

Final comments on November 9, 2017 Planning Commission agenda items, received before the noon deadline on November 9

Item 6, Brick Church Lane

(attachment follows)

James L. Murphy III
jmurphy@bradley.com
615.252.2303 direct



November 9, 2017

VIA HAND DELIVERY
Chairman Greg Adkins and Members of the
Metropolitan Planning Commission
800 Second Avenue South
Nashville, TN 37219-6300

RE: Request for Concept Plan Approval, Brick Church Lane Subdivision, Case No.
2017S-226-001

Dear Chairman Adkins and Commissioners:

I represent KCS Companies, LLC the developer of the Brick Church Lane Subdivision-Case No. 2017S-226-001, located on Brick Church Lane, approximately 2,500 feet east of Knight Drive (the "Subdivision"). Dale & Associates, Inc., the Applicant in Case No. 2017S-226-001, was retained by KCS Companies, LLC to file the application for concept plan approval for the Subdivision. The concept plan proposes to subdivide the approximately 65 acre tract into 193 lots.

Under Tennessee law, consideration of the concept plan by the Planning Commission is an administrative act. The Tennessee Supreme Court has distinguished between "administrative acts" versus "legislative acts" of governmental entities, with the "crucial test" being "whether the action taken makes new law or executes one already in existence." *McCallen v. City of Memphis*, 786 S.W.2d 633, 639 (Tenn. 1990) (finding that a resolution of the Memphis City Council approving a planned development was an administrative act). Applying the *McCallen* test, the Court of Appeals found in *Wills v. City of Memphis* that the Memphis City Council's denial of a landowner's petition to subdivide a lot into two lots "required the City Council to apply existing law; thus, the Council's decision is administrative in nature." *Wills v. City of Memphis*, 457 S.W.3d 30, 38 (Tenn. Ct. App. 2014). See also *Save Rural Franklin v. Williamson County Government*, 2016 WL 4523418 (Tenn. Ct. App. 2016) (noting that the Chancery Court had found that the Planning Commission's approval of a subdivision was an administrative act).

Because consideration of the concept plan for the Subdivision is an administrative act, the Planning Commission is limited to determining whether the concept plan complies with the Subdivision Regulations and the cluster lot provisions of the Zoning Code. The Planning Commission's decision must be based on the material evidence presented to the Planning Commission. "Mere beliefs, opinions and fears of neighborhood residents do not constitute material evidence." *Mullins v. City of Knoxville*, 665 S.W.2d 393, 396 (Tenn.App.1983). "Speculations, expression of fears and considerations of an aesthetic or political nature do not form a basis to support a decision made by an administrative body charged with adjudicatory responsibility." *Sexton v. Anderson County*, 587 S.W.2d 663, 666 (Tenn.App.1979). In particular, concerns of neighboring landowners do not provide a basis for the denial of an application that complies with all the applicable regulatory requirements. See *Brooks v. Fisher*, 705 S.W.2d 135, 138 (Tenn.App.1985). See also *Father Ryan High School, Inc. v. City of Oak Hill*, 774 S.W.2d

184, 190 (Tenn.App.1988); *Merritt v. Wilson County Board of Zoning Appeals*, 656 S.W.2d 846, 855 (Tenn.App.1983).

If the material evidence presented to the Planning Commission shows that the concept plan complies with the Subdivision Regulations and the cluster lot provisions of the Zoning Code, then the Planning Commission must approve the concept plan. Disapproval under such circumstances would be arbitrary and capricious and subject to reversal on appeal. See, e.g. *Rogers Group, Inc. v. County of Franklin*, 1992 WL 85805 (Tenn. Ct. App. 1992) (concluding that the Franklin County Regional Planning Commission acted arbitrarily and illegally when it denied a plot plan for a proposed rock quarry, rock crusher, and asphalt plant on the grounds that the location was not a "proper site" for the proposed uses, even though there was no material evidence that the plot plan failed to comply with the requirements of the zoning resolution); *Harrell v. Hamblen County Quarterly Court*, 526 S.W.2d 505 (Tenn. Ct. App. 1975) (holding that the Hamblen County Planning Commission acted arbitrarily when it denied approval of a permit to construct a mobile home even though all requirements of the zoning ordinance had been met); *Father Ryan High School, Inc. v. City of Oak Hill, supra* (finding that the Board of Zoning Appeals had illegally denied a conditional use permit based on considerations beyond the Board's statutory authority in a situation where the applicant had complied with all applicable provisions of the zoning ordinance).

The property in question is currently zoned R10, which requires a minimum of 10,000 square foot lot and is intended for one and two-Family dwellings at a density of 4.35 dwelling units per acre. The R10 zoning would permit a maximum of 284 lots as a conventional subdivision or 242 lots under the cluster lot provisions of the Zoning Code. The cluster lot provisions of the Zoning Code were adopted to permit varying minimum lots sizes in order to avoid topographic conditions such as steep slopes. Since the property in question has steep slopes, the concept plan proposes a development under the cluster lot provisions of the Zoning Code.

The Planning Department's staff has determined that the concept plan for the Subdivision complies with the Subdivision Regulations and the cluster lot provisions of the Zoning Code. Metro's Traffic and Parking Commission has recommended approval subject to the developer complying with the recommendations from the Traffic Impact Study prepared by Fischbach Transportation Group. One of those recommendation was that the developer would be required to provide adequate sight distance at all access drives.

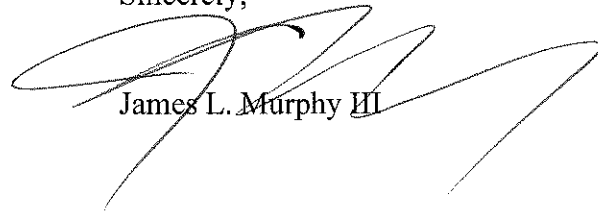
None of the objections of the neighbors address whether the concept plan complies with the Subdivision Regulations and/or the cluster lot provisions of the Zoning Code. Instead those objections are merely the beliefs, opinions and fears of neighborhood residents which would not constitute material evidence in support of a decision to disapprove the concept plan. Therefore the Planning Commission should approve the concept plan for the Subdivision.

November 9, 2017

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Thank you for your consideration of this matter. Please contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to be 'JLM', written over the printed name.

James L. Murphy III

JLM/jlm

cc: Doug Sloan (via email)

Items 8, 828 Cherokee Avenue, and 21, 851 Cherokee Avenue

From: Davis, Ashonti [<mailto:DavisA17@actna.com>]
Sent: Thursday, November 09, 2017 9:58 AM
To: Rickoff, Abbie (Planning)
Cc: 'ashontidavis@gmail.com'
Subject: Item 21 - No. 2017Z112PR-001 - Rezoning of Cherokee avenue

Hi, Ms. Rickoff,

I am writing to ask that the above-referenced item be removed from the Consent Agenda. Also, I would like to reiterate previous expressed concerns about the detrimental impact such upzonings have on the integrity and character of the neighborhood. If the applicant seeks to change its zoning from IWD to a more appropriate zoning such as R6, then I would have no objection. However, the negative impact that flows from this type of zoning request includes: potential for gentrification, overuse of aging infrastructure, degradation of the existing neighborhood quality, and increase in traffic.

In light of the recent and significant increase of rezoning applications and SP applications for this area, I respectfully ask the Planning Department and the Planning Commission to take a moment and reflect about the aggregate impact these types of rezonings have on the neighborhood. Jones Avenue and Cherokee Avenue are not main corridors, and are several blocks away from a main corridor. Considering the aggregate impact is key, but it is also important to weigh whether these types of dense rezoning applications are appropriate in the infill of a neighborhood.

I appreciate your consideration of my comments.

Much thanks,

Ashonti

Ashonti T. Davis

Counsel

Aetna Senior Supplemental Insurance

800 Crescent Centre Drive, Suite 200

Franklin, TN 37067

Phone: 615-807-7655

Email: davisa17@aetna.com

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This e-mail may contain confidential or privileged information. If you think you have received this e-mail in error, please advise the sender by reply e-mail and then delete this e-mail immediately. Thank you. Aetna

From: Christy Grace [mailto:christy.h.grace@gmail.com]

Sent: Thursday, November 09, 2017 11:57 AM

To: Planning Commissioners

Cc: Gordon Stacy Harmon; planning.commissioners@nashville.gov; Ashonti Davis; Devan Baldwin; Martha Carroll; Rae Sovereign; Russ Sims

Subject: Re: Items Nos. 2017Z-108PR-001 - Rezoning at 828 Cherokee Avenue and 2017Z-112PR-001 - Rezoning at 851 Cherokee Avenue

I would like to add my voice to that of my neighbors. I share the concerns of Stacy Harmon and Ashonti Davis. And particularly ask that the commissioners do not only consider the merits of each individual proposal but appreciate the tremendous impact in aggregate across our established neighborhood.

Christy Grace

1603 Lischey Ave

Sent from my iPhone

On Nov 9, 2017, at 11:46 AM, Russ Sims <rnsims@gmail.com> wrote:

Please allow my brief response here to signal my agreement and support of the issues as articulated by Mr. Harmon. I firmly share the same concerns that he expressed.

Russ Sims

1601 Lischey Avenue

On Nov 9, 2017 11:31 AM, "Gordon Stacy Harmon" <stacy@easeuptravel.com> wrote:

As a resident of the Highland Heights neighborhood, I must also add my voice to the growing concern of increasing density in our immediate area. My residence at 1826 Joy Circle is located in the midst of several proposed developments mentioned below -

1. Marshall Crossing - Item #3 on tonight's agenda - proposed rezoning to add 15 units on 0.87 acre
2. 828 Cherokee - Item #8 on tonight's agenda - proposed rezoning that could add up to 10 units on 0.55 acre
3. 851 Cherokee - Item #21 on tonight's agenda - proposed rezoning that could add up to 10 units on 0.48 acre
4. 1801 Meridian - SP rezoning that was recently approved on third reading by Metro Council - 158 units on 8.44 acres
5. East Trinity Lane - SP rezoning that was recently approved on second reading by Metro Council - 190 units on 10.08 acres
6. Cherokee Master Plan - SP rezoning that was recently approved on second reading by Metro Council - 166 units on 5.94 acres that will also include commercial space

Each project on its own is a concern due to the effects of the increased density of residential units within the area. But when you consider that within an area of approximately 1/3 square mile, the combined projects will add 549 residences in an area designed to accommodate 184 residential units.

I respectfully request that the Commission consider the significant impact all of the projects will have on our neighborhood. In aggregate, these projects will strain infrastructure - from roads to sewage to stormwater drainage to electric grids. While I understand the city's need

to increase housing stock, I must oppose this significant development drive in existing neighborhoods like ours.

Gordon Stacy Harmon, CHS

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(615) JET-SAND (538-7263)

----- Forwarded message -----

From: "Davis, Ashonti" <DavisA17@aetna.com>

Date: Nov 9, 2017 10:01 AM

Subject: RE: Item 8 - No. 2017Z-108PR-001 - Rezoning on Cherokee Avenue

To: "planning.commissioners@nashville.gov" <planning.commissioners@nashville.gov>

Cc: "ashontidavis@gmail.com" <ashontidavis@gmail.com>

Dear Members of the Planning Commission,

I am writing to ask that the above-referenced item be removed from the Consent Agenda. Also, I would like to reiterate previous expressed concerns about the detrimental impact such upzonings have on the integrity and character of the neighborhood. If the applicant seeks to change its zoning from IWD to a more appropriate zoning such as R6, then I would have no objection. However, the negative impact that flows from this type of zoning request includes: potential for gentrification, overuse of aging infrastructure, degradation of the existing neighborhood quality, and increase in traffic.

In light of the recent and significant increase of rezoning applications and SP applications for this area, I respectfully ask the Planning Department and the Planning Commission to take a moment and reflect about the aggregate impact these types of rezonings have on the neighborhood. Jones Avenue and Cherokee Avenue are not main corridors, and are several blocks away from a main corridor. Considering the aggregate impact is key, but it is also important to weigh whether these types of dense rezoning applications are appropriate in the infill of a neighborhood.

I appreciate your consideration of my comments.

Much thanks,

Ashonti

Ashonti T. Davis

Counsel

Aetna Senior Supplemental Insurance

[800 Crescent Centre Drive, Suite 200](#)

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Phone: [615-807-7655](tel:615-807-7655)

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Aetna

Items 25a/b/c, STRPs

From: Dani Scoggin [mailto:lillbite@yahoo.com]

Sent: Thursday, November 09, 2017 11:09 AM

To: Planning Commissioners

Subject: Support Nashville's New Short-Term Rental Ordinance

Dear Member Planning Commission,

I am writing you to ask for your support in protecting short-term rentals and the value they bring to the Nashville community. It is important for the Planning Commission to vote YES on Substitute Ordinance 937, which will preserve the economic benefits STRPs bring to the city, while creating requirements that make enforcement easier.

Nashville's STRPs have existed in our city for decades. They provide our residents with a critical source of income, bring visitor spending to neighborhoods that traditionally do not benefit from tourism, and expand the opportunities for families to visit the Music City we call home.

Thank you for your work on STRP regulations in Nashville. We have finally found a solution that will work for all groups involved. For this reason, I urge you to support Substitute Ordinance 937 and to pass the bill with no amendments. Bill 937 will protect property rights, preserve the economic benefits of STRPs, and ensure accountability and responsible renting.

Regards,

Dani Scoggin

1407 Sweetbriar Ave

Nashville, TN 37212

From: Adam Forgacs [mailto:foragacs74@gmail.com]

Sent: Thursday, November 09, 2017 11:04 AM

To: Planning Commissioners

Subject: Vote YES on Bill 937!

Dear Member Planning Commission,

Thank you for your time and consideration of short-term rental property (STRP) regulations in Nashville.

As a short-term rental supporter, I urge you approve Substitute Ordinance 937, which represents the policy solutions reached by the STRP Ad Hoc Committee, and will allow all STRPs in Nashville to continue to operate responsibly across the city. STRPs have been a part of Nashville's culture for generations, and responsible short term rental operators like me have only enhanced the quality of our neighborhoods and strengthened our local economy.

Bill 937 will protect my right to use my home for short-term rental, while ensuring accountability and responsible renting. Please approve this ordinance and support Nashville's short-term rental community!

Regards,
Adam Forgacs
1110 Chapel Ave
Nashville, TN 37206 ▪