



METROPOLITAN PLANNING COMMISSION MINUTES

Thursday, February 9, 2012

4:00 pm Regular Meeting

700 Second Avenue South

(between Lindsley Avenue and Middleton Street)

Howard Office Building, Sonny West Conference Center (1st Floor)

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.

Commissioners Present:

Jim McLean, Chair
Hunter Gee, Vice Chair
Stewart Clifton
Jeff Haynes
Judy Cummings
Phil Ponder
Greg Adkins
Andree LeQuire
Councilmember Phil Claiborne

Staff Present:

Rick Bernhardt, Executive Director
Ann Hammond, Assistant Executive Director
Kelly Armistead, Administrative Services Officer III
Craig Owensby, Public Information Officer
Dennis Corrieri, Planning Technician I
Bob Leeman, Planning Manager II
Brenda Bernards, Planner III
Jason Swaggart, Planner II
Jennifer Regen, Development Relations Manager
Tifinie Capehart, Planner II
Brian Sexton, Planner I
Greg Johnson, Planner II
Jon Michael. Legal

Commissioners Absent:

Derrick Dalton

Notice to Public

Please remember to turn off your cell phones.

The Commission is a 10-member body, nine of whom are appointed by the Metro Council and one of whom serves as the mayor's representative. The Commission meets on the 2nd and 4th Thursday of each month at 4:00 p.m., unless otherwise noted. The Planning Commission makes the final decision on final site plan and subdivision applications. On all other applications, the Commission recommends an action to the Metro Council (e.g. zone changes, specific plans, overlay districts, and mandatory referrals). The Metro Council can accept or not accept the recommendation.

Agendas and staff reports can be viewed on-line at www.nashville.gov/mpc/agendas or weekdays from 7:30 a.m. to 4:00 p.m. at the Planning Department office located at 800 2nd Avenue South, downtown Nashville. Also, at the entrance to this meeting room, a binder of all staff reports has been placed on the table for your convenience.

Meetings on TV can be viewed live or shown at an alternative time on Channel 3. Visit www.nashville.gov/calendar for a broadcast schedule.

Writing to the Commission

You can mail, hand-deliver, fax, or e-mail comments on any agenda item to the Planning Department. For the Commission to receive your comments, prior to the meeting, you must submit them by **noon the day of the meeting**. Otherwise, you will need to bring 14 copies of your correspondence to the meeting and during your allotted time to speak, distribute your comments.

Mailing Address: Metro Planning Department, 800 2nd Avenue South, P.O. Box 196300, Nashville, TN 37219-6300
Fax: (615) 862-7130
E-mail: planningstaff@nashville.gov

Speaking to the Commission

If you want to appear in-person before the Commission, view our tips on presentations on-line at www.nashville.gov/mpc/pdfs/mpc_mtg_presentation_tips.pdf and our summary regarding how Planning Commission public hearings are conducted at www.nashville.gov/mpc/docs/meetings/Rules_and_procedures.pdf. Briefly, a councilmember may speak at the very beginning of the commission meeting, after the individual item is presented by staff, or after all persons have spoken in favor or in opposition to the request. Applicants speak after staff presents, then, those in favor speak followed by those in opposition. The Commission may grant the applicant additional time for a rebuttal after all persons have spoken. Maximum speaking time for an applicant is 10 minutes, individual speakers is 2 minutes, and a neighborhood group 5 minutes, provided written notice was received prior to the meeting from the neighborhood group.

- Day of meeting, get there at least 15 minutes ahead of the meeting start time to get a seat and to fill-out a "Request to Speak" form (located on table outside the door into this meeting room).
- Give your completed "Request to Speak" form to a staff member.
- For more information, view the Commission's Rules and Procedures, at www.nashville.gov/mpc/pdfs/main/rules_and_procedures.pdf

Legal Notice

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.



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MEETING AGENDA

A. CALL TO ORDER

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

B. ADOPTION OF AGENDA

Mr. Clifton moved and Mr. Ponder seconded the motion to adopt the agenda. (8-0)

C. APPROVAL OF JANUARY 26, 2012 MINUTES

Mr. Ponder moved and Councilmember Claiborne seconded the motion to approve the January 26, 2012 minutes. (8-0)

D. RECOGNITION OF COUNCILMEMBERS

Councilmember Dominy was in attendance but elected to speak at a later time.

Councilmember Matthews spoke in support of Item 5.

Dr. Cummings arrived at 4:07 p.m.

E. ITEMS FOR DEFERRAL / WITHDRAWAL

2. 2011Z-016TX-001

BL2011-30 / JOHNSON

SIGN: TRI-FACE BILLBOARDS

6. 2012S-019-001

BEAUMONT PLACE, RESUBDIVISIO

Mr. Ponder moved and Mr. Adkins seconded the motion to approve the Deferred and Withdrawn Items. (9-0)

F. CONSENT AGENDA

3. 2004P-028-001

OLD HICKORY COMMONS

4. 2012Z-001TX-001

NON-CONFORMING USES AND STRUCTURES: NATURAL DISASTERS

Mr. Gee moved and Mr. Haynes seconded the motion to approve the Consent Agenda. (9-0)

G. PREVIOUSLY DEFERRED ITEMS

Community Plan Amendments

1a. 2011CP-013-004

ANTIOCH-PRIEST LAKE COMMUNITY PLAN: 2003 UPDATE

Map 149, Parcel(s) 026

Council District 28 (Duane A. Dominy)

Staff Reviewer: Tifine Capehart

A request to amend the Antioch-Priest Lake Community Plan: 2003 Update to change the land use policy from Residential Low-Medium Density (RLM) to T3 Neighborhood Evolving (NE) and Conservation (CO) for property located at 2158 Una Antioch Pike, requested by Anderson, Delk, Epps and Associates, Inc., applicant, Pamela Meadows, owner. (See also Specific Plan Case # 2011SP-024-001).

Staff Recommendation: DISAPPROVE

APPLICANT REQUEST

Amend land use policy from Residential Low Medium Density to T3 Suburban Neighborhood Evolving and Conservation.

Land Use Policy Amendment

A request to amend the Antioch-Priest Lake Community Plan: 2003 Update to change the land use policy from Residential Low Medium

Density (RLM) to T3 Suburban Neighborhood Evolving (T3 NE) and Conservation (CO) for property located at 2158 Una Antioch Pike.

CRITICAL PLANNING GOALS

N/A

ANTIOCH – PRIEST LAKE COMMUNITY PLAN

Existing Land Use Policy

Residential Low Medium (RLM)

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

Proposed Land Use Policies

T3 Suburban Neighborhood Evolving (T3 NE)

T3 NE policy is intended to create suburban neighborhoods that are compatible with the general character of classic suburban neighborhoods as characterized by their building form, land use and associated public realm, with opportunities for housing choice and improved pedestrian, bicycle and vehicular connectivity. The resulting development pattern will have higher densities than classic suburban neighborhoods and/or smaller lot sizes, with a broader range of housing types.

Conservation (CO)

CO policy is intended to preserve and enhance environmentally sensitive land within all Transect Categories except T6 Downtown. CO policy identifies land with sensitive environmental features including, but not limited to, steep slopes, floodway/floodplains, rare or special plant or animal habitats, wetlands and unstable or problem soils.

BACKGROUND

The proposed plan amendment site is located on Una Antioch Pike, approximately 0.4 miles south of Murfreesboro Pike. The existing land use policy (RLM) accommodates single-family, two-family, and multifamily development at maximum density of two to four dwelling units per acre.

The applicant has proposed a Specific Plan (SP) zone change to permit Assisted-Living at eight dwelling units per acre. The applicant is requesting T3 NE policy to accommodate the proposed density on the site.

The site also has slopes greater than 20 percent and a stream, both of which are considered environmentally sensitive features on the site. Based on Planning staff comments, the applicant has agreed to request CO policy on portions of the site with the most sensitive environmental features: the steep slopes and the stream.

COMMUNITY PARTICIPATION

Notification of the amendment request and the Planning Commission Public Hearing was posted on the Planning Department website and mailed to surrounding property owners and known groups and organizations within 600 feet of the subject site.

A community meeting was held on Thursday, October 27, 2011, at the Southeast Branch Library; 21 people were in attendance.

Significant concerns related to the policy amendment and associated SP zone change were discussed at the meeting. These concerns included vehicular access to the site from Oak Barrel Drive, the land uses on the site (assisted living and multi-family), and the site's environmental features.

Residents were not amenable to vehicular access on Oak Barrel Drive and preferred direct access to the site from Una Antioch Pike. Residents also preferred that assisted living be the only land use on the site, and that multi-family be removed from the proposed plans. The residents also mentioned that there is an old spring house (a small structure built over a spring or brook, used for cooling food) on the property that should be identified and preserved.

The applicant made initial revisions to the SP zone change and plan based on community input. Those initial changes included removing the multifamily land use, reducing the density from 15 dwelling units per acre to 11 dwelling units per acre, and providing an access point on Una Antioch Pike. In subsequent revisions, the density of the proposal has been further reduced to approximately eight dwelling units per acre.

While these changes reflected the community sentiment, the application remains "illustrative," meaning that – with the exception of the land uses – there remains uncertainty as to how these considerations would be addressed at the development stage.

ANALYSIS

While the proposed policy amendment is located along a major street in the vicinity of other multi-family and commercial land uses, there are aspects of the site and surrounding context that would inhibit appropriate development at higher densities than currently recommended by RLM policy (two to four dwelling units per acre).

Environmental Conditions

The site contains environmental features over most of the site, including steep slopes that are 20 percent or greater and a stream along Una Antioch Pike. Development should avoid these areas in order to minimize excessive grading on the site. CO policy should be applied to these features to preserve them. The T3 NE policy should be limited to the southeast quarter of the site, where the site is the flattest. Because only a portion of the site should be considered buildable, the permitted density will be concentrated onto this one area. Development

at densities consistent with T3 NE policy could result in significant grading of the southeast portion of the site, removing the natural features of this area. Development in proposed T3 NE areas should still consider the sensitive nature of the land.

Density and Intensity

The 8.9 acre site is currently zoned R10, where the achievable density would be approximately four dwelling units per acre. The current RLM policy accommodates up to four dwelling units per acre. The proposed T3 NE policy would accommodate a minimum of four dwelling units per acre and a maximum of 20 dwelling units per acre. Focusing this density on one portion of the site could result in a level of intensity in building form that is incompatible with the adjacent single-family residential neighborhood that is both smaller in scale and in residential density. Staff recommends that development under the current RLM policy, at a lower density, would provide a better transition to adjacent single-family development.

Connectivity to Surrounding Development

The property is located adjacent to multi-family and commercial development, but has no meaningful connection to these properties, which are separated from the site by significant grade changes. Street and driveway connections to these properties are not possible because of the existing grade.

The site is more connected topographically to the surrounding single-family neighborhoods to the south and west. These areas have RLM policy, similar to the site and also provide a potential street connection in Oak Barrel Drive, a local street that currently provides access to a single-family residential subdivision and terminates at the property line of the subject site. This access would be appropriate with the density of development that could result from the current zoning and the current RLM policy. It would likely not be an appropriate primary access for more intense development as is currently envisioned with T3 NE.

Appropriate Land Use

The requested T3 NE policy privileges residential land uses. The site is currently vacant and the proposed land uses are assisted living and nursing home. These types of facilities would increase the housing choice in this area and would allow residents in the Antioch – Priest Lake community to “age-in-place” by providing housing for those that may be elderly or that need full-time care. However, these types of facilities need to be consistent with the surrounding land uses and building form in terms of building height, street frontage, building size and impact on existing topography.

Similar to a multifamily land use, assisted living accommodates multiple residents in one location. Therefore, similar to multifamily, appropriate locations for assisted living should have vehicular and pedestrian connectivity and access to transit and services. Locating these uses near centers and along corridors rather than within the interior of a neighborhood minimizes impacts on existing single and two family residential land uses, and this is best achieved when the land use has direct access to prominent corridors.

Access and Connectivity (Vehicular and Pedestrian)

The application of T3 NE policy to accommodate higher density residential development should consider direct access onto prominent corridors. The site has potential access from Oak Barrel Drive; Oak Barrel Drive is a local street with residential character. Accessing the proposed assisted living land use from Oak Barrel Drive may negatively impact the neighborhood due to the type of vehicular traffic that an assisted living facility may attract; large vehicles associated with food service and other deliveries as well as ambulances. Other more intense land uses supported by T3 NE policy may also impose negative impacts on Oak Barrel Drive. Therefore land uses other than single and two family residential development should consider direct access onto Una Antioch Pike.

The application of T3 NE should also consider pedestrian connectivity as well. Pedestrian connectivity via a sidewalk should be provided to connect pedestrians to the transit stop at the intersection of Piccadilly Row and Una Antioch Pike, and to the goods and services that are provided along Murfreesboro Pike.

Site Features

Several community members have stated that there is an old spring house located on the property. The Metropolitan Historic Commission has expressed interest in working with the property owner and adjacent neighbors to locate and verifying the spring house's existence. Therefore, the spring house should be identified, and CO policy should be applied so that it can also be preserved to greatest extent possible.

Conclusion

The application of T3 NE policy could be appropriate where a mixture of housing types are placed to function together with street and pedestrian connections and with the siting of development to follow existing topography. T3 NE policy accommodates the density range generally needed for an assisted living facility. An assisted living facility would be beneficial in the Antioch area as it supports a larger policy goal of providing a housing choice that allows residents to ‘age – in – place’ within the Antioch – Priest Lake Community.

The application of T3 NE policy to consider assisted living, nursing facilities, or other more dense and intense land uses must take the following into consideration:

- The effect on existing environmental features and topography within the site;
- The concentration of higher densities on a small portion of the site;
- The impact of a significant facility adjacent to a lower-density single-family neighborhood;
- Primary vehicular access on Una Antioch Pike and secondary or emergency vehicular access on Oak Barrel Drive;
- Pedestrian facilities to provide better access to transit, goods and services.

The current proposal has not sufficiently considered these aspects of the site and surrounding area. Without these considerations, the application of T3 NE for more intense land uses on the site is premature.

STAFF RECOMMENDATION

Staff recommends disapproval.

Mrs. Capehart presented the staff recommendation of disapproval.

Councilmember Dominy recommended approval of Item 1a contingent upon approval of a specific zoning plan that addresses the concerns of the community. Councilman Dominy also recommended approval of 1b due to improved infrastructure and pre-blast surveys conducted from 600' of property lines. He also noted that the community has changed from being in opposition to supporting the plan.

Tom White, attorney for the applicant, asked for approval of Item 1a and 1b and stated that his client has agreed to everything that was requested:

1. Client will agree to widen Una Antioch Pike to three lanes in front of the property.
2. Client will agree to conduct pre-blast surveys of all structures within 600 feet of the property line.
3. Client will commit to Councilman dictated landscaping buffer along the property line at the end of Oak Barrel Drive.

Les Cappama, 4801 Payne Road, spoke in support of the proposal, stating that it would be nice to have one in the neighborhood.

Danny Bradbary, 1004 Oak Ridge Court, spoke in support of the proposal, stating it would be an asset to the community.

Janet Murnan, 4928 Oak Barrel Drive, spoke in opposition, stating that the plan doesn't fit into a residential area. She stated concerns with water retention, blasting, noise abatement, road improvements, and would like to see a geographical impact study conducted.

Melissa Smithson, 4714 Delia Drive, spoke in opposition, stating concerns with infrastructure and blasting.

Tom White, on rebuttal, stated that the water issue will have to be addressed regardless of what happens on this site, that far less traffic will be on the road with this proposed use, and that his client has agreed to a 600' pre-blast survey.

Dr. Cummings moved and Mr. Ponder seconded the motion to close the Public Hearing. (9-0)

Mr. Gee stated that this seems like an appropriate transition from commercial to residential.

Mr. Clifton inquired what other concerns the staff might have regarding the stream and its protection.

Mr. Johnson stated that in requesting a more intense land use policy, crossing the stream seems to be a result of wanting higher density. Going that route might be an environmental impact that does not have to be made if you keep the existing Residential Low-Medium policy.

Mr. Clifton noted that from a planning perspective, if this is approved, it might be better to use the existing stubbed out street to avoid the stream.

Dr. Cummings stated that assisted living seems to be done better in residential areas and that the traffic impact would not be as great with this use as it would with multi family.

Mr. Ponder stated support of this proposal.

Councilmember Claiborne stated that the developer seems to have gone out of their way to satisfy the community and stated support of this proposal assuming the Fire Marshall and Stormwater requirements are met.

Ms. LeQuire asked how the stream would be crossed.

Mr. Johnson stated that there are several options and that it depends on Stormwater requirements.

Ms. LeQuire stated that it seems to be a commercially operated facility, i.e. food trucks, laundry trucks, garbage trucks, etc.

Mr. Clifton moved to approve both 1a and 1b with the understanding that the access point be Oak Barrel Road.

Chairman McLean requested a motion for Item 1a only.

Mr. Clifton moved to approve Item 1a.

Councilman Claiborne asked if the motion to could be amended to add that approval is contingent on SP approval.

Mr. Gee asked for clarification that, according to the staff report, environmental constraints are what make the proposed policy unachievable.

Mr. Bernhardt stated that the main concern is the actual development, not the use itself, as it is a very difficult site.

Mr. Clifton restated his motion and Mr. Gee seconded the motion to approve Item 1a. (7-2) Councilmember Claiborne and Ms. LeQuire voted against.

“BE IT RESOLVED by The Metropolitan Planning Commission that 2011CP-013-004 is **APPROVED. (7-2)**”

1b. 2011SP-024-001

MEADOWS DOWNS

Map 149, Parcel(s) 026

Council District 28 (Duane A. Dominy)

Staff Reviewer: Greg Johnson

A request to rezone from R10 to SP-MR zoning property located at 2158 Una Antioch Pike, approximately 1,915 feet south of Murfreesboro Pike (8.9 acres) and within the Floodplain Overlay District, to permit a maximum of 70 dwelling units within an assisted living and/or nursing facility, requested by Anderson, Delk, Epps and Associates Inc., applicant, Pamela Meadows, owner. (See also Community Plan Amendment Case # 2011CP-013-004)

Staff Recommendation: DISAPPROVE

APPLICANT REQUEST

To permit assisted-living and nursing home land uses

Preliminary SP

A request to rezone from One and Two Family (R10) to Specific Plan – Mixed Residential (SP-MR) zoning property located at 2158 Una Antioch Pike, approximately 1,915 feet south of Murfreesboro Pike (8.9 acres) and within the Floodplain Overlay District, to permit a maximum of 70 dwelling units within an assisted living and/or nursing facility.

Existing Zoning

R10 District – R10 requires a minimum 10,000 square foot lot and is intended for single-family dwellings and duplexes at a density of 4.63 dwelling units per acre under a cluster lot subdivision allowing for 25 percent duplex lots. Subdivision of the site under the existing zoning would most likely occur as a cluster lot subdivision.

Proposed Zoning

SP-MR District – Specific Plan-Mixed Residential 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 a mixture of housing types.

CRITICAL PLANNING GOALS

N/A

ANTIOCH-PRIEST LAKE COMMUNITY PLAN

Existing Policy

Residential Low-Medium (RLM) policy is intended to accommodate residential development within a density range of two to four dwelling units per acre. The predominant development type is single-family homes, although some townhomes and other forms of attached housing may be appropriate. The proposed density for this SP is approximately 7.9 dwelling units per acre, which is not consistent with the recommended density of two to four dwelling units per acre within RLM policy.

Proposed Policy

T3 Neighborhood Evolving (T3 NE) policy is intended to create suburban neighborhoods that are compatible with the general character of classic suburban neighborhoods as characterized by their building form, land use and associated public realm, with opportunities for housing choice and improved pedestrian, bicycle and vehicular connectivity. The resulting development pattern will have higher densities than classic suburban neighborhoods and/or smaller lot sizes, with a broader range of housing types providing housing choice. This reflects the scarcity of easily developable land (without sensitive environmental features) and the cost of developing housing - challenges that were not faced when the original classic, suburban neighborhoods were built.

Consistent with Policy?

The SP proposal, at approximately 7.9 dwelling units per acre does not meet the RLM land use policy, which recommends a density of two to four dwellings units per acre. The applicant proposes to amend the current land use policy through an associated land use policy amendment application to the T3 NE land use policy, which would permit up to 20 dwelling units per acre. The mismatch of proposed density with policy, and the disapproval recommendation of the proposed T3 NE policy provide the basis for the disapproval recommendation of the zone change.

In addition to the issues with policy and density, the design of the site is not ideal to the existing topography or to the surrounding residential uses. Significant site grading will likely be necessary to accommodate a facility with such a large floor plate, as shown by the potential 25 foot retaining wall on the site plan. As stated in the disapproval recommendation for the policy amendment staff report, the concentration of a large facility on a relatively small portion of the site is likely to result in significant grading. Development under the current RLM policy would be less dense and could be more adaptable to the existing topography.

Although the site is located on land that is adjacent to single-family residential development on the south, the site plan does not show the intent to provide transitions in building form or street connections to this area. The disapproval recommendation in the policy amendment staff report points out that development under the RLM policy would be more likely to provide a stronger connection, in terms of building form and design, to the adjacent single-family residential neighborhood.

The SP proposal is for 70 dwelling units within nursing home and assisted-living uses. Because the permitted densities of the assisted-living and nursing home uses are expressed differently by the Zoning Code, the maximum combined density within the SP should be expressed in terms of rooming units and floor area ratio (FAR) instead of dwelling units. According to the Zoning Code, three assisted-living rooming units are considered to be a dwelling unit, allowing for a maximum number of 210 rooming units within the SP. The maximum FAR of the RM9 fall-back zoning district is 0.60.

PLAN DETAILS

The proposed SP consists primarily of a conceptual site diagram illustrating the proposed location for the nursing home and assisted living uses. The SP also includes limited bulk and architectural standards.

Land uses and site layout

The SP plan illustrates the intended layout of the SP. As proposed, a driveway access from Una-Antioch Pike provides the primary access to the site. The proposed facility and associated parking are located near the southeastern corner of the site.

Much of the site contains features that are considered to be environmentally-sensitive. A stream runs along the front of the site, adjacent to Una-Antioch Pike. Additionally, much of the site is sloped with areas of 20 percent slope or greater on the northern portion of the site. The proposed facility is shown on the least sloped portion of the site. However, the site plan shows the likely need for significant grading to the site in order to accommodate the proposed building. The site plan also shows that retaining walls could reach a height of 25 feet within the proposed development. The significant amount of site grading needed to accommodate the proposed use is not consistent with the character of the adjacent neighborhoods.

Architectural Standards

The SP includes minimal architectural standards that describe the intent of appropriate building design and specify acceptable materials for exterior walls, roofs, and awnings. The SP document submitted with the SP proposes a maximum building height of three stories for the assisted living/nursing facility.

Signage

Specific signage is not proposed within the SP. A note within the SP states that *signage shall be consistent with the sign standards found in the Metro Zoning Ordinance.*

Community Meeting

A community meeting to discuss this SP proposal and associated plan amendment was held on October 27, 2011. Approximately 20 people were in attendance. A number of issues were raised including traffic and residential density.

NES RECOMMENDATION

1. Developer to provide a civil duct and gear (pad/switch) locations for NES review and approval. No other utilities or private conduit can be under NES equipment.
2. Pad mounted equipment and riser pole must be installed no further than 10 feet off of paved surface.
3. Developer drawing shall show existing utility easements on property and the utility poles on the property and/or r-o-w.
4. Public utility easements required adjacent to public r-o-w and centered on NES and communication conduits. Widths to be determined.
5. NES equipment knuckle easements will be required. Dimensions to be determined.
6. Any additional easements required that are not part of this parcel must be obtained by the developer or the engineer for the developer.
7. Postal plan will be required before NES's final construction drawings can be issued.
8. NES can meet with developer/engineer upon request to determine electrical service options and meter locations for assisted living and independent living.
9. NES meters will be installed on multi gang pedestals for townhomes.
10. NES needs any drawings that will cover any road improvements to Oak Barrel Drive that Metro Public Works will require (i.e., turning lanes, driveway ramps or lane improvements). Any of these items may require electric facilities to be relocated and may be an impact to the developer.
11. NES follows the National Fire Protection Association rules; Refer to NFPA 70 article 450-27; and NESC Section 15 - 152.A.2 for complete rules (see NES Construction Guidelines under "Builders and Contractors" tab @ www.nespower.com).
12. For line removal contact "ESE" – best to request removal when signing up for power.
13. If porches are allowed to be constructed beyond the minimum setback limits and into the public utility easements; then the easement will be considered reduced by that much of the easement. Such encroachments may increase the cost of electrical infrastructure to allow for reduced or limited access to equipment. NES reserves the right to enter and to erect, maintain, repair, rebuild, operate and patrol electric power overhead and underground conductors and communications circuits with all necessary equipment reasonably incident thereto including the right to clear said easement and keep the same clear of brush, timber, inflammable structures, buildings, permanent structures, and fire hazards; all over, under, upon, and across the easement as granted on any plats.
14. If these are public streets then street lighting has to meet Metro/NES standards...
15. Developer needs to contact NES street lighting engineering @ 747-3531 (Bert Gilchrist) if decorative lights are planned.

PUBLIC WORKS RECOMMENDATION

- The developer's final construction drawings shall comply with the design regulations established by the Department of Public Works. Final design may vary based on field conditions.
- Drive aisles shall be 24' wide, parking stalls shall be 8.5'x18'.
- Submit solid waste and recycling plan with final construction documents.
- Show sidewalk with curb and gutter along the frontage of Una Antioch Pike.
- Provide adequate sight distance at proposed access on Una Antioch.
- Extend Left turn lane at Picadilly signalized intersection as TWTL along Property frontage to proposed project access with transition per MUTCD and AASHTO standards.
- Modify traffic signal at Picadilly intersection to provide ped crossing facilities for Una Antioch crossing.

Maximum Uses in Existing Zoning District: **R10**

Land Use (ITE Code)	Acres	FAR/Density	Total Floor Area/Lots/Units	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
Single-Family Residential(210)	8.9	4.63 D	41 L	458	39	49

Maximum Uses in Existing: **SP**

Land Use (ITE Code)	Acres	FAR/Density	Total Floor Area/Lots/Units	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
Assisted Living Facility (254)	8.9	-	300 Beds*	526	42	66

Traffic changes between maximum: **R10** and proposed **SP**

Land Use (ITE Code)	Acres	FAR/Density	Total Floor Area/Lots/Units	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
-	-	-	-	+68	+3	+17

*The application has been revised with a reduced number of beds (210).

STORMWATER RECOMMENDATION

Approved

FIRE MARSHAL RECOMMENDATION

Approved

Plans show project is sprinklered.

Plans show grade will be no greater than 10%.

METRO SCHOOL BOARD REPORT

A School Board Report was not prepared because this SP is for assisted-living and nursing facility uses only and will not generate students.

STAFF RECOMMENDATION

Staff recommends disapproval. The proposed SP is not compatible with the existing RLM land use policy, and because staff recommends disapproval of the proposed T3 NE policy. Additionally, the design of the proposal does not adequately address topography issues on the site or adjacent single-family development. Development meeting the density and intent of the existing RLM policy could be more likely to accommodate the site's existing topography and allow for an appropriate transition to adjacent development.

The Metro Fire Marshal has not approved the SP proposal. Fire Marshal comments are shown above.

CONDITIONS (if approved)

1. The uses of this SP shall be limited to a nursing home or an assisted living facility, or a combination of the two, to a maximum number of 210 rooming units with a maximum 0.6 Floor Area Ratio.
2. Ground signage shall be limited to one ground sign along the Una-Antioch street frontage. Ground signs shall have a maximum height of six feet with a maximum display area of 32 square feet.
3. Comments listed above from Metro Public Works and Metro Stormwater shall be addressed on the corrected copy of the preliminary SP plan.
4. All requirements of Chapter 17.24 (Landscaping, buffering and tree replacement) of the Metro Zoning Code for MUL zoning shall be met with any final site plan within the SP.
5. For any development standards, regulations and requirements not specifically shown on the SP plan and/or included as a condition of Metro Council approval, the property shall be subject to the standards, regulations and requirements of the RM9 zoning district.

6. A corrected copy of the preliminary SP plan incorporating the conditions of approval by the Metro Council shall be provided to the Planning Department prior to the filing of any additional development applications for this property, and in any event no later than 120 days after the effective date of the enacting ordinance. The corrected copy provided to the Planning Department shall include printed copy of the preliminary SP plan and a single PDF that contains the plan and all related SP documents. If a corrected copy of the SP plan incorporating the conditions therein is not provided to the Planning Department within 120 days of the effective date of the enacting ordinance, then the corrected copy of the SP plan shall be presented to the Metro Council as an amendment to this SP ordinance prior to approval of any grading, clearing, grubbing, final site plan, or any other development application for the property.
7. Minor modifications to the preliminary SP plan may be approved by the Planning Commission or its designee based upon final architectural, engineering or site design and actual site conditions. All modifications shall be consistent with the principles and further the objectives of the approved plan. Modifications shall not be permitted, except through an ordinance approved by Metro Council that increase the permitted density or floor area, add uses not otherwise permitted, eliminate specific conditions or requirements contained in the plan as adopted through this enacting ordinance, or add vehicular access points not currently present or approved.
8. 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.

Mr. Johnson presented the staff recommendation of disapproval.

Mr. Clifton moved and Dr. Cummings seconded the motion to approve Item 1b with the understanding that the access point be Oak Barrel Drive.

Mr. Adkins stated that he does not feel that the proper entrance is Oak Barrel Drive as the traffic impact would be bad for the houses on that street.

Councilmember Claiborne moved and Mr. Adkins seconded the motion to amend the previous motion by deleting the condition that it connects to Oak Barrel Drive. (7-2) Mr. Clifton and Mr. Ponder voted against.

The vote was taken to approve the SP with conditions listed in the staff report and including conditions added by the applicant at the Planning Commission meeting. (8-1) Ms. LeQuire voted against.

Resolution No. RS2012-39

“BE IT RESOLVED by The Metropolitan Planning Commission that 2011SP-024-001 is **APPROVED WITH ALL STAFF CONDITIONS, and the additional conditions added by the applicant at the Planning Commission meeting, and disapprove without conditions. (8-1)**

Conditions of Approval:

1. The uses of this SP shall be limited to a nursing home or an assisted living facility, or a combination of the two, to a maximum number of 210 rooming units with a maximum 0.6 Floor Area Ratio.
2. Ground signage shall be limited to one ground sign along the Una-Antioch street frontage. Ground signs shall have a maximum height of six feet with a maximum display area of 32 square feet.
3. Comments listed above from Metro Public Works and Metro Stormwater shall be addressed on the corrected copy of the preliminary SP plan.
4. All requirements of Chapter 17.24 (Landscaping, buffering and tree replacement) of the Metro Zoning Code for MUL zoning shall be met with any final site plan within the SP.
5. For any development standards, regulations and requirements not specifically shown on the SP plan and/or included as a condition of Metro Council approval, the property shall be subject to the standards, regulations and requirements of the RM9 zoning district.
6. A corrected copy of the preliminary SP plan incorporating the conditions of approval by the Metro Council shall be provided to the Planning Department prior to the filing of any additional development applications for this property, and in any event no later than 120 days after the effective date of the enacting ordinance. The corrected copy provided to the Planning Department shall include printed copy of the preliminary SP plan and a single PDF that contains the plan and all related SP documents. If a corrected copy of the SP plan incorporating the conditions therein is not provided to the Planning Department within 120 days of the effective date of the enacting ordinance, then the corrected copy of the SP plan shall be presented to the Metro Council as an amendment to this SP ordinance prior to approval of any grading, clearing, grubbing, final site plan, or any other development application for the property.

7. Minor modifications to the preliminary SP plan may be approved by the Planning Commission or its designee based upon final architectural, engineering or site design and actual site conditions. All modifications shall be consistent with the principles and further the objectives of the approved plan. Modifications shall not be permitted, except through an ordinance approved by Metro Council that increase the permitted density or floor area, add uses not otherwise permitted, eliminate specific conditions or requirements contained in the plan as adopted through this enacting ordinance, or add vehicular access points not currently present or approved.
8. 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.
9. Una Antioch Pike shall be constructed to a three lane road with curb and gutter along the frontage of the property
10. A pre-blast survey of all structures within 600 feet of the property line shall be offered to all property owners.
11. Additional landscaping along the property line abutting the Oak Barrel Lane subdivision shall be provided as determined by the Councilmember

The SP proposal is consistent with the T3 Neighborhood Evolving policy.”

Zoning Text Amendments

2. 2011Z-016TX-001

BL2011-30 / JOHNSON

SIGN: TRI-FACE BILLBOARDS

Staff Reviewer: Brenda Bernards

A request to amend Chapter 17.40 of the Metro Zoning Code to prohibit the conversion of nonconforming static billboards to tri- face billboards, requested by Councilmember Karen Johnson, applicant.

Staff Recommendation: WITHDRAW

The Metropolitan Planning Commission WITHDREW 2011Z-016TX-001 at the request of the applicant. (9-0)

Planned Unit Developments

3. 2004P-028-001

OLD HICKORY COMMONS

Map 175-02-0-B, Parcel(s) 075-086, 088-101, 119-126, 128-130, 208-215, 903, 905, 908-909

Council District 32 (Jacobia Dowell)

Staff Reviewer: Greg Johnson

A request to revise the preliminary plan and for final approval for a portion of the Old Hickory Commons Residential Planned Unit Development Overlay District located on various properties along Sprucedale Drive, between Beaver creek Way and Saddle creek Way (2.11 acres), zoned RM6, to permit 23 detached multi-family units where 47 attached multi-family units were previously approved, requested by Anderson, Delk, Epps & Associates Inc., applicant, for Old Hickory Commons LLC, owner. (See also Subdivision Case # 2011S-016-001).

Staff Recommendation: Approve PUD revision and final PUD with conditions, including all Public Works conditions.

APPLICANT REQUEST

Replace 47 attached multi-family units with 23 detached multi-family units

PUD Revision and Final PUD

A request to revise the preliminary plan and for final approval for a portion of the Old Hickory Commons Residential Planned Unit Development Overlay District located on various properties along Sprucedale Drive, between Beaver creek Way and Saddle creek Way (2.11 acres), zoned Multi-Family (RM6), to permit 23 detached multi-family units where 47 attached multi-family units were previously approved.

Existing Zoning

RM6 District - RM6 is intended for single-family, duplex, and multi-family dwellings at a density of 6 dwelling units per acre.

CRITICAL PLANNING GOALS

N/A

ANTIOCH/ PRIEST LAKE COMMUNITY PLAN

Neighborhood General (NG)

NG is intended to meet a spectrum of housing needs with a variety of housing that is carefully arranged, not randomly located. 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?

Yes. NG policy promotes diversity in housing types. The original PUD approval included a combination of attached multi-family dwellings and single-family lots. While the overall density of the PUD would decrease with this proposal, the PUD will maintain its housing diversity.

REQUEST DETAILS

This PUD was originally approved by Council in 2005, for residential development with a combination of townhouse and single-family dwellings. Specifically, the PUD was approved for 342 multi-family dwellings and 20 single-family lots. To date, most of the 20 single-family dwellings have been constructed, and approximately 20 of the 342 multi-family dwellings have been constructed. The current request is to remove 47 attached multi-family dwelling units within the same block, approved under the original PUD approval, and replace them with 23 detached multi-family dwelling units. The addition of the detached multi-family building type will allow the developer to provide more units similar to those within the single-family lots, while maintaining the original layout and infrastructure installation from the original PUD approval.

The proposal will minimally alter the site plan from the original approval. Under the original approval, parking was provided in common parking areas in the middle of each block within the multi-family areas. The proposed units will include individual parking spaces within the footprint of each unit. Individual driveways will be provided from the common parking areas. The applicant has shown that the minimum parking requirements for the overall PUD will be maintained.

The PUD revision proposal is consistent with the land use policy in terms of density and housing type diversity. Although the number of dwelling units is lower under the proposal, it is also consistent with the layout of the original PUD approval. The proposal will increase the diversity of dwelling unit types within the PUD. All requirements of the Zoning Code for parking and setbacks are met by the proposed revision.

NES RECOMMENDATION

- 1) With these changes to the development the existing NES installation doesn't meet NES requirements to maintain the existing underground equipment.
- 2) NES must remove ugrd primary cables and transformers in the affected areas.
- 3) Developer will have to dig new trenches and reinstall all new conduits.
- 4) All these changes will be at 100% of cost to be paid by the developer up front.
- 5) Developer to provide a civil duct and gear (pad/switch) drawing for NES review and approval. This shall cover the entire development area.
- 6) 20-foot public utility easement required adjacent to all public r-o-w or 20' easement centered on the conduit runs.
- 7) Any addition easements required that are not part of this parcel must be obtained by the developer or the engineer for the developer.
- 8) NES can meet with developer/engineer upon request to determine electrical service options.
- 9) NES follows the National Fire Protection Association rules; Refer to NFPA 70 article 450-27; and NESC Section 15 - 152.A.2 for complete rules (see NES Construction Guidelines under "Builders and Contractors" tab @ www.nespower.com).
- 10) Building phase lines are required at the design stage.
- 11) If porches or fire escapes are allowed to be constructed beyond the minimum setback limits and into the public utility easements; then the easement will be considered reduced by that much of the easement. Such encroachments may increase the cost of electrical infrastructure to allow for reduced or limited access to equipment. *NES reserves the right to enter and to erect, maintain, repair, rebuild, operate and patrol electric power overhead and underground conductors and communications circuits with all necessary equipment reasonably incident thereto including the right to clear said easement and keep the same clear of brush, timber, inflammable structures, buildings, permanent structures, and fire hazards; all over, under, upon, and across the easement as granted on any plats.*

STORMWATER RECOMMENDATION

Provide revised stamped grading plans for review (Permit SWGR 2006-044).

PUBLIC WORKS RECOMMENDATION

1. The developer's final construction drawings shall comply with the design regulations established by the Department of Public Works. Final design may vary based on field conditions.
2. If any construction is required to be completed in the public Right of Way then a permit must be obtained from the Metro Public Works Permit office. Contact MPW Permit office at (615) 862-8782.
3. Comply with all previous conditions of the previously approved PUD 2004P-028-001.
4. Provide verification that the proposed alley was constructed as per public works alley standard.
5. Homeowner's association and/ or developer will be required to sign a waiver releasing liability for trash pickup on private alleys.
6. Provide parking per code for each lot with additional guest spaces as shown.
7. Comply with previous conditions of PUD.
8. Document and verify the total number of lots/units currently approved for construction. Developer shall conduct traffic counts and signal warrant analysis at Ashford Trace /Hobson Pike/Old Hickory Blvd. intersection if the threshold of either 150 or 300 lots has been

reached. The warrant analysis and traffic counts shall be submitted to Metro Traffic engineer for review and approval. The developer shall submit traffic signal plans and install a traffic signal when approved by the Traffic and Parking Commission.

FIRE MARSHAL RECOMMENDATION

Approved

STAFF RECOMMENDATION

Staff recommends approval with conditions of the PUD amendment because it is consistent with intent of the original PUD approval and complies with applicable requirements of the Zoning Code.

CONDITIONS

1. This approval does not include any signs. Signs in planned unit developments must be approved by the Metro Department of Codes Administration except in specific instances when the Metro Council directs the Metro Planning Commission to review such signs.
2. 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.
3. If the PUD final site plan or final plat indicates that there is less acreage than what is shown on the approved preliminary plan, the final site plan shall be appropriately adjusted to show the actual total acreage, which may require that the total number of dwelling units or total floor area be reduced.
4. Prior to any additional development applications for this property, and in no event later than 120 days after the effective date of the enacting ordinance, the applicant shall provide the Planning Department with a corrected copy of the preliminary PUD plan. If a corrected copy of the preliminary PUD plan incorporating the conditions of approval therein is not provided to the Planning Department within 120 days of the effective date of the enacting ordinance, then the corrected copy of the preliminary PUD plan shall be presented to the Metro Council as an amendment to this PUD ordinance prior to approval of any grading, clearing, grubbing, final site plan, or any other development application for the property.

Approved PUD revision and final PUD with conditions, including all Public Works conditions. (9-0), Consent Agenda

Resolution No. RS2012-40

"BE IT RESOLVED by The Metropolitan Planning Commission that 2004P-028-001 is **APPROVED PUD REVISION AND FINAL PUD WITH CONDITIONS, including all Public Works conditions. (9-0)**

Revised Public Works comments:

1. The developer's final construction drawings shall comply with the design regulations established by the Department of Public Works. Final design may vary based on field conditions.
2. If any construction is required to be completed in the public Right of Way then a permit must be obtained from the Metro Public Works Permit office. Contact MPW Permit office at (615) 862-8782.
3. Homeowner's association and/ or developer will be required to sign a waiver releasing liability for trash pickup on private alleys.
4. Comply with previous conditions of PUD.
5. Document and verify the total number of lots/units currently approved for construction. Developer shall conduct traffic counts and signal warrant analysis at Ashford Trace /Hobson Pike/Old Hickory Blvd. intersection if the threshold of either 150 or 300 lots has been reached. The warrant analysis and traffic counts shall be submitted to Metro Traffic engineer for review and approval. The developer shall submit traffic signal plans and install a traffic signal when approved by the Traffic and Parking Commission.

Revised Conditions of Approval:

1. This approval does not include any signs. Signs in planned unit developments must be approved by the Metro Department of Codes Administration except in specific instances when the Metro Council directs the Metro Planning Commission to review such signs.
2. 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.
3. The PUD revision proposal shall comply with comments listed above from Metro Public Works.
4. If the PUD final site plan or final plat indicates that there is less acreage than what is shown on the approved preliminary plan, the final site plan shall be appropriately adjusted to show the actual total acreage, which may require that the total number of dwelling units or total floor area be reduced.
5. Prior to any additional development applications for this property, and in no event later than 120 days after the effective date of the enacting ordinance, the applicant shall provide the Planning Department with a corrected copy of the preliminary PUD plan. If a corrected copy of the preliminary PUD plan incorporating the conditions of approval therein is not provided to the Planning Department within 120 days of the effective date of the enacting ordinance, then the corrected copy of the preliminary PUD plan shall be presented to the Metro Council as an amendment to this PUD ordinance prior to approval of any grading, clearing, grubbing, final site plan, or any other development application for the property.

H. COMMUNITY PLAN POLICY CHANGES AND ASSOCIATED CASES

No Cases on this Agenda

I. RECOMMENDATIONS TO METRO COUNCIL

Zoning Text Amendments

4. 2012Z-001TX-001

NON-CONFORMING USES AND STRUCTURES: NATURAL DISASTERS

Staff Reviewer: Jennifer Regen

A request to amend the Metro Zoning Code, Chapter 17.40 (Administration and Procedures) regarding the period of inactivity for nonconforming uses and nonconforming structures damaged by a natural disaster or event where persons or businesses receive major disaster assistance from the federal and/or state government, requested by Councilmember Duane Dominy.

Staff Recommendation: APPROVE WITH AMENDMENTS

APPLICANT REQUEST

Modify Zoning Code regulations for legally nonconforming uses and the structures containing them to be consistent with state law.

ZONING TEXT AMENDMENT

A request to amend Title 17 of the Metro Zoning Code, to clarify the status and review of legally nonconforming uses and the structures containing a nonconforming use within Davidson County.

CRITICAL PLANNING GOALS

N/A

Note to Reader: Wherever the word “nonconforming” appears in this staff report, it refers to a legally grandfathered land use or structure. Meaning, a use or structure that has received Metro Government approval in the past.

STATE LAW

Tennessee Code Annotated (TCA) Section 13-7-208 affords certain protections to “industrial, commercial or business establishments” and multi-family residential establishments that legally exist at the time of a zoning change. TCA provides no protection to legally nonconforming single-family or two-family dwellings. A business is classified as a “nonconforming use” when the zoning on the property changes, and the new zoning district does not allow the current land use on the property.

Under state law, a nonconforming land use is allowed to remain on a property until it is intentionally and voluntarily abandoned by the property owner for 30 continuous months of ceased operations. Additionally, state law permits the 30 month clock to be stopped (“tolled”), if the property is in litigation, and in the case of a multi-family dwelling, a natural disaster or event significantly damages or destroys the property. Once a final order or judgment is rendered or the building/structure(s) rebuilt, then the toll no longer applies and the clock restarts. Clock begins measuring the period of ceased operations at the exact point where it stopped, prior to litigation being filed, or the involuntary disaster or event occurring.

EXISTING ZONING CODE

Nonconforming Business: The Zoning Code states that a business has 24 months or less to resume a nonconforming use on a property *where the business is not otherwise protected by the TCA*. There is only one business in Metro not protected by TCA, used auto sales with less than 250 feet of street frontage (add all street frontages together). Given TCA provides no protection, Metro’s Zoning Code applies. As stated above, if a business is not otherwise protected by TCA, then the nonconforming land use has 24 months to resume operations. Thus, if a property containing a nonconforming used auto sales business becomes vacant, the property owner has 24 months in which to reactivate that nonconforming land use. If the property owner fails to reactivate the nonconforming auto sales business within 24 months, it is thereafter subject to all provisions of the Zoning Code.

Nonconforming Single-Family Dwelling: TCA provides no protection to a single-family home located in a non-residential district. Hence, the Zoning Code allows a property owner one year from the date of damage to restore the dwelling based on the setbacks of the original dwelling.

Nonconforming Two-Family Dwelling: TCA provides no protection to a two-family home located in a RS zoning district. Hence, the

Zoning Code allows a property owner two years from the date of damage to restore the dwelling.

ANALYSIS OF PROPOSED BILL

Council Bill BL2012-92 revises the Zoning Code to ensure compliance with TCA Section 13-7-208 and to address structures containing nonconforming uses damaged or destroyed by a natural disaster. This bill recognizes the difficulties many businesses had with the May 2010 flood event to resume operations within a 24 month or 30 month timeframe.

Right now, a nonconforming business, except used auto sales, damaged by flood, tornado, earthquake, landslide, ice, or severe weather only has 30 months in which to resume operations. Depending on their location, a used auto sales business has between 24 to 30 months to resume operations, and a residence has between 12 to 24 months to rebuild. In addition, when a property is the subject of litigation between different parties, including family members, the active use of the property can be prevented from resuming within the 30-month window. Recognizing 30 months may not be sufficient time to rebuild or reactivate a use, the bill adds a measure that would "stop the clock" (toll) while the property is significantly damaged and being repaired or in litigation. In addition, the text amendment makes it easier to administer and enforce the Zoning Code. All businesses would have a 30 month window to reactivate a nonconforming land use or to rebuild a structure containing a nonconforming use.

Litigation Events

The proposed bill complies with state law.

- In the event a property is the subject of litigation, as with state law, the bill proposes the 30 month clock toll (stop) for reactivation of the nonconforming land use during litigation.
- Once a final order or judgment is rendered by a court, then the toll no longer applies and the clock restarts. Clock begins measuring the period of ceased operations at the exact point where it stopped, prior to litigation being filed.

Staff Concerns: None. While litigation can go on for a number of years between parties, eventually there is a time where it ends. *Staff supports this provision.*

Disaster or Events

The proposed bill complies with state law.

- A property owner's 30 months to reactivate a land use would toll (stop), if the property was significantly damaged or destroyed by a natural disaster.
- The toll provision applies during the time period a property is significantly damaged or destroyed.
- A natural disaster is an event of such magnitude as to warrant major disaster assistance from the federal and/or state government.
- A property owner has 30 months to rebuild a structure containing a nonconforming use.
- In the event of a flood, where federal and/or state assistance is declared, the bill proposes a property owner have 60 months to rebuild a structure containing a nonconforming use

Note: The Metro Council Office legal counsel has informed planning staff the "60 month" provision will be amended by the sponsors to apply to all disasters not just flood events, where federal and/or state assistance is declared.

Declaration of Assistance

The bill proposes tolling of a nonconforming land use when a natural disaster or event occurs **and** federal and/or state assistance is declared. As written, a property's nonconforming land use could be tolled indefinitely due to such a disaster or event. The bill does not establish a maximum period of time a nonconforming land use can remain inactive due to damage sustained by such a disaster or event.

Staff Concerns:

- A property owner should not be allowed an indefinite period of time to reactivate a nonconforming land use.
- A maximum period of inactivity of a nonconforming land use should be established.
- A property owner should be allowed 60 months to reactivate a nonconforming land use from the date of damage.
- After 60 months has passed from the date of damage, the property should be subject to all provisions of the Zoning Code.
- *Staff supports this provision with an amendment below.*

No Declaration of Assistance

A common situation the bill does not address is an involuntary disaster where a federal and/or state declaration of assistance is not made. According to the Mayor's Office of Emergency Management website, Nashville has had only seven federal disaster declarations in 20 years yet it has had 16 tornadoes since 1994. Also, Metro Stormwater has indicated significant rainfall events in Metro produce localized flooding on small streams, and consequently, some properties are damaged by the floodwaters. Not every tornado or flood event though has a declaration of assistance, yet the damage sustained by nonconforming businesses and residences can be equally devastating.

Staff Concerns:

- A property owner should not be penalized for sustaining damage or destruction by a natural disaster because no federal and/or state assistance was declared.
- All involuntary disasters or events impact a business and/or family similarly.
- A property owner in this situation should be allowed the same amount of time to reactivate a nonconforming land use, or to rebuild a structure containing a nonconforming use, as allowed for disasters with assistance declared.
- *Staff recommends all involuntary disasters or events be treated alike with amendment below.*

Single-Family Dwelling in Non-Residential District

No change to existing regulations except if property damaged by flood. A single-family home would continue to have 12 months to rebuild from date of voluntary or involuntary damage, except if property damaged by flood. In the event of a flood, where a declaration of federal and/or state assistance is made, bill proposes property owner have 60 months to rebuild. *Staff recommends all structures containing a nonconforming land use that are involuntarily damaged or destroyed be treated alike with amendment below.*

Two-Family Dwelling in "RS" District

No change to existing regulations except if property damaged by flood. All two-family homes in a RS zoning district would continue to have 24 months to rebuild from date of voluntary or involuntary damage, except if property damaged by flood. In the event of a flood, where a declaration of federal and/or state assistance is made, bill proposes property owner have 60 months to rebuild. *Staff recommends all structures containing a nonconforming land use that are involuntarily damaged or destroyed be treated alike with amendment below.*

Proposed Bill with Staff Amendments (in bold)

Section 17.40.650.B

Inactivity of a Nonconforming Use

B. *Inactivity of a Nonconforming Use.* When a nonconforming use has been inactive for a period of thirty continuous months, the land and its associated improvements shall thereafter be used only in accordance with the provisions of this title. An intent to resume activity shall not qualify the property for a continuation of the nonconforming use. For the purposes of this subsection, the thirty month period of continuous ceased operation shall be tolled by:

1. The period in which an establishment is party to any action in a court of competent jurisdiction regarding the use of the property until such time that a final settlement, order, decree, or judgment has been rendered.
2. The period in which a property is significantly damaged by a disaster or event for which President of the United States and/or Governor of the State of Tennessee has determined that such disaster or event caused damage of sufficient severity and magnitude within the area of the Metropolitan Government to warrant major disaster assistance from the federal and/or state government, **but in no event shall the period of inactivity exceed sixty months from the date of damage, otherwise it shall no longer be considered a nonconforming use.**
3. **The period in which a property is significantly damaged by an involuntary disaster or event for which no federal and/or state declaration of major disaster assistance is made as provided in Section 17.40.650.B.2, but in no event shall the period of inactivity exceed sixty months from the date of damage, otherwise it shall no longer be considered a nonconforming use. The Zoning Administrator shall have the authority to determine whether such disaster or event caused damage of sufficient severity and magnitude to qualify for the tolling of the thirty month period of continuous ceased operation based on evidence provided by the property owner regarding weather damage that was reported to, and documented by, the National Weather Service, Metro's Emergency Management Office, U.S. Small Business Administration (SBA), Federal Emergency Management Agency (FEMA), and/or Tennessee Emergency Management Agency (TEMA).**

Proposed Bill with Staff Amendments (in bold)

Section 17.40.650.E

Damage or Destruction of a Structure Containing a Nonconforming Use

5. Nonconforming use structures damaged or destroyed by flood **an involuntary disaster or event.**
 - a. Notwithstanding the foregoing, a structure containing an industrial, commercial, business, or residential nonconforming use that was damaged by a disaster or event for which the President of the United States and/or Governor of the State of Tennessee has determined that such disaster or event caused damage of sufficient severity and magnitude within the area of the Metropolitan Government to warrant major disaster assistance from the federal and/or state government may be restored within sixty months **from the date of damage**, regardless of percentage of damage or destruction, **otherwise the structure shall be subject to all provisions of the Zoning Code.**
 - b. **Notwithstanding the foregoing, a structure containing an industrial, commercial, business, or residential nonconforming use that was involuntarily damaged by a disaster or event not covered by Section 17.40.650.E.5a, and where the Zoning Administrator has made a determination as to whether such disaster or event caused damage of sufficient severity and magnitude as provided in Section 17.40.650.B.3, a structure may be restored within sixty months from the date of damage, regardless of percentage of damage or destruction, otherwise the structure shall be subject to all provisions of the Zoning Code.**

METRO HISTORIC COMMISSION RECOMMENDATION

Approve

METRO CODES ADMINISTRATION RECOMMENDATION

Approve with proposed staff amendments

PUBLIC WORKS RECOMMENDATION

N/A Not required for this project.

STAFF RECOMMENDATION

Staff recommends approval of Council Bill BL2012-92 with the proposed staff amendments. This bill recognizes the difficulties many nonconforming businesses and residences had with rebuilding and/or resuming operations after the May 2010 flood event. Extrapolating from that experience, the bill seeks to ensure properties significantly damaged or destroyed due to an involuntary disaster, have more time to reactivate a nonconforming land use or rebuild a structure containing a nonconforming use. The bill also recognizes litigation can occur between different parties, including family members, which can prevent activity being resumed on a property within the required period of time. Additionally, the text amendment makes it easier to administer and enforce the Zoning Code.

ORDINANCE NO. BL2012-92

An Ordinance amending Chapter 17.40 of the Metropolitan Code relative to the period of inactivity for nonconforming uses and for nonconforming structures damaged by a disaster, all of which is more particularly described herein (Proposal No. 2012Z-001TX-001).

WHEREAS, the Metropolitan Council recognizes that Tennessee Code Annotated § 13-7-208 provides certain protections for nonconforming uses; and

WHEREAS, those protections include allowing nonconforming commercial and industrial properties to cease to operate for up to 30 continuous months before being required to comply with new zoning laws, and tolls the 30-month provision while the use of the property is the subject matter of litigation; and

WHEREAS, the Metropolitan Zoning Code currently does not reflect this 30 month protection nor the tolling during litigation; and

WHEREAS, the historic rain event of May 1 and 2 of 2010 caused widespread flooding and land movement displacing families and destroying homes and businesses; and

WHEREAS, the Metropolitan Zoning Code does not include any protections for nonconforming residences and businesses that were damaged during the flood and remain uninhabitable; and

WHEREAS, the Metropolitan Council desires to amend the Zoning Code to include these state law protections for commercial/industrial properties, as well as add protections for nonconforming properties that were flooded.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That Title 17 of the Code of The Metropolitan Government of Nashville and Davidson County, Zoning Regulations, is hereby amended by amending Section 17.40.650 by deleting subsection B. and replacing it with the following subsection B:

“B. Inactivity of a Nonconforming Use. When a nonconforming use has been inactive for a period of thirty continuous months, the land and its associated improvements shall thereafter be used only in accordance with the provisions of this title. An intent to resume activity shall not qualify the property for a continuation of the nonconforming use. For the purposes of this subsection, the thirty month period of continuous ceased operation shall be tolled by:

1. The period in which an establishment is party to any action in a court of competent jurisdiction regarding the use of the property until such time that a final settlement, order, decree, or judgment has been rendered.
2. The period in which a property is significantly damaged by a disaster or event for which President of the United States and/or Governor of the State of Tennessee has determined that such disaster or event caused damage of sufficient severity and magnitude within the area of the Metropolitan Government to warrant major disaster assistance from the federal and/or state government.”

Section 2. That Title 17 of the Code of The Metropolitan Government of Nashville and Davidson County, Zoning Regulations, is hereby amended by amending subsection E. of Section 17.40.650 by adding the following provision at the end thereof:

“5. Nonconforming use structures damaged or destroyed by flood. Notwithstanding the foregoing, a structure containing an industrial, commercial, business, or residential nonconforming use that was damaged by a disaster or event for which the President of the United States and/or Governor of the State of Tennessee has determined that such disaster or event caused damage of sufficient severity and magnitude within the area of the Metropolitan Government to warrant major disaster assistance from the federal and/or state government may be restored within sixty months regardless of percentage of damage or destruction.”

Section 3. That this Ordinance shall take effect five (5) days from and after its passage and such change be published in a newspaper of general circulation, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

Sponsored by: Duane Dominy, Robert Duvall, Tony Tenpenny, Charlie Tygard

Approved with amendments. (9-0), Consent Agenda

Resolution No. RS2012-41

“BE IT RESOLVED by The Metropolitan Planning Commission that 2012Z-001TX-001 is **APPROVED WITH AMENDMENTS.**
(9-0)

The bill provides additional definition to time limits related to nonconforming uses and structures that are affected by natural disasters. The amendment will improve the administration and enforcement of the Zoning Code, and will align Metro standards with related Tennessee state regulations.”

J. PLANNING COMMISSION ACTIONS

Planned Unit Developments: final site plans

5. 68-87P-001

NORTHSIDE STATION

Map 069, Parcel(s) 235

Council District 01 (Lonnell Matthews, Jr.)

Staff Reviewer: Jason Swaggart

A request to revise the preliminary plan and for final site plan approval for a portion of the Northside Station Residential and Commercial Planned Unit Development Overlay District, located at Clarksville Pike (unnumbered), north of West Hamilton Avenue (6.93 acres), zoned RM15, to permit a revision to the layout for 66 multi-family units, where 66 multi-family units were previously approved, requested by T-Square Engineering, applicant, for Quality Properties Asset Management Co., owner.

Staff Recommendation: APPROVE WITH CONDITIONS including Public Works conditions included in the staff report and updated Stormwater conditions.

APPLICANT REQUEST

Revise preliminary and final site plan to permit 66 multi-family units.

Revision to preliminary and final site plan

A request to revise the preliminary plan and for final site plan approval for a portion of the Northside Station Residential and Commercial Planned Unit Development Overlay District, located at Clarksville Pike (unnumbered), north of West Hamilton Avenue (6.93 acres), zoned Multi-Family (RM15), to permit a revision to the layout for 66 multi-family units, where 66 multi-family units were previously approved.

Existing Zoning

RM15 is intended for single-family, duplex, and multi-family dwellings at a density of 15 dwelling units per acre. A maximum of 103 units is permitted on this site under the RM15 zoning district (15 units x 6.93 acres).

CRITICAL PLANNING GOALS

The proposed housing is adjacent to commercial uses including a grocery store, and is also near a bus line that runs along Clarksville Pike. The close proximity to commercial and transit will foster a walkable community as well as provide alternative transportation choices. The proposal will provide a range in housing choices which creates a distinct community and provides housing for different segments of the population.

PLAN DETAILS

The Northside Station PUD was originally approved in 1987 for various commercial uses. In 2007, Metro Council approved an amendment on this portion of the PUD to allow for 66 multi-family units. The 66 units consisted of 39 attached townhome type units, 19 detached townhome type units and eight duplex type units. The property is located behind the Kroger shopping center on Clarksville Pike and is currently vacant. The current request revises the mix of unit types and revises the layout of the units to address a condition in the Council Bill:

“Upon submittal of the final PUD, any changes from the preliminary plan that were made to address Public Works and Fire Marshal’s concerns listed above may be considered as a revision as long as the overall concept is the same and there is no increase in the total number of units.”

The site plan calls for 66 multi-family units for a density of a little over nine units per acre. Three unit types are proposed. Type A consists of eight detached units that front onto open space. Type B consists of 50 attached units similar to townhomes that front onto an internal open space. Type C consists of eight attached units similar to duplexes.

Vehicular access will be from Clarksville Pike through the Kroger parking lot. All roadways in the development will be private. An access easement is provided through the Kroger site from Clarksville Pike to this property. A total of 165 parking spaces is shown and is consistent with zoning requirements. Sidewalks are provided throughout the development and will provide for safe and convenient pedestrian movement.

A Type B landscape buffer yard is proposed along the northern and eastern property line and is consistent with Zoning Code requirements.

STAFF ANALYSIS

As proposed, there are no issues with this proposal. The request meets all Zoning Code requirements and is consistent with the concept of the Council approved plan and does not increase the density over the density approved by Council.

STORMWATER RECOMMENDATION

Stormwater plans are still under review.

PUBLIC WORKS RECOMMENDATION

1. The developer's construction drawings shall comply with the design regulations established by the Department of Public Works. Final design may vary based on field conditions.
2. Record and reference on the plans the permanent access easement to Clarksville Pike.

STAFF RECOMMENDATION

Staff recommends that the request be disapproved unless Stormwater approves plans prior to the February 9, 2012, Planning Commission meeting. If plans are approved by Stormwater prior to the meeting, then staff recommends approval with conditions as the request meets all zoning requirements and is consistent with the concept of the Council approved plan.

CONDITIONS

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

Mr. Swaggart presented the staff recommendation of approval with conditions.

Mr. Clifton out at 5:24 p.m.

David Kleinfelter, 424 Church Street, spoke in support of the proposal, stating that this property is not in nor does it abut the floodplain.

Tim Turner, 2558 Nashville Hwy, spoke in support of the proposal and clarified that all concerns from Public Works, Stormwater, and the Fire Marshall have been addressed.

Chris Utley, 3822 Hydes Ferry Road, spoke against the proposal, stating concerns with water retention, traffic issues, and would like to see the neighborhood concerns addressed.

David Kleinfelter clarified that this property is not in the flood plain and all construction access will be through a private drive.

Paul Widman, 2031 River Road, Louisville, KY, spoke in support of this proposal and stated that construction of this project will create over 100 jobs in the next 1.5 years.

Dr. Cummings moved and Mr. Ponder seconded the motion to close the Public Hearing. (8-0)

Dr. Cummings stated that this community needs to be developed, needs more rooftops. She stated excitement for this project, but would like to see the developer meet with the community as their input is very important.

Mr. Ponder stated that this plan looks much better than the previous plan.

Councilmember Claiborne spoke in support of the proposal and asked the developer to make sure and meet with the community.

Ms. LeQuire encouraged the Councilmember and the developer to meet with the community members.

Mr. Adkins stated that this looks like a better plan; noted that it is important to seek advice and help from the community.

Mr. Gee moved and Dr. Cummings seconded the motion to approve staff recommendation. (8-0)

Resolution No. RS2012-42

"BE IT RESOLVED by The Metropolitan Planning Commission that 68-87P-001 is **APPROVED WITH CONDITIONS, including Public Works conditions included in the staff report and updated Stormwater conditions. (8-0)**

Stormwater Conditions:

1. Please submit the Grading Permit fee of \$1,095 made payable to Metro Water Services.
2. Provide copy of NOC and sign and date the NOC note on the plans and show permit number.
3. Provide owner's email address.
4. Please provide a drainage area map showing pre and post areas and flow patterns.
5. The hydraflow report shows that detention is not being met at either outfall (onsite pond outfall and regional pond outfall). Please revise.
6. The pond report for the onsite detention pond does not match the detail of the outlet structure shown on the plan. A 7" diameter low flow orifice is modeled in the pond report but the detail shows a 4" diameter opening. The invert elevation of the 20 degree V-notch weir is modeled as 434.00 but is shown as 429.75 on the detail.
7. The detail of the outlet control structure needs to show the dimensions of the riser structure.
8. Please show detail of the emergency spillway.
9. The low flow orifice sizing design calculations need to be corrected. The maximum diameter opening for a 24-hour drawdown time should be 2 inches.
10. The existing regional detention pond must meet the current requirements for a dry pond in accordance with PTP-06 in order for the pond to receive credit of removing 60% of TSS. Please provide water quality volume and low flow orifice sizing design calculations for the existing regional pond.

Conditions of Approval:

1. Prior to the issuance of any permits, confirmation of PUD final site plan approval of this proposal shall be forwarded to the Planning Commission by the Stormwater Management division of Water Services.
2. Prior to the issuance of any permits, confirmation of PUD final site plan approval of this proposal shall be forwarded to the Planning Commission by the Traffic Engineering Sections of the Metro Department of Public Works for all improvements within public rights of way.
3. This approval does not include any signs. Signs in planned unit developments must be approved by the Metro Department of Codes Administration except in specific instances when the Metro Council directs the Metro Planning Commission to review such signs.
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6. The PUD final site plan as approved by the Planning Commission will be used by the Department of Codes Administration to determine compliance, both in the issuance of permits for construction and field inspection. Significant deviation from these plans may require reapproval by the Planning Commission and/or Metro Council.
8. 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."

Subdivision: Final Plats

6. 2012S-019-001

BEAUMONT PLACE, RESUBDIVISION

Map 083-06, Parcel(s) 127

Council District 06 (Peter Westerholm)

Staff Reviewer: Brenda Bernards

A request for final plat approval to create two lots on property located at 215 Manchester Avenue, at the southwest corner of Manchester Avenue and Benjamin Street, zoned R6 (0.24 acres), requested by Tammi Rhoton, owner, Campbell, McRae & Associates Surveying, Inc., surveyor.

Staff Recommendation: DEFER or DISAPPROVE

The Metropolitan Planning Commission DEFERRED 2012S-019-001 to the March 8, 2012, Planning Commission meeting. (9-0)

K. OTHER BUSINESS

7. Historic Zoning Commission Report
8. Board of Parks and Recreation Report
9. Executive Committee Report
10. Executive Director Report
11. Legislative Update

L. MPC CALENDAR OF UPCOMING MATTERS

February 9, 2012

MPC Meeting

4pm, 700 Second Ave. South, Howard Office Building, Sonny West Conference Center

February 23, 2012

MPC Meeting

4pm, 700 Second Ave. South, Howard Office Building, Sonny West Conference Center

March 8, 2012

MPC Meeting

4pm, 700 Second Ave. South, Howard Office Building, Sonny West Conference Center

M. ADJOURNMENT

The meeting was adjourned at 5:58 p.m.

Chairman

Secretary