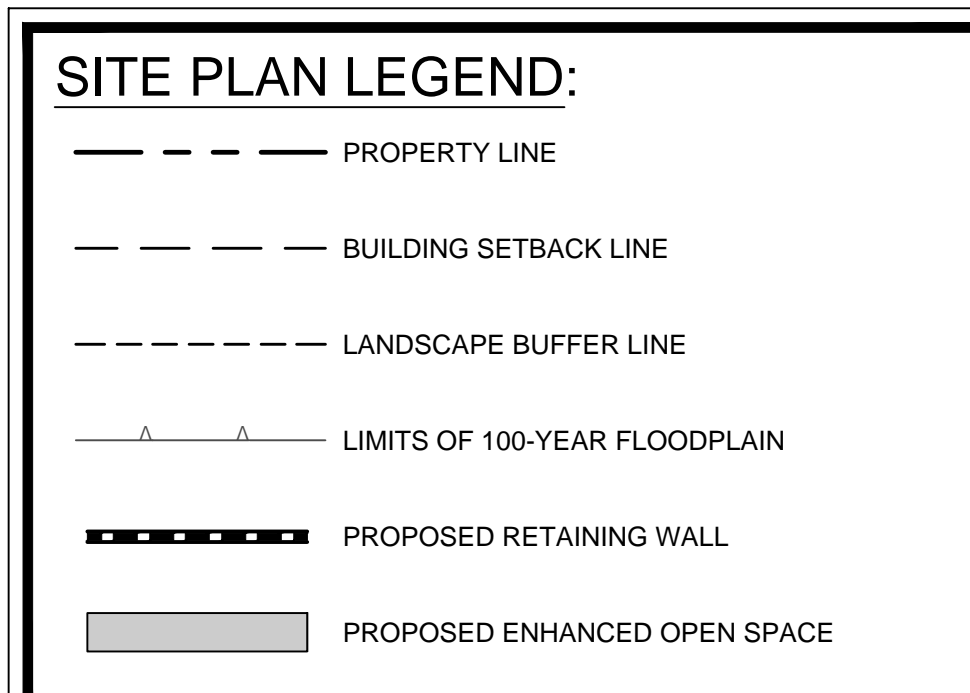


DEVELOPMENT SUMMARY:

SITE SUMMARY:

CURRENT ZONING:	MR-2 (I-20 OVERLAY DISTRICT)
SITE AREA:	11.95 ACRES
ROW DEDICATION:	0.06 ACRES
ADJUSTED SITE AREA:	11.89 ACRES
TOTAL DISTURBED AREA:	6 ACRES
ALLOWABLE LOT COVERAGE:	8.92 ACRES (75.0%)
PROPOSED LOT COVERAGE:	5.82 ACRES (49.0%)
OPEN SPACE REQUIRED:	2.38 ACRES (20.0%)
OPEN SPACE PROVIDED:	4.01 ACRES (33.7%)
ALLOWABLE FAR:	3.5 MAX
PROPOSED FAR:	0.43
BUILDING SETBACKS:	
FRONT:	0 FT
SIDE:	10 FT
BACK:	0 FT
LANDSCAPE SETBACK:	
FRONT:	10 FT
EAST SIDE:	50 FT (TRANSITIONAL BUFFER)
WEST SIDE:	5 FT
BACK:	50 FT (TRANSITIONAL BUFFER)
PROPOSED LAND USES & DENSITIES:	
MULTIFAMILY RESIDENTIAL:	224 UNITS
CLUBHOUSE:	4,800 SF
PARKING SUMMARY:	
REQUIRED PARKING:	280 SPACES (1.25/UNIT)
PROPOSED PARKING:	315 SPACES (1.4/UNIT)
STANDARD (NON-ADA):	226 SPACES
COMPACT:	89 SPACES

- ### SITE NOTES:
- THE PROPOSED BUILDING INFORMATION SHOWN HEREON IS FROM AN ELECTRONIC FILE PROVIDED BY ARCHITECT, DATED 00/00/0000 AND IS FOR ILLUSTRATIVE PURPOSES ONLY. CONTRACTOR SHALL REFERENCE ARCHITECTURAL PLANS FOR EXACT BUILDING INFORMATION.
 - EXISTING CONDITIONS SHOWN HEREON ARE FROM A SURVEY FILE PROVIDED BY SURVEY COMPANY NAME, DATED 00/00/0000.
 - ALL DIMENSIONS ARE FROM FACE OF CURB TO FACE OF CURB UNLESS OTHERWISE NOTED.
 - SIDEWALK INSTALLED AGAINST BACK OF CURB SHALL BE INSTALLED PER THE PLAN AS MEASURED FROM THE BACK OF CURB.
 - ALL SIGNAGE AND STRIPING MUST MEET THE LATEST REQUIREMENTS SET FORTH BY MUTCD, GDOT, AND GEORGIA STATE CODE.
 - REFERENCE LANDSCAPE PLANS FOR ALL HARDSCAPE AND LANDSCAPE DETAILS AND SPECIFICATIONS.



PARKING ACCESSIBILITY NOTE:

ALL PROPOSED PARKING SPACES ARE WITHIN 700 FEET OF ALL PRINCIPAL BUILDING ENTRANCES. THE FURTHEST PARKING SPACE TO ANY PRINCIPAL BUILDING ENTRANCE IS 689.1' TO BUILDING 4 AS ILLUSTRATED ON THIS SHEET.

GEORGIA811
Utility Protection Center, Inc.
Know what's below. Call before you dig.

GRAPHIC SCALE IN FEET
0 20 40 80

PROJECT: COOK ROAD MULTIFAMILY
2128 & 2170 COOK ROAD
DECATUR, GA 30032
DEKALB COUNTY

GSWCC NO. (LEVEL II)	62135
DRAWN BY	TGB
DESIGNED BY	TAD
REVIEWED BY	BBW
DATE	00/00/0000
PROJECT NO.	013592003
TITLE	VARIANCE SITE PLAN
SHEET NUMBER	C0.01

PREPARED BY: **Kimley-Horn**
© 2019 KIMLEY-HORN AND ASSOCIATES, INC.
11720 AMBER PARK DRIVE, SUITE 600
ALPHARETTA, GA 30009
PHONE: (770) 619-4282
WWW.KIMLEY-HORN.COM

PREPARED FOR: **DOMINIUM**
2905 NORTHWEST BOULEVARD, SUITE 150
PLYMOUTH, MN 55441
PHONE: 736.354.5500

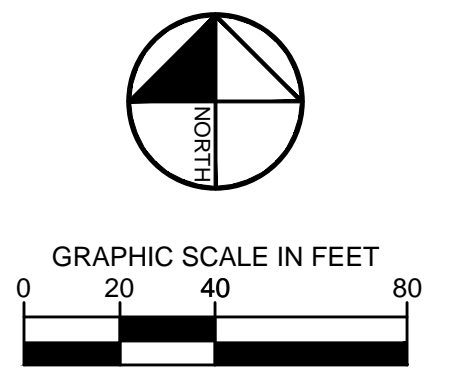
PROJECT: COOK ROAD MULTIFAMILY
2128 & 2170 COOK ROAD
DECATUR, GA 30032
DEKALB COUNTY

DATE: _____
BY: _____
NO. ISSUANCE AND REVISION DESCRIPTIONS

PRELIMINARY
NOT FOR CONSTRUCTION
05/05/2021

This document, together with the concepts and designs presented herein, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.

Drawing name: K:\atl_civil\13592003_cook_road_dekalb_variance\Plans\CAD\C3.00 - GRADING & DRAINAGE PLAN.dwg CS:00 GRADING & DRAINAGE PLAN May 05, 2021 10:07am by: Tyler Bishop



<p>© 2019 KIMLEY-HORN AND ASSOCIATES, INC. 11720 AMBER PARK DRIVE, SUITE 600 ALPHARETTA, GA 30009 PHONE: (770) 619-4282 WWW.KIMLEY-HORN.COM</p>	
<p>2905 NORTHWEST BOULEVARD, SUITE 150 PLYMOUTH, MN 55441 PHONE: 736.354.5500</p>	
PREPARED FOR	PROJECT
ISSUANCE AND REVISION DESCRIPTIONS	DATE
<p>COOK ROAD MULTIFAMILY 2128 & 2170 COOK ROAD DECATUR, GA 30032 DEKALB COUNTY</p>	
GSWCC NO. (LEVEL II)	62135
DRAWN BY	TGB
DESIGNED BY	TAD
REVIEWED BY	BBW
DATE	00/00/0000
PROJECT NO.	013592003
TITLE	GRADING PLAN
SHEET NUMBER	C3.00

This document, together with the concepts and designs presented herein, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.