



**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**

*June 11, 2009*

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**4:00 PM**

***Metro Southeast at Genesco Park  
1417 Murfreesboro Road***

**PLANNING COMMISSION:**

James McLean, Chairman  
Phil Ponder, Vice Chairman  
Stewart Clifton  
Judy Cummings  
Derrick Dalton  
Tonya Jones  
Hunter Gee  
Victor Tyler  
Councilmember Jim Gotto  
Andrée LeQuire, representing Mayor Karl Dean

**Staff Present:**

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

*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 4:02 p.m.

**II. ADOPTION OF AGENDA**

Ms. Hammond announced that the caption on Item #3, 2009SP-010-001, Ashland City Highway SP, was amended to better reflect the applicant's request, and that Michelle Lynn Dicken and Kyle E. Lampert were added to the list of Employee Contracts contained in Item 14.

Mr. Ponder moved and Mr. Gotto seconded the motion, which passed unanimously, to adopt the agenda as amended. **(8-0)**

**III. APPROVAL OF MAY 28, 2009, MINUTES**

Mr. Clifton moved and Mr. Ponder seconded the motion, which passed unanimously, to approve the May 28, 2009, meeting minutes as presented. **(8-0)**

**IV. RECOGNITION OF COUNCILMEMBERS**

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

Councilmember Evans explained she would be speaking in opposition to Item #8, 2009Z-008TX-001, Electronic Signs

(Special Exception Use) and then in support of Item #9, 2009Z-010TX-001, Electronic Signs (Distance Requirements). She briefly explained that her constituents were opposed to allowing LED signs into residential neighborhoods, as her district houses many institutions that could contemplate this bill. She then acknowledged that Item #9, 2009Z-010TX-001, would better incorporate today's sign technology and be more appealing and beneficial to area constituents.

Councilmember Dominy spoke in favor of Item #8, 2009Z-008TX-001. He explained that the bill would bring uniformity and control to LED sign usage in the City.

Dr. Cummings arrived at 4:07.

Councilmember Coleman thanked the Commission for their service to the City and spoke briefly on his item, #10, 2009Z-009TX-001, Telephone Services Conditions. He explained that he would address the Commission again after his item was presented for discussion which would allow those in opposition to voice their concerns.

Councilmember Holleman spoke in favor of Item #9, 2009Z-010TX-001. He briefly explained that the passage of his bill would place height requirements on LED signs that are located near residential areas and requested its approval. Councilmember Holleman then mentioned that he has only received opposition from his constituents regarding Item #8, 2009Z-008TX-001, Electronic Signs. He said the overall issue expressed by his constituents was the fact that if approved, the institutions located within their urban neighborhoods, could consider installation of LED signs and they were opposed to this idea.

Councilmember Cole spoke in favor of Item #6, 2007SP-122-001, Gallatin Pike Improvement District. Prior to his comments, he briefly explained that Councilmember Jameson, who could not be in attendance, also expressed his approval on the amendment. Councilmember Cole briefly discussed the improvements being made along Gallatin Pike resulting from this bill, and the need to amend it, as it contained several trigger provisions that could be considered a hindrance to redevelopment. He encouraged the Commission to approve the plan.

Councilmember Bennett also spoke in favor Item #6, 2007SP-122-001, Gallatin Pike Improvement District and requested its approval.

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

1. 2009CP-008-001 A request to amend the North Nashville Community Plan by changing from Single Family Detached in Neighborhood General to Transition or Buffer in Neighborhood General policy for 0.08 acres located at 906 Cheatham Place – deferred to July 23, 2009, at the request of the applicant.
2. 2009SP-007-001 A request to change from CN, MUL, and R6 to SP-R zoning properties located at 1501 and 1505 9th Avenue North, 9th Avenue North (unnumbered), and 906 Cheatham Place, at the northwest corner of 9th Avenue North and Cheatham Place (0.76 acres), to permit a 3-story, 44 unit multi-family complex – deferred to July 23, 2009, at the request of the applicant.
4. 2009Z-002TX-001 A council bill to amend the Metro Zoning Code, Chapter 17.16, to allow mobile vendors unable to comply with the indoor-only provisions to apply for a Special Exception (SE) permit for outdoor vending, sponsored by Councilmember Pam Murray – deferred indefinitely at the request of the applicant
5. 2009Z-011TX-001 A request to amend the Metro Zoning Code to create a new mobile vendor overlay (MVO) district, requested by Councilmember Pam Murray – deferred indefinitely at the request of the applicant
12. 2007SP-162U-05 A request for final site plan approval for the Winberry Place Specific Plan located at 927, 929, 1001 and 1003 Lischey Avenue, to construct up to four single-family residential units, four townhome units, and a one-story commercial building – deferred to June 25, 2009, at the request of the applicant

Mr. Ponder moved, and Mr. Dalton seconded the motion, which passed unanimously, to adopt the Deferred and Withdrawn items as presented. **(10-0)**

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**

### **REVISED SITE PLANS**

13. 89P-022-001 A request to revise the preliminary plan and for final approval for a portion of the Melrose Commercial Planned Unit Development Overlay located at 2615 Franklin Pike, to permit the development of a five dispenser fuel center (ten pumps). -Approve w/conditions

### **OTHER BUSINESS**

14. Employee contracts for Marie Cheek and Dennis Corrieri. -Approve
15. Employee contract renewal for Chin-Cheng Chen. -Approve

Mr. Clifton moved, and Dr. Cummings seconded the motion, which passed unanimously, to adopt the Consent Agenda as presented. **(10-0)**

## **VII. PUBLIC HEARING: PREVIOUSLY DEFERRED**

1. **2009CP-008-001**  
9th & Cheatham  
North Nashville Community Plan  
Council District 19 – Erica S. Gilmore  
Staff Reviewer: Bob Eadler

A request to amend the North Nashville Community Plan by changing from Single Family Detached in Neighborhood General to Transition or Buffer in Neighborhood General policy for 0.08 acres located at 906 Cheatham Place, requested by Dale and Associates and the Metro Planning Department, for Alpha Street Real Estate Development and Investments LLC, owner. (See also Proposal No. 2009SP-007-001).

**Staff Recommendation: Approve**

**The Metropolitan Planning Commission DEFERRED Community Plan Amendment 2009CP-008-001 to July 23, 2009, at the request of the applicant. (10-0)**

2. **2009SP-007-001**  
9th & Cheatham  
Map: 081-12 Parcels:309, 310, 311  
Map: 081-12-N Parcels:001, 002, 003, 004, 005, 006, 007, 008, 009  
North Nashville Community Plan  
Council District 19 – Erica S. Gilmore  
Staff Reviewer: Brian Sexton

A request to change from CN, MUL, and R6 to SP-R zoning properties located at 1501 and 1505 9th Avenue North, 9th Avenue North (unnumbered), and 906 Cheatham Place, at the northwest corner of 9th Avenue North and Cheatham Place (0.76 acres), to permit a 3-story, 44 unit multi-family complex, requested by Dale & Associates and the Metro Planning Department, applicants, for Alpha Street Real Estate Development & Investments, LLC, owner. (See also Proposal No. 2009CP-008-001).

**Staff Recommendation: Approve with conditions, subject to approval of the accompanying Community Plan Amendment.**

**The Metropolitan Planning Commission DEFERRED Zone Change 2009SP-007-001 to July 23, 2009, at the request of the applicant. (10-0)**

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3. **2009SP-010-001**  
Ashland City Highway SP  
Map: 069-00 Parcel: 120  
Bordeaux/Whites Creek Community Plan  
Council District 1 – Lonnell R. Matthews, Jr.  
Staff Reviewer: Brian Sexton

A request to rezone from RS15 to SP-MU zoning for property located at Ashland City Highway (unnumbered), approximately 1,620 feet east of Eatons Creek Road (7.14 acres), to permit a funeral home with a residence, subject to the standards, regulations and requirements of the OR20 zoning district, and/or one single family residence, requested by A. Brandon Starks, applicant, for Jackson Street Missionary Baptist Church, owner.

**Staff Recommendation: Disapprove**

**APPLICANT REQUEST - Preliminary SP**

A request to rezone from Single-Family Residential (RS15) to Specific Plan – Mixed Use (SP-MU) zoning for property located at Ashland City Highway (unnumbered), approximately 1,620 feet east of Eaton’s Creek Road (7.14 acres), to permit all uses within the Multi-Family Residential (RM9) zoning subject to the standards, regulations and requirements of the Multi-Family Residential (RM9) zoning district and to permit a Funeral Home subject to the standards, regulations and requirements of the OR20 zoning district.

**History** The original request of the applicant was to rezone from RS15 to Office/Residential (OR20) to permit a funeral home on this property. After discussions with the community, the applicant deferred the request to at the May 14, 2009, Planning Commission meeting where the request was amended to an SP to provide more certainty of the use for the property.

**Existing Zoning**

RS15 District - RS15 requires a minimum 15,000 square foot lot and is intended for single-family dwellings at a density of 2.47 dwelling units per acre. The RS15 district would permit approximately 18 lots within a cluster lot subdivision.

**Proposed Zoning**

SP-MU District - Specific Plan-Mixed Use 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 residential uses and a funeral home.

**BORDEAUX/WHITES CREEK COMMUNITY PLAN**

**Residential Medium (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.

**Natural Conservation (NCO)** NCO policy is intended for undeveloped areas with the presence of steep terrain, unstable soils, and floodway/floodplain. Low intensity community facility development and very low density residential development (not exceeding one dwelling unit per two acres) may be appropriate land uses.

**Consistent with Policy?** No. While the residential component of the SP plan is consistent with the RM policy, the proposed funeral home is inconsistent with both the RM and NCO policies. The residential component is inconsistent with NCO policy. Approximately one acre (14%) of the property is within the NCO policy area and is located within the 100-year floodplain.

**PLAN DETAILS** The proposed SP is located along the south side of Ashland City Highway and would permit all uses permitted in the RM9 zoning district as well as a funeral home.

If developed as residential, all uses within the RM9 zoning district would be allowed and any development would need to comply with the RM9 standards of the Metro Zoning Code. Any final site plan for residential development will need to be consistent with RM policy and approved by the Planning Commission.

The applicant has indicated an intention to construct a funeral home on the property. The SP would require that bulk standards for the proposed funeral home be consistent with the standards of the OR20 zoning district. The proposed funeral home is the only use, other than those permitted in the RM9 zoning district that will be permitted on the property. Details of the proposed funeral home building and site layout were not provided with the preliminary plan. The plan includes a map of the site and regulations restricting uses. Since this SP plan is regulatory in nature, a detailed site plan is not included with the preliminary SP. A detailed site plan, including elevations identifying building materials and site layout will need to be included with the final site plan. Prohibited building materials include all plastics, plywood, unfinished concrete blocks, metal buildings, and vinyl siding.

**Landscaping** If a funeral home is developed on the property, a standard C Buffer will need to be provided along the west, east and southeastern property lines of the site. A standard B Buffer will need to be provided along the southwest portion of the site. If the property is developed as residential, a standard B Buffer will need to be provided on the east and southeastern portion of the property.

Details of the proposed landscaping have not been provided. A landscape plan, including a list of proposed trees and shrubs species consistent with the Urban Forester's tree density requirement will be required with the SP final site plan.

**Signs** Sign details were not included in this SP. In addition to signs prohibited by Section 17.32.050 of the Metro Zoning Ordinance, prohibited signs will 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. Permitted signs will include a building sign and a freestanding ground sign.

Building signs are attached directly to, or supported by brackets attached directly to a principal building. One building sign of a maximum area of 48 square feet shall be permitted.

Freestanding ground signs are supported by structures or supports that are anchored in the ground and that are independent of any building or other structure and are a maximum six feet in height. One ground sign of a maximum of 28 square feet in size shall be permitted.

Signs are to 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. Freestanding ground signs may be lit from a ground lighting source.

All signs must be constructed using high-quality durable materials such as metal, stone, brick, and hardwood, and shall complement materials and features of buildings on the same property.

## **STORMWATER RECOMMENDATIONS**

Preliminary SP returned for corrections. Provide a site plan with the following information:

- Add Project Name to plans.
- Provide the FEMA Note / Information to plans.
- Show North Arrow & Bearing Information.
- Provide a Vicinity Map to plans.
- Proposed Site Layout (Scale no less than 1" = 100', Contours no greater than 5')
- Add 78-840 Note to plans:

(Any excavation, fill, or disturbance of the existing ground elevation must be done in accordance with storm water management ordinance No. 78/840 and approved by The Metropolitan Department of Water Services.)

- Add Preliminary Note to plans:

(This drawing is for illustration purposes to indicate the basic premise of the development. The final lot count and details of the plan shall be governed by the appropriate regulations at the time of final application.)

- Add Access Note to plans:

(Metro Water Services shall be provided sufficient and unencumbered access in order to maintain and repair utilities in this site.)

- Add C/D Note to plans:

(Size driveway culverts per the design criteria set forth by the Metro Stormwater Management Manual (Minimum driveway culvert in Metro ROW is 15" CMP).)

- Show Existing Topo.
- Provide a Water Quality Concept.
- Provide Room for Detention.

**WATER SERVICES RECOMMENDATION** An active capacity fee letter must be submitted. A water/sewer study will be required in advance with an active date. The cost of the study is \$500.00. Along with the money, a proposed site utility plan and water/sewer availability request forms must be filled out and included.

**FIRE MARSHAL RECOMMENDATION**

- All applicable fire codes shall be adhered to.
- All new construction shall be protected by a fire hydrant(s) that comply with the 2006 edition of NFPA 1 table H. To see table H go to (<http://www.nashfire.org/prev/tableH51.htm>)
- Actual or proposed fire hydrant(s) locations and flow data shall be shown on the plans used to protect structures for this project.
- 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.
- Developer needs to provide more information to the Fire Marshal's Office.
- Dead end fire mains over 600 feet in length are required to be no less than 10 inch in diameter. If this is to be a public fire main, a letter from Metro Water is required excepting the length and size.
- Fire Hydrants shall be in-service before any combustible material is brought on site. All fire department access roads shall be 20 feet minimum width and shall have an unobstructed vertical clearance of 13.6 ft.
- No part of any building shall be more than 500 ft from a fire hydrant via an approved hard surface road.

**PUBLIC WORKS RECOMMENDATION**

- A traffic impact study may required at the time of development.
- Site access points to be determined with the submittal of the final development plan.

**Maximum Uses in Existing Zoning District: RS15**

Land Use (ITE Code)	Acres	Density	Total Number of Lots	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
Single-Family Detached( 210)	7.14	2.47	18	173	14	19

**Typical Uses in Proposed Zoning District: SP**

Land Use (ITE Code)	Acres	Density	Total Units	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
Residential/Condo/Townhome ( 230 )	7.14	9	64	437	37	42

**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
Funeral Home/Church( 560)	7.14	0.081	25,192 sq. ft.	230	19	17

**Traffic changes between: RS15 and proposed SP**

Land Use (ITE Code)	Acres	FAR	Total Units	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
	7.14	N/A	N/A	+494	+42	+40

**METRO SCHOOL BOARD REPORT**

**Projected student generation if Developed under the RM9 Standards**  
**(64 units)      7 Elementary      7 Middle      10 High**

**Schools Over/Under Capacity** Students would attend Cumberland Elementary School, Joelton Middle School, or Whites Creek High School. None of the schools have been identified as being over capacity by the Metro School Board. This information is based upon data from the school board last updated June 2008.

**STAFF RECOMMENDATION** Staff recommends disapproval of the request to rezone 7.14 acres from RS15 to SP zoning. The proposed SP-MU zoning district is not consistent with the RM and NCO policies of the Bordeaux/Whites Creek Community Plan.

**CONDITIONS**

1. If developed as residential, all uses within the RM9 zoning district shall be allowed with such uses complying with RM9 zoning standards, except as otherwise required by other conditions of approval. Any final site plan for residential development shall be consistent with the RM policy and shall be approved by the Planning Commission.
2. A funeral home use shall be permitted and shall comply with all standards and regulations of the OR20 zoning district.
3. In conjunction with any final SP site plan, elevations identifying building material and a site layout shall be submitted to staff for review and approval. Prohibited building materials shall include all plastics, plywood, unfinished concrete blocks, metal buildings, and vinyl siding
4. If developed as residential, all property within NCO policy shall be conserved as open space. If developed as a funeral home, all standards of the OR20 zoning district shall apply.
5. The SP final site plan application shall include a landscape plan which includes a tree density table and plant species list to be approved by the Urban Forester.
6. Signs shall be limited to one wall mounted sign a maximum of 48 square feet in size and one ground sign a maximum of 28 square feet in size shall be permitted. Details of the signs shall be submitted with the final site plan for review and approval.
7. The requirements of Metro Stormwater must be met prior to final site plan approval.
8. The requirements of Metro Water Services must be met prior to final site plan approval.
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 final site plan approval.
10. The requirements of the Metro Public Works Department must be met prior to final site plan approval.
11. 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 RM9 zoning district for residential development and the OR20 zoning district for a funeral home use as of the date of the applicable request or application.
12. This SP is limited to a funeral home and all uses permitted within the RM9 zoning district.

13. 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.

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

Councilmember Matthews explained that he has held several community meetings on the proposed development and that his constituents were in favor of approving the SP without the RM9 zoning and that the development should only consist of a funeral home and one single-family dwelling unit. He requested that the Commission approve their request.

Mr. Chris Utley 511 Court, spoke in favor of the proposed zone change request without RM9 zoning and only one residence.

Mr. Brandon Starks, owner, spoke in favor of the proposed zone change request.

Mr. Henry Hill, Jr. 101 Queens Lane, spoke in favor of the proposed zone change without RM9 zoning and only one residence.

Mr. Dan Lane, 3912 Drakes Branch Road, spoke in opposition to the proposed zone change request.

Mr. Ponder questioned whether the Commission could craft a motion that would designate an approval of only the funeral home and one single-family dwelling unit.

Mr. Bernhardt offered that the Commission could craft a motion that would include the request of the Councilmember and the constituents, and briefly explained the implications of the fall back zoning, if it were approved as suggested.

Mr. Ponder then motioned to disapprove the request as presented and to approve an SP to include a funeral home, one single-family dwelling unit and that the fallback standards would be that of RS15.

Ms. Bernards then announced that the applicant explained earlier in the day that they were interested in constructing a small single-family unit as part of the funeral home, and then later, build another single-family dwelling unit on the property.

Mr. Starks explained that he wanted to include a single family residence in the funeral home so that he and his family could reside there, until they were able to build another single-family dwelling unit adjacent to the funeral home.

Mr. Clifton suggested disapproving the request as it was contrary to the plan. He then offered that the request could be further addressed at the Council level and approved if needed.

Dr. Cummings acknowledged Mr. Clifton's concerns with setting a precedent in approving a project that was contrary to the plan, however, she went on to explain that the location of the parcel would not be very conducive for single family homes as it is currently zoned, and that she would be in favor of approving the request.

Mr. Gee asked that Councilmember Matthews provide his opinion on whether he would be in favor of the Commission amending the request.

Councilmember Matthews explained that he and the community were only in agreement with a funeral home and one single-family dwelling unit. He stated that he was unaware of the second residence that was mentioned by Ms. Bernards. After learning of the second residence, the Councilmember explained to the applicant that he would need to defer the proposal. However, he further stated that the applicant did not want a deferral and agreed to construct a funeral home and only one single-family dwelling unit.

Mr. Gotto questioned whether Councilmember Matthews would be in favor of approving the request with a condition to include a temporary single-family residence in the funeral home, until such time, a second single-family dwelling unit were



to be built on the property.

Councilmember Matthews expressed concern with being able to place a time limit on the temporary residence as well as the issue of making sure that the temporary residence was no longer used after it was vacated.

Mr. Bernhardt offered that the Commission could approve the request to include the funeral home and one single family residence, and if the applicant wanted to add another residence, they would have to make another application.

Mr. Gotto moved to approve 2009SP-010-001 for the specific use of a funeral home with the condition it contain one single-family dwelling unit within the funeral home, and allow the applicant to construct a separate single-family dwelling unit on the property, and then after the detached single-family unit is completed, the temporary residence could no longer be used for residency.

Mr. Gee expressed concerns with approving the request as it was not compatible with the general plan, and the applicant did not provide a site plan for the development.

Ms. Bernards explained that the application was considered a regulatory specific plan that will require a final site plan prior to its approval.

Mr. Gee suggested that a condition be added to the motion which would require the application be brought back to the Commission for final site plan approval.

Dr. Cummings agreed to have the application brought back to the Commission prior to its approval as she would like to review the ingress/egress for the development.

Ms. LeQuire suggested amending the motion to specifically address the number of UNO's to be issued to the applicant.

Mr. Clifton explained that due to the various reasons mentioned regarding the terrain of the parcel, as well as the many zoning changes that have occurred since the plan update, he would support the request.

Mr. Gotto moved, and Dr. Cummings seconded the motion to approve SP 2009SP-010-001 for a funeral home subject to the standards, regulation and requirements of the OR20 zoning district and one single-family dwelling unit, and that the final site plan shall be approved by the Planning Commission. **(9-0-1) Abstain -- Dalton**

**Resolution No. RS2009-72**

**“BE IT RESOLVED by The Metropolitan Planning Commission that 2009SP-010-001 is **APPROVED for a funeral home subject to the standards, regulations and requirements of the OR20 zoning district and one residence. The final site plan shall be approved by the Planning Commission. (9-0-1)****

**While the proposed funeral home is not consistent with Bordeaux/Whites Creek Community Plan’s Residential Medium policy, it is more consistent with the Natural Conservation policy, as the funeral home will require less land than what could be developed under the residential policy. Also, due to the presence of flood plain, the adjacent rail line, and Ashland City Highway, residential is not appropriate at this location.”**

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**VIII. PREVIOUSLY DEFERRED**

- 4. 2009Z-002TX-001**  
Mobile Vendor with Special Exception (SE)  
Staff Reviewer: Jennifer Regen

A council bill to amend the Metro Zoning Code, Chapter 17.16, to allow mobile vendors unable to comply with the indoor-only provisions to apply for a Special Exception (SE) permit for outdoor vending, sponsored by Councilmember Pam Murray.

**Staff Recommendation: Approve with amendment**

**The Metropolitan Planning Commission DEFERRED Text Amendment 2009Z-002TX-001 indefinitely at the request of the applicant. (10-0)**

**IX. PUBLIC HEARING: SPECIFIC PLANS AND TEXT AMENDMENTS**

5. **2009Z-011TX-001**  
Mobile Vendor Overlay  
Staff Reviewer: Jennifer Regen

A request to amend the Metro Zoning Code to create a new mobile vendor overlay (MVO) district, requested by Councilmember Pam Murray.

**Staff Recommendation: Approve**

**The Metropolitan Planning Commission DEFERRED Text Amendment 2009Z-001TX-001 indefinitely at the request of the applicant. (10-0)**

6. **2007SP-122-001**  
Gallatin Pike Improvement District (Amend. #2)  
Map: 061-03, 061-03B, 061-07, 061-11, 061-15  
Parcels: various  
Map: 072-02, 072-03, 072-06, 072-10, 072-13, 072-14  
Parcels: various  
East Nashville Community Plan  
Council District 5 – Pam Murray  
Staff Reviewer: Jason Swaggart

A request to amend the Gallatin Road Improvements District Specific Plan as last amended with Council Bill BL2008-198 for properties generally located along Main Street and Gallatin Pike (266.11 acres), zoned SP to revise when the requirements of the SP apply and to make minor clerical changes within the document, requested by the Metro Planning Department, applicant.

**Staff Recommendation: Approve**

**APPLICANT REQUEST** - A request to amend the Gallatin Pike Improvement District Specific Plan as last amended with Council Bill BL2008-198, for properties generally located along Main Street and Gallatin Pike (266.11 acres), zoned SP to revise when the requirements of the SP apply and to make minor clerical changes within the document.

**BACKGROUND** The Gallatin Pike Improvement District SP was adopted by the Metro Council on July 17, 2007, and first amended on August 18, 2008. The SP district expressly implements the detailed land use policies in the East Nashville Community Plan along a portion of Main Street and Gallatin Pike. The SP includes provisions that tie land uses, building regulations, infrastructure requirements, and signage regulations directly to the detailed community plan policies for property included within the boundaries of the SP district.

The SP includes parcels of land that abut both sides of Main Street and Gallatin Pike, from South 5th Street to the south side of Briley Parkway, except for those parcels located within the Institutional Overlay for the Nashville Auto Diesel College and Planned Unit Developments adopted pursuant to BL2003-82 and BL2005-881.

As is common with any new comprehensive regulatory system, issues have arisen during implementation of the SP. These issues need to be adequately addressed; therefore this amendment has been initiated by the Metro Planning Commission. Some amendments are needed to address unintended consequences of provisions included in the SP, while others are needed to update the document. The amendments have been filed with the Council as a single ordinance. The primary proposed amendments are listed below, and will be discussed separately in the next section of this report.

1. “Trigger” Provisions – Amend provisions that regulate when the SP applies.
2. Standards for side streets – Remove from ordinance.
3. Building Regulations – Provide a side setback for corner lots.
4. Nonconforming Uses – Allow for limited nonresidential uses within the Mixed Housing Land Use area.

## DETAILS OF PROPOSED AMENDMENTS

1. Amend the “Trigger” provisions – When is the SP applicable to construction? (Page 7 of the SP document)

Currently the SP specifies that the design guidelines, system regulations, and building standards apply if:

1. The value of any one building permit is twenty-five percent, or the value of multiple building permits during any five-year period is fifty percent of the value of all improvements on the lot prior to application for the building permit; or
2. The total building square footage of any one expansion is twenty-five percent, or the total building square footage of multiple expansions during any five-year period is fifty percent of the total building square footage of all improvements on the lot prior to expansion.

It specifies that signs must be in compliance with all sign requirements if:

1. All signage provisions contained in this SP shall apply to all sign-related permits. If a nonconforming sign is damaged, however, the issuance of a permit for repairs to the sign to restore the sign to its pre-damage condition shall not require compliance with the standards contained in this SP.

### Issues with the Triggers

There have been two major issues with how the trigger provisions are currently written. First, the provisions have made it difficult for property owners to utilize existing nonconforming buildings that still retain a useful life. Paragraph 1 specifies that a property must be in full compliance with the SP requirements if the building permits value is twenty-five percent, or the value of multiple building permits during any five-year period is fifty percent of the value of all improvements on the lot prior to application for the building permit. The consequence of this is that a property owner would not be permitted to renovate a building if the value of the permit was twenty-five percent of the total building value, but would be required to tear down the building and redevelop the property consistent with the SP requirements. This has made it difficult for property owners to make reasonable renovations, exterior and interior, to existing buildings, creating a situation that encourages vacancy and waste of useable structures.

The second issue with Paragraph 1 is that it has been very difficult for staff to enforce. Often the property owner will submit an inaccurate permit in order to keep the permit value below the trigger. This situation is difficult for staff to regulate and is a time consuming process.

### Triggers to Remain the Same

Paragraph 2 of this section, which requires compliance with the SP if a proposed project will expand an existing building by twenty-five percent or more, has not been difficult to apply and should be retained as a trigger.

The provisions for signage standards have not been difficult to apply and should be retained.

### New Triggers

Most new ordinances of this type provide some means of grandfathering for existing nonconforming buildings. As written the Gallatin Pike SP severely limits what a property owner can do with an existing building, and given the current low demand for property along Gallatin Pike most property owners do not have the financial backing to demolish existing buildings and start over. Staff recommends a new set of trigger provisions which will allow property owners to utilize existing nonconforming buildings more easily. The new trigger provisions proposed by staff is a tiered approach having

three tiers: full compliance, partial compliance and no compliance.

Under the new approach recommend by staff a property owner could utilize an existing nonconforming building provided the use is allowed in the SP and the parking requirements can be met. It also would allow for minor expansions (less than twenty-five percent) to existing nonconforming buildings provided that the property can meet certain access and landscape provision of the SP. Full compliance would be required for all new construction, major expansions (twenty-five percent or more), and for existing nonconforming buildings where more than fifty percent of the total floor area has been damaged or destroyed.

Proposed amendments:

Delete section 1 under “Section B. Applications of Guidelines, Standards and Regulations” on page 7 in its entirety and replace with the following:

1. When do the guidelines, standards, and regulations apply?

The Gallatin Pike Improvement District SP does not apply to all building permits; however, *it does apply to all sign permits*. The SP allow for property owners to utilize existing nonconforming structures, but new construction, generally, shall meet all the provisions of this SP.

A. Full compliance with all the SP provisions shall be required as follows:

- i. New Construction – All new construction. When an existing nonconforming structure on property with multiple structures is being demolished only the new structure shall be in compliance with the guidelines, regulations and standards of this SP. When a portion of an existing nonconforming structure is being demolished then the replacement structure shall bring the overall structure more into compliance with the guidelines, regulations and standards of this SP.
- ii. Expansion – A single expansion increases the gross floor area by twenty-five percent or more, or multiple expansions over any five-year period increases the gross floor area for all structures on a property by fifty percent or more of the total gross floor area of all improvements on the property prior to expansion.
- iii. Damage or Destruction – Damage of a nonconforming structure exceeds fifty percent of the total gross floor area.

B. Compliance with Standards 1.1, 4.1, 4.2, 4.3 and 4.4 of the system regulations is required for minor expansions provided that:

- i. A single expansion or multiple expansions are less than twenty-five percent of the total gross floor area of all improvements on the property prior to July 17, 2007.
- ii. The expansion is not on the front of a structure unless the proposed expansion would bring the structure more into compliance with the guidelines, regulations and standards of this SP.

C. Compliance with the SP provisions *is not* required for the utilization of existing nonconforming structures provided there is no expansion to a nonconforming structure. While this SP does allow property with existing nonconforming structures to be utilized, the reuse of the property must meet the following standards:

- i. Use – All proposed uses must be permitted as specified in Section D. for each Subdistrict. If the Zoning Administrator determines that a use is legally nonconforming as specified by 17.40.650 of the Metro Zoning Code then the use shall be permitted.
- ii. Parking – Parking shall meet the minimum requirements of Section 17.20 of the Metro Zoning Code. In instances where the minimum parking requirements cannot be met then planning staff under the direction of the Executive Director of the Planning Department may permit adequate alternatives.

D. All signage shall require a sign permit. The signage standards contained in this SP shall apply to all sign-related permits. If a nonconforming sign is damaged, however, the issuance of a permit for repairs to the sign to restore the sign to its pre-damage condition shall not require compliance with the standards contained in this SP.

2. Delete Section 2, “Standards for side streets”, and update numbering (Page 7 of the SP Document).

The original SP specified that the design guidelines, system regulations, and buildings standards only applied to the Gallatin Pike frontage for any parcel located within the SP district, therefore, buildings on side streets within the SP did not have to meet the SP provisions. The first amendment deleted that wording, and also added a new section, "Standards for side streets". Since the original wording was removed, this section is not necessary as the provisions apply to all property within the SP district including side streets. Staff recommends that the entire section be deleted.

3. Provide setbacks for buildings on corner lots, and update the diagram to reflect change in all Building Regulations (Pages 20, 30, and 38 of the SP Document).

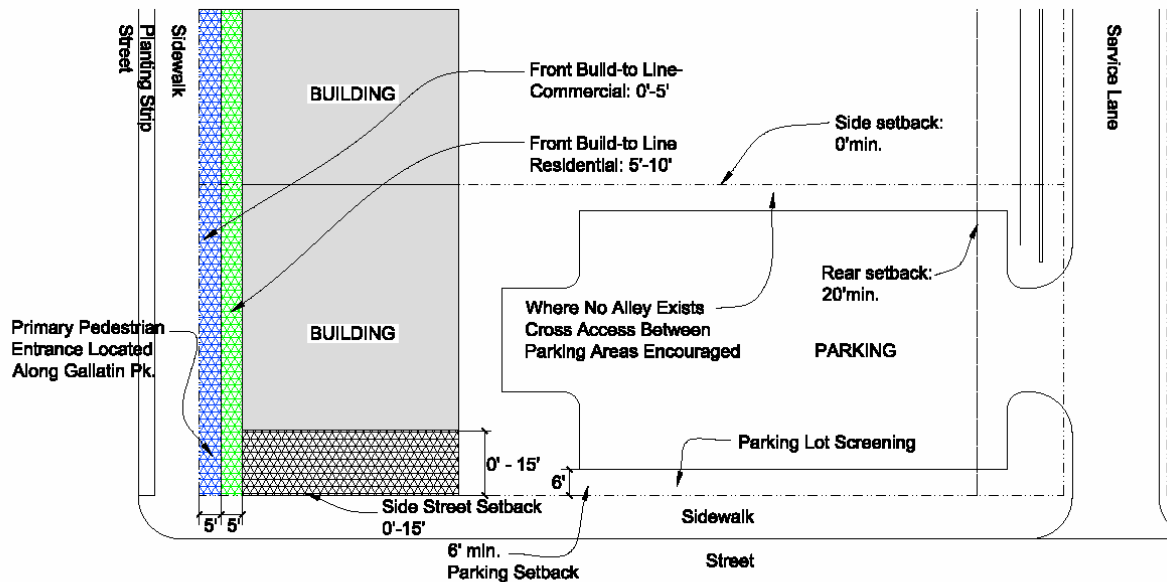
The current building regulations do not specify a maximum side setback, but only a minimal (0 feet) for either commercial or residential buildings. While maximum setbacks for interior lots lines may not be needed, maximum setbacks along side streets for corner lots are important. Staff recommends that the side setback on side streets be restricted to 15 feet. This will allow room for development to accommodate outdoor pedestrian facilities as well as defining the pedestrian environment.

Proposed amendments:

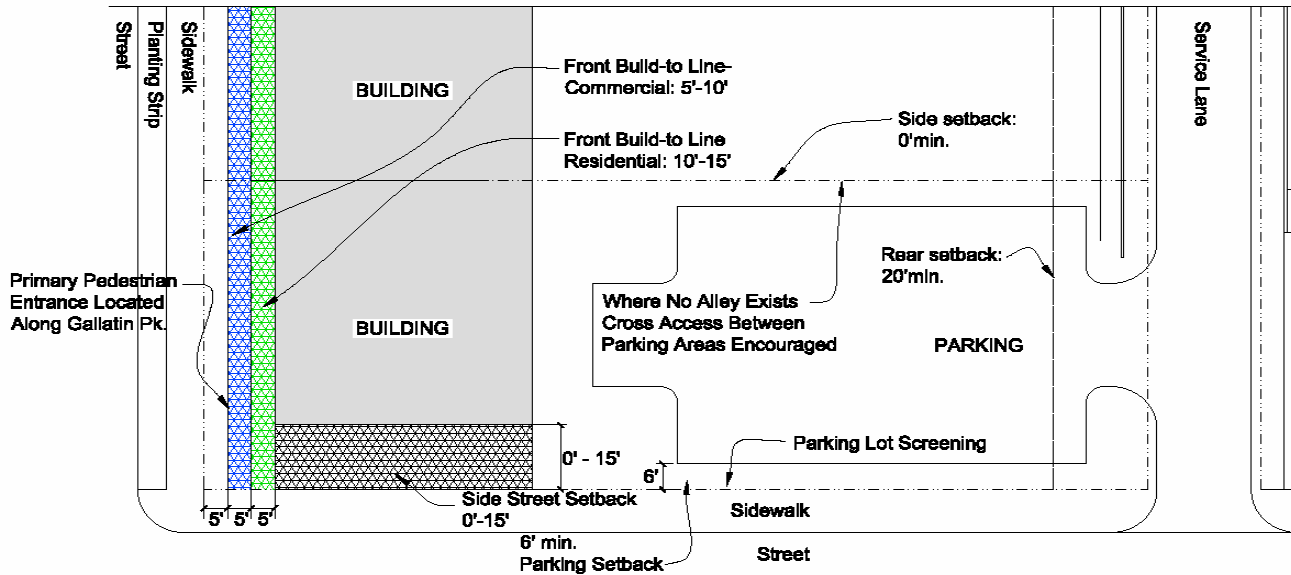
Add new side setback for corner lots for commercial and residential buildings on pages 20, 30 and 38 of the Building Regulations as follows:

Side (Corner Lots): 0' min. – 15' max for side streets.

Replace the diagram on pages 20, and 30 of the Building Regulations for Subdistrict 1 and 2 with the following diagram:



Replace the diagram on page 38 of the Building Regulations for Subdistrict 3 with the following diagram:



**4. Allow for nonresidential uses within Mixed Housing Land Use areas in Subdistrict 1 and 2 (Page 22, and 32 of the SP Document).**

Section D of the SP specifies allowed and prohibited uses within each district. Allowed uses are intended to reflect the underlying land use areas designated by the community plan for East Nashville. The Mixed Housing Land Use Area is only found in Subdistrict 1 and 2. Typically Mixed Housing is for residential only and the SP allows for all uses allowed in the RM40 zoning district. It also includes an exception that allows for retail, office, services, and other active uses when located on the first floor of a multi-floor residential building.

Given that the majority of uses along Gallatin Pike are commercial it is difficult to market residential property along certain stretches of Gallatin Pike. Property owners wanting to utilize existing buildings in areas designated for Mixed Housing can currently only use the existing building for residential. As few people currently choose to live along Gallatin Pike, the provision has resulted in the inability of property owners to re-use existing buildings. To allow property owners to re-use existing buildings staff recommends that limited commercial uses be allowed in existing nonconforming structures that are within a Mixed Housing land use area provided the building is not expanded.

**Proposed amendments:**

Delete the current exception to allowed uses for areas classified as Mixed Housing on page 22 and 32 and replace with the following new exception:

\* In this land use area, new development may have retail, restaurant, office, personal care services or other “active” uses on the first floor provided that the building is multi-story, and residential uses are provided on all other levels. Stand alone residential, general office, medical office, financial institution or personal care services uses are allowed within existing nonconforming structures provided they are not expanded.

**STAFF RECOMMENDATION** Staff recommends approval of this bill.

Mr. Swaggart presented and stated that staff is recommending approval.

Mr. Gotto spoke in favor of approving the Gallatin Road Improvement District.

Mr. Gee explained that he had two concerns with the specific plan and asked staff to further review these concerns. The first being the full compliance requirement and the second being the changes to the mixed-housing components within this SP

district. Mr. Gee offered brief explanations of both issues to staff and the Commission.

Mr. Tyler asked that Mr. Swaggart further explain the trigger mechanisms contained in the SP.

Dr. Cummings spoke in favor of the plan.

Mr. Ponder questioned whether this SP could be implemented universally for all corridor improvements.

Ms. Jones spoke in favor of the amendments and explained the difficulty experienced in improving strip centers in relation to building owners and tenants.

Mr. Dalton stated he was in favor of approving the plan.

Ms. LeQuire requested clarification on the percentage numbers used in the plan.

Mr. Swaggart explained the percentage numbers to the Commission.

Ms. LeQuire then offered a scenario in which adjacent properties within the district were interested in combining properties and questioned whether the combination of the two properties would set off any trigger provisions.

Mr. Swaggart explained how staff would analyze the combination of the two properties.

Mr. Bernhardt offered additional explanation on the SP in relation to the mixed-use component included in the plan.

Mr. Gee then offered his concerns with the mixed-use component contained in the proposed specific plan. He also spoke of his concern relating to the retail-use components as well.

Mr. Bernhardt explained that Council was not in favor expanding retail in the mixed housing area of the plan.

Mr. Clifton moved and Mr. Gee seconded the motion, which passed unanimously, to approve Specific Plan 2007SP-122-001, as recommended by staff. **(10-0)**

**Resolution No. RS2009-73**

“BE IT RESOLVED by The Metropolitan Planning Commission that 2007SP-122-001 is **APPROVED. (10-0)**

**The proposed amendments to the Gallatin Pike Improvement District SP are consistent with the East Nashville Community Plan policies, and will have a positive impact on redevelopment within the district.”**

7. **2009Z-006TX-001**  
Wind Energy Systems  
Staff Reviewer: Jennifer Regen

A request to amend Chapters 17.04, 17.08 and 17.16 of Zoning Code to allow wind energy systems as an accessory (A) use in all zoning districts, requested by Councilmember Charlie Tygard.

**Staff Recommendation: Approve with amendments**

**APPLICANT REQUEST** - A council bill to add “Wind Energy Facility (small)” and “Wind Energy Facility (utility)” to the Zoning Code.

**ANALYSIS**

**Prior Commission Review** On August 28, 2008, the Planning Commission reviewed a text amendment to allow small wind energy systems, 2008Z-071T; Council Bill BL2008-283 sponsored by Councilmember Tygard. The Commission voted to approve the bill in concept, but to disapprove the bill as it was filed. The Commission determined more work was needed on

the bill. Based on the Commission's action, the sponsor requested, and the Metro Council agreed, to defer indefinitely the bill's consideration on September 2, 2008. This new bill filed by the sponsor was drafted by Planning staff. Staff reviewed ordinances from around the country in drafting the bill.

**Proposed Use** "Wind energy systems" refers to equipment that captures the power of moving air (wind) and converts it into energy, storing it in a battery or transferring it to the power grid. The system typically consists of a windmill structure comprised of a turbine on a single pole measuring anywhere from 35 feet to 150 feet tall or more, and which has a rated capacity of producing 10 to 100 kilowatts (kW) or more per hour. The pole may be a freestanding or a guyed structure, and typically does not require a beacon light by the Federal Aviation Administration (FAA), if less than 150 feet tall.

Small wind turbines were commonplace on farms and ranches before rural electrification programs. Today, they are an important element of this country's energy independence. Both NES and TVA sponsor small wind energy systems as part of the "Green Power Switch" program.

**Existing Law** The Zoning Code does not allow wind energy systems. The State of Tennessee does not regulate them.

**Proposed Bill** The proposed bill distinguishes between two wind energy systems: small and utility. A "small" facility consists of one tower, one turbine, a rated capacity of 100kW or less and would be permitted with conditions (PC) in all zoning districts. A "utility" facility consists of two or more towers with turbines, or any tower having a rated capacity exceeding 100kW, and where the primary use of the facility is electrical generation to be sold to the wholesale electricity markets. A "utility" facility would require Specific Plan (SP) zoning to allow the use on a particular property.

**Proposed Text** The proposed bill adds definitions and standards to the Zoning Code for wind energy systems. Standards address setbacks, height, guy wires, signs, advertising, lighting, appearance, noise, separation distance, shadow/blade glint/flicker, emergency planning, utility notification, and abandonment of structures. In addition, a zoning application to permit the use requires submittal of a site plan, a statement from an engineer certified in noise control, and photo visualizations of the proposed structure and its relationship to surrounding structures showing pre- and post-construction views.

**Analysis** Wind energy systems refers to a technology that captures an abundant energy supply on Earth – wind – where a constant, consistent wind speed of eight miles per hour (m.p.h.) is sustained. Less than 8 m.p.h. and power cannot be generated. As the wind blows, the rotating blade on the windmill stops a percentage of the wind. That "percentage" is what is converted into energy; and according to physics, the maximum amount of energy that can be converted is 59.3%. While an unlimited supply of energy exists, there is in fact, a maximum amount that can actually be converted.

**U.S. Dept. of Energy** The U.S. Department of Energy's National Renewable Energy Laboratory has classified seven wind power levels in the United States ranging from one to seven; one being the worst and seven being superb. Nashville is rated a one (weakest); the entire southeast is rated between one and two except for coastal areas, and scattered locations in the Smoky Mountains and Cumberland Plateau.

**Nashville's Wind Speed** To independently verify Nashville's classification, planning staff contacted the Nashville International Airport. The airport has investigated wind power for generating electricity to light the airport terminals and parking lots. Recently, the airport obtained from the National Ocean and Atmospheric Association (NOAA) the last ten years of wind data for the airport taken at a height of more than 20 feet above the ground. The captured data was for every hour of every day within the past 10 years. The conclusion was that conventional wind power systems would not work in Nashville. The data revealed no consistent, constant or sustained wind speed of 8 m.p.h. or more.

**Proposed Standards** While the opportunity for wind energy systems is quite limited in Nashville, allowing them promotes the goal of decreasing reliance on traditional energy sources. Wind opportunities do exist for those people who live or work where the natural or man-made topography create a sustained wind speed, or for those people wanting to support green energy initiatives.

The proposed standards create a model ordinance, blending features of several other wind ordinances elsewhere in the country. One exception to Nashville's ordinance is no financial assurance being required to remove/demolish the wind energy facility in the event it is abandoned, as defined in the bill. As with the "Telephone Services" text amendment on this same agenda, the Zoning Administrator determined the current enforcement process is sufficient (e.g. Environmental Court). Requiring financial assurance to remain in place for 10, 15, 20, or more years would likely be administratively difficult to



manage.

**Proposed Ordinance**

- The following definitions related to wind energy facilities be **inserted** in Section 17.04.060 (Definitions of General Terms) of the Metropolitan Code:

Wind Energy Facility (small): A wind energy facility consisting of one tower, one turbine, and having a rated capacity of not more than 100kW.

Wind Energy Facility (utility): A wind energy facility consisting of two or more towers with turbines, or having a rated capacity of 100kW or more, and where the primary use of the facility is electrical generation to be sold to the wholesale electricity markets.

These terms regarding wind energy systems are referenced:

1. “Blade Glint” means the intermittent reflection of the sun off the surface of the blades of a single or multiple wind turbine(s).
2. “Distance” means a measurement made in a straight line, without regard to intervening structures or objects, from the wind turbine’s center toward the specified distance required by this title.
3. “Height” means the vertical distance from pre-development grade to the tip of the wind turbine blade at its highest point, or blade-tip height.
4. “Nacelle Body” means the structure at the top of the wind turbine that is separate from the blades and comprises the rotor shaft, gearbox, and generator.
5. “Occupied Building” means a residence, church, hospital, school, day-care, community education facility, or library.
6. “Shadow Flicker” means the effect when the blades of an operating wind turbine pass between the sun and an observer, casting a readily observable, moving shadow on the observer and his/her immediate environment
7. “Wind Energy Facility” means a wind turbine and all associated equipment, machinery and structures utilized to convert wind to electricity. This includes, but is not limited to, towers, transmission, storage, collection and supply equipment, substations, transformers, and service and access roads.
8. “Wind Turbine” means a device that converts kinetic wind energy into rotational energy to drive an electrical generator. A wind turbine typically consists of a tower, nacelle body, and a rotor with two or more blades.

- Modify Section 17.08.030 (Zoning District Land Use Table: Utility Uses) of the Metropolitan Code by **adding** “Wind Energy Facility (small)” as a use permitted with conditions (PC) in all zoning districts and “Wind Energy Facility (utility)” in a Specific Plan (SP) district permitting such use as adopted by the Metropolitan Council.
- Modify Section 17.16.100 (Uses Permitted With Conditions: Utility Uses) by **inserting** “C. Wind Energy Facility (small)” as follows:

C. Wind Energy Facility (small)

1. **Applicability.** The wind energy facility shall comply with the standards of this title; however, where a facility cannot comply, the applicant shall be required to submit for a special exception permit. The special exception permit request shall be accompanied by a written document that identifies and describes the facility’s compliance with the standards.

Where compliance is not possible, the document will detail why the standards cannot be met, and what alternative standards are proposed by the applicant.

2. **Height.** The height of any facility, whether building – or tower-mounted, shall not exceed fifteen (15) feet above the maximum building height allowed for the primary use in the subject zoning district as provided in this title.

3. **Setback.** The facility shall not be sited within (a) a distance equal to the height of the facility from any occupied buildings, or private ways that are not part of the wind energy facility; or (b) one point five times (1.5x) the facility’s height from the nearest property line, whichever is greater.

4. **Guy Wires.** No guy wire anchors shall extend closer than five (5) feet to the property line. All outer and innermost guy wires must be marked and clearly visible to a height of six (6) feet above the guy wire anchors.

5. **Signs and Advertising.** An information sign identifying the facility owner, facility manufacturer, and a 24-hour emergency contact phone number, along with warning sign(s) shall be required on the facility. In addition, an educational sign may be provided about the facility and the benefits of renewable energy. All such signs shall comply with

the base zoning district's sign regulations for a non-residential use as provided in this title. No other advertising signs shall be allowed on or around the facility.

6. **Lighting.** No lighting of the facility shall be permitted, except warning lights as required by state or federal law.

7. **Appearance.** All components of the facility shall be in a neutral, non-reflective exterior color designed to blend with the surrounding environment.

8. **Noise.** The facility shall not generate noise in excess of 60 decibels (dBA) measured at the closest neighboring occupied building, except during short-term events such as utility outages and severe windstorms.

9. **Separation Distance.** The facility shall be located a minimum of 1,000 feet from any other wind energy facility.

10. **Shadow, Blade Glint, and Flicker.** The facility shall be sited to minimize shadow, blade glint, and flicker impacts on any property within a minimum distance of 600 feet of the site property line.

10. **Utility Notification Plan.** No wind energy facility shall be installed until the Nashville Electrical Service approves the applicant's site plan.

11. **Emergency Plan.** The facility shall have an automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades and turbine components.

12. **Abandonment.** The applicant or property owner shall provide proof of the establishment of a financially secure and legally enforceable method of removing a wind energy facility when it ceases to be used for a period of twelve (12) consecutive months. This financial assurance can be provided through a sinking fund, a lien upon land which has a greater unencumbered appraised value than the cost of removal of the wind energy facility, a removal bond, a letter of credit or any alternative financial arrangement which is approved by the director of finance as to financial adequacy and the department of law as to legal enforceability. If the applicant or landowner owns more than one (1) wind energy facility, a blanket removal bond or alternative financial assurance may cover multiple sites.

13. **Site Plan.** No wind energy facility shall be erected, constructed, installed or modified as provided in this section without first undergoing site plan review and obtaining a building permit. All plans and maps shall be prepared, stamped and signed by a professional engineer licensed to practice in Tennessee as a mechanical, structural, or civil engineer. The required site plan shall show, identify, display, dimension, and/or demonstrate the following:

- a. All property lines and existing buildings/structures on site and within 600 feet of the site. For buildings/structures, the purpose of each will be labeled on the plan as well as the distance of each from the facility.
- b. Location of the proposed tower, foundations, guy anchors, access roads, and associated equipment on the site parcel and within 600 feet of its boundary.
- c. Any existing overhead utility lines;
- d. Existing areas of tree cover, including average height of trees, on the site parcel and any adjacent parcels within a distance, measured from the wind turbine foundation, of 1.2 times the height of the wind turbine;
- e. Location of each existing wind energy facility, regardless of size or operational condition that are within 2,000 feet of the proposed facility.
- g. Proposed changes to the landscape of the site, grading, screening, vegetation clearing and planting, any required FAA lights;
- h. Tower foundation blueprints or drawings signed by a professional engineer licensed to practice in the State of Tennessee as a mechanical, structural, or civil engineer demonstrating the facility is designed to meet the most stringent wind requirements;
- i. A statement by an engineer licensed in the State of Tennessee certifying that the proposed wind turbine will meet the noise standard established by this section. The engineer shall be certified by the Institute of the Noise Control Engineering of the USA (INCE/USA).
- l. One or three line electrical diagram detailing wind turbine, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
- m. Documentation of the wind energy facility's manufacturer and model, rotor diameter, tower height, tower type (freestanding or guyed), and foundation type/dimensions;
- n. Photo visualizations of the facility pre- and post-construction shall be provided by the applicant in color showing how the facility will look, once installed. The visualizations will be from a minimum of three sight lines, including the nearest occupied building with a view of the wind facility, excluding buildings owned by the applicant or property owner.
- o. An operation and maintenance plan shall be submitted for the facility.

**STAFF RECOMMENDATION** Staff recommends approval of this bill as it provides opportunities for wind energy systems in Nashville. In addition, the bill ensures sufficient, accurate and reliable information will be made available to the appropriate decision makers, when a wind energy facility is proposed.

Staff recommends two amendments to the proposed bill. The first amendment is to renumber l, m, n, and o to j, k, l, and m under Section 17.16.100.C.13. The second amendment is to delete the requirement for financial assurance in the event a Wind Energy Facility (small) is abandoned as shown below:

**Abandonment.** The applicant or property landowner shall provide proof of the establishment of a financially secure and legally enforceable method of removing a remove the wind energy facility when it ceases to be used for a period of twelve (12) consecutive months. This financial assurance can be provided through a sinking fund, a lien upon land which has a greater unencumbered appraised value than the cost of removal of the wind energy facility, a removal bond, a letter of credit or any alternative financial arrangement which is approved by the director of finance as to financial adequacy and the department of law as to legal enforceability. If the applicant or landowner owns more than one (1) wind energy facility, a blanket removal bond or alternative financial assurance may cover multiple sites.

Ms. Regen presented and stated that staff is recommending approval with amendments.

Councilmember Tygard offered a brief history on the Wind Energy Systems bill. He explained that the City of Nashville should be prepared to move forward on the implementation of wind energy systems as technology continually changes and there may soon be a day the city will begin using these energy systems.

Mr. Clifton spoke on the importance of having regulations in place.

Dr. Cummings spoke in favor of the plan.

Mr. Tyler requested clarification on which zoning districts would allow the wind energy systems as well as the regulations that mandate their placement on a property.

Ms. Regen explained these concepts to the Commission.

Mr. Ponder requested further clarification on the specifics of the zoning districts in which the wind energy systems could be placed.

Mr. Gee requested additional clarification as to the placement of rooftop units.

Ms. LeQuire questioned whether rooftop units would sufficiently power a single-family home.

Ms. Regen explained the power provided by a rooftop unit. She also explained the requirements that would need to be met in order to place a wind energy system either on homes or on property.

Ms. LeQuire expressed concerns with placing regulations on industrial and/or municipal locations whereby capturing this type energy would be greatly beneficial.

Mr. Ponder moved and Mr. Gotto seconded the motion, which passed unanimously, to approve Text Amendment 2009Z-006TX-001 as recommended by staff. **(10-0)**

**Resolution No. RS2009-74**

**“BE IT RESOLVED by The Metropolitan Planning Commission that 2009Z-006TX-001 is APPROVED WITH AMENDMENTS. (10-0)”**

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The Commission recessed at 5:30 p.m.

The Commission resumed at 5:45 p.m.

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**8. 2009Z-008TX-001**  
Electronic Signs (Special Exception Use)  
Staff Reviewer: Kathryn Withers

A request to amend the Metro Zoning Code to designate electronic display signs as a permitted use or a special exception use in certain zoning districts, and to add standards for electronic display signs, requested by Councilmember Charlie Tygard.

**Staff Recommendation: Approve**

Ms. Withers presented and stated that staff is recommending approval.

Ms. Adrienne Marianelli, 2410 Blair Blvd., spoke in opposition to the proposed text amendment.

Ms. Miriam Mimms, Blair Blvd., spoke in opposition to the proposed text amendment.

Ms. Kathy Baker, 6811 Fleetwood Drive, spoke in opposition to the proposed text amendment.

Ms. Rosemary Weldon, 815 Brook Hollow Road, spoke in opposition to the proposed text amendment.

Mr. Wendell Goodman, 4901 Park Avenue, spoke in opposition to the proposed text amendment.

Ms. Trish Bolian, Hickory Valley Road, spoke in opposition to the proposed text amendment.

Ms. Jennifer Pennington, 3700 Woodlawn Drive, spoke in opposition to the proposed text amendment.

Mr. David Widmer, 3821 Cross Creek Road, spoke in opposition to the proposed text amendment.

Mr. Bruce Wood, 1285 4<sup>th</sup> Avenue South, spoke in opposition to the proposed text amendment.

Ms. Kip Kirby, 142 Carnavon Parkway, spoke in opposition to the proposed text amendment.

Ms. Mina Johnson, 6600 Fox Hollow Road, spoke in opposition to the proposed text amendment.

Ms. Charlotte Cooper, 3409 Trimble Road, spoke in opposition to the proposed text amendment.

Mr. Josh Tillman, 410B Chesterfield Avenue, spoke in opposition to the proposed text amendment.

Ms. Chris Talbot, 2501 Essex Place, spoke in opposition to the proposed text amendment.

Ms. Myra Lathers, 709 Darden Place, spoke in opposition to the proposed text amendment.

Mr. Tom Cash, 3104 Acklen Avenue, spoke in opposition to the proposed text amendment.

Ms. Betty Horton, 726 Benton Avenue, spoke in opposition to the proposed text amendment.

Mr. Peter Horton, 726 Benton Avenue, spoke in opposition to the proposed text amendment.

Mr. Shane Burkett, 4920 Seiner Court, spoke in opposition to the proposed text amendment.

Ms. Susan Floyd, 222 Bonnbrook Drive, spoke in opposition to the proposed text amendment.

Ms. Louan Brown, 3071 Elm Hill Pike, spoke in opposition to the proposed text amendment.

Mr. Ken Winter, 1021 Daris Avenue, spoke in opposition to the proposed text amendment.

Mr. Bob Cooper, 5632 Knob Road, spoke in opposition to the proposed text amendment.

Mr. Keith Newcomb, 604 Georgetown Drive, spoke in opposition to the proposed text amendment.

Mr. John Summers, 5000 Wyoming Avenue, spoke in opposition to the proposed text amendment. He submitted information to the Commission for the record.

Councilmember Tygard spoke in favor of the proposed text amendment. He briefly explained the charge of the LED Sign Task Force to the Commission. He explained that the current policy requires churches and schools, zoned either residential and/or agricultural, to prove hardship to the BZA if they want to place a LED sign on their property. He explained that the ordinance does not allow any flashing light activity, nor does it allow any scrolling characteristics. He spoke of the importance of allowing these institutions the opportunity to communicate their activities to their constituents via signage. He then explained that he would recommend an amendment to the ordinance that would require that these signs be automatically built with the limitations such as timers, color of lighting, etc. Councilmember Tygard closed by reading a statement written by Commission Clifton. The statement included Mr. Clifton's views on the recommendation made by the Sign Task Force, as he also served on the committee.

Mr. Clifton acknowledged the complexity of this bill. He mentioned that the Task Force was asked to look at the issues associated with LED signage since the last bill was adopted and put in place by Council. He mentioned that the committee sent a letter along with their recommendation to Council asking Council to remain vigilant on the enforcement issues associated with LED signage as it was a key component of their findings. He briefly explained the limitation incorporated in the bill that prohibits any new LED signage. He explained that the bill only allows LED signs in residential areas where a current sign exists. Mr. Clifton then spoke on the make-up of the committee members and noted there were many neighborhood advocates that were asked and served on their task force.

Dr. Cummings thanked the Neighborhood Association members who addressed the Commission on behalf of their communities. She then acknowledged and thanked the committee members for their work and service to the task force. Dr. Cummings then questioned whether the Community Character Manual contained guidelines that addressed signs located in residential neighborhoods.

Ms. Hammond explained that the Community Character Manual basically outlines the individual components that make up the character of a neighborhood and that it does not address specific rules and regulations. The manual would only suggest that whatever components are to be used in a neighborhood, be compatible to further enhance the community's characteristics.

Mr. Tyler questioned the square footage allowed on LED signs, as well as any regulations that pertain to backlit signs.

Ms. Withers explained she did not have any information on light pollutions of LED signs.

Mr. Tyler then acknowledged that all of the comments made during the public hearing were in opposition to the proposed text amendment.

Mr. Gee too acknowledged only receiving letters of opposition on the bill. He then explained that the only positive factor related to LED signs is that they are energy efficient, and that this fact was not enough for the Commission to base their recommendation for Council.

Mr. Gotto acknowledged the make up of the task force and stated that the committee was well-balanced. He then explained that the amendment would not permit any new signs in residential neighborhoods and spoke of the restrictions contained in the bill which may make it more difficult to place LED signs in residential neighborhoods. He explained too that the proposed ordinance would also assist with the security measures, as the new signs would contain technology that would prohibit use by unwanted users.

Ms. LeQuire announced that the correspondence received by the Commission at their meeting only contained one letter of support. She acknowledged the beneficial aspects of the bill, but asked that staff further elaborate on why the Commission should move forward this bill as proposed.

Ms. Withers explained that the bill would set a uniform set of standards for LED signage and assist with spot zoning with regard to signage.

Ms. LeQuire questioned whether the ordinance had proper guidelines in place that would address those who would violate the new ordinance.

Mr. Sloan explained the procedure followed by those who violate codes regulations to the Commission.

Mr. Gotto mentioned that the Codes department allows a 30 day abate notice to allow a correction prior to a citation.

Mr. Sloan explained the citation procedure to the Commission.

Mr. Gotto then mentioned the fines associated with violations and asked if the fines could be issued on a per day basis.

Mr. Sloan explained the fine procedures to the Commission.

Ms. LeQuire acknowledged that the Commission could add additional standards, however, was having issues with finding a way to support the bill.

Mr. Dalton also explained his concerns with the bill and its driving force. He acknowledged the opposition expressed by constituents and offered that everyone is living with the current standards and maybe should continue to do so.

Ms. Jones stated that the bill contains so many restrictions that it would be difficult to replace any existing signs located in residential areas.

Mr. Ponder requested additional clarification on whether the ordinance contained size restrictions. .

Mr. Sloan was asked to comment on whether Metro Codes could enforce sign regulations in satellite cities.

Ms. LeQuire expressed concerns with implementing a county-wide ordinance that will only address a small number of existing signs.

Ms. Jones spoke of enacting the ordinance as the city is in need of regulating LED signage.

Mr. Clifton briefly explained both the reasons for and against passing the bill as expressed by the task force.

Dr. Cummings questioned how the 250 ft. measurement was incorporated in the bill.

Ms. Withers and Mr. Clifton explained the measurement.

Ms. LeQuire asked that Mr. Clifton share the views of the task force on placing these signs in or near residential neighborhoods.

Mr. Clifton explained the committee's recommendations that referenced placing these signs in residential neighborhoods.

Ms. Jones spoke on the issue of SP zoning and how it currently can be used to erect an LED sign near residential areas.

Mr. Tyler questioned how many LED sign cases have been heard by the Board of Zoning Appeals.

Councilmember Tygard explained that under the current regulations, applicants looking to place an LED sign on their property need to prove hardship to the BZA.

A discussion ensued on the existing process and whether the proposed ordinance should be adopted if there are only a small number of applications for the signage.

Mr. Gee referenced the staff report in which the Task Force recommended to Council to approve the ordinance only if the

tools and enforcement are in place.

Mr. Gotto reiterated the importance of approving the ordinance as it would provide specific guidelines for the BZA to follow on LED signage and it would provide consistency throughout the city.

Dr. Cummings asked that staff further explain the 500 nits measurement used in their report.

Mr. Bernhardt offered that the main issue was really the visibility of the sign as opposed to the light being emitted from the sign.

Mr. Ponder also referenced the staff report whereby it was mentioned that the Planning Commission would need to make a recommendation to the BZA and questioned if the Commission would need to hear each case prior to it moving to the BZA.

Mr. Bernhardt explained the process that the planning staff follows when there is a special exception to be heard by the BZA.

Mr. Ponder explained his concern that the ordinance does not prohibit larger replacement signs, however, stated he was in favor of bringing uniformity to the usage of LED signs.

Ms. Jones mentioned that it was the Commission's job to make their recommendation to Council and that Council could address the many issues shared at the Commission meeting.

Mr. Clifton expressed concerns with passing the proposed ordinance without first prohibiting LED sign uses included in SP zoning.

Mr. Dalton explained that the ordinance is a good start, however, he was not in total support of passing the bill as proposed.

Ms. LeQuire reiterated her appreciation on the standards proposed in the bill, however, expressed concerns that it may not support the overall desires of communities and that it may need to be looked at conceptually as opposed to approving one method to fit all scenarios.

Mr. Clifton acknowledged the concerns mentioned by the Commissioners and questioned if there was a bill scheduled for the July public hearing.

Mr. Bernhardt explained the various Council procedures that would be followed depending on the type of recommendation that is sent to them by the Planning Commission.

Mr. Clifton suggested deferring the proposed amendment.

Mr. Gotto explained the next Public Hearing would be held in September.

Mr. McLean suggested that the Commission hold an Informal Work Session in the month of July to hear additional information on the bill.

Mr. McLean moved and Mr. Ponder seconded the motion, which passed unanimously, to defer Text Amendment 2009Z-008TX-001, Electronic Sign (Special Exception Use) to August 13, 2009, to allow additional review of the proposed bill. **(10-0)**

**Resolution No. RS2009-75**

**"BE IT RESOLVED by The Metropolitan Planning Commission that 2009Z-008TX-001 is DEFERRED TO THE AUGUST 13, 2009, MEETING, and the public hearing is closed. (10-0)"**

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**9. 2009Z-010TX-001**  
 Electronic Signs (Distance Requirements)  
 Staff Reviewer: Kathryn Withers

A request to amend the Metro Zoning Code, Chapter 17.16.080 pertaining to the distance requirements for signs with any copy, graphics or digital displays that change messages by electronic or mechanical means, requested by Councilmember Jason Holleman.

**Staff Recommendation: Approve with amendment**

**APPLICANT REQUEST - A request to amend the Metro Zoning Code pertaining to the distance requirements for signs with any copy, graphics or digital displays that change messages by electronic or mechanical means.**

**ANALYSIS**

**Existing Law & Background** Section 17.32.050.G and H of the Zoning Code regulate signs with graphics, messages, and motion. These sections govern electronic billboards, as well as the full motion signs that are permitted only in the CA district, and LED message boards and digital signs.

The LED message boards and digital signs are currently only allowed in the most intense commercial and industrial districts of the city: CA, CS, CF, CC, SCR, IWD, IR and IG. They are allowed to have changeable copy graphics and/or text that must remain static for 8 seconds, and then must change instantaneously without any special effects. The signs are not permitted to be located less than 100 feet from any agriculturally or residentially zoned properties.

The size and height of a sign is controlled according to the property’s zoning district, in Table 17.32.130D. There are no special size and/or height requirements tailored specifically to the LED signs.

**Table 17.32.130D**

<b>Lot Frontage in Feet</b>	<b>Max. No. of Signs (See Note 2)</b>	<b>Max. Area of Any One Sign</b>	<b>Max. Total Area of All Signs</b>	<b>Min. Side Setback (See Note 1)</b>	<b>Min. Setback to Other Ground Signs on the Same Lot</b>	<b>Max. Height in Feet (See Note 2)</b>
Less than 50	1	150 sq. ft.	150 sq. ft.	2 ft.	NA	40 ft.
50-99	1	198 sq. ft.	198 sq. ft.	2 ft.	NA	40 ft.
100-199	1	288 sq. ft.	288 sq. ft.	10 ft.	NA	40 ft.
200-299	2	288 sq. ft.	288 sq. ft.	10 ft.	NA	40 ft.
300-399	2	384 sq. ft.	384 sq. ft.	25 ft.	100 ft.	40 ft.
400-499	3	480 sq. ft.	480 sq. ft.	25 ft.	100 ft.	40 ft.
500 or more	3	480 sq. ft.	576 sq. ft.	25 ft.	100 ft.	40 ft.

**Proposed Text** For the districts where the LED signs are currently allowed (CA, CS, CF, CC, SCR, IWD, IR and IG) the bill proposes a sliding scale for height based on the distance from any agriculturally zoned property instead of the height being controlled by the zoning district:

- a. Signs four feet or less in height shall not be less than one hundred feet from any agriculturally or residentially-zoned property.
- b. Each additional foot in height, or portion thereof, above four feet shall be setback an additional twenty-five feet from any agriculturally or residentially-zoned property. For example, a sign between five and six feet in height shall not be less than one hundred fifty feet from any agriculturally or residentially-zoned property.

**Analysis** This ordinance attempts to address some of the concerns of the intrusion of the LED signs into residential



neighborhoods by limiting the height of signs that are in proximity of residential neighborhoods. Currently, these signs can be up to 40 feet in height. The predominant nature of development along Nashville’s arterial roadways is one-story, flat roof buildings with residential neighborhoods behind. This means that the sign may actually be twice as tall as the building it is associated with and in direct view of residences. As proposed, the ordinance would keep heights low when the signs are close to agriculturally or residentially zoned property, but would allow them to be taller in strictly commercial or industrial areas. The current proposal does not have a maximum height specified and staff recommends using the current 40 foot height limit as the maximum.

**STAFF RECOMMENDATION** Staff recommends approval of this bill with the recommendation that a maximum height of 40 feet be specified in Section 2.b.

Ms. Withers presented and stated that staff is recommending approval amendments.

Mr. Bob Cooper, 5632 Knob Road, spoke in favor of the proposed text amendment.

Ms. Louan Brown, 3071 Elm Hill Pike, spoke in favor of the proposed text amendment.

Ms. Susan Floyd, 222 Bonnbrook Drive, spoke in favor of the proposed text amendment

Ms. Adrienne Marianelli, 2410 Blair Blvd., spoke in favor of the proposed text amendment

Mr. Ponder questioned whether the existing signs would be grandfathered in the existing laws.

Ms. Withers explained that existing signs would be grandfathered.

Mr. Clifton explained that both the Planning Commission and Council could review and possibly amend existing laws that govern signage throughout the City.

Mr. Gotto acknowledged that the bill only applies to digital signs and suggested that it should also examine all other signs.

Ms. LeQuire then questioned how this ordinance would fit into the overall sign ordinance.

Ms. LeQuire suggested that the Commission move to approve and add a condition that Council consider expanding this bill to include any new signs.

There was discussion on the issue of amending a bill that did not have the proper public hearing.

Mr. Ponder moved and Mr. Gotto seconded the motion, which passed unanimously, to approve Text Amendment 2009Z-010TX-001, as recommended by staff. **(10-0)**

**Resolution No. RS2009-76**

“BE IT RESOLVED by The Metropolitan Planning Commission that 2009Z-010TX-001 is **APPROVED WITH AMENDMENT. (10-0)**”

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- 10. 2009Z-009TX-001**  
Telephone Services Conditions  
Staff Reviewer: Jason Swaggart

A request to amend the Metro Zoning Code to add requirements pertaining to telephone service towers, requested by Councilmember Sam Coleman.

**Staff Recommendation: Approve with amendments**

**APPLICANT REQUEST** - A council bill to amend the Metro Zoning Code, Chapter 17.16.080, to replace the existing conditions with new conditions for Telephone Service (Cell Towers).

## **ANALYSIS**

**Existing Law** The Zoning Code currently allows telephone services (cell towers) as a use “permitted with conditions” (PC) in all zoning districts except SP. A cell tower could be permitted in SP if approved by the Metro Council. There are several conditions that must be met for a cell tower to be permitted including:

1. Applicant must demonstrate that existing towers within the service area can not accommodate the equipment planned for the new tower.
2. In residential areas the lot for which the tower is proposed must meet the minimum size requirement.
3. The tower and associated equipment must meet minimum setbacks for the zoning district, and in nonresidential districts a tower can not be within 20 feet of a residential zone district or district permitting residential uses.
4. An A-Buffer yard is required along all residential zoned districts and districts permitting residential uses.
5. Maximum height is determined by the height control provision for the zone district except in MUN, ON, CN and SCN districts where the height control slope plane is 1.5:1.
6. The zoning administrator or planning director must notify the council member of a new cell tower proposed within their districts, when it is proposed within a residential zoning district, or district permitting residential (except MUI, ORI, CF, CC, and SCR), and if it is within 1,000 feet of a residential zoning district, or district permitting residential uses. Council member may hold a community meeting within 30 days.

**PROPOSED TEXT** Under the proposed text change cell towers will still be permitted with conditions in all zoning districts except SP; however, the existing conditions will be replaced with a new set of conditions. Conditions fall into several different categories:

- 1) Required information;
- 2) Landscape requirements;
- 3) Co-location requirements;
- 4) Setback requirements;
- 5) Height requirements;
- 6) Light requirements;
- 7) Notification requirements;
- 8) Other requirements; and
- 9) Exemptions.

Below each category will be briefly discussed.

**Required Information** Applicants for a cell tower will be required to provide schematic site plans for the tower and all related equipment. Applicants will also be required to provide a site justification statement for all new cell towers. The statement must demonstrate the need for a new tower within the service area, and how the applicant has sited the tower so that it will have the least impact on surrounding areas. The applicant will document the total number of users that can be accommodated within the design of the tower, and the applicant will be required to establish a financial means to remove the tower when it is no longer in use.

**Landscape Requirements** Landscape plans will be required and must demonstrate how the visual impact of a tower on adjacent properties and streets will be minimized by utilizing existing topography, structures, and natural vegetation. Tower pads not adequately screened shall be required a landscape yard at least ten feet in width, and plantings shall meet a certain parameter.

**Co-location Requirements** Towers will be required to provide a means for co-location. The co-location requirements are based on height and are as follows:

- Towers more than 100 feet but less than 200 feet in height must be designed to accommodate at least three personal communication system carrier applications, and three additional single antenna applications such as paging, 911, two-way, and emergency management communications.
- Towers over 200 feet in height must be designed to accommodate at least three personal communication system

carrier applications, and three additional single antenna applications, plus at least one additional personal communication system application and at least one additional single antenna application for each additional fifty feet in height to a maximum of six personal service communication system carriers and six single antenna applications.

**Setback Requirements** Towers must be setback from all property lines on which the tower is located by the distance equal to the height of the lowest engineered failure point on the tower or the height of the tower. Provided, however, the minimum setback for any tower is fifty feet.

**Height Requirements** The maximum height of a tower will be determined by the height control provisions of Chapter 17.12.

**Light Requirements** No lights shall be permitted on a tower except for warning lights required by state or federal law.

**Notification Requirements** The Zoning Administrator or Planning Director must notify the council member of a new cell tower proposed within their districts, when it is proposed within a residential zoning district, or district permitting residential (except MUI, ORI, CF, CC, and SCR), and if it is within 1,000 feet of a residential zoning district, or district permitting residential uses. Council member may hold a community meeting within 30 days.

**Other Requirements** Site plans must be prepared by a registered engineer and the site plan and tower design must meet or exceed a list of acceptable standards from groups such as the Federal Communications Commission, American National Standards Institute, the American Concrete Institute, and the American Steel Institute. Plans must demonstrate compliance with all requirements including but not limited to setback, height and landscaping. Tower and landscaping must be maintained, and a tower that has not been utilized for a twelve month period shall be considered abandoned and the owner must remove the tower.

**Exemptions** The ordinance provides exemptions for applications within concealed devices, applications placed on existing structures with certain restrictions, and when applications are placed on existing towers provided the height is not increased.

**Analysis** Under the proposed amendment cell towers will still be permitted with conditions in all zoning districts except SP. While the amendment retains the current notification requirements, it increases the level of information and detail an applicant for a new cell tower must provide, and sets stricter requirements for landscaping, co-location and setbacks.

Overall there are no major issues with the proposed amendment; however, there are several minor issues that should be addressed in an amendment to the bill.

First, staff recommends deleting section C.1.f. which deals with the establishment of a financially secure and legally enforceable method for removing an abandon tower in its entirety. According to the Zoning Administrator, this section is not needed as Metro currently has the ability to require a property owner to remove an abandoned tower. The amendment only needs to specify that a property owner is responsible for the removal of an abandoned cell tower as specified in section C.8.e. of the proposed amendment. Second, the reference in section 2.(5)c. to “subsection A.2.a.” needs to be changed to “subsection C.2.a.” Third, section C.4. Setbacks, does not account for associated accessory structures and parking areas. The amendment should specify a minimum setback for associated accessory structures and parking areas, and staff recommends that the existing setback requirements found in 17.16.080.C.3 be retained which specifies that the setbacks for accessory structures and parking areas shall comply with the setback provisions of the applicable zone district. Fourth, the height requirements should be amended to recognize the differences of the slope of height control plane found in the existing zoning requirements. Staff recommends that the exception found in the current requirement (17.16.080.C.5) be retained which stipulates a slope of height control plane of 1.5:1 for MUN, ON, CN and SCN districts. Fifth, staff recommends that when a tower is proposed on a lot within a residential district, that the lot meet the minimum lot size for the zone district as currently specified in Section 17.16.080.C.2.

**STAFF RECOMMENDATION** Staff recommends approval of this bill with the following five minor amendments:

1. Section C.1.f. shall be deleted.
2. The reference in section 2.(5)c. to “subsection A.2.a.” shall be changed to be changed to “subsection C.2.a.”

3. Section C.4. Setbacks shall require that accessory structures and parking areas associated with any cell tower meet the setback requirements of the applicable zone district.
4. Section C.5 shall provide exceptions for cell towers in the MUN, ON, CN and SCN districts, but require that a slope of height control plane of 1.5:1 shall apply.
5. Minimum lot size requirements shall be added for towers located within residentially zoned districts, and the lot shall meet the minimum size required by the applicable zone district.

Mr. Swaggart presented and stated that staff is recommending approval with amendments.

Councilmember Toler spoke in favor of the proposed text amendments as it provided additional restrictions on the placement of cell towers within various communities.

Ms. Susan Floyd, 222 Bonnbrook Drive, spoke in opposition to the proposed text amendments.

Councilmember Coleman offered a brief history on the origination of this bill. He explained that the bill was the first step in sharing power with providers when it comes to placing cell towers communities. He acknowledged the need for the towers, however, stated that the community should have their input when a cell tower is moving into their neighborhood. He also stated that he would hold another meeting in an effort to allow cell phone tower providers the opportunity to share their concerns regarding on the proposed bill.

Mr. Clifton moved and Mr. Gotto seconded the motion, which pass unanimously, to approve Text Amendment 2009Z-009TX-001 as recommended by staff. **(10-0)**

**Resolution No. RS2009-77**

**“BE IT RESOLVED by The Metropolitan Planning Commission that 2009Z-009TX-001 is APPROVED WITH AMENDMENTS. (10-0)”**

11. **2009Z-012TX-001**  
Automobile Repair & Automobile Service  
Staff Reviewer: Jennifer Regen

A request to amend the Metro Zoning Code to modify the definition of "Automobile Repair" and "Automobile Service" relative to stores which sell and/or install tires, requested by Councilmember Anna Page.

**Staff Recommendation: Approve with amendment**

**APPLICANT REQUEST** - A council bill to amend Chapters 17.04.060 of the Metro Zoning Code to modify the definitions of “Automobile Repair” and “Automobile Service” to prohibit the reconditioning, repairing, sale, mounting, or installing of any used tires at a “Automobile Service” use.

**ANALYSIS**

**Existing Law** The Zoning Code allows used tires to be sold and installed at any automobile repair or automobile service use. An automobile repair use requires specific plan (SP) zoning unless located in an industrial zoning district (IWD, IR, or IG). Automobile service is allowed as a use “permitted with conditions” (PC) in the CL, CS, CA, CF, CC, SCC, SCR, IWD, IR, and IG zoning districts.

**Proposed Text** The bill modifies the definitions of Automobile Repair and Automobile Service. The definition of Automobile Service is clarified to state only new tires may be sold or installed. The definition of Automobile Repair is modified to clarify that new and used tires can be sold, recondi-tioned, repaired, sold, or mounted.

**Analysis** The proposed bill, if adopted, would require any person wanting to sell used tires to locate on property zoned SP or

industrial. The sponsor seeks to prohibit used tires businesses from selling, repairing, and installing used tires outside in full view of motorists and pedestrians in commercial and shopping areas. The bill grandfathers in all legally operating non-conforming uses.

The bill would not affect existing tire businesses. A business that today sells new tires and fixes flats (used tires) would be able to continue that service. That same business wanting to do the same services at a new location would be prohibited from fixing flat tires. Residents of Davidson County need the convenience, affordability, and safety of tire businesses being able to fix/repair flat tires near home, work, and shopping. To continue to provide residents this service, staff recommends the definition of Automobile Service include the fixing of customer flat tires.

"Automobile service" means any building, structure, improvements, or land used for the replacement of any part, or repair of any part, to an automobile that does not require removal of the engine head or pan, engine transmission or differential, including, but not limited to oil change and lubrication, cooling, electrical, fuel and exhaust systems, wheel alignment and balancing, brake adjustment, relining and repairs, mufflers, batteries, new tire services and sales (includes fixing/repairing customer flat tires), shock absorbers, installation of stereo equipment, car alarms or cellular phones, but excludes dismantling, rebuilding, reconditioning, or salvage of automobiles, in whole or in part. No abandoned vehicles shall be stored on the premises. No vehicle to be serviced shall remain on the premises more than forty-five days.

**STAFF RECOMMENDATION** Staff recommends approval of this bill with the proposed amendment to allow Automobile Service uses to fix customer flat tires.

Ms. Regen presented and stated that staff is recommending approval with an amendment.

Mr. Gotto moved and Ms. Cummings seconded the motion, to approve Text Amendment 2009Z-012TX-001, as amended and recommended by staff. **(10-0)**

**Resolution No. RS2009-78**

“BE IT RESOLVED by The Metropolitan Planning Commission that 2009Z-012TX-001 is **APPROVED WITH AMENDMENT. (10-0)**”

Mr. Gotto left the meeting at 8:35 p.m.

**X. PUBLIC HEARING: REVISED SITE PLANS**

**12. 2007SP-162U-05**

Winberry Place  
Map: 082-03 Parcel: 461, 462, 463, 464  
East Nashville Community Plan  
Council District 5 – Pam Murray  
Staff Reviewer: Brenda Bernards

A request for final site plan approval for the Winberry Place Specific Plan located at 927, 929, 1001 and 1003 Lischey Avenue, on the east side of Lischey Avenue (0.74 acre), zoned SP, zoned SP, to construct up to four single-family residential units, four townhome units, and a one-story commercial building, requested by Barge Cauthen & Associates, applicant, for B and V Development and Vernon Winfrey, owners.

**Staff Recommendation: Defer until revised plans have been approved by Stormwater**

**The Metropolitan Planning Commission DEFERRED Specific Plan 2007SP-162U-02 to June 25, 2009, at the request of the applicant. (10-0)**

**13. 89P-022-001**

Melrose PUD (Kroger Fuel Station)  
Map: 118-06 Parcel: 164  
Green Hills/Midtown Community Plan  
Council District 17 – Sandra Moore  
Staff Reviewer: Brian Sexton

A request to revise the preliminary plan and for final approval for a portion of the Melrose Commercial Planned Unit Development Overlay located at 2615 Franklin Pike, at the northwest corner of Franklin Pike and Gale Lane (4.22 acres), zoned SCC, to permit the development of a five dispenser fuel center (ten pumps), requested by Perry Engineering, LLC, applicant, for Kroger Limited Partnership I, owner.

**Staff Recommendation: Approve with conditions**

**APPLICANT REQUEST Revise Preliminary Plan and Final Site Plan**

A request to revise the preliminary plan and for final approval for a portion of the Melrose Commercial Planned Unit Development Overlay located at the northwest corner of Franklin Pike and Gale Lane (4.22 acres), zoned Shopping Center Community (SCC), to permit the development of five dispenser fuel center (ten pumps).

**PLAN DETAILS** The preliminary PUD was originally approved in 1989 for commercial, office and retail uses. The plan was subsequently amended and revised to allow 16 townhomes, 62 single-family cottages, and 13 residential flats within the PUD.

**Site Plan** This request is to add a fuel center of five fuel dispensers (ten gas pumps) to the PUD. The proposed fuel center will be located along the main drive within the Kroger parking lot adjacent to the outparcels. The fuel dispensers will be covered by a 3,480 square foot canopy.

**Access** The site is accessible from driveway off Gale Lane and from a driveway that traverses the Kroger parking lot that is accessed from Kirkwood Avenue to the north and Franklin Pike to the east.

**PUBLIC WORKS RECOMMENDATION** The developer's construction drawings shall comply with the design regulations established by the Department of Public Works. All Public Works' design standards shall be met prior to any final approvals and permit issuance. Final design may vary based on field conditions.

**STAFF RECOMMENDATION** Staff recommends approval with conditions of the revised preliminary and final site plan. The proposed fuel station would not result in a significant increase in the intensification of uses within 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. 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.
4. 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.
5. 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.

6. 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, (10-0) *Consent Agenda*

**Resolution No. RS2009-79**

“BE IT RESOLVED by The Metropolitan Planning Commission that 89P-022-001 is **APPROVED WITH CONDITIONS.**  
**(10-0)**

**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. 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.
4. 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.
5. 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.
6. 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.”

## **XI. OTHER BUSINESS**

14. Employee contracts for Marie Cheek and Dennis Corrieri.

Approved, (10-0) *Consent Agenda*

15. Employee contract renewal for Chin-Cheng Chen.

Approved, (10-0) *Consent Agenda*

16. Discussion of meeting procedures for June 25, 2009 consideration for 2008SP-022G-03 - May Town Center SP and 2008CP-007G-03, Alternative Development Area.

The Commission briefly discussed the procedures in which the May Town Center would be heard at their June 25, 2009, meeting. As a result of this discussion, the Commission made the following two motions:

Ms. LeQuire moved and Mr. Clifton seconded the motion, which passed unanimously, to open the June 25, 2009 public hearing to discussion of the staff report as well as transportation-related issues and the fiscal component. **(9-0)**  
Mr. Dalton moved and Mr. Ponder seconded the motion, which passed unanimously, to schedule a Special Meeting for June 30, 2009, if needed, beginning at 8:00 a.m. to deliberate on the May Town Center SP and The Alternate Development Area. **(9-0)**

**Resolution No. RS2009-80**

“BE IT RESOLVED by the Metropolitan Planning Commission that the public hearing for 2008SP-022G-03 will be open at the June 25, 2009, meeting. **(10-0)**”


- 17. Historical Commission Report
- 18. Board of Parks and Recreation Report
- 19. Executive Director Reports
- 20. Legislative Update

**XII. ADJOURNMENT**

The meeting adjourned at 8:45 p.m.

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Secretary

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