

**MEMPHIS AND SHELBY COUNTY OFFICE OF PLANNING AND
DEVELOPMENT
STAFF REPORT**

CASE NUMBER: BOA 13-29 **B.O.A. MEETING:** August 28, 2013

DEVELOPMENT NAME: ATM (Accessory structure in front yard setback)

LOCATION: 6456 E. Shelby Drive

COUNCIL DISTRICT: 3

SUPER DISTRICT: 8

OWNER OF RECORD/APPLICANT: Cho Yong Wook

REPRESENTATIVE: Joe Wiseman, H&T Consultants

REQUEST: To allow a variance from the UDC Section 2.7.1J to allow an accessory structure in the front yard setback and landscape plate.

AREA: .2 acres

EXISTING LAND USE & ZONING: Commercial Mixed Use 2 (CMU-2)

OFFICE OF PLANNING AND DEVELOPMENT RECOMMENDATION

REJECTION

Staff Planner: Calvin Abram

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CONCLUSIONS:

The applicant is requesting a variance to construct an additional automated teller machine (ATM) in the front yard of the existing convenience store with gas sales.

The applicant failed to fully comply with the previously approved BOA08-22 conditions pertaining to the existing ATM which is located 40 feet north of the proposed ATM. The proposal is in conflict with prior approved conditions to the site and the character of the area.

The proposal fails to meet the intent of the UDC and will not be consistent with the character and integrity of the neighborhood.

LAND USE AND ZONING MAP



SURROUNDING LAND USES AND ZONING:

- North:** Residential
- East:** Residential
- South:** Commercial
- West:** Commercial

Subject site (View from Shelby Dr.)



View of proposed placement for new ATM



Existing ATM



Kirby Pkwy frontage and landscaping



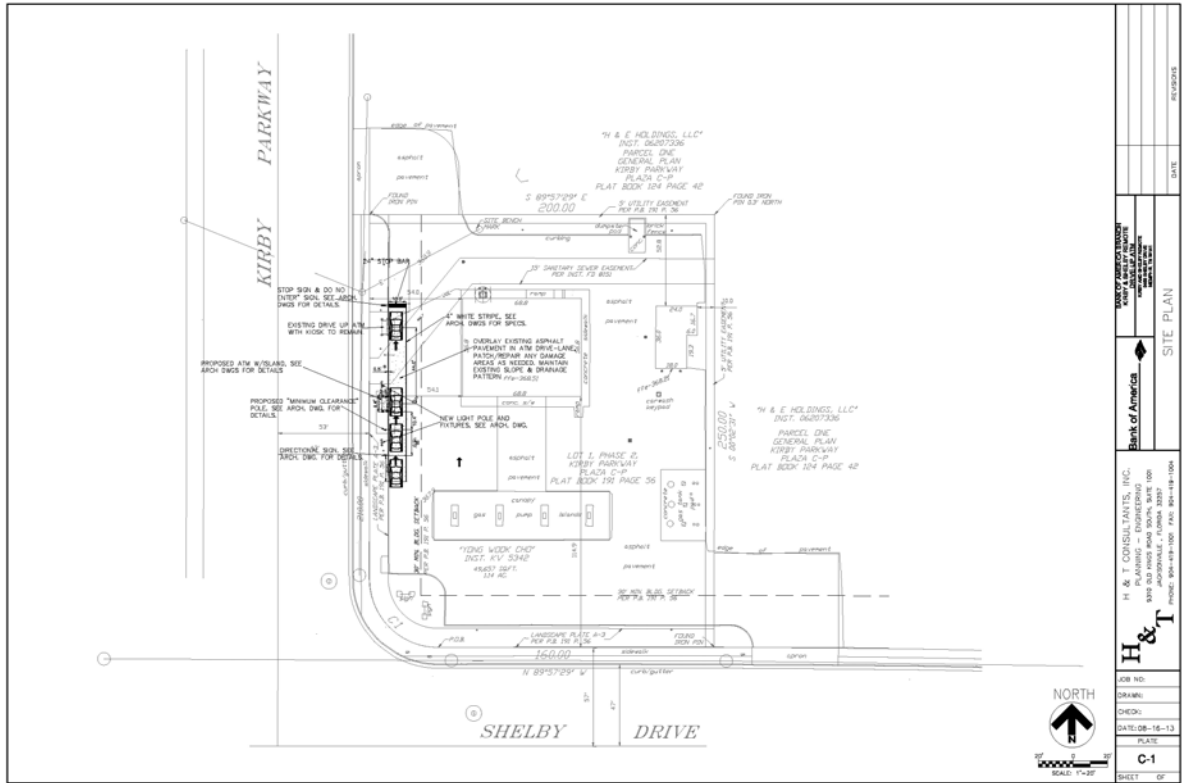


Adjacent gas station
(Kirby frontage)



2nd gas station adjacent
(Kirby frontage)

Survey



Above image is second revision of site plan.

STAFF ANALYSIS:

This application is a request for a variance to install a second Automated Teller Machine (ATM) in the front yard setback located at 6465 E. Shelby Drive within the Commercial Mixed Use Zoning District.

The commercial mixed use districts are intended to accommodate retail, service and commercial uses and to ensure that commercial-zoned areas are compatible with the character of existing neighborhoods. While the districts primarily accommodate commercial uses, apartments and upper-story residential area allowed in order to promote live-work and mixed use opportunities.

Variance:

The applicant is requesting to install a second ATM in the front yard setback to be located at 6465 E. Shelby Drive. In May of 2008, the Memphis and Shelby County Board of Adjustment approved BOA08-22 which allowed the existing ATM along the Kirby Parkway frontage with the conditions as recommended by the Staff Planner. Some of the conditions stated:

- The operator shall provide four (4) queuing spaces, including striping of the queuing lane and an adequate trash facility. The operator shall maintain the area around the vending facility in a clean and orderly fashion;
- The facility shall be maintained in a manner consistent with the safe and efficient circulation of pedestrian and vehicular traffic. Access and circulation shall be illustrated on the site plan.
- Landscaping shall be provided at the base of the structure. Bollards may be located outside the landscape area...

The conditions established by BOA08-22 would conflict with the proposed placement and traffic circulation for a second ATM and the installment of a second ATM is not consistent with the character and integrity of the community.

Staff viewed several gas stations adjacent to the subject site and within a half mile radius of the site and did not observe a single bank or other commercial property with two (2) ATM's in the front yard setback and the difficulties of the traffic circulation as the subject site may have with the introduction of a second ATM. The proposed site plan in conjunction with the surrounding community and the applicant's representative statement does not allow staff to support the application.

The applicant stated in the application, "This variance will meet the public demand/use of the existing ATM. The current volume of use by the public warrants a 2nd ATM to provide quicker service times, availability, etc. to accommodate the public" (applicant representative).

The proposal is in direct conflict with the prior approved BOA08-22, it does not meet the intent of the UDC Chapter 9.22.6 and does not meet the integrity and character of the surrounding land-uses. The surrounding land-uses consist of multiple gas stations, facility car wash and single-family homes. The proposal is not supported by the UDC Items 9.22.6A(3 and 6).

- The unusual characteristic found to apply in Paragraph 1 is not the result from any deliberate action by the owner;
- The variance is not granted simply because by granting the variance, the property could be utilized more profitably or that the applicant would save money.

RECOMMENDATION: REJECTION

If the Board of Adjustment determines to approve the applicant's request, the following conditions are recommended:

1. The subject site shall comply with a revised site plan which does not conflict with BOA08-22 site plan;
2. The second ATM Kiosk shall be located six (6) feet from the right-of-way line of Kirby Parkway and 100 feet from the Kirby Parkway curb-cut.
3. The operator shall provide an adequate trash facility and maintain the area around the kiosk in a clean and orderly fashion;
4. The facility shall be maintained in a manner consistent with the safe and efficient circulation of pedestrian and vehicular traffic. Access and circulation shall be illustrated on the site plan;
5. Landscaping shall be provided at the base of the structure. Bollards may be located outside the landscape area;
6. A detailed site plan shall be submitted in accordance with conditions, including required landscaping.

REJECTION OPTION 2: The board rejects the proposed application and:

1. The applicant shall be relieved from condition #3 of BOA08-22; the operator shall provide striping of the queuing lane.
2. The applicant shall be relieved from condition #6 of BOA08-22; landscaping shall be provided at the base of the structure.

GENERAL INFORMATION:

Street Frontage: Shelby Drive and Kirby Parkway

Planning District: Oakhaven

Zoning History: CMU-2

DEPARTMENTAL COMMENTS:

The following comments were provided by agencies to which this application was referred:

City Engineer: Comment received.

County Engineer: No comment received.

Memphis Fire Department: No comment received.

City Board of Education: No comment received.

OPD-Plans Development/Landmarks: No comment received.

OPD-Regional Services/Transportation: No comment received.

City Real Estate: No comment received.

OPD-Construction Code Enforcement: No comment received.

Memphis, Light, Gas & Water: Comment Received.

- **Street Names:** It is the responsibility of the owner/applicant to contact MLGW–Address Assignment @ 729-8628 and submit proposed/new street names for review and approval. Please use the following link to the MLGW Land & Mapping website for **Street Naming Guidelines** and the **Online Street Name Search:** <http://www.mlgw.com/builders/landandmapping>
- **It is the responsibility of the owner/applicant** to identify any utility easements, whether dedicated or prescriptive (electric, gas, water, CATV, telephone, sewer, drainage, etc.), which may encumber the subject property, including underground and overhead facilities. No permanent structures will be allowed within any utility easements.
- **It is the responsibility of the owner/applicant** to contact **TN-1-CALL @ 1.800.351.1111**, before digging, and to determine the location of any underground utilities including electric, gas, water, CATV, telephone, etc.
- **It is the responsibility of the owner/applicant** to pay the cost of any work performed by MLGW to install, remove or relocate any facilities to accommodate the proposed development.
- **It is the responsibility of the owner/applicant** to comply with the **National Electric Safety Code (NESC)** and maintain minimum horizontal/vertical clearances between existing overhead electric facilities and any proposed structures.

- **Landscaping is prohibited** within any MLGW easement or dedicated utility easement without prior MLGW approval.
- **It is the responsibility of the owner/applicant** to submit a detailed plan to MLGW Engineering for the purposes of determining the availability and capacity of existing utility services to serve any proposed or future development(s). Application for utility service is necessary before plats can be recorded.
 - All residential developers must contact MLGW's Residential Engineer at Builder Services: (901) 729-8675 to initiate the utility application process.
 - All commercial developers must contact MLGW's Builder Services line at 729-8630 (select option 2) to initiate the utility application process.
- **It is the responsibility of the owner/applicant** to pay the cost of any utility system improvements necessary to serve the proposed development with electric, gas or water utilities.

**Memphis & Shelby County
Health Department:**

No comments by the *Water Quality Branch & Septic Tank Program*.

Bell South/ATT:

No comment received.

MATA:

No comment received.

NEIGHBORHOOD ASSOCIATIONS NAMES: