



**CITY OF SNELLVILLE
DEPARTMENT OF PLANNING & DEVELOPMENT
BOARD OF APPEALS**

CASE SUMMARY

January 10, 2017

CASE NUMBER: #BOA 17-01

REQUEST: **Variance from Corridor Overlay Standards, Buffer and Screening Requirements, Parking Requirements, and Landscaping Requirements**

APPLICABLE SECTIONS: Various Sections and Articles of the City of Snellville Zoning Ordinance and Various Sections of Chapter 19, Buffer, Landscaping and Tree Ordinance

LOCATION: **2508 E. Main Street, Snellville**

TAX PARCEL(S): 5026 057 and 5026 058

ZONING: **BG (General Business) District**

SIZE: ±0.69 Acres

DEVELOPMENT/PROJECT: Existing ±1,912 Sq. Ft. Building and Associated Parking

APPLICANT/PROPERTY OWNER: Tiko Treasure, LLC
Loganville, Georgia 30052

CONTACT: Shane Lanham, Esq.
Mahaffey Pickens Tucker, LLP
(770.232.0000) or SLanham@mptlawfirm.com

RECOMMENDATION: **Approval with Conditions**



**CITY OF SNELLVILLE
DEPARTMENT OF PLANNING & DEVELOPMENT
BOARD OF APPEALS**

CASE ANALYSIS

January 10, 2017

TO: Snellville Board of Appeals

MEETING DATE: January 10, 2017

FROM: Jason Thompson, Director,
Department of Planning and Development

CASE NUMBER: #BOA 17-01

FINDING OF FACT:

The Department of Planning and Development has received a variance application from Tiko Treasure, LLC requesting various variances from the Zoning Ordinance and Buffer, Landscaping and Tree Ordinance for the property located at 2508 E. Main Street, Snellville and located at the intersection of E. Main Street and Pate Street North.

The 0.69± acre property is zoned BG (General Business) District and located within the Corridor Overlay District and Snellville Downtown Development area. The abutting property to the west and southwest is a used automobile dealership, zoned BG (General Business) District and the adjacent property to the east is the former Simpson residence and vacant residential property, zoned RS-180 (Single-family Residence) District. Just to the north of the subject property and directly across E. Main Street is Snellville Plaza, a 6.83± acre commercial shopping center, also zoned BG (General Business) District.

REQUEST:

The applicant is requesting variances from the Corridor Overlay District regulations, Parking and Loading requirements, Buffer and Screening requirements, and the Landscape Ordinance to

permit the occupation and use of the Property “as-is”, without making the necessary site and building improvements to the property as required by paragraph 5, Section 5.4, Article V, Nonconforming Uses of the Snellville Zoning Ordinance.

The applicant contends that the preservation of several mature oak and other trees on the property would hinder development of the site.

HISTORY:

The applicant originally applied for and received variance approval on October 15, 2009 as part of variance case #BOA 09-05 (a copy of the official minutes from this meeting are provided separately). These variances were necessary since the property became vacant for 18+ months resulting in the loss of the grandfather provision for the non-conforming uses and structure.

According to the Zoning Ordinance, Paragraph 5 of Section 5.4 requires that, *“When a nonconforming use of structure, or structure and premises in combination, is discontinued or abandoned for 6 consecutive months or for 18 months during any three-year period (except when government action impedes access to the premises), the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located.”*

The conditions of the October 15, 2009 approved variances were as follows.

1. Applicant/owner shall be required to install “above-ground” landscape/flower planters to limit parking to the paved parking area only and to protect the critical root zone of the specimen trees. Design and location of landscape/flower planters shall be subject to the approval of the Director of Planning and Development;
2. There shall be no outdoor storage or accessory uses of the property. Dumpster location shall be approved by the Director of Planning and Development;
3. Applicant/owner shall obtain a Certificate of Occupancy from the Gwinnett County Fire Marshal’s office and City of Snellville Department of Planning and Development prior to occupancy;
4. Only minor repairs and routine building and property maintenance shall be permitted;
5. Installation of any type of fence shall not be permitted;
6. New signs higher than 15-feet and/or larger than 225 square feet are prohibited;
7. Uses involving adult entertainment, including any sale or display of adult magazines, books, or videos and as further defined by the Adult Entertainment Ordinance in effect on the date this condition is imposed, are prohibited;
8. The variances shall be limited to a three (3) year period only. The time period shall start from the date of approval. The applicant, if desires, shall apply for extension to the Board of Zoning Appeals at least six month prior to expiration of permitted time period;

9. **Only** the following uses shall be outright permitted. For other uses permitted under BN (Neighborhood Business District) and BG (General Business District) the applicant must submit a rezoning or Conditional Use application with the Mayor and City Council for approval;

- Antique shops
- Art and school supply stores
- Art galleries and studios
- Bakeries
- Banks, savings and loan institutions (no pawn shops)
- Barber and beauty shops including manicurists
- Book and stationery stores
- Camera and photographic supply stores
- Contractor's office (provided no equipment or materials are stored outdoors)
- Custom dressmaking and sewing shops
- Dance studios
- Electronic sales and service establishment
- Eye glass shop
- Florist shops
- Frame shop
- Gift and card shops
- Ice cream shops
- Interior decorating shops
- Jewelry shops
- Locksmith shops
- Office/showroom facilities
- Office supply sales establishments
- Photocopying, printing, and reproduction service
- Plumbing, electrical, pool supply showrooms and sales center provided there is no outdoor storage associated with the storage
- Radio, recording, and television studios and broadcasting stations
- Record/video sales and rental stores
- Tailor shops
- Travel agencies
- Trophy shops

Office Uses:

- Accounting office
- Architectural or engineering offices
- Doctor, dentist or chiropractor offices
- Insurance offices
- Law offices
- Medical offices
- Other public or professional offices; and
- Real estate offices

Other similar type uses as determined by the Director, Planning and Development.

10. In the event the property owner submit plans to comply with the City regulations (Zoning Ordinance and Development Regulations) and the plans are approved the conditions approved with this application will be null and void;
11. The applicant/owner must provide a shared parking agreement with the adjoining property owner to the south and southwest (parcels 5026 063, 5025 066, and 5026 062) for the off-site parking and such agreement shall remain in force for at least three (3) years from the date of variance approval; and
12. No existing tree(s) on the property shall be cut or removed, either by the property owner, tenant, or contractor hired by the property owner or tenant, without first obtaining written approval from the Director of Planning and Development.

As a result of Condition #8 above, the applicant's three year variance approval expired at the end of October 2012. Upon application for the following years occupational tax license the applicant was made aware of the variance approval expiration. On July 8, 2013, the applicant received a one year extension from the Mayor and Council with the following conditions:

1. The variance extension is for one year from July 8, 2013 to expire on July 8, 2014;
2. This a one-time only extension and will permanently expire on July 8, 2014;
3. During the course of the year, the applicant will file for any permanent variances needed for the site to remain in commerce. The approved variances will govern the property until such time as a "Major Building Permit" is requested at which point the property will have to be brought into full compliance with the codes in force at that time.

After expiration of the one year extension, the planning and right-of-way acquisition phases of the Highway 78/124 intersection improvement program had begun. Planning Department staff allowed the applicant to continue to lease to its then current tenant, Total Quality Services (an HVAC company) until there was a better idea of how the property was going to be impacted by the intersection improvements. The last tenant has vacated the property and now there are new tenants interested in leasing the property.

STAFF ANALYSIS:

The subject property is located at 2508 E. Main Street at the intersection of E. Main Street and Pate Street North. The subject property contains a 1,912± sq. ft., one-story stone structure, originally constructed as a single-family residence circa 1948. The subject property and structure have been utilized for a variety of uses in the past, including a single-family residence, lamp shop, home repair business, office (only) location for steel company, and most recently a heating and air service company.

There are several large oak trees located on the property. These trees, considered “specimen trees” as defined in the City of Snellville Tree Preservation Ordinance as “Any tree, which qualifies for special consideration for preservation due to its size, type, condition, location or historical significance as defined in this article”. Furthermore, if the applicant is required to develop the property under the current ordinances and regulations, these trees would most likely require removal to make way for impervious structures such as parking, curb and gutter, sidewalks, dumpster pad, pedestrian bench pad, etc. Special consideration is warranted as these specimen trees are some of the last remaining specimen trees located along the Highway 78 corridor and proximity to the Highway 78/124 intersection.

The existing property, if kept “as-is” without any site improvements, could most likely continue as a small office or limited retail/service business. The onsite parking is comprised of three (3) parking spaces and one-handicap parking space, deficient of the required parking for an office-type use requiring a minimum of seven (7) onsite parking spaces. Directly across from this parking is a poorly maintained paved area off the shoulder and in the right-of-way of Pate Street which has served as overflow parking in the past. The Property owner also owns the adjoining property to the west (Parcels 5026 062 and 5026 066) currently in use by P&P Automotive and KD Auto, Inc. serving as a used-car sales lot which can also provide off-site parking.

With the planned Hwy. 78/124 intersection improvements, this parcel will most likely lose direct access from Hwy. 78 and will be only accessible from Pate Street. The requirement to redevelop the property seems moot without consolidating a large amount of parcels for redevelopment that would allow for more favorable ingress/egress.

The following variances have been requested by the applicant and which are necessary to be granted relief from the current ordinances and regulations.

1. Variance from the requirements of Section 9.15, Corridor Overlay District, of Article IX, Schedule of District Regulations Adopted.

The applicant is requesting to be exempt from the Corridor Overlay District requirements to include: a) interparcel vehicle access; b) sidewalks; c) street lights; d) pedestrian and parking lights; e) landscaping; f) parking design; g) street furniture; and h) architectural design standards.

This request is appropriate as any land disturbance necessary to install these items would require encroachment into the critical root zone of the existing specimen trees. Furthermore, the completion of these improvements for the subject property seems unreasonable until a larger scale redevelopment can be formed by consolidating several adjoining parcels.

2. Variance from Article II, Buffer and Screening Requirements of Chapter 26, Buffer, Landscape and Tree Ordinance.

The applicant is requesting to be exempt from the Buffer and Screening requirements of Article II to include: a) planted and berm buffer strips; and b) screening buffer and

landscaping. However, the required 60-foot buffer between the subject property and abutting RS-180 zoned property to the east shall be in place and remain undisturbed.

This request is appropriate as any land disturbance necessary to install the planted berm would require encroachment into the critical root zone of the existing specimen trees.

3. Variance from Article XI, Parking and Loading Requirements.

The applicant is requesting to be exempt from Parking and Loading requirements of Article XI to include: a) parking design standards; and b) minimum and maximum off-street parking and loading requirements.

This request is appropriate as any land disturbance necessary to install the additional parking spaces would require encroachment into the critical root zone of the existing specimen trees.

4. Variance from Article III, Landscape Ordinance of Chapter 19 of the Buffer, Landscape and Tree Ordinance.

The applicant is requesting to be exempt from the Landscape requirements of Article III to include: a) landscape strips; b) parking area planter islands; c) street trees; and d) irrigation.

This request is appropriate as any land disturbance necessary to install these items would require encroachment into the critical root zone of the existing specimen trees.

STANDARDS FOR CONSIDERATION:

Pursuant to Section 14.5, Powers and Duties, of the City of Snellville Zoning Ordinance, the City finds the following standards are relevant in considering all applications for a Variance.

1. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other land, structures, or buildings in the same district;

Yes, the structure was originally constructed before the advent of the current landscaping ordinance, and strict adherence to the landscape ordinance would require the removal of most of the specimen trees on the property. Also the Hwy. 78/124 intersection improvements are likely to affect the property as well by no action of the applicant.

2. That literal interpretation of the provisions of the Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the Zoning Ordinance;

No, the applicant would have to pay into the tree bank but would still be allowed to develop the property. Also the Hwy. 78/124 intersection improvements are likely to affect the property as well by no action of the applicant.

3. That the special conditions and circumstances do not result from the actions of the applicant; and

Yes, the specimen trees are there as a result of the property once being utilized as residential use. The trees are very old judging by their average size. Also the Hwy. 78/124 intersection improvements are likely to affect the property as well by no action of the applicant.

4. That granting the variance requested will not confer on the applicant any special privilege that is denied by the Zoning Ordinance to other lands, structures, or buildings in the same district.

Considering the location and size of the property the staff is of the opinion to consider the request for a certain period of time.

However, Section 14.5(2)(f) allows the Board of Appeals to make a finding that granting of the variance “will be in harmony with the general purpose and intent of the Zoning Ordinance, and will not injurious to the neighborhood, or otherwise detrimental to the public welfare.”

STAFF RECOMMENDATION:

The Department of Planning and Development recommends **Approval** of the request for variances from the Zoning Ordinance and Buffer, Landscaping and Tree Ordinance as delineated above with the following **Conditions**:

1. Uses allowed shall be the principal permitted uses which are allowed in the BN and BG zoning districts, excluding Conditional Uses, provided the use meets the Parking and Loading requirements of Article XI of the Zoning Ordinance for onsite parking and off-site parking;
2. Applicant/owner shall be required to install a pervious parking area of river rock or similar decorative material (excluding crushed gravel) with such area to contain a defined edge or border. Design and location of parking area shall be subject to the approval of the Director of Planning and Development. Parking in the grass/yard is strictly prohibited;
3. There shall be no outdoor storage or accessory uses of the property. Dumpster location shall be approved by the Director of Planning and Development and shall be enclosed in accordance with Section 19-34 of Article II of the Buffer Requirements;

4. Applicant/owner shall obtain a Certificate of Occupancy from the Gwinnett County Fire Marshal's office prior to occupancy;
5. Only minor repairs and routine building and property maintenance shall be permitted. There shall be no expansion of the existing building footprint or building height;
6. Installation of any type of fencing shall be prohibited;
7. New signs higher than 15-feet and/or larger than 225 square feet are prohibited;
8. Uses involving adult entertainment, including any sale or display of adult magazines, books, or videos and as further defined by the Adult Entertainment Ordinance in effect on the date this condition is imposed, are prohibited; and
9. These variances shall remain in effect until such time as the property is redeveloped or made part of a larger development, at which time the variances shall be come null and void.