



Lorraine Cochran-Johnson

Chief Executive Officer

DeKalb County Zoning Board of Appeals

Department of Planning & Sustainability

178 Sams Street,

Decatur, GA 30030

Wednesday July 9, 2025

Planning Department Staff Analysis



Cedric Hudson

Interim Director

N2. Case No: A-25-1247573

Parcel ID(s): 15 136 08 020

Commission District 03 Super District 07

Applicant: Dana Gibson c/o Battle Law, P.C.
3075 Toney Drive NE
Decatur, GA 30032

Owner: Dana Gibson c/o Battle Law, P.C.
3075 Toney Drive NE
Decatur, GA 30032

Project Name: 3075 Toney – Wall and parking pad in ROW

Location: 3075 Toney Drive NE, Decatur, GA 30032

Requests: Application by Dana Gibson c/o Battle Law, PC to request variances from Section 27-5.4.7 and 27-6.1.15 of the DeKalb County Zoning Ordinance to increase height of retaining wall up to ten feet from 4 feet and allow parking pad for RV in the R-75 (Residential Medium Lot-75) zoning district.

Staff Recommendation: Denial

STAFF FINDINGS:

The applicant requests variances from Sections 27-5.4.7 and 27-6.1.15 of the DeKalb County Zoning Ordinance to retain an existing retaining wall with increased height and a parking pad constructed on the steep front slope of a residential parcel within the R-75 zoning district.

The parking pad extends into the public right-of-way, which is not subject to variance relief under DeKalb County's Zoning Ordinance, as the Zoning Board of Appeals cannot authorize private improvements within the ROW.

Permit and inspection records under Permit #3160258 indicate the applicant received approval for in-kind repair and replacement only of an existing retaining wall and driveway that were damaged by a storm. The permit explicitly prohibited any extension of the driveway or increase in the height of the existing retaining wall. Post-construction inspections and subsequent enforcement actions determined that the work completed exceeded the scope of the approved permit, resulting in a stop work order and citation with instructions to remove the non-compliant portions of the wall and pad.

The applicant now seeks variance relief to retain the increased retaining wall height on portions of the property located within private property boundaries, citing the steep slope of the site and reliance on prior County permit approvals. While the prior approvals did not authorize the increased wall height, the Zoning Board of Appeals has authority to consider a variance for retaining wall height exceeding 4 feet on private property under Section 27-5.4.7.

Summary:

- The ZBA cannot grant a variance for encroachment in the public right-of-way.
- The ZBA may consider a variance to allow the increased retaining wall height on the applicant's private property, as otherwise the structure would remain limited to a maximum of 4 feet in height.

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.

The subject property is notably steep, with a significant grade change that limits practical locations for vehicle parking and necessitates the use of retaining structures to manage grade transitions safely. This topography is natural and was not created by the applicant or any previous owner. The slope of the lot effectively restricts the applicant's ability to place parking improvements elsewhere without substantial grading or environmental disturbance.

While the topography presents challenges, staff notes that steep slopes alone do not always justify permanent encroachment into areas otherwise regulated for public or community use, particularly when alternatives for managing vehicle storage may exist off-site, on the existing driveway, or through modified site planning.

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 does exceed the minimum necessary to afford relief. While the steep site presents challenges, the scope of the constructed improvements may extend beyond what is strictly necessary for reasonable access and parking, particularly in a residential context.

The scale, location, and permanence of the pad and wall introduce an overly-developed appearance along the frontage, which may exceed what is considered appropriate within the established character of the surrounding residential neighborhood. The presence of an RV on the pad further raises concerns regarding the intensity and type of use associated with the improvement.

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:

Public input on the request has included opposition, with concerns raised about neighborhood character impacts, the commercial appearance of the improvements, and uncertainty regarding the types of vehicles to be parked on the pad.

While retaining walls can contribute to erosion control and slope management, the introduction of additional hardscape and potential parking of large vehicles may diminish the visual quality of the street frontage and neighborhood cohesion. Staff finds that the improvements as built could have a detrimental effect on neighborhood character.

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

Strict application of the ordinance would require removal of the retaining wall and parking pad, which the applicant constructed under the assumption of County approval.

The steep topography does limit options for on-site parking; however, the existence of the slope alone does not compel the installation of a large parking pad within the right-of-way, particularly if less impactful alternatives could be considered.

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

The variance request is inconsistent with the spirit and intent of the DeKalb County Comprehensive Plan and zoning ordinance for the Suburban Character Area, which seeks to maintain neighborhood character, improve connectivity, and preserve greenspace in suburban areas. The constructed pad and wall introduce a scale and appearance more aligned with institutional or commercial properties rather than maintaining a cohesive residential frontage.

The Comprehensive Plan encourages design that enhances community connectivity and greenspace, goals that are challenged by the introduction of additional hardscape and vehicle storage along the street. The improvements as built do not align with these principles.

FINAL STAFF ANALYSIS:

Staff recommends denial of the variance request. While the site's slope presents practical challenges, the improvements as constructed are not consistent with the character of the surrounding neighborhood and exceed what is necessary to provide reasonable access to the site. Staff further notes that alternatives may exist that would achieve the applicant's goals while better aligning with community character and zoning intent.

Staff Recommendation: Denial

Filing Guidelines for Applications to the Zoning Board of Appeals

1. Submit Application Materials:

- a. To ensure proper processing and payment, please create a profile and upload at least page 1 of your application to: <https://epermits.dekalbcountyga.gov/> (no more than 10mb permitted).
 - If you have an existing account, you may use that account and create a *new application number* by selecting the proper application type.
 - Fill out *all* Account Portal Questions
 - Put your **email address under “WEB ACCOUNT”**
 - **SAVE APPLICATION NUMBER (124XXXX)** – send to staff when you email your complete application.
- b. After portal submittal, email one (1) combined PDF document of the completed application and materials to plansustain@dekalbcountyga.gov and ljcarter@dekalbcountyga.gov along with application number.
- c. Please confirm we have received your application.
- d. For any questions, please contact plansustain@dekalbcountyga.gov

2. Order of Submitted Materials:

- a. Application Form
- b. Signatures and authorization (including permission to go on property)
- c. Letter of Intent
- d. Surveys, site plans.
- e. Other relevant materials (e.g., photographs, letters of support, citation, etc.)

3. Authorization:

- a. If property owner is different from the applicant, the form to authorize the application must be signed by the owner and stamped by a notary.
- b. If property is owned by more than one property owner, all property owners must authorize the request.

4. Letter of Intent:

- a. **Explain what you are asking for and why.**
- b. A typed statement indicating the request and clarifying justification for the proposal based on the criteria as indicated in Section 27-7.5.3 or 7.5.4 of the DeKalb County Zoning Ordinance (see attached information).
- c. Reference the section of the code you are requesting to vary and the amount of requested change, (such as to reduce the rear yard setback from forty (40) feet to twenty (20) feet to construct an addition).

5. Surveys and site plans of the Subject Property:

- a. Must be stamped by a professional engineer or surveyor, registered in the State of Georgia.
- b. All plans and surveys must include the following information:
 1. Must show all property lines with dimensions.
 2. Must show the location of all existing and proposed buildings, structures, parking and setbacks (their relationship to the property boundaries).
 3. Must show any other features related to the request such as trees, fences, topography, streams, etc.
 4. Must be to-scale
 5. Must show lot area and lot coverage (impervious materials, including paving and structures).

6. **Application Fee is \$300.** You will be able to pay by credit card on the epermitting portal. A receipt will be provided.

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Writing the Letter of Intent

Please address the following criteria as appropriate:

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

The zoning board of appeals shall hear and decide applications for variances from the strict application of the regulations of this chapter and chapter 21 where the strict application of any regulation enacted under said chapters would result in exceptional and undue hardship upon the owner of such property. In determining whether or not to grant a variance, the board shall apply the criteria specified in this section to the facts of each case. The board may attach reasonable conditions to any approved variance in accordance with section 7.3.9. Once imposed, conditions shall become an integral part of the approved variance and shall be enforced as such. No changes to an approved condition attached to a variance shall be authorized except by re- application to the zoning board of appeals in full compliance with the applicable provisions of this division. No relief may be granted or action taken under the terms of this division unless such relief can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of this chapter and the comprehensive plan. The zoning board of appeals shall apply the following criteria to the types of applications specified below as follows:

- 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.
- B. Appeals of decisions regarding building architectural design standards shall be evaluated using the same criteria as section 7.6.7(B).

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- C. Appeals to the height standards, but not to add stories, shall be evaluated using the criteria as follows:
1. Adequacy of the size of the site for the use contemplated and whether or not adequate land area is available for the proposed use including provision of all required yards, open space, off-street parking, and all other applicable requirements of the zoning district in which the use is proposed to be located.
 2. Compatibility of the proposed use with adjacent properties and land uses and with other properties and land uses in the district.
 3. Adequacy of public services, public facilities, and utilities to serve the proposed use.
 4. Whether or not the proposed use provides for all required buffer zones and transitional buffer zones where required by the regulations of the zoning district in which the use is proposed to be located.
 5. Whether or not the size, scale and massing of proposed buildings are appropriate in relation to the size of the subject property and in relation to the size, scale and massing of adjacent and nearby lots and buildings.
 6. Whether or not the proposed use will create a negative shadow impact on any adjoining lot or building as a result of the proposed building height.

7.5.2 Applications for variances to reduce or waive off-street parking or loading space requirements.

The zoning board of appeals shall hear and decide applications for variances to reduce or waive required off-street parking or loading spaces in accordance with the provisions and standards of this section. All such applications shall be heard and decided based on the notice requirements of section 7.2.4. The zoning board of appeals may waive or reduce the required number of parking or loading spaces in any district only upon an expressed finding that:

- A. The character of the use of the building(s) is such as to make unnecessary the full provision of parking or loading spaces;
- B. The lot upon which the building(s) is located is within one thousand (1,000) feet of the boundary of a MARTA RapidTransit Station;
- C. The provision of the full number of parking spaces would have a deleterious effect on a historic building, site, district or archaeological resource;
- D. The use has a characteristic that differentiates it from the typical use example used in the formulation of this Zoning Ordinance;
- E. The location of the proposed development is relatively isolated where the opportunity for diversity of use, pedestrian access, and alternative modes is not available; or
- F. The developer is providing the additional spaces for general public parking (for hourly or daily parking charges) to serve surrounding development.

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Section 21-27. Sign Variances.

- (a) Where a literal application of this article, due to special circumstances, would result in an unusual hardship in an individual case, a variance may be granted by the zoning board of appeals after receiving evidence that the applicant meets all of the following criteria:
 - 1. Exceptional conditions pertaining to the property where the sign is to be located as a result of its size, shape, or topography, which are not applicable to other lands or structures in the area;
 - 2. Granting the variance would not confer on the applicant any significant privileges which are denied to others similarly situated;
 - 3. The exceptional circumstances are not the result of action by the applicant;
 - 4. The requested variance is the minimum variance necessary to allow the applicant to enjoy the rights commonly enjoyed by others similarly situated;
 - 5. Granting of the variance would not violate more than one (1) standard of this article; and
 - 6. Granting the variance would not result in allowing a sign that interferes with road or highway visibility or obstruct or otherwise interfere with the safe and orderly movement of traffic.
- (b) No variance shall be granted to the height of a sign or the aggregate area of signs permitted on a lot.
- (c) No variance shall be granted which increases the size of a sign more than twenty (20) percent of that allowed by this chapter. (Ord. No. 13-03, Pt. I, 6-10-03)

7.5.3 Appeals of decisions of administrative officials.

- A. *General Power.* The zoning board of appeals shall have the power and duty to hear and decide appeals where it is alleged by the appellant that there is error in any final order, requirement, or decision made by an administrative official based on or made in the enforcement of this Zoning Ordinance or as otherwise authorized by local law or the Code of DeKalb County as Revised 1988. Administrative officials must make final decisions covered by this section within one hundred and eighty (180) days of receipt of all necessary information to make such decision. A failure to act prior to the passage of one hundred and eighty (180) days shall not be construed to be a final order, requirement or decision within the meaning of this division. If a decision is not made by the 181st day, the requested decision is deemed denied, and becomes appealable. All such appeals shall be heard and decided following the notice requirements of section 7.2.4, and pursuant to the following criteria and procedural requirements.
- B. *Appeals of decisions of administrative officials.* Appeals of decisions of administrative officials may be filed by (1) any person aggrieved by; (2) any elected member of the DeKalb County Governing Authority affected by; or (3) an owner of property within two hundred and fifty (250) feet of the nearest property line of the property that is the subject of any final order, requirement, or decision of an administrative official, based on or made in the enforcement of this Zoning Ordinance, or as otherwise authorized by local law or the Code of DeKalb County as Revised 1988. by filing with the secretary of the zoning board of appeals an application for appeal, specifying the grounds thereof, within fifteen (15) days after the action was taken by the official that is the subject of the appeal.
- C. *Appeal stays all legal proceedings.* An appeal of a decision of an administrative official stays all legal proceedings in furtherance of the action or decision appealed from unless the official from whom the appeal is taken certifies to the zoning board of appeals, after notice of appeal has been filed, that by reason of facts stated in the certificate, a stay would, in that official's opinion, cause imminent peril to life or property. In such a case, legal proceedings shall be stayed only pursuant to a restraining order granted by a court of competent jurisdiction directed to the officer from whom the appeal is taken and on due cause shown.

- D. *Appeal stays land disturbance or construction activity in certain situations.* If the action or decision appealed from permits land disturbance or construction activity to commence or continue on residentially zoned property, the appeal stays the land disturbance or construction activity until the zoning board of appeals issues a decision on the appeal. Thereafter, land disturbance or construction activity in such cases shall only be stayed by an order from a court of competent jurisdiction. In all cases involving non-residentially zoned property, the appeal to the zoning board of appeals does not stay land disturbance or construction activity; such activity shall only be stayed by an order from a court of competent jurisdiction.
- E. Thereafter, in such situations land disturbance or construction activity shall only be stayed by an order granted by a court of competent jurisdiction.
- F. *Time of hearing.* The zoning board of appeals shall fix a reasonable time for the hearing of the appeal and give notice thereof pursuant to the requirements of section 7.2.4 as well as written notice to the appellant. Any party may appear at the hearing in person, by an agent, by an attorney, or by the submission of written documentation.
- G. *Decision of the zoning board of appeals.* Following the consideration of all testimony, documentary evidence, and matters of record, the zoning board of appeals shall make a determination on each appeal and shall issue a written decision explaining the reasons for its decision. The zoning board of appeals shall decide the appeal within a reasonable time, but in no event more than sixty (60) days from the date of the hearing. An appeal shall be sustained only upon an expressed finding by the zoning board of appeals that the administrative official's action was based on an erroneous finding of a material fact, erroneously applied the Zoning Ordinance to the facts, or that the administrative official acted in an arbitrary manner. In exercising its powers, the zoning board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and to that end shall have all the powers of the administrative official from whom the appeal was taken and may issue or direct the issuance of a permit, provided all requirements imposed by any applicable laws are met.

7.5.4 Limitations of authority of the zoning board of appeals.

No variance shall be granted by the zoning board of appeals to:

- A. Allow a structure or use not listed as a permitted use or a special use in the applicable zoning district or a density of development that is not authorized within such district. This prohibition does not apply to any variance from the supplemental regulations of Article 4 of this Zoning Ordinance or from any other accessory feature or characteristic of a permitted or special use, unless said variance is otherwise prohibited by the regulations of this chapter.
- B. Allow any variance which conflicts with or changes any requirement enacted as a condition of zoning or of a special land use permit by the board of commissioners.
- C. Reduce, waive or modify in any manner the minimum lot width unless the purpose is to reverse a lot merger.
- D. Reduce, waive or modify in any manner the minimum lot area established by this chapter.
- E. Extend the time period for a temporary outdoor social, religious, entertainment or recreation activity approved by the director of planning.
- F. Permit the expansion or enlargement of any nonconforming use of land, nonconforming use of land and buildings in combination, nonconforming use of land and structures in combination, or nonconforming use requiring special land use permit.

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- G. Permit the reestablishment of any nonconforming use of land, nonconforming use of land and buildings in combination, nonconforming use of land and structures in combination, or nonconforming use requiring special land use permit where such use has lapsed pursuant to the requirements and limitations of Article 8 of this chapter.
- H. Permit customer contact for a home occupation authorized by this chapter.
- I. Allow any variance to increase the height of a building which will result in adding a story.

Summary of Zoning Board of Appeals Application Process:

1. **Timeline.** It takes ~45-60 days to submit your application and receive an initial decision from the Zoning Board of Appeals regarding your request.
2. **Pre-application Meetings.** DeKalb County now mandates pre-application meetings. Please email plansustain@dekalbcountyga.gov to schedule a virtual appointment to meet with a Planner assigned to the Zoning Board of Appeals. During the virtual meeting, we will review and provide feedback regarding your request, review the application process, and answer any questions.
3. **Application Submittals.** Create a profile and upload at least page 1 of your application to: <https://epermits.dekalbcountyga.gov/> (no more than 10mb permitted). Email a combined PDF document of the completed application and materials to plansustain@dekalbcountyga.gov and lrcarter@dekalbcountyga.gov along with the application number.
4. **Public Hearing Signs.** You will need to post at least one sign per street frontage of the property. Staff will prepare a sign template. You will need to coordinate sign printing and posting with a sign company of your choice, at least 30 days prior to the ZBA hearing. Sign(s) must remain posted until final Board of Appeals action regarding the request. If the application is deferred, you may update the sign(s).
5. **Revisions or amendments.** An application must be submitted in writing and must be received at least 14-days before the scheduled meeting to be addressed by the staff report.
6. **Staff Report.** Staff prepares reports and recommendations for each application. These recommendations are based on the attached criteria established by the [DeKalb County Zoning Code](#). Final staff reports are available to the applicant and the public prior to the scheduled Board of Appeals meeting. Find current reports on our website, here: <https://www.dekalbcountyga.gov/planning-and-sustainability/public-hearing-agendas-info>
7. **Monthly Meetings.** The Zoning Board of Appeals meets once a month, generally on the second Tuesday of each month at 1:00 P.M., via Zoom. Find agendas on our website, [HERE](#).
8. **Applicant and/or Representative must be Present.** Applicants or their representatives must be present at the public hearing to present the request to the Zoning Board of Appeals.
9. **Public Hearing portion of Meeting.** Applicants and others in favor of an application are given a total of five (5) minutes to present to the Board. That is five minutes combined, no matter how many people wish to speak. Applicants should be prepared to explain their variance, why they are requesting it and answer questions from the board. Anyone speaking in opposition also has a total of five (5) minutes to address the application in front of the board. Be prepared to raise your hand or announce yourself when the chair asks for those in support or opposition to the application.
10. **Applicant and/or Representative must be Present.** Applicants or their representative must be present at the public hearing to present the request to the Zoning Board of Appeals.
11. **Executive Session.** After the public hearing, the Board of Appeals will close the public hearing, go into executive session for discussion, and will then take an action on an application. Applicants are not allowed to address the Board of Appeals during Executive Session unless they are asked
12. **Zoning Board of Appeals Actions.** The Board of Appeals is authorized to:
 - a. Approve the application as submitted;
 - b. Approve a revised application;
 - c. Approve an application with conditions;
 - d. Deny an application (if an application is denied, no variance can be considered on the same site within 24 months);
 - e. Allow an application to be “Withdrawn without Prejudice” at the request of the applicant.

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13. **Compliance with standards upon denial.** In such case that a variance request is initiated due to an existing code violation and such application is denied, the violation shall be required to be brought into compliance within thirty (30) days of such denial or as specified by the board if a greater time period is approved.
14. **Successive applications.** Section 27-920 of the DeKalb County Zoning Ordinance states: An application for a variance or special exception affecting all or a portion of the same property which was denied by the Zoning Board of Appeals shall not be submitted more than once every twenty- four (24) months measured from the date of final decision by the zoning board of appeals. The Zoning Board of Appeals may waive or reduce this twenty-four-month time interval by resolution provided that if the application for a variance or special exception was denied by the Zoning Board of Appeals, the time interval between the date of said denial and any subsequent application or amendment affecting the same property shall be no less than six (6) months.
15. **Appeals of Decisions.** Any person aggrieved by a final decision of the board, or any officer, department, board or agency affected by such decision, may seek review of such decision by petitioning the Superior Court of DeKalb County. Such petition shall be filed within 30 days after the final decision of the board is rendered.

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

Applicant and/or
Authorized Representative: _____

Mailing Address: _____

City/State/Zip Code: _____

Email: _____

Telephone Home: _____ Business: _____

OWNER OF RECORD OF SUBJECT PROPERTY

Owner: _____

Mailing Address: _____

Email: _____ Telephone: _____ Business: _____

ADDRESS/LOCATION OF SUBJECT PROPERTY

Address: _____ City: _____ State: _____ Zip: _____

District(s): _____ Land Lot(s): _____ Block: _____ Parcel: _____

Zoning Classification: _____ Commission District & Super District: _____

CHECK 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.***

Email plansustain@dekalbcountyga.gov with any questions.



Battle Law

STATEMENT OF INTENT

and

Other Material Required by
DeKalb County Zoning Ordinance
For
A Variance
to allow a retaining wall and parking pad in the right-of-way

of

Dana Gibson
c/o Battle Law, P.C.

for

+/-0.66 Acres of Land
Being 3075 Toney Drive
DeKalb County, Georgia and
Parcel Nos. 15 136 08 020

Submitted for Applicant by:

Michèle L. Battle, Esq.
Battle Law, P.C.
Habersham at Northlake, Building J, Suite 100
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Battle Law

I. LETTER OF INTENT

Dana Gibson (the “Applicant”) owns +/- 0.66 acres of land being Tax Parcel No(s). 15 136 08 020 having frontage on 3075 Toney Drive (the “Subject Property”). The Applicant recently improved the Subject Property with retaining wall and parking pad after receiving final inspection and approval from DeKalb County. However, after the Applicant finished construction, she received a stop work order and a citation for the wall and pad which states that the wall and pad must be moved. The Applicant is seeking a variance of the Subject Property to allow the retaining wall and parking pad to remain where they are.

This document serves as a statement of intent, analysis of the criteria under the DeKalb County and contains notice of constitutional allegations as a reservation of the Applicant’s rights.

II. DEKALB COUNTY VARIANCE CRITERIA

- 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.*

The Subject Property is extremely steep, rising about thirty (30) feet from the corner of Toney Drive and Thrasher Circle to the base of the home. The steep nature of the Subject Property limits the locations for a parking pad. Additionally, the steep nature of the property necessitates the retaining wall. Furthermore, the steepness of the lot was not created by the Applicant or any previous owner. Rather, the topography of the land is natural. The natural topography prevents the Applicant from placing the pad in any other location on the Subject Property.

- 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 does not go beyond the minimum to afford relief. Rather, the request seeks confirmation of the pad and wall that the County already approved. It follows that if the County could approve the pad and wall for construction that the relief sought via this application falls within the minimum necessary to afford relief.

- 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 grant of the variance will not be detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the Subject Property is located.



Battle Law

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 of this chapter would prevent the Applicant from placing the pad and wall anywhere else on the Subject Property due to the topography of the site.

The strict application of the applicable provisions would require the Applicant to tear down the pad and wall that the County approved. The Applicant relied on the County's stamp of approval to start construction. The strict application of the applicable provisions would unfairly cost the Applicant tens of thousands of dollars.

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

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

III. CONCLUSION

For the foregoing reasons, the Applicant hereby requests that the application for a variance to allow a retaining wall and parking pad in the right-of-way be approved. The Applicant welcomes any questions and feedback from the planning staff.

IV. NOTICE OF CONSTITUTIONAL ALLEGATIONS AND PRESERVATION OF CONSTITUTIONAL RIGHTS

The portions of the DeKalb County Zoning Ordinance, facially and as applied to the Subject Property, which restrict or classify or may restrict or classify the Subject Property so as to prohibit its development as proposed by the Applicant are or would be unconstitutional in that they would destroy the Applicant's property rights without first paying fair, adequate and just compensation for such rights, in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States and Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and would be in violation of the Commerce Clause, Article I, Section 8, Clause 3 of the Constitution of the United States.

The application of the DeKalb County Zoning Ordinance to the Subject Property which restricts its use to any classification other than that proposed by the Applicant is unconstitutional, illegal, null and void, constituting a taking of Applicant's Property in violation of the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States, Article I, Section I, Paragraph I, and Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States denying the Applicant an economically viable use of its land while not substantially advancing legitimate state interests.



Battle Law

A denial of this Application would 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 1 of the Constitution of the State of Georgia.

A refusal by the DeKalb County Zoning Board of Appeals to amend the land use and/or grant the variance of the Subject Property to the classification as requested by the Applicant would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and owners of similarly situated property in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Any Variance of the Property subject to conditions which are different from the conditions requested by the Applicant, to the extent such different conditions would have the effect of further restricting Applicant's utilization of the property, would also constitute an arbitrary, capricious and discriminatory act in zoning the Subject Property to an unconstitutional classification and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove.

A refusal to allow the land use amendment and/or variance in questions 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 allow the land use amendment and/or variance 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 Section 36-66/1 et seq., due to the manner in which the Ordinance as a whole and its map(s) have been adopted.

The existing land use designation and/or zoning classification on the Subject Property is unconstitutional as it applies to the Subject Property. This notice is being given to comply with the provisions of O.C.G.A. Section 36-11-1 to afford the County an opportunity to revise the Property to a constitutional classification. If action is not taken by the County to rectify this unconstitutional land use designation and/or zoning classification within a reasonable time, the Applicant is hereby placing the County on notice that it may elect to file a claim in the Superior Court of DeKalb County demanding just and adequate compensation under Georgia law for the taking of the Subject Property, diminution of value of the Subject Property, attorney's fees and other damages arising out of the unlawful deprivation of the Applicant's property rights.

Michele L. Battle, Esq.
Attorney for the Applicant

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.

5/8/2025

DATE:



APPLICANT/AGENT SIGNATURE

TO WHOM IT MAY CONCERN:

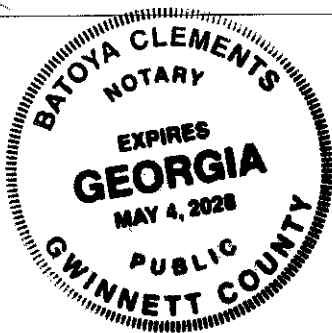
(I)/(WE): Dana Gibson

Name of Owner(s)

being (owner/owners) of the property described below or attached hereby delegate authority to the above signed agent/applicant.


Notary Public


Owner Signature



AUTHORIZATION OF THE PROPERTY OWNER

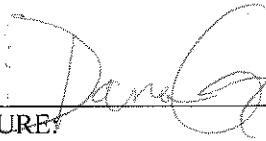
I hereby authorize the staff and members of the Zoning Board of Appeals to inspect the premises of the Subject Property.

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.

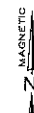
DATE:

SIGNATURE:

5/8/2025



FOOT).
 THESE SYMBOLS ARE NOT TO SCALE. TREE SYMBOLS
 INDICATE POSITION OF TREE & ARE NOT THE
 ORIGINAL ROZT ZONE (NOT DRUPINE).
 NO DETERMINATION OF FLOOD HAZARD HAS BEEN MADE FOR
 THIS PROPERTY BY THE LOCAL AGENCY.
 * L E G E N D *
 A = ADJACENT TO THIS LEGED MAY NOT APPEAR ON THIS PLAT.
 AXA ALSO KNOWN AS
 APD AS PER DEED
 B = BOUNDARY
 BBL BULLDOG (SEWAGK LINE)
 C = CROWNED
 CWP CROWN TOP PIPE
 D = DRIVEWAY
 DWP DRIVEWAY
 E = EASE OF PAVEMENT
 F = FLOOD ELEVATION
 FKA FORMERLY KNOWN AS
 H = HILL
 L = LAND LENGTH
 LLL LAND LOT LINE
 N = NEIGHBOR'S
 N/FZ NOT ON FORMERLY
 NAD NOT FOUND
 P = PLAT (BOOK/PAGE)
 P/FZ FOUND
 POS POSITION OF COMMENCEMENT
 R = RADIAL SURVEY
 R/FZ FOUND - MAY BE
 REINFORCING BAR FOUND
 S = SEWER
 S/FZ FOUND
 S/SZ SEWER SINKER
 S/SZ SEWER SINKER CLEANSUIT
 T = TIE



PROPERTY ADDRESS: 3075 TONEY DRIVE
DECATUR, GA 30032

AS-BUILT PREPARED FOR:
3075 TONEY DRIVE

REVISION: 5-10-2023

100% CERTIFIED
SURVEY
NO. 0000000000
GEORGIA
SURVEYORS
CHARLES W. LOWNES

BLOCK C UNIT H TONEY GARDENS SUBDIVISION
LAND LOT 136 15W DISTRICT SECTION 8W
DAKALB COUNTY, GEORGIA FIELD DATE: 3-9-2023 RD
LOCATED IN CITY/OW/INCHIRO DRAIN DATE: 3-9-2024 6
REFERENCE: PLAT BOOK 133, PAGE 30 148 MATTERS OF THIS CASE
RECORDED UNDER 472336, PAGE 88 148 INFORMATION
THE FIELD DATA UPON WHICH THIS PLAT IS BASED HAS A CLOSURE OF 1 FOOT IN AN ANGULAR ERROR OF 06 SECONDS PER ANGLE POINT AND WAS ADJUSTED USING THE LEAST SQUARES METHOD; THIS PLAT HAS BEEN CALCULATED FOR CLOSURE WHICH IS TO BE ACCURATE TO 1 FOOT IN 10,000 FEET; AN ELECTRONIC TOTAL STATION WAS USED IN THE PREPARATION OF THIS PLAT; NO STATE PLATE MONUMENT FOUND WITHIN 200' OF THIS PROPERTY

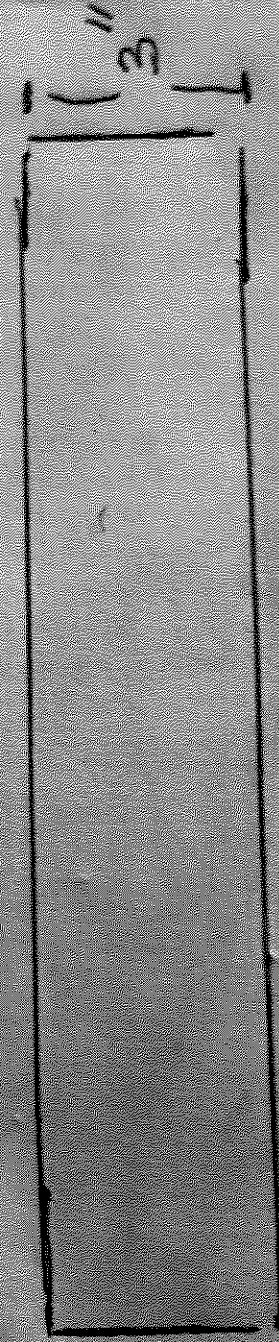
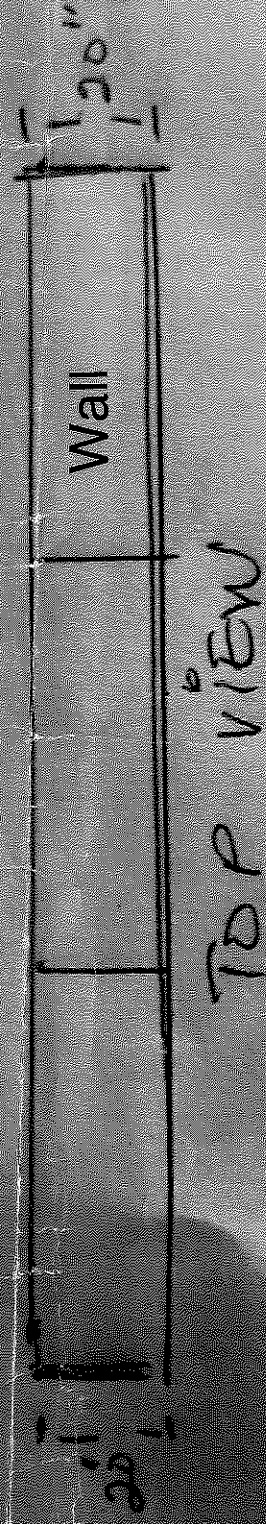
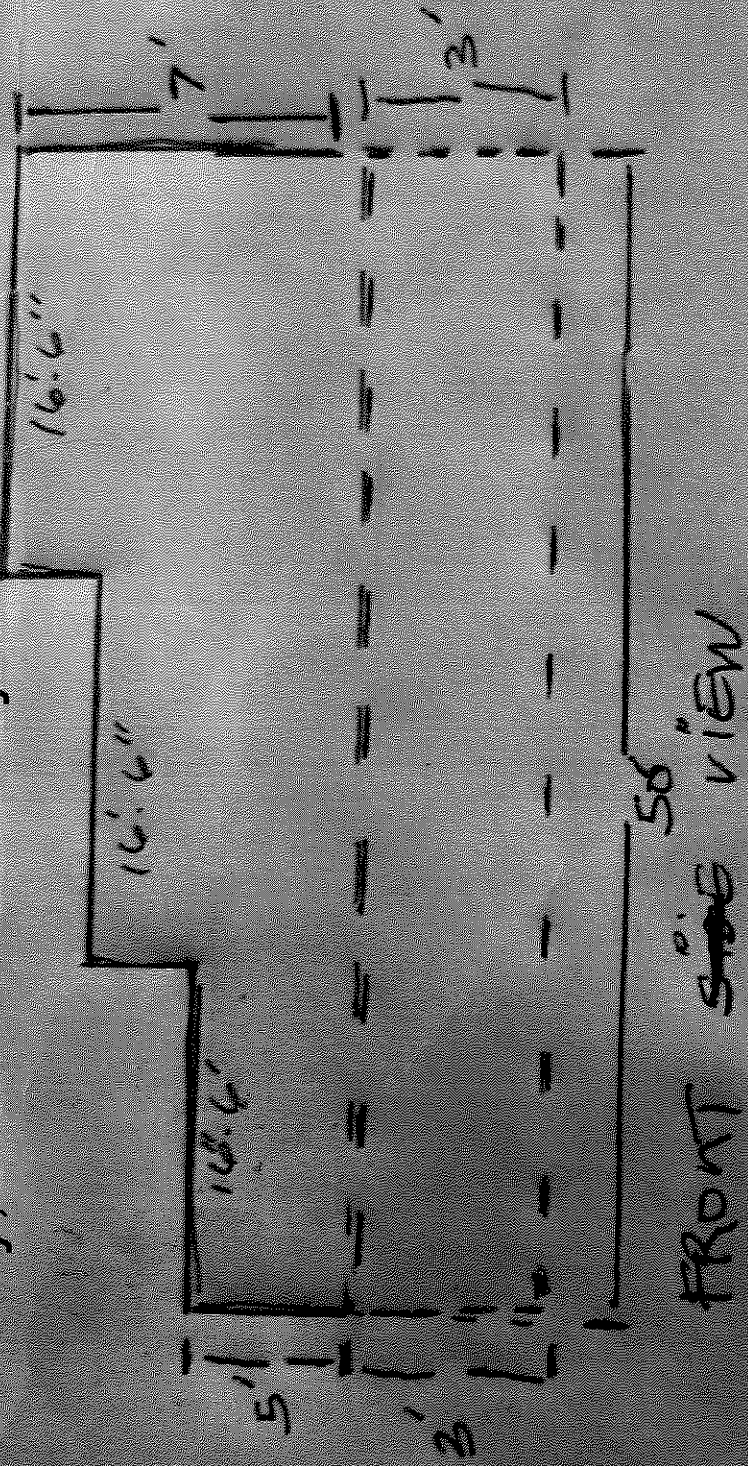
770-856-5192
183 Cypress Trail
Dunwoody, GA 30334

ZONING: R-75

0 20
10

THIS SURVEY WAS PREPARED IN CONFORMITY WITH THE TECHNICAL STANDARDS FOR PROPERTY SURVEYS IN GEORGIA AS SET FORTH IN CHAPTER 160-7 OF THE RULES OF THE GEORGIA BOARD OF REGISTRATION FOR PROFESSIONAL SURVEYORS AND LAND SURVEYORS AND AS SET FORTH IN THE GEORGIA PLAT ACT, O.C.G.A. 44-1-17.

Sketch for Repair Rebuild for Retaining wall & Driveway, Pad 3075 Toney Dr/3000 Thrasher Circle



SKETCH FOR RETAINING WALL

Pad Measurement 50ft length X 120ft width with depth of 6"



Department of Planning & Sustainability
Residential Building Permit
PERMIT # 3160258

To schedule an inspection call: (404)371-3010

Project

Permit Type: D-MISC

Phone Number of Record: (404)862-6834

Project: RETAINING WALL AND DRIVEWAY

Primary Contact: Ms Dana Gibson-Channer

Work Type: REPAIRS TO EXISTING STRUCTURE

Construction Type: N/A

Inspection Zone: 4

Occupancy Type: D-SFD

Property

Address: 3075 TONEY DR DECATUR GA 30032-

Parcel ID: 15 136 08 020

Zoning: R-75

Lot #: -

Land Use: SUB

Septic: -

District: CD03 SD07

Setbacks:

Front: -

Rear: -

Left: -

Right: -

Contacts

Owner:

Ms Dana Gibson-Channer
3075 Toney Dr
Decatur
(404)862-6834
Dana411@gmail.com

Applicant:

Ms Dana Gibson-Channer
3075 Toney Dr
Decatur
(404)862-6834
Dana411@gmail.com

Contractor:

OWNER AS CONTRACTOR **

Contractor's Business License: CO DEKALB 000000

Trade License: CO DEKALB 000000

Scope of Work

# Stories	0.0	Lot Size (SF)	0.00
# Rooms	0	Heated Area (SF)	0
# Baths	0.0	Basement (SF)	0
# Kitchens	0	Garage (SF)	0
Exterior Finish	N/A	Outdoor Living Space (SF)	0
Roof Finish	N/A	Total Area (SF)	0
Building Valuation:			\$25,000.00

Description of Work

Replace/Repair driveway, retaining walls and pad from storm damage. THIS PERMIT IS FOR THE IN-KIND REPAIR/REPLACEMENT OF RETAINING WALL AND DRIVEWAY ONLY. NO EXTENSION OF DRIVEWAY OR INCREASE IN HEIGHT OF EXISTING RETAINING WALL IS PERMITTED.

Other Permits Required

NO OTHER PERMITS

Inspections Required

F-FMO100%, S-FINAL

Holds

Processing

Total Fees: \$0.00

Issue Date: 09/26/2024

Processed By: JTCOLLINS

Issued By:



Department of Planning & Sustainability
Residential Building Permit
PERMIT # 3160255

To schedule an inspection call: (404)371-3010

Project

Permit Type: D-STRUCT

Project: Dana Roofing

Work Type: ALTERATION TO EXISTING STRUCTURE

Inspection Zone: 4

Phone Number of Record: (404)862-6834

Primary Contact: Ms Dana Gibson-Channer

Construction Type: N/A

Occupancy Type: D-SFD

Property

Address: 3075 TONEY DR, DECATUR, GA 30032-

Parcel ID: 15 136 08 020

Zoning: R-75

Lot #: -

Land Use: SUB

Septic: -

District: CD03 SD07

Setbacks:

Front: 0.0 Feet

Rear: 0.0 Feet

Left: 0.0 Feet

Right: 0.0 Feet

Contacts

Owner:

Ms Dana Gibson-Channer

3075 Toney Dr

Decatur

(404)862-6834

Dana411@gmail.com

Applicant:

Ms Dana Gibson-Channer

3075 Toney Dr

Decatur

(404)862-6834

Dana411@gmail.com

Contractor:

OWNER AS CONTRACTOR **

Contractor's Business License: CO DEKALB 000000

Trade License: CO DEKALB 000000

Scope of Work

# Stories	0.0	Lot Size (SF)	0.00
# Rooms	0	Heated Area (SF)	0
# Baths	0.0	Basement (SF)	0
# Kitchens	0	Garage (SF)	0
Exterior Finish	N/A	Outdoor Living Space (SF)	0
Roof Finish	N/A	Total Area (SF)	0
		Building Valuation:	\$15,000.00

Description of Work

Tree(s) damage replacing roofing, shingles, sulfates, and siding

Other Permits Required

Inspections Required

S-FINAL, S-FRAMING

Holds

Processing

Total Fees: \$0.00

Issue Date: 09/10/2024

Processed By: JTCOLLINS

Issued By: JTCOLLINS

DEKALB COUNTY PLANNING AND DEVELOPMENT DEPARTMENT INSPECTION CARD

	Type	Date	Pass	Fail	Inspector
S	Footing				
T					
R	Footing Engr. Letter/Box Check				
U	Slab				
C	Damp Proofing				
T	Pre-Cladding				
U	Framing				
R					
A	Final	2/19/25	/		KB
L					
	Rough				
H	Gas Line				
V					
A	Hood				
C					
	Log Lighter				
	Final				
	Slab				
	Rough				
P					
L	Sewer Line				
U	Water Service				
M	Grease Interceptor				
B	Back Flow Preventer				
I	Gas Line				
N					
G	Water Heater				
	Fire Sprinkler Rough				
	Fire Sprinkler Final				
	Final				
	Slab/Ditch Cover				
E	Temporary Power				
L	Rough Electrical				
E					
C	Rough Low Voltage				
T					
R	Temporary Permanent Power				
I					
C	Final Electrical				
A					
L	Final Low Voltage				
	Swimming Pool Basket				
E	Initial				
N	Pre Grading				
V	Tree				
I					
R	Final				

To schedule an Inspection call **404-371-3010**. Inspections are normally performed the following business day between the hours of 7:30am and 3:00pm. Inspections may also be scheduled via the Hansen Dynamic Portal (Online Permits) on the Planning and Development website: www.dekalbcountyga.gov/planning

Protect this card. It is the record of inspections and approvals. This card must be posted on the jobsite in a weatherproof container. The property address must be visible from the street with a minimum of 2-inch numbers. Approval must be obtained on all required inspections before proceeding to the next step. Return this card to the permit office to receive a Certificate of Completion or Occupancy.

Do not occupy structure before a Certificate of Occupancy is obtained.

LAND DEVELOPMENT			
Type	Pass	Fail	Insp.
Fire			
Date			
Final			
Date			
HISTORICAL PRESERVATION			
Type	Pass	Fail	Insp.
Footing			
Framing			
Final			
BACK FLOW PREVENTION			
Call 404-687-4075 to schedule inspection			
Type	Pass	Fail	Insp.

Keith Baldwin
404.725.8262





I am writing to express my opposition to the variance request for 3075 Toney Drive. The proposed increase in retaining wall height and addition of a parking pad are not compatible with the character of our neighborhood. These changes would resemble a commercial parking lot and bring down the aesthetic value of our quiet street.

There are existing concerns about an RV currently parked on the property, and it's unclear what type of vehicles would be parked on the proposed pad. The property sits in a hilly, rocky area, and I'm concerned about the potential for blasting during construction.

I also want to note that the "No Parking" signs posted on the property do not appear to be official County signs.

Thank you for your consideration.

Martha Mitchell