



Michael L. Thurmond
Chief Executive Officer

DeKalb County Zoning Board of Appeals
Department of Planning & Sustainability
178 Sams Street,
Decatur, GA 30030

Wednesday, June 12th, 2024

Planning Department Staff Analysis



Cedric Hudson
Interim Director

N5. Case No: A-23-1247000 Parcel ID(s): 18 233 07 002

Commission District 01 Super District 07

Applicant: The Church in Atlanta Inc. c/o J. Alexander Brock, Smith Gambrell & Russell LLP
1105 West Peachtree Street N.E.
Suite 1000
Atlanta, GA 30309

Owner: **The Church in Atlanta**
2345 Shallowford Road
Atlanta, GA 30345

Project Name: **2345 Shallowford – The Church in Atlanta Reconstruction**

Location: 2345 Shallowford Road, Atlanta, GA 30345

Request: Variance from Chapter 27-6.1.4 to reduce the minimum parking requirement from 238 spaces to 192 to reconstruct church

Staff Recommendation: Approval with condition

Condition: The following information about this variance shall be noted on any site plan prepared for the subject property: case number, approval date, type of variance and condition(s) of approval.

STAFF FINDINGS:

The applicant seeks a variance from Chapter 27-6.1.4 to reduce the minimum parking requirement from 238 spaces to 192 for a church. The subject property, located at 2345 Shallowford Road, consists of an 8.088-acre tract with a 21,509 square-foot church building and 137 parking spaces. After an arson attack in 2020, the Church in Atlanta plans to rebuild and add parking. The proposed 9,500 square-foot assembly area requires 238 spaces by code, but the Church proposes 192 spaces, which is 19.3% less than required but 40.1% more than currently standing. This amount of spaces also brings the lot coverage to 34.98%, just under the ordinance maximum of 35%. The project has also received SLUPS in 2021 and 2022 again after a redesign.

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 property exhibits extraordinary physical conditions not created by the current or previous owner, which would result in deprivation of rights compared to other property owners in the same zoning district if strict adherence to the zoning requirements were enforced. The rear yard's slope presents a challenge for conventional use but offers potential as valuable recreational space. Accommodating the ordinance-required parking would create the removal of many trees.

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 provides relief only to the extent necessary without conferring special privilege inconsistent with neighboring properties. The lot coverage proposal of 34.98% lies just under the ordinance's maximum limit of 35%. Operationally, the church has expressed that the use of the church would not confer the ordinance-required 238 spaces and the proposed 192 spaces would be sufficient for patrons.

3. The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located.

Granting the variance is unlikely to cause material detriment to public welfare or harm to neighboring properties within the zoning district. The proposal may even aid an existing parking agreement between the Church of Atlanta and the neighboring Globe Academy, which authorizes shared parking use during the school's pickup and drop-off hours.

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

Enforcing the parking maximum without granting the variance would indeed result in undue and unnecessary hardship for the property owner and would create the removal of greenspace and trees. Adhering strictly to parking requirements would push the lot coverage beyond the allowable limit of 35%.

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 aligns with the spirit and purpose of the DeKalb County Comprehensive Plan and the zoning chapter. The property falls within the Institutional Character Area designated for institutional services, including religious use. The variance supports multimodal connectivity goals by providing alternative transportation options, aligning with the plan's aim to reduce automobile dependency and promote biking, pedestrian, and transit infrastructure.

FINAL STAFF ANALYSIS:

The property exhibits extraordinary physical conditions, including a slope in the rear yard and the presence of trees, which make strict adherence to zoning requirements impractical and would result in undue hardship for the property owner. The proposed variance does not exceed the minimum necessary for relief and maintains consistency with neighboring properties by its adherence to lot coverage limits and its minimal impact on public welfare and neighboring properties. The variance request is in harmony with the spirit and purpose of the DeKalb County Comprehensive Plan. Therefore, staff recommends approval of the variance request.

Staff Recommendation: Approval with condition

Condition: The following information about this variance shall be noted on any site plan prepared for the subject property: case number, approval date, type of variance and condition(s) of approval.

DEKALB COUNTY PLANNING STAFF

SITE VISIT PHOTOS













Chief Executive Officer
Michael Thurmond

DEPARTMENT OF PLANNING & SUSTAINABILITY

Interim Director
Cedric Hudson

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

Applicant and/or
Authorized Representative: The Church in Atlanta Inc. c/o J. Alexander Brock, Smith Gambrell & Russell LLP

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

City/State/Zip Code: Atlanta, Georgia 30309

Email: jabrock@sgrlaw.com

Telephone Home: _____ Business: 404-815-3500

OWNER OF RECORD OF SUBJECT PROPERTY

Owner: The Church in Atlanta Inc., f/k/a The Local Church in Atlanta, Inc. (c/o Jon Gallant)

Address (Mailing): 2345 Shallowford Road

Email: jon@dg.dcv Telephone Home: _____ Business: 678-932-8236

ADDRESS/LOCATION OF SUBJECT PROPERTY

Address: 2345 Shallowford Road City: Atlanta State: GA Zip: 30345

District(s): 18 Land Lot(s): 233 and 232 Block: 07 Parcel: 1823307002

Zoning Classification: _____ Commission District & Super District: 1, 7

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.

SIGNATURE FORMS



DeKalb County

DEPARTMENT OF PLANNING & SUSTAINABILITY

ZONING BOARD OF APPEALS APPLICATION

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: 4/15/24

Applicant Signature:  (The Church in Atlanta Inc.)

DATE: _____

Applicant Signature: _____



DeKalb County

DEPARTMENT OF PLANNING & SUSTAINABILITY

ZONING BOARD OF APPEALS APPLICATION

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.

DATE: 4/22/2024 Applicant/Agent Signature: J. Alexander Brock - Smith Gambrell & Russell LLP

TO WHOM IT MAY CONCERN:

(I)/ (WE): The Church in Atlanta Inc. f/k/a The Local Church in Atlanta, Inc. (Name of Owners)

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



Stefan Robichaux

Jon [Signature]

Notary Public

Owner Signature

Notary Public

Owner Signature

STATEMENT OF INTENT

STATEMENT OF INTENT

and

Other Material Required by
DeKalb County Zoning Ordinance
for the

Special Exception Application

of

THE CHURCH IN ATLANTA, INC.

for

±8.088 acres of land located in
Land Lots 232 and 233, 18th District
2345 Shallowford Road

A variance to DeKalb County Code of Ordinances § 6.1.4 reducing the minimum parking to 1 space per 50 square feet of the largest assembly area.

Submitted for Applicant by:

Dennis J. Webb, Jr.
Kathryn M. Zickert
J. Alexander Brock
Smith, Gambrell & Russell, LLP
Promenade, Suite 3100
1230 Peachtree Street, NE
Atlanta, Georgia 30309
404-815-3500

INTRODUCTION

This Application seeks a variance from the DeKalb County Code of Ordinances (“Zoning Code” or “Code”) § 6.1.4 to reduce the minimum parking required to 1 space per 50 square feet of the largest assembly area for a church use. The Zoning Code, §27-7.5.4 authorizes the grant of a variance to reduce off-street parking upon the finding, among others, that the character of the use of the building makes the full provision of parking unnecessary. That standard is met here.

The property at issue consists of an ±8.088-acre tract of land located in Land Lots 232 and 233, 18th District, DeKalb County, known as 2345 Shallowford Road (the “Subject Property”). The Subject Property currently contains a ±21,509 sf church building that houses the congregation for The Church in Atlanta (the “Church”) and a parking field with 137 spaces. The Church building was constructed in 1977 and has been holding regular services since that time. In June 2020, the structure suffered an arson attack by an unknown vandal, leading to damage throughout and requiring extensive repairs. Now that the Church must rebuild, it is taking the opportunity to remove the existing structure, build a new church building and add parking.¹

The DeKalb County Code of Ordinances §27-6.1.4 and Table 6.2 require a minimum one (1) parking space for each forty (40) square feet of floor space in the largest assembly room. The proposed assembly area is ±9,500 sf which equates to a minimum of 238 required spaces. The Church intends to add 55 spaces in the front of its building for a total of 192 onsite spaces, which is ±19.3% less than the 238 spaces required by DeKalb County Code, but ±40.1% more than it has had in almost 50-years of operation. It is important to note that the Applicants initial 2021 SLUP design did not meet the minimum parking requirements, either, and was granted an Administrative

¹ In 2021, the Applicant was initially granted approval of a SLUP to rebuild/renovate the existing structure with slightly larger area (SLUP-21-1244393). The Applicant was then granted approval of a subsequent SLUP Application (SLUP-22-1245924) to allow the complete removal of the existing church structure and replace it with a new church building.

Variance for a parking reduction in March 2021.² The 2021 SLUP design only contemplated a renovation of the existing structure with a limited expansion, thus required less onsite parking (approximately 208 required spaces). The 2022 SLUP called for the complete removal of the existing church structure and redevelopment with an expanded building, hence a greater number of required spaces. The Code-required 238 spaces, however, are unnecessary.

The 137 existing parking spaces have adequately served the Church for most of its regular services for the last 47 years.³ The Church has limited gatherings outside of its Sunday services, so the parking lot remains largely unused on weekdays. For special occasions, like religious holidays, the Church has overflow parking arrangements with the nearby Globe Academy School and Shallowford Presbyterian Church. The Church is also served by mass transit; there is a bus stop for MARTA Route 133 directly in front on Shallowford Road and another opposite the Church on Briarcliff Road, so congregants can and do visit the site without using a car (or taking up a parking space).

During the occasional Sunday service in the past, however, congregants have parked vehicles in the grassed area in front of the building. To alleviate this occasional overflow, the Church is proposing 55 additional parking spaces in a new lot at the front of the building and along the periphery of the existing parking fields to either side of the building. Site constraints, however, such as topography and excessive tree impacts, limit design options. For example, the front of the site has several mature trees along the Shallowford Road frontage that are environmentally significant and worth preserving. The Applicant's initial 2021 design called for 71 additional spaces in the front of the building solely to meet the minimum parking requirements of §27-6.1.4. This design, however, required the removal of ±9 trees ranging in size from 15" to 28" in diameter,

² The Administrative Variance granted a reduction in parking from 208 spaces to 195 spaces (± 6.25%).

³ The existing Church is currently under-parked per DeKalb County Code requirements.

as well as a variance to encroach into the twenty (20) foot setback dictated by Code §27-4.2.42.C. The Applicant brought this issue to the County's attention and the County indicated that its preference was to preserve more greenspace and save the existing trees in front of the building, even if it meant that parking fell below the Code requirement and would require a variance.

Similar limitations are present at the rear and side of the Subject Property. Both have a large amount of mature tree coverage. Further, the rear of the site is encumbered by sloping topography that would require a significant amount of earthwork or retaining walls to add a small amount of parking that will only be used occasionally; in addition to the fact that most spaces will go unused outside of Sunday services, spaces behind the building will likely be avoided by elderly congregants and families with small children who need to park toward the front of the Church. Moreover, the Subject Property is zoned R-100 (Residential Medium Lot) and DeKalb County Code §27-2.2.1 limits the maximum lot coverage to 35% in the R-100 district. The Site Plan shows a proposed lot coverage of ±34.98%. Consequently, the Applicant cannot add any more parking without requiring a variance to increase the maximum lot coverage. In conversations with DeKalb County Staff, it was also noted that a parking reduction would be preferred to an increase in lot coverage. These site limitations coupled with the needs of the Church and input from stakeholders, including County officials, led to multiple iterations of the parking design and finally resulted in the layout now proposed.

The Applicant submits this document as a Statement of Intent with regard to its Application, a preservation of the Applicant's constitutional rights, and a written justification for the grant of a variance as required by Sections 27-7.5.3 and 27-7.5.4 of the DeKalb County Zoning Ordinance.

I. IMPACT ANALYSIS

This Application meets the criteria for the grant of a variance to reduce off-street parking per DeKalb County Zoning Ordinance § 27-7.5.3:

- 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.**

Existing site conditions (i.e. trees and topography) limit potential locations for the expansion of parking. The Subject Property has a large amount of tree cover that would be lost to add the additional parking required by code, parking that for the overwhelmingly majority of time would sit unused. The site does have some open, grassed space to the rear that generally slopes toward the existing building. The grassed area, however, has an approximate 6-to-7-foot rise in topography that will require a large amount of grading and/or retaining walls to accommodate a limited amount of parking that is needed infrequently, at best. Parking at the rear of the structure is also undesirable, due to its distance from the entrance at the front of the building.

- 2. The requested variance does not go beyond the minim. necessary to afford relief and does not constitute a grant of special relief and is consistent with the limitations upon other properties in the zoning district in which the subject property is located.**

The Applicant is not requesting a reduction in parking beyond what is needed to meet the constraints of the site and the functional needs of the Church. Furthermore, the proposed development brings the Subject Property closer into conformance with the current parking regulations. As noted above, the proposed 55 spaces will add to the existing 137 spaces that have served the church for the past 47 years, thus improving the current conditions.

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 reduction in parking will not be detrimental to the public. As noted above, the 192 spaces are adequate to accommodate the Church's regular services. The Church has a shared parking arrangement with adjacent properties for special events. The parking impacts are further mitigated by the Church's close proximity to two MARTA bus stops that provide an alternative means of travel to the site.

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 lead to environmental impacts and additional work that are unnecessary and unjustifiable for several reasons, including the fact that most of the parking will remain largely unused.

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

Yes. The DeKalb County Comprehensive Development Plan identifies the Subject Property as being within the "Institutional" (INS) character area. The Comprehensive Development Plan expressly notes churches and religious institutions as one of the primary uses in the INS character area. The Applicant's request for a parking reduction would allow the redevelopment of the church building with adequate parking to serve its congregation.

6. Criteria Applying to a Variance to Reduce Off-Street Parking

The Zoning Code §27-7.5.4 allows the grant of a variance to reduce off-street parking upon the finding of certain factors, including that the character of the use of the building(s) is such as to make unnecessary the full provision of parking spaces. As noted in the paragraphs above, the Church's highest weekly occupancy is during its Sunday services and outside of the Sunday services, the parking lot remains largely empty. The 192 proposed spaces will be adequate to serve

the congregation's normal peak demands and the Church has alternate arrangements in place for special events. The full 238 spaces are unnecessary when considering these facts and the Subject Property's access to MARTA bus transit.

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

The Applicant respectfully submits that the 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 III, Paragraph I 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 failure to approve the requested variance 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 variance 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 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. § 36-66-1 et seq., due to the manner in which the Ordinance as a whole and its map(s) have been adopted.

The proposed use at issue in this variance is a church that will house a religious assembly protected by the Religious Land Use and Institutionalized Persons Act of 2000. A denial of this variance will impose a substantial burden on the religious assembly's free exercise and will result in disparate treatment of a religious institution in violation of the Religious Land Use and Institutionalized Persons Act of 2000 of the United States.

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.


IV. CONCLUSION

For the foregoing reasons, the Applicant respectfully requests that the variance 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.

[Signature on the Following Page]

This 25th day of April, 2024.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "J. Alexander Brock", written over a horizontal line.

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

SITE PLAN
& SURVEY

