



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

VARIANCE CASE SUMMARY

May 11, 2021

CASE NUMBER: #BOA 21-02

REQUEST: Variance to reduce the 5 foot wide side yard landscape strip to 4 feet; and variance to allow encroachment of a single parking space into the 5 foot rear landscape strip.

LOCATION: 2229 Scenic Highway, Snellville, Georgia

TAX PARCEL: R5026 041D

CURRENT ZONING: BG (General Business) District

OVERLAY DISTRICT: Towne Center Overlay District

DEVELOPMENT/PROJECT: **0.45± Acre Tract for Dunkin Donuts Drive-Thru Restaurant**

PROPERTY OWNER: Restaurant Holdings, LLC
Grand Rapids, Michigan 49503

APPLICANT/CONTACT: Brent Moye, P.E.
Land Engineering and Development
678-432-5720 or bmoye@landengdev.com

RECOMMENDATION: **Approval with Conditions**



**CITY OF SNELLVILLE
PLANNING & DEVELOPMENT DEPARTMENT
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VARIANCE CASE ANALYSIS

May 11, 2021

TO: Snellville Board of Appeals

REGULAR MEETING DATE: May 11, 2021

FROM: Jason Thompson, Director
Department of Planning and Development

CASE NUMBER: **#BOA 21-02**

FINDINGS OF FACT:

The Department of Planning and Development has received a variance application from Brent Moye, P.E. representing Restaurant Holdings, LLC requesting variances from the Landscape Ordinance to allow for encroachment into the side yard and rear yard landscape strips for the construction and use of an 800 sq. ft. Dunkin Donuts drive-thru (only) restaurant located at 2229 Scenic Highway, Snellville.

The proposed developed is located on a small 0.45± acre tract and adjacent to the new Wendy's restaurant to the south and RaceTrac to the north.

REQUEST:

The applicant is requesting the following two variances from the Landscape Ordinance, as follows:

- 1. Variance from UDO Sec. 207-3.2.A.2. to reduce the 5 feet wide side yard landscape strip to 4 feet to allow the existing curb line along the northern property line to remain in place; and**

2. Variance from UDO Sec. 207-3.2.D.1. to allow encroachment of a single parking space into the rear landscape strip where no permanent structures are allowed.

STANDARDS FOR CONSIDERATION:

Pursuant to Sec. 103-7.2.B of Chapter 100 of the UDO, 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 zoning district;

Applicant Response: The curb and gutter that creates the landscape strip along the northern property line of the parcel is existing at the time of this application. The curb was installed during the construction of the site based on the approved plans for the Wendy's restaurant. The civil engineering drawings showed the proposed curb at the constructed location four (4) feet from the property line. The landscape plan showed the curb location at four (4) feet from the property line, however, the area was mislabeled "5' Landscape Strip". This was inadvertently overlooked at the time approval, inspection, and final sign off by the City and the error was not identified until after the construction was completed.

The permanent structure that encroaches into the landscape strip is a curb line of a parking space that is parallel to an internal drive. This drive connects to an adjacent property and provides inter-parcel access. Only a portion of the space encroaches into the landscape strip due to the angle of the drive required to align with the drive on the adjacent parcel. The geometry of the alignment of the inter-parcel access drives creates the encroachment into a small portion of the landscape strip.

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

Applicant Response: The errors resulted in a landscape strip that is substantially in compliance with the code requirement and to require strict compliance with the code would cause the applicant significant cost to correct a minor deviation. There are other similarly zoned properties in the area that have interior landscape strips that do not meet the five-foot minimum depth requirement. To strictly enforce the provision would deprive the applicant of rights enjoyed by those other property owners. Restaurant Holding, LLC is proposing to plant additional landscaping within the existing four-foot landscape.

The code allows for encroachment of into the landscape strip in the location of drives. The subject parking spaces is encroaching into landscape strip due to its proximity to the drive and the geometry of the inter-parcel access. The access drive and parking space are substantially in compliance with the requirements and to require strict compliance would

cause the applicant significant cost to correct a minor deviation.

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

Applicant Response: *The applicant relied on the professional consultants and contractors to design and construct this development. The error was a consultant and contractor error and not due to the actions of the applicant.*

The need for the requested variance is due to an update to the Municipal Code of Snellville for the Unified Development Ordinance (UDO) approved by Council October 26, 2020, which was after the Wendy's project was permitted for construction. As the development of second parcel within the project proceeds through the permit approval process, granting of this request will bring the project into compliance with the newly adopted UDO. The noncompliance with the UDO is due to the code revision and not the actions of the original developer or the developer of the second parcel.

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

Applicant Response: *There are multiple similarly zoned properties in the area that have interior landscape strips that do not meet the five-foot minimum depth requirement. A list of some of these similar properties and a map of their locations has been included with the application. To strictly enforce the provision would deprive the applicant of rights enjoyed by these other property owners.*

The development plans for the overall project were approved under the previous City Codes like many of the surrounding properties and the granting of this variance to comply with the new UDO will not grant any special privilege to this property that has not been granted to other previously developed properties within similar zoning districts in the area.

Per Sec. 103-7.2.B.7 of Chapter 100 of the UDO, the Board of Appeals must make a finding that the granting of the variance “will be in harmony with the general purpose and intent of the UDO, and will not injurious to the neighborhood, or otherwise detrimental to the public welfare.”

STAFF RECOMMENDATION:

The Department of Planning and Development recommends:

1. **Approval** of variance from UDO Sec. 207-3.2.A.2. to reduce the 5 feet wide side yard landscape strip to 4 feet to allow the existing curb line along the northern property line to remain in place; and

2. **Approval** of variance from UDO Sec. 207-3.2.D.1. to allow encroachment of a single parking space into the rear landscape strip where no permanent structures are allowed.