



**METROPOLITAN GOVERNMENT
OF NASHVILLE AND DAVIDSON COUNTY**

Planning Department
Metro Office Building
800 Second Avenue South
Nashville, Tennessee 37201

**Minutes
of the
Metropolitan Planning Commission**

2/26/09

4:00 PM

*Metro Southeast at Genesco Park
1417 Murfreesboro Road*

PLANNING COMMISSION:

James McLean, Chairman
Phil Ponder, Vice Chairman
Judy Cummings
Tonya Jones
Victor Tyler
Councilmember Jim Gotto
Andrée LeQuire, representing Mayor Karl Dean

Staff Present:

Rick Bernhardt, Executive Director
Ann Hammond, Asst. Executive Director
Ted Morrissey, Legal Counsel
Bob Leeman, Acting Planning Mgr. II
Jason Swaggart, Planner II
Trish Brooks, Admin. Svcs Officer 3
Craig Owensby, Public Information Officer
Brenda Bernards, Planner III
Brian Sexton, Planner I
Steve Mishu, Metro Water
Jonathon Honeycutt, Public Works

Commission members absent:

Hunter Gee
Derrick Dalton
Stewart Clifton

Mission Statement: The Planning Commission guides growth and development as Nashville and Davidson County evolve into a more socially, economically and environmentally sustainable community, with a commitment to preservation of important assets, efficient use of public infrastructure, distinctive and diverse neighborhood character, free and open civic life, and choices in housing and transportation.

I. CALL TO ORDER

The meeting was called to order at 4:03 p.m.

II. ADOPTION OF AGENDA

Mr. Ponder moved, and Dr. Cummings seconded the motion, which passed unanimously to adopt the agenda as presented. (7-0)

III. APPROVAL OF FEBRUARY 12, 2009, MINUTES

Mr. Ponder moved and Dr. Cummings seconded the motion, which passed unanimously to approve the February 12, 2009 minutes as presented. (7-0)

IV. RECOGNITION OF COUNCILMEMBERS

Councilmember Hunter stated he would address the Commission after his item was presented for discussion.

Councilmember Harris explained he would address the Commission after his item was presented for discussion.

Councilmember Jernigan stated he would address the Commission after his item was presented for discussion.

Councilmember Holleman acknowledged that Item #1, 2008Z-079U-10, was on the Consent Agenda for approval. He briefly explained that there were many meetings on this request and that almost all were in favor of its approval.

Councilmember Toler acknowledged that Item #12, 88-96P-001, Williams Home Place was to be deferred until March 12, 2009.

V. PUBLIC HEARING: ITEMS REQUESTED TO BE DEFERRED OR WITHDRAWN

- 2. 2008Z-088T A council bill to amend the Metro Zoning Code, Section 17.04.060 to modify the definition of "mobile vendor" to exempt vending activity along Cleveland Street between Dickerson Pike and McFerrin Avenue – deferred to April 14, 2009 meeting unless the Council Public Hearing is held on March 3, 2009, then defer to March 12, 2009, at the request of the applicant
- 3. 2008Z-042G-06 A request to amend a previously approved Council Bill (BL2005-543) to remove condition #5 restricting access to Moss Road for property located at Highway 100 (unnumbered) zoned Multi-Family Residential – deferred indefinitely, at the request of the applicant
- 12. 88-96P-001 A request to revise the preliminary plan and for final approval for the Williams Home Place Planned Unit Development located at 5714 Edmondson Pike, to permit a 180 foot monopole wireless communication tower – deferred to March 12, 2009, at the request of the applicant

Mr. Ponder moved, and Mr. Gotto seconded the motion, which passed unanimously to adopt the Consent Agenda as presented. (7-0)

Ms. Hammond announced, "As information for our audience, if you are not satisfied with a decision made by the Planning Commission today, you may appeal the decision by petitioning for a writ of cert with the Davidson County Chancery or Circuit Court. Your appeal must be filed within 60 days of the date of the entry of the Planning Commission's decision. To ensure that your appeal is filed in a timely manner, and that all procedural requirements have been met, please be advised that you should contact independent legal counsel."

**VI. PUBLIC HEARING: CONSENT AGENDA
PREVIOUSLY DEFERRED ITEMS**

- 1. 2008Z-079U-10 A request to apply a Neighborhood Conservation Overlay for various properties on both sides of Whitland Avenue between Wilson Boulevard South and Bowling Avenue, zoned R8 (19.61 acres) -Approve

SPECIFIC PLANS

- 6. 2009SP-003-001 A request to change from CS to SP-A zoning for property located at 3502 Dickerson Pike, to permit wrecker service and automobile repair uses. -Approve with conditions

ZONING MAP AMENDMENTS

- 7. 2009Z-001HP-001 A request to apply a Historic Preservation Overlay District to 11 properties located on Tanglewood Drive N. and Tanglewood Court. -Approve

CONCEPT PLANS

- 8. 2007S-073U-03 A request to extend concept plan approval for one year to May 10, 2010, for a 50-lot cluster subdivision on property located at Overall Street (unnumbered), 869 West Trinity Lane, and West Trinity Lane (unnumbered), northeast corner of West Trinity Lane and Overall Street. -Approve with conditions

FINAL PLANS

- 9. 2009S-015-001 A request for final plat approval to create three lots on property located at 6025 Marrowbone Lake Road. -Approve with conditions

REVISED SITE PLANS

- 11. 75-83P-001 A request to revise the preliminary plan and for final approval for a portion of the Elysian Fields Planned Unit Development located at 3985 Nolensville Pike, to permit the development of 200 square foot retail use for an ice dispenser. -Approve with conditions

OTHER BUSINESS

- 13. A resolution to authorize the expenditure of up to \$7,500 from the advance planning and research fund, in accordance with Section 6.14 of the Metro Charter, for the purpose of participating with other Metro Departments to provide matching funds for an Urban Tree Canopy Assessment (UTC) to set long-term canopy goals and develop an urban forest management plan to achieve them. -Approve
- 14. Amend Resolution No. RS2008-241 to authorize the expenditure of up to \$30,000 from the advance planning and research fund, where \$20,000 was previously approved on November 13, 2008, to provide specific technical assistance to staff in the development of a Form-Based Code for Downtown Nashville, meant to supersede (either entirely or in part) the present zoning ordinance and land development regulations that apply to the Downtown Community (sub-area 9 boundary). -Approve
- 15. Amend Resolution No. RS2008-242 to authorize the expenditure of up to \$130,000 with funding provided by the applicant for the May Town Center SP proposal, where \$80,000 was previously approved on November 13, 2008, to provide for the study of the economic impacts and traffic/transportation impacts of implementing the Alternative Development Area Policy in Bells Bend (Bordeaux/Whites Creek Community, Subarea 3). -Approve

Mr. Ponder moved, and Mr. Gotto seconded the motion, which passed unanimously, to adopt the Consent Agenda as presented. (7-0)

Mr. Gotto moved, and Mr. Ponder seconded the motion, which passed unanimously, to move Item #10, 2009S-016-001, Howard Trawick Property, to the beginning of the agenda. (7-0)

Mr. McLean briefly explained the procedures in which the Commission would hear Items #4 and 5, 2009Z-005PR-001 and 2002P-003-001, Park Preserve (PUD Cancellation)

VII. PREVIOUSLY DEFERRED ITEMS

- 1. **2008Z-079U-10**
Whitland Avenue
Map: 103-16 Parcels: various
Map: 104-09, 104-09-Q Parcels: various
Green Hills/Midtown Community Plan
Council District 24 – Jason Holleman
Staff Reviewer: Carrie Logan

A request to apply a Neighborhood Conservation Overlay for various properties on both sides of Whitland Avenue between Wilson Boulevard South and Bowling Avenue, zoned R8 (19.61 acres), requested by Councilmember Jason Holleman, applicant, for various owners.

Staff Recommendation: Approve

APPLICANT REQUEST A request to apply a Neighborhood Conservation Overlay for various properties on both sides of Whitland Avenue between Wilson Boulevard South and Bowling Avenue, zoned One and Two-Family Residential (R8) (19.61 acres).

Existing Zoning

R8 District -R8 requires a minimum 8,000 square foot lot and is intended for single-family dwellings and duplexes at an

overall density of 5.41 dwelling units per acre including 25% duplex lots.

Deferral This item was deferred in order to allow the residents of Whitland Avenue to discuss the proposed Neighborhood Conservation Overlay further. Councilmember Holleman held neighborhood meetings on November 5, 2008, and December 1, 2008.

PROPOSED OVERLAY DISTRICT Section 17.36.120 of the Metro Zoning Ordinance recognizes Neighborhood Conservation Districts, along with Historic Preservation Districts and Historic Landmarks, as “Historic Districts.” These are defined as geographical areas which possess a significant concentration, linkage or continuity of sites, buildings, structures or objects which are united by past events or aesthetically by plan or physical development, and that meet one or more of the following criteria:

1. The district is associated with an event that has made a significant contribution to local, state or national history; or
2. It includes structures associated with the lives of persons significant in local, state or national history; or
3. It contains structures or groups of structures that embody the distinctive characteristics of a type, period or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
4. It has yielded or may be likely to yield archaeological information important in history or prehistory; or
5. It is listed or is eligible for listing in the National Register of Historic Places.

The Metro Historic Zoning Commission will review any new construction including additions, demolitions, or relocation of structures.

GREEN HILLS/MIDTOWN COMMUNITY PLAN POLICY

Residential Low Medium (RLM) RLM policy is intended to accommodate residential development within a density range of two to four dwelling units per acre. The predominant development type is single-family homes, although some townhomes and other forms of attached housing may be appropriate.

Consistent with Policy? Yes. The proposed Whitland Avenue Neighborhood Conservation Overlay does not change the base zoning. Further, the proposed overlay will serve to preserve the distinctive character of Whitland Avenue. This area was designated as Worthy of Conservation in the 2005 Green Hills/Midtown Community Plan. Whitland Avenue is also part of a larger area that is listed on the National Register of Historic Places.

Metro Historic Zoning Commission Recommendation - At its meeting on February 18, 2009, the Metro Historic Zoning Commission (MHZC) adopted revised design guidelines for the proposed Whitland Avenue Neighborhood Conservation District.

The design guidelines were revised to clarify:

- what is reviewed and not reviewed by the MHZC in a Neighborhood Conservation District;
- when it may be appropriate to add front or side dormers;
- the size and height of rear ridge raised dormers;
- when it may be appropriate to construct a side addition; and
- when it may be appropriate to construct a front porch addition.

PUBLIC WORKS RECOMMENDATION No Exceptions Taken

METRO SCHOOL BOARD REPORT

Projected student generation As this request to apply a Neighborhood Conservation Overlay does not change the underlying zone district, the number of expected students to be generated is zero.

STAFF RECOMMENDATION Staff recommends approval because the request is consistent with the applicable land use policies and the intent of Section 17.36.120 of the Metro Zoning Code.

Approved, (7-0) *Consent Agenda*

Resolution No. RS2009-14

“BE IT RESOLVED by The Metropolitan Planning Commission that 2008Z-097U-10 is **APPROVED. (7-0)**”

2. **2008Z-088T**
Mobile Vendors on Cleveland Street
Staff Reviewer: Jennifer Regen

A council bill to amend the Metro Zoning Code, Section 17.04.060 to modify the definition of "mobile vendor" to exempt vending activity along Cleveland Street between Dickerson Pike and McFerrin Avenue, sponsored by Councilmember Pam Murray.

Staff Recommendation: Disapprove

The Metropolitan Planning Commission DEFERRED Text Amendment 2008Z-088T to April 14, 2009, unless the Council Public Hearing is held on March 3, 2009, then defer to March 12, 2009, at the request of the applicant. (7-0)

VIII. PUBLIC HEARING: PREVIOUSLY DEFERRED ITEMS

3. **2008Z-042G-06**
Map: 155-00 Parcels:122, Part of 293
Bellevue Community Plan
Council District 35 – Bo Mitchell
Staff Reviewer: Jason Swaggart

A request to amend a previously approved Council Bill (BL2005-543) to remove condition #5 restricting access to Moss Road for property located at Highway 100 (unnumbered) zoned Multi- Family Residential (RM9), approximately 775 feet south of Collins Road (6.03 acres), requested by West Meade Realtors, applicant, for Betty French and Mary and James Johnson, owners.

Staff Recommendation: Approve with condition

The Metropolitan Planning Commission DEFERRED INDEFINITELY Zone Change 2008Z-042G-06, at the request of the applicant. (7-0)

4. **2009Z-005PR-001**
Map: 059-00 Parcels: 208, 209, 210, 211, 212, 221
Map: 060-00 Parcel: 072
Bordeaux/Whites Creek Community Plan
Council District 2 – Frank R. Harrison
Staff Reviewer: Brenda Bernards

A request to change from RM9 zoning to RS80 zoning properties located at Brick Church Pike (unnumbered) and Whites Creek Pike (unnumbered), (260.43 acres), requested by Councilmember Frank Harrison, applicant. Property owners are Nashville Area Habitat for Humanity Inc. and Harding Corporation. (See also Proposal No. 2002P-003-001).

Staff Recommendation: Disapprove

APPLICANT REQUEST - A request to change from Multi-Family Residential (RM9) zoning to Single-Family Residential (RS80) zoning properties located at Brick Church Pike (unnumbered) and Whites Creek Pike (unnumbered), (260.43 acres).

Existing Zoning

RM9 District -RM9 is intended for single-family, duplex, and multi-family dwellings at a density of 9 dwelling units per acre.

Proposed Zoning

RS80 District -RS80 requires a minimum 80,000 square foot lot and is intended for single-family dwellings at a density of 0.46 dwelling units per acre.

BORDEAUX/WHITES CREEK COMMUNITY PLAN

Residential Medium Density (RM) RM policy is intended to accommodate residential development within a density range of four to nine dwelling units per acre. A variety of housing types are appropriate. The most common types include compact, single-family detached units, town-homes, and walk-up apartments.

Consistent with Policy? No. The request to rezone the property from RM9 to RS80 is not consistent with the RM policy. The 0.46 dwelling units per acre of the RS80 district is well below the density range of four to nine dwelling units per acre of the RM policy.

ANALYSIS This request would rezone seven parcels from RM9 to RS80. The rezoning will create one substandard parcel where the existing parcel size will be less than 80,000 square feet. Section 17.40.670 of the Metro Zoning Code allows that a single-family structure may be constructed on a legally created lot that contains less than the minimum lot area required by the zoning district provided the lot contains a minimum area of 3,750 square feet and existed prior to the date of the ordinance.

The property is within the Park Preserve Planned Unit Development (PUD). There is an accompanying request to this rezoning to cancel the PUD. Currently, the PUD is approved for 327 multi-family units and 416 single-family lots for a total of 743 dwelling units. The RS80 zoning would permit approximately 120 single-family lots with a cluster lot subdivision.

Additionally, the owner of the property has made the Planning Commission aware of Fair Housing Act and equal housing issues. In a November 11, 2008, memorandum to the Planning Commission, the property owner, the Nashville Area Habitat for Humanity (NAHFH) wrote:

“NAHFH has proclaimed its intent to construct homes affordable to families earning 50% or less of the median family income, ninety-three percent (93%) of which are minorities.... Any action taken by the MPC in an effort to frustrate NAHFH’s ability to construct homes for its intended residents on the Property would have a disparate impact on minorities because it will deprive minorities of affordable housing opportunities, and therefore, violate the Fair Housing Act.”

A memo dated February 2, 2009, has been prepared by the Metro Legal Department regarding the impact of the proposed zoning on compliance with the Fair Housing Act (FHA) and the Religious Land Use and Institutionalized Persons Act (RLUIPA). A copy of the memo has been included with the staff report packet sent to the Planning Commission. The Legal Department has advised the Metro Council not to adopt this rezoning request and the accompanying request to cancel the Park Preserve PUD. At the first reading for these ordinances, the Council voted to indefinitely defer both requests.

Maximum Uses in Existing Zoning District: RM9/PUD

Land Use (ITE Code)	Acres	Density	Total Number of Lots	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
Single-Family Detached(210)	260.43	N/A	416	3860	301	387

*Number of single-family lots currently approved in PUD.

Maximum Uses in Existing Zoning District: RM9/PUD

Land Use (ITE Code)	Acres	Density	Total Number of Units	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
Residential Condo/Townhome(230)	260.43	N/A	327*	1804	134	159

*Number of multi-family units currently approved in PUD

Maximum Uses in Proposed Zoning District: RS80

Land Use (ITE Code)	Acres	Density	Total Number of Lots	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
Single-Family Detached (210)	260.43	0.46	120	1230	94	127

Change in Traffic Between Maximum Uses in Existing and Proposed Zoning District

Land Use (ITE Code)	Acres	--		Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
--	260.43		-623	-4434	-341	-419

LEGAL DEPARTMENT RECOMMENDATION Conclusion and Legal Recommendation of the February 2, 2009, memo sent to the Metro Council:

In summary, NAHFH has announced its intention and taken steps to build a neighborhood of low-to-moderate-income housing on its property in compliance with the current zoning and existing PUD, NAHFH is protected under federal law by the Fair Housing Act and RLUIPA, there is widespread community opposition to NAHFH’s plans, and this opposition resulted in the rezoning legislation under consideration, BL2009-384 and BL2009-385. (While BL2009-374 was also filed in an apparent response to this issue, as currently written, its adoption would not impact NAHFH’s ability to carry out its project.) As a result, while the legislation may be neutral on its face, evidence that these bills are being enacted specifically to target NAHFH and its proposed use of the property, will be a relevant consideration for a federal court. It is the advice of the Department of Law that the Council not adopt this legislation, BL2009-384 and BL2009-385. The FHA “protects the right of individuals to live in the residence of their choice in the community.” *Larkin v. State of Mich. Dept. of Social Services*, 89 F.3d 285, 291 (6th Cir. 1996). Even if the proposed legislation was not found to be “intentionally” discriminatory under the FHA, a court is likely to find that it has a disparate impact on a protected class. It is also likely that a court would find that this legislation violates RLUIPA. This legislation, BL2009-384 and BL2009-385, could endanger the approval by the Court of the proposed, pending consent decree of the Metropolitan Government with the Department of Justice, as well as result in additional litigation against the Metropolitan Government by NAHFH and the DOJ resulting in additional fines and damages being awarded against the Metropolitan Government, as well as further injunctive relief.

METRO SCHOOL BOARD REPORT

Projected Student Generation As this request to change from a multi-family to a single-family district represents a down zoning, the number of expected students to be generated would be less than could be generated under current zoning.

STAFF RECOMMENDATION Staff recommends disapproval of the zone change request because the RS80 zoning district is not consistent with RM land use policy. In addition, the Legal Department has advised the Metro Council not to adopt this legislation.

[Note: Items #4 and #5 were discussed by The Metropolitan Planning Commission together. See Item #5 for actions and resolutions.]

- 5. **2002P-003-001**
 Park Preserve (PUD Cancellation)
 Map: 059-00 Parcels: 208, 209, 210, 211, 212, 221
 Map: 060-00 Parcel: 072
 Bordeaux/Whites Creek Community Plan
 Council District 2 – Frank R. Harrison
 Staff Reviewer: Brenda Bernards

A request to cancel the Park Preserve Planned Unit Development Overlay district on properties located at Brick Church Pike (unnumbered) and Whites Creek Pike (unnumbered), approved for 327 multi-family units and 416 single-family lots for a total of 743 dwelling units (260.43 acres), zoned RM9 and proposed for RS80, requested by Councilmember Frank Harrison, applicant. Property owners are Nashville Area Habitat for Humanity Inc. and Harding Corporation. (See also Proposal No.

2009Z-005PR-001).

Staff Recommendation: Disapprove

APPLICANT REQUEST - PUD Cancellation

A request to cancel the Park Preserve Planned Unit Development Overlay district on properties located at Brick Church Pike (unnumbered) and Whites Creek Pike (unnumbered), approved for 327 multi-family units and 416 single-family lots for a total of 743 dwelling units (260.43 acres), zoned Multi-Family Residential (RM9) and proposed for Single-Family Residential (RS80).

PLAN DETAILS The Council approved plan for the Park Preserve PUD, as revised by the Planning Commission, consists of both single-family and multi-family units on 260.43 acres. The PUD is designed to protect the environmental features of the site and fit into the existing residential fabric of the surrounding area through location of housing types, street connections and open space. The single-family lots are concentrated to the north and southwest portion of the PUD, while the multi-family units are located to the southeast. The multi-family units are designed as one, two and three-story buildings ranging from seven to ten units per building.

Environmental Features Approximately 140 acres (53%) are designated for open and Open Space space. The plan is designed to preserve large areas of severe slope by clustering the units on portions of the site that were not as environmentally constrained. The open space areas help to maintain the existing tree mass, and provide passive recreation use in the form of walking trails that meander throughout the development and within open space shown at the rear of the single-family lots.

Access Access to the PUD is provided by connections to Vista Lane to the north, Adlai Street to the south, Revels Drive and Malta Drive to the east, and Trinity Hills Drive to the west. All internal streets are designed in a curvilinear pattern and provide connections throughout the PUD and to adjacent sites. Some streets are designed to terminate in either a permanent or temporary cul-de-sac. Sidewalks and street trees are also planned within the public right of way.

PUD HISTORY In 2002, PHP Ministries, Inc., requested a rezoning from Single-Family Residential (RS7.5) to Multi-Family Residential (RM4) on approximately 260.43 acres on the east side of Whites Creek Pike between Malta Drive and Haynie Avenue. Planning staff recommended disapproval of that initial zone change request because the property contains steep topography and a straight zone change could result in development that was not sensitive to the hillsides.

2002 PUD Plan PHP Ministries subsequently worked with Planning staff to develop a plan that was consistent with the goals of the adopted community plan. That plan was presented to the Planning Commission as a Planned Unit Development application along with a request to rezone the property to RM9 at the Commission's May 23, 2002, meeting. The PUD plan consisted of 839 units, including 469 multi-family units and 370 single-family lots. At the May 23, 2002, meeting, the Planning Commission recommended the PUD plan and RM9 rezoning to the Metro Council for approval with conditions. On July 16, 2002, the Metro Council approved the PUD plan and RM9 rezoning as recommended by the Planning Commission, but with a reduction in the number of units to 743 total units, including 327 multi-family and 416 single-family lots.

2003 Revision In 2003, PHP Ministries applied for a revision to the preliminary plan for Phases 1 and 3 of the PUD and for final site plan approval for Phase 1. The proposed revisions slightly altered the number of living units in Phases 1 and 3, replacing the Council-approved 327 multi-family units with 325 multi-family units and increasing the single-family lots in these phases from 25 to 29. Both the revisions to the preliminary PUD and the final site plan were approved by the Planning Commission on the consent agenda of the Commission's June 26, 2003, meeting.

2003 Community Plan Update On September 25, 2003, the Planning Commission approved the 2003 update of the Bordeaux-Whites Creek Community Plan. That Community Plan applied the Residential Medium (RM) land use policy to the PUD site and the surrounding land. The zoning districts in place at the time of the plan's adoption included RS7.5, R8 and RM9, which support densities between 4 and 9 units an acre.

2008 Revision In the spring of 2008, the Harding Corporation, as owner of the PUD property, applied for another revision to the preliminary PUD plan. The revised preliminary PUD plan was approved by the Planning Commission on the consent agenda of the Commission's April 24, 2008, agenda.

The April 24, 2008, revisions included the following:

- Some buildings, as well as intersections, were rearranged in order to minimize grading and preserve slopes. Several lots on the east side of Park Preserve Way, which were in steep slopes, were removed.
- A stub street was added to the north, where a cul-de-sac was previously located. The street will eventually connect to Ewing Drive.
- The intersection off of Whites Creek Pike was modified. Park Preserve Way changed from a through street to a T-intersection, which minimizes grading in this location.
- A common open space area was identified as a possible public park if accepted by Metro Parks.

The April 24, 2008, revisions superseded the revisions and final site plan approved by the Planning Commission in June 2003. The currently approved PUD plan, therefore, includes all provisions approved by the Metro Council in July 2002, as revised by the Planning Commission on April 24, 2008. The final site plan approved by the Planning Commission in June 2003 is no longer effective.

2008 Periodic Review At its meeting of December 11, 2008, the Planning Commission conducted a periodic review of the Park Preserve PUD under Section 17.40.120.H of Zoning Code. The Commission found that the PUD was active due to the specific and unique aggregate of actions taken by the current owner as presented in the oral presentations and written record.

Staff Analysis The RM9 district, together with the requirements and limitations of the residential PUD overlay district, are consistent with the Residential Medium (RM) land use policy and other policies as designated by the Bordeaux-Whites Creek Community Plan for this property.

The RM policy supports a variety of housing types within a density range of four to nine dwelling units per acre. The most common housing types include compact, single-family detached units, town-homes, and walk-up apartments. The Park Preserve PUD was approved at an overall density of 2.85 units per acre. The land use policy and the current zoning encourage a much higher density than the PUD plan provides, but in order to maintain tree mass and protect steep slopes, the site is not proposed to be completely built-out, and instead proposed to be developed to respect its environmental features. Even with the preservation of the hillsides and open space areas, the land use policies could possibly support a PUD of higher density.

The Bordeaux-Whites Creek Community Plan supports the infill of residential uses in this area. Specific issues raised during the development of the structure plan resulted in the following goals:

- *Provide New Residential Growth* – encourage new residential growth to support desired services.
- *Prevent Additional Industrial Zoning* – prevent additional industrial or other similar uses in the community. Provide additional land for residential growth
- *Improve Housing Choices* – provide locations for condominiums, townhouses, and apartments to allow for greater diversity in the housing stock in the community. Attract young professionals, empty-nesters, or retired persons.

Most of the property abutting the current PUD is zoned RS7.5, which allows single-family residential development on lots with a minimum size of 7,500 square feet. RS7.5 zoning allows development at up to 4.94 units per acre, which would allow approximately 1,284 single family units on the 260 acres that are included within the Park Preserve PUD. These numbers assume that 15% of the area would be used for roads and other infrastructure.

Additionally, the owner of the property has made the Planning Commission aware of FHA and equal housing issues. In a November 11, 2008, memorandum to the Planning Commission, the property owner, the Nashville Area Habitat for Humanity (NAHFH) wrote:

“NAHFH has proclaimed its intent to construct homes affordable to families earning 50% or less of the median family income, ninety-three percent (93%) of which are minorities.... Any action taken by the MPC in an effort to frustrate NAHFH’s ability to construct homes for its intended residents on the Property would have a disparate impact on minorities because it will deprive minorities of affordable housing opportunities, and therefore, violate the Fair Housing Act.”

A memo dated February 2, 2009, has been prepared by the Metro Legal Department regarding the impact of the proposed

zoning on compliance with the Fair Housing Act (FHA) and the Religious Land Use and Institutionalized Persons Act (RLUIPA). A copy of the memo has been included with the staff report packet sent to the Planning Commission. The Legal Department has advised the Metro Council not to adopt this request to cancel the Parks Preserve PUD and the accompanying rezoning request from RM9 to RS80. At the first reading for these ordinances, the Council voted to indefinitely defer both requests.

LEGAL DEPARTMENT RECOMMENDATION Conclusion and Legal Recommendation of the February 2, 2009 memo sent to the Metro Council:

In summary, NAHFH has announced its intention and taken steps to build a neighborhood of low-to-moderate-income housing on its property in compliance with the current zoning and existing PUD, NAHFH is protected under federal law by the Fair Housing Act and RLUIPA, there is widespread community opposition to NAHFH's plans, and this opposition resulted in the rezoning legislation under consideration, BL2009-384 and BL2009-385. (While BL2009-374 was also filed in an apparent response to this issue, as currently written, its adoption would not impact NAHFH's ability to carry out its project.) As a result, while the legislation may be neutral on its face, evidence that these bills are being enacted specifically to target NAHFH and its proposed use of the property, will be a relevant consideration for a federal court. It is the advice of the Department of Law that the Council not adopt this legislation, BL2009-384 and BL2009-385. The FHA "protects the right of individuals to live in the residence of their choice in the community." *Larkin v. State of Mich. Dept. of Social Services*, 89 F.3d 285, 291 (6th Cir. 1996). Even if the proposed legislation was not found to be "intentionally" discriminatory under the FHA, a court is likely to find that it has a disparate impact on a protected class. It is also likely that a court would find that this legislation violates RLUIPA. This legislation, BL2009-384 and BL2009-385, could endanger the approval by the Court of the proposed, pending consent decree of the Metropolitan Government with the Department of Justice, as well as result in additional litigation against the Metropolitan Government by NAHFH and the DOJ resulting in additional fines and damages being awarded against the Metropolitan Government, as well as further injunctive relief.

STAFF RECOMMENDATION Staff recommends disapproval of the request to cancel the Park Preserve PUD. The existing PUD and base zoning are consistent with and support the residential goals and objectives outlined by the Bordeaux-Whites Creek Community Plan. The current PUD plan will contribute to the residential growth needed to support commercial services and improvements to public facilities and services. The housing mix also advances the goal of providing choice. The mixture of housing types will accommodate families, single households as well as seniors. In additions, through the use of the cluster-lot provisions of the Zoning Code, the design of the PUD protects the environmentally sensitive areas on these properties. Further, the Legal Department has advised the Metro Council not to adopt this legislation.

Ms. Bernards presented and stated that staff is recommending disapproval of Zone Change 2009Z-005PR-001, as well as disapproval of the request to cancel Planned Unit Development 2002P-003-001.

The proponents in favor of approving Zone Change 2009Z-005PR-001, and the request to cancel Planned Unit Development 2002P-003-001, were first to address the Commission. They were given 20 minutes to speak and present their views to the Commission.

Councilmember Harrison, District 2, spoke in favor of the requested zone change as well as in favor of the cancellation of PUD 2002P-003-001.

Councilmember Hunt, District 3, spoke in favor of the requested zone change as well as in favor of the cancellation of PUD 2002P-003-001.

The opponents not in favor of approving Zone Change 2009Z-005PR-001, nor approving the request to cancel Planned Unit Development 2002P-003-001, were given 20 minutes to speak and present their views to the Commission.

Ms. Chris McCarthy, 1006 8th Avenue South, spoke in favor of staff's recommendation to disapprove Zone Change 2009Z-005PR-001 and to disapprove the cancellation of Planned Unit Development 2002P-003-001.

Mr. Gary Bigelow, 1006 8th Avenue South, spoke in favor of staff's recommendation to disapprove Zone Change 2009Z-005PR-001 and to disapprove the cancellation of Planned Unit Development 2002P-003-001.

Ms. Lillian Gilmer, Reno & Cavanaugh, spoke in favor of staff's recommendation to disapprove Zone Change 2009Z-005PR-001 and to disapprove the cancellation of Planned Unit Development 2002P-003-001. She submitted information for the record and requested that a copy of the December 11, 2008, minutes also be added to the record.

The Commission closed the public hearing.

Mr. Gotto acknowledged the difficult nature of the requested proposals. He then mentioned the lawsuit currently moving through the legal system regarding the requested development located in this area. He spoke of all the legal opinions of each respective party involved and offered that the final decision regarding this issue should come from the courts. He expressed concerns with the number of low income housing that is being proposed for placement in this particular area of the County and its implications on this community. He stated that due to the many conflicts involved with this development, he would abstain from voting.

Mr. Tyler requested clarification on the applicant's request for rezoning the parcel to RS80 and whether there were similar requests made for this type of rezoning.

Mr. Bernhardt explained a recent RS80 request and stated that these requests were supported by either the rural policy or conservation policy.

Mr. Tyler acknowledged that the request for RS80 did not support the policy planned for this area. He then mentioned that this area of the county has not experienced development like other parts of the county. He reiterated his request for the development to contain more mixed income housing as opposed to all low income and that this would better support the existing community. He then mentioned the need for additional studies on placing low income housing throughout the entire City.

Dr. Cummings acknowledged the good ministry of the Habitat for Humanity organization, however, expressed her concern with the density of the proposal, its placement in this community, and its lack of mixed-use components. She briefly explained her views on this development.

Mr. Ponder offered and reminded the Commission that their role was only to make a decision on the two requests being made; which were to rezone the parcel to RS80 and to cancel the Planned Unit Development. He did however acknowledge all of the issues and comments that were made regarding the entire proposal, however, would only base his decision on the current requests being made of the Commission

Ms. Jones agreed with Mr. Ponder in that the Commission should only focus on the two decisions being made of the Commission. She did express her enthusiasm on the proposed parks and open space that are part of the proposed development planned for this area.

Ms. LeQuire too acknowledged the difficulty of the request. She commended the applicant for utilizing sustainable development and briefly pointed out each component included in the project that supported this type of development. She then spoke of the various issues relating to this development, as well as overall development taking place in the entire City. She also commented that the location of the project should be sustainable, as well as the building materials. In closing, she suggested to further communications between both groups, that the Commission cancel the PUD and not call out the rezoning for the parcel and defer it to allow additional time for much needed discussions between both parties.

Mr. Ponder moved, and Ms. Jones seconded the motion, to approve staff's recommendation which is to disapprove of Zone Change 2009Z-005PR-001, and disapprove the request to cancel Planned Unit Development 2002P-003-001.

Ms. LeQuire expressed issues with casting her vote on the motion and requested clarification on alternative ways in which the motion could cancel the PUD, without calling out the zoning.

Mr. Bernhardt explained that the Commission could cancel the PUD which would allow the existing zoning to be in affect, which was RM9. He then offered that it is the role of the Commission to determine whether that the request being made by the applicant is consistent with the adopted community plan for this area. He further explained the adoption of the Community Plan for this area and the goals planned for this portion of the district.

Mr. Ponder moved, and Ms. Jones seconded the motion, to approve staff’s recommendation which is to disapprove of Zone Change 2009Z-005PR-001, and disapprove the request to cancel Planned Unit Development 2002P-003-001. **(5-0-2)**
Abstained – Gotto, Lequire

Resolution No. RS2008-15

“BE IT RESOLVED by The Metropolitan Planning Commission that 2009Z-005PR-001 is **DISAPPROVED. (5-0-2)**

Resolution No. RS2009-16

“BE IT RESOLVED by The Metropolitan Planning Commission that 2002P-003-001 is **DISAPPROVED. (5-0-2)**

Mr. Bernhardt explained that Council requested that the Planning Department along with MDHA provide a report that spoke to the issue of housing diversity in this area of the County.

IX. PUBLIC HEARING: SPECIFIC PLANS

- 6. 2009SP-003-001**
Anchor Property Holdings
Map: 050-00 Parcel: 088
Parkwood/Union Hill Community Plan
Council District 3 – Walter Hunt
Staff Reviewer: Brian Sexton

A request to change from CS to SP-A zoning for property located at 3502 Dickerson Pike, approximately 3,255 feet north of Doverside Drive (2.88 acres), to permit wrecker service and automobile repair uses, requested by Anchor Property Holdings LLC, owner/applicant.

Staff Recommendation: Approve with conditions

APPLICANT REQUEST - Preliminary SP

A request to change from Commercial Service (CS) to Specific Plan-Auto (SP-A) zoning for property located at 3502 Dickerson Pike, approximately 3,255 feet north of Doverside Drive (2.88 acres), to permit wrecker service and automobile repair uses.

Existing Zoning

CS District - Commercial Service is intended for retail, consumer service, financial, restaurant, office, self-storage, light manufacturing and small warehouse uses.

Proposed Zoning

SP-A District - Specific Plan-Automobile is a zoning District category that provides for additional flexibility of design, including the relationship of streets to buildings, to provide the ability to implement the specific details of the General Plan. This Specific Plan includes wrecker service and automobile repair uses.

PARKWOOD -UNION HILL COMMUNITY PLAN

Community Center (CC) CC is intended for dense, predominantly commercial areas at the edge of a neighborhood, which either sits at the intersection of two major thoroughfares or extends along a major thoroughfare. This area tends to mirror the commercial edge of another neighborhood forming and serving as a “town center” of activity for a group of neighborhoods. Appropriate uses within CC areas include single- and multi-family residential, offices, commercial retail and services, and public benefit uses. An accompanying Urban Design or Planned Unit Development overlay district or site plan should accompany proposals in these policy areas, to assure appropriate design and that the type of development conforms to the intent of the policy.

Detailed Land Use Plan

Commercial (Com) Commercial is intended for commercial uses only, with no residential uses. It is intended for mixed

commercial buildings with shops at street level and office uses on the upper levels.

Consistent with Policy? Yes. The proposed plan is consistent with the area’s CC policy. While auto-oriented uses may not be conducive to creating a pedestrian-oriented streetscape, the applicant has designed a site plan that will bring the property closer to the goal of creating a pedestrian-oriented streetscape that is consistent with the intent of the CC policy.

PLAN DETAILS -The site contains an existing one story, 9,580 square foot building. The existing building is proposed to remain and will continue to be used as a wrecker and towing facility that will include an automobile repair shop. The plan proposes a 24 foot driveway leading to the rear of building.

Fencing The front of the site is currently enclosed by a 5 foot chain link fence with barbed wire. Staff recommends that the applicant replace the chain link fence in the front of the property with a wrought iron fence that contains brick or stone pillars between the wrought iron fencing. The fence is required for insurance and permitting purposes, as all vehicles must be parked within a secured area.

Landscaping Landscaping is proposed along the front of the property. A standard C Landscape Buffer Yard is required along the rear and side perimeters of the property adjacent to the properties zoned RS7.5. The applicant can choose to provide the landscape buffer on-site, or a permanent 30 foot wide landscape easement may be put in place that would utilize the heavily wooded areas on the adjacent properties. If the applicant opts to use landscape easements, the deeds will be required to be recorded prior to final site plan approval.

Parking and Access The plan proposes a total of 48 parking spaces which meets the parking requirements of the zoning code. Main access to the site is located off Dickerson Pike. There is no secondary access to this property

Signs Sign details were not included within this SP submittal. Staff is recommending that only one building mounted and one monument style sign be permitted. Building signs are attached directly to, or supported by brackets attached directly to a principal building. The building sign must not exceed 100 square feet in size. The monument style sign must not exceed 6 feet in height and can have a maximum sign area of 28 square feet. The base of the monument sign shall be constructed of brick or stone.

Signs must be externally lit with steady, stationary, down directed, and completely shielded light sources or may be internally illuminated or back-lit with a diffused or shielded light source. Sign backgrounds must be opaque, only letters and logos may be illuminated. The monument style sign may be lit from a ground lighting source.

In addition to signs prohibited by Section 17.32.050 of the Metro Zoning Ordinance, prohibited signs include roof mounted signs, pole mounted signs, billboards, and signs that flash, rotate, scintillate, blink, flicker or vary in intensity or color, including all electronic signs.

STORMWATER RECOMMENDATIONS Preliminary approval.

- Site is in non-compliance with Metro Stormwater requirements. Site is required to become compliant with Metro Stormwater Regulations prior to any final approvals.

FIRE MARSHAL RECOMMENDATION Reviewed: Conditional Approval

- Approved based on no construction being done this application. Any new construction will require additional information.

PUBLIC WORKS RECOMMENDATION All Public Works' design standards shall be met prior to any final approvals and permit issuance. Any approval is subject to Public Works' approval of the construction plans.

Typical Uses in Existing Zoning District: CS

Land Use (ITE Code)	Acres	FAR	Total Floor Area	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
New Car Sales (841)	2.88	0.02	2,509	84	6	7

Typical Uses in Proposed Zoning District: SP

Land Use (ITE Code)	Acres	FAR	Total Floor Area	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
Automobile Repair (942)	2.88	N/A	9,750	NA	29	33

Maximum Uses in Existing Zoning District: CS

Land Use (ITE Code)	Acres	FAR	Total Floor Area	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
Shopping Center (820)	2.88	0.60	75,271	5647	131	526

Maximum Uses in Proposed Zoning District: SP

Land Use (ITE Code)	Acres	FAR	Total Floor Area	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
(942)	2.88	N/A	9,750	NA	29	33

STAFF RECOMMENDATION Approval with conditions. The proposed SP plan is consistent with the CC policy of the Parkwood-Union Hill Community Plan.

CONDITIONS

1. This SP is limited to wrecker service and automobile repair.
2. The chain link fence in the front of the property shall be replaced with a wrought iron fence that contains brick or stone pillars between the wrought iron fencing prior to any Use and Occupancy permit.
3. A standard C Landscape Buffer Yard on-site or a 30 foot wide landscape easement on the adjacent properties shall be provided along the rear and side perimeters of the property adjacent to the properties zoned RS7.5. Landscape easement(s) used to meet this requirement shall be recorded prior to final site plan approval.
4. One building mounted and one monument style sign only shall be permitted. The building mounted sign shall not exceed 100 square feet in size. The monument style sign shall not exceed 6 feet in height and may have a maximum sign area of 28 square feet. The base of the monument style sign shall be constructed of brick or stone. Signs shall be externally lit with steady, stationary, down directed, and completely shielded light sources or may be internally illuminated or back-lit with a diffused or shielded light source. Sign backgrounds shall be opaque, only letters and logos may be illuminated. The monument style sign may be lit from a ground lighting source. In addition to signs prohibited by Section 17.32.050 of the Metro Zoning Ordinance, prohibited signs include roof mounted signs, pole mounted signs, billboards, and signs that flash, rotate, scintillate, blink, flicker or vary in intensity or color, including all electronic signs.
5. Prior to final site plan approval, the requirements of the Stormwater Division shall be completed, bonded or satisfied as specifically required by the Stormwater Division.
6. For any development standards, regulations and requirements not specifically shown on the SP plan and/or included as a condition of Commission or Council approval, the property shall be subject to the standards, regulations and requirements of the CS zoning district as of the date of the applicable request or application.
7. A corrected copy of the preliminary SP plan incorporating the conditions of approval by the Planning Commission and Council shall be provided to the Planning Department prior to the filing of any additional development applications for this property, and in any event no later than 120 days after the effective date of the enacting ordinance. If a corrected copy of the SP plan incorporating the conditions therein is not provided to the Planning Department within 120 days of the effective date of the enacting ordinance, then the corrected copy of the SP plan shall be presented to the Metro Council as an amendment to this SP ordinance prior to approval of any grading,

clearing, grubbing, final site plan, or any other development application for the property.

8. Minor modifications to the preliminary SP plan may be approved by the Planning Commission or its designee based upon final architectural, engineering or site design and actual site conditions. All modifications shall be consistent with the principles and further the objectives of the approved plan. Modifications shall not be permitted, except through an ordinance approved by Metro Council that increase the permitted density or floor area, add uses not otherwise permitted, eliminate specific conditions or requirements contained in the plan as adopted through this enacting ordinance, or add vehicular access points not currently present or approved.
9. The requirements of the Metro Fire Marshal's Office for emergency vehicle access and adequate water supply for fire protection must be met prior to the issuance of any building permits.

Approved with conditions, **(7-0) Consent Agenda**

Resolution No. RS2009-17

“BE IT RESOLVED by The Metropolitan Planning Commission that 2009SP-003-001 is **APPROVED WITH CONDITIONS. (7-0)**

Conditions of Approval:

1. This SP is limited to wrecker service and automobile repair.
2. The chain link fence in the front of the property shall be replaced with a wrought iron fence that contains brick or stone pillars between the wrought iron fencing prior to any Use and Occupancy permit.
3. A standard C Landscape Buffer Yard on-site or a 30 foot wide landscape easement on the adjacent properties shall be provided along the rear and side perimeters of the property adjacent to the properties zoned RS7.5. Landscape easement(s) used to meet this requirement shall be recorded prior to final site plan approval.
4. One building mounted and one monument style sign only shall be permitted. The building mounted sign shall not exceed 100 square feet in size. The monument style sign shall not exceed 6 feet in height and may have a maximum sign area of 28 square feet. The base of the monument style sign shall be constructed of brick or stone. Signs shall be externally lit with steady, stationary, down directed, and completely shielded light sources or may be internally illuminated or back-lit with a diffused or shielded light source. Sign backgrounds shall be opaque, only letters and logos may be illuminated. The monument style sign may be lit from a ground lighting source. In addition to signs prohibited by Section 17.32.050 of the Metro Zoning Ordinance, prohibited signs include roof mounted signs, pole mounted signs, billboards, and signs that flash, rotate, scintillate, blink, flicker or vary in intensity or color, including all electronic signs.
5. Prior to final site plan approval, the requirements of the Stormwater Division shall be completed, bonded or satisfied as specifically required by the Stormwater Division.
6. For any development standards, regulations and requirements not specifically shown on the SP plan and/or included as a condition of Commission or Council approval, the property shall be subject to the standards, regulations and requirements of the CS zoning district as of the date of the applicable request or application.
7. A corrected copy of the preliminary SP plan incorporating the conditions of approval by the Planning Commission and Council shall be provided to the Planning Department prior to the filing of any additional development applications for this property, and in any event no later than 120 days after the effective date of the enacting ordinance. If a corrected copy of the SP plan incorporating the conditions therein is not provided to the Planning Department within 120 days of the effective date of the enacting ordinance, then the corrected copy of the SP plan shall be presented to the Metro Council as an amendment to this SP ordinance prior to approval of any grading, clearing, grubbing, final site plan, or any other development application for the property.
8. Minor modifications to the preliminary SP plan may be approved by the Planning Commission or its designee based upon final architectural, engineering or site design and actual site conditions. All modifications shall be consistent with the principles and further the objectives of the approved plan. Modifications shall not be permitted, except

through an ordinance approved by Metro Council that increase the permitted density or floor area, add uses not otherwise permitted, eliminate specific conditions or requirements contained in the plan as adopted through this enacting ordinance, or add vehicular access points not currently present or approved.

9. The requirements of the Metro Fire Marshal's Office for emergency vehicle access and adequate water supply for fire protection must be met prior to the issuance of any building permits.

X. PUBLIC HEARING: ZONING MAP AMENDMENTS

7. 2009Z-001HP-001

Tanglewood Historic Preservation District
Map: 051-16 Parcels: 009, 009.01, 020
Map: 061-04 Parcels: 030, 031, 032, 033, 034, 035, 036, 151
Madison Community Plan
Council District 4 – Michael Craddock
Staff Reviewer: Brian Sexton

A request to apply a Historic Preservation Overlay District to 11 properties located at 4903, 4905, 4907, 4908, 4909, 4910, 4911, 4914, and 4918 Tanglewood Drive N., Tanglewood Drive N. (unnumbered) and Tangelwood Court (unnumbered), (6.71 acres), zoned RS20, requested by Councilmember Michael Craddock, for various property owners.

Staff Recommendation: Approve

APPLICANT REQUEST -A request to apply a Historic Preservation Overlay District to 11 properties located at 4903, 4905, 4907, 4908, 4909, 4910, 4911, 4914, and 4918 Tanglewood Drive N., Tanglewood Drive N. (unnumbered) and Tangelwood Court (unnumbered), (6.71 acres), zoned Single-Family Residential (RS20).

Existing Zoning

RS20 District -~~RS20~~ requires a minimum 20,000 square foot lot and is intended for single-family dwellings at a density of 1.85 dwelling units per acre.

PROPOSED OVERLAY DISTRICT Section 17.36.120 of the Metro Zoning Ordinance recognizes Neighborhood Conservation Districts, along with Historic Preservation Districts and Historic Landmarks, as "Historic Districts." These are defined as geographical areas which possess a significant concentration, linkage or continuity of sites, buildings, structures or objects which are united by past events or aesthetically by plan or physical development, and that meet one or more of the following criteria:

1. The district is associated with an event that has made a significant contribution to local, state or national history; or
2. It includes structures associated with the lives of persons significant in local, state or national history; or
3. It contains structures or groups of structures that embody the distinctive characteristics of a type, period or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
4. It has yielded or may be likely to yield archaeological information important in history or prehistory; or
5. It is listed or is eligible for listing in the National Register of Historic Places.

The Metro Historic Zoning Commission will review any new construction including additions, demolitions, or relocation of structures.

MADISON COMMUNITY PLAN

Residential Low (RL) RL policy is intended to conserve large areas of established, low density (one to two dwelling units per acre) residential development. The predominant development type is single-family homes.

Consistent with Policy? Yes. The Historic Preservation Overlay District is consistent with RL policy in this area. The RL policy supports the conservation of large established areas such as the Tanglewood area. Furthermore, multiple properties within the Tanglewood neighborhood are eligible for listing on the National Register of Historic Places.

Metro Historic Commission staff has determined that properties located at 4911, 4909, and 4907 Tangelwood Drive are eligible for listing in the National Register of Historic Places, which satisfies criteria five above.

The remaining properties located at 4903, 4905, 4908, 4910, 4914, 4918 and two unnumbered properties located on Tanglewood Drive and Tanglewood Court all embody distinctive characteristics of a type, period or method of construction which satisfies criteria three above.

The Tanglewood District is significant in part due to its association with Robert Condra. The Tanglewood Historic District is the only known example of Condra’s design of detached dwellings in a residential neighborhood in Nashville which satisfies criteria two above.

Metro Historic Zoning Commission Recommendation At its meeting on February 18, 2009, the Metro Historic Zoning Commission (MHZC) approved the boundaries of the proposed Tanglewood Historic Preservation Overlay District as a historically significant geographic area in accordance with the criteria of Metro Code 17.36.120. Additionally, the MHZC adopted design guidelines for the district.

STAFF RECOMMENDATION Staff recommends approval. The request is consistent with the Madison Community Plan and the intent of Section 17.36.120 of the Zoning Code.

Approved, **(7-0) Consent Agenda**

Resolution No. RS2009-18

“BE IT RESOLVED by The Metropolitan Planning Commission that 2009Z-001HP-001 is **APPROVED. (7-0)**”

XI. PUBLIC HEARING: CONCEPT PLANS

- 8. 2007S-073U-03**
Nocturne Village
Map: 070-03 Parcels: 006, 007
Map: 070-07 Parcels: 062, 063
Bordeaux/Whites Creek Community Plan
Council District 2 – Frank Harrison
Staff Reviewer: Brenda Bernards

A request to extend concept plan approval for one year to May 10, 2010, for a 50-lot cluster subdivision on property located at Overall Street (unnumbered), 869 West Trinity Lane, and West Trinity Lane (unnumbered), northeast corner of West Trinity Lane and Overall Street, zoned RS7.5 and RS20, Nocturne Village Investors, owner, Wamble & Associates, surveyor.

Staff Recommendation: Approve with condition

APPLICANT REQUEST - Concept Plan Extension

A request to extend concept plan approval for one year to May 10, 2010, for a 50-lot cluster subdivision on property located at Overall Street (unnumbered), 869 West Trinity Lane, and West Trinity Lane (unnumbered), northeast corner of West Trinity Lane and Overall Street, zoned Single-Family Residential (RS7.5) and (RS20).

Zoning

RS20 District - RS20 requires a minimum 20,000 square foot lot and is intended for single-family dwellings at a density of 1.85 dwelling units per acre.

RS7.5 District - RS7.5 requires a minimum 7,500 square foot lot and is intended for single-family dwellings at a density of

4.94 dwelling units per acre.

SUBDIVISION DETAILS The concept plan for the 50 lot Nocturne Village subdivision was approved by the Planning Commission on May 10, 2007. The applicant is requesting an extension of the approval due to the difficulty the applicant is experiencing marketing this property.

A plan for 35 single-family lots was approved on this property in August of 2006. That plan originally was revised with the May 2007 concept plan to account for a stream buffer crossing the western boundary of the property and redesigned to eliminate double frontage lots along West Trinity Lane and lots without public street frontage. The adopted plan is well laid out with alley access and needed street connections.

Section 2-3.4.f of the Subdivision Regulations provide for an extension of one additional year for a concept plan:

f. *Effective Period of Concept Plan Approval.* The approval of a concept plan of a minor subdivision shall be effective for a period of one year and the approval of a concept plan for a major subdivision shall be effective for two years from the date of Planning Commission Approval. Prior to the expiration of the concept plan approval, such plan approval may be extended for one additional year upon request and if the Planning Commission deems such extension appropriate based upon progress made in developing the subdivision.

The applicant has made substantial efforts to market the property since the May 2007 approval. The price has been adjusted several times. Three offers have been received but were not followed through due to financing difficulties and unacceptable financing arrangements. The applicant has requested the additional year to continue marketing the property.

STAFF RECOMMENDATION Staff recommends that approval of the concept plan be extended for one year to May 10, 2010, with the condition that all conditions of the May 10, 2007, approval of this concept plan remain with the extension.

CONDITION

1. All conditions of the May 10, 2007, approval of this concept plan remain with the extension.

Approved with conditions, (7-0) *Consent Agenda*

Resolution No. RS2009-19

“BE IT RESOLVED by The Metropolitan Planning Commission that 2007S-073U-03 is **APPROVED WITH CONDITIONS.** (7-0)

Conditions of Approval:

1. All conditions of the May 10, 2007, approval of this concept plan remain with the extension.”

XII. PUBLIC HEARING: FINAL PLANS

9. **2009S-015-001**
Newlin's Marrowbone Lake Road Subdivision
Map: 028-00 Parcels: 016.01
Joelton Community Plan
Council District 1 – Lonnell R. Matthews, Jr.
Staff Reviewer: Brenda Bernards

A request for final plat approval to create three lots on property located at 6025 Marrowbone Lake Road, approximately 480 feet north of Grays Point Road (9.31 acres), zoned AR2a, requested by Jeffrey A. Newlin et ux, owners, Campbell, McRae & Associates Surveying Inc., surveyor.

Staff Recommendation: Approve with condition

APPLICANT REQUEST - Final Plat

A request for final plat approval to create three lots on property located at 6025 Marrowbone Lake Road, approximately 480 feet north of Grays Point Road (9.31 acres), zoned Agricultural/ Residential (AR2a).

ZONING

AR2a District - Agricultural/Residential requires a minimum lot size of 2 acres and is intended for uses that generally occur in rural areas, including single-family, two-family, and mobile homes at a density of one dwelling unit per 2 acres. The AR2a District is intended to implement the natural conservation or interim nonurban land use policies of the general plan.

SUBDIVISION DETAILS The plat will create three irregularly shaped lots in a predominantly rural area of the county. Because this area is not predominantly developed, a lot comparability analysis was not required by the Subdivision Regulations.

The land use policy for this property is Natural Conservation due to slopes in excess of 20%. Each lot has been identified as a critical lot. As the lots will be served by individual septic systems, the building envelopes for Lots 1 and 2 have been identified on the plat and the existing house is to remain on lot 3. The building envelopes are located in areas with less than 20% slope.

STORMWATER RECOMMENDATION Approved

WATER SERVICES RECOMMENDATION Approved

FIRE MARSHAL RECOMMENDATION -One & two family final plat plans must show results from fire hydrant(s) flow test, performed within 6 months with a minimum of 1000 gpm @ 20 psi available at hydrants, for buildings up to 3600sq. ft. to be approved for fire hydrant flow requirements.

No part of any building shall be more than 500 ft from a fire hydrant via an approved hard surface road.

All fire department access roads shall be 20 feet minimum width and shall have an unobstructed vertical clearance of 13.6 ft.

All dead end roads over 150 ft. in length require a 100 ft. diameter turnaround, this includes temporary turnarounds.

Temporary T-type turnarounds that last no more than one year shall be approved by the Fire Marshal’s Office.

Developer needs to provide more information to the Fire Marshal's Office.

Fire department access roads shall be provided such that any portion of the facility or any portion of an exterior wall of the first story of the building is located not more than 150 ft (46 m) from fire department access roads

A fire department access road shall extend to within 50 ft of at least one exterior door that can be opened from the outside and that provides access to the interior of the building.

PUBLIC WORKS RECOMMENDATION No Exception Taken

STAFF RECOMMENDATION Staff recommends approval with a condition as the proposed plat meets the requirements of the Subdivision Regulations.

CONDITION

- 1. The requirements of the Fire Marshal shall be met prior to the recordation of the Final Plat.

Approved with conditions, (7-0) *Consent Agenda*

Resolution No. RS2009-20

“BE IT RESOLVED by The Metropolitan Planning Commission that 2009S-015-001 is **APPROVED WITH CONDITIONS. (7-0)**

Conditions of Approval:

- 1. The requirements of the Fire Marshal shall be met prior to the recordation of the Final Plat.”

10. 2009S-016-001

Howard Trawick Property
Map: 043-04 Parcel: 059
Doneslon/Hermitage/Old Hickory Community Plan
Council District 11 – Darren Jernigan
Staff Reviewer: Brenda Bernards

A request for final plat approval to create one lot on property located at 505 B Keeton Avenue, approximately 450 feet south of Hiller Drive (1.47 acres), zoned R10, requested by Howard Trawick, owner, Jason Smith, surveyor.

Staff Recommendation: Disapprove

APPLICANT REQUEST - A request for final plat approval to create one lot on property located at 505 B Keeton Avenue, approximately 450 feet south of Hiller Drive (1.47 acres), zoned One and Two-Family Residential (R10).

ZONING

R10 District - R10 requires a minimum 10,000 square foot lot and is intended for single -family dwellings and duplexes at an overall density of 4.63 dwelling units per acre including 25% duplex lots.

PLAN DETAILS This subdivision proposes to create one lot on an existing flag shaped parcel. The existing parcel was created by deed and is not a legal lot. The current owner operated a nursery business for the past 25 years and now intends to relocate a house onto a new lot.

Public Chapter 246, which was adopted by the Tennessee Legislature in 2007 and became effective on May 10, 2007, requires certain criteria to be met before a permit will be issued to move a single family residence from an existing foundation to another foundation located within a developed area of single family residences. For purposes of this determination, a developed area of single family residences means an area generally referred to as a subdivision as indicated on a plat filed in the Register of Deeds office.

Under the State law, in situations where the house is to be relocated to a subdivision where there is a Homeowner's Association or a Neighborhood Association, it is up to those bodies to determine if the criteria are met. This property is within the Rayon City Neighborhood Association and on November 20, 2008, the Association approved the request to relocate the house to this property.

Two accessory structures are to remain on the property-- a greenhouse that will be converted to a garage and a wood shed. Generally, these types of buildings are not permitted to remain when a lot is platted, as accessory buildings cannot be the principle use on a lot. In this case, as the house is to be relocated as soon as the lot is platted, the Zoning Administrator has not required them to be removed, if approved.

Variance from Flag Lot Standards The applicant has requested a variance to Section 3-4.2.c of the Subdivision Regulations for this flag lot. This section states that:

Residential flag lots shall not be permitted except the Planning Commission may waive the requirement if it finds that, due to unusual conditions, limited area for lot frontage on a street is available, or if all of the following conditions are met:

1. The proposed lots fit into the character of the area and are consistent with the general plan.
2. All minimum standards of the Zoning Code shall be met.
3. Up to three lots are proposed.
4. The residential unit on the lot with frontage comparable to other lots in the area shall face the street.
5. The flag lot private drive and/or access easement shall connect to a street.
6. The flag lot private drive and/or access easement shall be at least ten feet wide for its entire length.
7. The flag lot shared access easement shall be part of one non-frontage lot and under the same ownership as that lot.

This subdivision application does not meet condition 1. Condition 1 requires that the proposed lots fit into the character of the area. There are no residential flag lots in the area.

The owner has submitted a variance request indicating that this is the only way to use this lot as a residential lot. The

Planning Commission may grant a variance to the regulations if it is found that extraordinary hardships or practical difficulties may result from strict compliance with the regulations, provided that the variance does not have the effect of nullifying the intent and purpose of the regulations.

The applicant has indicated that the lot was created in 1968 by deed and has been in the same ownership since 1981. The hardship identified is that the applicant will not be able to build a house on this property, nor can it be sold as a buildable residential lot. The applicant also owns the adjacent lot in front of this lot, which, if replatted with the proposed lot could create two regularly shaped lots. Due to the placement of the existing housing on the adjacent lot, the applicant has indicated that it is impractical to reconfigure the two lots into a more regular pattern. The applicant has not provided sufficient evidence of a hardship for staff to recommend that the Planning Commission grant the variance.

PUBLIC WORKS RECOMMENDATION No Exceptions Taken

STORMWATER RECOMMENDATION Approved

WATER SERVICES RECOMMENDATION Required capacity fees must be paid before this plat can be recorded.

FIRE MARSHAL RECOMMENDATION Approved

STAFF RECOMMENDATION Staff recommends disapproval of the request as the proposed flag lot does not meet the requirements of Section 3-4.2.c of the Subdivision Regulations and the applicant did not provide sufficient evidence of a hardship for the Planning Commission to grant a variance.

CONDITION

1. Payment of outstanding water and sewer service charges shall be remitted to Water Services Permits Office prior to the recordation of the final plat.

Ms. Bernards presented and stated that staff is recommending disapproval.

Councilmember Jernigan acknowledged the staff's recommendation to disapprove, however expressed his support for the request. He explained there were neighborhood meetings and that there was no opposition. He then briefly spoke of the unique situations associated with the proposal and then requested that the Commission approve the applicant's request.

Mr. Jason Smith, 9101 Meadow Lawn, spoke in favor of the proposed subdivision.

Ms. Susan Meece, 348 Rayon Drive, spoke in favor of the proposed subdivision.

Mr. Howard Trawick, 108 Hickman Street, spoke in favor of the proposed subdivision.

Dr. Cummings recognized the hardships mentioned and stated she would support the request.

Mr. Tyler requested additional explanation on the structures that would remain on the property after its completion.

Mr. Gotto moved and Dr. Cummings seconded the motion, which passed unanimously, to approve Final Plan 2009S-016-001, as requested by the applicant. **(7-0)**

Resolution No. RS2009-21

“BE IT RESOLVED by The Metropolitan Planning Commission that 2009S-016-001 is **APPROVED. (7-0)”**

XIII. PUBLIC HEARING: REVISED SITE PLANS

11. 75-83P-001

Elysian Fields Shopping Center (Ice House Revision)
Map: 133-15 Parcel: part of 144
Southeast Community Plan
Council District 26 – Gregory E. Adkins
Staff Reviewer: Jason Swaggart

A request to revise the preliminary plan and for final approval for a portion of the Elysian Fields Planned Unit Development Overlay located at 3985 Nolensville Pike, approximately 490 feet south of Elysian Fields Road (0.16 acres), zoned SCC, to permit the development of 200 square foot retail use for an ice dispenser, requested by Merville & Howe Engineering Inc., applicant, for Sabrina Shoulders, owner.

Staff Recommendation: Approve with conditions

APPLICANT REQUEST -Revise Preliminary Plan and PUD Final Site Plan

A request to revise the preliminary plan and for final approval for a portion of the Elysian Fields Planned Unit Development Overlay located at 3985 Nolensville Pike, approximately 490 feet south of Elysian Fields Road (0.16 acres), zoned Shopping Center Community (SCC), to permit the placement of 200 square foot retail use for an ice dispenser.

PLAN DETAILS -The Elysian Fields Shopping Center PUD was originally approved in 1983, for 110,265 square feet of commercial uses. The plan has been revised numerous times in the past. The last major change was approved in 2001 in which the Planning Commission approved a fuel station. The PUD is developed with the exception of the parcel in this request which is currently vacant.

Site Plan The plan calls for an 8.3' x 24' (~200 sq. ft.) ice dispenser. A four foot wide sidewalk wraps the dispenser, which is located at the edge of the adjacent Kroger parking lot. The dispenser is accessible only by pedestrians. Parking will be provided in the adjacent parking lot.

Staff Analysis The request is minor in nature meets all zoning requirements. The use is consistent with uses found in the PUD, and it is allowed within the SCC zoning district. The parking area that will be utilized for this request provides more spaces than what is required by zoning, and there is a shared parking agreement between all parcels within the PUD.

PUBLIC WORKS RECOMMENDATION

1. Confirm access easement / shared parking agreement with adjacent property owner.
2. All Public Works' design standards shall be met prior to any final approvals and permit issuance. Final design may vary based on field conditions.

STORMWATER RECOMMENDATION No permits required from Stormwater.

STAFF RECOMMENDATION Staff recommends approval with conditions. The request meets the requirements of the Metro Zoning Ordinance and is consistent with uses approved in the PUD.

CONDITIONS

1. Prior to the issuance of any permits, confirmation of PUD final site plan approval of this proposal shall be forwarded to the Planning Commission by the Stormwater Management division of Water Services.
2. Prior to the issuance of any permits, confirmation of PUD final site plan approval of this proposal shall be forwarded to the Planning Commission by the Traffic Engineering Sections of the Metro Department of Public Works for all improvements within public rights of way.
3. This approval does not include any signs. Signs in planned unit developments must be approved by the Metro Department of Codes Administration except in specific instances when the Metro Council directs the Metro Planning Commission to review such signs.
4. The requirements of the Metro Fire Marshal's Office for emergency vehicle access and adequate water supply for fire protection must be met prior to the issuance of any building permits.

5. Authorization for the issuance of permit applications will not be forwarded to the Department of Codes Administration until four additional copies of the approved plans have been submitted to the Metro Planning Commission.
6. The PUD final site plan as approved by the Planning Commission will be used by the Department of Codes Administration to determine compliance, both in the issuance of permits for construction and field inspection. Significant deviation from these plans may require reapproval by the Planning Commission and/or Metro Council.
7. A corrected copy of the PUD final site plan incorporating the conditions of approval by the Planning Commission shall be provided to the Planning Department prior to the issuance of any permit for this property, and in any event no later than 120 days after the date of conditional approval by the Planning Commission. Failure to submit a corrected copy of the final PUD site plan within 120 days will void the Commission's approval and require resubmission of the plan to the Planning Commission.

Approved with conditions, **(7-0) Consent Agenda**

Resolution No. RS2009-22

"BE IT RESOLVED by The Metropolitan Planning Commission that 75-83-P-001 is **APPROVED WITH CONDITIONS.**
(7-0)

Conditions of Approval:

1. Prior to the issuance of any permits, confirmation of PUD final site plan approval of this proposal shall be forwarded to the Planning Commission by the Stormwater Management division of Water Services.
2. Prior to the issuance of any permits, confirmation of PUD final site plan approval of this proposal shall be forwarded to the Planning Commission by the Traffic Engineering Sections of the Metro Department of Public Works for all improvements within public rights of way.
3. This approval does not include any signs. Signs in planned unit developments must be approved by the Metro Department of Codes Administration except in specific instances when the Metro Council directs the Metro Planning Commission to review such signs.
4. The requirements of the Metro Fire Marshal's Office for emergency vehicle access and adequate water supply for fire protection must be met prior to the issuance of any building permits.
5. Authorization for the issuance of permit applications will not be forwarded to the Department of Codes Administration until four additional copies of the approved plans have been submitted to the Metro Planning Commission.
6. The PUD final site plan as approved by the Planning Commission will be used by the Department of Codes Administration to determine compliance, both in the issuance of permits for construction and field inspection. Significant deviation from these plans may require reapproval by the Planning Commission and/or Metro Council.
7. A corrected copy of the PUD final site plan incorporating the conditions of approval by the Planning Commission shall be provided to the Planning Department prior to the issuance of any permit for this property, and in any event no later than 120 days after the date of conditional approval by the Planning Commission. Failure to submit a corrected copy of the final PUD site plan within 120 days will void the Commission's approval and require resubmission of the plan to the Planning Commission."

12. **88-69P-001**
Williams Home Place PUD (Cellular Tower Revision)
Map: 161-00 Parcel: 084
Southeast Community Plan

A request to revise the preliminary plan and for final approval for the Williams Home Place Planned Unit Development Overlay located at 5714 Edmondson Pike, approximately 380 feet south of Old Hickory Boulevard (4.36 acres), zoned SCC, to permit a 180 foot monopole wireless communication tower, requested by Verizon Wireless Tennessee Partnership, applicant, for WM LLC, owner.

Staff Recommendation: Approve with conditions

The Metropolitan Planning Commission DEFERRED 88-69P-001 to March 12, 2009, at the request of the applicant. (7-0)

XIV. OTHER BUSINESS

13. Authorize the expenditure of up to \$7,500 from the advance planning and research fund, to provide specific technical assistance in the filing of an application for development of an Urban Tree Canopy Assessment (UTC) for Metro. We have been in communication with the US Forest Service, and that agency is eager to include Nashville as one of three cities in the country to participate in a pilot study of tree canopy. A UTC assessment is a cost-effective study that can be completed in a short amount of time and provides useful and precise data to set long-term canopy goals and develop an urban forest management plan to achieve them. It would allow a to look at the city ecosystem as a whole, with potential impacts to stormwater, air quality, wildlife habitat, cooling effects, property values, and overall quality of life for residents. This assessment is a critical part of meeting the Mayor's sustainability goals and is consistent with the recommendations of the Green Ribbon Committee.

Some cities are now working with EPA to include tree planting as strategies for ozone attainment and stormwater management. The data collected will also compare tree canopy cover by property types (public, private, institutions, etc.), as well as by council districts, zip codes, census blocks, or other geographic boundaries that will aid in the development of neighborhood and community plans. This is an important part of our community sustainable goals. The study has a projected price tag of around \$40,000. The TN Division of Forestry is now accepting applications for its Urban and Community Forestry grants program - April 1st is the deadline for receipt. The grant is for \$20,000, and as is generally the case, a commitment of matching funds is required. We will be working with Public Works, Parks, and Stormwater Departments in providing the match and benefiting from the study.

Staff Recommendation: Approve

Approved, (7-0) *Consent Agenda*

Resolution No. RS2009-23

“BE IT RESOLVED by The Metropolitan Planning Commission that the Authorization of expenditure of \$7,500 from the advance planning and research fund for development of an Urban Tree Canopy Assessment (UTC) is **APPROVED. (7-0)**”

14. Amend Resolution No. RS2008-241 to authorize the expenditure of up to \$30,000 from the advance planning and research fund, where \$20,000 was previously approved on November 13, 2008, to provide specific technical assistance to staff in the development of a Form-Based Code for Downtown Nashville, meant to supersede (either entirely or in part) the present zoning ordinance and land development regulations that apply to the Downtown Community (sub-area 9 boundary).

Staff Recommendation: Approve

Approved, (7-0) *Consent Agenda*

Resolution No. RS2009-24

“BE IT RESOLVED by The Metropolitan Planning Commission that amendment to Resolution No. RS2008-241 is **APPROVED. (7-0)**”

15. Amend Resolution No. RS2008-242 to authorize the expenditure of up to \$130,000 with funding provided by the applicant for the May Town Center SP proposal, where \$80,000 was previously approved on November 13, 2008, to provide for the study of the economic impacts and traffic/transportation impacts of implementing the Alternative Development Area Policy in Bells Bend (Bordeaux/Whites Creek Community, Subarea 3).
Staff Recommendation: Approve

Approved, (7-0) *Consent Agenda*

Resolution No. RS2009-25

“BE IT RESOLVED by The Metropolitan Planning Commission that amendment of Resolution No. RS2008-242 is **APPROVED. (7-0)**”

16. Executive Director Reports


17. Legislative Update

XV. ADJOURNMENT

The meeting adjourned at 5:40 p.m.

Chairman

Secretary

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