



ADMINISTRATIVE APPEAL APPLICATION

Name of Applicant: Shah Ali Enterprises Telephone: 404-902-9476

Applicant Mailing Address: c/o Dunlavy Law Group, LLC

Name and Address of Property Owner: Shah Ali Enterprises, LLC

Physical Address of Property: 6030 Hillandale Road

Zoning District: M Map Lot: 16-88-01-002

A sketch plan of the property must accompany this application showing the dimensions and shape of the lot, the size and location of existing buildings or alterations and any natural topographic peculiarities of the lot in question.

An Administrative Appeal – relief from the decision or lack of decision of the Code Enforcement Officer or Planning Board in regard to an application for a permit. The undersigned believes that (check one):

- An error was made in the denial of a permit
- The denial of the permit was based on a misinterpretation of the ordinance
- There has been a failure to approve or deny the permit within a reasonable period
- Other see attached

Please explain in more detail the facts surrounding this appeal. Attach all pertinent information. You should be as specific as possible so that the Zoning Board of Appeals can consider your case.

see attached letter from Linda Dunlavy, Esq.

I certify that the information contained in this application and its supplement is true and correct.

Date: 11/21/22

Applicant's Signature: [Handwritten Signature]

Note to Applicant: This form and all supporting documentation should be returned to the Town Clerk with the application fee of \$100. Please be aware that additional charges for advertising and mailing costs will be due prior to the decision on your variance.

You will be notified of the date of the hearing on your request as well as the remaining balance of the fee.



Linda L. Dunlavy
Dunlavy Law Group, LLC
245 N. Highland Avenue, NE, Suite 230, #305
Atlanta, GA 30307
Tel: 404-371-4101 | Fax: 404-371-4102
ldunlavy@dunlavylawgroup.com | www.dunlavylawgroup.com

November 21, 2022

VIA EMAIL TO: keirston.mcmillan@stonecrestga.gov

Keirston McMillan
Secretary to the Zoning Board of Appeals
City of Stonecrest
3120 Stonecrest Boulevard
Stonecrest, GA 30038

**RE: Certificate of Occupancy for Convenience Store/Gas Station at 6030
Hillandale Road—Appeal of Administrative Decision**

Dear Keirston:

I represent Shah Ali Enterprises (“Shah Ali”), the owner of 6030 Hillandale Road and applicant for a certificate of occupancy at that location for a gas station/ convenience store. On November 4, 2022, more than one year after Shah Ali had been issued a land disturbance permit (#LD21-000029) and two years after a building permit had been issued, Keedra Jackson, Deputy Director of the City’s Planning and Zoning Department, advised Shah Ali that because his proposed development did not meet the requirements of a text amendment passed on July 26, 2021, it would need to apply for and secure a special land use permit before a certificate of occupancy could be issued. At the point of this communication, Shah Ali had completed construction of the gas station/convenience store in reliance upon the permits and other approvals provided by the City since over the course of the past 2+ years and expended more than \$3million in construction costs. Additionally, Shah Ali had received an expression of serious interest in the sale of the completed project from Circle K in the amount of \$4.3 million. The communication from Ms. Jackson came as an unexpected and extremely harmful surprise. As such, Shah Ali appeals the determination made by Ms. Jackson pursuant to the City’s Zoning Ordinance Section 7.5.2.

A chronology of known events¹ relative to this appeal is as follows:

- October 2017- Shah Ali obtained a zoning verification letter from the City of Stonecrest confirming that the property at 6030 Hillandale was zoned M . However, it was located in the

¹ Please note that investigation into the permitting process over the course of the past 2+ years continues and additional information will be provided as ascertained.

I-20 Overlay district which prohibited gas station/convenience stores. Client hired Michele Battle who worked with the City and other stake holders to secure, inter alia, removal of the Hillandale property from the Overlay and have it relocated into a tier that allowed gas station/convenience stores

- May 20, 2019- Sha Ali retained engineer Terri Boomer to draft LDP plans for submittal to the City for a gas station convenience store.
- January 16, 2020 -Terri Boomer submitted LDP drawings showing a gas station/convenience store on the Hillandale Property to the City for review.
- June 25, 2020-City returned first round of comments on LDP to Terri Boomer. No comment on whether zoning proper or SLUP required for contemplated use.
- October 20, 2020-Construction drawings for building permit submitted to City.
- November 9, 2020-building permit application filed (CB 20-000073).
- April 20, 2021-Erosion control inspection done and found in compliance.
- June 26, 2021-text amendment relative to fuel pumps passed, according to Ms. Jackson.
- October 13, 2021-LDP issued (#LD21-000029).
- February 14, 2022-Framing inspection completed and passed by City.
- September 1, 2022-As built survey completed by Sha Ali.
- October 10, 2022-Final commercial inspection conducted by City-failed-no mention of need for SLUP.
- November 3, 2022-Final inspection conducted. John Wright advised verbally that passed but refused to finalize inspection report due to Keedra Jackson email next day.
- November 4, 2022-Keedra Jackson informed client for the **first time ever** that a SLUP would be required.

In addition to the events listed above in the chronology, there are numerous email threads between my client, his representatives, and city officials concerning this project over the course of two plus years. At no time until November 4, 2022, was there any mention by city officials of the need for a SLUP. The Use Table in the City's Zoning Ordinance identifies convenience stores as permitted uses within an M zoning district (which is the current zoning on the subject property) but refers a reader to "alcohol outlet or fuel pumps accessory". "Fuel pumps in character areas other than activity centers, unless otherwise allowed under Section 27-4.2.8," require a "SP" in an M District. It is unclear exactly when this provision first appeared in the city's Zoning Ordinance. Although counsel has asked the City when this provision first appeared in its ordinance, a response has yet to be provided. While my client feels confident that its project would meet the requirements for the approval of a special use permit, the process would

require it to wait a minimum of 6 months before the SLUP could wind through the hearing process and there is no guarantee that the SLUP would be approved. Moreover, the client submits that it was error for Ms. Jackson to make the administrative decision she did.

Section 7.5.2.(a) of the Zoning Ordinance gives the Zoning Board of Appeals “the power and duty to hear and decide appeals where it is alleged by the appellant that there is error in any final order, requirement, or decision made by an administrative official based on or made in the enforcement of this zoning ordinance or as otherwise authorized by local law or the Code of the City of Stonecrest.” Section 7.5.2(g) requires that “[a]n appeal ... be sustained ... upon an expressed finding by the zoning board of appeals that the administrative official's action was based on an erroneous finding of a material fact, erroneously applied the zoning ordinance to the facts, or that the administrative official acted in an arbitrary manner.” Ms. Jackson’s decision was clearly erroneous for at least two reasons: 1) if she is correct that the text amendment was adopted first in June of 2021. Shah Ali’s applications for permits predated that adoption and was entitled to consideration under the old ordinance provisions; 2) the City had a ministerial duty to process Shah Ali’s applications in accordance with its own ordinances and its failure to do so over the course of more than two years is arbitrary.

Error #1: Shah Ali applied for LDP and Building Permit prior to June 2021

The land disturbance permit application was submitted fully 1 ½ years before the text amendment upon which Ms. Jackson relies was allegedly adopted. The building permit application was submitted fully 8 months prior to the alleged adoption. Under the City’s own ordinances and well-established Georgia case law, Shah Ali was entitled to the processing and consideration of these permit applications and ultimately the issuance of a certificate of occupancy under laws in effect at the time of the applications, not laws adopted between 8 months and 1 ½ years later. *See, e.g., Barker v. Forsyth County, 248 Ga. 73 (1981); Spalding County v. East Enterprises, Inc., 232 Ga. 887 (1974). Also, Nonconformities Article 8 of City Zoning Ordinance.*

Error #2: Ms. Jackson’s decision was arbitrary considering the permitting history on this project

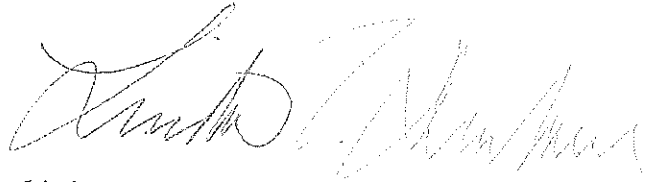
Among its other duties, City officials have a ministerial duty to circulate development and building plans amongst various impacted departments and secure red line comments/feedback concerning code compliance from said departments. If in fact Shah Ali’s application for a gas station/convenience store required the securing of a special land use permit after June 26, 2021, city officials breached this ministerial duty by repeatedly failing to notify the Shah Ali of this requirement when they approved the LDP in October of 2021 (4 months after the alleged text amendment) and when they passed the various inspections conducted pursuant to that LDP and building permits after June 26, 2021. If, as Ms. Jackson states in her email of November 4, 2022, “it appears the land disturbance and building permits were issued with little Planning & Zoning involvement”, that is not through any failure of Shah Ali. Either zoning confirmation was given by city officials in their various reviews or city officials failed to circulate the plans and application materials to Planning & Zoning. To wait two years and five months, after Shah Ali has relied upon official assurances from the City and expended substantial sums of money, to advise Shah Ali that it needs a special use permit is the epitome of arbitrary. Under such circumstances the City is equitably estopped from denying Shah Ali its

certificate of occupancy and Ms. Jackson's decision to withhold the certificate of occupancy contingent upon securing of a special land use permit should be reversed.

Documents relevant to this appeal are enclosed. It is likely additional documents will be submitted as they are secured from the City. Please do not hesitate to contact me should you wish to discuss at more length. Please note that my address has changed and the best place to reach me is through my cell phone at 404-664-0895 (although my office number remains the same).

Sincerely,

DUNLAVY LAW GROUP, LLC




Linda I. Dunlavy

LID

Enclosures

cc: Alicia Thompson
Young Tae
Winston Denmark
Ray White
Ayaz Ali

	CITY OF STONECREST LAND DISTURBANCE PERMIT		2021
	3120 STONECREST BLVD STONECREST, GA 30038 770-224-0200 www.stonecrestga.gov		
	NUMBER OF LOTS: 1	PERMIT NUMBER: LD21-000029	
	NAME OF SUBDIVISION: [Permitting::10083::86296]	LOCATION ADDRESS: 6030 Hillandale Drive	
	DATE ISSUED: 10/13/2021	DESCRIPTION OF JOB: the demolition of a c-store and new construction of one free standing 5,000sqft c-store with 4 fuel dispensers	
EXPIRES: 7/13/2022	CONTRACTOR: Tri/Septem Developers Inc Al Johnson ADDRESS: 2111 Sugar Creek Falls Drive Atlanta, GA 30316 PHONE: 678-777-0030 FEE: \$1,680.00		
I hereby certify that I have read and examined this application and know the same to be true and correct. The granting of a land disturbance permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of related requirements.			
Applicant's Signature _____		Date _____	

DISPLAY THIS CERTIFICATE FOR PUBLIC VIEW

VIEW PERMIT

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Permit #: CB20-000073

Project #: 20-004435

Status: Under Review

Address: 6030 Hillendale Drive [📍](#)

Description: New convenience store building 4893 sq.ft., structural steel structure, metal stud framing and finishes with MEP

[Permit](#) [Reviews](#) [Documents](#) [Inspections](#)

Permit #: CB20-000073
Permit Type: Commercial Building Permit
Sub Type: New Construction

Issue Date
Expiration Date.

CONTACT INFORMATION

Applicant is: Architect/Engineer

Each contractor must complete the Subcontractors Affidavit. Please click here for download

Electrical Contractor:

Electrical Contractor
Subcontractors Affidavit

Mechanical Contractor:

Mechanical Contractor
Subcontractors Affidavit.

Plumbing Contractor:

Plumbing Contractor



3120 Stonecrest Blvd â Stonecrest Georgia 30038â (770) 224-0220â www.stonecrestga.gov

Stonecrest, GA Inspection Report 6030 Hillandale DRIVE

Permit

Number:

Site Address: 6030 Hillandale DRIVE, Stonecrest, GA 30058

Property Owner: Shah Ali Investment

Description: New convenience store building 4893 sq.ft., structural steel structure, metal stud framing and finishes with MEP

Inspection Date: 10/10/2022

Inspection Type: Final Commercial - Building

Inspection Results: Inspection Failed

Inspection comments:

1. Remaining pending items: a) Provide codeworthy guardrail at the west retaining wall, north & south of the wood curb wall. b) SITE inspection approval per Jacob Cockrell (I checked with him; he said not quite approved yet). DOCUMENTS needed: 1) Letter from Engineer Michael Flynn stating that the electrical service, panels, etc. are satisfactory "as built" even though it differs from his plan. 2) Copy of Structural Steel Special Inspection report 3) Copy of State of Ga. Fire Marshall inspection of fuel island. 4) Copy of DeKalb Co. Fire Dept. Final Inspection approval.

Sincerely,
John Wright

**PLEASE REQUEST THE NEXT INSPECTION
24 HOURS IN ADVANCE**

THE CITY OF STONECREST, GA
ONLINE PERMIT APPLICATION RECEIVED

Your permit application has been received and is currently under review

CB20-000073

Type: New Construction

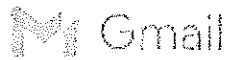
Application Date: 11/09/2020

Address: 6030 Hillandale Drive

Description: New convenience store building 4893 sq.ft., structural steel structure, metal stud framing and finishes with MEP

Applicant: CMB Design Group Carl Burnett

Amount Paid: 0.00



ayaz ali <alienterprise87@gmail.com>

6030 hillandale dr

3 messages

ayaz ali <alienterprise87@gmail.com>
To: "jreed@stonecrestga.gov" <jreed@stonecrestga.gov>
Bcc: Michele Battle <mlb@battlelawpc.com>

Thu, Jan 16, 2020 at 3:14 PM

Hey Joshua,

Submitted 5 sets of plans and was told that you would get back with me regarding how much to pay for the permit. Can you please let me know via email so I can have some drop of the check.

Thank you

Breach of confidentiality & accidental breach of confidentiality

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager. This message contains confidential information and is intended only for the individual named. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. If you are not the intended recipient you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

ayaz ali <alienterprise87@gmail.com>
To: "jreed@stonecrestga.gov" <jreed@stonecrestga.gov>

Tue, Jan 21, 2020 at 3:06 PM

Any update on the fees?
[Quoted text hidden]

ayaz ali <alienterprise87@gmail.com>
To: "jreed@stonecrestga.gov" <jreed@stonecrestga.gov>, cwheeler@stonecrestga.gov

Wed, Feb 12, 2020 at 9:59 AM

Joshua,

Want to see if my plans are ready to be picked up? Also I have yet to make a payment on the plans. Do you have a fee breakdown?

On Thu, Jan 16, 2020 at 3:14 PM ayaz ali <alienterprise87@gmail.com> wrote
[Quoted text hidden]
[Quoted text hidden]



ayaz ali <alienterprise87@gmail.com>

6030 Hillandale Rd Convenience Store Gas Station Results FINAL Inspections of 9-16-22

Keedra Jackson <kjackson@stonecrestga.gov>

Fri, Nov 4, 2022 at 3:23 PM

To: ayaz ali <alienterprise87@gmail.com>

Cc: John Wright <JWright@stonecrestga.gov>, Hari Karikaran <hkarikaran@stonecrestga.gov>, Shah <vansihomesatl@gmail.com>, Susan Carpenter <scarpenter@stonecrestga.gov>, Ray White <rwhite@stonecrestga.gov>

Mr. Ali,

After further research, it appears both the land disturbance and building permits were issued with little Planning & Zoning involvement. However, there was a text amendment passed on July 26, 2021 creating development regulations. This ordinance was passed prior to you submitting for these permits.:

1. Fuel pumps associated with convenience stores, gas stations, and service stations require a special land use permit in activity centers. In all other character areas a special land use permit is required unless that facility must meet at least three of the following criteria:
 1. Facility is located within 100 feet of an intersection of a major arterial street and a major or minor arterial street, or located within 500 feet of an intersection within an interstate highway intersection with an arterial street as designated on the Functional Classification Map in the City Comprehensive Plan.
 2. Facility is accessible via direct and or secondary access to two roads, either through a secondary street or by interparcel or other shared access.
 3. Facility is a new building or includes at least 5,000 square feet of retail space, or facility is part of a major redevelopment, as defined in section 27-8.1.16.

According to my review you are only meeting one of these requirements. This means you will need a Special Land Use Permit. Furthermore, if you will be serving alcohol, you must be 600 feet from a school, church, substance abuse treatment center and alcohol package store or outlet.

The facility must consist of the following:

Facility include must include at least two bathrooms capable of serving at least three persons at a time, open to the public, and compliant with the Americans with Disabilities Act, FG..

If a reverse frontage design is proposed the primary building shall be located close to the street to define street edge. Pump islands shall not be located between the building and the street, but shall be placed behind or to the side of the primary building.

The facade of the primary building located closest to the street shall include architectural features and shall have an active entrance either on the side or rear, with clear unobstructed pedestrian access from the public sidewalk. The street facade shall have at least 25 percent fenestration or faux fenestration.

11/4/22, 3:54 PM

Gmail - 6030 Hillendale Rd Convenience Store Gas Station Results FINAL Inspections of 9-16-22

Service areas, storage areas, and trash enclosure shall be oriented away from public view and screened from adjacent properties.

Facilities must provide a two-foot-high masonry wall with landscaping and/or an evergreen hedge to help screen the pumps from view from a public right-of-way.

I don't see these on your plans except for the trans enclosure.

With this review, you are not eligible for a CO at this time. Please feel free to reach out to me to schedule a Pre-application meeting to discuss the Special Land Use Permit.

Thank you

Keedra T. Jackson, MPA

DEPUTY DIRECTOR

PLANNING & ZONING DEPARTMENT



City of Stonecrest

3120 Stonecrest Blvd, STE 190

Stonecrest, GA 30038

cell: 470.542.0057

main: 770.224.0200

kjackson@stonecrestga.gov

www.stonecrestga.gov

From: ayaz ali <alienterprise87@gmail.com>

Sent: Friday, November 4, 2022 12:57 PM

To: Keedra Jackson <kjackson@stonecrestga.gov>

Cc: John Wright <JWright@stonecrestga.gov> Hari Karikaran <hkarikaran@stonecrestga.gov> Shah <vansihomesat@gmail.com> Susan Carpenter <scarpenter@stonecrestga.gov>

Subject: Re: 6030 Hillendale Rd Convenience Store Gas Station Results FINAL Inspections of 9-16-22

11/4/22 3:54 PM

Gmail - 6030 Hillandale Rd Convenience Store Gas Station Results FINAL Inspections of 9-16-22

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

You make the statement but then don't respond. What do you mean by the alcohol license distance requirement for gas stations? When did this convenience store / gas station distance get approved? This wasn't the case when I applied for the permit and requested a zoning certificate. Will I be grandfathered in? Please respond asap since I have spent a lot of money getting this development done. My attorney and I both requested a zoning and alcohol verification before starting the development.

[Quoted text hidden]