



DeKalb County Zoning Board of Appeals

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Wednesday, May 12, 2021

Planning Department Staff Analysis

Case No.:	A-21-1244830	Parcel ID(s): 18-062-06-032, -036, -027, -037
<u>Commission District: 2 Super District: 6</u>		
Applicant:	Matthew Kaczinski	
Owners:	The Estate of Margaret Helen Talton c/o Herman E. Talton, Jr., and Martin S. Talton, and Marianne T. McMillian	
Location/Address:	1702, 1708, 1712, and 1724 Scott Boulevard, Decatur, GA	
Requests:	Appeal and administrative decision to deny a variance to allow a proposed townhome development to encroach up to 15 feet into the required 75-foot stream buffer.	

STAFF FINDINGS

Site Location and Property Description:

The subject property is a 4.73-acre tract, zoned MR-2, located on Scott Boulevard, a six-lane major thoroughfare that is developed with a mixture of non-residential and multifamily residential land uses. The adjoining property to the south is developed with an automobile repair shop; the adjoining property to the north is developed with a vacant car dealership. The adjoining property to the rear is developed with the Tuxworth residential condominium complex. A stream is located to the rear of the subject property.

The subject property is 467 to 746 feet deep and has an irregular shape due to the angle of the front property lines in relation to the side property lines. The topography slopes gradually downwards towards the stream.

The applicant proposes to construct a 55-unit townhome development with 15-foot wide lots. The proposed density, 12 units per acre, is within the maximum allowed base density of 18 units per acre. On December 12, 2020, the applicant applied for a stream buffer variance to encroach 20 feet into the 75-foot stream buffer located at the rear of the site. Based on comments by Land Development staff, this site plan was modified to reduce the proposal by five units and encroach less into the 75-foot stream buffer. The modified site plan, dated February 17, 2021, shows the following encroachments: A pervious sidewalk, which encroaches 12 – 15 feet into the buffer; an approximately 200- square foot stub of the private drive that runs down the center of the site; six ½ threshold landings, which encroach approximately 2.5 – 5 feet into the buffer, and a sewer tie-in. On March 4, 2021, Land Development staff denied the application for the stream buffer variance in accordance with the modified site plan.

Surrounding Zoning and Land Use:

Direction	Adjacent Zoning	Adjacent Land Use
North	R-75 and Multiple Zoning	Vacant Car Dealership

Direction	Adjacent Zoning	Adjacent Land Use
Northeast	R-75 and Multiple Zoning	Vacant Car Dealership
East	Scott Boulevard	N.A.
Southeast	Scott Boulevard	N.A.
South	C-2	Automobile Repair Shop
Southwest	MR-1	Tuxworth Residential Condominiums
West	MR-1	Tuxworth Residential Condominiums
Northwest	R-75	Single-Family Res

Section 14-44.4(i)(1). In considering any request for a variance to the terms of this Chapter authorized in subsection (1) above, the director shall apply all of the following criteria:

- a. The request, while not strictly meeting the requirements of Chapter 14, will in the judgment of the director be at least as protective of natural resources and the environment as would a plan which met the strict application of these requirements. In making such a judgment, the director shall examine whether the request will be at least as protective of the natural resources and the environment with regard to the following factors:
 1. Stream bank or soil stabilization.
 2. Trapping of sediment in surface runoff.
 3. Removal of nutrients, heavy metals, pesticides, and other pollutants from surface runoff.
 4. Terrestrial habitat, food chain, and migration corridor.
 5. Buffering of flood flows.
 6. Infiltration of surface runoff.
 7. Noise and visual buffers.
 8. Downstream water quality.
 9. Impact on threatened and endangered species, as those species are designated by law or federal or state regulation. The shape, size, topography, slope, soils, vegetation and other physical characteristics of the property.
 10. The locations of all streams on the property, including along property boundaries.
 11. The location and extent of the proposed buffer or setback intrusion.
 12. Whether alternative designs are possible which require less intrusion or no intrusion.
 13. The long-term and construction water quality impacts of the proposed variance.

The plan presented by the applicant, as well as the alternate plan that the applicant worked out with the neighbors, would not protect natural resources and the environment as well as the undisturbed stream buffer.

- b. By reason of exceptional topographic or other relevant physical conditions of the subject property that were not created by the owner or applicant, there is no opportunity for any development under any design configuration unless a variance is granted.

A full range of development scenarios has not been offered or evaluated. The stream buffer reduces the buildable area of the property by 1.1 acres, leaving approximately 3.63 acres of developable lot area. This is enough space to construct many types of land uses, but whether there is a viable opportunity for a developer to construct a new land use on the site depends on factors unknown to the staff, such as the price of the land and the profit margin desired by the developer.

- c. The request does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privileges inconsistent with the limitations upon other properties which are similarly situated.

It appears that the developer, by modifying the site plan such that the amount of encroachment was reduced, has requested the minimum amount of encroachment necessary to enable the property to be developed in accordance with the business model used by Planners and Engineers Collaborative, Inc.

- d. The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the area in which the property is located.

Encroachment into the stream buffer is materially detrimental to the public welfare, as it can lead to degradation of water quality and, over time, threaten the natural systems that are integrated into the water supply. Encroachment of streets into the buffer is particularly objectionable because oil, heavy metals, and other by-products of automobiles can run off the street during rain events and seep into the soil of the buffer. The applicant has agreed to stabilize, clean up, and restore a portion of the stream bank” and remove invasive species of plants. The application also states that “A hydrology report submitted with the LDP package indicates no hydraulic impacts on the downstream channel as a result of the proposed development.”

- e. Whether the applicant has provided a mitigation plan designed and stamped by Georgia licensed design professionals and whether that proposed mitigation plan is (a) non-structural; (b) designed to improve the quality of the stream and the associated buffer; and (c) includes a planting schedule and channel protection design.

The application references an agreement, signed by owners of adjacent property located at 2563, 2567, and 2573 McCurdy Way, which “stipulates that the full clean up and restoration of the stream bank on site will be required after stabilization. Similarly, invasive species will be removed from the stream buffer. A hydrology report submitted with the LDP package indicates no hydraulic impacts on the downstream channel as a result of the proposed development.

- f. Whether the literal interpretation and strict application of the applicable provisions or requirements of Chapter 14 would cause an extereme hardship, so long as the hardship is not created by the owner. The applicant is responsible for providing proof or hardship. The proof shall demonstrate the difficult site conditions and possible alternate designs. The director shall not grant any stream buffer variances if the actions of the property owner of a given property have created the conditions of hardship on the property.

Land development staff has indicated that the applicant did not show proof of hardship.