



STAFF REVIEW AND RECOMMENDATION

Variance Case #: V2014-56 **Legistar #:** 20141156
Board of Zoning Appeals Hearing: Monday, November 24, 2014
Property Owner: Nicholas C. Jones as Trustee of the Nicholas C. & Beverly P. Jones Irrevocable Trust; The Reuel Hamilton Family L.P.; and Edgar T. Rambo as Trustee of the Edgar T. Rambo Irrevocable Trust
c/o McWhirter Realty Partners, LLC
300 Galleria Parkway, Suite 300
Atlanta, GA 30339
Applicant: Tylin International / Teresa Curry
260 Peachtree Street, Suite 900
Atlanta, GA 30303
Address: 840 Church Street
Land Lot: 16 **District:** 10150 **Parcel:** 0600
Council Ward: 5 **Existing Zoning:** CRC

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

1. Variance to allow an accessory structure closer to Vann Street than the principal structure. §708.16.F.1
2. Variance to reduce the setback for an accessory structure from 10' to 5.' §708.16.F.1
3. Variance to allow the use of metal siding on the building facades facing a roadway. §708.16.G.3

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



Northeastern corner of Vann and Church Streets



Church Street frontage



Subject property from Vann Street

Recommended Action:

Denial. Teresa Curry with T.Y.Lin International is requesting variances for a proposed McDonald's location at the northeastern corner of the intersection of Vann Street and Church Street. The subject property is zoned CRC (Community Retail Commercial), 4.1 acres in size, and contains medical offices. Surrounding properties are zoned CRC and OI (Office Institutional) and also contain medical offices. A developer intends to subdivide the site so that a McDonald's may be constructed on the corner. The applicant is requesting variances for the location of a dumpster enclosure and metal siding for the building façade.

Variance #1 – Enclosure closer to Vann Street

The primary McDonald's building will be oriented so the front is facing Church Street. The location of the dumpster enclosure will still be in the side and rear, but the applicant would like to place the structure nearer to Vann Street than the primary building. According to Section 708.16.F.1, when an accessory structure is located on a corner lot, "*the accessory structure may not be closer to any right-of-way than the principal building.*" Although the structure could be relocated to the other back (northeastern) corner of the site, the applicant has stated that the dumpster will be most accessible in this location. The applicant has also stated that the dumpster will be fully enclosed and surrounded by landscaping.

In November 2012, City Council approved a variance (V2014-56) to allow an accessory structure (dumpster enclosure) be located closer to the right of way (Whitlock Ave) than the principal building for the Starbucks at the corner of North Marietta Parkway and Whitlock Avenue. However, the existing building's location and the shape of the lot would not permit the placement of a dumpster enclosure anywhere but closer to the right of way. That condition is not present in this current situation, where the dumpster surround could be shifted to the other corner. As a result, staff recommends denial of this variance.

Variance #2 – Setback for enclosure

The second variance being requested is to reduce the setback for an accessory structure from 10' to 5' in order to place the dumpster enclosure closer to the property line. While this is a self-imposed condition and could be corrected by shifting the property line - considering the property has not yet been subdivided; it is also a situation that would only impact one other parcel within this development. Staff recommends denial of this variance request; however if the Board is inclined to approve the variance, it should be upon the condition that a row of evergreen shrubs must be planted to screen the dumpster enclosure.

Variance #3 – Façade materials

The applicant is also requesting a variance from the section that prohibits the use of metal siding on the side of a building facing a roadway. The section states "*Building design and materials may be of the developer's choosing; however, structures which utilize metal siding shall be constructed with brick, stone, rock or wood covering any facade of the building facing a roadway.*" The applicant has stated that the metal band along the top of the building is part of McDonald's corporate branding.



Department of Development Services
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Brian Binzer, Director

However, staff would like to point out that the applicant recently permitted a new McDonald's at the corner of Cobb Parkway and Roswell Street without the metal banding - the band will be constructed of stucco instead. In this instance, the applicant has not demonstrated a justifiable hardship. Staff recommends denial of this variance request.

In summary, **staff recommends denial of all three variance requests**, as the applicant has not demonstrated justifiable hardships as distinguished from inconveniences.