

Variance Justification:

In order to justify approval of any variance, the Board of Zoning Adjustment considers the following criteria. Please answer all of the following items. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

Variance of Section 5.3.1.C.5, Table 5.3.2, to allow the building to exceed the maximum height of 30 ft.

1. The variance will not adversely affect the public health, safety or welfare because this is an aesthetic/nuisance issue, not a public health, safety or welfare one. Further, the building is appropriate in the location along the primary collector or Smyrna Pkwy and the property will be significantly buffered to reduce adverse impacts to the residential properties to the east with fencing, landscaping, the retention of a significant 50 foot depth of mature trees already separating the project from the residences.
2. The variance will not alter the essential character of the general vicinity because the significant buffering with a 50 foot buffer of mature trees, addition of landscaping, and incorporation of a fence inside the property line of the project.
3. The variance will not cause a hazard or a nuisance to the public because there is no safety issue involved in this height variance. Moreover, this slightly taller than Code-allowed building adjoins the Gene Snyder Freeway to the north, a primary collector of Smyrna Parkway to the west, and the existing L&N office and branch bank to the south, none of which will be adversely impacted by a minor additional height. The height does allow the property to be a tremendous aesthetic asset to the area by improving the architecture of the building and allowing room for the minimum parking and increasing the landscaping buffers with the residential properties.
4. The variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because this is the minimal amount necessary for the proposed office to fit on the uniquely shaped site, provide necessary room for vehicular maneuvering, and still permitting the necessary scale of the building

Additional consideration:

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1. The variance arises from special circumstances, which do not generally apply to land in the general vicinity because this slightly taller than Code-allowed building adjoins the Gene Snyder Freeway to the north, existing L&N office and branch bank south, a primary collector/parkway west, none of which will be adversely impacted by a few additional feet of height, but rather make this property unique and appropriate for the requested variance.

2. Strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create unnecessary hardship because the variance is necessary because of the unique shape of the lot in this area and the surrounding properties and uses, such as the Gene Snyder Expressway and Smyrna Pkwy.

3. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation, but rather are a result of the practical circumstances of this corporate office's space needs, including height, especially in relationship to a location such as this one adjoining an interstate, another commercial uses and a parkway.

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Variance of: Section 5.3.1.C.5, Table 5.3.2 to allow the building setback to exceed the maximum allowable setback along a parkway.

1. The variance will not adversely affect the public health, safety or welfare because it will allow for the last parcel to be developed in this small corridor to be developed in the same pattern as the first, it will allow for the access easement that benefits both the existing office and branch bank to the south and the proposed office building to the north to continue in force while allowing this property to be developed in a way that complies with the parkway buffer requirements as well. Moreover, the development is largely dictated by the unique shape of the property and the multiple differing uses on each side of the property.
2. The variance will not alter the essential character of the general vicinity because for the reasons mentioned above and because this area is not residential being along the primary collector of Smyrna Pkwy. and abutting the Gene Snyder Expressway.
3. The variance will not cause a hazard or a nuisance to the public because the variance request is slight, it will allow the proposed office building to comply with the intent of the required parkway buffer and it will allow sufficient parking and maneuvering in front of the office building in a practical and rational way. If the variance is not granted, the site cannot be developed in the pattern proposed and would significantly detract from the significant design applications incorporated into the project, which will be an asset to the area and greatly improve the aesthetics of along Smyrna Parkway next to the Gene Snyder Expressway.
4. The variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because in this case, context, including legally binding easement agreements, limits the pattern of development on the subject property so that development can either occur with the requested variance or not occur at all due to the unique shape and configuration of the property and limitations because of surrounding property.

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Additional consideration:

1. The Variance arises from special circumstances, which do not generally apply to land in the general vicinity because among other reasons, the subject property is sandwiched between the Gene Snyder Expressway to the north, the existing L&N branch bank and office to the south, residential to the east and Smyrna Parkway to the west. The existing branch bank and office development to the south both contain parking in the front of the buildings on site. The pattern of parking in the front of buildings has therefore been set in this area and this project attempts to create consistency with while also improving the character of the area. Also, there is a 30' parkway buffer required between the right of way of Smyrna Parkway and the parking area and a 30' shared access easement that benefits both the existing branch bank and office center, which, when combined with the pattern of development in the area makes contextually compatible development impossible without the requested variance.

2. Strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create unnecessary hardship because the applicant would create a development that would preclude the location of the corporate offices at the very least and break a well-defined pattern of development in this area.

3. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation but rather, the applicant is attempting to develop in accordance with the pattern created by the unique shape and location of the property and the surrounding development.

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Variance of: Section 5.3.1.C.5, Table 5.3.2 to allow the parking to encroach into the building setback along the northern property line.

1. The variance will not adversely affect the public health, safety or welfare because only a very small portion of the pavement in this area encroaches into the setback and there is still a very large distance between this proposed pavement and the neighboring residence along Lantana Drive.
2. The variance will not alter the essential character of the general vicinity because the pavement is located along the rear portion of the property, away from Smyrna Parkway and will not cause a negative impact with the neighbor to the north. Screening and buffering will be preserved and /or provided through plantings or a fence.
3. The variance will not cause a hazard or a nuisance to the public because it will not cause any unsafe condition and the impact of the variance will be mitigated through screening and buffering.
4. The variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because this is the minimal amount required for the proposed office to fit on the site and provide vehicular maneuvering.

Additional consideration:

1. The Variance arises from special circumstances, which do not generally apply to land in the general vicinity because of the very small portion of the site in the area requested. Additionally, the encroachment is in large part caused by the non-uniform shape of the property as it approaches the entrance to the Gene Snyder Expressway.

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2. Strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create unnecessary hardship because the applicant is providing the minimum number of parking spaces allowed and the variance is necessary because of the unique shape of the lot in this area.

3. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation because this is the only potential use of this site at this time, the commercial office use is appropriate at this area Smyrna Pkwy where it is next to the Gene Snyder Expressway, and because of the unique shape of the property.

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General Waiver Justification:

In order to justify approval of any waiver, the Planning Commission or Board of Zoning Adjustment considers four criteria. Please answer all of the following questions. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

Waiver of Section 5.8.1.B to not provide sidewalks along Smyrna Parkway.

Explanation of Waiver:

1. The waiver will not adversely affect adjacent property owners because this site is at the corner of Smyrna Parkway and the on-ramp to I-265 East. Moreover, the area of the requested waiver consists of unsafe pedestrian conditions going toward the I-265 on-ramp, which is an existing condition, not created by the development.
2. The waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan filed with the original rezoning application.
3. The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because sidewalks should only be located where thoughtfully designed with public safety in mind, and the construction of the sidewalks would not serve a useful purpose.
4. Strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant because it would be building sidewalks in areas where there is no practical possibility of use and which would encourage unsafe conditions where pedestrians could attempt to cross Smyrna Pkwy. at a particularly busy area next to the Gene Snyder Expressway.

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