

City of Lee's Summit

Development Services Department

November 19, 2020

TO: Board of Zoning Adjustments
FROM: Hector Soto, Jr., Planning Manager
RE: **PUBLIC HEARING – Application #PL2020-251 – APPEAL OF ADMINISTRATIVE INTERPRETATION – Casey's General Store, 1800 NE Langsford Rd; Casey's Marketing Company, applicant**

Recommendation

The Development Services Department recommends **DENIAL** of the appeal of administrative decision that an outdoor ice machine (or outdoor ice bunker) is considered an outdoor vending machine, which is a prohibited accessory structure.

Request

Appeal of Administrative Interpretation: the applicant appeals the administrative interpretation that an outdoor ice machine is a type of outdoor vending machine and is thus prohibited

Site Characteristics

Location: 1800 NE Langsford Rd

Zoning: CP-2 (Planned Community Commercial District)

Property Owner: Casey's Marketing Company

Surrounding Zoning and Uses:

North: CP-2 – commercial retail center

South (across NE Langsford Rd): CP-2 – Walgreens Pharmacy

West (across NE Todd George Pkwy): RP-3 (Planned Residential Mixed Use) – residential four-plexes

East: CP-2 – CVS Pharmacy

Ordinance Requirement

Background.

- August 2015 – A Google Streetview image dated this month and year shows no ice machine located outside the Casey's General Store building.
- May 2018 – A Google Streetview image dated this month and year shows the appearance of an ice machine on the north side of the Casey's General Store building.
- April 22, 2020 – The City received an anonymous public complaint regarding an ice machine located on the outside of the convenience store, on the north side of the building. The City's Neighborhood Services Division mailed a Notice of Violation (NOV) on April 24, 2020, to Casey's Marketing Company advising them of the violation that the outside ice bunker is not an allowed accessory structure and thus needs to be abated.

Based on the available imagery of the site, the ice machine appeared outside the building at some point between mid-2015 and mid-2018. The City's Neighborhood Services

Division operates on a complaint-driven basis, meaning the City does not proactively seek violations of City ordinance. The City was not aware of the ice bunker's existence prior to receipt of the public complaint.

Ordinance Regulations. To provide an understanding of an accessory use or structure, the UDO provides the following definition under the Article 6, Division IV. – Accessory Uses and Structures:

“A use or structure will be considered ‘accessory’ when it is being used in conjunction with the principal use and is incidental and integrally related to the principal use.” (UDO Section 6.1310)

The UDO has a list of prohibited accessory uses and structures, which includes outdoor vending machines (UDO Section 6.1480.E). This same section includes the following exception note regarding outdoor product displays:

“Retail sales of products being displayed outdoors, provided such products are being sold within the commercial building where the products are being displayed shall not constitute an accessory use or structure. Said outdoor product display shall be located immediately adjacent to the wall of the building or within 20 feet of such wall, or in the case of a C-Store adjacent to the pump island, except for seasonal sales regulated by Division V of this article.”

The City has historically equated outdoor ice machines with vending machines. As such, staff considers them a type of outdoor vending machine and thus prohibited.

Existing Conditions. Casey's General Store is an approximately 2,400 sq. ft. building constructed in 1984. The outdoor ice machine remains on-site pending the outcome of the subject appeal.

Request. The applicant disagrees with staff's interpretation that the outdoor ice machine is a type of vending machine. The applicant argues that the outdoor ice machine is an allowed outdoor product display per the exception language previously cited under UDO Section 6.1480.

Analysis of Variance

Similar to an evaluation conducted by staff regarding a proposed use variance and the impacts it may have on surrounding properties and the rights of property owners, staff evaluated the requested appeal of administrative interpretation against the same criteria set forth in the Unified Development Ordinance Article 2, Sec. 2.530.B.3.:

Criteria #1 – The granting of the variance will not adversely affect the rights of adjacent property owners or residents.

Allowing the outdoor ice machine to remain by classifying it a display as opposed to a type of vending machine adversely affects the public good of controlling visual and physical clutter as a means of protecting an area's aesthetics. Other outdoor vending machines, such as food/beverage, DVD/game rental, novelty items, etc., are required to be located out of the public view interior to a building.

Criteria #2 – The granting of the variance will not be opposed to the general spirit and intent of the ordinance from which the variance is sought.

The City has bestowed to it police powers to impose reasonable laws and regulations related to the protection and promotion of a public good. Regulations enacted with the goal of preserving and/or protecting a community's aesthetics serve a public good. The UDO's regulation prohibiting outdoor vending machines furthers the public good of protecting the community's aesthetics by minimizing the visual and physical clutter of the city's commercial areas by relegating their usage to the interior of buildings.

Criteria #3 – The variance requested will not adversely affect the public health, safety, morals or general welfare of the community.

Allowing the outdoor ice machine to remain negatively affects the aesthetics of this commercial area and opens the door to propagate the outdoor use of these and similar appliances in full view of the public across the city's commercial areas.

Criteria #4 – The variance requested arises from a condition that is unique and peculiar to the property in question and which is not ordinarily found in the same zone or district, and further, is not created by an action or actions of the property owner or applicant.

This issue is not unique and peculiar to the property in question. Outdoor ice machines have historically been considered a type of outdoor vending machine and thus prohibited across the city as an accessory structure or use. The current issue was self-created by the property owner by bringing an outdoor ice machine to the site. There are three solutions, in the City's view, that the property owner can pursue to abate the issue: 1) remove the outdoor ice machine from the site; 2) re-locate the outdoor ice machine interior to the building; or 3) if not possible to relocate the ice machine to the building's interior due to a lack of space, a building addition or enclosure to house the outdoor ice machine can be constructed. Any building addition or enclosure to house the outdoor ice machine would need to be constructed with similar and compatible materials to that of the associated commercial building to which the ice machine is accessory.

Criteria #5 – Substantial justice will be done by the granting of the variance.

Substantial justice would not be done by approving the appeal to staff's interpretation. There are three options the applicant may pursue to comply with the UDO, two of which allow for the continued use of an ice machine with reasonable alterations to the building, be they to the building interior or exterior. Any other business looking to employ the use of a similar appliance in their operations would not be allowed to locate it outside the building in full view, but rather would have to alter the building or interior layout to accommodate for its use.

Staff does not agree with the applicant's characterization of the outdoor ice machine as a product display. Retail product displays are generally seasonal and temporary in nature, whereas the outdoor ice machine is a year-round fixture on the property. Additionally, the ice machine has a solid, opaque exterior. The product itself that is available for purchase (i.e., bagged ice) is not visible and thus by definition is not on "display".

Analysis of Use Variance

In making such recommendation, the Staff has analyzed the following considerations set forth in the Unified Development Ordinance Article 2, Sec. 2.530.B.1.:

Consideration #1 – The strict application of the provisions of the Unified Development Ordinance would constitute an unnecessary hardship upon the applicant or landowner.

The strict application of the UDO provisions would not constitute an unnecessary hardship upon the applicant/property owner. As previously mentioned, there are three options available to the applicant to abate the matter come into compliance with the UDO. While removal of the ice machine from the premises altogether is one option for compliance, two other options allow for its continued use with the appropriate and reasonable building alterations.

Consideration #2 – The granting of the variance will not alter the essential character of the locality.

Interpreting outdoor ice machines as a product display as opposed to a type of outdoor vending machine has the potential to alter the character of the city's commercial areas by negatively

impacting a property's aesthetics. The regulations in place prohibiting outdoor vending machines are intended to control visual and physical clutter in the city's commercial areas.

Consideration #3 – The land in question cannot yield a reasonable return if used only for the purposes allowed in the district.

The land in question can continue to yield a reasonable economic return if the outdoor ice machine is removed from the site, relocated to the interior of the building or if housed within a building addition or enclosure, all in compliance with the UDO.

Attachments:

1. Board of Zoning Adjustment Application and Variance Criteria – 7 pages
2. Copy of Notice of Violation, dated April 24, 2020
3. Applicant's Appeal to Staff Interpretation, dated August 12, 2020
4. Location Map