

RECEIVED

By Howard Johnson at 4:12 pm, Oct 06, 2022



DeKalb County Department of Planning & Sustainability

Hon. Michael Thurmond
Chief Executive Officer

Andrew Baker, AICP,
Director

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

BOA No. _____

Applicant and/or
Authorized Representative Dennis J. Webb, Jr.

Mailing Address: 1105 W. Peachtree Street, N.E., Suite 1000

City/State/Zip Code: Atlanta, GA 30309

Email: dwwebb@sgrlaw.com

Telephone Home: _____ Business: (404) 815-3620

OWNER OF RECORD OF SUBJECT PROPERTY

Owner: Brian Waterfield, Managing Partner

Address (Mailing): Timshel Development Group, LLC, 310 S. Dillard St., Ste. 135, Winter Garden, FL 34787

Email: bwaterfield@timsheldevelopment.com

Telephone Home: _____ Business: (cell) (407) 461-4651

ADDRESS/LOCATION OF SUBJECT PROPERTY

Address: 2537 Candler Road City: Decatur State: Georgia Zip: 30032

District(s): 15 Land Lot(s): 137 Block: 02 Parcel: 001

Zoning Classification: Mixed Zoning, I-20 OVD, Tier 2 Commission District & Super District: 3 & 6

CIRCLE TYPE OF HEARING REQUESTED:

- VARIANCE (From Development Standards causing undue hardship upon owners of property.)
- SPECIAL EXCEPTIONS (To reduce or waive off-street parking or loading space requirements.)
- OFFICIAL APPEAL OF ADMINISTRATIVE DECISIONS.

*** PLEASE REVIEW THE FILING GUIDELINES ON PAGE 4. FAILURE TO FOLLOW GUIDELINES MAY RESULT IN SCHEDULING DELAYS. ***

TO BE COMPLETED BY PLANNING AND SUSTAINABILITY DEPARTMENT:

Date Received: _____ Fee Paid: _____

DEPARTMENT OF PLANNING & SUSTAINABILITY

ZBOA APPLICATION AUTHORIZATION

Completion of this form is required if the individual making the request is not the owner of the property.

DATE: Sept. 26, 2022

CHECK TYPE OF APPLICATION:

- () ADMINISTRATIVE APPEAL
- (X) VARIANCE
- () SPECIAL EXCEPTION

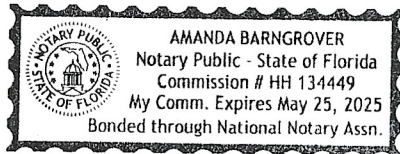
TO WHOM IT MAY CONCERN:

(I) / (WE), Brian Waterfield, Managing Partner, Timshel Development Group, LLC
[Name of owner(s)]

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

Dennis J. Webb, Jr.

[Name of Applicant or Representative]
to file an application on (my) / (our) behalf.




Notary Public


Owner

Notary Public

Owner

Notary Public

Owner

STATEMENT OF INTENT

and

Other Material Required by
DeKalb County Zoning
Ordinance for the
Variance/Special Exception

Application of

Timshel Development Group, LLC
for

± 11.48 Acres of Land
located at 2537 Candler Road in
Land Lot 137 of the 15th District,
DeKalb County

Variations from the DeKalb County Code of Ordinances §5.4.7(E), Table 5.3, to increase the maximum allowed height of two retaining walls, and a variance from §5.4.7(E)(3) to eliminate the required landscape screen for a retaining wall that faces a stream buffer.

Submitted for Applicant by:

Dennis J. Webb, Jr.
Kathryn M. Zickert
J. Alexander Brock
Smith, Gambrell & Russell, LLP
1105 West Peachtree Street, N.E.
Atlanta, Georgia
30309
404-815-3500

1. **INTRODUCTION**

This Application seeks variances from the DeKalb County Code of Ordinances ("Zoning Code" or "Code") to increase the allowed height of two retaining walls that are proposed to be constructed as part of a multifamily residential development called *Tranquility at Decatur* ("Proposed Development"), located in Tier 2 of the I-20 Overlay District. The walls are depicted on the site plan as Wall 5 and Wall 6. Specifically, the variances are as follows:

1. A variance to increase the maximum allowed height of a non-tiered retaining wall ("Wall 5") from six feet to twelve feet at its highest point;
2. A variance to increase the maximum allowed height of a tiered retaining wall ("Wall 6") from six feet to ten feet at its highest point; and
3. A variance to eliminate the requirement of Section 5.4.7(E)(3) to plant a vegetative screen next to Wall 5.

The Applicant intends to redevelop the Subject Property with a multifamily residential development consisting of 160 units in six residential buildings, a community building, an outdoor pavilion with grills and a playground. Parking is provided in linear surface parking lots. The previous use of the site was for a combination of two single-family homes and three multifamily apartment buildings. The latter are in an advanced state of disrepair, and nothing remains of one of the buildings except the foundation. The single-family homes, while in decent condition, are inconsistent with the intent of Tier 2, which states: "The purpose of this tier is to

allow medium-density development in a mixed use [environment]. The maximum height shall be up to eight (8) stories and . . . up to forty (40) dwelling units per acre.”

The redevelopment project will enable the Developer to replace an obsolete mixture of buildings with a development that provides the households necessary to support the commercial establishments on the Candler Road corridor. At a floor area ratio of .365, the density of the development is far under the maximum allowed floor area ratio of 3.5. In addition, the density of the development, 13.94 units per acre, is well under the maximum density that would be allowed at a FAR of 3.5 with two- and three-story residential buildings.

Section 27-7.5.3 of the Zoning Ordinance authorizes the Zoning Board of Appeals to grant variances where the strict application of any regulation would result in exceptional and undue hardship upon the owner of property. In addition, Section 5.4.7(E) of the Zoning Ordinance states that one of the considerations the Zoning Board of Appeals may take into account in making a decision about a retaining wall that exceeds the maximum allowed height is “extremely steep slope, greater than [a] three (3) to one (1) topographical change on [the] site as compared to [an] adjacent existing subdivision.” The entire site slopes an average of 6.2% from the Candler Road frontage to the stream that runs across the west side of the property, and there are several locations in the interior of the site where the slopes are higher. At Wall 5, at the northwest corner of the site, creation of an embankment for a detention facility has resulted in a slope of 3:1. At Wall 6, located at the southwest corner of the site, a slope of 2:1 was the minimum achievable even with a foundation wall at the end of the building closest to this corner of the site, and with another retaining wall several feet

from Wall 6. Thus, the Proposed Development and the subject property meets the hardship criterion as well as the slope criterion.¹

2. **IMPACT ANALYSIS**

This variance request meets all of the following criteria.

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.**

The Subject Property is an irregularly-shaped parcel; what would otherwise have been straight side property lines are angled into twelve sections. In addition, Doless Creek runs across the west side of the property, reducing the buildable area of the property to the width of the creek bed and the seventy-five foot stream buffer on the side of the creek. In addition, the property is sloped up to 24% at some locations. On the Subject Property, the site conditions, which were not created by the owner, pose challenges to buildout of the site at the floor area ratio that is allowed and desirable for a property in Tier 2 of the I-20 Overlay, compared to other multifamily residential properties in Tier 2. The limitations on the buildable area of the site create a hardship that is unique to the site and are not found on other properties in Tier 2 of the I-20 Overlay District.

¹ In support of this assertion, a letter from the Applicant's engineer, Merela Consultants Company, dated September 26, 2022, notes the slope issues. A copy of the letter is attached to this application.

- 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 Applicant has made every effort to keep the retaining walls as low as possible without compromising the structural integrity of the walls. Retaining walls are proposed only where necessary to create level areas for buildings and parking lots, to construct a stormwater detention basin, or to ensure the stability of buildings and parking areas. The height of Wall 6 has been minimized by two measures: the inclusion of a foundation wall in the building near Wall 6, and the second wall parallel to Wall 6.

The request to eliminate the landscape screen along Wall 5 is the minimum requested in the sense that it is the only variance requested from the screening requirement. Wall 5 faces a heavily vegetated stream buffer and a landscape screen is not necessary to block views of the wall. However, the other wall for which the screening requirement is applicable, Wall 6, is proposed to have a screen of foster holly plants, which grow to a height of about 24 feet.

The variances are requested solely because of the limitations of the site, and do not, therefore, constitute 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.**

Increasing the height of Wall 5 and Wall 6 would enable the applicant to build the Proposed Development in a manner that would help reduce the amount of re-

grading and earth moving. Preservation of the health of the natural environment has been found to be closely tied to the public welfare. In addition, the applicant has proposed to install safety fences on top of the walls, to prevent children or teenagers from climbing on the walls and putting themselves in danger. Security fences made of black vinyl covered chain link are proposed for the north and south sides of Wall 5. The fence type has a small mesh, which has openings that are too small to enable hand- or toe-holds. Specifications for the fence are enclosed in this application. The west side of Wall 5 would be twelve feet above grade, and this height, combined with the smooth surface of the cast-in-place concrete used to construct the wall, would make it very difficult to climb; thus a security fence on top of this section of Wall 5 is not necessary. The same type of small-mesh security fence is proposed for a 144-foot distance inside of Wall 6, mostly along the interior retaining wall that runs parallel to Wall 6, but also extending to the southwest and northeast of the interior retaining wall. At several locations on the interior of the site, the applicant has also proposed the small-mesh security fence.

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

As noted in the paragraphs above, a strict interpretation of the Code would preclude the construction of the Proposed Development as envisioned by the Applicant. Because the Development is appropriate, suitable, and desirable, and

because it meets all of the criteria for the approval of a variance, it is neither justifiable nor necessary to impose this hardship.

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

The requested variances would be consistent with the spirit and purposes of both the Zoning Ordinance and the DeKalb County Comprehensive Plan. They are part of a proposal that would bring 160 residential units in a predominantly non-residential part of the I-20 Overlay District, thereby meeting goals for a mixture of land uses along Candler Road. *Tranquility at Decatur* is consistent with Section 3.33.3(N) of the Zoning Ordinance, which states that one of the purposes of the I-20 Overlay is “allow and encourage development densities and land use intensities that are capable of making productive use of alternative transportation modes such as bus transit, rail transit, ridesharing, bicycling and walking.” And, consistent with Section 3.33.3(F), it would “enhance the long-term economic viability of the portion of DeKalb County within the Overlay by encouraging new residential development that would increase the tax base and provide employment opportunities”.

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

The Applicant respectfully submits that the current zoning classification of and rules relative to the Subject Property owner's right to use the Property established in the DeKalb County Zoning Ordinance, to the extent they prohibit this use, are unconstitutional and constitute an arbitrary, irrational abuse of discretion and unreasonable use of the zoning power because they bear no substantial relationship to the public health, safety, morality

or general welfare of the public and substantially harm the Applicant in violation of the due process and equal protection rights guaranteed by 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. Further, the failure to allow this use would constitute a taking of private property without just compensation and without due process 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 I, Paragraph 1 of the Constitution of the State of Georgia, and would be in violation of the Commerce Clause, Article I, Section 8, Clause 3 of the Constitution of the United States.

The Applicant respectfully submits that the Zoning Board of Appeals' failure to approve the requested variances would be unconstitutional and would discriminate in an arbitrary, capricious and unreasonable manner between the Subject Property's owner and owners of similarly situated property in violation of Article I, Section III, Paragraph I of the Constitution of the State of Georgia and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

A refusal to grant the variances in question 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 variances in question would be invalid inasmuch as it would be denied pursuant to an ordinance which is not in compliance with the Zoning Procedures

Law, O.C.G.A. § 36-66-1 et seq., due to the manner in which the Ordinance as a whole and its map(s) have been adopted.

The practical effect of a denial of the requested variances will be to drive up the cost of housing which will have the effect of discriminating on the basis of race in violation of the Fair Housing Act of the United States and Georgia.

Opponents to this request lack standing, have failed to exhaust administrative remedies, and have waived their rights to appeal by failing to assert legal and constitutional objections.

4. **CONCLUSION**

For the foregoing reasons, the Applicant respectfully requests that the variances to DeKalb County Zoning Ordinance at issue be approved. The Applicant also invites and welcomes any comments from Staff or other officials of DeKalb County so that such recommendations or input might be incorporated as conditions of approval of this Application.

This 6th day of October, 2022.

Respectfully Submitted,



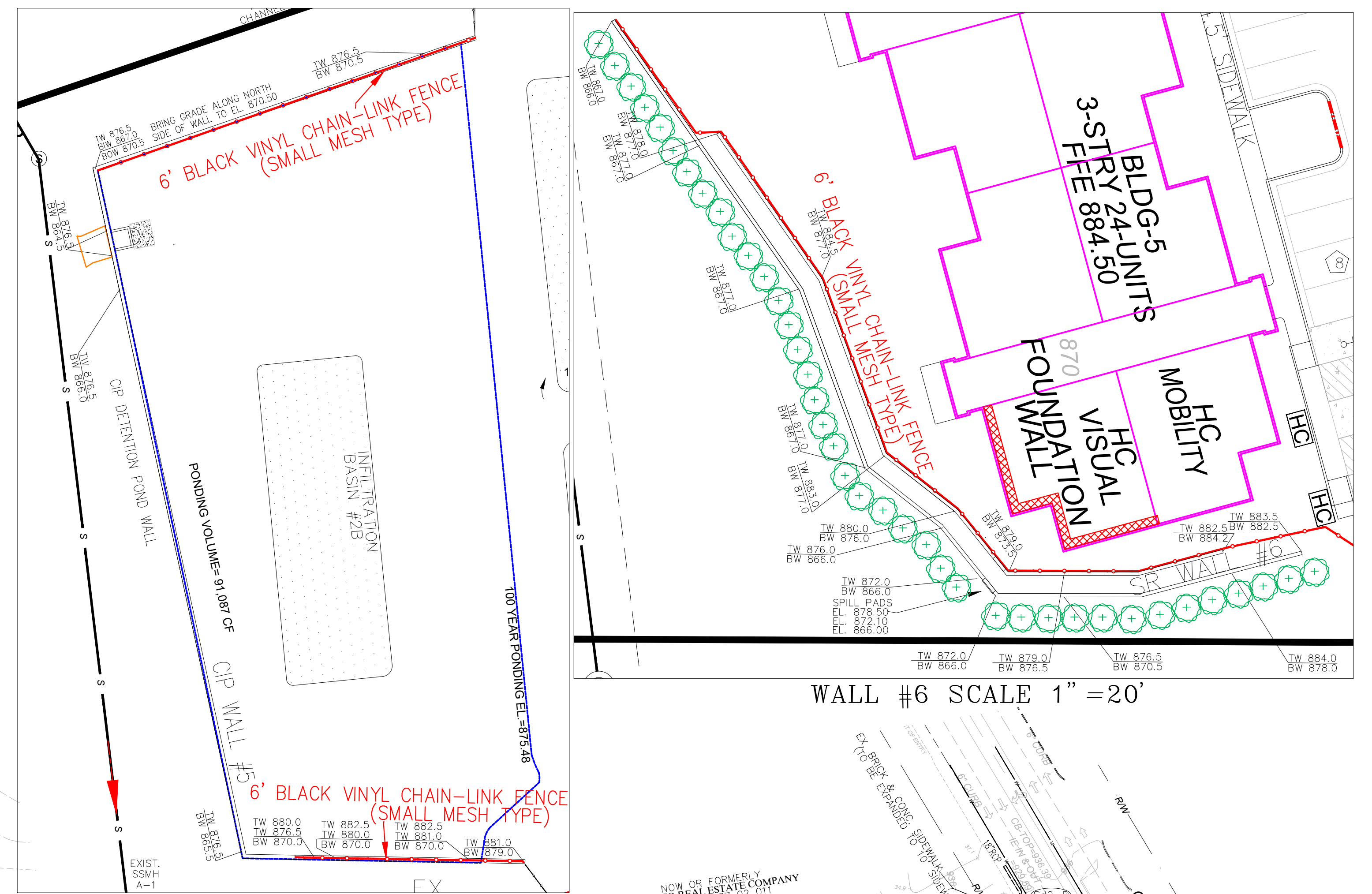
Dennis J. Webb, Jr.
Kathryn M. Zickert
J. Alexander Brock
Attorneys For Applicant

GRAPHIC LEGEND

- LIMITS OF DISTURBANCE
- BOUNDARY
- - - EX. STORM UTILITY
- - - PROP. STORM UTILITY
- - - EX. FENCE
- S - S - EX. SEWER LINES
- SS - SS - PROP. SEWER LINES
- P - P - EX. OVERHEAD POWER LINES
- UT - UT - EX. TELEPHONE OR CABLE LINES
- UP - UP - EX. UNDERGROUND POWER LINES
- W - W - EX. WATER LINES
- HC HANDICAP PARKING SIGN
- BE ROUTE OF EX. PRIVATE EASEMENT
- BE ROUTE OF EX. PRIVATE DRIVEWAY

V1 ALLOW CIP WALL #5 TO BE GREATER THAN 6' (12') ALONG WEST SIDE OF WALL #6 (166 LF)

V2 ALLOW MODULAR WALL #6 TO BE GREATER THAN 6' (10') ALONG THIS 144 LF AREA



WALL #5 SCALE 1" = 20'

WALL #6 SCALE 1" = 20'

SITE PLAN-OVERALL BOUNDARY-VARIANCE

TRANQUILITY AT DECATUR

15TH DISTRICT, LAND LOTS 120&137
 PARCEL 15 137 02 001
 2537 CANDLER ROAD, DECATUR, GA. 30032
 DEKALB COUNTY GEORGIA

OWNERS & DEVELOPERS:
 TIMSHELL HILL TIDE DEVELOPERS, LLC
 PARENT DEVELOPMENT, LLC
 OUTLOOK DEVELOPMENT, LLC
 310 S DILLARD STREET SUITE 135
 WINTER GARDEN, FLORIDA 34787
 CONTACT: TODD WIND
 (917) 497-8520

DEKALB LDP-AP# 1245295

QTY	COMMON NAME	BOTANICAL NAME	1/4" @ 20" SIZE (MIN.)	SPACING TTL DBH @ 3' OF TTL CONDITIONS
39	FOSTERS HOLLY	ILEX X ATTENUATA 'FOSTERI'	0.4	3 GAL

LANDSCAPE LEGEND

- PROPOSED TREES
- FOSTERS HOLLY



REVISION LOG:

NO.	DATE	REMARKS

BULLARD
 LAND PLANNING
 3790 CANNONWOLDE DR
 SNELLVILLE, GEORGIA 30039
 CONTACT: BOBBY BULLARD
 (678) 344-1293 ~ (770) 978-8857 FAX
 bpbobb@bellsouth.net

PROFESSIONAL SEALS



SCALE: AS SHOWN

JOB NUMBER:
20-2062

DATE:
09-22-22

SHEET TITLE:
VARIANCE SITE PLAN FOR TRANQUILITY AT DECATUR

SHEET NUMBER:
C1

Merela Consultants Company, Inc.

3830 Thompson Mill Road
Buford, GA 30519

Dekalb County
Department of Planning and Sustainability
178 Sams Street Floor 3
Decatur, Georgia 30030
(404) 371-2155

September 26, 2022

Re: Tranquility at Decatur Wall Height Variance (LDP #1245295)

To Whom It May Concern:

Included herein are the wall plans and design calculations prepared by Merela Consultants, Inc. for the six retaining walls depicted on the recently approved land disturbance permit plan for the project referenced above. It is our understanding that Wall 5 and Wall 6 are over the height maximums and will need variances prior to final approval of the LDP. The following statements pertain to the engineering of Walls 5 and 6 in relation to the considerations contained in Section 5.4.7(E)(2)(d) of the DeKalb County Code.

The existing topography of the site has slopes in the areas of Walls 5 and 6 of between 14 - 24%. Creation of the detention pond embankments will result in a 3:1 slope, and grading to create a level construction platform for Building 5 will result in a slope of 2:1, even after addition of a second retaining wall behind Building 5. The retaining walls are needed to prevent additional land disturbance for grading, which would otherwise be required to ensure stability of the slopes. The walls also allow enough room for the installation of water quality and storm water runoff reduction measures. In addition, the retaining walls allow for maintenance around the building and detention pond.

The calculations included herein demonstrate the design measures to prevent the possibility that the walls could slide or overturn. Safety fences are proposed as necessary on top of each of the walls to prevent climbing onto and jumping off the walls.

The walls will need periodic maintenance of the vegetation around the walls and at least one yearly inspection to ensure that conditions that could compromise wall stability do not arise. At least five feet of cleared space is provided next to each side of Wall 5 and Wall 6 to allow inspectors to walk along the base of the walls. During construction of the footings of Wall 5, existing vegetation will be removed to construct the footings of Wall 5. The hollies will be planted at a distance of five feet from the base of Wall 6.

Regarding screening: an evergreen shrubbery screen is proposed at the base of Wall 6, which is adjacent to the multifamily residential development to the south. Heavy vegetation is already

growing along the stream buffer, and to plant a screen for Wall 5, which faces the stream buffer, would require disturbance of the stream buffer to remove existing vegetation. Therefore, a variance from this requirement is part of this application.

Sincerely,



Jack Fu, PhD, PE

 Office: 770.614.3898

 Email: jfu@merelaconsultants.com



