



**STAFF REVIEW**

**Variance Case #:** V2014-25

**Legistar #:** 20140767

**City Council Hearing:** Wednesday, August 13, 2014 – 7:00 p.m.

**Property Owner:** Allgood I-75 Ind Prop. Inc.  
Attn: Jim Freeman  
280 Pearl Street  
Marietta, GA 30060

**Address:** 879 Pickens Industrial Drive

**Land Lot:** 10200      **District:** 16      **Parcel:** 0100

**Council Ward:** 6A      **Existing Zoning:** LI (Light Industrial)

**Special Exception / Special Use / Variance(s) Requested:**

1. Variance to eliminate the requirement that a billboard be regulated as a principal use. [*§714.04 (F.1)*]
2. Variance to allow a billboard be located on a lot upon which a building is located if such lot or the building thereon has any sign located thereon. [*§714.04 (F.9)*] and [*§714.06 (A.11)*]
3. Variance to receive density credit for apple trees. [*§712.08 (L)*]
4. Variance to allow 12 existing dogwood trees located in the right of way count as street trees. [*§712.08 (G. 2)*]
5. Variance to waive the street trees along the I-75 frontage. [*§712.08 (G. 2)*]

**Statement of Fact**

As per section 720.03 of the Comprehensive Development Code of Marietta, the Board of Zoning Appeals may alter or modify the application of any such provision in the Development Code because of unnecessary hardship if doing so shall be in accordance with the general purpose and intent of these regulations, or amendments thereto, and only in the event the board determines that by such alteration or modification unnecessary hardship may be avoided and the public health, safety, morals and general welfare is properly secured and protected. In granting any variance the board of zoning appeals shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of these regulations and may designate conditions to be performed or met by the user or property owner, out of regard for the public health, safety, comfort, convenience, and general welfare of the community, including safeguards for, with respect to light, air, areas of occupancy, density of population and conformity to any master plan guiding the future development of the city. The development costs of the applicant as they pertain to the strict compliance with a regulation may not be the primary reason for granting a variance.

**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**



**879 Pickens Industrial Drive**



**Dogwood trees along Pickens Industrial Drive**



**Dogwood tree along Pickens Industrial Drive**

**Staff Analysis:**

The applicant, Jim Freeman, is requesting five variances for the currently vacant property located at 879 Pickens Industrial Drive. The property is 7.03 acres in size and is located at the corner of Pickens Industrial Drive and Allgood Road. I-75 runs along the entire rear of the property. Currently vacant and undeveloped, the property is zoned LI (Light Industrial) and is adjacent to another parcel zoned LI to the southeast with office/warehouse buildings.

The applicant's development plans for this project were approved on June 25, 2014 – with plans that meet all of the zoning regulations. Development can begin now on the property; however, he is seeking to have the five variances considered that would substantially change the landscape plans for the entire site.

The applicant is proposing the construction of two new warehouse buildings, one labeled “AK Manufacturing” and the other “Aquaguard,” that are both over 33,000 square feet in size. The applicant is requesting variances for various tree-related issues, and to allow the existing billboard remain on the same tax parcel as the proposed development.

**Variance #1 & 2 (Billboard lot split)**

City sign regulations require billboards to be regulated as a principal use that must be located on an individual parcel of property at least 20,000 square feet in area. Despite having enough property to split off a 20,000 square foot parcel for the billboard and still be able to meet the setbacks for the two proposed buildings, the applicant is requesting a variance to allow the billboard remain on the same parcel as the proposed development.

The applicant initially applied for this variance in October 2013, but chose to withdraw the request when staff suggested that as an alternative, he could subdivide the property rather than going through the variance process. Contrary to the applicant's statement in the application (in item #1), Planning & Zoning staff did not force the applicant to subdivide, but rather provided options. In November of 2013, the applicant was given the choice to continue with the variance application or work with an engineer to subdivide the parcel. The applicant notified Staff that he would *“like to avoid the variance & is fine with the suggested change”* and would have the engineer prepare the plat. An exemption plat is a type of survey used for lot splits, and contains much of the same information provided within construction plans, which are required for the land disturbance permitting process. The applicant has already prepared this plat, but has not had it recorded and would prefer not to be held to this requirement.

If a variance is granted to allow the billboard remain on the same tax parcel as the new development, an exemption plat will still be required to eliminate the property line between 875 Pickens Industrial Drive (Parcel# 16102000110) and 879 Pickens Industrial Drive (Parcel# 16102000100), so that a new building is not constructed over a property line, which is not permitted. The combination of these two parcels, by an exemption plat, would be required even if the billboard did not exist or was not an issue.

### **Variance #3 (Density credit for apple trees)**

The applicant is also requesting variances from the Tree Ordinance (§712.08). The first tree-related variance request is to receive density credit for apple trees, which are not included in the "Approved Tree Species" list. The applicant would like to use an area of the site located near the billboard to plant rows of apple trees to create an apple orchard similar to one he owns in Cherokee County. In the letter provided to staff, Mr. Freeman proposes to substitute 24 apple trees for 16 – 3 inch elm trees and 5 – 3 inch maple trees. The 16 elm trees are located in specifically required areas - all the parking lot islands, along the Pickens Industrial Drive frontage southeast of the driveway, along the Allgood Road frontage, and along the I-75 frontage. The maple trees are indicated along the Allgood Road frontage and the I-75 frontage.

It should also be noted that most of the area surrounding the billboard is located within a 100' Georgia Power easement. Any portion of the subject property which is within a utility power easement is required to meet the height standards of the controlling entity.

If this variance is approved and the apple trees are planted in rows near the billboard, there will no longer be any trees in the parking lot islands, along the Allgood Road, Pickens Industrial Drive or I-75 road frontages.

### **Variance #4 (Waiver of street trees along Pickens Ind.)**

There are twelve (12) dogwood trees located in the right of way along Pickens Industrial Drive that the applicant has stated that he planted approximately twenty years ago. The tree ordinance does not allow Dogwood trees - or any other trees - located in the right of way to count as street trees. Further, the City Arborist has stated that most of these dogwood trees have health problems and are in decline. Staff has considered the street tree requirement for this section of road frontage satisfied by the existing tree save area - as long as the trees are to be protected during construction and cleaned of invasive scrub brush. If credit is given for these 12 dogwoods, then the applicant will be able to eliminate the requirement for 12 street trees along other sections of road frontage. This will leave a section south of the curb cut along Pickens Industrial without street trees.

### **Variance #5 (Waiver of street trees along I-75)**

The last variance being requested would waive the requirement that street trees be planted along the I-75 road frontage in order to enhance the visibility of the proposed buildings. Based on the topography shown on the landscape plan, the site sits between 20' and 30' higher than I-75.

The purpose of having a street tree requirement within the tree ordinance is to create tree-lined parkways. Because of the width of the I-75 right of way, the height of the property above I-75 and GDOT policies, it is difficult, if not impossible, to have I-75 meet the intent of the ordinance as a tree-lined parkway. In his request, the applicant reasons that the decreased visibility created by the required street trees is a justification of the variance. However, this is an argument that could be used by any development site in the City and would likely undermine the intent of the ordinance.

Compliance, in this situation, does not result in a particular hardship as distinguished from a mere inconvenience or a desire to save money. If this variance from the tree ordinance is approved, there could be other ways to support a hardship argument such as the practical constraints along this particular section of I-75 as stated above.

Also, although the landscape plan approved for permitting shows an excess of density units, the calculations have exempted the area allocated towards the proposed billboard parcel. If the applicant receives the variance to allow the billboard remain on the same parcel as the development, the applicant will have to provide density units for the additional 20,000 square feet. In addition, if the billboard parcel remains part of the development site, street trees will be required for the sections of that parcel that front along Allgood Road and I-75 as well, unless that is also waived.