



PLANNER'S REPORT

TO: Adrienne Senter
FROM: Lynn Patterson
RE: Variance Application for Willingham Drive & Colville Avenue - The Village Walk at Hapeville
DATE: April 17, 2019

BACKGROUND

The City of Hapeville has received a variance application from Miller Lowry Developments to allow for two variances for review to the Board of Appeals for their proposed multi-use development to be located at Willingham and Colville (Parcel IDs 14 012700020429 and 14 012700020379). Variances include (1) decreasing the required distance between multifamily buildings from 24' to 10'; and, (2) decreasing the required parking spaces for the commercial portion of the development from 36 spaces to 32 spaces, while allowing three of those spaces to be located in the residential parking area (potentially behind a residential gate as shown on the plans). The proposed development would consist of 20 2.5 story townhomes located adjacent to 7,132 SF of commercial space. The site is currently vacant. The property is zoned V, Village and is in the Arts District overlay.

The Applicant has also requested two additional variances: waiving the sidewalk requirement along Willingham Drive, and allowing commercial buildings to be lower than 24' in height. However, such exceptions do not fall under the purview of the Board of Appeals and must instead be reviewed by the Design Review Committee for compliance with the Architectural Design Standards.

The Applicant has requested a review of the variances prior to the review of site plan by the Planning Commission.

A hardship is created when the zoning ordinance create a condition that unfairly burdens the property owner. The Applicant cannot create a hardship nor can the hardship be for increased financial gain. The Applicant must demonstrate the hardship and show how the variance is consistent with the intent of the ordinance, will result in increased public safety and substantial justice.

Variance One – Decrease the Required Distance Between Multifamily Buildings/Attached Single Family Dwellings to 10'.

CODE

Sec. 93-11.1-6. - Area, placement, and buffering requirements.

All buildings or structures erected, converted or structurally altered shall hereafter comply with the following lot area, yard, and building coverage requirements:

- (4) *Distance between buildings.* The minimum distance between two multiple family buildings on a single lot or on contiguous property under the same ownership shall be 20 feet, plus four additional feet for every story or fraction thereof that the building exceeds two stories, or such distance determined necessary by the planning commission to enhance the aesthetics of development.

FINDINGS

Sec. 87-3-3. - Powers and duties.

(2) Variances. To authorize, upon appeal in specific cases, those variances from the provisions of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will, in an individual case, result in unnecessary hardship, so that the spirit of this chapter shall be observed, public safety and welfare secured and substantial justice done. A variance may be granted in any individual cases of practical difficulty or unnecessary hardship only upon a finding by the board of appeals that:

a. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography;

There are no extraordinary or exceptional conditions because of shape, size or topography of the parcel. The property is approximately 3.255 acres in size, is generally rectangular in shape and is fairly flat with the south end of the parcel dropping approximately 5' in grade.



Parcel as proposed after subdivision.

The Applicant states they are aiming to preserve trees by placing the townhome buildings a minimum of 10' apart. This is not a function of size, topography or shape. No hardship can be determined.

b. The application of this chapter to this particular piece of property would create an unnecessary hardship;

The requirement to place townhomes 20' + 4 feet for every story above two stories is not a hardship for this property. The site is over 3 acres in size and can accommodate separation with a different layout and/or number of townhomes.

The Applicant states the hardship is based upon the desire to preserve mature trees. Staff commends the desire to preserve trees, however, no information regarding a tree inventory and plan to retain trees has been provided. A hardship has not been demonstrated.

c. Such conditions are peculiar to the particular piece of property involved; and

The parcel contains a large number of mature trees, particularly along its southern border. The plans have not adequately documented the tree coverage or provided how reducing the space between multifamily buildings to 10' is required to save the trees. A hardship cannot be determined with information provided.

d. Relief, if granted, would not cause substantial detriment to the public good or impair the purpose and intent of this chapter.

Safety is a crucial element of all developments, and the Fire Chief has been consulted and found the reduced distance between multifamily buildings will not create a fire hazard. The requirement for the 24' is based upon "distance determined necessary by the planning commission to enhance the aesthetics of development." The Planning Commission has not yet reviewed the site plan to make this determination. Relief, if granted, would not cause substantial detriment to the safety, however, it may impair the purpose and intent of the Code as written.

RECOMMENDATION

The requested variance will allow the Applicant to build more townhomes on the lot while maintaining the proposed form of the development. The Applicant claims the variance is required to preserve tree coverage, but adequate information to qualify as a hardship has not been provided.

With the lack of hardship established, staff recommend denial of the variance request.

Variance Two - Decrease the Required Parking Spaces for the Commercial Portion of the Development From 36 Spaces to 32 Spaces, While Allowing Three of Those Spaces to Be Located in The Residential Parking Area.

CODE

Sec. 93-22.1-1. - Chart of dimensional requirements. *(Parking Requirements)*

Development Type	Lot Frontage (FT)	Min. Lot Area (SF)	Lot Area/ DU (SF)	Bed/ Bath Required	Floor Area/ DU (SF)	Max. Lot Coverage (%)	Minimum Front Yard Setback		Minimum		Maximum		Min. Parking Spaces	Max. Unit/ Bldg. Lot
							Minor Col.	Maj. Arterial	Side	Rear	Stories	Feet		
Single-family Attached 4 to 8 Units	40	10,000	2,500	3br/2bth	1,400	70	15	15	5	10	2½	35	2 DU	a.
Nonresidential	50	10,000	10,000		1,000	70	15	15	15	25		40 b..	c., d., e.	N/A

c. One parking space for every 200 square feet of enclosed commercial floor area.

Sec. 93-23-7. - Mixed uses.

In the case of mixed uses, the total requirements for off-street parking and off-street loading space shall be the sum of the requirements of the various uses computed separately as specified herein. Off-street parking and off-street loading space for one use shall not be considered as providing the required off-street parking or off-street loading space for any other use.

Sec. 93-23-10. - Off-street parking requirements according to district and uses.

At the time of the erection of any building or structure hereinafter listed, or at the time any such building or structure is enlarged or increased in capacity by adding dwelling units, guestrooms, floor area, seats, beds, members or employees, there shall be provided for such new construction, enlargement or increased capacity only, off-street automobile parking space and off-street loading spaces in accordance with the minimum requirements established

for each zone. The maximum number of off-street automobile parking spaces shall be 110 percent of the requirement for uses proposed at the time of development approval.

FINDINGS

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- a. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography;

There are no extraordinary or exceptional conditions because of shape, size or topography of the parcel that create a hardship for the parking requirement. The property is approximately 3.255 acres in size, is generally rectangular in shape and is fairly flat with the south end of the parcel dropping approximately 5' in grade.



Parcel as proposed after subdivision.

- b. The application of this chapter to this particular piece of property would create an unnecessary hardship;

There is no indication the application of the parking requirement to this particular piece of property creates an unnecessary hardship. The Applicant has not established what unnecessary hardship they would be burdened with if the parking provision of the code was applied in full.

- c. Such conditions are peculiar to the particular piece of property involved; and

The parcel contains a large number of mature trees, particularly along its southern border. The plans have not adequately documented the tree coverage or provided how the reduction in parking and the use of 3 parking spaces in the residential area ameliorate the tree preservation. A hardship cannot be determined with information provided.

- d. Relief, if granted, would not cause substantial detriment to the public good or impair the purpose and intent of this chapter.

The proposal to reduce the parking for a commercial use is a major concern for this property. The Applicant has indicated three of the 32 provided parking spaces will be located in the residential area and has suggested that 13 more spaces running along a street behind several of the townhomes could be used to meet parking demand in the commercial area. First, the layout of the townhomes reflects a multi-use rather than mixed use approach. Encouraging the use of residential parking to meet commercial demand will result in a high volume of automobile and foot traffic in what is designed to be a private residential area (as indicated on the site plan with an optional residential gate). There is no proximal public or on street parking to capture overflow should the reduced parking lot requirements be met.

Second, the use of the proposed parking spaces in the residential area is complicated by (a) safety concerns, (b) site layout and conflict with Architectural Design Standards, (c) layout of the parking, and (d) optional residential gate as shown. The parking of cars in the residential area directly behind the townhomes for the use of patrons creates a potential safety concern. As discussed with the Chief of Police, the parking is located to the rear and not highly visible (e.g., a public street). Entering autos is an on-going issue in the Metro area and the City of Hapeville. Conflicts between commercial visitors and residents could be problematic as this is private property. Similarly, the property will belong to the HOA and all maintenance, issues and liability would become their responsibility.

The site layout does not adhere to the Architectural Design Standards, including residences fronting on a public street and no parking in the supplemental area. The parallel parking proposed along South Central violates this code requirement – even with a fence. The optional residential gate as shown on the site plan, if installed, would preclude the use of the proposed 3 spaces (not including the additional 13 spaces).

The site plan also shows an excess of parking beyond 110% of the dimensional requirements. This would require Board of Appeals approval at a separate meeting.

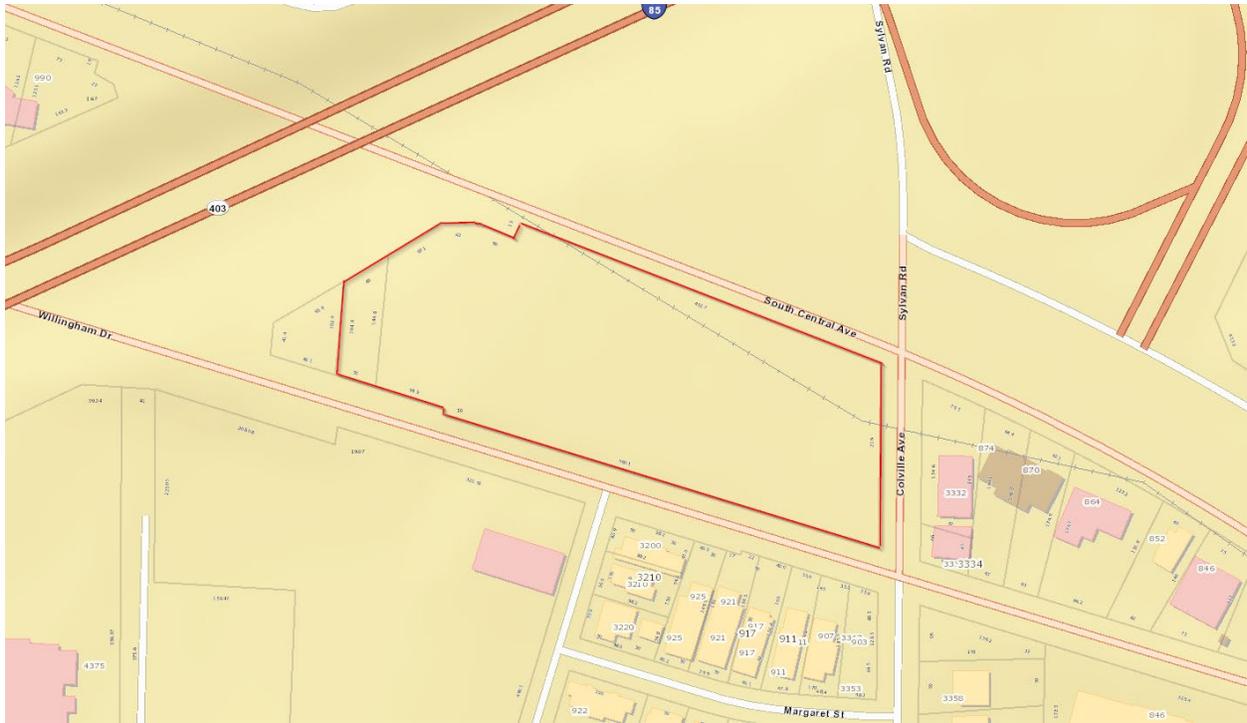
Staff believes there could be detriment to the public good should this parking reduction and arrangement be allowed in terms of safety for the commercial and residential users of the property.

RECOMMENDATION

The requested variance would allow the Applicant to reduce the number of parking spaces for commercial use. Hardships cannot be determined based on the required conditions reviewed above. The Applicant has suggested the necessary parking can be provided by a 13-space strip of parking along a road privately serving the residential area. Such an arrangement is detrimental to the townhouse community as it encourages a high volume of users of the commercial space to use a private area intended to be a shared driveway.

In addition, the 13-space area in question itself is not compliant. The minimum parking required for 20 townhomes is 40 spaces. The maximum parking allowed is 44 spaces. The Applicants have provided 56 spaces for the residential area, which exceeds the 110% maximum and is not compliant.

Staff recommendation is to deny the variance request.



Location Map – Willingham Dr. & Colville Ave.