

CITY OF SMYRNA

COMMUNITY DEVELOPMENT

MEMORANDUM

To: Mayor and Council

From: Ken Suddreth, Community Development Director
Joey Staubes, AICP, Planner II

Date: January 9, 2018

RE: **VARIANCE CASE V17-054**
2552 South Cobb Drive – Accessory Structure in the Front Yard.

BACKGROUND

The applicant is requesting a variance for the placement of a free standing Automated Teller Machine (ATM) at 2552 South Cobb Drive. The proposed location of the ATM will be in the front yard of the property, approximately 35 feet from the S Cobb property line. Per Section 501.2 of the Zoning Ordinance, accessory structures are prohibited in the front or side yards.

The License and Variance Board denied the request at the November 8, 2017 meeting by a vote of 3-0. The applicant has appealed the request to Mayor and Council and submitted a revised site plan incorporating additional parking spaces, and adjusting the layout of the ATM.

ANALYSIS

The subject parcel is located on the west side of South Cobb Drive and is zoned GC – General Commercial (See Figure 1). The adjacent properties to the north, south, east, and west are zoned GC are occupied with commercial uses. The applicant is requesting a variance for a proposed free standing ATM. The ATM is located in the front yard, which is not permissible under Section 501.2 of the Zoning Ordinance.

The applicant is proposing to place a free standing ATM machine in the parking lot, as an accessory structure in the shopping center located at 2552 S Cobb Drive, and has cited visibility and access as the basis for a hardship, as the front yard provides the most visibility which may yield more security. The proposed ATM machine is a 6 feet x 12 feet structure, with a vertical elevation of approximately 10 feet.

The subject property is a planned commercial development. The commercial tenants are personal service retail in nature. There are no banks in operation at the subject property. Banks are allowed in NS, OI, GC, OD and LC zoning categories as primary structures. The zoning ordinance does not list accessory ATM structures as a permitted use in any zoning category. The zoning ordinance defines an accessory structure/use as:

(402.1) *Accessory building or use:* A use or a structure subordinate to the principal use or building on a lot and serving a purpose customarily incidental to the use of the principal

building, provided any such structure is built with or after the construction of the principal building. Where an accessory building is attached to the main building in a substantial manner, as by a wall or roof, such accessory building shall be considered part of the main building.

Section 501 provides further requirements for accessory structures/uses that are applicable to the subject property:

(501.1) Such structures and uses shall be located on the same lot as the principal building to which they are accessory.

(501.2) Such structures and uses shall not be permitted in a required front or side yard.

(501.7) No nonresidential accessory building shall be used by other than employees of the owner, lessee, or tenant of the premises.

The existing parking lot has approximately 50,000 sq. ft. or retail floor area, and thus requires approximately 225 parking spaces, however only 162 spaces currently exist. About 9 spaces would be removed in place of the proposed ATM and which expands the existing non-conforming parking lot. The applicant has provided a revised plan showing the potential for 192 parking spaces (See Figure 5).

At the November 8, 2017 License and Variance Board hearing, the board denied the request by a vote of 3-0. The applicant has subsequently appealed that decision, and made revisions to their site plan. The applicant provided a conceptual plan that increases the number of parking spaces to 192 spaces, and adjusted the location of the ATM.

Community Development still believes there are no unique and special extraordinary circumstances applying to the property to justify the accessory structure in the front yard. Additionally, the use of the subject property as proposed does not meet the intent of an accessory structure/use, as the proposed location and the vehicular orientation of the ATM yield a use and structure that is separate from the existing commercial center. Thus, the use would generate traffic beyond that of the patrons for the primary tenants within the shopping center. Strict application of the ordinance does not deprive the subject property owner of reasonable use, as the shopping center has been in existence for decades, and no modifications have been made to the zoning ordinance with respect to accessory structures/uses. Additionally, there have been no variances granted for similar commercial accessory structures in the front yard of commercially zoned property, and approval would set a negative precedent. In fact, a variance request for a similar accessory structure on commercial property was denied by the Board in 2015, and the License and Variance Board denied this request on November 8, 2017.

STAFF COMMENTS

According to Section 1403 of the Zoning Ordinance, variances must be reviewed under the following standards: (1) Whether there are unique and special or extraordinary circumstances applying to the property; (2) Whether any alleged hardship is self-created by any person having an interest in the property; (3) Whether strict application of the relevant provisions of the code would deprive the applicant of reasonable use of the property; and (4) Whether the variance proposed is the minimum variance needed. Community Development has reviewed the request

against the variance review standards and found it not to be in compliance with the standards, based on the lack of hardship. No variances for similar structures have been approved, thus, approval of the request would set a negative precedent. Additionally, the License and Variance Board heard the request and voted to deny at the November 8, 2017 hearing. At the time of this report, there has been no public objection to the request. After a review of the standards above, Community Development believes that there is no justifiable hardship for the accessory structure in the front yard and approval would set a negative precedent; therefore, staff recommends **denial**.

Figure – 1



Figure – 2
(Subject Parcel)



Figure – 3
(Subject Parcel Parking Area)



Figure – 5
(Revised - Site Plan)

