



# TOWN OF SMYRNA BOARD OF ZONING APPEALS

## MEETING MINUTES

August 19, 2021

5:00 p.m.

Smyrna Town Hall

Vice-Chairman Phil Wilson called the regular session of the Smyrna Board of Zoning Appeals to order on August 19, 2021 at 5:00 p.m. The invocation was given by Troy Powell and the Pledge of Allegiance was led by Scott Demonbreun.

The following Board of Zoning Appeals members/staff were present/absent:

Present: Phil Wilson; Jay Michaelson; Scott Demonbreun; Troy Powell

Absent: Steve Sullivan, Councilman

Staff Present: Kevin Rigsby, Town Planner; Mitchell Wensman, Planner; Jeff Peach, Town Attorney; Jennifer Bizarri, Planning Technician; Kathryn Bobbitt, Office Coordinator; Todd Spearman, Assistant Town Manager

1. Citizens' Comments: None at this time.
2. Approval of Minutes of the July 15, 2021 meeting.

Motion by Scott Demonbreun, seconded by Troy Powell to approve the Minutes of the July 15, 2021 meeting.

**Vote:** 4 - 0 Passed - Unanimously

3. Old Business:

1. Travis Webb  
1205 South Lowry Street

Location: 1205 South Lowry Street	Property Owners: Kimberly Johnson
Tax Map/Parcel #: Map 49, Parcel 35.00	

*Request:* A front setback variance of 12.5' along South Lowry Street for an ice vending machine.



**Staff Analysis** The applicant has requested a front setback variance of 12.5' to allow for an ice vending machine. Property request is located at 1205 South Lowry Street and has a lot size of approximately 2.07 acres. The property is zoned C-2, general commercial, and has a minimum front setback requirement of 35'. The machine was discovered by the Codes Department on May 22, 2020. It was then discovered that the applicant failed to apply for a permit before installation of the structure. Staff did not receive plans prior to installation of the structure. Multiple attempts were made to have this issue resolved with the applicant since it was discovered, but no resolution has been made at this time.

A plan was submitted by the applicant during the previous meeting in the July meeting that was drawn in January of 2021. This plan shows where the structure is located and a potential berm. A site plan was drawn two months later in March of 2021 showing where the structure could be located to meet all applicable setbacks and avoid any potential conflicts with the property layout. Based on initial calculations, a relocation of the structure most likely will not affect the detention pond due to the large size of the berm.

Section 7.080 D of the Zoning Ordinance detail the requirements for variances not involving special flood hazard areas. These are detailed below.

### **Zoning Variance Requirements**

Section 7.080 of the Municipal Zoning Ordinance lists general requirements for a zoning variance request. Those requirements and staff's findings are as follows:

*Section 7.080 Procedure for authorizing zoning variances*

The purpose of a variance is to modify the strict application of the specific requirements of this ordinance in the case of exceptionally irregular, narrow, shallow, or steep lots, or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship which would deprive an owner of the reasonable use of his land. The variance shall be used only where necessary to overcome some obstacle which is preventing an owner from using his property under this ordinance.

B. Standards for Variances not Involving Special Flood Hazard Areas:

The board shall not grant a variance unless it makes finding based upon evidence presented to it as follows:

1. The particular physical surroundings, shape, topographic conditions of the specific property involved that would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict application of this ordinance were carried out must be stated.
  - Staff finds that 1205 South Lowry Street is a fairly uniform shape, is flat, and only approximately half of the property being utilized by another business.
2. The conditions upon which the petition for a variance is based would not be applicable, generally, to other property within the same district.
  - Staff finds that the property is consistent with many other C-2 zoned properties within Town.
3. The variance will not authorize activities in a zone district other than those permitted by this ordinance.
  - Convenience commercial uses are allowed by right in the C-2 zoning district, but are to adhere to any applicable setbacks.
4. Financial returns only shall not be considered as a basis for granting a variance.
  - The property owner has not identified financial returns as a reason for requesting this variance.
5. The alleged difficulty or hardship has not been created by any person having an interest in the property after the effective date of this ordinance.
  - Applicant states the hardship present is a wet weather ditch located behind the machine. The placement of the machine was done by the applicant prior to applying for permits.
6. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same districts.
  - Requests heard previously without permits applied for, generally are denied in which no hardship is found. Additionally, a site plan has been drawn to show where the structure could be relocated elsewhere on the property to meet setbacks, so if approved it would grant special privileges to the applicant.
7. The variance is the minimum that will make possible the reasonable use of the land, building, or structure.
  - Staff finds that the requested setback variance is not the minimum that will make possible the reasonable use of the structure as the applicant has alternative options to locate the structure on the property while still meeting setback requirements.
8. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the area in which the property is located.
  - Staff finds that the variance should not be detrimental to the public welfare or injurious to other property or improvements in the area.

9. The proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the area.
  - Staff finds that granting this variance should not create any of the above effects.
  
10. Variances may be issued for the reconstruction rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places upon a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building, and provide the proposed reconstruction, rehabilitation or restoration will not result in the structure losing its historic designation.
  - Not applicable.

**Conclusion**

Staff finds that the lot is relatively uniform in shape with no significant topographic changes. There are many other locations on the property in which the structure could have been erected to meet setbacks, as shown on the site plan drawn in March of 2021. There have been other front setback variance requests presented to the Board in previous years and the requests have been denied due to lack of hardships. Based on initial calculations by Public Works, the relocation of the structure would most likely not affect the detention pond. This is in part due to the larger constructed size of the berm compared to the plans.

At this time, Phil Wilson acknowledged applicant Travis Webb to speak regarding this request.

At this time, Phil Wilson acknowledged Public Works Director Tom Rose to speak regarding this request.

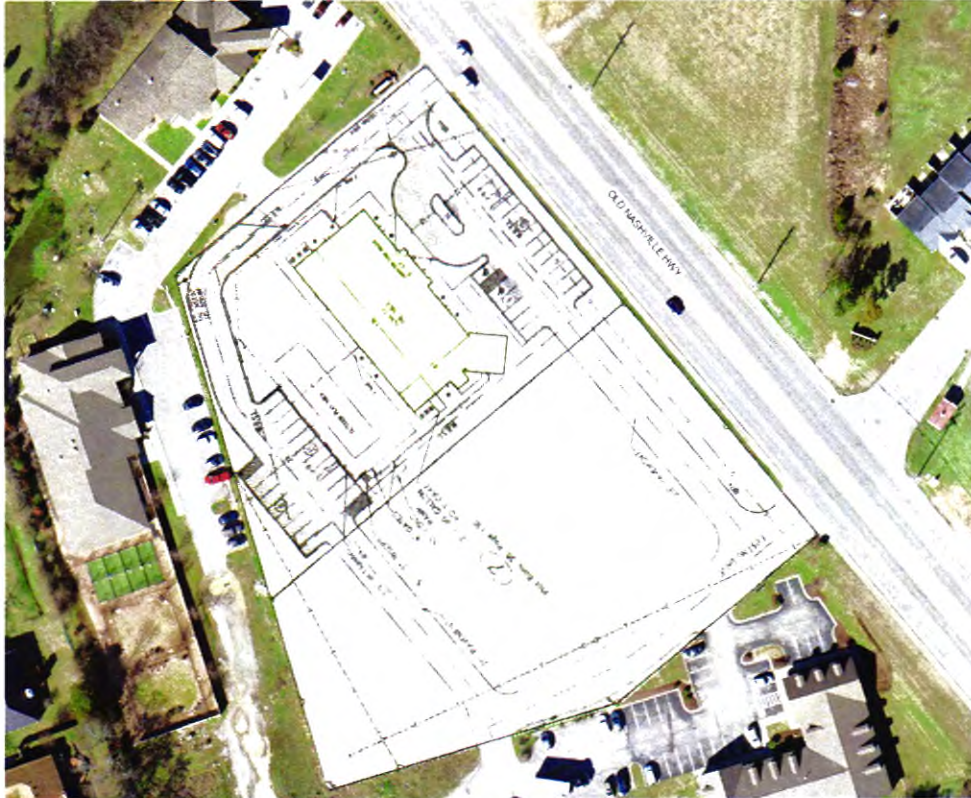
Motion by Scott Demonbreun, seconded by Troy Powell to deny the 12.5' front setback variance for an ice vending machine due to a lack of hardship.

**Vote:** 4 - 0 Passed - Unanimously

4. New Business:
  - a. Special Exceptions:
    1. Joey Rhyne  
13179 Old Nashville Highway

Location: 13179 Old Nashville Highway	Property Owner: Rhyne Smith Properties
Tax Map/Parcel #: Map 28/Parcel 106.00	
Zoning/Use Classification: PCD/Day Care Center	

*Request:* For a special exception to allow a day care center in a PCD district.



**Staff Analysis** The applicant has requested a special exception to allow a day care center at 13179 Old Nashville Highway. The property is zoned PCD, Planned Commercial District, and is approximately 1.51 acres in size. When the property was rezoned from R-1 to PCD in 2005, day care centers were an approved use as a special exception within this PCD as part of the rezoning. The site plan for this development was heard by the Planning Commission on August 5, 2021 and was approved with a condition that it is reviewed by the Board of Zoning Appeals for a special exception request.

Section 7.060 B of the Zoning Ordinance details the requirements for authorizing special exceptions. These are detailed below.

#### *Special Exception Requirements*

Section 7.060 of the Municipal Zoning Ordinance lists general requirements for a zoning variance request. Those requirements and staff's findings are as follows:

#### *Section 7.060 Procedure for authorizing special exceptions*

The following procedure is established to provide procedures for review of a proposed use as a conditional use or special exception by the Board of Zoning Appeals. The procedure shall be the same whether review is required under Section 13-7-206 of the Tennessee Code Annotated, by this ordinance, or whether a review is requested by the Building Official to determine whether a proposed use is potentially noxious, dangerous or offensive.

#### B. General Requirements:

A conditional use permit (a special exception) shall be provided the Board finds that it:

1. Is so designed, located, and proposed to be operated so that the public health, safety, and welfare will be protected.
  - Staff finds the proposed business of a day care center should not negatively affect the health, safety, and welfare of the public.
2. Will not adversely affect other property in the area in which it is located.
  - Staff finds that the proposed use should not adversely affect other properties in the surrounding area as the property is part of a commercial subdivision.
3. Is within the provisions of "Special Exceptions" as set forth in this ordinance.
  - When the property was rezoned to PCD, it was for C-4 uses, day care centers are considered special exceptions within the Municipal Zoning Ordinance in the C-4 district.
4. Conforms to all applicable provisions of this ordinance for the district in which it is to be located as well as the provisions cited in Sections 7.060 and 7.061, and is necessary for public convenience in the location planned.
  - Staff finds that this site may be able to conform to all provisions of the Municipal Zoning Ordinance as listed in Criteria Review Section 7.060 C.

#### C. Criteria for Review:

Prior to the issuance of a special exception, the Board shall make written findings certifying compliance with the specific rules governing individual special exceptions (Section 7.061), and that satisfactory provisions and arrangement has been made concerning all the following where applicable:

1. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.
  - Access to the site would utilize an existing access point off Old Nashville Highway that is used by other businesses within the commercial subdivision.
2. Off-street parking and loading areas where required, with particular attention to the items in item 1. above, and the economic, noise, vibrations, glare, or odor effects of the special exception on or by adjoining properties and properties generally in or near the district.
  - Staff finds that the lot would provide sufficient space for off-street parking.
3. Refuse and service areas, with particular reference to the items in 1. and 2. above.
  - Refuse collection will be coordinated by the owner/developer.
4. Utilities, with reference to locations, availability, and compatibility.
  - This location has all the necessary utilities present on site.
5. Screening and buffering with reference to type, dimensions and character.
  - Not applicable.
6. Signs, if any, and proposed exterior lighting with reference to glare, traffic, safety, economic effect, and compatibility and harmony with properties in the district.
  - Any proposed signage will have to meet Sign Ordinance requirements.

7. Required yard and other open space.
  - Staff finds that this yard has the necessary yard and open space to allow for the day care center as it has a lot size of approximately 1.51 acres.
8. General compatibility with adjacent properties and other property in the district.
  - Staff finds that the use would be compatible with adjacent properties as there are other neighborhood commercial uses surrounding as well as residential uses.
9. The following additional rules apply for upper story residential development proposals:
  1. All upper story residential development proposals shall require a certified statement demonstrating a firm agreement for parking reserved exclusively for the use of the upper story residential development.
  2. All upper story residential development proposals shall be in compliance with all Building, Utility, and Housing Codes within the Smyrna Municipal Code.
  - Not applicable.

7.061.7

*Special Conditions for Day Care Centers:*

1. No such facility shall be permitted on a zone lot unless it contains a minimum of ten thousand (10,000) square feet, or twice the lot area requirements of the zone district whichever is greater.
  - The subject property at 13179 Old Nashville Highway is approximately 1.51 acres, larger than 10,000 square foot minimum.
2. All bulk and setback regulations of the district shall be met.
  - The site plan submitted to the Planning Commission shows the building meeting all applicable setbacks.
3. The requirement of the accessory off-street parking regulations of this ordinance in Article IV, Section 4.010 shall apply.
  - 39 parking spaces are required for this development; the applicant has proposed 40 spaces so the requirement is being met.
4. All regulations of the State of Tennessee shall be met.
  - Applicant states they will meet all the requirements set forth by the Tennessee Department of Human Services.
5. All public utilities and sewage disposal shall be available to the site, and shall be subject to approval by the Director of Utilities, and site and architectural plans for such a facility shall be approved by the Planning Commission taking into account the above conditions as well as any other pertinent factors.
  - All utilities are available at the site.
6. The facility shall be located so as to be compatible with the surrounding area and provide safety to those using such facility.
  - This PCD is comprised of other neighborhood commercial style uses, such as a vet and offices. There are surrounding neighborhoods to which this service could be of assistance to.
7. Fencing, screening, and landscaping shall be provided as appropriate to protect the surrounding area.
  - There will not be any additional screening required for this use.

**Conclusion**

Staff finds that the property provides sufficient space for the business of a day care center. The proposed site plan was approved by the Planning Commission earlier this month on August 5, 2021. There are other neighborhood commercial uses present surrounding this property as well as residential uses, so this use would not be out of place with surrounding properties.

At this time, Phil Wilson acknowledged Enoch Jarrell, engineer for this project, to speak regarding the request.

Motion by Jay Michaelson, seconded by Troy Powell to approve the special exception for a day care center within the PCD district at 13179 Old Nashville Highway.

**Vote:** 4 - 0 Passed - Unanimously

5. Zoning Variance:

- 1. ETC Gymnastics  
Old Nashville Highway & Sunshine Circle

Location: 11265 Old Nashville Hwy.	Property Owner: Vester Waldron Family Limited Partnership
Tax Map/Group/Parcels #: Map 34-P, Group A, Parcels 3.00 & 4.00	
Zoning/Use Classification: C-2/Gymnastics studio	

*Request:* For a zoning variance to reduce the amount of required parking for a gymnastics studio.



**Staff Analysis** The applicant has requested a zoning variance of 50 parking space reduction for their 12,500 square foot gymnastics studio. The property is zoned C-2, General Commercial, and is

approximately 2.07 acres in size. There is a private road owned by the Smyrna Housing Authority which may be utilized by these parcels for access, but not altered or used for parking, and splits these two properties. The Zoning Ordinance parking requirement for recreation centers and gymnastics uses are 50% of building capacity, plus one space per every two employees. Based on plans submitted by the applicant, the Building Official has determined the maximum occupancy in the proposed building is 304 people. The applicant has noted there would be 15 employees as well. Using the parking requirement, 160 spaces would be required and the applicant is requesting 110 for the development. A previous site plan submitted to the Planning Commission showed 120 parking space availability between the two properties.

ETC Gymnastics currently has an 18,000 square foot facility in Murfreesboro with 92 parking spaces. Murfreesboro has a parking requirement for gymnastic studios of 1 space/300 square feet of building space. If 1 space/300 SF was used as the parking ratio for this 12,500 SF building, 42 spaces would be required.

Other local municipality parking requirements:

- Brentwood: 1 space/3 patrons at maximum capacity which would yield 102 parking spaces for this structure.
- Franklin: No listed requirement as it may vary based on the use. The City may determine the minimum based on the closest comparable use or approve an alternate standard based on a parking study based on anticipated traffic, size and type of development and a nationally-accepted standard for parking.
- Lebanon: 25% of the maximum capacity, plus 1 space/4 employees. This requirement would yield 78 required parking spaces.
- Mt. Juliet: Similar requirements to Smyrna in 50% of maximum capacity, plus 1 space/2 employees.

Section 7.080 D of the Zoning Ordinance detail the requirements for variances not involving special flood hazard areas. These are detailed below.

#### *Zoning Variance Requirements*

Section 7.080 of the Municipal Zoning Ordinance lists general requirements for a zoning variance request. Those requirements and staff's findings are as follows:

#### *Section 7.080 Procedure for authorizing zoning variances*

The purpose of a variance is to modify the strict application of the specific requirements of this ordinance in the case of exceptionally irregular, narrow, shallow, or steep lots, or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship which would deprive an owner of the reasonable use of his land. The variance shall be used only where necessary to overcome some obstacle which is preventing an owner from using his property under this ordinance.

#### **B. Standards for Variances not Involving Special Flood Hazard Areas:**

The board shall not grant a variance unless it makes finding based upon evidence presented to it as follows:

1. The particular physical surroundings, shape, topographic conditions of the specific property involved that would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict application of this ordinance were carried out must be stated.
  - Staff finds that this is a unique circumstance in that there is a private road separating

these two properties in which can only be used for access, not parking nor altered.

2. The conditions upon which the petition for a variance is based would not be applicable, generally, to other property within the same district.
  - Staff finds there is a unique situation regarding this property that may not be applicable to other property in the same district.
3. The variance will not authorize activities in a zone district other than those permitted by this ordinance.
  - Parking spaces are required for gymnastics studios, but the requirement is for 50% maximum occupancy, plus 1 space/2 employees.
4. Financial returns only shall not be considered as a basis for granting a variance.
  - The property owner has not identified financial returns as a reason for requesting a variance.
5. The alleged difficulty or hardship has not been created by any person having an interest in the property after the effective date of this ordinance.
  - The alleged difficulty or hardship was not created by the applicant.
6. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same districts.
  - Staff finds that the variance requested may not provide the applicant with special privileges denied by the ordinance to other lands, structures, or buildings in the C-2 district due to the unique circumstance with these properties.
7. The variance is the minimum that will make possible the reasonable use of the land, building, or structure.
  - Staff finds that the requested reduction in parking is the minimum that will make possible the reasonable use of the property while accommodating for landscaping and drainage requirements among others.
8. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the area in which the property is located.
  - Staff finds that the variance would not be detrimental to the public welfare or injurious to other property or improvements in the area.
9. The proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the area.
  - Staff finds that the variance should not have any of the above effects.
10. Variances may be issued for the reconstruction rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places upon a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building, and provide the proposed reconstruction, rehabilitation or restoration will not result in the structure losing its historic designation.
  - Not applicable

### **Conclusion**

Staff finds that there is a unique circumstance present with the private road that divides these two properties, leaving a space that cannot be developed or altered. There are many other surrounding municipalities in which this development, as presented, would meet their requirements for parking standards.

At this time, Phil Wilson acknowledged Steve Steele, engineer for this project, to speak regarding the request.

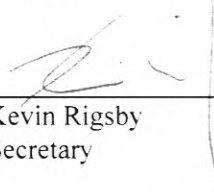
Motion by Scott Demonbreun, seconded by Jay Michaelson to approve the zoning variance for a reducing in the number of required parking spaces from 160 to 110 spaces due to Sunshine Circle splitting the two properties, reducing the potential for additional parking.

**Vote:** 4 - 0 Passed - Unanimously

6. Staff comments and/or other business

7. Adjournment

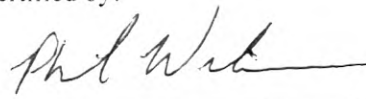
Respectfully submitted:



---

Kevin Rigsby  
Secretary

Certified by:



---

Phil Wilson  
Vice-Chairman