

# ZONING BOARD OF APPEALS MEETING MINUTES SUMMARY

Stonecrest City Hall - 6:30 PM \*Spoke-in-Person Meeting

March 21, 2023



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## I. Call to Order

Commissioner Michael Armstrong called the meeting to order at 6:30 PM.

## II. Roll Call

Chairman Michael Armstrong (District 4) called the roll. Ms. Kelly Ross (District 1), Ms. Gwendolyn Green (District 2) and Ms. Sonja Hicks (District 3), and Mr. Shedrick Harris (District 5) were present.

The Planning & Zoning Director, Ray White, and Planner, Keirston McMillan were present. Attorney Alicia Thompson, Fincher Denmark, LLC, and Attorney Banks were present.

## III. Approval of the Agenda Need: **Agenda not approved.**

## IV. Minutes:

Commissioner Michael Armstrong called for a deferral for the minutes dating **February 21, 2023**, due to them not being complete. A motion to defer the Zoning Boards of Appeals Meeting Minutes dated **February 21, 2023**, was called by Sonja Hicks (District 3). Shedrick Harris (District 5) seconded the motion. The motion was unanimously **Deferred**.

## V. Presentations: Upcoming Cases Presented by Ray White, Director

**AAA22-000002**

## VI. Old Business:

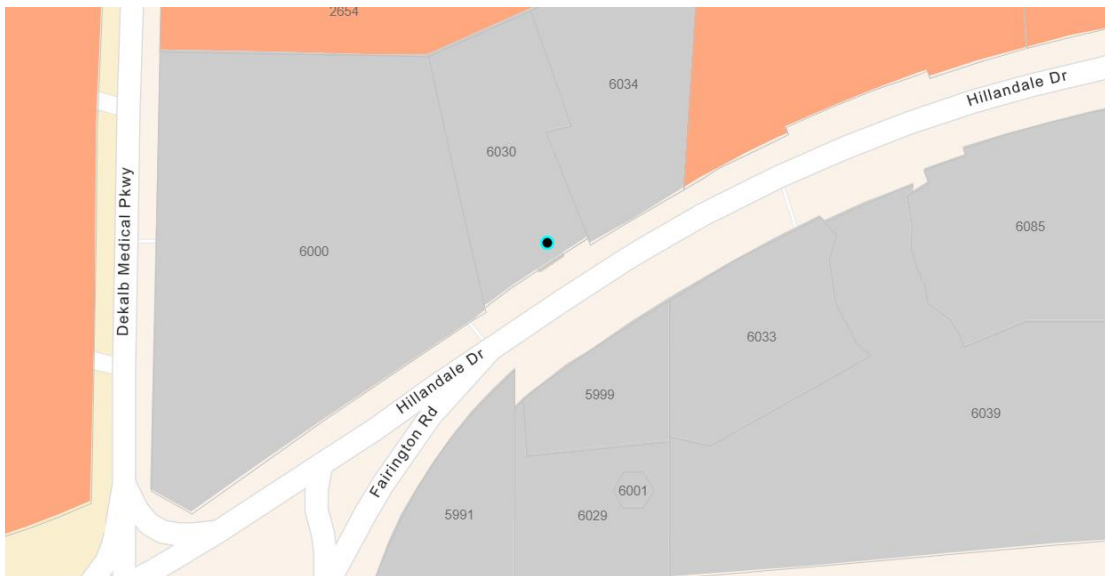
LAND USE PETITION:	AAA22-000002
PETITIONER:	Linda Dunlavy, Dunlavy Law Group, LLC on behalf of Applicant Shah Ali Enterprises, LLC
LOCATION:	6030 Hillandale Drive Stonecrest GA 30058
CURRENT ZONING:	M (Light Industrial) and Viewshed Overlay
PROPOSED DEVELOPMENT:	To appeal an administrative decision to deny issuance of a certificate of occupancy for convenience store/gas station.

*Director of Planning and Zoning Ray White presented this case,*

The Zoning Board of Appeals staff report for March 21, 2023 was used to present this case and staff is recommending approval with conditions.

The current use of the subject property is for commercial purposes for use as a convenience store and a gas station. The subject property 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 with this property. The City’s Zoning Ordinance prohibits package stores but not alcohol outlets that are accessory to convenience stores/gas stations. It is mainly surrounded by industrial development.



**Figure 1: 6030 Hillandale Drive**  
**Retrieved from City Map of Stonecrest, GA GI**

#### 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		

“According to 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 his proposed development did not meet requirements because a text amendment passed on July 26, 2021. The applicant would need to

apply for 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 over the course of the past 2+ years and expended more than \$3million in construction costs. Please note the land disturbance permit number LD21000029 was issued on October 13, 2021. The commercial building permit number CB20-000073 was issued on November 18, 2021.”

“In discussion of this particular 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.

The pictures below show the elevation of the facility located at 6030 Hillandale Drive when it was under construction after receiving the permits and LDP to do so





### **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 applicant 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.

#### **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.
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City of Stonecrest Zoning Ordinance (Chapter 27):

Division 5: Stonecrest Area Overlay District

a. Sec. 3.5.15.3. - Viewshed zone (Tier VI).

Definition: **Viewshed** means the total visible area from an identified observation position.

- A. Statement of purpose and intent. The intent of Tier VI is to promote uniform and visually aesthetic development which serves to unify the distinctive visual quality of the Stonecrest Area Overlay District.
- B. Permitted principal uses and structures. The permitted principal uses of land and structures for property in Tier VI shall be governed by all of the underlying zoning district regulations.
- C. Accessory uses and structures. The permitted accessory uses and structures for property in Tier VI shall be governed by the underlying zoning district.
- D. Prohibited uses. The following principal uses of land and structures are prohibited in Tier V: Viewshed Zone:
  1. Sexually Oriented Business
  2. Pawn Shops
  3. Package stores
  4. Check cashing facility

**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 permit 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 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.

These are the reasons for the basis for the appeal.

**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.

*Ms. Kelly Ross (District 1)* Had a question about the staff analysis. She wanted to understand the date timeline that the applicant initially started the process relative to the ordinance of being amended in passing in July 26, 2021

*Director White stated* that information was compiled by the applicant and asked if the applicant's attorney could come to the stand

There was a **motion** to open the public Hearing by the *chairman* and *Ms. Green (District 2)* seconded the **motion**. It was approved by a unanimous vote.

Procedures for public hearings were read by *Ms. Green (District 2)* and *Director Ray White* kept the time.

*The applicant's attorney Linda Dunlavy* came to stand to speak on behalf of her client. Says this is a tragedy to the applicant who is investing in a project that cannot be fulfilled due to him not being

able to do what he wants to do. Now that the structure is up it only has value as a gas station. The applicant has a contract or at least an offer with Circle K for 4.2 million. Every month that this goes by without a certificate of occupancy he loses 20 thousand dollars in potential rental.

She mentioned that her client submitted documents, but she will resubmit all the documents that the client submitted pertaining to the matter due to the pages being missing on the City of Stonecrest website.

Appealing the decision that was made in November of 2022

She stated that her client applied for a land disturbance permit depicting a gas station convenience store on the property in January of 2020 and in November of that same year he applied for a building permit. LDP was issued by the city of Stonecrest in October of 2021.

The building permit was obtained in November on 2021 and construction was completed in September of 2022

In November of 2022, the applicant was informed that he could not continue the development of this business without a Special Land Use Permit

The applicant has spent over 3 million dollars on the project, and it is completed

TMOD approved in August 2021 states that you cannot have a gas station within 1500 feet of another gas station.

Appealing this requirement for a Special Land Use Permit because the project was started and had permits before TMOD approval.

Was asked for a letter stating why the law on why he should be entitled to processing of this application under the regulations that were in effect in 2020. A letter was provided.

There was an error made on behalf of Ms. Jackson (previous employee) with the approval being giving and revoked

Asking a special land use permit that this board should sustain the appeal and order the certificate of occupancy to be issued

*Commissioner Michael Armstrong* asked if anyone was in favor to this come to the stand

*A member of Shah Ali Investment (client)* came to the stand and stated that they started this process back in 2020 and had civil engineers to provide information to get the permits approve.

Talked to contractors and developers that stated that they are grandfathered in

Got a professional alcohol survey to show that there is not an alcohol treatment center near the property.

*The applicant's attorney Linda Dunlavy* briefly came back to the stand to state that center near the property is a physical therapy center, but this is a separate issue

*Chairman Michael Armstrong* asked if anyone was in opposition to this application to come to the stand. There was none and there was a **motion** and a second **motion** to close the public hearing. It was **motioned** to close unanimously and discussion started.

*Chairman Michael Armstrong* asked Director Ray White if he knew that the building near the property was a physical therapy center, not an alcohol treatment facility

*Director Ray White* stated that he was not able to speak on that issue.

*Shedrick Harris (District 5)* asked about the land disturbance permit time frame

*Director Ray White* stated that the LDP is handled by the engineering department, not by planning and zoning

*Shedrick Harris (District 1)* asked if there was a difference between being approved and issued a permit and why they would not have been updated.

*Director Ray White* stated that usually, the city announces when a new legal TMOD is put in place and they would have had knowledge of that

*Attorney Alicia Thompson* stated that “there's the general notice that has to be given by the city if the zoning ordinance has to change but it's not the responsibility of the city to notify residents outside of the notices or that the entire public has to receive or applicants that certain things are changing as you know they're happening with the zoning law”

*Chairman Michael Armstrong* asked if there is a percentage of the completion of the project completed can that have an influence on if the applicant may continue or not if it was under the old law

*Attorney Alicia Thompson* stated that it is dependent on a number of factors to see if the applicant is affected or not

*Chairman Michael Armstrong (District 4)* asked about the percentage of completion for this project.

*Ms. Kelly Ross (District 1)* It is the responsibility of residents and applicants to insure that nothing has changed and be mindful of what can come up over time

*Director Ray White* stated that he was not here at the time when the project was not in the city at that time, but it can be difficult to have all projects going on in the city underway, but inspectors would have viewed the development

The pictures that the department had were recent pictures of the development

*Sonja Hicks (District 3)* asked if there would be any problems that would arise if the property were grandfathered in



*Attorney Banks stated* that at the time that Mr. Ali submitted these applications the law in place at that time and it has not changed

*Attorney Alicia Thompson mentions* that grandfathering in is not an option.

*Chairman Michael Armstrong asked* why the applicant was not notified about the special land use permit for 2020

*Director Ray White stated* that the application was applied for in 2020 and it was issued in 2021

*Attorney Alicia Thompson stated* that the LDP was applied for on Oct 4, 2021, and issued on Oct 13, 2021. The building permit was applied for on Nov 9, of 2020, and issued on November 18, 2021

The application has to be proper in order to get vested rights

*Director Ray White states* that staff can only go by what they have in their possession

*Attorney Banks stated* that the application in 2017 was just to verify the zoning

*Ms. Kelly Ross (District 1)* needed clarity on the dates of the applications because it seemed that the application submission and issuance seemed as if it all happened in a week.

*Shedrick Harris (District 5)* asked which permit would have been issued first

*Director Ray White stated* that the LDP would be issued after going through the process of permission.

*The ZBA members gave Linda Dunlavy* a moment to read from a page in her packet

*Attorney Alicia Thompson stated* that developers have several ways to inform themselves about law changes within the city such as the legal newspaper and city website

*Gwendolyn Green (District 2)* asked if the facility was fully developed with the exception of the underground portion.

*A member of Shah Ali Investment (client)* mentioned that he has a statement that it complies.

*Chairman Michael Armstrong (District 4)* asked if he had a **MOTION**

*Gwendolyn Green (District 2)* motioned to **APPROVE** the operation of this business without the Special Land Use Permit considering that the building is almost complete and the effect the pandemic may have had on the project.

*Sonja Hicks (District 3)* Second the **MOTION** to approve. **APPROVED** by unanimous vote.

The meeting was **ADJOURNED** and ended at 7:52 pm

APPROVED:

*Eric S. Fulkerson*

08-01-2023

CHAIRMAN

Date

ATTEST:

*Cofi Brown*

8/02/2023

SECRETARY

Date