

LICENSE AND VARIANCE BOARD

Minutes - Final



Richard Garland, Chairperson
Bo Jones, Board Member
Andrea Worthy, Board Member
Brian Marcos, Board Member
Eric Mohrmann, Board Member
Mary Moore, Board Member
Jill G. Head, Secretary

A. Max Bacon City Hall
Council Chambers
2800 King Street SE
Smyrna, GA 30080

City Attorney Scott Cochran
City Administrator Joseph Bennett
City Clerk Heather K. Peacon-Corn

March 13, 2024
10:00 AM

1. Roll Call

Present: 3 – Chairperson Richard Garland, Boardmember Bo Jones, Boardmember Mary Moore

Staff: 8 – Caitlin Crowe, Jill G. Head, H. Houze, Dat Luu, Eddie Matano, Russell Martin, Starla Whiddon, and Mark Wolff

2. Call to Order

3. Chairperson Instruction and Comment

4. Formal Business

- A. **V24-009** Public Hearing - Variance Request - V24-009 - Allow gravel parking - Land Lot 412 - 802 Smyrna Hill Drive - Hossein Kafaei
Ward 4 Councilmember - Charles “Corkey” Welch

Caitlin Crowe, Planner I, provided the following background:

The subject parcel is 1.40 acres located on the south side of Smyrna Hill Drive, near the intersection of Smyrna Hill Drive and the private alley known as Dickson Way (formerly Radcliff Road) (see Figure 1). The subject parcel and adjacent parcels to the south, east, and west are zoned GC (General Commercial) and are occupied by a variety of auto-related businesses. The adjacent parcel to the north is zoned LI (Light Industrial) and is occupied by a self-storage facility.

The subject property was formerly occupied by the Concord Body Shop, which closed for business in July 2020. The property sat vacant until it was sold in June 2023, when the applicant purchased the property to use for his own autobody shop, Georgia Luxury Automotive. The applicant subsequently extended the parking facilities with gravel in the rear of their property, removed an accessory building, and began construction in the interior of the warehouse, all without the appropriate permits or variances. The applicant

had also replaced the previous nonconforming chain link fence and gate with a 6-foot-tall metal fence within the front setback. Once notified of the violations, the applicant began working with City staff to correct the violations, most specifically the parking plan on the property, and come into compliance.

The property is currently occupied by an 18,210 square foot warehouse building with a detention pond in the southwest corner. The former 2,800 square foot accessory building in the rear was demolished and, per the applicant, will not be replaced to ensure fire truck access around the building.

As part of the unpermitted work, the applicant put roughly 6,600 square feet of fresh gravel in the rear of the property. The applicant is proposing to retain the gravel area as a parking surface for his customer's vehicles while they are being worked on in the shop. This area is not to be used by the general public during drop off or pick up of their vehicles.

Section 901(b) in reference to the City's parking design standards reads, "Each parking facility shall be graded and paved, including access drives and be curbed when needed for effective drainage control." The City's parking design standards do not provide any exemptions from this requirement for specific uses or zoning districts. Therefore, the applicant is requesting a variance to continue use of the gravel parking area. Community Development has completed an aerial survey of the immediate surrounding area and has found gravel parking areas with similar operations as proposed by the applicant. However, the gravel area may not be expanded further than what is currently on-site without obtaining a further variance. Due to the existing detention pond, the City Engineer has determined that additional stormwater management is not required to account for the replaced impervious surface. Section 906.1 and Section 906.6 of the Zoning Ordinance requires 107 parking spaces on the subject property, which is calculated at 1 space per 150 square feet of garage space for the auto repairs and 1 space per 250 square feet of gross floor area in the office areas. The existing building is centered in the middle of the lot, with an existing nonconforming setback of 8.10 feet on the western side property line and 20 feet to the eastern side property line. Due to the configuration of the existing building on the site, the applicant can only provide 59 spaces while still maintaining the required fire truck access to the eastern side of the property. Per the applicant, the business may have up to 20 employees at one time with the majority of the vehicles parked inside while they are being worked on. The applicant's business model does not allow for walk-ins, as all vehicles are scheduled with drop off times and can thus be regulated by the shop. If a particular vehicle is waiting on a part or repair, it will be parked in the rear of the property on the gravel parking and thus not be visible to the public. Due to the limited access to the general public and regulated intake of vehicles, Community Development can support the variance request.

The newly installed 6-foot metal fence and gate will be replaced with a 4-foot metal fence, still within the front setback, with room for vehicles to wait on the property outside of the City right-of-way. Since fences can be up to four feet tall in the front yard, the variance to allow for a 6-foot fence in the front yard is being withdrawn.

Community Development believes the variances will not cause negative impacts to the adjacent properties, as the lot and building configuration is unique and has existed since the previous use. Additionally, the parking lot will be updated to comply with the current code requirements, including ADA parking. Since the proposed gravel parking and reduction in spaces is in line with existing conditions in the surrounding area, Community

Development is supportive of the proposed variances. At the time of this report, Community Development has not received any calls in opposition to these requests.

The applicant is requesting to deviate from the City's required parking requirements. According to Section 1403 of the Zoning Ordinance, variances must be reviewed under the following standards: (1) Whether there are unique and special or extraordinary circumstances applying to the property; (2) Whether any alleged hardship is self-created by any person having an interest in the property; (3) Whether strict application of the relevant provisions of the code would deprive the applicant of reasonable use of the property; and (4) Whether the variance proposed is the minimum variance needed. Community Development believes that the requested variances will not adversely affect surrounding properties. Therefore, Community Development recommends approval of the requested variances with the following conditions:

1. Approval of the requested variances shall be conditioned upon the development of the property in substantial compliance with the site plan submitted with the variance application on March 5, 2024.
2. A land disturbance permit must be submitted to Community Development for review within 60 days of approval of the variance requests.
3. The 6-foot metal fence within the front setback must be removed and replaced with a 4-foot fence prior to completion of the land disturbance permit. Any gates shall also be a maximum of 4-feet in height if within the front setback.
4. The dumpster shall be enclosed by a three-sided enclosure per Section 86-34.1.
5. Pavement markings/stripping shall be added indicating parking spaces and direction of traffic flow in the parking lot. Signage and/or pavement markings added indicating customer parking.
6. No additional impervious surface shall be added beyond what is shown on the approved site plan.
7. All vehicles parked outside of the structure must be maintained in the parking spaces recognized in the approved parking layouts to help protect fire department access.
8. All work performed on the site shall not encroach into the City right-of-way unless approved with the land disturbance permit.

Chairperson Garland asked if there are currently any outstanding violations. Ms. Crowe stated that they have applied for the building permit and the land disturbance permit, and technically the violations are still outstanding until the variances are approved first and the permits are completed.

Hossein Kafaei, applicant (Canton, GA) – stated that they will make all the corrections necessary, and they are ready to get the business going. He also stated that he understands and agrees to all of the conditions read into record.

A public hearing was called, and no one came forward in favor of or in opposition to this item.

Boardmember Mary Moore made a motion to approve item V24-009; seconded by Boardmember Bo Jones.

The motion to approve carried with the following vote:

Aye: 3 – Chairperson Garland, Boardmember Jones, Boardmember Moore

Nay: 0 – None
Recuse: 0 – None

- B. V24-010** Public Hearing - Variance Request - V24-010 - Reduce the required parking spaces from 107 spaces to 59 spaces - Land Lot 412 - 802 Smyrna Hill Drive - Hossein Kafaei

Ward 4 Councilmember – Charles “Corkey” Welch

No further information was provided by staff nor the applicant.

A public hearing was called, and no one came forward in favor of or in opposition to this item.

Boardmember Mary Moore made a motion to approve item V24-010; seconded by Boardmember Bo Jones.

The motion to approve carried with the following vote:

Aye: 3 – Chairperson Garland, Boardmember Jones, Boardmember Moore
Nay: 0 – None
Recuse: 0 – None

- C. V24-011** Public Hearing - Variance Request - V24-011 - Allow 6-foot fence in the front yard - Land Lot 412 - 802 Smyrna Hill Drive - Hossein Kafaei

This request is to be withdrawn at the request of the applicant.

Ward 4 Councilmember - Charles “Corkey” Welch

Boardmember Bo Jones made a motion to withdraw at the request of the applicant item V24-011; seconded by Boardmember Mary Moore.

The motion to withdraw carried with the following vote:

Aye: 3 – Chairperson Garland, Boardmember Jones, Boardmember Moore
Nay: 0 – None
Recuse: 0 – None

- D. V24-012** Public Hearing - Variance Request - V24-012 - Reduce the rear setback from 30 feet to 22 feet - Land Lot 673 - 1900 Sadler Drive - Kevin Lee

Ward 6 Mayor Pro Tem / Councilmember - Tim Gould

Caitlin Crowe, Planner I, provided the following background:

The subject parcel is a 0.16-acre lot located on the west side of Sadler Drive within the Stonecrest Manor subdivision (see Figure 1). The subject parcel and all adjoining parcels are zoned RDA and are all occupied by single-family detached homes, with the exception of the property to the west, which is occupied by the Old Vinings Mill amenity area.

The existing home was originally built in 2013 and was permitted with a 44% impervious surface area. Prior to permit completion and without plan approval, a deck and stairs were added to the rear over the existing concrete patio, which extended the impervious surface

area above the allowed 45% (by 0.8% or 61.25 square feet). Since the home was completed with an increased impervious surface area, the hardship is not self-created.

The applicant is proposing to enclose the existing deck to make a 300 square foot sunroom and add a new 250 square foot deck with accompanying stairs. After the addition of the sunroom and deck to the property, the impervious surface area will be 4.1% over the allowable 45% (or 348 square feet). With the sunroom and deck additions increasing the impervious surface area, regardless of the previous nonconformity, the property is required to be brought to current code.

To offset the increase in impervious surface area, the applicant is adding two flo-wells to the southwest corner of the rear yard. The City Engineer has reviewed the application and is supportive of the proposed mitigation method with the stipulation that a Stormwater Inspection & Maintenance Agreement be recorded prior to the issuance of the building permit.

Patios that are flush to the ground are not required to meet building setbacks. However, once the deck was added over the patio, the deck encroached into the rear setback by 8 feet. The applicant is looking to expand this nonconforming location along the back of the home, but no closer to the rear of the property than exists currently. Due to the existing deck location, the most logical area to construct the sunroom and new deck is within the setback. The same variance was approved at the adjacent property to the south in 2013 (V13-010). Additionally, the new deck stairs will also be encroaching into the 20-foot drainage easement at the rear of the property by 2 feet; this has been approved to remain by the City Engineer during plan review.

Community Development believes the requested variances are the minimum variances needed to add more outdoor space on the property. Similar variances have been approved throughout the city when an appropriate mitigation method has been included and implemented. Strict application of the ordinance would deny the applicant any ability to modify the existing deck since the existing impervious area is already over the allowable maximum impervious coverage. At the time of this report, Community Development has not received any calls in opposition to the request.

The applicant is requesting to deviate from the development standards established by the City for the RDA zoning district and the Stonecrest Manor subdivision plat, which requires a maximum impervious area of 45% and a rear setback of 30 feet. According to Section 1403 of the Zoning Ordinance, variances must be reviewed under the following standards: (1) Whether there are unique and special or extraordinary circumstances applying to the property; (2) Whether any alleged hardship is self-created by any person having an interest in the property; (3) Whether strict application of the relevant provisions of the code would deprive the applicant of reasonable use of the property; and (4) Whether the variance proposed is the minimum variance needed. After a review of the standards above, Community Development believes that the impervious surface increase will not adversely affect surrounding residents; therefore, staff recommends approval of the requested variances with the following conditions:

1. Approval of the variance is conditioned upon substantial compliance with the mitigation plan and elevations submitted with the variance application.
2. A Stormwater Inspection and Maintenance Agreement shall be completed and recorded with the Cobb County Superior Court and an as-built certification statement submitted to Community Development prior to issuance of the building permit.

Mark Wolff, City Engineer, explained that the dry wells, or flo-wells, meet requirements for mitigation.

Kevin Lee, applicant (Kennesaw, GA), stated he understands and agrees to the two conditions read into record.

A public hearing was called, and no one came forward in favor of or in opposition to this item.

Boardmember Bo Jones made a motion to approve item V24-012; seconded by Boardmember Mary Moore.

The motion to approve carried with the following vote:

Aye: 3 – Chairperson Garland, Boardmember Jones, Boardmember Moore
Nay: 0 – None
Recuse: 0 – None

**E. V24-013 Public Hearing - Variance Request - V24-013 - Increase the maximum impervious surface area - Land Lot 673 - 1900 Sadler Drive - Kevin Lee
*Ward 6 Mayor Pro Tem / Councilmember - Tim Gould***

No further information was provided by staff nor the applicant.

A public hearing was called, and no one came forward in favor of or in opposition to this item.

Boardmember Bo Jones made a motion to approve item V24-013; seconded by Boardmember Mary Moore.

The motion to approve carried with the following vote:

Aye: 3 – Chairperson Garland, Boardmember Jones, Boardmember Moore
Nay: 0 – None
Recuse: 0 – None

**F. V24-015 Public Hearing - Variance Request - V24-015 - Allow encroachment into the 75-foot impervious surface area setback - Land Lot 543 - 1362 Wynbrook Trace - James Lamar Lea
*Ward 7 Councilmember - Rickey N. Oglesby, Jr.***

Caitlin Crowe, Planner I, provided the following background:

The subject parcel is a 0.46-acre lot located on the south side of Wynbrook Trace with a stream running to the south of the property (see Figure 1). The subject parcel and all adjoining parcels are zoned RDA and are occupied by single-family detached residences within the Vinings Estates subdivision, with the exception of the property to the south, which is occupied by Whitefield Academy, a private school.

The subject property is currently occupied by a 7,149 square foot single-family home with a stream to the south of the property. Due to the stream, the rear yard is encumbered by the City's 50-foot undisturbed stream buffer and the City's 75-foot impervious surface area setback. The applicant has designed the pool to stay out of the 50-foot undisturbed buffer but encroaches into the 75-foot impervious surface area setback by 1,104 square feet. The proposed pool is outside the stream buffers as much as possible without infringing on the house foundation. No other variances are needed as the property is just below their impervious coverage maximum of 45% and there are no additional accessory structures.

The applicant will require relief from the City's stream buffer ordinance in order to construct the pool and decking in the rear yard. The applicant will mitigate the encroachment by installing 3 flo-wells to the west side of the home. The City Engineer has reviewed the application and accompanying mitigation plan and supports the method used for buffer mitigation with the stipulation that a Stormwater Inspection & Maintenance Agreement be recorded prior to issuance of the pool permit.

Due to the existing stream buffers in the rear yard, Community Development believes this is the minimum variance needed to allow for any outdoor amenity. Due to the location of the pool in the rear yard, Community Development believes the proposal will not adversely impact adjacent properties. Strict application of the ordinance would deny the applicant the ability to build any outdoor amenity in the rear yard due to the existing stream buffers. Similar variances have been approved throughout the city when an appropriate mitigation method has been included. At the time of this report, Community Development has not received any calls in opposition to the request.

The applicant is requesting relief from the City's 75-foot impervious surface area setback to install an inground swimming pool in the rear yard. According to Section 1403 of the Zoning Ordinance, variances must be reviewed under the following standards: (1) Whether there are unique and special or extraordinary circumstances applying to the property; (2) Whether any alleged hardship is self-created by any person having an interest in the property; (3) Whether strict application of the relevant provisions of the code would deprive the applicant of reasonable use of the property; and (4) Whether the variance proposed is the minimum variance needed. After a review of the standards above, Community Development believes that the encroachment will not adversely affect surrounding residents; therefore, staff recommends approval of the requested variance with the following conditions:

1. Approval is conditioned upon substantial compliance with the mitigation plan submitted with the variance application.
2. A Stormwater Inspection and Maintenance Agreement must be completed and recorded with the Cobb County Superior Court and an as-built certification statement submitted to Community Development prior to issuance of the pool permit.

Mark Wolff, City Engineer, explained that the flo-wells that will be installed are appropriate for mitigation efforts for this property.

James Lamar Lea, applicant (Marietta, GA) had nothing further to add. He stated he understands and agrees to the two conditions read into record.

A public hearing was called, and no one came forward in favor of or in opposition to this item.

Boardmember Mary Moore made a motion to approve item V24-015; seconded by Boardmember Bo Jones.

The motion to approve carried with the following vote:

Aye: 3 – Chairperson Garland, Boardmember Jones, Boardmember Moore
Nay: 0 – None
Recuse: 0 – None

- G. V24-016** Public Hearing - Variance Request - V24-016 - Reduce the front setback from 50 feet to 25 feet - Land Lot 485 - 1076 Concord Road -David Butler
This request is to be tabled to the March 27, 2024 License and Variance Board Meeting at the request of the applicant.
Ward 3 Councilmember - Travis Lindley

Boardmember Bo Jones made a motion to table to the March 27, 2024 License and Variance Board meeting at the request of the applicant item V24-016; seconded by Boardmember Mary Moore.

The motion to table carried with the following vote:

Aye: 3 – Chairperson Garland, Boardmember Jones, Boardmember Moore
Nay: 0 – None
Recuse: 0 – None

- H. V24-017** Public Hearing - Variance Request - V24-017 - Reduce the required parking spaces from 23 spaces to 9 spaces - Land Lot 485 - 1076 Concord Road - David Butler
This request is to be tabled to the March 27, 2024 License and Variance Board Meeting at the request of the applicant.
Ward 3 Councilmember - Travis Lindley

Boardmember Bo Jones made a motion to table to the March 27, 2024 License and Variance Board meeting at the request of the applicant item V24-017; seconded by Boardmember Mary Moore.

The motion to table carried with the following vote:

Aye: 3 – Chairperson Garland, Boardmember Jones, Boardmember Moore
Nay: 0 – None
Recuse: 0 – None

5. Approval of Minutes

- A. MIN2024-033** Approval of the February 28, 2024 License and Variance Board Meeting Minutes
Citywide

Boardmember Mary Moore made a motion to approve item MIN2024-033; seconded by Boardmember Bo Jones.

The motion to approve carried with the following vote:

Aye: 3 – Chairperson Garland, Boardmember Jones, Boardmember Moore
Nay: 0 – None
Recuse: 0 – None

6. Other Business / Staff Comment

7. Adjournment

Chairperson Richard Garland adjourned the March 11, 2024 License and Variance Board meeting at 7:25 AM.

Facilities are provided throughout City Hall for the convenience of persons with disabilities.

THIS MEETING WAS PROPERLY NOTICED AND POSTED AT THE FOLLOWING LOCATIONS IN ACCORDANCE WITH THE NOTICING STANDARDS AS OUTLINED IN O.C.G.A. 50-14-3:
The City of Smyrna website – www.smyrnaga.gov
City Hall, 2800 King Street SE, Notice Boards