

Criteria:

1. Exceptional or extraordinary circumstances or conditions *are/are not* applicable to the development of the site that do not apply generally to sites in the same zoning district.
2. Granting the application *is/is not* necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship.
3. Granting the application *will/will not* be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.

PICTURES



650 South Marietta Parkway



Property frontage along South Marietta Parkway



Patio Area

Staff Analysis:

Brian Arnold, Vice President of Development for GPS Hospitality, LLC, is requesting variances for the Burger King at 650 South Marietta Parkway. The property is zoned CRC (Community Retail Commercial). QuikTrip, zoned CRC, is located to the west and Dunkin Donuts, also zoned CRC, is located to the east. The Cobb County Transit facility is zoned LI (Light Industrial) and is located immediately to the south.

A building renovation, valued at \$230,000, has just been completed on the property. Because the construction work was isolated to the building only, the following section of the nonconforming use section applies when determining whether the entire site also has to come into compliance:

706.03 Continuance of a nonconforming building or structure.

Any nonconforming building or structure existing as of June 9, 2010, may be retained, except that it shall not be:

- C. Rebuilt, altered or repaired over a 12 month period if such construction costs would exceed 75% of the replacement costs of the building, as calculated according to the Square Foot Construction Costs table produced by the International Code Council, or the total appraised building value as shown on the current tax record, or an appraisal made by a licensed appraiser; whichever is the greater value of the three options. If an appraisal is used, the appraisal must be provided for review prior to issuance of the building permit. This section shall apply in cases where there is no sitework, and neither the footprint nor square footage of the existing building expand. Any increase of the building square footage must be for a use that is conforming and all other zoning and development standards must be met for the new addition.*

In this case, the construction cost of the renovation fell just below 75% of the building's replacement cost using the Square Foot Construction Costs table produced by the International Code Council. This means the building may be remodeled without bringing the entire site (landscaping, signs, etc) into compliance.

However, the applicant is now requesting the ability to remove the concrete patio in the front of the building so it may be replaced with sod. Because it is lower than the road and provides screening from South Marietta Parkway, the patio is attracting loiterers engaging in unsavory and illegal activities after hours. To increase safety, the applicant would like to demolish the concrete and fill the area to the same grade as the parking lot and road in order to eliminate the appeal of the location for loiterers. However, because this constitutes site work, it would require the entire property to come into compliance since the construction costs would exceed 50% of the building's replacement cost.

In order for the patio to be demolished and filled, the following issues would need to be corrected in order to bring the site into compliance:

- 1. Trees** – Street trees, parking lot islands, and the necessary tree density units would need to be provided.
- 2. Sign** – The site contains a pylon sign, approximately 30 feet high, along South Marietta Parkway. To be considered compliant, the sign would need to be lowered to 15 feet tall or less, the square footage of the sign area reduced, and then converted to a monument style sign by adding a base.

3. **Overlay District** – This property does not meet the minimum points required to satisfy the optional design elements for the building or the site design. Further, there are many aspects of the mandatory building and streetscape elements that are not being met or may not be met (exterior building materials, street trees, pedestrian lighting features, etc.). In order for the applicant to demolish the patio and not come into compliance with the overlay requirements, a variance from these regulations would be required.

The applicant appears to have at least four options. The first would be to do nothing. The second would be to demolish the patio and comply with the tree, overlay, and sign codes. The third option would be to wait until February 2015, when the 12 month period would reset, to demolish the patio. The applicant has opted for the fourth option, which is to apply for variances to demolish the patio, but not come into compliance with the rest of the codes. City Council could consider each of the variance requests individually, which would require compliance with some of the issues; or they could consider all three as a group, which would alleviate the applicant from complying with current codes on these issues.