



**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**

*September 24, 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  
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  
Greg Johnson, Planner II  
Steve Mishu, Metro Water  
Jonathon Honeycutt, Public Works  
Sonny West, Metro Codes

**Commission Members Absent:**

Judy Cummings  
Hunter Gee  
Tonya Jones  
Derrick Dalton

*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 4:11 p.m.

**II. ADOPTION OF AGENDA**

Mr. Clifton moved and Mr. Ponder seconded the motion, which passed unanimously, to adopt the agenda as presented. **(6-0)**

**III. RECOGNITION OF COUNCILMEMBERS**

Councilmember Coleman addressed the Commission on Item #1, 2009SP-026-001, Stones River Senior Living Community. He briefly explained the outstanding issue associated with the proposal, which was the inconsistency of the requested zoning and the subarea plan that was recently placed on this area of his district. He then spoke on the economic enhancements that the development would offer the City as well as this community. He explained that the neighborhood affected by this development was in support of its approval. He asked that the Commission deliberate the request in a way that would be beneficial to all.

Councilmember Tygard spoke in favor of Item #5, 2009Z-036TX-001, Artisan- Distillery. He explained that the bill would provide economic development and continue the revitalization of downtown Nashville and requested its approval.

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 PUBLIC HEARING: ITEMS REQUESTED TO BE DEFERRED OR WITHDRAWN**

There were not items to be deferred or withdrawn.

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."

#### **V. PUBLIC HEARING: CONSENT AGENDA**

##### **ZONING MAP AND TEXT AMENDMENTS AND**

- |    |                 |   |                          |
|----|-----------------|---|--------------------------|
| 2. | 2009SP-003-002  | A request to amend Council Bill BL2009-388 for the previously approved Anchor Property Holdings SP District located at 3502 Dickerson Pike, to add Automobile Sales (new) Automobile Services (used), Automobile Service, Car Wash, Vehicular Sales and Services, Vehicle Rental/Leasing and Heavy Equipment Repair and all other uses permitted in the CS zoning district as additional permitted uses in the SP district. | - Approve<br>w/condition |
| 4. | 2009Z-017TX-001 | A council bill to modify Section 17.040.60 (Definitions) of the Zoning Code pertaining to the definitions of Adult Entertainment uses such as "Adult Bookstore" and "Adult Video Store" and to modify Chapter 6.54 (Sexually-Oriented Businesses) pertaining to "Sexually-Oriented Bookstore" and "Sexually-Oriented Video Store"   | - Approve                |

##### **OTHER BUSINESS**

- |    |   |          |
|----|---|----------|
| 7. | Employee contract renewals for Matthew R. Meservy and Melissa Stevens | -Approve |
| 8. | 2010 Planning Commission Filing Deadlines & Meeting Schedule          | -Approve |

Mr. Clifton moved and Mr. Ponder seconded the motion, which passed unanimously, to adopt the Consent Agenda as presented. **(6-0)**

#### **VI. PUBLIC HEARING: PREVIOUSLY DEFERRED ITEMS**

1. **2009SP-026-001**  
Stones River Senior Living Community  
Map: 175-00 Parcels: 154, 166  
Map: 176-00 Parcels: 035, 051  
Antioch/Priest Lake Community Plan  
Council District 32 – Sam Coleman  
Staff Reviewer: Greg Johnson

A request to rezone from SP-MU to SP-R properties located at 4222 Mufreesboro Pike, Murfreesboro Pike (unnumbered) and LaVergne Couchville Pike (unnumbered), at the southeast corner of LaVergne Couchville Pike and Murfreesboro Pike (13.09 acres), zoned SP, to permit a 77,000 square foot 124-bed skilled nursing facility and a 79,400 square foot 104-bed assisted-living facility, requested by Littlejohn Engineering Associates, Inc., applicant, for Harold and Hermena Holigan, owners.

**Staff Recommendation: Disapprove**

##### **APPLICANT REQUEST - Preliminary SP**

SP rezoning to allow nursing and assisted-living facilities.

A request to rezone from Specific Plan-Mixed Use (SP-MU) to Specific Plan-Residential (SP-R) properties located at 4222 Mufreesboro Pike, Murfreesboro Pike (unnumbered) and LaVergne Couchville Pike (unnumbered), at the southeast corner of LaVergne Couchville Pike and Murfreesboro Pike (13.09 acres), to permit a 77,000 square foot 124-bed skilled nursing facility and a 79,400 square foot 104-bed assisted-living facility.

## **CRITICAL PLANNING GOALS**

### **• Creates Walkable Neighborhoods**

The proposed plan will replace a significant portion of the Hickory Woods SP, and will conflict with the remaining portions of the Hickory Woods SP. The adopted SP provides a well-designed gateway into Davidson County from the City of LaVergne through mixed-use development with distinctive standards for building placement and design. These standards create an integrated community and improve walkability by separating vehicular and pedestrian traffic and requiring placement of front building facades along sidewalks.

The design of the proposed medical campus conflicts with several Critical Planning Goals. The auto-focused layout of the campus with a perimeter driveway and parking area separates this development from the remainder of the center. Deep building setbacks from surrounding streets, placement of driveways within front setbacks, and placement of stormwater detention facilities along streets diminish the quality of the pedestrian realm and will limit the continuity of future surrounding development. This insular and inefficient layout will provide little opportunity for interaction with the public realm.

The application undermines the fundamental goals of the Hickory Woods SP and will result in the continuation of isolated and separate strip development at a critical gateway to Davidson County.

## **ANTIOCH / PRIEST LAKE COMMUNITY PLAN**

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

**Consistent with Policy?** No. The proposed SP does not comply with the design principles of the CC policy and is inconsistent with the current zoning, which does implement the CC policies.

**Project Description** This proposal was originally submitted as an amendment to the Hickory Woods SP (2006SP-166-001). Working with Planning staff, the applicant submitted a revised application to create a new SP in order to avoid unanticipated complications with the standards of the existing Hickory Woods SP.

The proposed Stones River SP is located in the middle of the Hickory Woods SP, which was approved in 2006 to create an integrated mixed-use community and provide context-sensitive standards to follow the design principles and land-use provisions of the CC policy. The Hickory Woods SP addresses CC policy through requirements for shallow street setbacks, limitations on building heights, standards for building design and requirements for mixed-use development. This proposed SP would replace the standards of the Hickory Woods SP for a significant piece of the SP area to allow skilled nursing and assisted living facilities in an isolated campus-style layout, independent from the surrounding Hickory Woods SP. Because of its location, the Stones River SP will sever the continuity of intended development within the Hickory Woods SP and will eliminate the compatibility of the Hickory Woods SP with the design principles of the CC policy.

The proposed development will occupy the portion of the Hickory Woods SP on the north side of Murfreesboro Pike, bordered by Lavergne-Couchville Pike on the west and Hickory Woods Drive on the east. The fundamental feature of the proposed layout is a perimeter driveway that surrounds the development and connects it to three proposed vehicular entrances, one along each bordering street, while also separating development from these bordering streets. Parking is provided along this driveway and along a north-south driveway that bisects the site, separating the nursing and assisted living facilities. This perimeter driveway would replace a main street, proposed by the Hickory Woods SP, which would have run parallel to Murfreesboro Pike, connecting all development within the SP on the north side of Murfreesboro Pike and providing a defined boundary between mixed-use/commercial and residential development.

The proposed nursing facility is a one-story structure with an entrance facing Murfreesboro Pike and separated from this street by a 75 foot wide perimeter driveway. The assisted living facility is three stories in height and will be set back from Murfreesboro Pike approximately 160 feet. It is separated from Murfreesboro Pike by the perimeter driveway, an “amenity garden,” and a stormwater detention pond to be placed in the southeast corner of the project site. These proposed setbacks

are significantly larger than currently allowed by the Hickory Woods SP and reduce the project's compatibility with the "main street" pedestrian-oriented intent of the CC design principles.

The proposal does not meet the design principles and reduces the likelihood of achieving the intended mixture of uses of the CC policy or meeting the intent of the Hickory Woods SP.

**Policy Analysis** The design principles of the CC policy promote shallow or non-existent building setbacks, off-street parking placed to the side or rear of buildings, development within a "main street" layout, mixed-use development, and strong engagement of public realm. The campus-style layout of the proposed development does not meet these guidelines with its deep building setbacks separated from surrounding streets by driveways, parking areas, and stormwater detention facilities. The CC policy does allow the proposed nursing and assisted-living uses, but encourages this type of public benefit use to contribute to surrounding mixed-use context in a walkable main street format.

**SP Analysis** The development area is located within portions of two subdistricts of the Hickory Woods SP. As noted above, the Hickory Woods SP was approved in 2006 to provide standards to follow the design principles of the CC policy.

Subdistrict 1 runs along both sides of Murfreesboro Pike and allows mixed-use/commercial and residential uses in a format that follows the "main street" character intended by the CC policy, by promoting well-designed mixed-use development that is placed along a continuous pedestrian network. This subdistrict requires shallow street setbacks of 10-20 feet for commercial and mixed-use buildings. Street setbacks can go as deep as 20-25 feet for some residential buildings. These required setbacks are significantly shallower than those in the proposed development. Subdistrict 2 covers the remainder of the site behind Subdistrict 1 and is intended to allow only residential development in the form of stacked flat, townhouse, and cottage buildings. This residential development helps to provide a transition from Murfreesboro Pike to the single-family residential neighborhood to the north.

The Hickory Woods SP includes square footage limits on development within Subdistrict 1 in order to ensure mixed-use development along Murfreesboro Pike, in accordance with the intent of the CC policy, and to prevent the proliferation of a single use within the Hickory Woods SP. Mixed-use/commercial development is limited to less than 10,000 total square feet until other building types, such as live/work and residential types are included into Subdistrict 1. Additionally, total commercial/retail development within Subdistrict 1 is required to remain under 200,000 square feet. Together, these standards are intended to prevent large single-use commercial projects from dominating development within the Hickory Woods SP, especially during the initial stages of development. The proposed development, which includes 156,400 square feet of a single building type along Murfreesboro Pike without providing other building types or uses, is the type of single-use project that the SP standards are intended to prevent.

Because the proposed development does not fit into the existing Hickory Woods SP subdistricts, the applicant proposes a new SP with new setback and development standards. The proposed SP would allow minimum street setbacks of 20 feet along all public streets and property lines. All buildings would have a maximum height of 3 stories and a maximum development area of 225,000 square feet. 156,400 square feet of development is currently proposed on the proposed site plan. Architectural standards regulating building materials, structural dimensions, roof materials and pitches, and window and door openings are included in the proposed SP.

Even though new standards are proposed within the Stones River SP to prevent implementation conflicts with the Hickory Woods SP, the proposal fundamentally undermines the intent of both the existing land-use policy, which emphasizes pedestrian-oriented "main streets," and the existing SP zoning, which requires shallow building setbacks along streets and discourages large-scale single-use development. The SP zoning was specifically tailored to implement the land-use and design provisions of the community plan.

#### **PUBLIC WORKS RECOMMENDATION**

1. All Public Works' design standards shall be met prior to any final approvals and permit issuance. Any approval is subject to Public Works' approval of the construction plans.
2. Along Murfreesboro Pike, label and show reserve strip for future right of way, 54 feet from centerline to property boundary, consistent with the approved major street plan (U6 - 108' ROW).
3. Along Murfreesboro Pike, construct sidewalks with curb & gutter, a six (6') foot furnishing zone and eight (8') foot

sidewalk, consistent with the Strategic Plan for Sidewalks & Bikeways. Locate sidewalks within the public right of way / dedicate right of way, as applicable.

4. Tennessee Department of Transportation approval is required for any modifications and work within the Murfreesboro Pike right of way.
5. In accordance with the recommendations of the traffic impact study, the following improvements are required:
  - Access on Hickory Woods Drive and Lavergne Couchville Pike should have 1 exiting and 1 entering lane with appropriate sight distance and departure sight triangles per AASHTO standards.
  - Hickory Woods Drive should be striped with a two way left turn lane (TWLTL) from the proposed driveway to Murfreesboro Pike. Provide a dedicated WB left turn lane with 125 ft of storage at Murfreesboro Pike.
  - Modify the existing traffic signal at Lavergne Couchville Pike and Murfreesboro Pike to provide pedestrian accommodations including push buttons, crosswalks, and signal heads.

**Maximum Uses in Existing Zoning District: SP-MU**

Land Use (ITE Code)	Acres	FAR/Density	Total Floor Area/Lots/Units	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
Various	13.09	Various	Various	-	-	-

**Maximum Uses in Proposed Zoning District: SP-MU**

Land Use (ITE Code)	Acres	FAR/Density	Total Floor Area/Lots/Units	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
Nursing Home (620)	13.09	-	124 Bed	292	22	28

**Maximum Uses in Proposed Zoning District: SP-MU**

Land Use (ITE Code)	Acres	FAR/Density	Total Floor Area/Lots/Units	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
Assisted Living (254)	13.09	-	104 Bed	291	15	23

**Traffic changes between maximum: SP-MU and proposed SP-MU**

Land Use (ITE Code)	Acres	FAR/Density	Total Floor Area/Lots/Units	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
-	13.09	-	-	-	-	-

**STAFF RECOMMENDATION** Staff recommends disapproval of the zone change request. The proposed SP falls short of the design intent of the CC policy and fundamentally undermines the goals and purpose of the adopted Hickory Woods SP.

**CONDITIONS**

1. With approval of this SP, Planning staff shall initiate both the repeal of the remainder of Hickory Woods SP and an examination of land-use policy within the existing CC policy area within and surrounding the Hickory Woods SP.

Mr. Johnson presented and stated that staff is recommending disapproval.

Mr. Jeff Heinze, 1935 21<sup>st</sup> Avenue South, spoke in favor of the proposed development.

Mr. Tom White, 315 Deadrick Street, spoke in favor of the proposed development.

Ms. Sidney Ames, 4100 Maxwell Road, spoke in favor of the proposed development. She submitted information to the Commission for the record.

Ms. Donna Cantrall, 4126 Maxwell Road, spoke in favor of the proposed development.

Councilmember Coleman spoke in favor of the proposed development and requested its approval.

Mr. Gotto spoke on the policy issue and questioned whether the staff's recommendation would change if the community and neighborhood groups went through all the necessary processes to change the Subarea plan policy from CC to another zoning that would accommodate the requested development.

Mr. Bernhardt briefly explained the issues associated with the proposed development and the overall affects the requested rezoning would have on the entire Hickory Woods SP. He further explained that if the Commission were inclined to approve the requested rezoning, that they remove the entire SP intended for this area, as the zoning contained in the SP may impede any future rezoning requests for this area.

Mr. Gotto explained he was in favor of supporting this development although he would not support the removal of the entire Hickory Woods SP zoning until the Councilmember had the opportunity to discuss it further with his community.

Mr. Clifton expressed concerns with approving the proposed development as it was not consistent with the Subarea plan. He spoke on the importance of sustainability and the Commission's role in its implementation.

Mr. Ponder requested additional clarification on the staff's recommendation if the Commission were to approve the requested rezoning.

Mr. Bernhardt offered additional explanation on the staff's recommendation.

Ms. LeQuire expressed concerns with removing the entire SP zoning if approved, and questioned whether the community was made aware of the affects that an approved recommendation would have on the entire Hickory Woods SP.

Mr. Bernhardt explained the information that was given to the Community at their meeting. He then offered further explanation on the Hickory Woods SP and how this proposal would alter the intended uses originally planned for this area. He also spoke of other areas within this district that could house this type of development.

Mr. Gotto suggested an amendment be made to the approval recommendation that would address the issue of removing the entire Hickory Woods SP.

Mr. Coleman shared that he agreed with the amended condition. He also stated that the community was made aware of the affects an approval would have the SP.

Ms. LeQuire questioned whether the applicant had been asked to revise their plan to better accommodate the intended uses originally planned for this area.

Mr. Johnson explained that staff did work with the applicant on amending the plan.

Mr. Bernhardt explained that the applicant was unable to amend their plan due to operational issues of their facility.

Mr. LeQuire expressed her concern with approving the development and mentioned that patience and planning are what make a great city.

Mr. Clifton moved and Ms. Lequire seconded the motion to disapprove Specific Plan 2009SP-026-001, Stones River Senior Living Community. **(2-4) Yes Votes: LeQuire, Clifton**  
**No Votes: Gotto, Tyler, Ponder, McLean**

This motion failed.

Mr. Gotto moved, and Mr. Ponder seconded the motion, to approve with conditions Specific Plan 2009SP-026-001, Stones River Senior Living Community, with the condition that Planning staff initiate discussions with the district Councilmember to determine the appropriate zoning for the remaining properties in the Hickory Woods SP. **(4-2) Yes Votes: Ponder, McLean, Tyler, Gotto**  
**No Votes: LeQuire, Clifton**

**Resolution No. RS2009-122**

“BE IT RESOLVED by The Metropolitan Planning Commission that 2009SP-026-001 is **APPROVED WITH CONDITION** that Planning staff initiate discussions with the district Councilmember to determine the appropriate zoning for the remaining properties in the Hickory woods SP. (4-2)

**The uses included in the proposed SP-R zoning district are consistent with the Antioch/Priest Lake Community Plan’s Community Center policy.”**

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**VII. PUBLIC HEARING: ZONING MAP AND TEXT AMENDMENTS**

- 2. **2009SP-003-002**  
Anchor Property Holdings (Amendment #1)  
Map: 050-00 Parcel: 088  
Parkwood/Union Hill Community Plan  
Council District 3 – Walter Hunt  
Staff Reviewer: Brian Sexton

A request to amend Council Bill BL2009-388 for the previously approved Anchor Property Holdings Specific Plan District located at 3502 Dickerson Pike, approximately 3,255 feet north of Doverside Drive (2.88 acres), to add Automobile Sales (new) Automobile Services (used), Automobile Service, Car Wash, Vehicular Sales and Services, Vehicle Rental/Leasing and Heavy Equipment Repair and all other uses permitted in the CS zoning district as additional permitted uses in the SP-A district, requested by Anchor Property Holdings LLC,

**Staff Recommendation: Approve with Condition**

**APPLICANT REQUEST - Amend SP Ordinance** -Add auto-related uses and all uses permitted in the CS zoning district. A request to amend Council Bill BL2009-388 for the previously approved Anchor Property Holdings Specific Plan District located at 3502 Dickerson Pike, approximately 3,255 feet north of Doverside Drive (2.88 acres), to add Automobile Sales (new) Automobile Sales (used), Automobile Service, Car Wash, Vehicular Sales and Services, Vehicle Rental/Leasing and Heavy Equipment Repair and all other uses permitted in the Commercial Service (CS) zoning district as additional permitted uses in the Specific Plan - Auto (SP-A) district.

**Existing Zoning**

SP-A District - Specific Plan-Auto 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 auto uses.

**CRITICAL PLANNING GOALS N/A**

**PARKWOOD-UNION HILL COMMUNITY PLAN POLICY**

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

in these policy areas, to assure appropriate design and that the type of development conforms with the intent of the policy.

*Detailed Land Use Plan*

**Commercial (Com)** Commercial is intended for commercial uses only, with no residential uses. It is intended for mixed commercial buildings with shops at street level and office uses on the upper levels.

**Consistent with Policy?** Yes. The amendment adds Automobile Sales (new) Automobile Sales (used), Automobile Service, Car Wash, Vehicular Sales and Services, Vehicle Rental/Leasing and Heavy Equipment Repair and all other uses permitted in the CS zoning district as additional uses within the SP district, which are uses that are compatible with the Community Center policy.

While auto-oriented uses may not be conducive to creating a pedestrian-oriented streetscape, the applicant has designed a preliminary site plan, which was approved by the Metro Planning Commission on February 26, 2009, that will bring the property closer to the goal of creating a pedestrian-oriented streetscape and is consistent with the intent of the CC policy given that the plan utilizes the existing building. There are no other changes to the SP with this amendment.

**PLAN DETAILS** The Anchor Property Holdings Specific Plan District was approved by Metro Council in 2009. The approved plan consists of a one-story 9,580 square foot building that is being used as a repair shop, wrecker, and towing facility. While the SP permits some auto uses, it did not include automobile sales (new) automobile sales (used), car wash, vehicular sales and services, vehicle rental/leasing and heavy equipment repair as permitted uses. The permitted commercial uses in the current SP approved by Council are as follows:

- Wrecker Service
- Automobile Repair Uses

The proposed auto uses are consistent with the intent of the original SP and compatible with other permitted commercial uses. The change is minor in that it does not alter the design of the SP, but should benefit the development by allowing a wider range of uses.

**Stormwater Violations** The Stormwater Division has identified a number of violations on this property which were also referenced in the original rezoning to SP. To date, no actions have been taken by the property owner. After discussion with the Councilmember, the Stormwater Division has set a deadline to correct the violations.

**STORMWATER RECOMMENDATION** The reference property contains outstanding stormwater violations. These violations shall be corrected no later than 180 days after Council approval of the amended SP plan.

**STAFF RECOMMENDATION** Staff recommends that the request be approved with a condition that the stormwater violations be corrected within 180 days of Council approval. The proposed auto uses are consistent with other commercial uses currently permitted in the SP district.

**CONDITION**

1. The outstanding stormwater violations on this property shall be corrected no later than 180 days after Council approval of the amended SP plan. No grading, building, or use permits shall be issued until the violations are corrected.

Approved with condition, (6-0) *Consent Agenda*

**Resolution No. RS2009-123**

“BE IT RESOLVED by The Metropolitan Planning Commission that 2009SP-003-002 is **APPROVED. (6-0)**”

**The proposed additional uses for the SP-A district are consistent with the Parkwood/Union Hill Community Plan’s Commercial in Community Center policy.”**



**3. 2009Z-016TX-001**

Text Amendment to Remove Department of Law Review  
Staff Reviewer: Carrie Logan

A council bill to amend the Metro Zoning Code, Section 17.40.075 (Submission of Amendatory Ordinances to the Department of Law), to repeal the requirement that all amendments to the official zoning map or zoning regulations be submitted to the department of law for a statement as to legality, sponsored by Councilmember Robert Duvall.

**Staff Recommendation: Disapprove**

**APPLICANT REQUEST - Text Amendment** - Remove required review by Department of Law

A council bill to amend the Metro Zoning Code, Section 17.40.075 (Submission of Amendatory Ordinances to the Department of Law), to repeal the requirement that all amendments to the official zoning map or zoning regulations be submitted to the department of law for a statement as to legality.

**CRITICAL PLANNING GOALS** N/A

**APPLICATION DETAILS** This request is to remove Section 17.04.075 from the Zoning Code. Section 17.04.075 of the Zoning Code requires all ordinances to amend the official zoning map or the zoning code to be reviewed by the Department of Law. The Department of Law is also required to “provide to each member of the metropolitan council and to the director of the council office an opinion as to whether or not the enactment of such ordinance may expose the metropolitan government to any liability for violation of federal, state or local law.”

**History of Existing Law** Ordinance No. BL2008-245, which added this requirement to the Zoning Code, was approved by the Planning Commission on June 26, 2008, and passed third reading at Metropolitan Council on July 15, 2008. The first draft of BL2008-245 required all ordinances to be reviewed by the Department of Law “*prior to being filed with the metropolitan clerk.*” The Planning Commission approved BL2008-245 with an amendment that recommended the removal of the requirement to review amendments to the official zoning map. The Planning Commission minutes indicate that the reason for the proposed amendment was concern with causing unnecessary delay of development.

The Metropolitan Council amended BL2008-245 on July 15, 2008. Instead of removing the requirement to review all amendments to the official zoning map, this amendment required ordinances to be submitted to the Department of Law at the time they are filed with the Metropolitan Clerk and specifically provides that the opinion of the Department of Law is required “no later than ten (10) days prior to the date such ordinance is initially set for third reading before the metropolitan council.” Changing the review time by the Metropolitan Department of Law also satisfies the Planning Commission’s concern with causing unnecessary delay of development. Since the adopted ordinance was drafted to minimize any impact on specific development proposals, staff recommends disapproval of the proposed ordinance to remove the requirement of review by the Department of Law from the Zoning Code.

**Analysis** The Zoning Code specifically states that the opinion of the Department of Law will state “whether or not the enactment of such ordinance may expose the metropolitan government to any liability for violation of federal, state or local law.” While the Planning Department also reviews all ordinances to amend the official zoning map or the zoning code, this department does not and can not determine whether the ordinance may expose Metro to any liability. Only the Department of Law is capable of making this determination.

**STAFF RECOMMENDATION** Staff recommends disapproval of the proposed ordinance.

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

Mr. Gotto requested additional information on the process that is followed by the Metro Legal Department when bills and amendments are introduced.

Mr. Sloan explained the review process of his department to the Commission.

Mr. Clifton expressed concern with approving the request and suggested that the Commission take no action.

Mr. Clifton moved and Mr. Gotto seconded the motion, which passed unanimously, to take no official position on Text

**Resolution No. RS2009-124**

**“BE IT RESOLVED by The Metropolitan Planning Commission that for 2009Z-016TX-001 The Planning Commission voted to take no official position on the bill. (6-0)”**

**4. 2009Z-017TX-001**

Adult/Sexually-Oriented Book and Video Stores  
Staff Reviewer: Jennifer Regen

A council bill to modify Section 17.040.60 (Definitions) of the Zoning Code pertaining to the definitions of Adult Entertainment uses such as "Adult Bookstore" and "Adult Video Store" and to modify Chapter 6.54 (Sexually-Oriented Businesses) pertaining to "Sexually-Oriented Bookstore" and "Sexually-Oriented Video Store", sponsored by Councilmembers Jim Gotto and Anna Page.

**Staff Recommendation: Approve**

**APPLICANT REQUEST - Text Amendment** -Modify definitions related to adult/sexually-oriented bookstores and video store.

A council bill to modify Section 17.040.60 (Definitions) of the Zoning Code pertaining to the definitions of Adult Entertainment uses such as "Adult Bookstore" and "Adult Video Store" and to modify Chapter 6.54 (Sexually-Oriented Businesses) pertaining to "Sexually-Oriented Bookstore" and "Sexually-Oriented Video Store".

**CRITICAL PLANNING GOALS** N/A

**PURPOSE** The proposed bill is to further strengthen Nashville’s existing laws governing adult/sexually-oriented businesses by being consistent with Knox County’s adult/sexually-oriented laws that were upheld by the U.S. Court of Appeals (6<sup>th</sup> Cir.) on February 12, 2009.

**ANALYSIS**

**Existing Law** Where the majority (51 percent or more) of a business has its floor space or stock of goods and items devoted to adult/sexually-oriented material, Section 17.04.060 (Definitions) of the Zoning Code defines the business as “adult entertainment”. These entertainment uses are further broken down into different establishments such as theatres, bookstores, video stores, and night clubs.

The phrase “majority of stock” means 50 percent or more of the stock or floor space. The Zoning Code requires businesses with a majority of their stock or floor space devoted to adult/sexually-oriented material to locate in the Adult Entertainment Overlay district and receive approval from Sexually-Oriented Business Licensing Board. Those having less than a majority (49 percent or less) are classified as “retail” uses by the Zoning Code, and can locate anywhere in the county where retail uses are allowed.

**Proposed Bill** The proposed bill modifies two different sections of the Metro Code: Chapter 6.54 (Sexually-Oriented Businesses) and Title 17 (Zoning Code). The changes proposed in both sections are nearly identical in content. Both propose to replace existing definitions of an adult/sexually-oriented book store or video store, and to add a definition for “principal business purpose”. The bill is also modeled after Knox County, TN’s adult/sexually-oriented laws that were recently upheld by the U.S. Court of Appeals (6<sup>th</sup> Cir.).

“Principal business purpose” means a business purpose for which any one of the following applies:

- (1) At least thirty-five percent (35%) of the business’s displayed merchandise consists of books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations, which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas”;
- (2) At least thirty-five percent (35%) of the wholesale value of the business's displayed merchandise consists of the foregoing enumerated items;
- (3) At least thirty-five percent (35%) of the retail value of the business's displayed merchandise consists of the foregoing

enumerated items;

(4) At least thirty-five percent (35%) of the business's revenues derive from the sale or rental, for any form of consideration, of the foregoing enumerated items;

(5) At least thirty-five percent (35%) of business's interior business space is used for the display, sale, or rental or the foregoing enumerated items;

(6) The business regularly features the foregoing enumerated items, and prohibits access by minors, because of age, to the premises, and advertises itself as offering "adult" or "XXX" or "x-rated" or "erotic" or "sexual" or "pornographic" material on signage visible from a public right-of-way.

"Sexually oriented bookstore" means an establishment which, as one of its principal business purposes, offers for sale books, magazines, other periodicals, or any other items which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined in this section for observation of the patrons therein; or in conjunction therewith has facilities for the presentation of sexually oriented entertainment, including but not limited to sexually oriented movies, sexually oriented videos, sexually oriented films, or sexually oriented live entertainment, for observation by patrons therein.

"Sexually oriented video store" means a commercial establishment which, as one of its principal business purposes the sale or rental, or presentation for a fee or incidentally to another service, "sexually oriented videos," as defined in this section; or in conjunction therewith, regularly presents on the premises sexually oriented motion pictures or sexually oriented films, "sexually oriented videos," or sexually oriented live exhibitions which are distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined in this section for observation by patrons therein.

"Adult bookstore" means an establishment which, as one of its principal business purposes, offers for sale books, magazines, other periodicals, or any other items which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined in this section for observation of the patrons therein; or in conjunction therewith has facilities for the presentation of sexually oriented entertainment, including but not limited to sexually oriented movies, sexually oriented videos, sexually oriented films, or sexually oriented live entertainment, as defined in section 6.54.010 of the metropolitan code, for observation by patrons therein.

"Adult video store" means a commercial establishment which, as one of its principal business purposes the sale or rental, or presentation for a fee or incidentally to another service, "adult videos," as defined in this section; or in conjunction therewith, regularly presents on the premises sexually oriented motion pictures or sexually oriented films, "adult videos," or sexually oriented live exhibitions which are distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined in this section and in section 6.54.010 of the metropolitan code for observation by patrons therein.

**Countywide Effect** The proposed bill would increase the number of retail and wholesale businesses classified as "adult" or "sexually-oriented" by lowering the threshold devoted to adult/sexually-oriented items from 50 percent to 35 percent. The Knox County ordinance also uses 35 percent as its threshold. If a new business was classified as adult/sexually-oriented based on it meeting the 35 percent threshold, it would have to receive approval from the Sexually-Oriented Business Licensing Board and locate in the Adult Entertainment Overlay.

**Enforcement** The Sexually-Oriented Business Licensing Board enforces the standards of the Metropolitan Code relative to adult/sexually-oriented businesses. This board has one staff member who directly works for the board with supplemental assistance for inspections by the Codes and Health Departments and background checks by the Police Department. The board currently is responsible for monitoring and inspecting the eight (8) businesses located in the Adult Entertainment Overlay (5 clubs, 1 bookstore, 2 video stores). With this bill lowering the adult vs. non-adult classification threshold from 50 percent to 35 percent, more businesses will be classified as "adult", thus requiring more licenses and inspections.

**STAFF RECOMMENDATION** Staff recommends approval of this bill. The proposed definitions for adult/sexually-oriented bookstore and video store are consistent with those adopted by Knox County, TN and recently upheld by the U.S. Court of Appeals (6<sup>th</sup> Cir.).

**Resolution No. RS2009-125**

“BE IT RESOLVED by The Metropolitan Planning Commission that 2009Z-017TX-001 is **APPROVED (6-0)**”

**5. 2009Z-036TX-001**

Artisan-Distillery

Staff Reviewer: Brenda Bernards

A council bill to amend the Metro Zoning Code to add "Artisan Distillery" as a permitted use in the commercial core, core frame and industrial zoning districts, and to make a technical change to the land use tables pertaining to microbreweries, sponsored by Councilmembers Mike Jameson and Charlie Tygard.

**Staff Recommendation: Approve**

**APPLICANT REQUEST - Text Amendment** - Create new land use called Artisan Distillery

A council bill to amend the Metro Zoning Code to add "Artisan Distillery" as a permitted use in the commercial core, core frame and industrial zoning districts, and to make a technical change to the land use tables pertaining to microbreweries

**CRITICAL PLANNING GOALS** N/A

**ANALYSIS**

**Existing Law** Any business that manufactures alcoholic beverages is classified by the Zoning Code as a “medium manufacturing” use. This use is permitted in only two zoning districts: the IR and IG districts.

In September 2008, the Metro Zoning Code was amended where microbreweries were defined and permitted in the CF zoning district in addition to the IR and IG districts. At the time the legislation was codified, microbreweries were listed under the commercial land use heading of the Land Use Table, Section 17.08.030 of the Zoning Code.

**Proposed Text** This bill proposes to create a new land use category, Artisan Distillery, as a permitted use in the CC, CF and all industrial districts. This new use would be listed under the industrial land use heading in the Land use Table. This text amendment also corrects a codification error by moving microbreweries to the industrial land use heading of the Land Use Table. Below are the provisions included in the proposed ordinance:

- Amend Section 17.04.060 (Definitions) to add the following:

“Artisan distillery” means the production of alcoholic beverages in quantities not to exceed one thousand (1,000) barrels per month, with a barrel containing not more than fifty-five U.S. liquid gallons.

- Amend Section 17.08.030 (District Land Use Table) to add “Artisan Distillery” as a use permitted by right (P) in the CC, CF, IWD, IR, and IG zoning districts.
- Amend Section 17.08.030 (District Land Use Table) to delete Microbrewery under the commercial land use heading and add Microbrewery under the industrial land use heading

**Background** Public Chapter 524, which was adopted by the Tennessee Legislature in June 18, 2009 permits the “manufacture of intoxicating liquors and/or intoxicating drinks” in certain counties including “any county having a population of more than five hundred thousand” that permit both retail package sales and liquor by the drink. Davidson County meets both these standards.

**Analysis** With the adoption of Public Chapter 524, a distillery of any size could be established in the IR and IG zoning district. This text amendment provides a definition of a distillery with a limited capacity of 1,000 barrels per month and expands the locations where these smaller distilleries can locate in Davidson County. Permitting smaller-scale distilleries in the CC and CF zoning districts will add to active uses in the downtown area and add to the tourist attractions already in place. Any distillery would be required to meet all applicable Federal and State regulations.

**STAFF RECOMMENDATION** Staff recommends approval of the text amendment to allow “Artisan Distillery” as a new land use category.

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

Mr. Ponder questioned whether the amendment would allow distilleries in the same zoning districts as adult entertainment establishments.

It was confirmed that distilleries could be placed in the same zoning districts as adult entertainment establishments.

Mr. Ponder then questioned whether an adult entertainment facility could house an artisan distillery.

Ms. Bernards explained there were many federal regulations associated with housing distilleries.

Mr. Bernhardt offered additional information on mixed-use permits.

Mr. Gotto expressed concerns with approving the text amendment as proposed without addressing the issue of the amendment possibly allowing distilleries within an adult entertainment establishment.

Mr. Bernhardt explained that staff could amend the bill to prohibit placement of artisan distilleries in adult entertainment establishments.

Mr. Gotto reiterated his concern of approving the proposed amendment that would possibly alter the regulations currently placed on adult entertainment establishments.

Mr. Gotto moved and Mr. Ponder seconded the motion, which passed unanimously, to approve Text Amendment 2009Z-036TX-001, Artisan-Distillery, with the condition the Council Bill be amended to include a prohibition on permitting an Artisan Distillery within an Adult Entertainment establishment. **(6-0)**

**Resolution No. RS2009-126**

“BE IT RESOLVED by The Metropolitan Planning Commission that 2009Z-036TX-001 is **APPROVED WITH THE CONDITION the Council Bill be amended to include a prohibition on permitting an Artisan Distillery within an Adult Entertainment establishment. (6-0)**”

- 6. 2009Z-037TX-001**  
Definition of "Family" & "Residence for Handicapped"  
Staff Reviewer: Carrie Logan

A council bill to amend the definitions of "Family" and "Residence for handicapped, more than eight individuals" in the Metro Zoning Code, sponsored by Councilmembers Sean McGuire, Jim Gotto, Jim Hodge.

**Staff Recommendation: Approve**

**APPLICANT REQUEST** - Change Zoning Code definition of “Family” and "Residence for handicapped, more than eight individuals "

**Text Amendment** A council bill to amend the definitions of "Family" and "Residence for handicapped, more than eight individuals" in the Metro Zoning Code.

**CRITICAL PLANNING GOALS** N/A

**APPLICATION DETAILS** The Zoning Code contains the following definitions:

**Current Definition of “Family”** “‘Family’ means one of the following:

1. An individual, or two or more persons related by blood, marriage or law, or, unless otherwise required by federal or state law, a group of not more than three unrelated persons living together in a dwelling unit. Servants and temporary nonpaying guests having common housekeeping facilities with a family are a part of the family for this code;
2. A group of not more than eight unrelated mentally retarded, mentally handicapped (excluding the mentally ill) or physically handicapped persons, including two additional persons acting as houseparents or guardians, living together as a single housekeeping unit in accordance with Tennessee Code Annotated 13-24-102. For purposes of this subsection, 'mentally handicapped' and 'physically handicapped' includes persons being professionally treated for drug and/or alcohol dependency or abuse.
3. A group of not more than eight unrelated persons over the age of sixty-five, including two additional persons acting as houseparents or guardians, living together as a single housekeeping unit.”

**Current Definition of “Residence for handicapped, more than eight individuals”** “Residence for handicapped, more than eight individuals” means a group of more than eight unrelated mentally retarded, mentally handicapped (excluding the mentally ill) or physically handicapped persons, including two additional persons acting as houseparents or guardians, living together as a single housekeeping unit.”

Analysis Both of the current definitions of “Family” and “Residence for handicapped, more than eight individuals” excludes all persons who are mentally ill from the category of mentally handicapped. However, both of the definitions conflict with Tennessee Code Annotated. Tennessee Code Annotated § 13-24-101 states that “‘mentally handicapped’ does not include persons who are mentally ill and, because of such mental illness, pose a likelihood of serious harm as defined in § [33-6-501](#), or who have been convicted of serious criminal conduct related to such mental illness [emphasis added].”

Tennessee Code Annotated § 33-6-501 defines “substantial likelihood of serious harm” with the following language:

“IF AND ONLY IF

- (1) (A) a person has threatened or attempted suicide or to inflict serious bodily harm on the person, OR  
(B) the person has threatened or attempted homicide or other violent behavior, OR  
(C) the person has placed others in reasonable fear of violent behavior and serious physical harm to them, OR  
(D) the person is unable to avoid severe impairment or injury from specific risks, AND

- (2) there is a substantial likelihood that the harm will occur unless the person is placed under involuntary treatment,

THEN

- (3) the person poses a ‘substantial likelihood of serious harm’ for purposes of this title.”

**Proposed Ordinance** The proposed ordinance changes the Zoning Code so that the definition of “mentally handicapped,” which is contained in the definitions of “Family” and “Residence for handicapped, more than eight individuals,” mirrors the definition in Tennessee Code Annotated.

**Proposed Definitions** Sections 1 and 3 of the definition of “Family” will remain the same. Section 2 will be replaced with the following text:

“2. A group of not more than eight unrelated mentally retarded, mentally handicapped, or physically handicapped persons, including two additional persons acting as houseparents or guardians, living together as a single housekeeping unit in accordance with Tennessee Code Annotated § 13-24-102. For purposes of this subsection, ‘mentally handicapped’ and ‘physically handicapped’ includes persons being professionally treated for drug and/or alcohol dependency or abuse. For the purposes of this subsection, ‘mentally handicapped’ does not include persons who are mentally ill and, because of such mental illness, pose a likelihood of serious harm as defined in Tennessee Code Annotated § 33-6-501, or who have been convicted of serious criminal conduct related to such mental illness.”

“Residence for handicapped, more than eight individuals” will be replaced with the following definition:

“‘Residence for handicapped, more than eight individuals’ means a group of more than eight unrelated mentally retarded,

mentally handicapped, or physically handicapped persons, including two additional persons acting as houseparents or guardians, living together as a single housekeeping unit. For the purposes of this subsection, 'mentally handicapped' does not include persons who are mentally ill and, because of such mental illness, pose a likelihood of serious harm as defined in Tennessee Code Annotated § 33-6-501, or who have been convicted of serious criminal conduct related to such mental illness."

**STAFF RECOMMENDATION** Staff recommends approval of the proposed ordinance.

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

Ms. LeQuire requested clarification on the number of "house parents" allowed as defined by the state law and whether it was in conflict of the proposed amendment.

Mr. Sloan briefly explained the state statute and its intentions, as well as the intentions of the proposed text amendment.

Mr. Clifton moved and Mr. Gotto seconded the motion, which passed unanimously, to approve 2009Z-037TX-001, Definition of "Family" & "Residence for Handicapped", with the amendment that the sentence "For purposes of this subsection, 'mentally handicapped' and 'physically handicapped' includes persons being professionally treated for drug and/or alcohol dependency or abuse." be added to the definition of "Residence for handicapped, more than eight individuals." (6-0)

**Resolution No. RS2009-127**

**"BE IT RESOLVED by The Metropolitan Planning Commission that 2009Z-037TX-001 is APPROVED WITH THE AMENDMENT that the sentence "For purposes of this subsection, 'mentally handicapped' and 'physically handicapped' includes persons being professionally treated for drug and/or alcohol dependency or abuse," be added to the definition of "Residence for handicapped, more than eight individuals." (6-0)"**

**VIII. OTHER BUSINESS**

7. Employee contract renewals for Matthew R. Meservy and Melissa Stevens

Approved, (6-0) *Consent Agenda*

8. 2010 Planning Commission Filing Deadlines & Meeting Schedule

Approved, (6-0) *Consent Agenda*

9. Historical Commission Report

10. Board of Parks and Recreation Report

11. Executive Director Reports

Mr. Bernhardt briefly explained that at the last Commission meeting, it was determined to hold the consideration to rehear the May Town Center proposal on October 22, 2009. He further explained that since that time, several Commissioners expressed issue with holding the consideration on that date as they would not be present for the meeting. Mr. Bernhardt asked that the Commission consider the request for the rehearing at their October 8, 2009, meeting. He also explained that as a result of possibly moving the date to another meeting, the applicant for the May Town Center requested that the consideration to rehear the proposal be moved to November 12, 2009, in order to allow additional time to modify their plan. Mr. Bernhardt further offered that he explained to the applicant that modifying the plan did not constitute new information as required by Planning Commission rules and that a modification to the plan would be considered as a new application.

Mr. Gotto requested clarification on the deadline date imposed on the rehearing request.

Mr. Bernhardt explained the deadline date and briefly explained the Commission's rule on a request for a rehearing.

Mr. Gotto clarified with Legal Counsel, the procedures that would need to be followed whenever the consideration was placed on the Commission's agenda.

Mr. Clifton explained that he and Ms. LeQuire would not be present for the October 22, 2009, meeting and suggested that it would be more beneficial for the applicant to have as many members from the prevailing side present at the meeting when this item was to be considered by the Commission.

Mr. Gotto summarized the issue by noting that a rehearing would only be granted if a member of the prevailing side would motion to rehear, and then be seconded by another member of the prevailing side.

Mr. Sloan reminded the Commission that the item needed to be placed on an agenda as it required action by the Commission.

After additional conversation, Mr. McLean explained that the consideration to rehear the May Town Center would be placed on the October 8, 2009 meeting agenda.

12. Legislative Update

## IX. ADJOURNMENT

The meeting adjourned at 5:30 p.m.

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Chairman

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Secretary



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