

**APPLICATION FOR VARIANCE  
TO THE CITY OF SMYRNA**

*Type or Print Clearly*

(To be completed by City)

**Ward:** 5

**Application No:** V19-043

**Hearing Date:** 10/14/19  
10/21/19

**APPLICANT:** 2900 South Cobb Drive, LLC

Business Phone: (770) 649-8527 (o) Cell Phone: \_\_\_\_\_ Home Phone: \_\_\_\_\_

Representative's Name (print): Garvis L. Sams, Jr., (SAMS, LARKIN, HUFF & BALLI, LLP)

Address: 376 Powder Springs Street, Suite 100, Marietta, GA 30064

Business Phone: 770-422-7016 Cell Phone: 404-975-7772 Home Phone: \_\_\_\_\_

E-Mail Address: gsams@slhb-law.com

Signature of Representative: 

**TITLEHOLDER:** 2900 South Cobb Drive, LLC (see attached)

Business Phone: \_\_\_\_\_ Cell Phone: \_\_\_\_\_ Home Phone: \_\_\_\_\_

Address: \_\_\_\_\_

Signature: \_\_\_\_\_

**VARIANCE:**

Present Zoning: GC Type of Variance: 1) Lot size reduction from 40,000 square feet to 0.46 acre (20,037.6 square feet); 2) Waive the rear setback as shown on the As-Built Survey.

Explain Intended Use: To remain as existing Smoothie King (would become an owner occupant as opposed to a leasehold tenant).

Location: At the intersection of South Cobb Drive and Plaza Drive (2930 South Cobb Drive).

Land Lot(s): 378 District: 17th Size of Tract: 0.46 Acres

(To be completed by City)

Received: 9/19/19

Posted: \_\_\_\_\_

Approved/Denied: \_\_\_\_\_

**CONTIGUOUS ZONING**

**North:** General Commercial ("GC")

**East:** General Commercial ("GC") - across South Cobb Drive

**South:** RM-12 (Lexington Park)

**West:** General Commercial ("GC")

**NOTIFICATION OF CONTIGUOUS OCCUPANTS OR LAND OWNERS TO  
ACCOMPANY APPLICATION FOR VARIANCE**

By signature, it is hereby acknowledged that I have been notified that \_\_\_\_\_

Intends to make an application for a variance for the purpose of \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

on the premises described in the application.

**NAME**

**ADDRESS**

Certified letters to be mailed to adjacent and adjoining properties, including any property abutting the subject property as well as any directly across street.


Please have adjacent property owners sign this form to acknowledge they are aware of your variance request. Also you may provide certified mail receipts of notification letters sent to adjacent properties. Adjacent and adjoining properties include any property abutting the subject property as well as any directly across a street.



APPLICATION FOR VARIANCE TO THE CITY OF SMYRNA

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Ward: \_\_\_\_\_

Application No: \_\_\_\_\_

Hearing Date: \_\_\_\_\_

APPLICANT: \_\_\_\_\_

Business Phone: \_\_\_\_\_ Cell Phone: \_\_\_\_\_ Home Phone: \_\_\_\_\_

Representative's Name (print): \_\_\_\_\_

Address: \_\_\_\_\_

Business Phone: \_\_\_\_\_ Cell Phone: \_\_\_\_\_ Home Phone: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Signature of Representative: \_\_\_\_\_

TITLEHOLDER: 2900 SOUTH COBB DRIVE, LLC

Business Phone: 770-649-8527 Cell Phone: 770-365-5862 Home Phone: \_\_\_\_\_

Address: 880 Marietta Hwy, S-630, Box-102, Roswell, GA 30075

Signature: [Handwritten Signature] As: MANAGER  
CHRISTOPHER S. RIDGEN

VARIANCE:

Present Zoning: \_\_\_\_\_ Type of Variance: \_\_\_\_\_

Explain Intended Use: \_\_\_\_\_

Location: \_\_\_\_\_

Land Lot(s): \_\_\_\_\_ District: \_\_\_\_\_ Size of Tract: \_\_\_\_\_ Acres

(To be completed by City)

Received: \_\_\_\_\_

Posted: \_\_\_\_\_

Approved/Denied: \_\_\_\_\_



GEORGIA  
CORPORATIONS  
DIVISION

GEORGIA SECRETARY OF STATE  
BRAD RAFFENSPERGER

[HOME \(/\)](#)

**BUSINESS SEARCH**

BUSINESS INFORMATION

Business Name: **2900 SOUTH COBB DRIVE, LLC** Control Number: **0250081**

Business Type: **Domestic Limited Liability Company** Business Status: **Active/Compliance**

Business Purpose: **NONE**

Principal Office Address: **880 Marietta Hwy , Suite 630, Box 102, Roswell, GA, 30075** Date of Formation / Registration Date: **9/30/2002**

State of Formation: **Georgia** Last Annual Registration Year: **2019**

REGISTERED AGENT INFORMATION

Registered Agent Name: **Pridgen, Christopher S**

Physical Address: **1988 Willeo Creek Point Marietta, GA 30068, Marietta, GA, 30068, USA**

County: **Cobb**

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## Real Estate

[View Bill](#)

[View bill image](#)

**As of**

9/13/2019

**Bill Year**

2018

**Bill**

70

**Owner**

2900 SOUTH COBB DRIVE LLC

**Parcel ID**

17037800520

[View payments/adjustments](#)

Installment	Pay By	Amount	Payments/Credits	Balance	Interest	Due
1	11/15/2018	\$1,148.92	\$1,148.92	\$0.00	\$0.00	\$0.00
<b>TOTAL</b>		\$1,148.92	\$1,148.92	\$0.00	\$0.00	\$0.00



Printed: 9/13/2019

## Cobb County Online Tax Receipt

Thank you for your payment!

**CARLA JACKSON** TAX COMMISSIONER  
**HEATHER WALKER** CHIEF DEPUTY  
Phone: 770-528-8600  
Fax: 770-528-8679

Payer:  
2900 SOUTH COBB DRIVE LLC

**2900 SOUTH COBB DRIVE LLC**

**Payment Date: 11/14/2018**

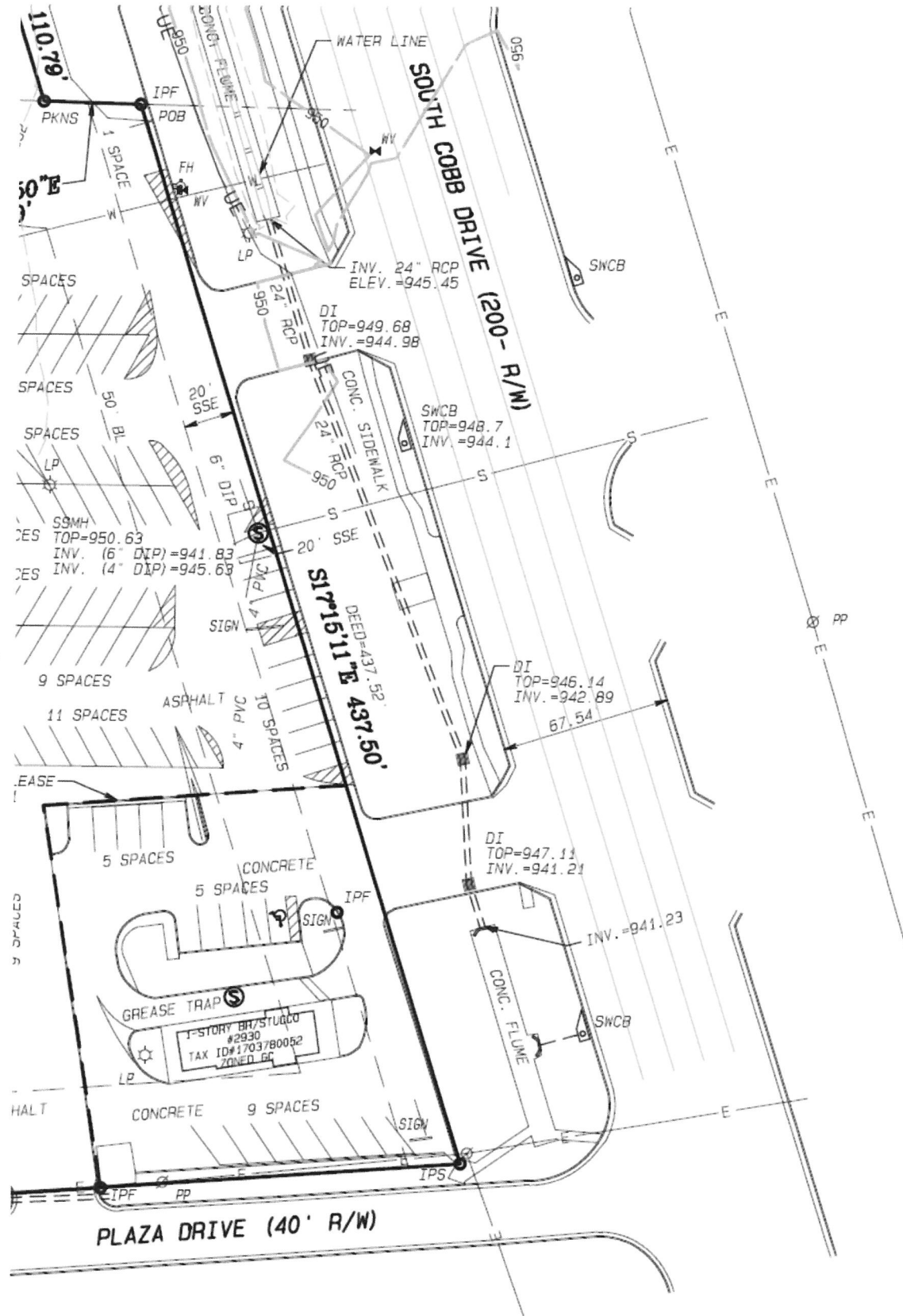
Tax Year	Parcel ID	Due Date	Appeal Amount	Taxes Due
2018	17037800520	10/15/2018	Pay: N/A or	\$0.00

Interest	Penalty	Fees	Total Due	Amount Paid	Balance
\$23.06	\$175.66	\$0.00	\$0.00	\$3,711.94	\$0.00



Scan this code with your  
mobile phone to view  
this bill!





Comprehensive Narrative  
Regarding the Variance Application of 2900 South Cobb Drive, LLC

The property which constitutes the subject matter of this Application, 2930 South Cobb Drive, is owned by 2900 South Cobb Drive, LLC (“SCD”) and is currently under contract for sale to the existing tenant, Smoothie King. The sale of the Subject Property is contingent upon the granting of Variance Application waiving Ordinance requirements with respect to the size and configuration of the property.

More specifically, per the Cobb County Tax Office/Map Room, 2930 South Cobb Drive (Tax ID 17-0378-0-052-0) was subdivided from 2900 South Cobb Drive (Tax Parcel 17-0378-0-039-0) in 1992. It has been separately taxed as a separate parcel since tax year 1993. Since the property was not being sold at that time and the owners of 2900 South Cobb Drive were the same as 2930 South Cobb Drive, the titled owners at that time did not record a separate warranty deed. 2930 South Cobb Drive has for all practical intents and purposes been treated and operated as a separate tract from 2900 South Cobb Drive since 1992. It has had a separate mailing address as well as tax designation since that time. It has been treated as a separate tract in all respects by Cobb County and City of Smyrna since that time.

SCD, as the property owner, purchased the Subject Property along with the “mother tract” in 2002. In that regard, SCD is desirous of selling the Subject Property to the tenant which has occupied the building located thereon for over three years. By purchasing the Subject Property, Smoothie King becomes an owner occupant as opposed to a tenant with a leasehold interest.

The Subject Property consists of a 0.46 acre tract but contains more than ample parking required under the City of Smyrna’s parking ratio calculations. Additionally, SCD’s remaining property also contains more than sufficient parking for its own use, independent of the parking spaces located on the Subject Property. Both SCD and Smoothie King have agreed to execute Reciprocal Easement Agreements regarding parking and cross ingress/egress in order to preserve the present status-quo between the two owners.

The City of Smyrna Zoning Ordinance requires a commercial tract to be a minimum of 40,000 square feet. Consequently, the Variance Application seeks a Variance to formally recognize and approve the previous division of 2930 South Cobb Drive from 2900 South Cobb Drive in accordance with the manner in which it has been utilized for an extended length of time. Additionally, requested is a Variance regarding the fifty foot (50’) rear setback regarding the As-built circumstances.

After conferring with the City's professional staff it is a shared opinion that the granting of the requested Variances will not impair the purposes, spirit and intent of the Zoning Ordinance nor set an adverse precedence. Moreover, a literal interpretation or enforcement of ordinance provisions constitutes a hardship upon SCD and the tenant with its leasehold interest unless the Variances are approved to sell the property so that a rental set of circumstances evolves into business property ownership.

This 19<sup>th</sup> day of September, 2019.

By: 

GARVIS L. SAMS, JR.  
Attorney for Applicant  
Ga. Bar No. 623950

**CONSTITUTIONAL CHALLENGE**  
**ADDENDUM TO APPLICATION FOR VARIANCE**

**Hearing Date: October 9, 2019**

**BEFORE THE SMYRNA LICENSE AND VARIANCE BOARD**

COMES NOW the Applicant, 2900 SOUTH COBB DRIVE, LLC,  
(hereinafter referred to as the "Applicant") and asserts the following:

1.

By Application for Variance, the Applicant has applied for Variances as to provisions under the City of Smyrna Zoning Ordinance which impose certain requirements as same apply to the property more particularly set forth in said Application (hereinafter referred to as the "Subject Property").

2.

The Applicant states that the Subject Property is limited due to its shape, size and as-built situation and that a literal interpretation and enforcement of Ordinance provisions creates a hardship.

3.

Enforcement of Ordinance requirements concerning the Subject Property creates an unnecessary and unreasonable hardship with no resulting substantial benefit to the public good.

4.

The Variances sought by the Applicant concerning the Subject Property will not impair the purpose, spirit and intent of the Ordinance and stands to alleviate any and all non-compliance of the foregoing requirement while causing no substantial detriment to the public good.

5.

Applicable City of Smyrna Zoning provisions concerning the required Variance(s) are unconstitutional as applied to the Subject Property in that same deprive the Applicant of property under and pursuant to Article I, Section I, Paragraphs I and II of the Georgia Constitution of 1983 and the Equal Protection and Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America. This deprivation of property without due process violates the constitutional prohibition against the taking of private property without just compensation.

6.

Applicable City of Smyrna Zoning Ordinance provisions, as applied to the Subject Property, violate the Applicant's right to the unfettered use and development of the Subject Property in conformity with the existing City of Smyrna Zoning Ordinance in that the Ordinance creates an unreasonable hardship totally unrelated to public health, safety, morality, or general welfare and is therefore confiscatory and void. Further, same is unconstitutional in that it is arbitrary, unreasonable and injurious resulting in relatively little gain or benefit to the public while at the same time inflicting serious injury and loss upon the Applicant.

7.

The City of Smyrna's Zoning Ordinance is further unconstitutional in that the procedures contained therein pertaining to the public hearing held in connection with Applications for Variances also violate Article I, Section I, Paragraphs I, II and XII of the Georgia Constitution of 1983 in that said procedures impose unreasonable time restraints, contain the absence of rebuttal, contain the inability to confront witnesses, contain the lack of procedural and evidentiary safeguards, do not restrict evidence received to the issue at hand and are controlled wholly and solely by political considerations rather than the facts and considerations required by law. These procedures fail to comport with the due process requirements of the Constitution of the State of Georgia 1983 and the due process requirements of the Constitution of the United States of America.

This 19<sup>th</sup> day of April, 2019.

By: 

GARVIS L. SAMS, JR.  
Attorney for Applicant  
Ga. Bar No. 623950

West

2900 SOUTH COBB DRIVE LLC

PO BOX 450233

ATLANTA, GA 31145

North

2900 SOUTH COBB DRIVE LLC

PO BOX 450233

ATLANTA, GA 31145

East – Across South Cobb Drive

Zele LLC

2150 LOCKETT CT

DULUTH GA 30097

South

Lexington Park LLC

1200 LAKE HEARN DR NE SUITE 200B

ATLANTA GA 30319