

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

CASE NUMBER: BOA 14-62 **B.O.A. MEETING:** 4/22/2015

DEVELOPMENT NAME: Community Choice Financial #1

LOCATION: 3288 Austin Peay Hwy

OWNER OF RECORD/APPLICANT: Huang Yi and Li Yanhong

REPRESENTATIVE: Al Bright

REQUEST: Appeal of written interpretation by building official

AREA: 0.66 acres

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

OFFICE OF PLANNING AND DEVELOPMENT RECOMMENDATION

APPEAL: None provided as this is an appeal made to the BOA of a determination made by staff

Staff Planner: Calvin Abram

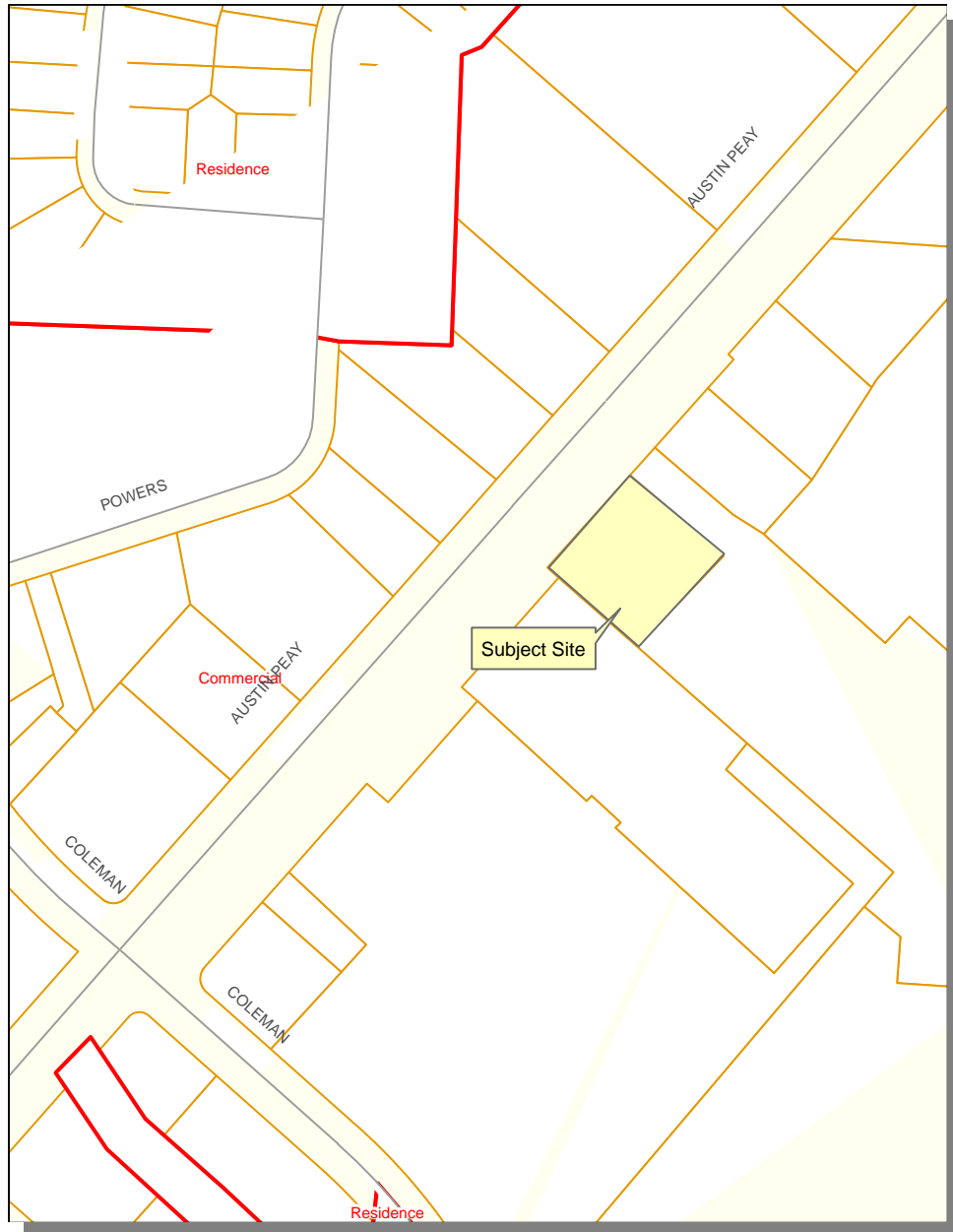
calvin.abram@memphistn.gov

CONCLUSIONS:

The applicant is requesting an appeal from OPD's interpretation of its classification of an unlisted use. After researching the applicant's portfolio, requesting additional information from the applicant and referring to the Tennessee Code Annotated for a definition of "Flexible Spending Account Establishment," it was determined the applicant proposed use of the site would be identified as consistent with a "payday loan establishment." Staff created a chart (Appendix A, attached with Staff Report) and this chart was used to compare the likeness between a payday loan establishment, title loan establishment, flexible spending account establishment and a bank.

The determination is consistent with UDC Subsection 2.5.1B(1).

LAND USE AND ZONING MAP



SURROUNDING LAND USES AND ZONING:

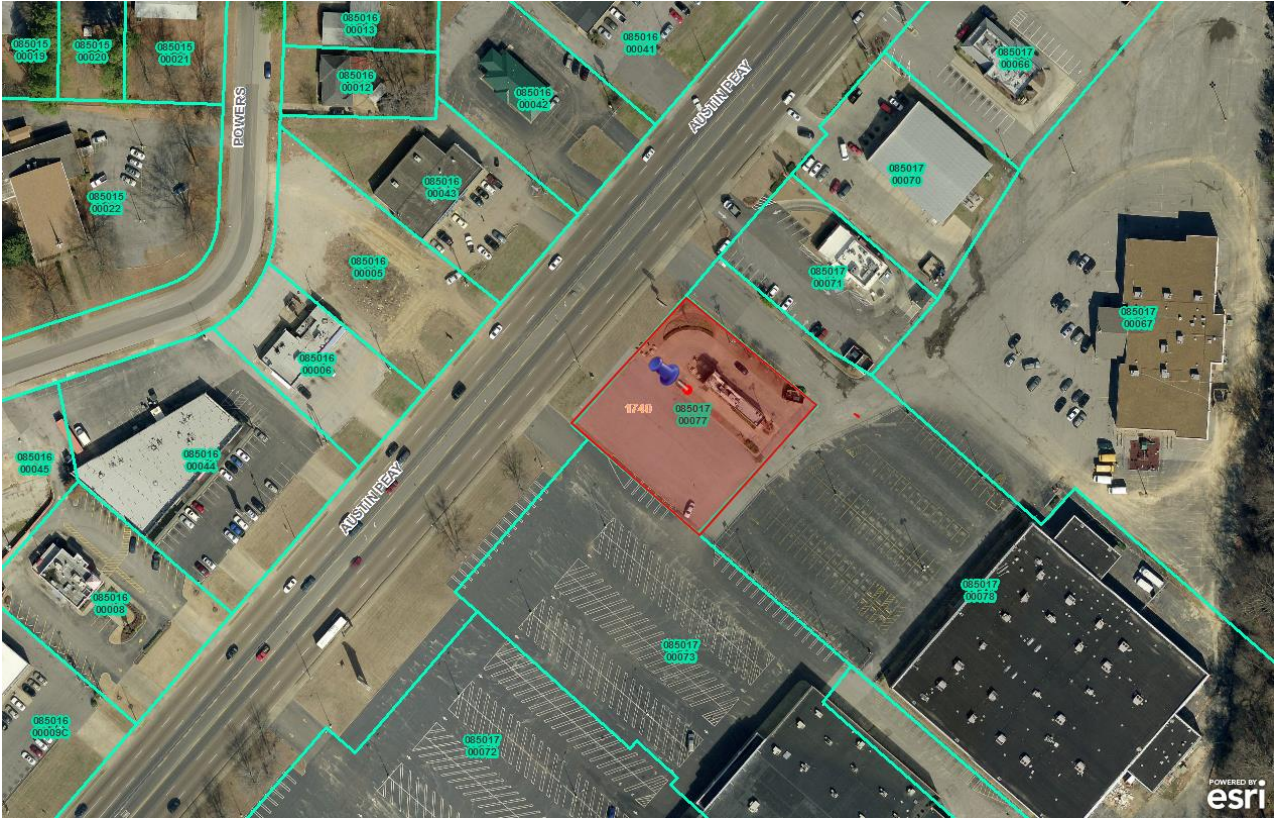
North: Commercial

East: Commercial

South: Commercial

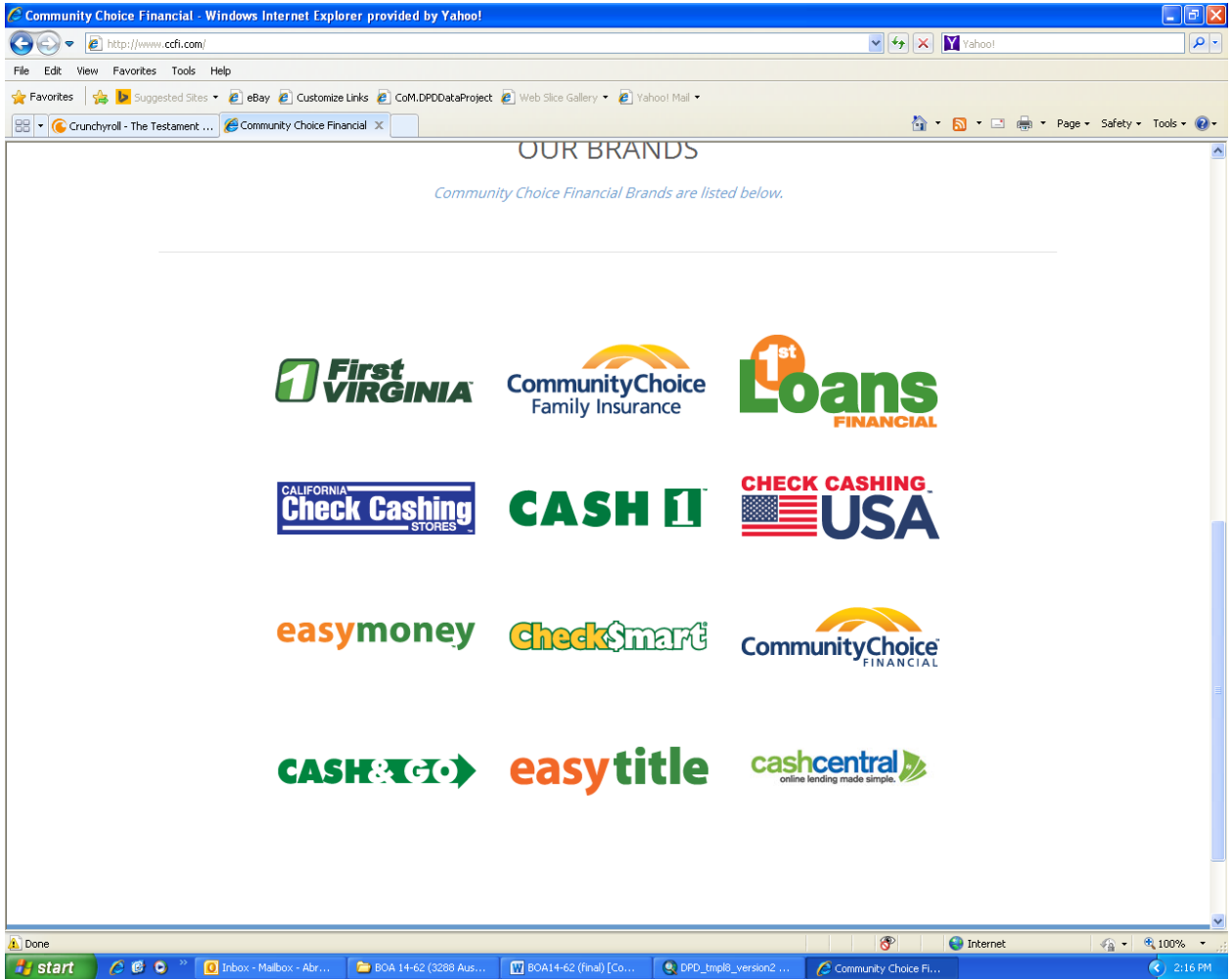
West: Commercial

Aerial of Site



The subject site has frontage along Austin Peay Hwy.

The applicant also has the following businesses as part of its portfolio. The information is a “Print Screen” from the applicant’s website.



STAFF ANALYSIS:

This application is a request for an appeal of the Planning Director and the Building Official’s decisions to classify a potential “loan establishment” as consistent with a payday loan establishment.

- Payday Loan Establishment: “Any building, room, space or portion thereof where a person, company, or other legal entity makes or facilitates a deferred presentment service, such that a person, company or legal entity provides currency or a payment instrument in exchange for a person’s check or agreement to provide access to a drawer’s account in a financial institution and agrees to hold that person’s check for a period of time prior to presentment, deposit, or redemption or facilitate this process. Payday loan establishments include persons or businesses licensed under Title 45, Chapter 17, of the TN Code Annotated.”

- Title Loan Establishment: “Any building, room, space or portion thereof where a person, company, or other legal entity engaged in the business of making loans in exchange for possession of the certificate of title property or a security interest in titled property. Title loan establishments include persons or businesses licensed under Title 45, Chapter 15, of the TN Code Annotated.”

The applicant has identified the location in which they would like to provide flexible spending loan services to the general public at 3288 Austin Peay Highway and this area is identified as a Commercial Mixed Use-2 Zoning District. Within the CMU-2 zoning districts, a payday loan establishment is not permitted by right and the only relief an applicant has to the UDC that establishes this zoning is through a variance application to be authorized by either the Board of Adjustments, through the approval of use and other variances or by the City Council, through the approval of a Planned Development.

After researching Community Choice Financial, it was determined the vast majority of its loan uses are payday loans or title loans; therefore, without additional information that was requested from the applicant’s attorney, OPD must conclude the applicant’s business will continue to meet its current history of payday loan or title loan establishments. OPD Staff has created a chart that is attached with the Staff Report; this chart (Appendix A) identifies the difference between a bank, payday loan, title loan and a financial spending account.

The applicant also fails to meet the UDC Subsection 2.6.3M(2):

- It shall be a violation of this development code for a person, corporation or other legal entity to operate or cause to be operated any payday loan or title loan establishment within 1,320 feet from the boundary of a residential district or historic overlay district (Residential is west of the site within this proximity).

Appeal:

The Community Choice Financial is requesting to appeal the administrative interpretation of the UDC as interpreted by the Planning Director and/or his Staff Planner. The applicant does not agree that the services provided by its organization which, if approved, would be located at 3288 Austin Peay Highway. The UDC identifies a payday loan as “Any building, room, space or portion thereof where a person, company, or other legal entity makes or facilitates a deferred presentment service, such that a person, company or legal entity provides currency or a payment instrument in exchange for a person’s check or agreement to provide access to a drawer’s account in a financial institution and agrees to hold that person’s check for a period of time prior to presentment, deposit, or redemption or facilitate this process. Payday loan establishments include persons or businesses licensed under Title 45, Chapter 17, of the TN Code Annotated.” On

January 1, 2015, Title 45, Chapter 17 of the TN Code Annotated was amended to allow Flexible Spending Accounts; however, OPD has determined the category of such a use is consistent with that of a payday loan establishment.

The Office of Planning and Development began communications as of September 2014 with the applicant pertaining to their proposal of a Payday loan establishment to be located along Austin Peay. Between the date beginning in September 2014 until the present date, several County Staff has attempted to assist the applicant with the interpretation of the UDC, complications the applicant may have with their proposal and the BOA appeal process (Please see attached Staff interaction timeline as part of the BOA forwarding packet).

Staff ultimately had to consider the UDC Subsection 2.5.1B(1) which states, "...Any use not specifically listed is expressly prohibited unless the Planning Director determines that the use is similar to a permitted use listed in the development code." The final interpretation of the applicant's request by OPD is the loan establishment in which Community Choice proposes is consistent with a payday loan and will be identified as a payday loan establishment.

Conclusion:

A payday loan is not permitted by right within a CMU-2 Zoning District; therefore, the applicant must submit a variance application that must be approved by either the Board of Adjustments or the City Council in order to be located at 3288 Austin Peay Hwy, if the applicant demonstrates that it is not providing payday or title loan services.

Staff created a table (Attachment A) comparing several aspects between the following:

- Banks
- Flexible Spending Loans
- Payday Loans
- Title Loans

After comparing the above types of lending establishments, it was further determined a Flexible Lending Establishment is more consistent to the Payday Loan Establishment category within the UDC. Staff of OPD shared the table (Attachment A) with the applicant's representative in a timely manner; however, the applicant did not respond to the information provided.

RECOMMENDATION: **APPEAL:** None provided, as this is an appeal of a determination by Staff.

GENERAL INFORMATION:

Street Frontage: Austin Peay
Planning District: Raleigh Community Council
Census Tract: 020541
Annexation Reserve Area: Not Applicable.
Zoning Atlas Page: 1740
Parcel ID: 085017 00077
Zoning History: CMU-2

DEPARTMENTAL COMMENTS

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

City Engineer: No Objection.
City Fire Division: No comments received.
City Real Estate: No comments received.
**City/County Health Department-
Pollution Control:** No comments received.
Environmental Sanitation: No comments received.
City Board of Education: No comments received.
Construction Code Enforcement: No comments received.
Memphis Light, Gas and Water: No comments received.
Bell South: [AT&T Tennessee has no comment.](#)
Memphis Area Transit Authority (MATA): No comments received.
OPD-Regional Services: No comments received.
Division of Park Services: No comments received.
Neighborhood Associations: No comments received.