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Interim Chief Executive
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DeKalb County Zoning Board of Appeals
Department of Planning & Sustainability
330 Ponce De Leon Avenue, Suite 500
Decatur, GA 30030



WEDNESDAY, January 11, 2017 AT 1:00 P.M.
Planning Department Staff Analysis

N-10 Case No: A-17-21212 Parcel ID(s): 18-065-10-043

Commission District: 4 Super District: 6

Applicant: Jaime And Robert Rosegren
3634 E. Ponce De Leon Ave.
Scottdale, GEORGIA 30079

Owner: Jaime And Robert Rosegren
3634 E. Ponce De Leon Ave.
Scottdale, GEORGIA 30079

Project Name: 3634 E. Ponce De Leon Ave.

Location: The property is located at the northwest corner of East Ponce de Leon Ave and East Avenue (at 3634 E. Ponce de Leon Ave).

REQUEST: Variance request from Section 27-5.4.7 (B)(1) of the DeKalb County Zoning Ordinance to increase the height of a fence in the front yard from four feet to five point five (5.5) feet, relating to the R-75 zoning district.

STAFF RECOMMENDATIO "APPROVAL" TO ALLOW THE EXISTING FENCE TO BE FIVE POINT FIVE (5.5) FEET ON THE CONDITION THAT IF A NEW FENCE IS INSTALLED, IT MUST COMPLY WITH THE REQUIRED FOUR FOOT MAXIMUM HEIGHT FROM FINISHED GRADE.

STAFF FINDING:

Table 1: Surrounding Zoning and Land Use

	Adjacent Zoning	Adjacent Land Use
North:	R-75	Single Family Residences
South:		CSX Rail Line and City of Clarkston
East:	R-75	Single Family Residences
West:	R-75	Single Family Residences
Northeast:	R-75	Single Family Residences
Northwest:	R-75	Single Family Residences
Southeast:		CSX Rail Line and City of Clarkston
Southwest:		CSX Rail Line and City of Clarkston
Street Type:	E. Ponce de Leon Ave: Minor Arterial; East Ave: Local Street	

Site Location: The subject property is located at the northwest corner of East Ponce de Leon Ave and East Avenue (at 3634 E. Ponce de Leon Ave). The property is zoned R-75 and is surrounded by R-75 zoned property to the north, east and west. The CSX Rail Line and the City of Clarkston are to the south. East Avenue is classified as a local street. East Ponce de Leon Avenue is classified as a minor arterial.

Variance request: The applicant is requesting a variance from Section 27-5.4.7 (B)(1) of the DeKalb County Zoning Ordinance to increase the height of a fence in the front yard along east Ponce de Leon Avenue from four feet to five point five feet. The applicant submitted some of the following comments: "Our front yard has varying height and we are asking for a one foot height variance for our fence in the front yard".

Variance Analysis: Based on tax records, the site appears to have 60 feet of frontage along E. Ponce de Leon Avenue and 147 feet of frontage along East Avenue. The submitted site plan indicates that the site consists of 8,171 square feet. County records indicate that the house was constructed in 2004 before the Scottdale Overlay District was adopted in 2008. The underlying zoning is R-75. The R-75 zoning district requires a minimum lot area of 10,000 square feet and a minimum lot width along corner lots of 90 feet. Tier 1 of the Scottdale Overlay District no longer allows detached single family homes as a permitted use. Therefore, the property is a legal, non-conforming site and use.

Table 5.3. within Section 27-5.4.7 of the DeKalb County Zoning Ordinance requires fences in the front yard to be a maximum of four feet and prohibits fences in the right-of-way. The fence is composed of wood which is an allowed material. Based on the submitted materials, the owners were cited by code enforcement on November 14, 2016 for exceeding the fence height limit. Based on the submitted materials, the portion of the fence which is located along East Avenue is in the public-right-of-way. The owners can apply to the Transportation Division for a utility encroachment agreement. This agreement will allow the fence to be within the public right-of-way until or unless the area is needed for road improvements or utility installation. The Zoning Board of Appeals is not authorized to approve the encroachment in the right of way.

Article 9 of the DeKalb County Zoning Code defines front yard as "as area extending across the total width of the lot between the front building line and the building. With respect to limitations within the front yard, there can only be one (1) front yard. Based on this definition, the fence is 1.5 feet over the maximum four foot height. However, this portion of the fence is wholly within the property. Code enforcement can cite the property owner for building a portion of the fence in the East Avenue right-of-way, the property owner can apply for a utility encroachment agreement from the DeKalb County Transportation Division, or the property owner can re-locate the fence on the property boundary.

East Ponce de Leon Ave is a busy minor arterial at this location. The property is located between two traffic signals, located at McLendon Drive and Glendale Road. The CSX Rail Line lies on the other side of East Ponce de Leon Avenue. Based on County topo maps, the topography increases in height from an elevation of 1,020 feet at East Ponce de Leon Avenue to an elevation of 1,032 feet along the back property line. The front fence screens the single family home from view of busy traffic and allows the homeowners a degree of privacy to enjoy their front yard. Due to the topography, the homeowners can see over the fence when sitting on their front porch. Since East Ponce de Leon Avenue is such a busy street, the requested variance appears to meet the criteria for approval, due to the following findings:

1. By reason of exceptional narrowness, shallowness or shape of a specific lot, or by reason of exceptional topographic conditions, 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:

Based on the submitted materials, 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, it appears that 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 due to the exceptional topography and narrowness of the site and since E. Ponce de Leon Avenue is a busy minor arterial.

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:

Based on the submitted materials, it appears that the requested variance does not go beyond the minimum necessary to afford relief since the fence has already been constructed. Based on a site visit, it appears that granting the variance would 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:

Based on a site visit, it appears that granting the variance would 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 since the fence does not obscure the view of the house from the street but allows the homeowners to enjoy privacy when outside in their front yard.

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

Based on the submitted materials, it appears that the literal interpretation and strict application of the applicable provisions or requirements of this chapter would cause an undue and unnecessary hardship since East Ponce de Leon Avenue is a busy minor thoroughfare.

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

Based on the submitted materials, it appears that the requested variance would be consistent with the spirit and purpose of this chapter and the DeKalb County Comprehensive Plan text (HP3. Enhance the County's existing supply of housing).

FINAL STAFF ANALYSIS:

On November 14, 2016, the homeowners were cited for having built a fence taller than four feet in the front

yard along East Ponce de Leon Avenue at East Avenue. East Ponce de Leon Avenue is a busy minor arterial. Based on a site visit, it appears that granting the variance would 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 since the fence does not obscure the view of the house from the street but allows the homeowners to enjoy privacy when outside in their front yard. Therefore, the Department of Planning and Sustainability recommends that the request be "approved" to allow the existing fence to be five point five (5.5) feet on the condition that if a new fence is installed, it must comply with the required four foot maximum height from finished grade.

STAFF RECOMMENDATION "APPROVAL" TO ALLOW THE EXISTING FENCE TO BE FIVE POINT FIVE (5.5) FEET ON THE CONDITION THAT IF A NEW FENCE IS INSTALLED, IT MUST COMPLY WITH THE REQUIRED FOUR FOOT MAXIMUM HEIGHT FROM FINISHED GRADE.
