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APPLICATION

CITY OF SNELLVILLE PLANNING & DEVELOPMENT

APPLICATION FOR VARIANCE, APPEAL, OR WAIVER

City of Snellville Planning & Development Department 2342 Oak Road, 2nd Floor Snellville, GA 30078 Phone 770.985.3514 Fax 770.985.3551 www.snellville.org

DATE RECEIVED: 09/15/15

1000 ATHENS HWY- THE KROGER CO #1500341 ANX-15-02;RZ15-05;LUP15-04;CUP-06 PARCEL- 5100-006, 059, 065, 005, 023

Applicant is: (check one) [] Owner's Agent [x] Contract Purchaser [] Property Owner

Owner (if not the applicant): [] check here if there are additional property owners and attach additional sheets.

The Kroger Company Name (please print) 2175 Parklake Drive Address Atlanta, Georgia, 30345 City, State, Zip Code 1-770-496-7486 (770)-496-7586 Phone Number(s) Fax

Sinocoin Investment LLC Name (please print) 1130 VINTAGE CLUB DR. Address Johns Creek, GA 30097 City, State, Zip Code Phone Number(s) Fax

Contact Person: Arahn Hawkins Phone: 1-770-496-5399 Fax: (770) 496-7586 Cell Phone: 1-404-931-3759 E-mail: arahn.hawkins@kroger.com

Application for: (check one) [] Appeal [x] Variance from Zoning Ordinance [] Variance from Municipal Code [] Waiver of Development Regulations

Section(s) of Zoning Ordinance VARIANCE request is for: See Attached Section(s) of Municipal Code VARIANCE request is for: See Attached Section(s) of Development Regulations WAIVER request is for: N/A Property Address/Location: See Attached District Land Lot Parcel(s) State the purpose of this request: The purpose of this request is so that we may meet & work with the special circumstances that exist on said property.

At a minimum, the following items are required with submittal of this application. INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED.

- Pre-submittal appointment shall be requested and completed a minimum of five (5) business days prior to Application deadline to ensure application is complete, accurate, and includes all required attachments/exhibits and required signatures;
Payment of the appropriate application and public notice sign fees. Make checks payable to City of Snellville;
Letter of Intent explaining the reason for the request for the variance, appeal, or waiver;
The names, addresses, and original signatures of the owners of the subject parcel(s) and their agents, if any;
Analysis of impact (if variance application) or details of grievance (if appeal) or details of waiver request (if waiver) as per Section 14.5;
A current legal description of the subject parcel(s). If the property proposed for a variance, appeal, or waiver includes multiple parcels, provide a separate legal description for each individual parcel, together with a composite legal description for all parcels;
Verification from county Tax Assessor that all property taxes have been paid and account is current (for all parcels subject to this application). Applicant to obtain confirmation of taxes paid using original Verification Sheet (attached);
A Certificate of Title (for all parcels subject to this application);
Map indicating the subject parcel(s) and the adjoining parcel(s), identified by property owner(s) name and tax parcel number;
VARIANCE or WAIVER applications only: Nine (9) copies and one (1) original of the proposed Site and Concept Plan and one (1) 11" x 17" (or smaller) reduction of the plan, drawn to scale, showing: (a) north arrow; (b) district, land lot(s) and parcel number(s); (c) the dimensions with bearing and distance; (d) acreage; (e) location of the tract(s), (f) the present zoning and land use classification of all adjacent parcels, (g) the proposed location of structures, driveways, parking and loading areas; (h) the location and extent of required buffer areas; and (i) location of floodplains. Site and Concept Plan shall be prepared by an architect, engineer, landscape architect, or land surveyor whose Georgia state registration is current and valid. Site plan must be stamped and sealed by one of the four above-mentioned professionals no more than six (6) months prior to the date of submittal. All documents must be folded to 8-1/2" x 11";
Nine (9) stapled or bound copies of: (a) completed application; (b) Letter of Intent; and (c), Any and all supporting documents. In addition, one (1) unbound application (original) bearing original signatures and all other required documents.
A CD-ROM containing a digital file of: (a) site plan in .pdf and .dwg file formats, (b) legal description(s) in .pdf file format, and (c) completed and signed Variance, Appeal, and Waiver application (and all supporting documents) in .pdf file format;

If request is for an APPEAL, please discuss your grievance in detail. You may attach additional sheets and provide additional documentation as appropriate:

N/A

A VARIANCE from the terms of the Snellville Zoning Ordinance or Development Regulations shall not be granted by the Board of Appeals unless and until the applicant has **demonstrated** the following. You may attach additional sheets and provide additional documentation as appropriate:

1) **Demonstrate** 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 zoning district.

See Attached

2) **Demonstrate** that literal interpretation of the provisions of the Zoning Ordinance or Development Regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Zoning Ordinance or Development Regulations.

See Attached

3) **Demonstrate** that the special conditions and circumstances do not result from the actions of the applicant.

See Attached

4) **Demonstrate** that granting the variance (or waiver) requested will not confer on the applicant any special privilege that is denied by the Zoning Ordinance or Development Regulations to other lands, structures, or buildings in the same zoning district.

See Attached

Please Note: Non-conforming uses of adjacent properties cannot be considered as grounds to justify a variance. Peculiar conditions or circumstances which are the result of actions of the owner of property covered by this application cannot be considered as grounds justifying a variance. A "use variance", i.e. a variance for the purpose of using land or a structure, or combination thereof for a purpose prohibited by the present zoning classification of the property covered by this application will not be granted.

Variance #1

A VARIANCE from the terms of the Snellville Zoning Ordinance or Development Regulations shall not be granted by the Board of Appeals unless and until the applicant has **demonstrated** the following. You may attach additional sheets and provide additional documentation as appropriate:

- 1) **Demonstrate** 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 zoning district.
The frontage along Rosebud Road will be shared between 3 parcels (Kroger and two (2) outparcels). This will create a special condition unique to this parcel whereas a large amount of road frontage will be shared by several parcels belonging to the same shopping center but only a small amount of road frontage (where the entrances are located) will belong to the applicant. Both outparcels, that will share the frontage, will have entrances only from private drives located inside of the development creating the feel of one (1) parcel and not three (3) separate parcels. Total, overall road frontage along Rosebud Road is nearly 660 feet; allowing for the maximum sign size of 200 sf.

- 2) **Demonstrate** that literal interpretation of the provisions of the Zoning Ordinance or Development Regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Zoning Ordinance or Development Regulations.
Restricting sign size strictly to the amount of road frontage of the user will deprive the applicant of the necessary signage needed to accurately represent the shopping center due to the configuration of the site. In order to create a shopping center and seek the highest and best use of the property, shops and outparcels have been included in the design of the site. As a result, the outparcels will now share a common boundary along Rosebud Road. The division of this boundary is creating the hardship described above and reduces Kroger's road frontage to less than what is needed for a 200 sf sign.

- 3) **Demonstrate** that the special conditions and circumstances do not result from the actions of the applicant.
The special conditions described above are a result of the applicant but are necessary for the development of the shopping center. In order for future, nonconcurrent development, the outparcels will be sold as individual parcels to individual users. However, the applicant has made an effort to include the outparcels in the shopping center by providing internal, private access drives only and not entrances directly onto Rosebud Road. By doing this, the frontage along Rosebud Road will appear to belong to the shopping center as a whole and not individual, dissimilar uses.

- 4) **Demonstrate** that granting the variance (or waiver) requested will not confer on the applicant any special privilege that is denied by the Zoning Ordinance or Development Regulations to other lands, structures, or buildings in the same zoning district. The applicant is only asking for the ability to provide signage, appropriate in size for the shopping center and overall street frontage, within the limits set forth in the code. The applicant is not asking for signage larger than is typically allowed and therefore a special privilege will not be created.

Variance #2

A VARIANCE from the terms of the Snellville Zoning Ordinance or Development Regulations shall not be granted by the Board of Appeals unless and until the applicant has **demonstrated** the following. You may attach additional sheets and provide additional documentation as appropriate:

- 1) **Demonstrate** 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 zoning district.
The topography of the site along Hwy 78 creates a special condition that requires the installation of a substantial retaining wall. The retaining wall will be parallel to a portion of and face Hwy 78. In order to better identify the shopping center and provide additional directional signage, a wall sign is requested on the wall structure itself.

- 2) **Demonstrate** that literal interpretation of the provisions of the Zoning Ordinance or Development Regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Zoning Ordinance or Development Regulations.
Due to the topography of the site, the required retaining wall creates a new vertical structure that provides wall surface appropriate for signage. A 'structure' is defined in Article VI of the zoning ordinance as "A combination of materials to form a construction for use, occupancy, or ornamentation whether installed on, above, or below the surface of land or water." A literal interpretation of a retaining wall as being a 'structure' is actually favored by the applicant and would allow a wall sign to be installed without the need of a variance. However, the applicant has been advised by city staff that signage on a retaining wall would require a variance.

- 3) **Demonstrate** that the special conditions and circumstances do not result from the actions of the applicant.
The special condition described above (topography) is an encumbrance of the land itself and makes the retaining wall(s) necessary for the development of the parcel to its highest and best use. A retaining wall is a costly improvement that is not desired by the applicant but required for this property.

- 4) **Demonstrate** that granting the variance (or waiver) requested will not confer on the applicant any special privilege that is denied by the Zoning Ordinance or Development Regulations to other lands, structures, or buildings in the same zoning district.
The applicant is only asking for a literal interpretation of the code and not for special privilege of any kind. By interpreting the site wall as a structure, the applicant would be allowed to provide wall signage that would not only help beautify the wall itself but also add cohesion to the feel of the entire shopping center.

Variance #3: Reduce screening of rooftop mechanical units in rear of building (Sec. 19.42)

A VARIANCE from the terms of the Snellville Zoning Ordinance or Development Regulations shall not be granted by the Board of Appeals unless and until the applicant has **demonstrated** the following. You may attach additional sheets and provide additional documentation as appropriate:

- 1) **Demonstrate** 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 zoning district.
Due to the fact that the rear of the Kroger store will have a finished floor elevation of 20' to 40' higher than the adjacent residentially zoned parcel (currently undeveloped) to the rear, plus the addition of the evergreen trees within the 60' buffer and additional trees at the top of the slope closest to the proposed Kroger, the rear of the building will not be visible from the adjacent property. Furthermore, the residentially zoned property will be located over 350' away from the proposed Kroger building at its closest. Due to these existing conditions, the screening of the rooftop mechanical units will already be achieved through use of existing conditions and future plantings. See the Site Line Study, Sheet RSP-1.

- 2) **Demonstrate** that literal interpretation of the provisions of the Zoning Ordinance or Development Regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Zoning Ordinance or Development Regulations.
The parapet wall required to screen rooftop units would be in excess, as screening will already be achieved through elevation, distance, and proposed plantings.

- 3) **Demonstrate** that the special conditions and circumstances do not result from the actions of the applicant.
The elevation differences between the Kroger parcel and the residentially zoned parcel to the rear are not the result of Kroger's proposed plan, but rather existing conditions of the site. Furthermore, the proposed location of the Kroger store footprint is separated by 350' to 400' from the adjacent residential parcel due to the fact that the rear of the property is the natural location for the proposed detention pond, thus providing a large distance between the future residential homes and the Kroger store.

- 4) **Demonstrate** that granting the variance (or waiver) requested will not confer on the applicant any special privilege that is denied by the Zoning Ordinance or Development Regulations to other lands, structures, or buildings in the same zoning district.
Due to the fact that the rear of the building will be screened through elevation changes, proposed evergreen & canopy trees, and natural distact, this variance request is not granting Kroger any special privilege. Kroger is meeting the intent of the ordinance, just in an alternative way.

Variance #4: Eliminate the requirement of providing inter-parcel vehicle access points between all contiguous nonresidential and/or attached residential tracts (Sec. 9.15(a)(1))

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- 1) **Demonstrate** 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 zoning district.
It is Kroger's intent to provide inter-parcel access to all possible contiguous tracts. Currently we are providing said access to Outlots 1 and 2, as well as future access to the residential property to the rear of the Kroger store, details to be worked out once the residential property is developed. However, the property at the corner of Hwy 78 and Rosebud Rd is not within Kroger's ownership control. And with its current residential use, connectivity isn't feasible. Furthermore, there is a significant grade change between the Kroger parcel and the corner property, which makes inter-parcel access almost impossible.

- 2) **Demonstrate** that literal interpretation of the provisions of the Zoning Ordinance or Development Regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Zoning Ordinance or Development Regulations.
Due to the change in elevation between the proposed Kroger site and the existing corner tract, providing inter-parcel access to the corner parcel would require a substantial amount of land from both the Kroger tract and the corner tract in order to make connectivity feasible due to the change in grades. Thus, a large portion of land from both tracts would be essentially wasted in order to make the connectivity happen, rather than being used to best serve the consumers.

- 3) **Demonstrate** that the special conditions and circumstances do not result from the actions of the applicant.
The applicant cannot control the ownership, the current use, or the elevation of the adjacent corner tract, therefore the conditions are not a result of from the actions of Kroger.

- 4) **Demonstrate** that granting the variance (or waiver) requested will not confer on the applicant any special privilege that is denied by the Zoning Ordinance or Development Regulations to other lands, structures, or buildings in the same zoning district.
Kroger ideally prefers interparcel access at as many points as possible, as this provides an avenue for more consumers to easily reach their shopping destination. However, in this instance, we are not able to provide said connectivity, and therefore no special privilege is being granted to the applicant.

Variance #5: Allow new trees to be planted within zoning buffers, and for said trees to count towards overall site tree density (Sec. 19-76(a))

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- 1) **Demonstrate** 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 zoning district.
The 60' required buffer to the rear of the property is adjacent to a future residential development. Currently, the buffer is void of any significant existing trees and therefore would not provide a true buffer to the adjacent neighbors. And furthermore, there are very few existing trees on-site to be saved for tree density credits. In order to provide the maximum amount of screening, and to stabilize what will be a rather large slope up to the Kroger store, we are asking to be able to allow the newly planted trees within the zoning buffer to count towards the overall site tree density.
- 2) **Demonstrate** that literal interpretation of the provisions of the Zoning Ordinance or Development Regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Zoning Ordinance or Development Regulations.
This site will require over 400 trees to be planted, due to the fact that there are essentially no existing trees to be saved for tree density credit. If we were not able to count the trees being proposed within the rear and side buffers, we literally would not have enough room to provide all of the necessary trees in order to meet tree density. Kroger would rather heavily plant the site now so that in the future it is a nice, shaded, tree-filled site, rather than having to submit to the tree bank.
- 3) **Demonstrate** that the special conditions and circumstances do not result from the actions of the applicant.
Due to the fact that the site is essentially void of all substantial existing trees, the variance request to allow for trees proposed within the buffers to count towards overall tree density is a circumstance that Kroger is unfortunately inheriting. This variance is not due to a result from the actions of the applicant.
- 4) **Demonstrate** that granting the variance (or waiver) requested will not confer on the applicant any special privilege that is denied by the Zoning Ordinance or Development Regulations to other lands, structures, or buildings in the same zoning district.
By granting said variance, this will not provide any special privilege to Kroger, as it is always Kroger's intent to meet the overall tree density on-site (vs. tree bank) in order to create an appealing landscape for their customers. Kroger is simply asking to be able to use the land area of the currently barren buffers in order to meet the tree density.

Please Note: Non-conforming uses of adjacent properties cannot be considered as grounds to justify a variance. Peculiar conditions or circumstances which are the result of actions of the owner of property covered by this application cannot be considered as grounds justifying a variance. A "use variance", i.e. a variance for the purpose of using land or a structure, or combination thereof for a purpose prohibited by the present zoning classification of the property covered by this application will not be granted.

