



ZONING BOARD OF APPEALS STAFF REPORT

Zoning Board of Appeals Public Hearing March 21, 2023

CASE NUMBER:	AAA22-000002
PROPERTY LOCATION:	6030 Hillandale Drive Stonecrest GA 30058 (Parcel 16 088 01 002)
CURRENT ZONING:	M (Light Industrial)
PARCEL SIZE:	1.16 +/- acres
PROPERTY OWNER(S):	SHAH ALI INVESTMENT
APPLICANT:	Linda Dunlavy, Dunlavy Law Group, LLC on behalf of Applicant Shah Ali Enterprises, LLC
STAFF RECOMMENDATION:	Approval with Conditions
VARIANCE REQUEST:	To appeal administrative decision to deny issuance of certificate of occupancy for convenience store/gas station

Current Use

The current use of the subject property is for commercial purposes for use as a convenience store and a gas station. This property owner, Shah Ali Enterprises, has received a serious interest in the sale of the completed project from Circle K in the amount of \$4.3 million. Property is located at 6030 Hillandale Drive Stonecrest GA 30058.

Zoning and Case History

The subject property and all surrounding properties are zoned M – Light Industrial and Stonecrest Overlay District Tier 6. There were no known conditions of zoning found associated to this property.

The City's Zoning Ordinance prohibits package store but not alcohol outlets that are accessory to convenience store/gas stations.



















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**Figure 1: 6030 Hillandale Drive
Retrieved from CityMap of Stonecrest, GA GIS**

Zoning

- | | | | |
|---|---|---|---------------------------------|
|  | NS - Neighborhood Shopping |  | R-85 - Residential Med Lot |
|  | C-1 - Local Commercial |  | R-75 - Residential Med Lot |
|  | C-2 - General Commercial |  | R-60 - Residential Small Lot |
|  | OIT - Office-Institutional-Transitional |  | RSM - Small Lot Residential Mix |
|  | OI - Office-Institutional |  | MR-1 - Med Density Residential |
|  | OD - Office-Distribution |  | MR-2 - Med Density Residential |
|  | M - Light Industrial | | |
|  | M-2 - Heavy Industrial | | |
|  | MU-4 - Mixed-Use High Density | | |
|  | RE - Residential Estate | | |
|  | R-100 - Residential Med Lot | | |



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Existing Conditions

According to the Linda Dunlavy's administrative appeal application, "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 requirements if 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."

Please note: The land disturbance permit (#LD21-000029) was issued on October 13, 2021. The commercial building permit (#CB20-000073) was issued on November 18, 2021.

Administrative Appeal

The applicant is seeking an administrative appeal for relief from the decision to deny the issuance of a certificate of occupancy for a convenience store/gas station. As a convenience store/gas station with an alcohol outlet, it is important to note Section 4.2.8. B of the Chapter 27 Zoning Ordinance prohibits alcohol outlets being within 600 feet of a school building, school grounds, educational facility, college campus or sexually oriented business or substance abuse treatment owned, operated, or approved by the state or county or municipal government. Furthermore, is the violation of the location criteria. Section 4.2.28.D., states Fuel pumps associated with convenience stores, gas stations, and service stations cannot be located within 100 feet of an intersection of a major arterial and a major or minor arterial road or located within 500 feet of an interstate highway intersection with an arterial street designated as on the Functional Classification Map in the City the Comprehensive Plan. Per staff's due diligence, there is another gas station adjacent to the subject property and there is a rehab facility next door. The applicant has violated these standards.



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Figure 1: AAA22-000002 6030 Hillandale Drive



Figure 2: AAA22-000002 6030 Hillandale Drive



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APPLICABLE CODE REQUIREMENTS

Zoning Ordinance (Chapter 27)

Article 2 – District Regulations

Division 31: M (Light Industrial) District

Sec. 2.31.1. Statement of purpose and intent.

The purpose and intent of the City Council in establishing the M (Light Industrial) District is as follows:

- A) To provide areas for the establishment of businesses engaged in the manufacturing, processing, creating, repairing, renovating, painting, cleaning, or assembling of goods, merchandise, or equipment and the sale and distribution of such goods, merchandise or equipment in locations so designated in the comprehensive plan;
- B) To provide an environment for light industrial uses that produces no appreciable impact on adjacent properties and preserve the appeal and appearance of residential and commercial areas;
- C) To ensure that all establishments located within the M (Light Industrial) District operate in compliance with the noise standards contained in this chapter and that any negative noise impact resulting from the use of land within the M (Light Industrial) District is contained within the boundaries of said district and does not create noise problems for adjoining residential, office or commercial districts;
- D) To provide an area within City of Stonecrest for recycling and green businesses to locate;
- E) To generate employment opportunities and economic development;
- F) To ensure that M (Light Industrial) Districts are so located that transportation access to thoroughfares and freeways is available;
- G) To implement the future development map of the city's most current comprehensive plan

Zoning Ordinance (Chapter 27)

Article 1– General Requirements

Division 5: Variances and Appeals to the Zoning Board of Appeals

a. Sec. 7.5.2. – Appeals of decisions of administrative officials

A. General power.

The zoning board of appeals shall have 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. Administrative officials must make final decisions covered by this section within 180 days of receipt of all necessary information to make such decision. A failure to act prior to the passage of 180 days shall not be construed to be a final order, requirement, or decision within the meaning of this division. If a decision is not made by the 181st day, the requested decision is deemed denied and becomes appealable. All such appeals shall be heard and decided following the notice requirements of section 7.2.4, and pursuant to the following criteria and procedural requirements.



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B. Appeals of decisions of administrative officials.

Appeals of decisions of administrative officials may be filed by:

- (1) Any person aggrieved by; or
- (2) An owner of property within 250 feet of the nearest property line of the property that is the subject of any final order, requirement, or decision of 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.

City of Stonecrest Zoning Ordinance (Chapter 27):

Division 5: Stonecrest Area Overlay District

Prohibited uses. The following principal uses of land and structures are prohibited.

1. Sexually Oriented Business
2. Pawn Shops
3. Package stores
4. Check cashing facility



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STAFF ANALYSIS

Following are the specific variance considerations listed in Sec 7.5.3 of the Stonecrest Zoning Ordinance that must be considered by the Board of Zoning Appeals to grant a variance. These considerations include:

- A. By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic and other site conditions (such as, but not limited to, floodplain, major stand of trees, steep slope), which were not created by the owner or applicant, the strict application of the requirements of this chapter would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district.**

There are no exceptional site conditions. The collected data showcases known events which support the argument of requested documentation being provided and submitted by the applicant. A request was communicated with staff for an administrative appeal.

- B. The requested variance does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located.**

Granting the administrative variance would not go beyond the minimum necessary to afford relief and does not constitute granting special privilege which is inconsistent with the limitations upon other properties in the zoning district in which the subject property is located. Due to the site factors, space requirements of the site, and conditions of the process of this development the applicant's request is reasonable.

- C. The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located.**

By implementing or approving this variance request, the site and its surrounding area will be significantly impacted. There has however been concern about the proliferation of gas service stations in the city and their negative impacts on adjacent neighborhoods. These updated regulations allow Planning Commission, and City Council more opportunities to review Special Land Use Permits on a case-by-case basis for these uses. The updates also help to tighten up the location criteria for such uses restricting where they can be placed. However, based on the information presented and case finding, this case been in the pipeline for over two years, and the applicant had been receiving the "green" light via approved land use permits and commercial business permits that were reviewed by the building department. Before construction, then City Planner Christopher Wheeler confirmed zoning for applicant.

- D. The literal interpretation and strict application of the applicable provisions or requirements of this chapter would cause undue and unnecessary hardship.**

As the code reads today, the applicable provisions would cause concern as this will be the second gas station in the area. It is in the City's best interest to thoroughly review all incoming documents and collaborate more effectively with between departments to avoid misinterpretation of the process or the ordinance. Therefore, considering the movement of the project, on a case by case basis, staff



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recommends the approval of the issuance of a certificate of occupancy for applicant only after the condition to secure fuel underground storage permit has been met.

E. The requested variance would be consistent with the spirit and purpose of this chapter and the Stonecrest Comprehensive Plan text.

It is important to note the application and process started before the new ordinance took effect. The process began in October 2017, and the ordinance was passed on July 26, 2021. Based on the ordinance and information presented at the start of the project, the project was consistent with the spirit with the purpose of the existing chapter and the Stonecrest Comprehensive Plan. That is why the appeal has been brought before this board for further review. Based on the updated ordinance regarding convenience stores/gas stations with an alcohol outlet, new requirements such as acquiring a Special Land Use Permit and not being within 1,000 feet of another gas station and not being within 600 feet of an educational facility or substance abuse treatment facility are in effect. The requested variance would be consistent with the spirit and purpose of this chapter and the Stonecrest Comprehensive Plan, which has designated this site as Suburban on the Future Development Map.

NOTE: Special Land Use Permit (or SLUP) is in reference to cases where a use is permitted but there are supplemental use regulations.

RECOMMENDED CONDITIONS

Based on the findings and conclusions, it appears the applicant meets all the criteria for approval. Therefore, staff recommends **Approval of AAA22-000002** with the following condition (s):

- The applicant shall secure fuel underground storage permit/license or certificate of station registration and a Special Land Use Permit before issuance of a certificate of occupancy