



License and Variance Board Meeting - Final

May 24, 2023
10:00 AM

-
- B. V23-030** Public Hearing - Variance Request - V23-030 - Reduce the minimum separation between emissions stations from 1,000 feet to 650 feet - Land Lot 413 - 860 Concord Road - Jeff Carter



City of Smyrna

Issue Sheet

A Max Bacon
City Hall
2800 King Street
Smyrna, GA 30080

File Number: V23-033

Agenda Date: 4/26/2023

In Control: License and Variance Board

File Type: Variance Item

Agenda Section:
Formal Business

Agenda Number: B

Department: Community Development

Agenda Title:

Public Hearing - Variance Request - V23-030 - Reduce the minimum separation between emissions stations from 1,000 feet to 650 feet - Land Lot 413 - 860 Concord Road - Jeff Carter

Ward 3 Councilmember - Travis Lindley

ISSUE AND BACKGROUND:

The applicant is requesting a variance to allow an emissions station within 1,000 feet of another emissions station. Section 711.5.1.4 controls the location of emissions stations within the Neighborhood Shopping and General Commercial zoning districts.

RECOMMENDATION / REQUESTED ACTION:

The applicant is requesting the minimum separation between emissions stations be reduced from 1,000 feet to 650 feet to accommodate a new emissions establishment at 860 Concord Road. 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 has reviewed the request against the variance review standards and found there to be no unique or extraordinary circumstances applying to the property. Community Development believes that the strict application of the code does not deprive the property of its reasonable use and that need for the variance is solely based on economic reasons and is not unique. Therefore, Community Development recommends denial of the requested variance.

CITY OF SMYRNA

COMMUNITY DEVELOPMENT

MEMORANDUM

To: License and Variance Board

From: Rusty Martin, Community Development Director
Caitlin Crowe, Planner I

Date: April 17, 2023

RE: VARIANCE CASE V23-030
860 Concord Road – Reduce the minimum separation between emissions stations
from 1,000 feet to 650 feet

BACKGROUND

The applicant is requesting a variance to allow an emissions station within 1,000 feet of another emissions station. Section 711.5.1.4 controls the location of emissions stations within the Neighborhood Shopping and General Commercial zoning districts.

ANALYSIS

The subject parcel is a 0.29-acre lot located on the south side of Concord Road (see Figure 1). The subject parcel and all adjoining parcels are zoned General Commercial (GC) and are occupied by various commercial uses.

The applicant purchased the subject property in 2019 after it had been sitting vacant for 7 years (since 2016). After several years with no business occupancy, the applicant has proposed renovating for an emissions station, which would be an expansion of his existing emissions business on Spring Road, which opened in 2018. After the applicant filed a business license application for the emissions station on March 29, 2023, staff put a hold on the application since a nearby property would also be offering emissions services.

The subject property's zoning designation of General Commercial allows emissions stations as a permitted use with several requirements for operation, one of which is "no licensed location for an emissions or inspection station shall be located closer than 1,000 feet to any similarly licensed emissions or inspection station location". There is a Valvoline Instant Oil Change currently under construction at 3261 S Cobb Dr, which is roughly 650 feet to the west of 860 Concord Rd. Valvoline has had civil plans in for review since March 2021 and was ultimately permitted in January 2023. A representative of Valvoline has confirmed that they will be offering emissions as part of their services at this location but have not yet submitted for a business license due to the current construction. Since the City is aware Valvoline will be offering emissions and they have been issued a building permit and have already started construction, Valvoline is vested in their property. The applicant at 860 Concord Road is required to seek a variance from the distance requirement.

There are no extraordinary or exceptional conditions that apply to the property that do not apply to other properties. Strict application of the ordinance does not deprive the property of reasonable use since there are 106 allowable uses by right within the General Commercial Zoning District. The hardship is self-created as the applicant has stated that he had numerous offers from several different business types over the years to either rent or sell the space. Additionally, there have been no distance reduction variances given for emissions stations since it was added to the Zoning Ordinance in 2009.

STAFF COMMENTS

The applicant is requesting the minimum separation between emissions stations be reduced from 1,000 feet to 650 feet to accommodate a new emissions establishment at 860 Concord Road. 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 has reviewed the request against the variance review standards and found there to be no unique or extraordinary circumstances applying to the property. Community Development believes that the strict application of the code does not deprive the property of its reasonable use and that need for the variance is solely based on economic reasons and is not unique. Therefore, Community Development recommends **denial** of the requested variance.

Figure – 1



Figure – 4
Proposed Building Elevation

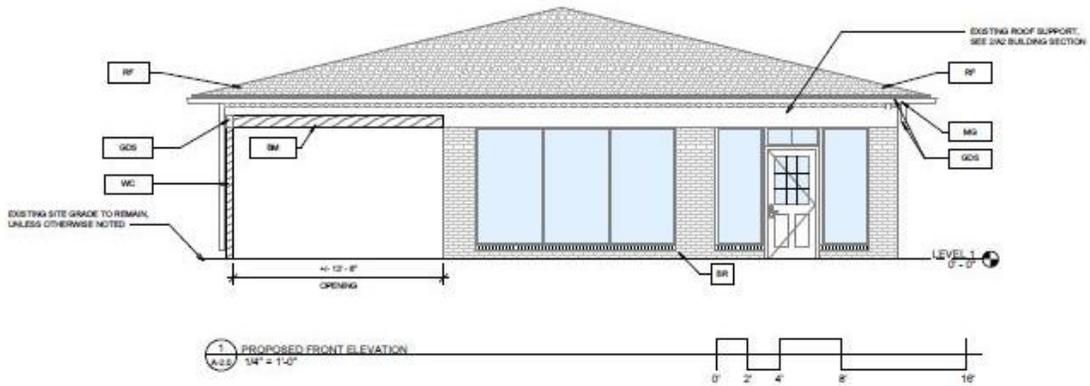


Figure – 5
Subject Property



Figure – 6
Adjacent Property to the West



Figure – 7
Adjacent Property to the East



Figure – 8
Adjacent Property across Concord Road



Variance Application**VAR-23-16**

Submitted On: Apr 5, 2023

Applicant

 Jeff Carter
 7042800770
@ jwcarte22@yahoo.com

Primary Location

860 CONCORD RD SE
SMYRNA, GA 30080

Applicant Information**First Name**

Jeff

Last Name

Carter

Street Address

3279 Lee St

City

Smyrna

State

Ga

Zip Code

30080

Email

jwcarte22@yahoo.com

Phone Number

704.280.0770

Are you the titleholder of the subject property?

Yes

Property Information**Property Address**

860 Concord Rd

Description of Requested Variances

Allow an Emission Inspection station within the 1000 feet minimum distance of another testing facility.

Comprehensive Narrative

In rendering its decisions, the License and Variance Board shall consider the following factors:

1. Whether there are extraordinary and exceptional conditions applying to the property in question, or to the intended use of the property, that do not apply generally to other properties in the same district.
2. Whether any alleged hardship which is self-created by any person having an interest in the property or is not the result of mere disregard for or ignorance of the provisions from which relief is sought.
3. Whether strict application of the relevant provisions of the zoning code would deprive the applicant of reasonable use of the property for which the variance is sought.
4. Whether the variance proposed is the minimum variance which makes possible the reasonable use of the property.

A comprehensive narrative detailing the extraordinary and exceptional conditions which will necessitate a nonconforming use.

I am interested in opening an emission inspection station at 860 Concord rd. This has been in the works for sometime. In meeting with the staff I was informed that there is a building being built at the corner of South Cobb and Concord that will be an oil change business. This business will also provide

emission related services. Smyrna ordinance does not permit two emission related business within 1000 feet of each other. I am here to ask for a variance to allow for such a use.

Acknowledgement

Applicant further affirms they are aware that any knowingly false statement made in the permit application may subject said applicant to prosecution for violation of Georgia Criminal Code, Section 16-10-20 (False Swearing) and a possible fine of not more than \$1,000.00 or imprisonment for not less than one (1) nor more than five (5) years, or both.

Applicant Signature:

true

7022 2410 0002 4506 7915

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PS Form 3826, April 2015 PSN 7530-02-000-9001 See Reverse for Instructions

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Total Postage and Fees \$5.96

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04/10/2021

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6045 ... Rd Ste 920
HOLMES GA 30428

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...
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Real Estate (Your House or Land)

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Payments/Adjustments

As of 4/5/2023

Bill Year	2022				
Bill	146				
Activity	Posted	Entered	Reference #	Paid By/Reference	Amount
Payment	11/21/2022	11/22/2022	3011412	DWELLINGS OF SMYRNA LLC	\$937.72
Billing Adjustment	10/19/2022	10/19/2022	204268		\$0.00
Billing Adjustment	10/19/2022	10/19/2022	215629		\$0.00
Billing Adjustment	10/17/2022	10/17/2022	183439		\$0.00
Billing Adjustment	10/13/2022	10/13/2022	139517		\$0.00
Billing Adjustment	10/12/2022	10/12/2022	123749		\$0.00

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Printed: 4/6/2023

Cobb County Online Tax Receipt

Thank you for your payment!

CARLA JACKSON TAX COMMISSIONER
HEATHER WALKER CHIEF DEPUTY
 Phone: 770-528-8600
 Fax: 770-528-8679

Payer:
Amie Carter

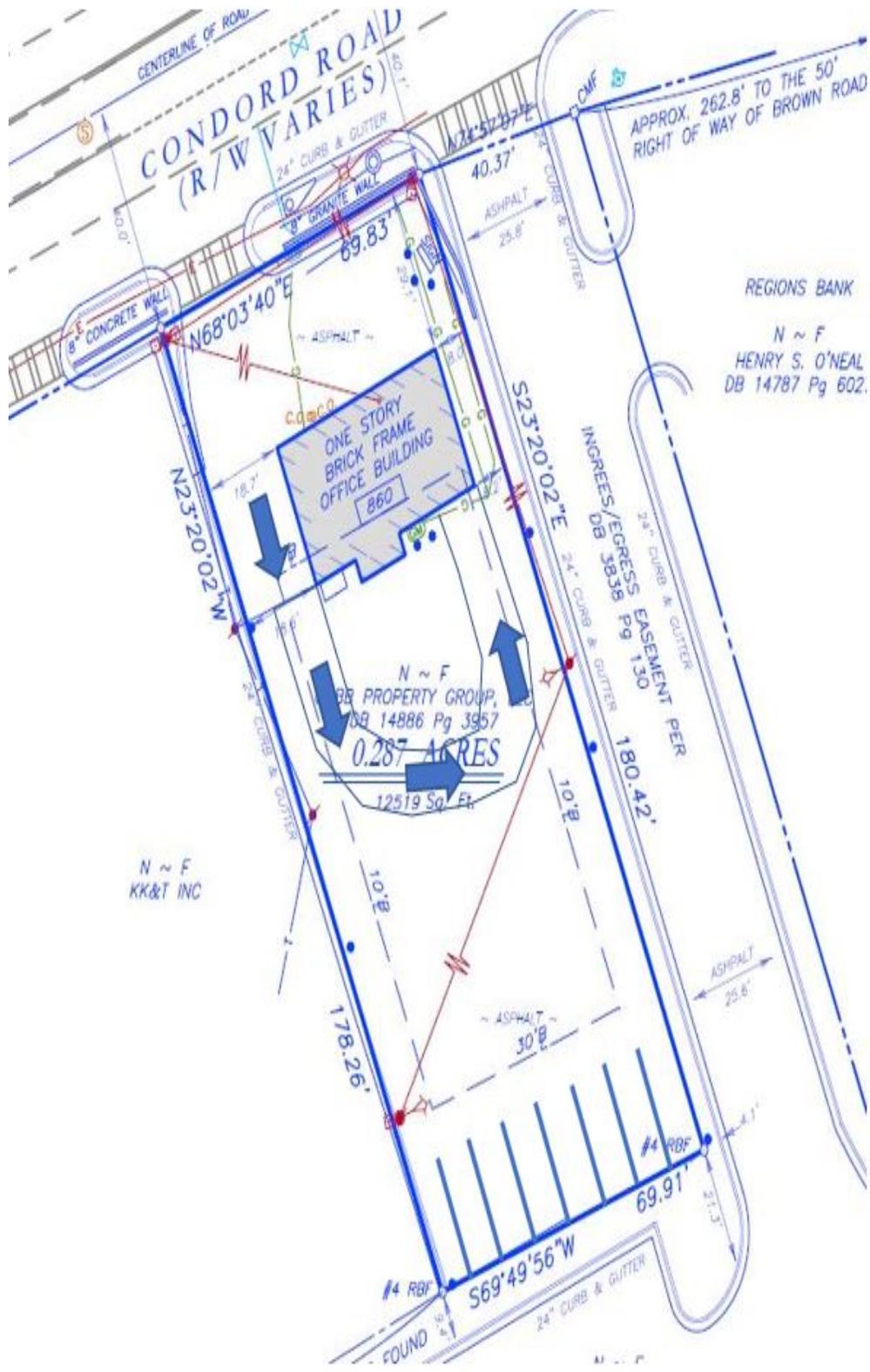
860 CONCORD RD LLC

Payment Date: 10/11/2022

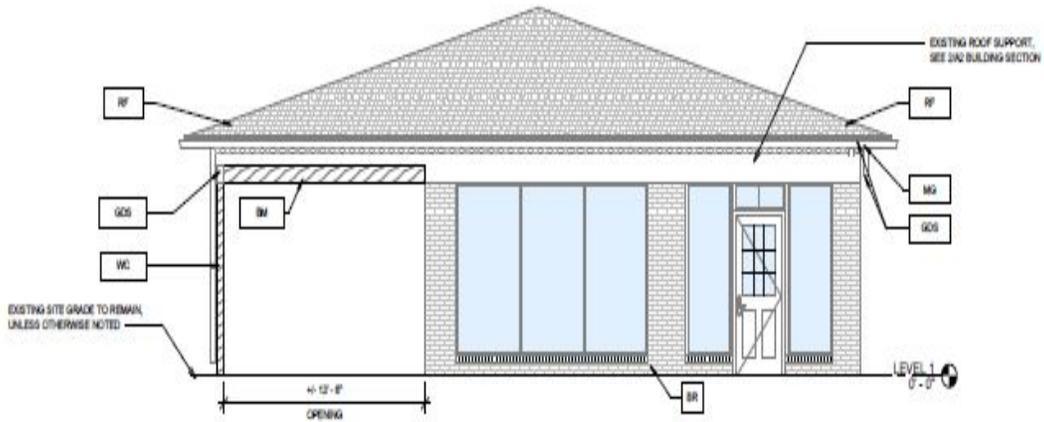
Tax Year	Parcel ID	Due Date	Appeal Amount			Taxes Due
2022	17041300250	10/15/2022	Pay:	N/A	or	\$0.00
Interest	Penalty	Fees	Total Due	Amount Paid	Balance	
\$0.00	\$0.00	\$0.00	\$0.00	\$2,598.19	\$0.00	

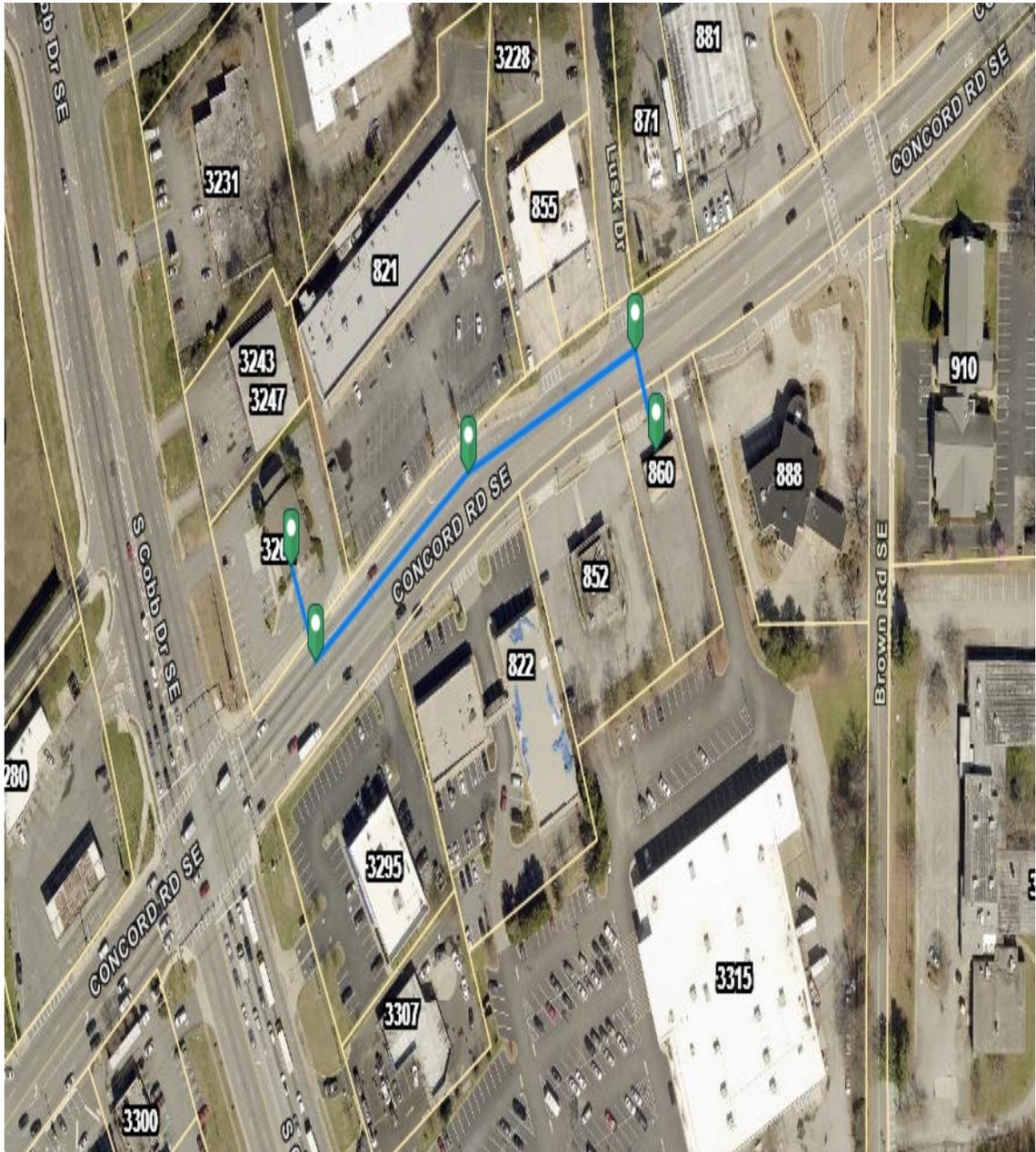


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Parking: 8 spaces will be provided at the rear of the property





Variance Meeting

License and Variance Board Meeting : April 26, 2023
10:00 am Smyrna City Hall

Ms. Penny Mocerì
Deputy City Administrator
City of Smyrna

Mr. Richard Garland
Director, Parks & Recreation
City of Smyrna

Mr. Bo Jones
Assistant Public Works Director
of W/S, Sanitation, Fleet
City of Smyrna

RE: Opposition to Variance Request V23-030
Allow emissions station within 1,000 feet of another emissions station
860 Concord Rd.

BY: Dennis Tyrone, KK&T Inc. - owner of 852 Concord Rd.

Dear Board Members,

The following written statement outlines my opposition to the Variance application before you requesting the property at 860 Concord Rd. be allowed to operate as an emissions station despite its proximity to the new Valvoline facility just down the street at Concord and South Cobb Drive.

I would like to first begin by requesting a full cycle deferral for this matter. As I did not receive notification for this request until Saturday afternoon, I don't feel enough time has been given to undertake the necessary due diligence needed to ensure that my right to due process has been met. Additional time is needed to confer with Council, identify expert witnesses for affidavit submissions, undertake a review of all available information, whether public or subject to subpoena, to define lot size, and to review and present violations in both law and ordinances that would result from the granting of such a variance. I do hereby submit this request as a matter of record.

Of course, if this Committee should feel denial of the applicant's request is warranted after reviewing all input, the above requested continuance would be moot and a denial of the variance request should proceed.

I would first like to point out that there are 11 existing emissions stations already operating within a 3 mile radius of this location. A list of these stations and maps of their locations in relation to the subject property is attached as Exhibit One. In fact, one of these existing locations is owned and operated by the applicant. It is a mile away from the proposed new

station. Clearly, another station is duplicative and unnecessary. As such, no hardship to the applicant would occur with a variance denial.

As a result of multiple eminent domain takings, the subject property now faces ingress and egress challenges. A single driveway exists for both entry and exit. The front parking has been virtually eliminated further exacerbating vehicle maneuverability. The one remaining pathway along the right side of the property to the lot's rear parking is further encumbered by a property line encroachment onto the 852 Concord Rd. property. This incursion was illegally absconded by the original property owners via pavings and curb placement. Once corrected, ingress to the back will be difficult if not impossible. In fact, the property is so inaccessible City Sanitation trucks had to come onto the 852 Concord property to undertake dumpster collections. These factors of diminished lot size and the resulting logistical challenges they present constitute clear rational for variance denial.

The above described difficulties associated with such a diminished lot size are in support of Cobb County's Ordinance §134-227 (4) which clearly states 20,000 square feet is the minimum lot size requirement. Unfortunately, years of eminent domain takings have transformed this lot from simply non-conforming to a non-economic remnant that is only suitable for assemblage.

This lot size minimum and associated restrictions are further supported at the City level with the City of Smyrna Ordinance Article VIII, Sec. 802 - Nonresidential districts which defines GC (General Commercial) lots to have a minimum size of 20,000 square feet. The subject property has approximately 14,000 square feet or less. In addition, the above described Ordinances are further supported with the area specific size requirements outlined by the Concord Road Overlay District. Both the County and City Ordinances coupled with the Overlay requirements clearly support, without exception, the denial of this variance application.

Further to the issues described above, the approval of this application would be in direct conflict with the City's Continuation of Use Ordinance, Article XI - NonConforming Uses which states that the nonconforming use of this building and land is allowed provided "that the nonconforming use of a building, structure, or land shall not be changed to another nonconforming use or reestablished after discontinuance for one year." The last rendition of use for this property was as a residential real estate brokerage some 5 or more years ago, not an emissions station.

Finally, I would like the Committee Members to consider and recognize that the approval of this application would have a significant impact on my redevelopment efforts for 852 Concord Rd. Past interested National Tenants always raised concerns about making a potential multimillion dollar investment next to what was a used car lot. Would another emissions station truly constitute the highest and best use of this non-economic remnant within this zoned(Sec. 711) NS, neighborhoods shopping district? My efforts will continue to identify and partner with a Nationally recognized or destination specific tenant for my property. I can assure you what is in proximity next door will materially impact their decision to invest . The redevelopment of the Four Corners area should resume and move forward so that the citizens and residents of the area are the recipients of improvements that should benefit the greater good.

I therefore respectfully request this Variance application be DENIED.

Faithfully submitted,
Dennis Tyrone

Speedemissions

4.5 ★★★★★ (125)

Car inspection station · 1869 Cobb Pkwy SE

Open · Closes 6PM · (770) 953-2043

"A great place for emissions testing."



Quick Emissions Express

4.1 ★★★★★ (30)

Smog inspection station · 4641 S Atlanta Rd SE

Closes soon · 5PM · Opens 9AM Tue · (770) 989-1954

"Fast and reasonably priced emissions inspection for \$25."



Spring Emissions

4.8 ★★★★★ (199)

Car inspection station · 1685 Spring Rd SE

Open · Closes 6PM · (404) 478-7226

"This is where you want to go for your emissions!!!"



DEKRA Emission Check

4.6 ★★★★★ (389)

Car inspection station · 3273 Atlanta Rd SE

Open · Closes 7PM · (770) 432-5226

"Great emissions spot ... quick and perfect stop before work!"



Car Spa Car Wash, Oil Change, & Emissions Testing

3.5 ★★★★★ (675)

Car inspection station · 2330 Windy Hill Rd SE

Open · Closes 7PM · (770) 955-9720

"Got the emissions test and free car wash."



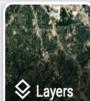
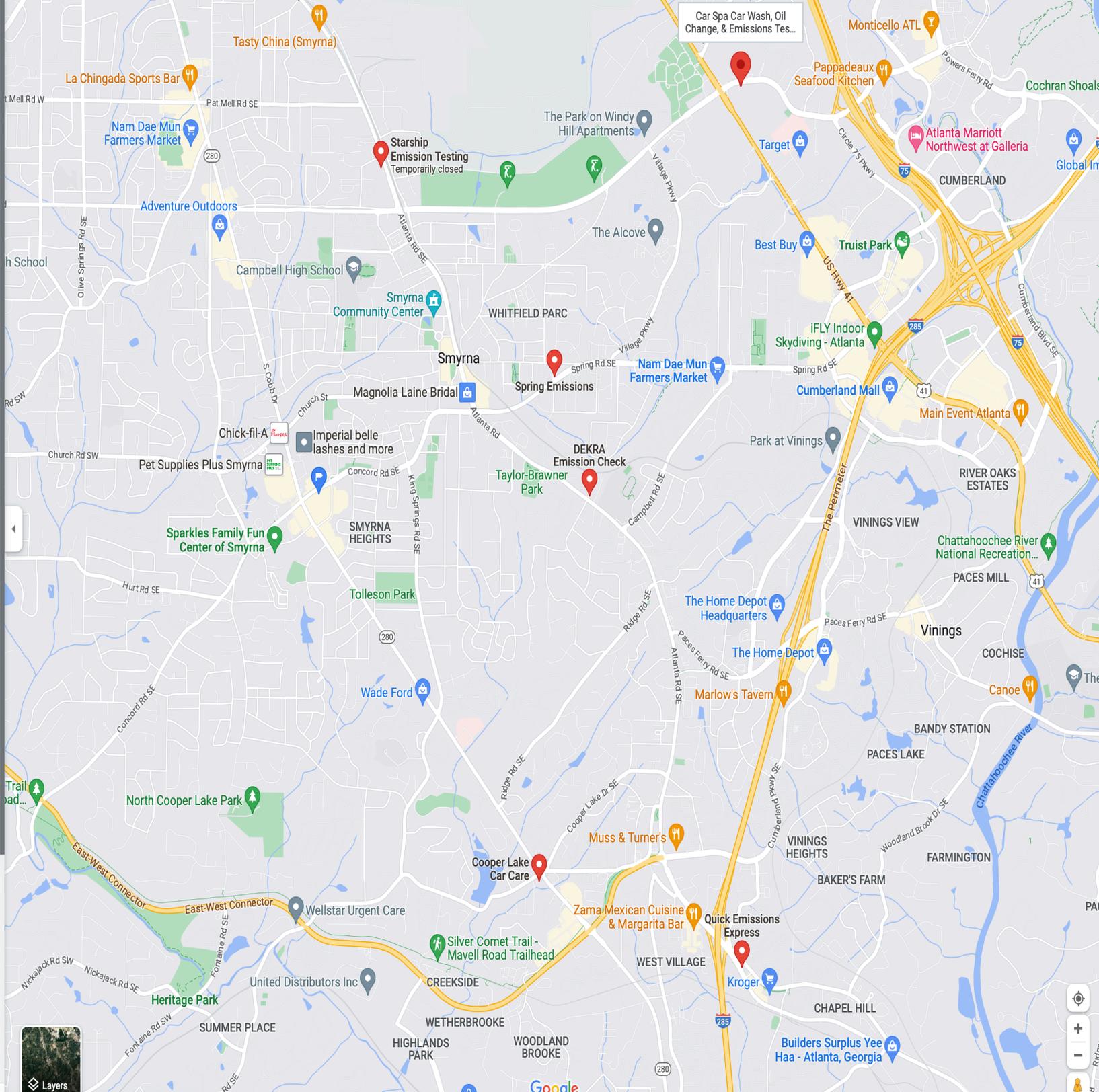
Starship Emission Testing

4.9 ★★★★★ (140)

Auto restoration service · 2274 Atlanta Rd SE

Temporarily closed · (770) 726-2934

"Excellent place for emission testing."



Austell Emission Center
 4.4 ★★★★★ (87)
 Car inspection station · 1911, 4612
 -3 Austell Rd
 Open · Closes 5PM · (770) 657-7070
 "Nice Man who does emissions!"

[Website](#) [Directions](#)

Wilmott's Emission
 4.6 ★★★★★ (46)
 Car inspection station · 2688 Austell Rd SW
 Open · Closes 5PM · (678) 842-5887
 "I love having my emission test done here."

[Directions](#)

Akaya Emissions LLC
 4.7 ★★★★★ (97)
 Car inspection station · 1355 East-West Connector
 Open · Closes 5PM · (678) 398-5205
 "Great place to get your emissions.."

[Directions](#)

Testing Wilson
 4.9 ★★★★★ (28)
 Car inspection station · 3731 Austell Rd SW
 (770) 438-1453
 "Best place for getting your emissions done"

[Directions](#)

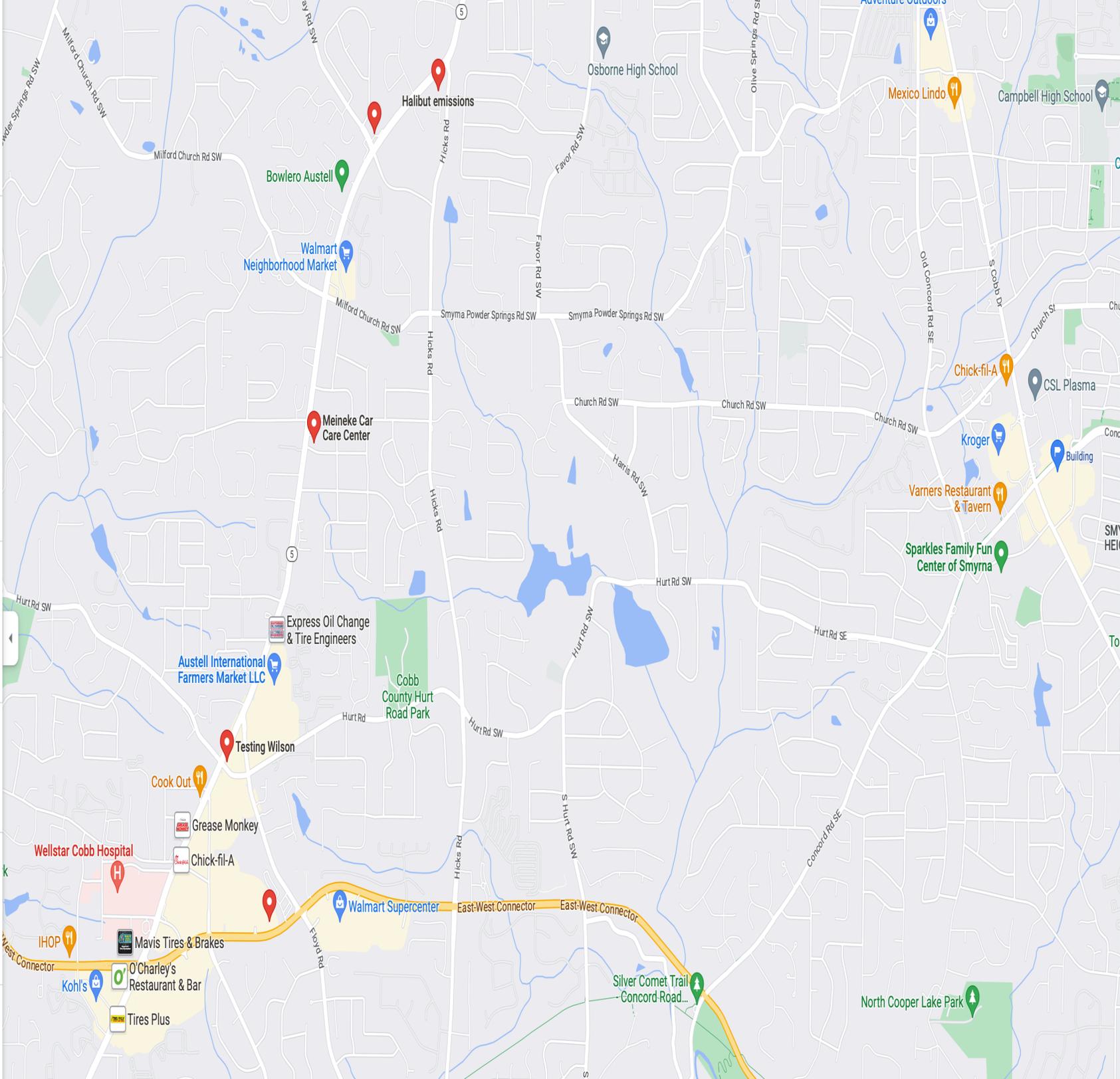
Halibut emissions
 4.3 ★★★★★ (21)
 Vehicle inspection · 2561 Austell Rd SW
 Open · Closes 6PM · (770) 405-8091

[Directions](#)

Meineke Car Care Center
 4.3 ★★★★★ (115)
 Auto repair shop · 3195 Austell Rd SW
 Open · Closes 6PM · (678) 383-2879

[Website](#) [Directions](#)

You've reached the end of the list.





§ 134-227. GC general commercial district.

Latest version.

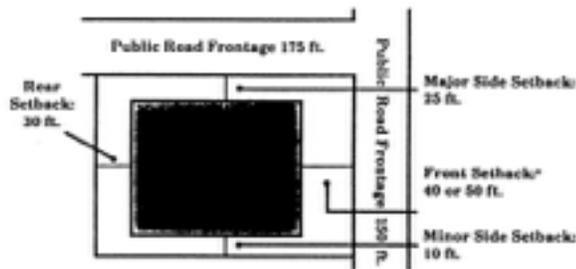


- (4) Lot size and setback requirements. Lot size and setback requirements are as follows:
- Minimum lot size: 20,000 square feet.
 - Minimum lot width at front setback line: 60 feet.
 - Minimum public road frontage: 50 feet.
 - Minimum building setbacks: As shown and applied in the following diagram:

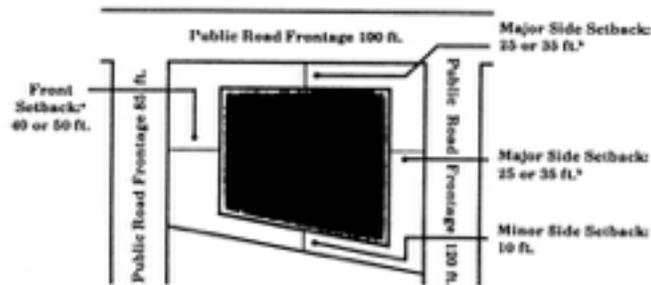
MINIMUM BUILDING SETBACK REQUIREMENTS FOR GC DISTRICT

Note: All setbacks shall be measured from future right-of-way.

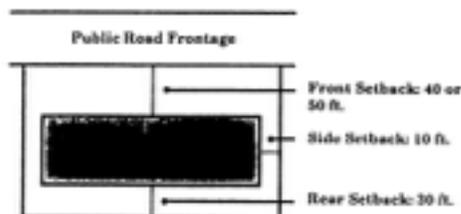
GC



Example for Property with two (2) Public Road Frontages



Example for Property with three (3) Public Road Frontages



Example for Property with one (1) Public Road Frontage

VERSION: FEB 17, 2023 (CURRENT)

Chapter 80 - PROPERTY MAINTENANCE

Chapter 82 - SIGNS

Chapter 86 - SOLID WASTE

Chapter 90 - STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

Chapter 94 - TAXATION

Chapter 95 - TELECOMMUNICATIONS

Chapter 98 - TRAFFIC AND VEHICLES

Chapter 102 - UTILITIES

Chapter 106 - VEGETATION

Chapter 110 - VEHICLES FOR HIRE

APPENDIX A - ZONING ORDINANCE

ARTICLE I. - TITLE

ARTICLE II. - SHORT TITLE

ARTICLE III. - PREAMBLE AND ENACTMENT CLAUSE

ARTICLE IV. - DEFINITIONS

ARTICLE V. - GENERAL PROVISIONS

ARTICLE VI. - ESTABLISHMENT OF DISTRICTS

ARTICLE VII. - USE PROVISIONS

ARTICLE VIII. - AREA, YARD AND HEIGHT REQUIREMENTS

Sec. 801. - Residential districts.

modified

Sec. 802. - Nonresidential districts.

modified

ARTICLE IX. - OFF-STREET PARKING AND LOADING REQUIREMENTS

ARTICLE X. - PLANNED DEVELOPMENT

ARTICLE XI. - NONCONFORMING USES

ARTICLE XII. - EXCEPTIONS AND

Sec. 802. - Nonresidential districts.

modified

EXPAND

Districts	Minimum Lot Area (square feet)	Maximum Lot Coverage by Buildings and Other Structures Including Paving (percent)	Minimum Lot Width at Setback Line (feet)	Minimum Yard Requirement ¹			Minimum ² Side Yard (feet)	Minimum ³ Rear Yard (feet)	Maximum Height of Structures ⁵ (feet)
				Major Thoroughfares	Minor Thoroughfares	Other			
CBD	None	100	None	12	12	12	0	0	35 or 3 stories
LC	8,000	80	85	50	40	35	10	30	55 or 5 stories
NS	20,000	100	100	50	40	40	15	30	55 or 5 stories
OI	20,000	80	100	75	50	50	15	40	55 or 5 stories
GC	20,000	100	100	50	40	40	10 ⁴	30	(Additional height must be approved by the mayor and city council)
OD	30,000	80	100	75	50	50	20	30	
LI	40,000	90	100	75	50	50	20	30	
HI	40,000	90	150	75	50	50	20	40	55 or 5 stories
PS	20,000	100	100	50	40	40	10 ⁴	30	

¹ No building in any of the nonresidential districts shall be located closer than 50 feet to any property line which abuts a residential district.

² If a side property line abuts a railroad right-of-way, no side yard is required.

³ If a rear property line abuts a railroad right-of-way, no rear yard is required.

⁴ May be reduced to zero if using common wall with adjoining property owners.

⁵ Buildings in excess of 35 feet must be approved by the fire chief to insure adequacy of fire protection facilities and services.

VERSION: FEB 17, 2023 (CURRENT) ▾



- › CODE OF ORDINANCES CITY OF SMYRNA, GEORGIA
 - SUPPLEMENT HISTORY TABLE modified
- › PART I - CHARTER AND RELATED LAWS
 - RELATED LAWS COMPARATIVE TABLE
- › Chapter 1 - GENERAL PROVISIONS
- › Chapter 2 - ADMINISTRATION
- › Chapter 6 - ALCOHOLIC BEVERAGES
- › Chapter 10 - AMUSEMENTS AND ENTERTAINMENTS
- › Chapter 11 - RACING EVENTS
- › Chapter 14 - ANIMALS
- › Chapter 18 - BUILDINGS AND BUILDING REGULATIONS
- › Chapter 22 - BUSINESSES
- › Chapter 26 - CEMETERIES
- › Chapter 30 - CIVIL EMERGENCIES
- › Chapter 34 - COURTS
- › Chapter 38 - ELECTIONS
- › Chapter 42 - EMERGENCY SERVICES
- › Chapter 46 - ENVIRONMENT
- › Chapter 50 - FIRE PREVENTION AND PROTECTION
- › Chapter 54 - FLOODS
- › Chapter 58 - LAW ENFORCEMENT
- › Chapter 62 - MANUFACTURED HOMES AND TRAILERS
- › Chapter 66 - OFFENSES AND MISCELLANEOUS PROVISIONS
- › Chapter 70 - PARKS AND RECREATION
- › Chapter 74 - PEDDLERS AND SOLICITORS

Sec. 711. - NS, neighborhood shopping district.



The intent of this section, in establishing the NS district, is to provide for the development of planned shopping centers and related limited retail activities, designed to serve the immediate neighborhood in which such uses are located.

Within any NS commercial district, the following uses shall be permitted:

- (711.1) Planned shopping development in accordance with the provisions of [section 1011](#).
- (711.1.2) Automobile broker office.
- (711.2) Automobile service stations, provided they are located in a planned shopping development, and further provided that no major auto repair shall be permitted and gasoline or other service facilities are located not less than 15 feet from any property line.
- (711.3) Banks.
- (711.4) Day nurseries and kindergartens, provided that:
 - (1) The lot on which such uses are established shall have access on a major or minor thoroughfare.
 - (2) There shall not be less than 35 square feet of usable space per child. Kitchens, bathrooms, closets, halls, storage areas or rooms, offices, rooms designated for staff use, other single use areas and space occupied by adult size furniture shall be excluded in determining usable space. The minimum size of the outdoor area must be equal to 100 square feet × one-third of the center's licensed capacity for children.
 - (3) The outdoor play area shall be enclosed by a fence not less than four feet in height.
 - (4) A circular drive shall be provided for off-street loading and unloading of children.
 - (5) All applicable state and county regulations are complied with.
- (711.5) Electrical supply stores provided there is no outdoor storage of materials, supplies, equipment or vehicles.
 - (711.5.1) Emission and inspection stations provided that:
 - (1) No temporary buildings and/or tents are to be utilized;
 - (2) Paint colors shall be selected from the approved palate of Pantone Colors identified in section 717.173(b) of the Zoning Ordinance;
 - (3) Subject to the requirements of the Sign Ordinance;
 - (4) No licensed location for an emissions or inspection station shall be located closer than 1,000 feet to any similarly licensed emissions or inspection station location; and
 - (5) If constructed in an existing parking lot, the facility and stacking lane shall not occupy any required onsite parking space or encroach into any minimum required driveway width.
- (711.6) Laundry and dry cleaning pickup stations, and coin-operated laundries and dry cleaning establishments having not more than 2,000 square feet of floor area and no

VERSION: FEB 17, 2023 (CURRENT)

Sec. 513. - Vision clearance at intersections.

Sec. 514. - Yards and other spaces.

Sec. 515. - Townhome design standards.

new

ARTICLE VI. - ESTABLISHMENT OF DISTRICTS

ARTICLE VII. - USE PROVISIONS

ARTICLE VIII. - AREA, YARD AND HEIGHT REQUIREMENTS

ARTICLE IX. - OFF-STREET PARKING AND LOADING REQUIREMENTS

ARTICLE X. - PLANNED DEVELOPMENT

ARTICLE XI. - NONCONFORMING USES

Sec. 1101. - Continuation of use.

Sec. 1102. - Extension of building, structure or use.

Sec. 1103. - Restoration of building.

Sec. 1104. - Nonconforming use of annexed property. modified

ARTICLE XII. - EXCEPTIONS AND MODIFICATIONS

ARTICLE XIII. - ADMINISTRATION, ENFORCEMENT, PENALTIES AND REMEDIES

ARTICLE XIV. - ZONING VARIANCE

ARTICLE XV. - AMENDMENTS

ARTICLE XVI. - LEGAL STATUS PROVISIONS

ARTICLE XVII. - APPEALS OF ADMINISTRATIVE DECISIONS

APPENDIX B - SUBDIVISION REGULATIONS

APPENDIX C - FRANCHISES

APPENDIX D - DESIGN SPECIFICATIONS FOR STORM DRAINAGE, ROADS, CONSTRUCTION

< Sec. 1015. - Development standards for high-rise apartment development.

ARTICLE XII. - EXCEPTIONS AND MODIFICATIONS >

ARTICLE XI. - NONCONFORMING USES



Sec. 1101. - Continuation of use.



The lawful use of any building, structure or land existing at the time of the enactment of this ordinance or amendment thereto may be continued even though such use does not conform with the provisions of this ordinance, provided that the nonconforming use of a building, structure, or land shall not be changed to another nonconforming use or reestablished after discontinuance for one year.

Sec. 1102. - Extension of building, structure or use.



No nonconforming building, structure or use shall be extended, nor shall its total value be enhanced, unless such extensions or alterations conform with the provisions of this ordinance. However, a nonconforming use may be extended throughout those interior parts of a building which were designed for such use prior to the adoption of this ordinance or any subsequent amendments thereto, even though such extension may enhance the building's total value.

Sec. 1103. - Restoration of building.



Any nonconforming building or any building containing a nonconforming use, which has been damaged by fire or other cause, may be rebuilt and used as before if such reconstruction is completed within one year of such damage. However, if such building or structure has been damaged to an extent exceeding 50 percent of its replacement cost at the time of such damage or destruction, as determined by the building inspector, any repair, reconstruction, or use of such building or structure shall be in conformity with the provisions of this ordinance.

(Ord. of 12-29-77, § 1)

Sec. 1104. - Nonconforming use of annexed property. modified

modified



(a) Any parcel or parcels of land annexed to the city (a) having multifamily dwelling use; (b) consisting of ten or more acres of land; and (c) containing existing buildings and structures comprising a density of greater than 12 units per acre, shall constitute a legal nonconforming use of such land and the buildings and structures located thereon, in accordance with this ordinance. Moreover, notwithstanding anything to the contrary contained in section 1103 of this ordinance, in the event any building or structure on such land is damaged to an extent exceeding 50 percent of its replacement cost at the time of such damage or destruction, as determined by the city building inspector, than any replacement repair, reconstruction or use of such building or structure may be substantially [the] same as existed immediately prior to such damage, including, without limitation, the density (units per acre) and setback encroachments (if any) that existed