



STAFF REVIEW AND RECOMMENDATION

Variance Case #: V2009-25

Legistar #: 20091196

Board of Zoning Appeals Hearing: Monday, November 30, 2009 – 6:00 p.m.

Applicant: Eddie R. Gomez
2240 Mantilla Court
Acworth, GA 30101

Property Owner: Joe W. Moor
2240 Mantilla Court
Acworth, GA 30101

Address: 712 Lawrence Street

Land Lot: 12140 **District:** 16 **Parcel:** 0910

Council Ward: 5 **Existing Zoning:** CRC (Community Retail Commercial)

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

1. Variance to reestablish a nonconforming use to allow the subject property to be used as a residence for 6 – 10 months. [Section 706.02 (A) and Section 706.02 (B)]

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



712 Lawrence Street



Rear of subject property

Recommended Action:

Approval with stipulations. Eddie R. Gomez, petitioner for the owner, is requesting a variance to allow the property located at 712 Lawrence Street to be used as a residence for 6-10 months. The subject property is zoned CRC (Community Retail Commercial) as well as the properties to the east, west and south. The properties to the north, across Lawrence Street, are zoned OI (Office Institutional) and contain a residence, a vacant lot, and a children's substance abuse center. Although the subject property contains a structure originally built as a residence, the business license and building permit history indicate that it has been used as a business in the past.

Section 706.02 allows the continuance of a nonconforming use as long as the use is not "*changed to another nonconforming use*" or "*reestablished after discontinuance for a continuous period of 6 months or 18 months during any 3 year period....*" At some point prior to 1989, the property was being used as a residence despite the property being zoned CRC. Beginning in 1989, city records show this location as housing an electrical contractor business. It is at this point in time that the property would no longer be considered grandfathered as a residence. However, the property owner is now requesting a variance to allow this property to be used temporarily as a residence.

Residential use of a building or property is typically less intensive than a commercial use. As a result, a temporary residential tenant should have little to no effect on any surrounding properties. However, it appears that the rear of the property is being used to store trucks, trailers, and other various commercial/industrial vehicles. Unless these are personal vehicles of the tenant, it is suggested that they be removed from the premises to prevent any question of whether this property is being used for commercial storage or as a residence. Further, any potential business operations at this location, other than a home office, should be halted while the tenant is using the property residentially. A home office, or Type A Home Occupation, allows residents to register a business license with this City using their home address, but does not allow clients, employees, exterior storage or outside operations at the property. Should the variance request be approved, it is suggested that the tenant be limited to a Type A Home Occupation permit, should he desire.

Because granting the application 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, *staff recommends approval of this variance request with the following stipulations:*

- *All commercial vehicles and trailers be removed from the subject property while it is being occupied as a residence*
- *Any business operations by the tenant be limited to restrictions for Type A Home Occupations, as specified in Section 712.04 Home Occupations*
- *Any and all leases for residential use terminate by September 30, 2010*
- *Any and all residential tenants vacate the property by September 30, 2010*

It should also be noted that, if the application is approved, a building permit will be required to ensure that the interior of the structure is adequately suited for residential use.