



**CITY OF SNELLVILLE
PLANNING & DEVELOPMENT DEPARTMENT**

BOARD OF APPEALS

VARIANCE CASE SUMMARY

January 9, 2018

CASE NUMBER:	#BOA 18-01
REQUEST:	Variances from the Zoning Ordinance
APPLICABLE SECTION:	Section 9.14, Town Center Overlay District Requirements
LOCATION:	2380 Wisteria Drive, Snellville, Georgia
SIZE:	2.76± Acres
DEVELOPMENT:	Former Ryan's Family Steakhouse
PARCEL:	5038 133
ZONING:	BG (General Business) District
OVERLAY DISTRICT:	Town Center Overlay District
PROPERTY OWNER:	Shifa Real Estate Investments, LLC Duluth, Georgia 30097
APPLICANT/CONTACT:	Marian C. Adeimy, Esq. 404-543-2826 or madeimy@gmail.com
PLANNING DEPARTMENT RECOMMENDATION:	See Table 1



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VARIANCE CASE ANALYSIS

January 9, 2018

TO: Snellville Board of Appeals

DATE: January 9, 2018

FROM: Jason Thompson, Director
Department of Planning and Development

CASE NUMBER: #BOA 18-01

FINDING OF FACT:

The Department of Planning and Development has received an application from Shifa Real Estate Investments, LLC requesting variances from the development requirements of the Town Center Overlay District until such time that the property and/or adjacent tracts are redeveloped.

The subject 2.76± acre property, zoned BG (General Business) District, is located at the corner of Hugh Drive and Wisteria Drive, adjacent to SunTrust Bank and across the street from the Snellville Historical Cemetery. The adjacent properties on either side and to the rear are also zoned BG, though a small sliver of the property borders residential property zoned RS-180. The subject property is within the Town Center Overlay District, as are all adjacent properties with the exception of the single RS-180 property.

The property was developed in 1986 as two separate parcels; a square parcel containing the main building and the majority of the parking, and a smaller rectangular parcel containing additional parking in the front and is otherwise largely wooded, especially where it abuts the RS-180 zoned property in the rear. At some point the two parcels were combined, resulting in the unusual 'L' shape property boundary represented today.

The property was originally developed by Fire Mountain Restaurants, Inc. (dba Ryan's Family Steakhouse), which operated until closure in 2007. In late 2006, the property was acquired by Realty Income Corporation (a REIT), but never had the property reoccupied since closure of the Ryan's restaurant, resulting in the loss of all of its grandfathering privileges relating to the non-conformities of the property and building.

In accordance with Sec. 5.4(5), Non-conforming Uses:

“When a nonconforming use of structure, or structure and premises in combination, is discontinued or abandoned for eighteen (18) consecutive months or for 36 months during any five-year (5) 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 nonconformity of the structure and premises shall be calculated from the date of adoption of this amended section of this Ordinance (adopted 3-22-2010).”

Therefore, unless granted variance(s) approval, the property must be brought into full compliance with the current requirements of the Zoning Ordinance before any Certificate of Occupancy may be issued.

VARIANCE REQUEST:

The applicant is requesting six (6) variances from Section 9.14 of the Snellville Zoning Ordinance relating to the requirements of the Town Center Overlay District to permit the economic use and temporarily maintain the status quo, to be conditioned upon the redevelopment of the property or any of the adjacent parcels, whichever occurs first.

The requested variances are outlined below:

1. A variance from the two-story building minimum, due to the existing building appearance and proposed improvements;
2. Variance from Sec. 7.7, Architectural Design Standards of the Snellville Zoning Ordinance until such time as the property is redeveloped.
3. Variance from setback requirements until such time as the property is redeveloped;
4. Variance from the driveway, curb-cut, access and parking requirements until such time as the property is redeveloped;
5. Variance from sidewalk requirements until such time as the property is redeveloped; and
6. Variance from certain landscape requirements until such time as the property is redeveloped, subject to the landscape and streetscape improvements proposed or agreed-to by the applicant.

In lieu of the immediate application of the requirements of the Town Center Overlay District, the applicant is requesting a “multi-tiered” approach of several phases: (1) extensive landscaping

improvements; (2) painting and updating of the existing building to match the rest of the Wisteria Village Shopping Center; and (3) screening the dumpster and exterior utilities.

As an additional condition, the applicant proposes that all other development requirements of the Town Center Overlay District, including sidewalks, curb-cuts, driveway access and parking shall be completed upon the redevelopment of the subject property or any of the adjacent parcels, whichever takes place first. While not currently required by the Town Center Overlay District, the applicant also agrees to cooperate fully with the City's goal of pedestrian and greenway connections, including potential easements.

STAFF ANALYSIS:

Applicant's Reasoning

The applicant's request has two supporting points: (1) that the amount of work required to fully comply with the Town Center Overlay District requirements would be burdensome to the property owner and (2) such substantial changes to the property may potentially be undone once the property is fully redeveloped into something that is more in line with the vision for downtown Snellville as a more dense, human-scaled and pedestrian friendly area.

Rebuttal

Both concerns are valid to an extent. However, the financial cost of making improvements is not often sufficient reason to seriously consider granting a variance, unless the burden is such that it eliminates most or all uses of the property, which is not the case here. There is little in the way of topography that makes development of the site difficult or impossible. As noted in the Letter of Intent, an existing wall would have to be removed for the expansion of the sidewalk, at the expense of some parking spots and at a cost of roughly \$50,000. But the site is otherwise fairly level, and as previously stated, financial cost is not usually considered grounds for granting a variance.

Similarly, the threat that what is done to a property today may need to be undone in a potential future development is a risk shared by literally every property in all jurisdictions and municipalities and is not grounds for foregoing improvements in the short-term.

Purpose of the Town Center Overlay District

The purpose of the Town Center Overlay District is to "encourage the redesign and redevelopment of existing shopping centers" to allow for a "denser mix of land uses built for pedestrian access...at scale convenient for walking and biking." From the City's perspective, then, the intent of the district is to prepare for and guard against scenarios of this exact nature. The City cannot force redevelopment on a property that is currently operating, but it *can* require and regulate the redevelopment or properties on a case by case basis as they appear.

Setting Precedent

There is also the matter of precedence. This is one of the first (or possibly the first) case of a private property owner seeking to reutilize a property within the Town Center Overlay District that has been vacant and out-of-commerce for over ten (10) years. Allowing variances based on unsubstantial reasoning such as this would set a bad precedent. It may seem reasonable in some light to delay redevelopment until adjacent parcels do likewise; the optics of the full suite of pedestrian improvements next to nothing but a four (4) foot sidewalk is an unappealing aesthetic. But that logic could just as easily be applied to the adjacent properties, or any other privately held property in the Town Center. This kind of standoff that takes leverage away from the City and puts it into the hands of a hypothetical development, all while stripping the teeth from the City's ordinance to enforce the long-term goals of the City.

Knowledge Beforehand

Finally, it should also be noted that although this is the first time the applicant is bringing this matter before the Board of Appeals, this conversation has been ongoing. Prior to the September 2017 purchase of the property by the applicant, Planning Department staff met with the applicant informing him of the non-conformities that exist on the property and improvements that would be required per the Zoning Ordinance and the Town Center Overlay District regulations. The dialogue continued after purchase of the property resulting in receipt of the Variance Application on December 1st.

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;

There is an existing stone wall that will have to be removed for the expanded sidewalk, but the site is otherwise level.

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;

*The applicant is correct in stating that the Town Center Overlay District does not apply to "continued existing uses and is intended solely for redevelopment." However, the language of the ordinance refers to uses that are **currently** operating, and have not been inactive for more than 18 months. It **does not** refer to a use that was once contained in a property but has not been operational for a period of more than 18 months.*

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

The applicant purchased the thirty-one (31) year old property as an investment knowing that the property was encumbered by the requirements of the Town Center Overlay District. Approving the requested variances would absolutely result in a special condition for the applicant, as the granting of variances would create an opening for any current use to continue operating in the Town Center, regardless of its suitability with the intent of the ordinance or goals of the City.

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.

The applicant states that they are seeking “the same treatment as its neighboring properties”, the implication being that other properties have been granted variances in the past. None of the adjacent properties have yet gone through redevelopment under the current requirements, so allowing for variance from the requirements would create a special situation for the applicant, while also opening a door that other properties could later exploit.

STAFF RECOMMENDATION:

In conclusion, the Department of Planning and Development recommends the following with regard to each of the six requested variances:

Table 1

Variance Request	Planning Department Recommendation
1. Variance from the two-story building minimum, due to the existing building appearance and proposed improvements.	Approval
2. Variance from Sec. 7.7, Architectural Design Standards of the Snellville Zoning Ordinance until such time as the property is redeveloped.	Approval
3. Variance from building orientation/setback requirements until such time as the property is redeveloped.	Approval
4. Variance from the driveway, curb-cut, access and parking requirements until such time as the property is redeveloped.	Denial
5. Variance from sidewalk requirements until such time as the property is redeveloped.	Denial
6. Variance from certain landscape requirements until such time as the property is redeveloped, subject to the landscape and streetscape improvements proposed or agreed-to by the applicant.	Denial

In conjunction with the variance recommendations above, the Planning Department recommends the following conditions:

1. All other requirements of the Town Center Overlay District shall remain in full force and effect;
2. Any and all variances granted herein shall become null and void upon redevelopment of the property, as determined by the Director of Planning and Development;
3. No Certificate of Occupancy shall be approved until such time that: (a) all non-conforming exterior building light fixtures and parking light poles and fixtures are removed or made conforming; (b) all non-conforming signs (wall signs, pylon sign, etc.) are removed. New signs shall require a Sign Permit approved by the Director of Planning and Development; (c) all rooftop and ground mechanical units shall be screened on all sides from public view; and (d) the walk-in cooler/freezer shall be painted to match the color of the primary building; and (e) cosmetic improvements to the building including but not limited to, painting and the maintenance of any existing building materials that are found in poor condition; and
4. No Certificate of Occupancy shall be approved until such time that the requirements of the Town Center Overlay District, Zoning Ordinance, and Buffer, Landscaping and Tree Ordinance have been satisfactorily met and approved by the Director of Planning and Development.