Staff Report
City of Doraville, Georgia
Planning and Zoning

MCC Public Hearing(s):
MCC public hearing scheduled for October 25, 2010 @ 6:30 p.m.

PC Public Hearing(s):
Not required as per City Code.

Applicant: Kathryn M. Zickert and Dennis J. Webb, Jr., Smith, Gambrell & Russell, LLP, Attorneys for Halpern Enterprises

Request(s): Conditional Use (CU) per Ordinance 2008-33 on property zoned C-2 (General Business District) for that of an "Automatic teller machine (walk up or drive-through) without associated retail banking facility provided adequate stacking and pass lane(s) are provided" with Variance to not have to provide a pass lane per the zoning ordinance development guidelines

Location: 5197 Buford Highway (Parcel ID 18-310-03-003) – one of six (6) lots which comprise the PineTree Plaza Shopping Center complex

Tract Size: 10.695 +/- acres

History: Reference CU Case of August 30, 2010 for same ATM development which was advertised on the wrong lot based on the submitted application but was approved by the City Council (5-0). Subsequently, another ATM CU application was submitted on the wrong lot on September 14, 2010. On September 30, 2010, the final ATM CU application was received which still again placed the ATM on the wrong lot desired by the Owner/Developer. With the assistance of the City Attorney and the Applicant's legal counsel it was finally clarified that the owner, indeed, wanted the ATM on the 5197 Buford Highway lot and not the 5269 Buford Highway lot as had three (3) times been incorrectly filed with the City on a single boundary survey which encapsulated six (6) lots but did not graphically show their existence.

At the August 30, 2010, meeting the Department withdrew on the record the recommendation of CU approval (without variance) after lengthy and detailed prior and in hearing discussion of probable Zoning Procedures Act (ZPA) violations for the run CU advertisement in 2010 on the wrong lot per the Applicant's application and the probable ZPA violations for the August 31, 2001, zoning variances previously granted by the City Council. The following case is corrective action for Zoning Procedure Act violation(s) sought by both the City and the Applicant.

CU Standards of Review:

(1) ***The proposed use at the specified location is consistent with the policies embodied in the adopted Comprehensive Plan.***

The lot described as 5197 Buford Highway is delineated by the Comp Plan as "Highway Commercial Corridor." The use is consistent with the Plan given it is an expansion of retail and service uses; however, the site warrants additional modifications for long range compliance with City codes and adopted plans. Unlike some other Conditional Use types, the Staff views the ATM installation as a long-term commitment and investment in the property.

Additionally, to quote the Doraville Comp Plan 2005-2025 (Page 12): "There are two primary commercial corridors in Doraville: Buford Highway and Peachtree Industrial Boulevard. Some of these areas are declining and need redevelopment to be vital in the future. Comprised mainly of unattractive, vacant, or under-utilized strip shopping centers, these areas are characterized by auto-oriented design that creates a high degree of access for vehicular traffic. Superfluous on-site parking and lack of preserved open space typify these areas." How can this site be made to conform or further ameliorate the aspects the Plan envisions while reconciling the investments already made and further desired now by the Applicant's proposed ATM development?

(2) ***The proposed use is consistent with the general purpose and intent of the applicable zoning district regulations.***

Although mandated as a Conditional Use to evaluate the specific situation of the Applicant, the C-2 district is the appropriate heavy commercial zoning to allow drive-in and drive-through facilities rather than a neighborhood commercial district.

(3) ***The proposed use is compatible with and preserves the character and integrity of adjacent developments and neighborhoods, and includes improvements either on-site or within the public rights-of-way to mitigate development related adverse impacts such as traffic, noise, odors, visual nuisances, drainage or other similar adverse effects to adjacent developments and neighborhoods.***

The site is part of a larger C-2 parcel that may contain a number of probable legally non-conforming uses, principally wholesale uses, within a multi-tenant shopping center. Not all of the six (6) lots which are part of the shopping center complex can be alleged to have legal non-conforming uses since they are based on a per lot basis and cannot be expanded onto another lot. The City Code prohibit use variances when something is neither a permitted use (use by right) or a Conditional Use option within the zoning Code, it is simply a prohibited use.

(4) ***The proposed use does not generate pedestrian and vehicular traffic which will be hazardous or conflict with the existing and anticipated traffic in the neighborhood.***

Not affected. The Buford Highway corridor is characterized by high volumes of vehicular traffic at low speeds but does not usually generate significant pedestrian usage. A drive-up ATM location often accompanies limited walk up patronage; however, Staff does not view this as a negative by-product.

(5) ***The proposed use incorporates roadway adjustments, traffic control devices or mechanisms, and access restrictions to control traffic flow or divert traffic as may be needed to reduce or eliminate development generated traffic on neighborhood streets.***

Again not affected. The site has no road connectivity to a residential neighborhood.

(6) ***The proposed use incorporates features to minimize adverse affects, including visual impacts, of the proposed conditional use on adjacent properties; and the proposed use meets the standards for the zoning district, or to the extent variations from such standards have been requested, that such variations are necessary to render the use compatible with adjoining developments and neighborhoods.***

The use is incorporated into a multi-tenant facility which has previously been developed. Although there is certainly room for improvement relative to the site's aesthetic design within its community, such design does not depart significantly from other neighboring developed non-residential properties which were developed and/or remodeled in an era without the benefit of City architectural design standards. The same statement could be made about many other properties. Hopefully, architectural standards will be adopted by the City as envisioned by the Comp Plan to understand what design style is reflective of the community choice. Enhancement of the built form either in terms of hardscape elements (benches/trash receptacles) or streetscape (e.g. supplemental plantings, parking lot islands) should be a long term goal of the City in working with the property owner.

(7) ***The proposed use is based on a site plan in conformity with all space limits, buffers, parking and loading provisions, and other provisions of this article.***

Space limits provisions cannot be answered affirmatively due to the purported legal non-conforming status of the site; however, transitional buffers are required for this site as abutting a number of residential zoned properties and a church located on residential R-1 as well. NOTE: Rezoning and zoning variance action(s) underway to address these issues separate from the Conditional Use action. Parking, transitional buffers, and impervious limits are clearly deficient. Upon further examination, the tract did not exist in its present configuration on the 1966 zoning map. The City could assert a breach of the alleged legal non-conformity has occurred with a building demolition on the property in 2010 (the former El Charrua Restaurant) and with subsequent parking lot redevelopment and pavement without the City having granted a permit for any action other than demolition down to the slab for which a warning was issued by QOL. The overriding issue has been the application of the City tree ordinance (non-zoning) in the proposed development scheme. NOTE: Tree Ordinance variance to be addressed separately by Department Head – Storm water/Arborist, Steven Strickland.

(8) ***The proposed use applicant has agreed to any specific limitations or conditions necessary to protect the public interest and assure the continued beneficial use and enjoyment of nearby properties or that no special limitations are necessary to protect the public.***

The Applicant may feel the City is engaging in a permanent recognition of the overabundance of impervious surfaces on the site; however, this is not the City Staff's recommendation and/or intention in light of the goals of the Comp Plan, the site's LCI location, and the City's Tree City USA designation

Recommendation:

Conditional Use:

Based upon the standards of review contained herein, the Department recommends **APPROVAL** of the CU ATM petition request on 5197 Buford Highway (18-310-03-003) **without pass lane variance** because there are more standards that appear to be met than not met. Overall site characteristic deficiencies can be resolved with a long range plan of action which can be formulated at the Council level. At a minimum, the Department recommends the entirety of the shopping center property needs to be combined from six (6) lots into one (1) lot.

If a pass lane is not installed, care needs to be taken to ensure vehicles cannot be blocked in while using the ATM, can rapidly exit if need be, for the safety of patrons of the machine who could easily become victims of a crime when blockaded by other vehicles as the ATM patron uses the ATM from the confines of their car.

The site as a CU would be governed by Ordinance 2009-28 with no variations expressed or implied. The Council may elect to review by way of a show cause hearing for CU revocation upon notification by Staff which is required yearly exactly one (1) month before the CU's approval anniversary.

NOTE: Additional City codes govern the sun-setting of any zoning variance, if the Council elects to grant the pass lane zoning variance.