

## Rebecca Keefer

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**From:** zoning boardofappeals [zoningboardofappeals@dunwoodyga.gov]  
**Sent:** Friday, April 27, 2012 3:52 PM  
**To:** ardy11422@yahoo.com; joetuttleat@aol.com; egodshall@comcast.net; otness\_r@mindspring.com; pennfam@bellsouth.net; billmccahan@bellsouth.net; smmitchell@bellsouth.net; Howard Koontz; Rebecca Keefer; Steve Dush  
**Subject:** FW: comments for ZBA 12-052 and ZBA 12-054 Variance/Appeal applications on Womack Road

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**From:** joehirsch[SMTP:JOEHIRSCH@BELLSOUTH.NET]  
**Sent:** Friday, April 27, 2012 3:51:55 PM  
**To:** zoning boardofappeals  
**Cc:** Rebecca Keefer; Steve Dush  
**Subject:** comments for ZBA 12-052 and ZBA 12-054 Variance/Appeal applications on Womack Road  
**Auto forwarded by a Rule**

To the ZBA:

I am writing regarding the variance and appeal requested for 2012 and 2026 Womack Road before the ZBA at the May 3<sup>rd</sup> meeting regarding stream buffer and building height.

I am familiar with the history of the property, as I was engaged with the process that ultimately led to DeKalb's SLUP approval at those locations. I feel the impact of your decisions will greatly affect me, as I actually live on Womack, about ½ mile down the street.

I heard the recent presentation for this project at the DHA meeting and I have several questions and points I hope you can clarify or rectify. It appears the attorney who spoke at the DHA was not entirely familiar with what has transpired with DeKalb, so I wanted to also share a few points with you that might be of assistance:

Prior to Dunwoody's incorporation, DeKalb modified it's code on July 22, 2008 to allow multi-family (senior living) homes for residents 55 years of age or older on properties with 25 acres or more of land per a Special Land Use Permit (SLUP) in R-100 Districts. [TA-08-14843]

The original application for the "Jewish convent/monastery" was considered by DeKalb to only be for approximately 3.3 acres; however, since the MJCCA has more than 50 acres, its entirety was later integrated into the amended application so it could be considered when applying for the newly created SLUP, which requires more than 25 acres.

A SLUP was then granted on August 12, 2008 for the Marcus Jewish Community Center to build a Synagogue/Jewish Home (convent/monastery) with 90 units, with 11 SLUP conditions.

Contrary to what the project's attorney recently explained to the DHA in deliberating the style of roof to be built, SLUP condition #5 actually requires a particular type of roof: "The proposed building shall contain a pitched roof comprised of architectural grade shingles...."

In the SLUP application's "Amended Statement of Intent", the MJCCA clearly explains the property's building will not be higher than its neighbors', writing, "The structure will be designed to blend into the

residential character of the area, mirroring existing facades and rooflines, reaching no more than 35 feet in height (as allowed in R-100) and being heavily landscaped."

Another facet worth clarifying is regarding the ownership of the land. The owner of the property in the SLUP is listed as the "Atlanta Jewish Community Center". The applicant was identified as "Marcus Jewish Community Center", with those two names being synonymous with each other and the "MJCCA".

However, in looking at the Dunwoody ZBA applications, I see the "property owner" is listed as Berman Commons. Yet, my understanding is the property has not been sold; the owner is actually still the MJCCA. DeKalb's online tax office shows the owner as the MJCCA. What legal standing does Berman Commons have if they are not the actual owners while applying for a variance? The ZBA application also has a notarized form stating who the "property owner" is to identify campaign disclosures - listing Berman Commons as the owner. If indeed this is inaccurate, one would think the city can't accept the application. The application would appear to be unacceptable, lacking the actual owner's name and campaign disclosure. Per city code listed below, a variance request form must be "complete in all respects":

Dunwoody Chapter 7, Division 5, Sec. 27-1568. - Application forms; filing of applications; application fees:

"Applications for appeals, variances and special exceptions shall be filed on forms provided by the department of planning and shall not be considered authorized or accepted unless complete in all respects. Application fees shall be as established by the city council."

I believe "complete in all respects" is another way of saying "accurate". If Berman Commons is not the owner of the land, then the city does not have an accurate campaign disclosure form provided, nor is there transparency in the process for identifying who would be benefiting from a variance. The Dunwoody zoning "Variance Application Checklist" also asks for the application to provide "signed and notarized affidavits for all owners". Who are all the true owners?

And while land use applications "run with the land", meaning they are not tied to a particular owner(s), and can transfer to a new owner, if Berman Commons is considered the "owner", the SLUP would now appear to be void - since the owner does not have more than the required 25 acres. So, if indeed the owner of the property is Berman Commons, the land parcel of about 3.5 acres would no longer meet the SLUP requirement of having 25 acres - and the variances would be moot. In my opinion, either the application was filed with an incorrect owner listed, or the new owner does not meet the SLUP requirements of having 25 acres.

If there are inaccuracies in the application, and it is not complete in all respects, I hope the city does not accept the applications. If needed, perhaps the variance applications could be resubmitted correctly at a later date, since amending the forms this late in the process does not seem proper. I see on the ZBA's hearings scheduled for May that one application has already been determined to be non-compliant and will not be heard.

Thank you for your careful and deliberate decisions. If you wish to reach me, please don't hesitate.

Sincerely,  
Joe Hirsch