

DOCKET

2/6/2020

**METROPOLITAN BOARD OF ZONING APPEALS
P O BOX 196300
METRO OFFICE BUILDING
NASHVILLE, TENNESSEE 37219-6300**

**Meeting held at the Metropolitan Board of Education
located at 2601 Bransford Avenue**

**MS. ASHONTI DAVIS
MS. CHRISTINA KARPYNEC
MR. ROSS PEPPER, Vice-Chair
MS. ALMA SANFORD
MR. DAVID TAYLOR, Chairman
MR. TOM LAWLESS**

CASE 2019-478 (Council District - 1)

COCHRUM, ROBERT G, appellant and **COCHRUM, ROBERT G**, owner of the property located at **650 PUTNAM DR**, requesting a variance from front street setback requirements in the RS15 District, to construct a porch on existing single-family residence. Referred to the Board under Section 17.12.030. The appellant alleged the Board would have jurisdiction under Section 17.40.180 B.

Use-Single Family

Map Parcel 05811019500

RESULT -

CASE 2020-004 (Council District - 11)

THE OLD HICKORY NO-TOWER COMMISION, appellant, requesting an Item A appeal challenging the issuance of building permit 2019044881 for a telecommunication tower at the property located at **4321 OLD HICKORY BLVD** in the R15 District. Referred to the Board under Section 17.40.010. The appellant alleged the Board would have jurisdiction under Section 17.40.180 A.

Use-Telecommunication facility

Map Parcel 06400010400

RESULT -

CASE 2020-005 (Council District - 16)

LOPEZ, ROLANDO M., appellant and owner of the property located at **104 DESOTO DR**, requesting variances from side setback, rear setback, and building coverage restrictions in the RS10 District, to maintain two existing sheds and one existing carport. Referred to the Board under Section 17.12.020.A, 17.12.040.E.1.b, 17.12.050.A. The appellant alleged the Board would have jurisdiction under Section 17.40.180 B.

Use-Single Family

Map Parcel 11903000900

RESULT -

CASE 2020-024 (Council District - 17)

BAIRD GRAHAM, appellant and **LONE OAK PROPERTIES, LLC**, owner of the property located at **1033 WEDGEWOOD AVE 6**, requesting variances from step back, height in the build-to-zone, maximum height, primary entrance location, glazing and building frontage requirements in the RM20-A District, to complete the sixth unit in a 6-unit building. Referred to the Board under Section 17.12.020.D and 17.12.020.D notes 3.c, 3.g, and 3.h.ii. The appellant alleged the Board would have jurisdiction under Section 17.40.180 B.

Use-Commercial

Map Parcel 105092I00100CO

RESULT -

CASE 2020-026 (Council District - 19)

FARD, ASAD NARANGI & HAGHNEGAHDAR, AMIR appellants and owners of the property located at **1533 ARTHUR AVE**, requesting a variance from driveway requirements in the R6-A District, to construct a single-family residence. Referred to the Board under Section 17.12.020. The appellant alleged the Board would have jurisdiction under Section 17.40.180 B.

Use-Single Family

Map Parcel 08112025700

RESULT -

CASE 2020-028 (Council District - 21)

VERLERIA BRIDGES, appellant and **ATTAR, JIM A.**, owner of the property located at **2618 BUCHANAN ST**, requesting a special exception in the RS5 District, to use a residential space for a fellowship hall. Referred to the Board under Section 17.16.170.E.3. The appellant alleged the Board would have jurisdiction under Section 17.40.180 C.

Use-Religious Institution

Map Parcel 08106016800

RESULT -

CASE 2020-030 (Council District - 18)

CUMMINGS, ROBERT H., JR. ET UX, owner of the property located at **523 CHESTERFIELD AVE**, requesting a variance from front setback requirements in the RM20 District, to construct a detached accessory dwelling unit. Referred to the Board under Section 17.12.030.A. The appellant alleged the Board would have jurisdiction under Section 17.40.180 B.

Use-Detached Accessory Dwelling Unit

Map Parcel 10414000900

RESULT -

CASE 2020-031 (Council District - 23)

TERRY, ROBERT J. & PATRICK W., appellants and owners of property located at **841 CLEMATIS DR**, requesting a variance from street setback requirements in the RS15 District, to construct an addition to a single-family residence. Referred to the Board under Section 17.12.030.C. The appellant alleged the Board would have jurisdiction under Section 17.40.180 B.

Use-Single Family

Map Parcel 10214006000

RESULT -

CASE 2020-032 (Council District - 26)

LIND, JON & RAMSEY, TERRI L., appellants and owners of the property located at **4810 BRIARWOOD DR**, requesting a variance from front setback requirements in the RS10 District, to construct a front porch addition. Referred to the Board under Section 17.12.030. The appellant alleged the Board would have jurisdiction under Section 17.40.180 B.

Use-Single Family

Map Parcel 14604008900

RESULT -

CASE 2020-036 (Council District - 8)

PAUL BOULIFARD, appellant and **BLUE HERON HOLDINGS, LLC**, owner of the property located at **906 HART LN**, requesting a variance from distance requirements in the IR District, to open an animal boarding facility. Referred to the Board under Section 17.16.070.B.1. The appellant alleged the Board would have jurisdiction under Section 17.40.180 B.

Use-Animal Boarding Facility

Map Parcel 07202006800

RESULT –

CASE 2020-037 (Council District - 7)

SCOTT MORTON, appellant and **BD. TRS. EASTMINSTER PRES. CH.**, owner of the property located at **3928, 3930 & 3932 GALLATIN PIKE**, requesting variances from parking and build to zone requirements in the MUL-A District, to construct an office building. Referred to the Board under Section 17.12.020.D and 17.20.030. The appellant alleged the Board would have jurisdiction under Section 17.40.180 B.

Use-Office Map Parcel 06115022700

RESULT - Map Parcel 06115016200

Map Parcel 06115016300

CASE 2020-038 (Council District - 19)

SCOTT MORTON, appellant and **14TH AVENUE NORTH, LLC**, owner of the property located at **806 16TH AVE N**, requesting special exceptions for height and step-back requirements in the MUL-A, UZO District, to construct a multi-family unit. Referred to the Board under Section 17.12.020.D. The appellant alleged the Board would have jurisdiction under Section 17.40.180 C.

Use-Multi-family Map Parcel 09204031800

RESULT – Deferred 2/20/20

CASE 2020-039 (Council District - 1)

SCOTT MORTON, appellant and **VILLALOBOS, AMANDA TARASA**, owner of the property located at **3804 FAIRVIEW DR**, requesting a variance from sidewalk requirements in the RS15 District, to construct a single-family residence without building sidewalks or paying into the sidewalk fund. Referred to the Board under Section 17.20.120. The appellant alleged the Board would have jurisdiction under Section 17.40.180 B.

Use-Single Family Map Parcel 06904000300

RESULT -

CASE 2020-040 (Council District - 21)

AZIZ ASHROV, appellant and **HILL, RICHARD**, owner of the property located at **823 & 825 21ST AVE N**, requesting variances from rear setback requirements in the RM20, UZO District, to construct two single family residences. Referred to the Board under Section 17.12.020.A. The appellant alleged the Board would have jurisdiction under Section 17.40.180 B.

Use-Single Family

Map Parcel 09207014000

RESULT -

Map Parcel 09207013900

CASE 2020-042 (Council District - 11)

ELMINGTON CAPITAL GROUP, appellant and **MDHA**, owner of the property located at **415 CREEDMORE DR**, requesting a variance from side setback variance in the R10 District, to permit an existing single-family residence. Referred to the Board under Section 17.12.020.A. The appellant alleged the Board would have jurisdiction under Section 17.40.180 B.

Use-Single Family

Map Parcel 044140D01100CO

RESULT -

CASE 2020-043 (Council District - 24)

NORTON, JAMESON K. & ANNA K., appellants and owners of the property located at **905 WILSON BLVD**, requesting a variance from setback requirements in the RS15 District, to construct an attached garage. Referred to the Board under Section 17.12.020z A. The appellant alleged the Board would have jurisdiction under Section 17.40.180 B.

Use-Single Family

Map Parcel 11608014100

RESULT -

SHORT TERM RENTAL CASES TO BE HEARD

CASE 2020-029 (Council District - 10)

GLENN SMITH, appellant and owner of the property located at **208 NORTHSIDE DR**, requesting an Item A appeal, challenging the zoning administrator's denial of a short-term rental permit. Appellant operated after the issued STRP permit expired in the RS40 District. Referred to the Board under Section 17.16.250.E. The appellant alleged the Board would have jurisdiction under Section 17.40.180 A.

Use-Short Term Rental

Map Parcel 02615001400

RESULT –

CASE 2020-033 (Council District - 23)

SHADBURNE, JAMES E. & JULIE A., appellant and owner of the property located at **979 WINDROWE DR**, requesting an Item A appeal, challenging the zoning administrator's denial of a short-term rental permit. Appellant operated prior to obtaining the legally required short term rental permit in the RS40 District. Referred to the Board under Section 17.16.250 E. The appellant alleged the Board would have jurisdiction under Section 17.40.180 B.

Use-Short Term Rental

Map Parcel 11506000300

RESULT –

Metropolitan Board of Zoning Appeals

Metro Howard Building
800 Second Avenue South
Nashville, Tennessee 37210



Appellant : ROB COCHRUM
Property Owner: ROBERT COCHRUM
Representative: ROB COCHRUM

Date: 09/27/19
Case #: 2019- 478
Map & Parcel: 05811019500

Council District 01

The undersigned hereby appeals from the decision of the Zoning Administrator, wherein a Zoning Permit/Certificate of Zoning Compliance was refused:

Purpose:

VARIANCE REQUEST FROM CONTEXTUAL STREET/FRONT
SETBACK TO LOCATE A COVERED FRONT PORCH.

Activity Type:

VARIANCE

Location:

FRONT OF EXISTING SINGLE-FAMILY STRUCTURE

This property is in the RS15 Zone District, in accordance with plans, application and all data heretofore filed with the Zoning Administrator, all of which are attached and made a part of this appeal. Said Zoning Permit/Certificate of Zoning Compliance was denied for the reason:

Reason:

PROPOSED ADDITION LIKELY LOCATED IN REQUIRED SETBACK

Section(s):

17.12.030 (C)(3)

Based on powers and jurisdiction of the Board of Zoning Appeals as set out in Section 17.40.180 Subsection B Of the Metropolitan Zoning Ordinance, a Variance, Special Exception, or Modification to Non-Conforming uses or structures is here by requested in the above requirement as applied to this property.

ROBBIE COCHRUM
Appellant Name (Please Print)

SAME
Representative Name (Please Print)

650 PURAM DR
Address

SAME
Address

NASHVILLE, TN 37218
City, State, Zip Code

SAME
City, State, Zip Code

615-495-3105
Phone Number

SAME
Phone Number

R.COCHRUM@YAHOO.COM
Email

SAME
Email

Zoning Examiner: DAVID D-B

Appeal Fee: \$ 100.00



**Metropolitan Government
of Nashville and Davidson County, Tennessee
Department of Codes and Building Safety
800 Second Avenue South, Nashville, TN 37210**



3716930

**ZONING BOARD APPEAL / CAAZ - 20190059090
Inspection Checklist for Use and Occupancy
This is not a Use and Occupancy Notification**

PARCEL: 05811019500**APPLICATION DATE:** 09/27/2019**SITE ADDRESS:**

650 PUTNAM DR NASHVILLE, TN 37218

LOT 0187 SECT 0003 ROYAL HILLS

PARCEL OWNER: COCHRUM, ROBERT G**CONTRACTOR:****APPLICANT:****PURPOSE:**

Applicant seeks to construct 8' x 15' (120 sq. ft.) front porch to existing single-family residential structure. Variance request from 17.12.030(C)(3) contextual street/front setback.

*Before a Use and Occupancy Letter can be issued for this project, the following approvals are required.
Inspections Foundation = before concrete poured, Framing = before covering wall and after rough-in inspections.*

There are currently no required inspections

Inspection requirements may change due to changes during construction.



**Metropolitan Government
of Nashville and Davidson County, Tennessee
Department of Codes and Building Safety
800 Second Avenue South, Nashville, TN 37210**



3716885

**APPLICATION FOR BUILDING RESIDENTIAL - ADDITION / CARA - T2019059054
THIS IS NOT A PERMIT**

PARCEL: 05811019500

APPLICATION DATE: 09/27/2019

SITE ADDRESS:

650 PUTNAM DR NASHVILLE, TN 37218
LOT 0187 SECT 0003 ROYAL HILLS

PARCEL OWNER: COCHRUM, ROBERT G

APPLICANT: SELF CONTRACTOR RESIDENTIAL (SEE
APPLICANT INFORMATION)
Robbie Cochrum
, 615-495-3105

PURPOSE:

Construct 8'x 15' covered front porch addition to existing single-family structure. Will include porch light. Required front/street setback TO BE DETERMINED based on contextual or variance, if granted. POC: Robbie Cochrum, 615-495-3105. Applicant applied for a self-permit and will act as his/her own general contractor with full responsibility for code compliance, for hiring and employing individuals and subcontractors, and with ultimate responsibility for his/her own work and for the work of others. Acting as his/her general contractor, applicant may forfeit certain protections which might be available to him/her through the State of Tennessee general contractor's licensing process. Applicant, as a self-build permit holder, is further responsible for requesting all required inspections and completing all authorized work in compliance with applicable adopted codes. Separate permits are required for any electrical, plumbing and gas/mechanical work and are not part of the building permit. No construction and demolition waste will be stored on the property and such waste shall be disposed of in a clean and sanitary manner by placing it in approved containers and having such waste discarded at an approved landfill. Signage must be posted pursuant to M.C.L. 16.28.230, including project information signs, which shall be posted in English and Spanish with one double-sided 24" (vertical) x 36" (horizontal) sign posted for every fifty feet of site frontage, with no more than three signs required per street frontage.

*Before a building permit can be issued for this project, the following approvals are required.
The Applicant is responsible for providing any plans or other information to the individual agencies*

[A] Site Plan Review		
[A] Zoning Review	PENDING	615-862-6510
[A] Zoning Review		
CA - Zoning Sidewalk Requirement Review	SWNOTREQD	615-862-6510
[B] Fire Life Safety Review On Bldg App		615-862-5230
[B] Fire Sprinkler Requirement		615-862-5230
[G] Bond & License Review On Bldg App		
[C] Flood Plain Review On Bldg App		615-862-7225 mws.stormdr@nashville.gov
[D] Grading Plan Review For Bldg App		615-862-7225 mws.stormdr@nashville.gov

APPLICATION FOR A VARIANCE REQUEST

After your appeal is filed, Zoning staff will visit the site to take photographs for the Board members. So they will have a better ideal of the nature of your request. Zoning staff will notify the district council member of the hearing. **You will be responsible for preparing the envelopes and notices for mailing to the owners of property within 1,000 feet of the property at issue in the case. The envelopes must include the return address for the BZA and case number.** Fold and insert notices into envelopes, seal the envelopes, and apply first class postage. These neighbor notices must be delivered to Zoning staff at least twenty-three (23) days before the public hearing. Additionally, you will be responsible for purchasing, posting, and removing the red Zoning Appeal signs for the subject property. (See attached Metro Code of Laws requirements regarding, sign placement.)

The day of the public hearing, it will be your responsibility to convey to the Board the nature of the hardship in your request that makes it difficult/impossible for you to comply with the Zoning Code. **It would be to your benefit to let your neighbors know about your request prior to all notices being sent to them from our office.**

Any party can appeal the Board's decision to Chancery or Circuit Court within sixty (60) days from the date the order in the case is entered. **Should your request be granted, we would remind you that it is your responsibility to obtain the permit for which you have applied.** You should also be aware that you have two (2) years to obtain the permit or you would have to re-file your request with the board.

Once your request is filed, the staff will review your request to verify that the submittal is complete. Incomplete submittals will not be scheduled for hearing until complete.

Any correspondence to the Board must be submitted to our office by close of business, the Thursday prior to the public hearing to be included in the record.

I am aware that I am responsible for posting and also removing the sign(s) after the public hearing.

Robtino Cochran

APPELLANT

9-27-19

DATE

Standards for a Variance

The Metropolitan Board of Zoning Appeals may grant variances from the strict application of the provisions of the Zoning Code based upon findings of fact related to the standards in section 17.40.370. This Section is included as follows:

Physical Characteristics of the property- The exceptional narrowness, shallowness or shape of a specific piece of property, exceptional topographic condition, or other extraordinary and exceptional condition of such property would result in peculiar and exceptional practical difficulties to, or exceptional or undue hardship upon the owners of such property.

Unique characteristics- *The specific conditions cited are unique to the subject property and generally not prevalent to other properties in the general area.*

Hardship not self-imposed- The alleged difficulty or hardship has not been created by the previous actions of any person having an interest in the property after date of Zoning Code.

Financial gain not only bases- Financial gain is not the sole basis for granting the variance.

No injury to neighboring property- The granting of a variance will not be injurious to other property or improvements in the area, impair and adequate supply of light and air to adjacent property, or substantially diminish or impair property values within the area.

No harm to public welfare- *The granting of the variance will not be detrimental to the public welfare and will not substantially impair the intent and purpose of this Zoning Code.*

Integrity of Master Development Plan- *The granting of a variance will not compromise the design integrity or functional operation of activities or facilities within an approved Planned Unit Development.*

The Board shall not grant variances to the land use provisions of section 2.3, nor the density of Floor Area Ratio (FAR) standards of Tables 3-B and 2-C, nor the required size of residential lots approved by the Planning Commission under the authority of section 3.7 (Lot Averaging), section 3.8 (Cluster Lot Option) or Section 9. E.3 (PUD). Further the Board shall not act on a variance application within a Planned Unit Development (PUD), Urban Design Overlay or Institutional Overlay district without first considering a recommendation from the Planning Commission.

In Simple terms, for the Board to grant you a variance in the zoning ordinance, you must convey to the Board what your hardship is. Hardships are narrowness, shallowness, irregular shape, and topography of property. The Board can also consider other practical difficulties such as mature trees, easements, and location of disposal systems which can affect your plan. Consideration can be given to the characteristics of neighborhood and the way it is developed. One or more of these conditions must affect your inability to build or occupy the property to provide your case.

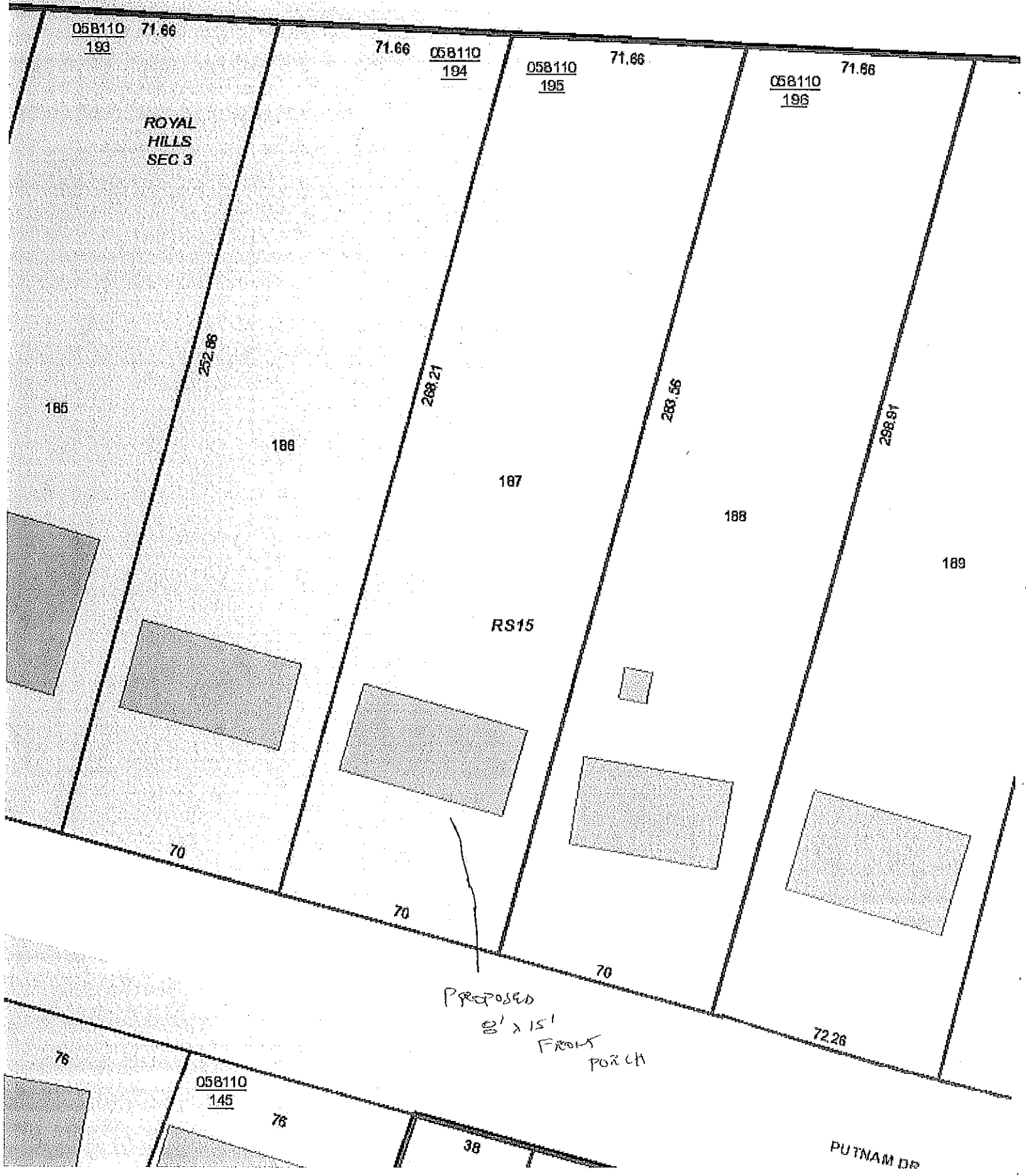
At the public hearing, please be prepared to tell the Board what your hardship is, why you cannot build in accordance with zoning without requesting a variance and why you feel you have legitimate hardship.

The Board cannot grant a variance based solely on inconvenience to the applicant or solely on a financial consideration. It is incumbent on you as the appellant to complete this form by conveying a **HARDSHIP** as outlined. At the meeting it is important that you explain this hardship as effectively as possible.

WHAT SPECIFIC AND UNIQUE CIRCUMSTANCES (HARDSHIP) EXIST THAT WOULD AUTHORIZE THE CONSIDERATION OF THE BOARD UNDER THE REVIEW STANDARDS AS OUTLINED?

As a new/First-time homebuyer, I was not aware ~~of~~ ^{the} many building codes necessary for adding to or renovating a home. That said, I bought the home fully expecting to be able to make changes and certain additions. It appears the front setback does not allow for me to build a porch on the front of the home. However, others have built porches in the same neighborhood due to their setback being more amenable than my own. This appears a bit arbitrary in some ways and was not mentioned ~~in~~ during the purchase of my home. Overall, the addition I want to build (porch) will only add value to the neighborhood, and only exceed the setback by a few feet. My neighbors are okay w/ this addition and I can provide verification of this. Further, a contractor has already been commissioned and materials bought that cannot be returned. A previous addition ~~was~~ has already been torn down in anticipation there would be no issues w/ this addition. Again, it will complement the home and neighborhood and provide no burden, ~~or~~ distinct safety concern, or dramatically different design than already exists within the neighborhood. Essentially, it appears I cannot build due to the irregular shape and topography of my property, rather than any major aesthetic, safety, or societal concern.

SP



SP



PUTNAM DR









Metropolitan Government
of Nashville and Davidson County, Tennessee
Department of Codes and Building Safety
800 Second Avenue South, Nashville, TN 37210



3695759

TELECOMMUNICATIONS PERMITS / CATC - 2019044881

Inspection Checklist for Use and Occupancy

This is not a Use and Occupancy Notification

PARCEL: 06400010400

APPLICATION DATE: 07/29/2019

SITE ADDRESS:

4321-A OLD-HICKORY-BLVD OLD-HICKORY, TN 37138
LOT 1 GRANWOOD VILLAGE

PARCEL OWNER: LEVOG

CONTRACTOR:

APPLICANT: EMPIRE CONTRACTING, LLC

EMPIRE CONTRACTING, LLC

68041 STHC-2

HUDSON, NC 28638 6786651097

PURPOSE:

PERMIT TO CONSTRUCT A NEW 140' CELL TOWER WITH 6' LIGHTNING ROD AND EQUIPMENT
CABINET/SHELTER/GENERATOR FOR SCI TOWERS... ..80' MINIMUM SIDE AND REAR SETBACK... ..NO ANTENNAS THIS
PERMIT.....

*Before a Use and Occupancy Letter can be issued for this project, the following approvals are required.
Inspections Foundation = before concrete poured, Framing = before covering wall and after rough-in inspections.*

Commercial Building Final

Tim.Rowland@nashville.gov

U&O Letter

615-862-6527 tawanna.dalton@nashville.gov

Inspection requirements may change due to changes during construction.

IN THE STATE OF TENNESSEE FOR THE NASHVILLE METROPOLITAN BOARD OF ZONING APPEALS AND IF NECESSARY, THE TENNESSEE COURTS OF LIMITED JURISDICTION OR TRIAL COURTS

~~THE OLD HICKORY NO-TOWER COMMISSION,~~

APPELLANT,

v.

METRO PERMIT NO. CATC 2019044881

SCI TOWERS, EMPIRE CONTRACTING, AND LEVOG

APPELLEES.

_____ /

PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR PERMIT REVOCATION

Appellant files this Memorandum of Law in support of its Motion For Revocation of an Issued Building Permit, pursuant to the local ordinances of this Jurisdiction and the rights of the citizens herein.

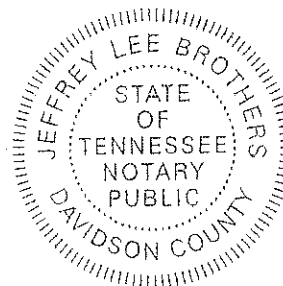
NOTARIZED AFFIDAVIT

We, residents and registered voters of Old Hickory of Davidson County, State of Tennessee, do hereby certify, swear and affirm under the penalty of perjury that we are competent to present the following declarations and information based on personal knowledge, research and counsel, and that the following pages, documents and exhibits are true and correct to the best of our knowledge:

Each signature on page 2 of this petition was affixed in my presence and is the true signature of the individual who signed the petition.

Subscribed and sworn to before me in my presence this 11TH day of NOVEMBER 2019, a Notary Public in and for the County of DAVIDSON, State Of TENNESSEE.

[Signature]
(Signature) Notary Public
My Commission Expires 9/7/20



JAMES TIMBERLAKE for Jill 11/11/2019
 (Print Name) (Sign Name) (Date)

JAMES TIMBERLAKE | 76 YRS. OLD | 301 AARONWOOD CT. | 31 YEAR RESIDENT OF HOME

Audrey Timberlake Audrey Timberlake 11/11/2019
 (Print Name) (Sign Name) (Date)

AUDREY TIMBERLAKE | 70 YRS. OLD | 301 AARONWOOD CT. | 31 YEAR RESIDENT OF HOME

Chris Smith [Signature] 11/11/2019
 (Print Name) (Sign Name) (Date)

CHRIS SMITH | 57 YRS. OLD | 300 AARONWOOD COURT | 30 YEAR RESIDENT OF HOME

Laura Smith [Signature] 11/11/19
 (Print Name) (Sign Name) (Date)

LAURA SMITH | 54 YRS. OLD | 300 AARONWOOD COURT | 30 YEAR RESIDENT OF HOME

Tamatha Boyle Tamatha Boyle 11-11-19
 (Print Name) (Sign Name) (Date)

TAMATHA BOYLE | 59 YRS. OLD | 4404 SO. TRACE BLVD. | 26 YEAR RESIDENT OF HOME

Nelda Graham (Holt) Nelda Graham (Holt) 11-11-2019
 (Print Name) (Sign Name) (Date)

NELDA GRAHAM | 73 YRS. OLD | 305 AARONWOOD COURT | 23 YEAR RESIDENT OF HOME

Paul Hughes [Signature] 11-11-19
 (Print Name) (Sign Name) (Date)

PAUL HUGHES | 59 YRS. OLD | 701 BUTLER ROAD | 20 YEAR RESIDENT OF HOME

Linda Guffee Linda Guffee 11/11/19
 (Print Name) (Sign Name) (Date)

LINDA GUFFEE | 70 YRS. OLD | 1604 AARONWOOD DRIVE | 3 YEAR RESIDENT OF HOME

The aforementioned individuals comprise the Old Hickory NO-TOWER Committee and represent the Old Hickory NO-TOWER Commission, which is a group of almost 900 residents who have signed the included petition as a show of opposition to the cell tower proposed to be built by SCI Towers at 4321 Old Hickory Blvd., Old Hickory, Tennessee, which sits directly behind their homes. Of the 1,000 homes which would sit within a half-mile of this tower, about 900 signatures have been gathered opposing it. They are herein respectfully submitted (Exhibit A).

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- 1. Majority of Residents Were Never Notified of Tower By City Council**
- 2. Community First Unites at Town Meeting, August 8, 2019**
- 3. The Old Hickory NO-TOWER Commission is Formed**
- 4. Online Petition is Launched (Now More Than 900 Signatures)**
- 5. Town Meeting #2 Takes Place with 150 person opposition turnout, Aug. 22**
- 6. Local Media Gets Involved, Does Two News Stories (WKRN, WSMV)**
- 7. Laura Smith Visits Codes to Appeal, is Denied on Grounds of No Permit Yet Issued. Told by Examiner How to Watch Daily Permit Progress Online.**
- 8. Neighbors Come Together By The Hundreds To Oppose Tower and They Spend The Summer Organizing and Researching.**
- 9. Neighbors Protest That a 140-150' Tower Should Not Be 85' from the Property Line of a Children's Trampoline Park, Nor Steps Away From a Gas Station, Which Sits on Same Property. These Present Dangers To Life.**
- 10. All Community, City, State and Congressional Elected Officials Notified**
- 11. Smith Reaches Out to James Levin (of LEVOG) in NY Seeking Intervention. Levin Offers To "Negotiate An Equitable Exit" for SCI Towers. He Mentions an EIA (Environmental Impact Assessment) Being Needed.**
- 12. Residents (Appellants) Request Environmental Impact Assessment (request is enclosed in this packet.)**

Arguments.....	15
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1. **Permit Should Be Revoked Because From The Affected 1,000 Homes, 900+ People and Business Owners Have Signed the Online Petition Opposing Tower (see Exhibits A, B) and Involved Media (Exhibit C).**

2. **~~Permit Should be Revoked Because Possible Metro Ordinance Violations By The Tower Will Endanger Nearby Residents And Cause Death If "Breakpoint Technology" Fails (see Exhibits D, E and F).~~**

3. **Permit Should Be Revoked Because Precedent is Set in Multiple Court Rulings for Negative Aesthetic Impact Being Taken Into Account for Permit Denial; also: Local Realtor Letters Are Submitted Herein to Testify to The Truth of Cell Towers Devaluing Properties (see Exhibit G).**

4. **Permit Should Be Revoked Because Circulating Site Plans and Photos Do Not Adequately Show the Close Proximity to the 1,000 Homes Within the 100 ft. - ½ mile Radius of Tower and are Misleading (see Exhibit H).**

5. **Permit Should Be Revoked Because the Tower Could be Later Increased in Height Without Community Consent Under The Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96, H.R. 3630, 126 Stat. 156) and Appellants Submit Evidence of These Intentions (See Exhibit I).**

6. **Permit Should Be Revoked Because Burden Of Proof by SCI to Prove Coverage Gaps Has Not Been Properly Met, Per Cited Court Precedent(s).**

7. **Permit Should Be Revoked Because Appellees Never Disclosed Alternate Tower Sites That Was Requested on 8/8/19 & 8/22/19. Proof is Submitted Herein of 36 Towers/Antennas Found in a 2 Mile Radius (see Exhibit J).**

8. **Permit Should Be Revoked or at Least "Stayed/Delayed" As Appellants Are Requesting an EIA based on Multiple Allowable Reasons In NEPA's Own Requirements Per The FCC's Rules in 47 CFR §1.1307 (See Ex. K, L)**

9. **Permit Should Be Revoked Because Property is not In a Right of Way (ROW) and Owner (LEVOG) James Levin has offered to Negotiate An Equitable Contract Exit for SCI Towers in Light of Overwhelming Evidence of Community Opposition (letter available upon request).**

10. **Permit Should Be Revoked Because Land is on Sacred Indian Site (Ex.M).**

11. **Permit Should Be Revoked Because Local Officials Failed to Act.**

12. **Permit Should Be Revoked WITHOUT Fear that Metro Will Be Penalized By The FCC Since Precedent Has Been Set in Multiple Court Rulings Protecting the Authority of Local Zoning Boards.**

Closing Statements.....48

Exhibits:

-
- A. ~~Petition of 900+ Signors Opposing the Proposed Tower~~**
 - B. Old Hickory NO-TOWER Logo and Apparel**
 - C. Images of and Links to Local Media Coverage**
 - D. Codes Memo from Examiner David Diaz-Barriga**
 - E. Stills From Video of Failing Breakpoint Technology map**
 - F. Letter from Tower Engineer Michael Plahovinsak**
 - G. Negative Property-Value Impact Letters from Realtors**
 - H. Maps and Area Pictures of Proposed Site and Affected Homes**
 - I. Evidence of Appellee's Plans to Increase Tower Height**
 - J. Evidence of 36 Cell Towers or Antennas in 2 Mile Radius of Site**
 - K. Environmental Impact Request Statement (EIA)**
 - L. Proof of Area Being Home to Wildlife Habitats**
 - M. Proof of Tower's Close Proximity to Sacred Indian Site**
 - N. Negative Impact Statements from Residents**

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STATEMENT OF THE CASE

Appellants (900+ residents comprising the Old Hickory NO-TOWER Commission) are seeking revocation of Permit #CATC 2019044881, issued by Nashville Metro Codes Dept. to Empire Construction and SCI Towers, Inc. on November 6, 2019 for a telecommunications tower at 4321 Old Hickory Blvd. in Old Hickory, TN. This motion is supported by 12 arguments, one of which is that property owner, James Levin, (LEVOG), has learned that of the 1,000 homes within a 100 ft.-½ mile of the tower, more than 900 people have signed a petition opposing it for serious property setback and safety issues, and he has offered in writing to “negotiate an equitable exit strategy” for SCI Towers. The other 11 arguments focus on said setback safety issues, breakpoint technology failure concerns, unproven coverage gaps, undisclosed alternative sites, and other such arguments, none of which violate the 1996 Telecommunications Act but half of which do violate Metro Ordinances cited herein. Others violate FCC allowances made for sacred Indian sites, seeing as how said property rests on The Trail of Tears (State Route 45). Missing amongst the arguments are claims of human health hazards, which the Appellant acknowledges compromise the TCA of 1996. Exhibit M is of Resident’s Negative Impact Statements, some of which *do* cite very personal health concerns, but those citizens do so under their 1st Amendment “right to petition” and not as part of the overall appeal. Accumulatively, these 12 arguments represent the genuine concerns and fears of the 900+ petition signors, hundreds of which say they must move if the tower is built. These individuals are not anti-cell tower or pro-community prohibition, but merely petition Metro Codes to advise SCI Towers to pursue one of their other considered sites for this tower, preferably one not steps away from such a densely populated residential area.

STATEMENT OF THE FACTS

In early July of 2019, citizens of Old Hickory, Tennessee were finally hearing rumors of a proposed cell tower at 4321 Old Hickory Blvd., a project that was already months in the works without proper notice to them. A few of them researched and discovered that under METRO SUBSTITUTE ORDINANCE NO. BL2016-415, 4.e.(v), their local council member was supposed to be notified by the zoning administrator, “prior to the issuance of a zoning permit (was pre-approved) and immediately after receiving an application for a new tower.” That did not happen “immediately after receiving the application” and the law says it is “required when a tower is proposed within a residential district (*which it is*), a district permitting residential uses (*which it does*), or within one thousand feet of the zoning boundary line of a residential district or a district permitting residential uses (*which it is*). Such notification shall also be required when a telecommunications facility is within a Historic Overlay District or right of way abutting a Historic Overlay District (*which it does w/Andrew Jackson’s The Hermitage.*)

The ordinance goes on to say: “within thirty days from the date on which the tower application was filed, the district councilmember may hold a community meeting on the proposed tower” (*which Larry Hagar did, but residents were only alerted about a related sidewalk dispute*). Eventually, Councilman Hagar did call a community meeting as much as four months after the application was filed, but the meeting did not meet ordinance requirements. Residents learned that ORDINANCE NO. BL2016-415, 4.e.(v), states “if a meeting is held, the applicant shall attend and provide information about the tower's safety, technical necessity, visual aspects, and alternative tower sites and designs

considered,” and while SCI Tower’s attorney, Joel Hargis, did attend this August 8th meeting at Berryville Baptist Church, he did not answer residents’ heated questions about these issues. Residents videoed this meeting for the purposes of documentation and are ready to present it as evidence to show the failure to comply with this ordinance by not answering questions about anything besides basic tower measurements.

Since the Councilman was not notified by the zoning administrator “immediately after receiving the application” and since the Councilman’s office did not notify all residents “within one thousand feet of the zoning boundary line” about the called town-meeting as the ordinance requires, this caused residents to learn about it too late to have a strong show. Nonetheless, one local 30-year homeowner couple closest to the proposed tower, Chris and Laura Smith, quickly designed flyers and personally funded not only the printing of hundreds of copies but the delivery on-foot to neighbors’ doors—300 to be exact—in almost 100° weather. As a result, about 50 residents did show to the meeting and it proved to be those who had the most spirit-opinions about the issue. It should be noted that not a single resident was present who was in favor of the tower. That same day, Smith had started an online petition (see Exhibit A) for tower-opponents to be represented by, and the URL was listed on the distributed flyers that day just hours prior to the meeting. So even though only about 50 people attended the meeting, by the time it adjourned and the petition was checked, another 40 people had signed it, meaning that by the end of the first day people even learned about the tower, almost 100 were already rallying to oppose it. The Old Hickory NO-TOWER Commission was born (see Exhibit B for logo). From that emerged a small team of leaders, which refer to themselves as the Old Hickory NO-TOWER Committee.

Two days later, another resident, 70-year old Linda Guffee, set out on foot again door to door in near 100° weather, fell while canvassing and was cut, bruised her ribs, and ~~required several days in bed to recover. Other residents, John and Tamatha Boyle, spent~~ hundreds of both dollars and hours hand delivering notices to neighbors, a job that should have been done by local officials in compliance with previously cited Metro Ordinances.

Due to Metro Ordinance's required information not being provided by SCI Tower's representative at the meeting, citizens requested another meeting at which a better-informed representative could be present to answer important questions. Again, questions that are required to be answered in compliance with Metro Ordinance ORDINANCE NO. BL2016-415, 4.e.(v).

Two days before the second meeting, Smith visited Metro Codes to express concern over the dangers of failing "Breakpoint Technology" so close to human life and to file a permit appeal but was told by Examiner David Diaz-Barriga that appeals could only be filed after the permit was issued. Smith was given an online link where she could daily monitor tower progress, which she did throughout the summer. Diaz-Barriga presented Smith with a memo recognizing her attempt to file (See Exhibit D, which included original emails between Zoning Attorney Jon Michael to Laura Smith on 7/12/19).

The second town meeting was held two weeks after the first--on August 22nd 2019-- at Eastgate Creative Christian Fellowship in Old Hickory, TN. Present were about 150 residents who opposed the tower, without one person present who spoke in favor of it. Also present was Councilman Larry Hagar and Metro Codes Attorney Emily Lamb. So were members of the local television media and on the news that night were two feature

stories about the citizens organizing against the tower¹ (see Exhibit C). Although that meeting had been requested specifically to receive more answers about the tower, no new ones were given, and even Ms. Lamb admitted she could not answer certain questions with specificity. To her defense, it did not appear she had been informed that this meeting was called specifically to receive such answers. A full video documentation of this meeting is offered as evidence if so required of Appellant.

The Summer of 2019 became—for hundreds of Old Hickory residents—the summer that they learned to write their elected officials, discovered their 1st Amendment “right to petition”, researched how to better protect their health in the face of expanding technology, and connected with neighbors beside whom they had lived for decades and in some cases, had never met. These neighbors say they are already connecting better without the help of a telecommunications tower. They comprise the Old Hickory NO-TOWER Commission and are an army rallying in 100% agreement about their opposition to this tower.

Reasons for their strong opposition are centered on several factors and will be discussed in full in this document’s arguments. They begin first with inadequate property setback lines that do not account for breakpoint technology failure and that could cause loss of human life. An August 13th letter to SCI Towers from tower-engineer Michael F. Plahovinsak in Ohio raises many questions for the Old Hickory residents who live within steps of the tower. They also cite concerns over the WirelessEstimator.com statistics that

¹ “Community in Old Hickory Fights Against Application for Cellphone Tower” - WKRN: <https://www.wkrn.com/news/community-in-old-hickory-fights-against-application-for-cellphone-tower/> And “Neighbors Fighting Cell Tower Proposal in Old Hickory,” WSMV: https://www.wsmv.com/news/neighbors-fighting-cell-tower-proposal-in-old-hickory/article_c21e16ba-c54d-11e9-95f5-8f811bb7b348.html.

say that every month in America a cell tower catches fire with almost 100 articles on such fires.² The reason for residents' urgent concern is that said tower at 4321 Old Hickory Blvd. sits just feet away from Speedway Gas Station also on the same LEVOG property.

Should a cell-tower fire occur, they argue that this could be a deadly, explosive event and result in massive loss to human life.

Appellants/Residents also state other arguments such as the 140-150' tower sitting within 85' of the property line for a strip mall containing a children's Trampoline park and other local areas of heavy traffic by children, including three area churches with childcare programs, and the Rotary Park Ball Field which sits less than ½ mile away and is visited by thousands of children monthly. This is all within walking distance of the tower, which also will not be protected by anything other than a chain link fence with warning signs, neither of which will keep curious children from climbing it.

Appellant also states that the permit should be revoked because SCI Towers never provided the requested disclosure of alternate tower locations that had been considered for the tower, and under Metro ORDINANCE NO. BL2016-415. 4.e.(v) it states, "applicant shall attend and provide information about the tower's safety, technical necessity, visual aspects, and *alternative tower sites and designs considered.*" This was requested at the August 8th meeting at Berryville Baptist Church and video documentation is available as evidence upon request. All of these points are discussed further in Arguments. Appellants also have proof that they have contacted all of their local elected representatives including all Council people, the Mayor, State Representatives, Senators and Congressmen, and yet

² <http://wirelessestimator.com/about-wirelessestimator-com/search-results/?search=fires>, WirelessEstimator.com, *Cell Tower Fires*

not heard back. Due to this they cite directly from the Telecommunication Act of 1996 which states,

“Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.”

Finally, and of utmost priority, is the fact that on October 19th, NO-TOWER Commission member, Laura Smith, reached out to LEVOG owner, James Levin, in NY by letter, introducing herself to him as his “neighbor of 30 years” since he has owned his property there for 31 years and she has owned her adjacent property for 30 years. She petitioned Levin to please consider the majority neighborhood uprising and organized efforts to oppose this tower, and sent a full 13-page report with all data, research and proof of the 900+ signature petition. Levin responded very compassionately to Smith the next week by stating three very important facts: 1) no one had told him about the NO-TOWER Commission or their months of organized efforts *or* their appearances on local media which involved *his* name (LEVOG), 2) he reasoned that an Environmental Impact Assessment would surely need to be done before issuing the permit (of which there is no public record), and 3) he states, “*Let me assure you that LEVOG would be willing to negotiate an equitable exit strategy with them (SCI Towers).*”

Appellants also are—inside this memo—submitting in writing their request for a full NEPA Environmental Impact Assessment. Reasons are stated in Arguments.

ARGUMENTS

Herein are the 12 arguments submitted by The Old Hickory NO-TOWER Com-
mission as reason for Permit Revocation of METRO PERMIT NO. CATC 2019044881.

The Telecommunications Act of 1996, §704 (B) (iii) says:

“Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by **substantial evidence** contained in a **written record.**”

Through this provision, Appellants submit this “written record” and cite this case as precedent in the definition of “substantial evidence” (findings are **bolded**):

1. T-Mobile Northeast LLC v. Loudoun County Board of Supervisors

903 F. Supp. 2d 385 (E.D. Va. 2012)

” 47 U.S.C. § 332(c)(7)(B)(iii). Courts have interpreted “**substantial evidence**” to mean “**such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.**” *AT&T Wireless PCS v. City Council of Va. Beach*, 155 F.3d 423, 429 (4th Cir.1998) (quoting *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 477, 71 S.Ct. 456, 95 L.Ed. 456 (1951)). **Substantial evidence “is more than a scintilla” but “less than a preponderance.”**

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

There is another citation of this exact definition (findings are bolded)::

2. T-Mobile Northeast LLC v. Frederick County Board of Appeals

761 F. Supp. 2d 282 (D. Md. 2010)

"[S]ubstantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *ATT Wireless PCS v. City Council of Va. Beach*, 155 F.3d 423, 430 (4th Cir. 1998) (quoting *Universal Camera v. NLRB*, 340 U.S. 474, 488 (1951)). Significantly, "substantial evidence," while more than a scintilla, is also less than a preponderance.

It is through this same requirement of the TCA 1996 §704 that this appeal is submitted in legal brief form in order to provide written record, and it is done so with "substantial evidence" according to the legal definition of such.

Appellant submits these arguments in the spirit of the 10th Amendment of the Bill of Rights, which states:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Residents of the NO-TOWER Commission respectfully ask that these last three words be remembered as they, the people of Old Hickory, Tennessee, briefly make these arguments in representation of the majority vote of their community's voice.

Argument #1

Permit Should Be Revoked Because From The Affected 1,000 Homes, 900+ People and Business Owners Have Signed NO-TOWER Petition (see Exhibit A), Formed Commission (Exhibit B), and Involved Media (Ex C).

It has already been stated that Appellant is submitting a 900+ Signature petition with signatures in opposing to the tower (Exhibit A). But many residents have also sent letters and we have enclosed 10 such letters herein (Exhibit M). Some of them do express

health grievances but those are not a part of our legal argument. These individuals merely do so based on their 1st Amendment right:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

Argument #2

Permit Should be Revoked Because Possible Metro Ordinance Violations By The Tower Will Endanger Nearby Residents And Cause Death If “Breakpoint Technology” Fails (see Exhibits D, E and F).

This project does not afford safe fall-zone. Please consider the following

Metro Ordinances:

PROVISION 17.16.080 Section C Paragraph 4E it states: “Setbacks. A tower shall be set back from all property lines on which the tower is located by the distance equal to the height of the lowest engineered break point on the proposed structure or the height of the tower.”

This project’s Site Plan by SCI shows the “Required” Setback to be 150’ on the Rear, 150’ on the Left Side, 150’ on the Right Side and 150’ on the Front, but the “Proposed” Set Backs are listed as 126’ Rear, 85’ Left Side, 186’ Right Side, and 635 Front. Since two of the Set Backs are less than the overall height of the tower, homeowners and lives could be endangered if the Breakpoint Technology fails and the tower falls but does not split in its breakpoint zone. Appellant has produced the following video montage of towers all over the United States that have either collapsed or begun to collapse due to fire, ice, high winds or even lightning strikes. View video at: <https://youtu.be/NpDWZYCe5vU>) and see Exhibit E for video frame shots.

Appellant understands that “Breakpoint Technology” means the engineering design of a monopole, or any applicable support structure, wherein a specified point on the monopole is designed to have stresses concentrated so that the point is at least five percent (5%) more susceptible to failure than any other point along the monopole so that in the event of a structural failure of the monopole, the failure will occur at the breakpoint rather than at the base plate, anchor bolts, or any other point on the monopole.” Argument #1 centers on the fact that this is a very small margin of error and very dangerous when hovering so closely over houses containing human life. Since this tower has now been issued a permit to build, *Appellant officially requests SCI Towers to provide a Third Party Structural Engineer Certification of the “engineered breakpoint” for the proposed tower to verify the actual break point and fall zone.* Appellant has studied the letter from Engineer Michael F. Plahovinsak and does not consider it to be “third-party” since he designed the tower. The letter also raises several concerns (see Exhibit F). Among those concerns are: 1) He says he has only designed the tower to “withstand a 3-second gusted wind speed of 90 mph,” which sounds insufficient, especially during Tennessee Tornado Season. It does mention being built for a wind speed of 116mph but this does not list time span of sustainability. Appellant cites news reports from as recently as February 20, 2019 which recorded wind gusts in Tennessee of 123 mph.³ Even closer to home—and therefore more alarming-- is a 2017 report which stated:

“As the QLCS (quasi-linear convective system) moved across the region, widespread damaging winds were reported in nearly every county along and west of I-24 across Middle Tennessee, with winds estimated up

³ “123 MPH wind gusts recorded in Greene County,” WVLT Channel 8, <https://www.wvlt.tv/content/news/123-MPH-wind-gusts-recorded-in-Greene-County-506107901.html>

to 100 mph in some areas. These intense downbursts winds damaged numerous homes and businesses...”⁴

The letter also mentioned a “theoretical fall radius” in its discussion on breakpoint technology. Appellant has known and opposed from the beginning that the tower is too tall in comparison to surrounding structures that if collapsed upon, would be impacted, including nearby residents or children. Plahovinsak also admits that while the upper 85’ of the pole has been designed to meet the wind loads of the design, “the lower portion of the pole has been designed with a minimum 10% extra capacity.” This is far too small a number with far too high a potential consequence. He continues with very uncertain promises on which human life depends:

“Assuming the pole has been designed according to my design, and well maintained, in the event of a failure due to extreme wind and comparable appurtenance antenna load (winds in excess of the design wind load), it would yield/buckle at the 55’ elevation. The yielded section would result in a maximum 85’ fall radius, but would most likely remain connected and hang from the standing section.”

When human lives are at stake, nearby residents find no comfort in words like “assuming,” “in the event of a failure,” or “most likely.” They appreciate the fact that the tower is well-designed but what is built by a human is subject to human error. Appellant also cites concerns over the WirelessEstimator.com data that says that every month in America a cell tower catches fire, plus the site’s other research which includes 1530 total results upon searching cell tower fires (with almost 100 articles on tower fires).⁵ The reason for their urgent concern is that said tower at 4321 Old Hickory Blvd. sits just yards away from Speedway Gas Station also on the same LEVOG property. Should a cell-tower

⁴ <https://www.weather.gov/ohx/20170309>, National Weather Service, March, 2017

⁵ “Cell Tower Fires,” WirelessEstimator.com, <http://wirelessestimator.com/about-wirelessestimator-com/search-results/?search=fires>,

fire occur, they argue that this could be a deadly, explosive event and result in massive loss to human life. In keeping with this theme and with Appellant's request for the NEPA ~~(National Environmental Protection Act) EIA (Environmental Impact Assessment)~~, they request it be thoroughly researched as to what the impact would be of a cell tower collapse to neighboring communities. If not all goes according to planned and the breakpoint malfunctioned, it would do serious damage to property, structures, or even cause potential death to nearby lives, including children.

Again, please watch Appellant's exclusive cell tower montage video at <https://youtu.be/NpDWZYCe5vU> and see Exhibit E for images of its 25 examples in the United States where cell fires either caught fire, collapsed in full due to breakpoint technology failure, or due to other causes such as wind or ice.

Argument #3

Permit Should Be Revoked Because Precedent is Set in Multiple Court Rulings for Negative Aesthetic Impact Being Taken Into Account for Permit Denial; also: Local Realtor Letters Are Submitted Herein to Testify to The Truth of Cell Towers Devaluing Properties (see Exhibit G).

Under SUBSTITUTE ORDINANCE NO. BL2016-415, Appellant has found multiple violations being committed by the building of this proposed tower:

C.1.d. "The applicant shall demonstrate that through location, construction, or stealthing, the proposed facility or network of facilities will have minimum visual impact upon the appearance of adjacent properties and the views and vistas from adjacent residential neighborhoods and pedestrian environment, while retaining viable opportunities for future collocation, provided applications for designs consistent with the design guidelines provided for in subsection 5.f of this section shall be deemed to have met the requirement of this subsection."

This project's tower will have MAXIMUM (not "minimum") visual impact upon the appearance of adjacent properties and the views and vistas from adjacent residential neighborhoods and pedestrian environment. According to the National Institute for Science, Law and Public Policy in Washington, D.C., 94% of people polled say they will not rent or buy near a cell tower and that property values can drop up to 20%.⁶

Next:

- 5d. d. "New telecommunication facility support structures may not be erected to a height greater than the height surrounding utility poles or street lights, whichever is greater. If no utility poles are present, the total height shall be built to a maximum height of 35', including antennas, lightning rods or other extensions. All new proposed structures, or a stealth telecommunications support structure replacing an existing support structure or alternative structure, within the ROW shall be designed for a minimum of two PWSF providers."

This tower would be 140-150' high, much taller than the height of surrounding utility poles, which is no more than 40 ft., and much taller than the approx. 35' light poles.

Installation of proposed tower would inflict on surrounding community adverse impacts that Codes Ordinances were enacted to prevent. Appellant submits as evidence letters gathered from area Realtors and Brokers affirming the difficulty in selling homes near towers in the Nashville area (see Exhibit F). Residents argue that for most in this

⁶ "Survey by the National Institute for Science, Law & Public Policy Indicates Cell Towers and Antennas Negatively Impact Interest in Real Estate Properties," Emily Roberson, July 03, 2014, <https://www.businesswire.com/news/home/20140703005726/en/Survey-National-Institute-Science-Law-Public-Policy#.VNRBPp3F-So>

community, their homes are their main and only investment, and this tower is going to dilute and devalue that.

~~While many refuse to rent or buy near a tower for health concerns, an over-~~
 whelming majority says it is a loss of property value that they dread most immediately, mainly due to the loss of aesthetic appeal their homes will lose. Appellant cites the following article and study on "Visual Pollution" from John Copeland Nagle of Notre Dame, which also contains multiple citations on court precedents:⁷

"...Residents repeatedly object to the environmental, health, safety, and especially aesthetic harms of cell phone towers, which in turn lead to claims of reduced property values. As National Public Radio's Noah Adams reported in November 2004, "Americans everywhere from Manhattan to Hollywood take their cell phones for granted, but in many parts of the country where scenery is cherished, cell phone towers have been called visual pollution."⁸

Cell phone towers are just the most recent target of visual pollution complaints. The term visual pollution has been used by courts, academics, and environmental groups to explain their distaste for ugly buildings, telephone towers, billboards, flags and signs, and numerous other images that have been derided as polluting the visual landscape.⁹ As Chief Justice

⁷ "Cell Phone Towers as Visual Pollution," John Copeland Nagle, *Notre Dame Journal of Law, Ethics & Public Policy*, Vol. 23, Article 7, Issue 2, Symposium on the Environment, M, 1-1-2012

⁸ 3. *Day to Day: Squaring off Over "Frankenpines" in the Adirondacks* (NPR radio broadcast Nov. 22, 2004), available at <http://www.npr.org/templates/story/story.php?storyId=4182101>. For additional descriptions of cell phone towers as visual pollution, see *AT&T Wireless PCS, Inc. v. City Council of Va. Beach*, 155 F.3d 423, 427 (4th Cir. 1998); *Avoid Cell Tower Pollution*, CHATTANOOGA TIMES FREE PRESS, May 30, 2007, at B7; Eric Peterson, *Silo to Hide Cellular Tower, Schaumburg OK's Church's Request*, DAILY HERALD, Aug. 11, 2004, at 1; Richard Quinn, *New Cell Towers, Public Protests Rising Together*, VIRGINIAN-PILOT [NORFOLK, VA.], Oct. 7, 2007, at B1; *Visual Pollution*, BURLINGTON FREE PRESS [VT.], Feb. 23, 2003, at 10A; *The Early Show: Cell Phone Towers in Disguise* (CBS television broadcast Nov. 29, 2006), available at <http://www.cbsnews.com/video/watch/?id=2214391n%3fsource=search+video;ScenicNevada.org,Taming+Wireless+Telecommunications+Towers,http://www.scenicnevada.org/main/towers.html>.

⁹ For judicial references to visual pollution, see, e.g., *Ballen v. City of Redmond*, 466 F.3d 736, 744 (9th Cir. 2006) (billboards); *Shivwits Band of Paiute Indians v. Utah*, 428 F.3d 966, 983 (10th Cir. 2005) (billboards); *Cleveland Area Bd. of Realtors v. City of Euclid*, 88 F.3d 382, 384 (6th Cir. 1996) (residential signs); *Kramer v. Gov't of V.I.*, 479 F.2d 350, 352 (3d Cir. 1973) (drive-in theater); *Lamar Adver. Co. v. Twp. of Elmira*, 328 F. Supp. 2d 725, 729 (E.D. Mich. 2004) (billboards); *People v. Amerada Hess Corp.*, 765 N.Y.S.2d 202, 205 (N.Y. Dist. Ct. 2003) (gas stations); *Blue Legs v. EPA*, 732 F. Supp. 81, 83 (D.S.D. 1990) (waste dumps); *State v. Watson*, 6 P.3d 752, 758 (Ariz. Ct. App. 2000) (trash); *Stearn v. County of*

Burger once wrote, "[E]very large billboard adversely affects the environment, for each destroys a unique perspective on the landscape and adds to the visual pollution of the city. Pollution is not limited to the air we breathe and the water we drink; it can equally offend the eye and the ear."¹⁰

Visual pollution is a fascinating example of pollution. Ordinarily, we associate pollution with air pollution, water pollution, and hazardous wastes. But we also worry about hostile work environments "polluted" by discrimination, claims of cultural pollution leveled against violent entertainment and internet pornography, and political processes polluted by excessive campaign spending. As I have argued elsewhere, a wide range of pollution claims have long appeared in the law and literature, with the idea of moral pollution preceding the contemporary understanding of pollution as a uniquely environmental phenomenon.¹¹ Some of these other pollution claims persist, as evidenced by the kinds of pollution discussed in legal and political debates and by the continuing role Offensive sights fit within this broader understanding of pollution. These offensive sights are polluting agents because their appearance is found objectionable. A polluting agent is placed into the environment by a sign, a tower, a building, or a disorganized pile of materials. The affected environment is the heretofore uncluttered outdoor landscape. The most common harm associated with visual pollution is the annoyance resulting from the perception of something that is judged unsightly. That is not the only harm, though. Signs, communications towers, and discarded cars have all been blamed for reducing property values and inhibiting the

San Bernardino, 170 Cal. App. 4th 434 (Cal. Ct. App. 2009) (billboards); *Am. Nat'l Bank & Trust Co. v. City of Chi.*, 568 N.E.2d 25, 35-36 (11. App. Ct. 1990) (building that blocked view); *Mayor & City Council of Balt. v. Mano Swartz, Inc.*, 299 A.2d 828, 833 (Md. 1973) (billboards); *John Donnelly & Sons, Inc. v. Outdoor Adver. Bd.*, 339 N.E.2d 709, 718 (Mass. 1975) (billboards); *Mtn. Cmty. for Responsible Energy v. Pub. Serv. Comm.*, 665 S.E.2d 315, 329 (W. Va. 2008) (affirming an administrative decision allowing the construction of 124 wind turbines because "[s]ome people consider them eyesores they do not want in their backyards. Others consider them elegant or beautiful."). For some of the other references to visual pollution, see Final National Pollutant Discharge Elimination System (NPDES) General Permits for the Eastern Portion of Outer Continental Shelf (OCS) of the Gulf of Mexico (GMG280000) and Record of Decision, 63 Fed. Reg. 55,718, 55,722 (Oct. 16, 1998) (noting that an Alabama coastal city had complained that offshore drilling structures constituted visual pollution); Sunrise Powerlink Project: Final EIR/EIS 3-1663 (Oct. 2008) (comment from the Sierra Club Visual Pollution Task Force objecting to "visual pollution and visual impacts of the 150 miles of 160 foot-tall and 65 foot-wide transmission towers covering some of San Diego's formerly most scenic parks and neighbourhoods"); Harvey K. Flad, *Country Clutter: Visual Pollution and the Rural Landscape*, 553 ANNALS AM. ACAD. POL. & Soc. Sci. 117 (1997); Lesley K. McAllister, *Revisiting a Promising Institution? Public Law Litigation in the Civil Law World*, 24 GA. ST. U. L. REV. 693, 730 (2008) (noting that Brazilian prosecutors regarded the reduction of visual pollution as one of their six priority areas); Peter J. Howe, *Storefront Tobacco Ads Said to Target Students*, BOSTON GLOBE, Sept. 11, 1998, at B2 (cigarette advertisements).

¹⁰ *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 560-61 (1980) (Burger, C.J., dissenting).

¹¹ 6. See John Copeland Nagle, *The Idea of Pollution*, 43 U.C. Davis L. REV. ___ (forthcoming 2009).

enjoyment of neighboring property. Aesthetic concerns have also been linked to human health and blamed for depriving land-owners of the cultural identity of their neighborhood. Billboards have been accused of distracting drivers, degrading public taste, encouraging needless consumption, and desecrating the landscape. Billboards also illustrate the cumulative nature of visual pollution, for the sight of a solitary billboard proves much less objectionable than a highway that is filled with them. Visual pollution rarely results from a purposeful effort to offend the aesthetic sensibilities of others, though the person or organization that introduces the sight to the landscape may expect that the sensibilities of many viewers will be offended. Visual pollution also illustrates the three ways of responding to pollution. Toleration is the initial response. Toleration is championed by First Amendment scholars as the appropriate response to claims of cultural pollution resulting from violent entertainment and internet pornography (though not the appropriate response for hostile work environments). The idea of tolerating pollution may seem foreign to environmental law, but in fact many environmental laws prescribe the tolerable amount of air or water pollution, or they establish the permissible tolerances for pesticides. Prevention is the second response to pollution. Here the goal is to altogether eliminate pollution by preventing it from occurring. The Pollution Prevention Act states the national policy of the United States that pollution should be prevented or reduced at the source whenever feasible.¹² The act establishes a program for achieving that goal, but it is generally understood that zero pollution is a goal our society has so far been unwilling to pay to achieve. So the most common response to pollution is avoidance. The law variously encourages dilution, filtering, separating pollution and its victims, and the treatment and removal of pollution as methods to reduce the harms resulting from exposure to pollution.¹³

This Essay seeks to analyze the idea of visual pollution in the context of cell phone towers. Part I provides a general description of the nature of, and responses to, visual pollution. Part II examines the debate concerning the aesthetics of cell phone towers, which pits affected residents against cellular providers, with local governments exercising their traditional powers of land use regulation while being constrained by a federal law designed to promote wireless services. Part III reflects on the lessons that

¹² 42 U.S.C. § 13101(b) (2000). Pollution prevention also appears in other federal statutes. A primary goal of the Clean Air Act (CAA) is to encourage or otherwise promote reasonable actions for pollution prevention. 42 U.S.C. § 7401(c) (2000). The Clean Water Act (CWA) supports activities and programs for the prevention, reduction, and elimination of pollution. 33 U.S.C. §§ 1253(a), 1254(a) (2000). The Resource Conservation and Recovery Act declares that wherever feasible, the generation of hazardous wastes is to be reduced or eliminated as expeditiously as possible. 42 U.S.C. § 6902(b) (2000).

¹³ See generally John Copeland Nagle, *The Three Responses to Pollution* (Mar. 2009) (unpublished manuscript, on file with author).

the idea of pollution offers for controversies regarding cell phone towers, and the lessons that the cell phone tower controversies offer for understanding pollution in other contexts.

I. VISUAL POLLUTION

The first reported case to acknowledge "visual pollution" rejected a challenge to a gas station to be located in the downtown shopping area of a Detroit suburb.¹⁴ Two years later, the same court upheld another Detroit suburb's rejection of a proposed high-rise sign to advertise another gas station located along Interstate 75. The court enthusiastically embraced municipal aesthetic regulation: The modern trend is to recognize that a community's aesthetic well-being can contribute to urban man's psychological and emotional stability. It is true that the question of what is beautiful and pleasing is for each individual to decide. We should begin to realize, however, that a visually satisfying city can stimulate an identity and pride which is the foundation for social responsibility and citizenship. These are proper concerns of the general welfare. Yellin, *Visual Pollution and Aesthetic Regulation* 12, *The Municipal Attorney* 186 (1971). Madison Heights has determined that its citizens' well-being will be served best by preventing the visual pollution which occurs when high-rise signs dot major thoroughfares. It has sought to do this by limiting the height of freestanding signs within its boundaries. The use of such signs for advertising purposes is often done with little regard for their natural or man-made environment. Their garishness often intrudes on a citizen's visual senses. Property owners do have the right to put their property to profitable use. But, we do not think that the right to advertise a business is such that a businessman may appropriate common airspace and destroy common vistas. Nor do we believe that the right to advertise a business means the right to interfere with the landscape and the views along public thoroughfares.¹⁵

The concurring judge warned, however, that "[w]e will all live to rue the day that public officials are permitted to meddle in private affairs on aesthetic considerations since . . . each person has his own yardstick for the evaluation of matters aesthetic."¹⁶ Of course, the law struggled with aesthetic concerns long before the term visual pollution was coined.

¹⁴ *Pure Oil Div. of Union Oil Co. of Cal. v. City of Northville*, 183 N.W.2d 303, 304 (Mich. Ct. App. 1970). The suburb's website now boasts of the "charming and relaxed setting of downtown Northville." *Northville Downtown!*, <http://downtown.northville.org/>.

¹⁵ *Sun Oil Co. v. City of Madison Heights*, 199 N.W.2d 525, 529 (Mich. Ct. App. 1972).

¹⁶ *Id.* at 530 (Targonski, J., concurring in the result).

Traditionally, aesthetic complaints were insufficient to establish a nuisance. As Horace Wood's treatise explained over a century ago, "[T]he law will not declare a thing a nuisance because it is unpleasant to the eye."¹⁷ The courts repeatedly rejected assertions that aesthetic objections to junk yards, fences, and other things as unsightly rendered those objects a nuisance.¹⁸ The basis for those decisions was the reluctance of courts to find that offenses to one's sense of aesthetics constituted an injury that could be remedied by the courts.¹⁹

"The cases rejecting aesthetic nuisances are now in tension with other areas of the law. Aesthetic concerns were once held insufficient to support zoning laws, but the modern trend is to uphold zoning conducted for aesthetic purposes."²⁰ Other areas of the law now accept aesthetic concerns as a valid purpose, too.²¹ Moreover, several academic commentators have favored the acceptance of aesthetic nuisance cases. Raymond Coletta has argued that "it seems somewhat incongruous to allow individuals redress for offenses to their senses of hearing and smell, but at the same time to deny them a remedy for offenses to their sense of sight."²²

¹⁷ HORACE G. WOOD, A PRACTICAL TREATISE ON THE LAW OF NUISANCES IN THEIR VARIOUS FORMS; INCLUDING REMEDIES THEREFOR AT LAW AND IN EQUITY 24 (3d ed. 1893); see also DAN B. DOBBS, THE LAW OF TORTS 1331 (2000) ("[B]ecause tastes differ and criteria for aesthetic judgment are deemed unreliable, courts have been reluctant to say that an inappropriate and ugly sight can be a nuisance."); W. PAGE KEETON ET AL., PROSSER & KEETON ON THE LAW OF TORTS 626 & n.3 (5th ed. 1984) (indicating that "mere unsightliness" does not constitute a nuisance, but that "aesthetic considerations . . . play an important part in determining reasonable use"); John Cope-land Nagle, *Moral Nuisances*, 50 EMORY L.J. 265 (2001) (discussing the application of nuisance law to aesthetic harms).

¹⁸ See, e.g., *Bixby v. Cravens*, 156 P. 1184, 1187 (Okla. 1917) (holding that an unsightly fence did not constitute a nuisance because landowners are "not compelled to consult the 'aesthetic taste' of their neighbors" when building a fence); *Mathewson v. Primeau*, 395 P.2d 183, 189 (Wash. 1964) (holding that the unsightliness of a pig farm did not create a nuisance); *State Rd. Comm'n of W. Va. v. Oakes*, 149 S.E.2d 293, 300 (W. Va. 1966) (rejecting a nuisance claim against the storage of rubbish near a road).

¹⁹ See generally Raymond Robert Coletta, *The Case of Aesthetic Nuisance: Rethinking Traditional Judicial Attitudes*, 48 OHIO ST. L.J. 141, 145-48 (1987) (explaining that courts refused to find a nuisance based on mere unsightliness because of the belief that aesthetic harms are subjective and de minimis).

²⁰ Nagle, *supra* note 13, at 286.

²¹ See, e.g., *Berman v. Parker*, 348 U.S. 26, 36 (1954) (holding that aesthetic concerns can justify a use of the government's eminent domain power). See generally Coletta, *supra* note 15, at 159 & n. 111 (citing cases illustrating that "many federal and state courts have upheld a wide variety of aesthetically oriented regulations" since *Berman*).

²² Coletta, *supra* note 15, at 165-66. Coletta adds that "there is no physiological reason for treating visual perceptions any differently from noise or smell." *Id.* at 166.

Also cited by Appellant as proof of Aesthetic Impact being given court precedent in previous rulings are the following 5 cases (findings are **bolded**):

1. *Voice Stream PCS I, LLC v. City of Hillsboro*

301 F. Supp. 2d 1251 (D. Or. 2004)

See St. Croix County. 342 F.3d at 831; Troup County. 296 F.3d at 1219; Todd. 244 F.3d at 61; Pine Grove Township. 181 F.3d at 408; *ATT Wireless PCS, Inc. v. City Council of the City of Virginia Beach*. 155 F.3d 423, 430-31 n. 6 (4th Cir. 1999); see also H.R. Conf. Rep. 104-458, at 208, reprinted in 1996 U.S.C.C.A.N. 124, at 222 (contemplating that localities properly can base decision on aesthetic impact). **Plaintiff does not cite, and the court could not find, any authority holding that the TCA renders aesthetic concerns an invalid basis upon which to base a permit denial.**

2. *Southwestern Bell Mobile Systems, Inc. v. Todd*

244 F.3d 51 (1st Cir. 2001)

Holding that the TCA does not prevent “municipalities from exercising their traditional prerogative to restrict and control development based on aesthetic considerations”

Town of Amherst, 173 F.3d at 14. But see *AT T Wireless PCS, Inc. v. City Council of Virginia Beach*, 155 F.3d 423, 428 (4th Cir. 1998) (**holding that the "prohibits" clause applies to general blanket bans on services and not to individual zoning decisions**). Nonetheless, Southwestern Bell does not seriously pursue an argument in its brief that the denial of its application was "an effective prohibition," and it specifically abandoned such a contention at oral argument.

3. *Southwestern Bell Mobile Systems, Inc. v. Todd*

244 F.3d 51 (1st Cir. 2001)

Finding there was adequate evidentiary support for denial when the tower was of a different magnitude than anything else in the vicinity" and was "out of keeping with the residential uses in close proximity to it"

Although some of the evidence before the Board did consist of general statements that the tower was an eyesore, these statements did not dominate the debate. The majority of the objections to the visual impact of the tower specifically addressed whether this 150-foot tower was appropriate for this particular location, on the top of a fifty-foot hill in the middle of a cleared field. The location has no trees, was in the geographic center of town, would be visible at all seasons of the year, and would be seen daily by approximately 25% of the Town's population. It was also located in close proximity to three schools and two residential subdivisions. The closest of these two subdivisions, the Carey Hill Estates, had houses that were located only 200 feet away. Indeed, this subdivision was in such close proximity to the tower that Southwestern Bell used Carey Hill Estates construction plans as a reference map when drawing up the proposed plans for the tower. Purchasers who had placed deposits on houses that were to be built in this subdivision indicated that the tower would be plainly visible from their land. Finally, we note that the Board also based its minimal visual impact conclusion upon the fact that the tower would be painted in alternating red and white sections and would have a night beacon. The tower would only have these features because the FAA requires them. Though the Leicester Wireless Bylaw prohibits bright coloration and night lighting, it allows deviations from that prohibition when required by the FAA. To the extent that the Board's objection was based upon the failure to paint the tower a neutral color, the Board improperly relied upon this evidence to justify its decision. Because we conclude that there was substantial evidence to support the denial without the inclusion of this factor, it does not affect the outcome of this case.

4. *Southeast Towers, LLC v. Pickens County*

625 F. Supp. 2d 1293 (N.D. Ga. 2008)

Finding that the local government's denial "was not based merely upon general objections to the aesthetic appeal of a telecommunications tower; rather, photographs and specific supporting testimony demonstrated that the proposed tower would have a specific and material impact"

Substantial evidence means "such relevant evidence which a reasonable mind might accept as adequate to support a conclusion." *American Tower LP v. City of Huntsville*, 295 F.3d 1203, 1207 (11th Cir. 2002) (quoting *AT T Wireless PCS, Inc. v. City Council of Virginia Beach*, 155 F.3d 423, 430 (4th Cir. 1998)). "It requires more than a mere scintilla but less than a preponderance."

5. *Sprint Spectrum v. Charter Tp. of West Bloomfield*
141 F. Supp. 2d 795 (E.D. Mich. 2001)

Distinguishing other cases on the ground that the tower in that case was opposed by a "significant number of community residents"

In *ATT Wireless PCS, Inc. v. City Council of Virginia Beach*, 155 F.3d 423 (4th Cir. 1998), the court held that the denial of a permit, based upon aesthetic concerns, was supported by substantial evidence in the record.

Argument #4:

Permit Should Be Revoked Because Circulating Site Plans and Photos Do Not Adequately Show the Close Proximity to the 1,000 Homes Within the 100 ft. - ½ mile Radius of Tower and are Misleading (see Exhibit H).

Appellants submit new photographic representations of the close proximity of the tower to the affected homes. The circulating photos do not adequately reveal the surrounding 1,000 homes and are therefore, misleading. Skeleton site maps are inadequate and aerial views (if too-high up) are insufficient to bring life to the neighboring homes affected. Please see Exhibit G for photos of maps.

Argument #5

Permit Should Be Revoked Because the Tower Could be Later Increased in Height Without Community Consent Under The Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96, H.R. 3630, 126 Stat. 156) and Appellants Submit Evidence of These Premeditated Intentions (See Exhibit I).

Due to the U.S. ordinance called the MIDDLE CLASS TAX RELIEF and Job Creation act of 2012²³, towers can be modified without restraint or further approval according to §6409A. This would cause even more adverse negative impact. The Middle

²³ *MIDDLE CLASS TAX RELIEF and Job Creation act of 2012*
“<http://www.naco.org/sites/default/files/Model-Ord-NACo.pdf>”

Class Tax Relief and Job Creation Act of 2012 (Pub.L. 112-96, H.R. 3630, 126 Stat. 156, enacted February 22, 2012), also known as the "payroll tax cut", was an Act of the United States Congress. Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 mandates that a State or local government approve certain wireless broadband facilities siting requests for modifications and collocations of wireless transmission equipment on an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station. Appellant submits that this flings wide open the door to future tower additions that would be out of their control with no way to appeal it.

In fact, research already shows this is being planned. According to AntennaSearch.com, this tower at 4321 Old Hickory Blvd in Old Hickory is already appearing on such tower-search sites and on those listings it documents the tower as being 172.9 feet tall (see Exhibit I). This surely is the ultimate intent of SCI Towers or whoever down the road will seek to grow the tower. And in a Statement of Compliance letter from Attorney Joel Hargis dated October 14, 2019, it does state:

- Additionally, Metro's ordinance in §17.16.080 C (4)(e)(vi) provides "Because tornado sires require additional tower space and have varying design qualities, applicants will be allowed a fifty percent increase in height over the otherwise applicable height limitation and will not be required to utilize camouflaged designs, but shall comply with all applicable landscaping standards set forth in this section. (emphasis added). SCI Towers complies with this requirement.

It is obvious that SCI Towers has no intent on keeping this tower at 140'. Upon first learning of the tower, Appellants were told it was 150' tall but that The Hermitage ~~(as a Historic Property) had requested it be reduced to 140' since it is abutting to their~~ property and would be an eyesore. Furthermore, the site drawings show an unusually wide foundation for a tall, thin monopole, and so by all appearances it seems that SCI Towers is premeditating to plant and then quickly grow this tower. Between the AntennaSearch.com measurement of 172.9', the Metro Ordinance which allows them to add up to 50% of an increase due to the fact that a tornado siren will be attached, and the MIDDLE CLASS TAX RELIEF and Job Creation act of 2012 which would write the owners a blank check on increasing height, the residents strongly object to this, as would The Hermitage, Historic Home of President Andrew Jackson, had they been told about this prior to their Section 106 letter. And perhaps they should be.

Argument #6

Permit Should Be Revoked Because Burden Of Proof by SCI to Prove Coverage Gaps Has Not Been Properly Met, Per Cited Court Precedent(s)

Appellant argues that the burden of proof is upon Appellee to prove legitimate gaps in cell coverage in this vicinity. They understand that under Tennessee Code §13-24-305, Appellee is not required to provide justification of "radio frequency need." That is not necessarily what is requested. But, in a Statement of Compliance letter from Attorney Joel Hargis dated October 14, 2019 multiple inaccurate statements were found:

- Tennessee Code Annotated §13-24-305 (2) does not allow an authority to "require the applicant to provide any sort of justification for radio frequency need". To achieve Verizon Wireless' network goals and objectives a new structure is required. There are no existing wireless telecommunication towers within the search area which would meet its network objectives.
- The proposed site will greatly improve Verizon's capacity in the area and will alleviate heavy data usage in the vicinity, as shown in Exhibit 2, and will improve coverage for residents in the area.
- There are no existing towers within a one-mile radius of the proposed site nor are there existing structures with significant height in order to accomplish the network goals and objectives of Verizon Wireless without the construction of this new tower. This site will allow Verizon Wireless to offload existing network traffic and improve coverage and capacity to the network in the area.

Appellate notes that above in paragraph one it states, "There are no existing wireless telecommunication towers within the search area which would meet its network objectives," and it says in paragraph 3, "There are no existing towers within a one-mile radius of the proposed site..." but these statements are not true. According to AntennaSearch.com, there are 36 towers or cellular antennas within a TWO mile radius of proposed site at 4321 Old Hickory Blvd in Old Hickory (see Exhibit I). With this in mind, colocation is surely a better option that can be explored, and Appellants requested this on August 8, 2019. Appellants request further information be provided to prove that there is indeed a legitimate gap in this specific locale, since statements about achieving Verizon's "network goals" or network objectives" is not in the best interest of those petitioning, which is the community majority. They cite these 5 court cases that set precedent when using the "gaps" and "coverage" argument in such a preceding (finding are **bolded**):

1. *T-Mobile Northeast LLC v. Fairfax County Board of Supervisors*

672 F.3d 259 (4th Cir. 2012)

~~Affirming the denial of plaintiff's application where its "several declarations, along with some exhibits" simply presented "very general conclusions regarding the feasibility of alternative locations, including repeated assertions that the locations 'would not allow T-Mobile to meet its coverage objectives' "~~

Our previous opinions addressing subsection (B)(i)(II) have established certain principles, which guide the review of challenges brought under that subsection. In our decision in *AT&T Wireless PCS, Inc. v. City Council of Virginia Beach*, 155 F.3d 423 (4th Cir.1998) (*Virginia Beach*), we considered a local governing body's denial of an application submitted jointly by four telecommunication companies, which sought approval to construct two communications towers in a residential area.

2. *T-Mobile Central, LLC v. Charter Township of West Bloomfield*

691 F.3d 794 (6th Cir. 2012)

Holding that T-Mobile's consideration and rejection of suggest alternative sites was "sufficient to make the requisite 'showing as to the intrusiveness or necessity of its proposed means of closing that gap'"

As a threshold matter, we must first determine whether the denial of a single application from T-Mobile can constitute an effective prohibition. The Township places great stock in precedents from the Fourth Circuit, which has held that only a general, blanket ban on the construction of all new wireless facilities would constitute an "impermissible prohibition of wireless services under the TCA." *MetroPCS*, 400 F.3d at 730 (citing *AT & T Wireless PCS v. City Council of Virginia Beach*, 155 F.3d 423, 428 (4th Cir.1998) (holding that only "blanket prohibitions" and "general bans or policies" affecting all wireless providers count as effective prohibition of wireless services under the TCA)). However, the large majority of circuits have rejected this approach.

3. *APT Pittsburgh Ltd. Partnership v. Lower Yoder Township*

111 F. Supp. 2d 664 (W.D. Pa. 2000)

Holding that Defendant was entitled to summary judgment where Plaintiff failed to demonstrate that it was treated differently with respect to the erection of a telecommunications tower in a specific zoning district

Nonetheless, it is dicta that finds support in other cases. See *Town of Amherst*, 173 F.3d at 16 n. 7; *AT&T Wireless PCS v. City Council of Virginia Beach*, 155 F.3d 423, 426-28 (4th Cir. 1998) (Luttig J.). I will exercise my discretion and consider Mr. Tuttle's affidavit to the extent that it contains admissible evidence. Even when the facts adduced in Tuttle's affidavit are added to the mix, APT still cannot show that the defendants violated the TCA. First, APT has not tendered any evidence to demonstrate that there is a "significant gap in the ability of remote users to access the national telephone network."

4 & 5. (*Metropcs Inc. v. City and County of San Francisco* No. C-02-3442 PJH (N.D. Cal. Apr. 24, 2003) and *ATT Wireless PCS v. City Council of Virginia Beach*, 155 F.3d 423, 429 (4th Cir. 1998).

Distinguishing between a "gap" in coverage and a "dead spot"

See, e.g., *New Par v. City of Saginaw*, 301 F.3d 390, 395 (6th Cir. 2002) (explaining the range of requirements adopted); *Southwestern Bell Mobile Syst. v. Todd*, 244 F.3d 51, 59 (1st Cir. 2001) (same). **Some courts have held that the governing local body must issue full findings of fact and conclusions of law**, see, e.g., *Omnipoint Communications, Inc. v. Planning Zoning Comm'n*, 83 F. Supp.2d 306, 309 (D. Conn. 2000), **while others state that merely stamping the word "DENIED" on an application is sufficient**, *ATT Wireless PCS v. City Council of Virginia Beach*, 155 F.3d 423, 429 (4th Cir. 1998). **In Todd, the First Circuit reviewed these precedents, and noted that "[b]oth of these approaches seem flawed."**

PCS marketing materials claiming coverage throughout the Bay Area with Nahmanson Decl. ¶ 19 (describing "significant gap" in Richmond coverage); Schwartz Decl. ¶ 7 (describing degrading of network based on "seemingly small coverage holes and weak spots"); Tr. 163:1-7 (MetroPCS claiming it "can't service this neighborhood" without 5200 Geary installation). Summary judgment on this issue for both parties is thus denied.

Service Gap MetroPCS claims next that while it offers some service in the Bay Area, the City's refusal to permit it to install the antenna at the 5200 Geary site creates a gap in its service that is sufficiently wide to constitute a denial of service. To prevail on a claim under § 332(c)(7)(B)(i)(II) based on a service gap, MetroPCS must show first that "its facility will fill an existing significant gap in the ability of remote users to access the national telephone network," and next, that

"the manner in which it proposes to fill the significant gap in service is the least intrusive on the values that the denial sought to serve." APT Pittsburgh Ltd. Partnership v. Penn Township Butler County of Pennsylvania, 196 F.3d 469, 480 (3rd Cir. 1999); see also Cellular Telephone Co. v. Zoning Board of Adjustment of the Borough of Ho-Ho-Kus, 197 F.3d 64, 69 (3rd Cir. 1999).

a. **"Significant Gap"** There is a circuit split as to what constitutes a "significant gap" in services. The Third Circuit has held that a "significant gap" is a gap in coverage that no provider has been able to fill — so if any provider has provided coverage for the area, no significant gap exists. APT Pittsburgh, 196 F.3d at 480. **The First Circuit has held, on policy grounds, that a "significant gap" exists if any provider cannot provide general service in a certain area, even if other providers can. Second Generation, 313 F.3d at 634 (reviewing case law of other circuits, legislative history, and policies behind Telecommunications Act). In other words, APT Pittsburgh holds that a "significant gap" in services is a gap as perceived by all the users of a network, and Second Generation holds that a "significant gap" in services is a gap as perceived by a service provider, or an individual user subscribed to a specific service provider, in the network.**

The court finds the First Circuit position more persuasive. Second Generation argues that the policy considerations behind the Telecommunications Act were to encourage competition in the wireless telecommunications marketplace, and that the Third Circuit's position does not adequately do so.

To use an example from this case, it is of little comfort to the customer who uses ATT Wireless . . . who cannot get service along the significant geographic gap which may exist along Route 128 that a Cingular Wireless customer does get some service in that gap. of course, that ATT Wireless customer could switch to Cingular Wireless.

In addition, even if MetroPCS prevails on the "significant gap" issue, MetroPCS must next demonstrate that its proposed installation at 5200 Geary is the only acceptable option to provide coverage for the Richmond district.

Thus, the court finds that a "significant gap" is a gap in any individual service provider's coverage in a specific area. This gap, however, must be a significant gap and not merely individual "dead spots" within a greater service area. Therefore, once a provider has some general coverage in an area, even if certain "dead zone" holes exist in certain specific locations, no "significant gap" exists. Willoth, 176 F.3d at 643-44.

Argument #7

Permit Should Be Revoked Because Appellees Never Disclosed Alternate Tower Sites That Was Requested on 8/8/19 & 8/22/19. Proof is Submitted Herein of 36 Towers/Antennas Found in a 2 Mile Radius (see Exhibit J)

Appellant argues that Appellees never disclosed the alternative sites they were required to disclose in Metro ORDINANCE NO. BL2016-415 4.e.(v). Attorney Joel Hargis, was asked for this information at the August 8th Berryville Baptist Meeting and Attorney Emily Lamb was asked for it at the August 22nd meeting at Eastgate Creative Christian Fellowship. Herein are cited 5 court cases where precedent was set concerning this requirement:

1. *Airtouch Cellular v. City of El Cajon*

83 F. Supp. 2d 1158 (S.D. Cal. 2000)

Holding that the denial of Airtouch's tower did not have the effect of denying services because Airtouch could have explored alternative sites.

There is a split in authority, and no Ninth Circuit authority, on whether a telecommunications zoning decision can be based on constituent testimony alone. Compare *ATT Wireless PCS v. City Council of Virginia Beach*, 155 F.3d 423, 430 (4th Cir. 1998) (holding that it is proper for a legislature and its members to consider constituent testimony as "particularly compelling forms of evidence"); with *Cellular Telephone Co. v. Town of Oyster Bay*, 166 F.3d at 496 (2nd Cir. 1999) (finding that a "few generalized expressions of concern with 'aesthetics' cannot serve as substantial evidence"); *Hearing Zone Rd. of Pine Grove Tp.*, 181 F.3d at 409 (3rd Cir. 1999) (same). The Court agrees that a decision must be based on more than just residents' concern about neighborhood aesthetics.

2. *Omnipoint Communications v. White Plains*

430 F.3d 529 (2d Cir. 2005)

Holding that Omnipoint did not meet its burden of showing that the proposed facility was “more feasible than other options”, where there was an option for co-location available that surfaced during the damages trial in the district court, and, although the “more feasible” alternative was “not in the Board’s administrative record, it was an available inference from the facts presented to the Board.”

Third, we reject Omnipoint’s argument that the Board gave improper deference to community opposition. In *Town of Oyster Bay*, 166 F.3d at 495-96, we declined to rule whether constituent comments amount to substantial evidence, and noted tension between *Omnipoint Corp. v. Zoning Hearing Bd.*, 20 F.Supp.2d 875, 880 (E.D.Pa. 1998) (holding that “unsubstantiated personal opinions” expressing “[g]eneralized concerns . . . about the aesthetic and visual impacts on the neighborhood do not amount to substantial evidence”), and *AT&T Wireless PCS v. City Council of Va. Beach*, 155 F.3d 423, 430 (4th Cir. 1998) (holding that neighbors’ aesthetic concerns could constitute “compelling” evidence for a city council). In this case, some of the residents’ comments may amount to no more than generalized hostility, such as the objection that the tower was being dumped on them rather than on their more affluent neighbors in Scarsdale.

3. New Cingular Wireless PCS, LLC v. Town of Fenton

843 F. Supp. 2d 236 (N.D.N.Y. 2012)

Finding it relevant that unlike the plaintiff in *White Plains*, the plaintiff “provide[d] a photo simulation of the site from which the cell tower would be most visible ... when the deciduous trees were bare.”

See, e.g., R. 253 (Chairman suggesting the service gap might be better handled by another tower in neighboring Chenango County or elsewhere), 369 (Chairman joking that there are more cows than people in Chenango County, and both species might not care about a cell tower there), 375 (Chairman speculating that alternative, less intrusive sites might be available elsewhere), 379 (Chairman suggesting several alternative sites in other towns), 383 (Chairman proposing that ATT get “creative” in considering alternatives, e.g., in a neighboring town).

4. Michael Linet, Inc. v. Village of Wellington

408 F.3d 757 (11th Cir. 2005)

In *Michael Linet, Inc. v. Village of Wellington, Fla.*, 408 F.3d 757 (11th Cir. 2005), the court acknowledged that one relevant factor in determining if a provider had met its burden under § 332(c)(7)(B)(i)(II) was “whether

the company can reasonably place a cell site in an alternative location and eliminate the residents' concerns."

The phrase "unreasonably discriminate among providers of functionally equivalent services" was intended to provide localities with the flexibility to treat facilities that create different visual, aesthetic, or safety concerns differently to the extent permitted under generally applicable zoning requirements even if those facilities provide functionally equivalent services. H.R. Conf. No. 104-458, at 208 (1996), reprinted in 1996 U.S.C.C.A.N. 124, 222. Linet has not shown that he was precluded from proposing an alternative cell site and did not present any evidence that an alternative site would adversely effect Metro PCS' cellular coverage. Moreover the alternative site utilized by the other provider may have had less of an impact or no impact on property values or otherwise not raised the same concerns as the golf course site proposed by Linet. As the district court noted, the Telecommunications Act does not prevent the Village from treating two applicants different, it just prevents it doing so unreasonably.

The Village met this standard. It heard objections from residents and a realtor concerning the cell site's negative impact on real estate values. The Village also heard testimony that the proposed site was unnecessarily close to a local middle school. Under our case law this testimony was sufficient to support the board's determination. Linet's expert testimony contradicting the adverse property value impact concerns was provided by a telecommunications executive who placed a tower in a different part of the community and a realtor who based his knowledge on condominium sales in a different county. This does not change our conclusion. The residents were worried about the impact of this tower on the golf course within their community, not a different tower, different location, or different community. Linet also failed to show that an alternative location was unavailable or unfeasible.

5. *Southwestern Bell Mobile Systems, Inc. v. Todd*

244 F.3d 51 (1st Cir. 2001)

Holding that carrier, in bringing substantial evidence claim under the TCA, had the burden to establish that no feasible alternative site existed.

Southwestern Bell raises two objections to the Board's visual impact conclusion, arguing that there was no competent evidence in the record to support it, and that the Board could not deny the permit based upon the visual impact of the tower when there was no evidence of "available alternative site with a lesser visual impact." We deal with each of these arguments in turn.

Although some of the evidence before the Board did consist of general statements that the tower was an eyesore, these statements did not dominate

the debate. The majority of the objections to the visual impact of the tower specifically addressed whether this 150-foot tower was appropriate for this particular location, on the top of a fifty-foot hill in the middle of a cleared field. The location has no trees, was in the geographic center of town, would be visible at all seasons of the year, and would be seen daily by approximately 25% of the Town's population. It was also located in close proximity to three schools and two residential subdivisions. The closest of these two subdivisions, the Carey Hill Estates, had houses that were located only 200 feet away. Indeed, this subdivision was in such close proximity to the tower that Southwestern Bell used Carey Hill Estates construction plans as a reference map when drawing up the proposed plans for the tower. Purchasers who had placed deposits on houses that were to be built in this subdivision indicated that the tower would be plainly visible from their land.

Appellants request here for SCI Towers (or any other builder) to not build within a 2 mile radius of proposed site at 4321 Old Hickory Blvd. in Old Hickory, but to choose some place that is further away from such a densely populated area.

Argument #8

Permit Should Be Revoked or at Least "Stayed/Delayed" As Appellants Are Requesting an EIA based on Multiple Allowable Reasons In NEPA's Own Requirements Per The FCC's Title 47 CFR § 1.1307 (See Ex. K, L)

47 CFR §1.1307 states the following reasons that a tower site *must be required* to have an Environmental Impact Assessments, and the Appellant cites six as being pertinent to the proposed tower at 4321 Old Hickory Blvd. in Old Hickory:

"An EA must be submitted if the antenna structure may have a significant environmental impact as defined by the FCC's 47 CFR §1.1307 of the Commission's rules. An Environmental Assessment (EA) is required:

- If the facilities may affect listed threatened or endangered species or **designated critical habitats**; or are likely to jeopardize the continued existence of any proposed endangered or threatened species or **likely to result in the destruction or adverse modification of proposed critical habitats**. (Exhibit K shows the deer that freely roam this area. While they are not "endangered," the language says "*or likely to result I the destruction or adverse modification of proposed critical habitats,*" which this would. These deer have been pushed out and have nowhere else to go and so they literally

dwell on this patch of land and on the streets inside the Hampton Park Neighborhood. Please see Exhibit K).

- **If the facilities may physically or visually affect a property significant in American history that is listed, or is eligible for listing, in the National Register of Historic Places, as determined in accordance with the Nationwide Programmatic Agreement or the Collocation Programmatic Agreement.** (See Argument #5, which states that The Hermitage, historic home of President Andrew Jackson, approved a 140' tower, but AntennaSearch.com already measures this tower at 172.9'. Plus, the Metro Ordinance which allows a builder to add up to 50% of an increase due to the fact that a tornado siren will be attached, coupled with the MIDDLE CLASS TAX RELIEF and Job Creation act of 2012 which would write the owners a blank check on increasing height, Appellants see premeditation that this tower will one day seek to be an eyesore towering over the skies by The Hermitage. Residents strongly object to this, as would The Hermitage, had they been told about this prior to their Section 106 letter. And perhaps they should be.)

Please see exhibit K for Appellant's official request for a NEPA EIA.

Argument #9

Permit Should Be Revoked Because Property is not In a Right of Way (ROW) and Owner (LEVOG) James Levin has offered to Negotiate An Equitable Contract Exit for SCI Towers in Light of Overwhelming Evidence of Community Opposition (letter available upon request).

On October 19th, NO-TOWER Commission member, Laura Smith, reached out to LEVOG owner, James Levin, in NY by letter, introducing herself to him as his "neighbor of 30 years" since he has owned his property there for 31 years and she has owned her adjacent property for 30 years. She petitioned Levin to please consider the majority neighborhood uprising and organized efforts to oppose this tower, and sent a full 13-page report with all data, research and proof of the 900+ signature petition. Levin responded very compassionately to Smith the next week by stating two three very important facts: 1) no one had told him about the NO-TOWER Commission or their months of organized efforts and appearances on local media which involved his name (LEVOG), 2) he

reasoned that an Environmental Impact Assessment would surely need to be done before issuing the permit (which there is no public record of such), and 3) he states, “Let me assure you that LEVOG would be willing to negotiate an equitable exit strategy with them (SCI Towers).”

Appellant strongly suggests that SCI Towers communicate with LEVOG to discuss this equitable exit.

Argument #10

Permit Should Be Revoked Because Land is on Sacred Indian Site (Ex.M)

As it pertains to the FCC’s 47 CFR §1.1307 and the aforementioned reasons that a site must be required to have an Environmental Impact Assessment, the Appellant cited two reasons (in Argument #8) to request the EIA. Now, they submit herein evidence that the property is also on a sacred Indian site.

“An Environmental Assessment (EA) is required”:

“If the facilities may affect Indian religious sites.”²⁴

Simply put, 4321 Old Hickory Blvd. is State Route 45, which is the Trail of Tears. On this very property has been found countless arrowheads by residents, and even reports of an American Indian burial ground approximately ¼ mile down on same side of LEVOG property. Those grounds were excavated circa 1995 with exhumed bones

²⁴ <https://www.fcc.gov/wireless/support/antenna-structure-registration-asr-resources/filing-environmental-assessment>

according to testimony of neighbors and top committee members of the NO-TOWER Committee. This land is undoubtedly a sacred Indian site and needs to not be further disturbed more than it already has. Please see Exhibit J for proof of proximity.²⁵

Argument #11

Permit Should Be Revoked Because Local Officials Failed to Act

Appellants also have proof that they have contacted all of their local elected representatives including all Council people, the Mayor, State Representatives, Senators and Congressmen, and yet not heard back. The letter writing campaign began on October 16th from the NO-TOWER Committee, but then on November 1st, all elected official's email addresses were published to Appellant's 900+ email data base and residents were encouraged to reach out to them (and many did so). No residents have reported hearing back from any elected official. One member of the Committee heard back from one councilman who said that was nothing he could do. Due to this, Appellant cites directly from the Telecommunication Act of 1996 which states,

“Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis.”

These citizens deserve to be heard. They are speaking loudly and require action “on an expedited basis.”

²⁵ <https://www.nps.gov/trte/planyourvisit/tennessee.htm>

Argument #12

Permit Should Be Revoked WITHOUT Fear that Metro Will Be Penalized By The FCC Since Precedent Has Been Set in Multiple Court Rulings Protecting the Authority of Local Zoning Boards.

Appellant wishes to encourage the Board of Zoning Appeals that although the TCA of 1996 and the FCC pre-approves many telecommunication towers, the Zoning Board must approve the dirt upon which such towers are placed. Appellants ask the BZA to consider the following 5 court cases in which precedent is set when a court rules in favor of a local Zoning Board or Code's decision to deny or revoke a permit.

1. *Uscoc of Vir. v. Montgomery Cty. Bd. Sup'rs*

343 F.3d 262 (4th Cir. 2003)

Finding that the denial of an application to build a telecommunications tower found "ample support" in the form of "evidence regarding the proposed tower's inconsistencies" with "zoning ordinances and guidelines"

To be entitled to relief under a(B)(i)(II) prohibition of service claim, the plaintiff's burden is substantial. In AT T Wireless PCS, Inc. v. City Council of Virginia Beach, 155 F.3d 423, 428-29 (4th Cir. 1998), we held that a telecommunications provider could not prevail in a challenge to an individual zoning decision absent a general ban or policy to reject all applications. See also 360°o Communications Co. v. Board of Supervisors of Albemarle County, 211 F.3d 79, 88 (4th Cir. 2000) ("The burden for the carrier invoking this provision is a heavy one: to show from language or circumstances not just that this application has been rejected, but that further reasonable efforts are so likely to be fruitless that it is a waste of time to try.").

2. *Omnipoint Corporation v. Zoning Hearing Board*

181 F.3d 403 (3d Cir. 1999)

Holding that a zoning board acted in a quasi-judicial capacity when it denied a conditional use permit.

See *Aegerter v. City of Delafied*, 174 F.3d 886, ___, 1999 WL 225310, at *2- *4 (7th Cir. 1999); *Cellular Telephone*, 166 F.3d at 494-97 (both

applying the substantial evidence requirement of § 332(c)(7)(B)(iii) without regard to state law evidentiary burdens). The Board relies heavily on *ATT Wireless PCS, Inc. v. City Council*, 155 F.3d 423 (4th Cir. 1998), where **the court affirmed the city council's denial of a conditional use permit to build two 135-foot wireless telephone transmission towers based on considerable community opposition. The Court of Appeals for the Fourth Circuit stressed the legislative nature of the city council.**

3. *A&T Wireless PCS v. Winston-Salem Zoning*

172 F.3d 307 (4th Cir. 1999)

Holding that the writing requirement was satisfied by the zoning board's notice to the applicant that consisted of a copy of the first page of the application with the word "denied" written on it when considered along with a transcript and minutes of the zoning board's hearing.

[A]ny decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record. As this court recently stated in *ATT Wireless PCS v. City Council of the City of Virginia Beach*, 155 F.3d 423, 429 (4th Cir. 1998), "[w]e treat separately the two requirements of section (B)(iii)."

4. *Sprint Spectrum L.P. v. Willoth*

996 F. Supp. 253 (W.D.N.Y. 1998)

Upholding a city's decision to deny a variance and stating that a carrier cannot unilaterally dictate the level of service it wishes to provide, nor does it have the right to construct any and all towers it deems necessary because that would nullify a local government's right to deny construction of WCFs

The Town Planning Board did not exceed its authority in considering whether adequate service could be provided with fewer than three towers. Although considerations for the "level of service" as such is not a specific factor listed in N.Y. Town Law § 274-a or in the Ontario Zoning Ordinance, the Town was nonetheless authorized to consider whether alternative sites are available for a public utility's facility which could provide safe and adequate service. *Niagara Mohawk Power Corp. v. Fulton*, 8 A.D.2d 523, 188 N.Y.S.2d 717 (4th Dept. 1959) ["In determining the reasonable necessity of a particular site, consideration must be given to the availability of other sites and to the degree of detriment that might be

caused by the various sites..."]; Bell Atlantic NYNEX Mobile, Inc. v. Loneragan, 172 Misc.2d 317, 659 N.Y.S.2d 402 (Sup.Ct. West. Cty. 1997)

5. *City of Medina v. T-Mobile USA, Inc.*

95 P.3d 377 (Wash. Ct. App. 2004)

Stating "the entity seeking a variance bears the burden of proof"

Second, the cases the City cites in support of its argument that T-Mobile cannot justify its variance requests with its desire to provide adequate coverage are distinguishable. Each of those cases involves analyzing whether a land use authority improperly refused to grant a variance in violation of the FTA. While these cases hold that local zoning authorities are not required by the FTA to grant variances unless denying the application would effectively constitute a ban on wireless services, they do not prohibit a zoning board from considering desired coverage for its citizens. **Those cases reinforce the FTA's purpose of preserving local zoning authority within the statutory limits. Accordingly, when a cellular company bases its variance requests in part on coverage, as in this case, the local zoning authority is free to consider those issues according to local law.** This conclusion is evident in the cases the City itself relies on where land use authorities considered service issues. For example in *Sprint Spectrum L.P. v. Willoth*, the Town of Ontario Planning Board denied Sprint's application to build three cell towers. In reaching...

Finally, Appellants encourage the BZA to not fear being accused by the FCC of "Prohibition of Service." Here are 5 such court cases where precedent was set ruling in a Zoning Board's favor.

1. *360° Communications Co. v. Board of Supervisors*

211 F.3d 79 (4th Cir. 2000)

Holding that provider has burden of demonstrating that "denial of its application for the one particular site is tantamount to a prohibition of service" and that "further reasonable efforts are so likely to be fruitless that it is a waste of time even to try"

We have interpreted the term "substantial evidence" to mean "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *ATT Wireless PCS, Inc. v. City Council of the City of Virginia Beach*, 155 F.3d 423, 430 (4th Cir. 1998) (quoting

Universal Camera Corp. v. NLRB, 340 U.S. 474, 477 (1951)). **It requires more than a mere scintilla but less than a preponderance.** See NLRB v. Grand Canyon Mining Co., 116 F.3d 1039, 1044 (4th Cir. 1997).

2. APT Pittsburgh Ltd. Partnership v. Penn Township

196 F.3d 469 (3d Cir. 1999)

Summary judgment in favor of the City on this issue is warranted. Finding an "effect of prohibiting" claim requires "evidence that the area the new facility will serve is not already served by another provider"

It is unclear at this point whether the requirement of a "decision ... in writing" is satisfied by a writing that simply memorializes the ultimate conclusion or requires findings of fact supporting the denial. Compare *ATT Wireless PCS, Inc. v. City Council of Va. Beach*, 155 F.3d 423 (4th Cir. 1998) (when Congress has intended to require a written decision with factual findings, it has expressly done so; it did not in § 322(7)(B)(iii)) with *Smart SMR of N.Y., Inc. v. Zoning Commission of the Town of Stratford*, 995 F. Supp. 52, 56 (D. Conn. 1998) (findings of fact required); *Illinois RSA No. 3, Inc. v. County of Peoria*, 963 F. Supp. 732, 743 (C.D. Ill. 1997) (same); *Western PCS II v. Extraterritorial Zoning Auth.*, 957 F. Supp. 1230, 1236 (D.N.M. 1997) (same). **We find it unnecessary to resolve in this case whether memorialization of the denial will suffice.**

MetroPCS claims that the City has imposed a general ban on any new entrants into the San Francisco wireless communications market. The City has demonstrated that MetroPCS has been permitted to install 30 antennas within San Francisco, and has been granted 18 CUPs as well. Ionin Decl. ¶¶ 4-5; Exh. A. MetroPCS in fact has already entered, and offers service, in the Bay Area market. McCoy Decl. Exh. C. **MetroPCS thus cannot show that it has been denied entry into the San Francisco telecommunications market.**

3. T-Mobile Northeast LLC v. Howard Cnty. Board of Appeals

Civil Action No. RDB-11-729 (D. Md. Mar. 30, 2012)

Denying T-Mobile's motion for summary judgment on its effective prohibition claim where T-Mobile showed that it "had unreliable coverage in the area" but "coverage was not completely lacking."

T-Mobile's Proposed Facility was met with community opposition. The President of the Glenwood Estates Homeowner's Association testified that the community opposed the construction of the Proposed Facility in the area. Bd. of Appeals Decision and Order, j 15, at 7. Sharon Keeny, a real estate agent, testified that cell towers lowered the property values of nearby properties and also extend the time during which a property was on the market. Id. ¶16. The testimony presented by James Brent, a software engineer, indicated that T-Mobile could increase coverage in the area "by placing directional antennae on existing towers within the search range area." Id. ¶17. Additionally, a nearby resident testified that T-Mobile's "revised landscape plan . . . [would] negatively impact sight distance at an already troubled intersection of Hobbs and Burntwoods Road." Id. ¶ 18. Finally, two individuals respectively testified that (a) the Proposed Facility was "not in harmony with the land uses and policies" of the Howard County General Plan and (b) T-Mobile **"did not make a legitimate effort to locate the proposed communication facility on an existing structure."**

4. *ATT WIRELESS PCS v. CITY COUN.*

155 F.3d 423 (4th Cir. 1998)

Concluding that the TCA's anti-prohibition clause applies only to "blanket prohibition" and "general bans or policies," not to individual zoning decisions.

The City Council's vote concluded a months-long effort by appellees to secure a location for tower in Little Neck. ATT and PrimeCo both offer digital wireless personal communications services in the Virginia Beach area. Digital service is considered an advance over analog service. Like analog service, it relies on overlapping "cells," each centered on a communications tower. However, because digital signals are weaker than analog signals, and because of the thick tree cover in Little Neck, ATT and Prime Co found that their Virginia Beach service had a "hole" in portions of Little Neck. Aided by City staff, they investigated several possible tower sites in Little Neck and concluded that the Church's property was the most desirable. They therefore entered into leases with the Church allowing them, in exchange for approximately \$60,000 annual rent, to construct, maintain, and operate two 135-foot communications towers on the Church's property. Besides carrying digital signals, the towers were also to provide analog signals for GTE Mobile Net and 360o Communications (not parties to this case), who also sought to enhance their... *Metropcs Inc. v. City and County of San Francisco*, No. C-02-3442 PJH, at *1 (N.D. Cal. Apr. 24, 2003)

those citizens do so under their 1st Amendment “right to petition the Government for a redress of grievances.” and not as part of this overall appeal. Accumulatively, these 12 arguments represent the genuine concerns and fears of the 900+ petition signors, hundreds of which say they must move if the tower is built. These individuals are not anti-cell tower or pro-community tower prohibition, but merely petition Metro Codes to advise SCI Towers to pursue one of their other considered sites for this tower, preferably one not steps away from such a densely populated residential area.). As previously stated, precedent has been set in many cell-tower court cases cited herein, and a recurring phrase in many of them was that of “substantial evidence.” The Telecommunications Act of 1996, §704 (B) (iii) says:

“Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by **substantial evidence** contained in a **written record.**”

According to the precedent of *T-Mobile Northeast LLC v. Loudoun County Board of Supervisors* 903 F. Supp. 2d 385 (E.D. Va. 2012), substantial evidence “is more than a scintilla” but “less than a preponderance,” and that is exactly what the Appellant has sought to provide through the “written record” of this brief’s and its 12 arguments.

Appellant respectfully files this memorandum of law in support of its motion for Revocation of Issued Building Permit, pursuant to the local ordinances of this jurisdiction and the rights of the citizens herein.

Exhibits

A-N

EXHIBIT A

NO-TOWER PETITION

PREAMBLE

NOTICE: Proposed Cell Tower to be built at Hampton Park Subdivision (behind Aaronwood Court cul-de-sac at 4321 Old Hickory Blvd. beside Urban Air). There are 1,000 homes within 100 ft. to 1/2 mile radius of the proposed tower counting Hampton Park, Southfork, Laurel Hill, Hopewell, Berryville, parts of Cleveland Hall and other homes along OHB. Full petition with signatures can be viewed at: www.gopetitions.com/petitions/NO-TOWER/html

Petition:

"We, the undersigned, call upon the Metro Nashville BZA, Nashville, Codes, LEVOG, SCI Towers and the FCC to move this proposed cell tower further away from our Old Hickory subdivisions, far from its 1,000 homes and thousands of residents, children's trampoline park, children's baseball field and three childcare/church centers that are within the 1 mile radius of this proposed location. We agree and request that one of the alternate sites first explored by SCI in a more remote area be selected for tower placement, or another locale altogether that is safer for the health and property values of Old Hickory residents."

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④

Sheet1

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owns Tech gifts on left by Church

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3

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David	Carney Eaves		David Eaves
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 324 P20 313 HOGG
 BRANDILINDA

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Victor	Torres		
Carly	Yarns		
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Brittney	Fay	animalcareclinical	
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Jessie	H. Rankin		
Kyle	Steranka	JKSTERANKA@gmail.com	
Amber	Stamper	amberstamper@gmail.com	

Station wants to donate SD - for large donation 4 mo
 #12
 The Shrink

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Shaw 714-512 84995

First Name	Last Name	Email	Signature
Nelka Wallace		nwall346@gmail.com	Nelka Wallace
Adam Waller			Adam Waller
Austin Choggin			Austin Choggin
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Anna Pugh		anna.hobland3@aol.com	Anna Pugh
CESAZ	SATZAN	cesaz@satzan.com	Cesaz Satzan
LIZ	SATZAN	liz@satzan.com	Liz Satzan
PATRICIA	WRIGHT	wright40594@bellsouth.net	Patricia Wright
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Diane	Webster	DianeWebster@gmail.com	Diane Webster
Mikeyes	Bighan	sharewall@gmail.com	Mikeyes Bighan

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Stephanie @ UrbanArmenashville.com
 Case # 2020-004

"We, the undersigned, call upon the Metro Nashville BZA, Nashville, Codes, LEVOG, SCI Towers and the FCC to move this proposed cell tower further away from our Old Hickory subdivisions, away from its 1,000 homes and thousands of residents, children's trampoline park, children's baseball field and three childcare/church centers that are within the 1 mile radius of this proposed location."

	TITLE	FIRST NAME	LAST NAME	PHONE OR EMAIL ADDRESS
1		Cindy	Knecht	cindyknecht55@gmail.com
2	Mrs	Beverly	Thompson McCord	bmacord4209@gmail.com
3	Mrs	Ellen	Dammann	ellen1d@bellsouth.net
4		Connie E.	Turner	turner8516@bellsouth.net
5		Richard	Hofmann	4240 Old Hickory Blvd
6	MR	Dan	Dammann	
7	MR	STANW	MELINE	4973-Breckenwood 0432038
8	Mrs.	Jeanette	Billey	4441 South Arael
9	Mr.	James	Billey	4441 South Arael
10	Ms.	Willie Blair	Barrago	615-604-1344
11	Mrs.	Michele	Nelson	michelefnelson7@gmail.com
12	Mr	Jeffrey	Harig	tnphl562@yahoo.com
13	Mrs	Betty Hubbard	Hubbard	615-357-0375
14	Mr.	Ellis	Hubbard	
15	Mr.	Shild Greer	Greer	615-498-5288
16	MR.	RANDOLPH NELSON, JR	NELSON	615 602-5856
17	MR.	Chirag	Patel	615-478-7706
18		Pratik	Patel	615-496-2911
19	Mrs.	Trina	Collier	615-480-2215
20		Karen	DeBery	kdeberry58@gmail.com

"We, the undersigned, call upon the Metro Nashville BZA, Nashville, Codes, LEVOG, SCI Towers and the FCC to move this proposed cell tower further away from our Old Hickory subdivisions, away from its 1,000 homes and thousands of residents, children's trampoline park, children's baseball field and three childcare/church centers that are within the 1 mile radius of this proposed location."

	TITLE	FIRST NAME	LAST NAME	PHONE OR EMAIL ADDRESS
1	Mrs	Moreen	Muldoon	momuldoon@aol.com
2	Mr+Mrs	David & Patricia	Evans	(615) 847-5906 d.evans49@comcast.net
3	Mrs.	Donna	Grinn	dbgrimm@ATT.NET
4	Dr.	Alberto	Gonzalez	615-336-5143 lungs66@gmail.com
5	Mrs	Marie	Sargent	615 847-0148
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				

Last Name	Email	Signature
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Https://

www.Gopetition.com

Petitions/ND-tower.html

Christina

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Bruce	BAKER		
JACK	Loce		
Jim	LYNN		
Heather	Curtis	H76smith@yahoo.com	
Marc	DeJawor		
Robbie Jo	Caldwell		
Thomas	Penningson		
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Randy Reeves	Reeves	Reeves.RANDY@HARRISONANDREES.COM	
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MARLYN COMSTOCK



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Anna	Cawender		<i>Anna Cawender</i>
Michelle	Leon		<i>Michelle Leon</i>
Anna	Amz		<i>Anna Amz</i>
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MICHAEL	MASHINGANZIE	MIKEC.MASH@yahoo.com	<i>Michael Mashinganzie</i>
Justin	L Kelly		<i>Justin L Kelly</i>
Kora	MYERS		<i>Kora Myers</i>
Diana	Reyes	Venlunspree-we cannot ^{we will not} give up	<i>Diana Reyes</i>

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#	First name	Last name
1	Harris	Smith
2	Maureen	Ryan
3	Joe	McCauley
4	Kajin	Shaban
5	Shayna	Brown
6	Jennifer	Beeson
7	Terrell	Hayes
8	Sharon	Scrofne
9	Jenny	Klooster
10	Barry	Kraus
11	Cedrick	Hobson
12	Armando	Martins
13	Blake	Heberle
14	Cynthia	Martins
15	Destiny	Heberle
16	Kim	Ridings
17	Jolanda	Hughes
18	Amy	Gerkin
19	Laura	Evans
20	Tonya	Patten
21	Rick	Hughes
22	Terry	Hughes
23	David	Gerkin
24	Susan	Lyle
25	Mike	Lyle
26	Joseph	DeMartini
27	Takako	Hayes
28	Leah	Cross
29	Samuel	McClung
30	Diana L.	Ray
31	Steven	Gray
32	Eddy	EdohoEket
33	Kirsten	Mitchell
34	Kylie	Blackett
35	Sydney	Mitchell
36	Sarah	Que
37	Libby	Hooper
38	Jana	Moore
39	Sandy	Sargent
40	Karen	Juday
41	Samantha	York
42	Joann	Searfoss
43	Tamatha	Boyle
44	Jenesis	Smith
45	Christopher (Chris)	Smith
46	Sean	Smith
47	john	Boyle
48	Kelsey	Woodcock
49	Jude	Smith
50	Faye	Swann
51	Gabriel	Tiamson

52	Rene	Alvarado
53	Carmela	Tiamson
54	Joselito	Tiamson
55	Isabella	Tiamson
56	Jason	Turner
57	Kaye	Johnson
58	Melody	Moore
59	Carmen	Moore
60	Kim	Brooks
61	Duane	Brooks
62	Darlene	Pirtle
63	Marilyn	Pitt
64	TIMOTHY	TREPAGNIER
65	Bonnie	Campbell
66	mittchell	guffee
67	Elaine	Brooks
68	Linda	Guffee
69	Cindy	Seay
70	Randall	Butler
71	David	Seay
72	Winifred	Tart
73	Sherry	Payne
74	Barry	Shuffitt
75	Nelda	Graham
76	DEBI	MCWILLIAMS
77	Brian T.	Donnelly
78	William	Tompkins
79	Denny	McBride
80	Dennis J.	McBride III
81	James	Timberlake
82	Audrey	Timberlake
83	Joseph	Merritt
84	Anthony	Santaguido
85	Susan	Nimmo
86	Richard	Nimmo
87	Clyde	Taylor
88	Terra	Taylor
89	Trey	Taylor
90	Sherrie	Taylor
91	Jason	Deal
92	Jessica	Gearlds
93	Kelly	Troglin
94	Courtney	Troglin
95	Abbey	Thompson
96	Aiden	Deal
97	Austin	Gearlds
98	Michael	Gearlds
99	Jade	Green
100	Patricia	Atkinson
101	Dryw	young
102	Tamika	Deal
103	Mindy	Bussoletti
104	Tim	Carroll

105	P	Caulder
106	Jeff	Owens
107	Shawn	Melia
108	Kimeka	Collins
109	Norma	Simmons
110	Amanda	Parker
111	Lori	Turner
112	Kenneth	Cahall
113	Elizabeth	Becker
114	Patty	Campbell
115	Conan	Curry
116	Anne	Fentress
117	Kelly	Morgan
118	Deborah	Stokes
119	Betty	Stark
120	Sam	Graham
121	Alicia	Christian
122	Melissa	Hughes
123	Mary	Cunningham
124	cheryl	wachtel
125	KAREN	BUTLER
126	Pamela	Furr
127	Randall	Butler
128	Calvin	Harrell
129	Terry	Crutcher
130	RICK	fussell
131	Susie	Benefield
132	Bobby	Perkins
133	Andrew	Hughes
134	Peach	McComb
135	Gordon	Batcheller
136	Lisa	Robinson
137	Erin	Miller
138	Rachel	Krawchuk
139	Sheri	Schmucker
140	james	butler
141	LESLIE	ELLIOTT
142	Thomas	Taylor
143	Elizabeth	Roberts
144	Wendy	Jarvis
145	Mollie	Knapp
146	Martha	Hodges
147	Tony	Hodges
148	Russell	Freeman
149	Maria	Alvarado
150	NDigo	Kali
151	Trinity	Franklin
152	Buffy	Butler
153	Christie	Cooper
154	Britney	Gunn
155	Charlene	Collier
156	Chatoria	Franklin
157	Gloria	Campbell

158	CYNTHIA	PRATT
159	Amanda	White
160	R	Mcmurtry
161	Sue	Brusseau
162	Teena	Smith
163	Jerry	Smith
164	Lisa	Dunn
165	Michael	Dunn
166	Amanda	Graham
167	Chelsey	Corley
168	Penny	Blevins
169	Crystal	Shelton
170	Sue	Powell
171	Phil	Ramsey
172	Janna	Ramsey
173	Dennis	Reeves
174	Martha	Purucker
175	Annalese	Bowlus
176	Donlee	Likins
177	Melissa	Mccrary
178	Leslie	Sherrick
179	Katherine	Green
180	Susan	Floyd
181	Bonnie	Naff
182	Susan	Thomas
183	Kristina	Calvin
184	Raymond	Fields
185	Philip	Yater
186	Nancy	Yater
187	Brandon	Etheridge
188	Patricia	Campbell
189	Jeff	Ke t
190	Sherry	Del Negro
191	Haley	DeVillez
192	Laura	Lambie
193	Kevin	Bradshaw
194	Robert	Biggers
195	Gregg	Garner
196	Rodger	Grimm
197	Jason	Rediker
198	Susan	Sawyer
199	Debbie	Klingler
200	Allen	Pointer
201	John	Ruch
202	Michael	Sawyer
203	Michael	Paul
204	Daniel	Faulkner
205	Teresa	Ussery
206	Thomas	Franklin
207	Juan	Arboleda
208	Melissa	Davis
209	Sandra	McDowell
210	Adam	Loeffler

211	Lyssa	Loeffler
212	Melanie	FOrd
213	Tara	Brewer
214	Joseph	Steranka
215	Laurie	Kagay
216	Judie	Russell
217	Sandra	Porter
218	Beth	Kagay
219	Cameron	Kagay
220	Jeorgi	Smith
221	Debbie	Paulson
222	Robert	Paulson
223	Alicia	Paulson
224	Daniel	Erickson
225	Amanda	Muckelroy
226	Karen	Richter
227	Wayne	Jaco
228	Morgan	Troxler
229	Betty	Thompson
230	Randy	Wheeler
231	Joe	St.Aubin
232	Alicia	Riehl
233	Nancy	Uribe
234	Hannah	Ogan
235	JORDANKA	VASQUEZ
236	Tim	Riehl
237	DAVID	EVANS
238	Jason	Hart
239	Donna	Ogan
240	Jackie	Gorman
241	Jordan	Burnside
242	Shannon	Moore
243	Darlene	Fischer
244	Kaycee	Schroder
245	Sam	Payne
246	Pamela	Perry
247	John	Perry
248	Amanda	Luffman
249	Kay	Cordell
250	Rick	Graham
251	Andrea	Anderson
252	Jennifer	Proctor
253	Wendy	Hauth
254	Joan	Floyd
255	Tony	Thompson
256	Cheryl	Keisler
257	Tammi	Edwards
258	Elizabeth	Kagay
259	Emily	Galford
260	Tori	Roufs
261	Heather	Maute
262	Stefanie	Nsubuga
263	AJ	Gerard

264	Jennifer	Sherrod
265	Ryan	McAllister
266	Kathryn	Montgomery
267	Megan	Ssekabira
268	Megan	Cameron
269	Ethan	Harris
270	Cannon	Cameron
271	Julia	Harshbarger
272	Lavy	Becker
273	Jeff	Sherrod
274	Taylor	Maute
275	Sara	Giguere
276	Rachel	Nowlin
277	Hollie	Benoit
278	Katie	Dunning
279	Moses	Ssekabira
280	L	Germeraad
281	Hannah	Duffy
282	Derek	Bargatze
283	Candace	Galford
284	Elise	Gerard
285	Maria	Swang
286	Craig	Duffy
287	Lauren	Cosgrove
288	Bri	Botzum
289	Carly	Koehn
290	Roger	Koehn
291	Denise	Koehn
292	Barbara	Starkey
293	Haley	Arpaio
294	Aaron	Montgomery
295	Rachel	Olson
296	Jasmine	Mcwhorter
297	Matthew	Webb
298	Jaimee	Arroyo
299	Heather	Munoz
300	Anna	Reyes
301	Chasity	Lin
302	Julie	Watson
303	Brian	Mcelreath
304	Gabby	Ladd
305	Celesta	Bargatze
306	Kelly	Jobe
307	Sara	Davis
308	Kathryn	Stowers
309	Jessica	Woody
310	Michelle	Madron
311	Harry	Baker
312	Tricia	Baker
313	Drew	Waldon
314	Drew	Amstadt
315	Anne	Rummel
316	Anand	Patel

317	Luke	Loeffler
318	Anisleys	Perez
319	Alfonso	Perez
320	Eden	Loeffler
321	Irving	Martinez
322	Hope	Loeffler
323	Lily	Loeffler
324	Carson	Guthoerl
325	Amanda	Howard
326	Justin	Howard
327	Leah	Sherrod
328	Ashley	Moore
329	Nick	Moore
330	Bethann	Quigley
331	J	Reichert
332	Evie	Arroyo
333	Yonah	Arroyo
334	Eisele	Arroyo
335	Esem	Arroyo
336	Tresa	Botzum
337	Janae	Castro
338	Jason	Carpenter
339	Brett	Madron
340	Kendice	Hartnell
341	Joshua	Mohn
342	Titus	Duffy
343	Elizabeth	Widman
344	Sage	Widman
345	Jude	Widman
346	Joel	Widman
347	Zoe	Hill
348	Phil	Loeffler
349	Tim	Sherrod
350	Stephanie	Bartlett
351	Ty	Benoit
352	Ethan	Benoit
353	Aaron	Montgomery
354	Jennifer	Nyago
355	Gerron	Norman
356	Jude	Montgomery
357	Alexander	Castro
358	Brynn	Buchanan
359	Roy	Copeland
360	Geoff	Hartnell
361	Ava	Hartnell
362	Aundra	Moore
363	Keanda	Guest
364	Cecilia	Bender
365	Nakita	Guest
366	Trevon	Guest
367	Tara	Garner
368	Laura	Voight
369	Michael	Davis

8/20/19, 8:22 AM

370	Jim	Gilley
371	James	Nance
372	Jon	Berry
373	Sommer	Rush
374	Owen	Kagay
375	Jeremiah	Watson
376	Charlotte	Kagay
377	Amos	Kagay
378	Samuel	Kagay
379	Sean	Fitzgerald
380	Jessie	Kerr-Fitzgerald
381	Vanessa	Edmondson
382	River	Edmondson
383	Ruby	Edmondson
384	Jack	Edmondson
385	Sunny	Edmondson
386	Leslie	Coffey
387	Rodney	Coffey
388	Breanna	Stewart
389	Starr	Durham
390	Bill	Maxey
391	Pam	Maxey
392	Robert	York
393	John	Wright
394	Priscilla	Wright
395	Mike	Hudnall
396	Lloyd	Stinnett
397	Carol	Wilson
398	Lois	Garner
399	Stephen	Collins
400	Nicolle	Wolken
401	Betty	Triplett
402	Rylan	Aaseby
403	Vicki	Cunningham
404	Robert	Parker
405	Teresa	Kurzynske
406	Timothy	Burnette
407	Andrew	Bradley
408	Scott	Mathews
409	Trushar	Champaneria
410	Mark	Croxall
411	Charlotte	Peacock
412	Anna	Baskin
413	Cheryle	McClung
414	Melissa	Warden
415	Wade	Reichert
416	Guy	Morgan
417	Rachel	Hartnell
418	LaTonya	Williams
419	Tamara	Hodges
420	Doug	Neff
421	Joel	Ratekin
422	William	Morgan

423	Mary Anne	Lovell
424	Ron	Lovell
425	Erin	Wilder
426	Deborah	Ritter
427	Randy	Frey
428	Paige	Eby
429	Vanessa	Carter
430	Esther	Bargatze
431	Michele	Sharpe
432	Alyssa	Kurtz
433	Jackson	Kurtz
434	Amani	Kurtz
435	Isaiah	Kurtz
436	Josh	Kurtz
437	Joshua	Kurtz
438	Melinda	Simpson
439	Melinda	Duncan
440	Daniel	Martin
441	Kelsey	Richardson
442	Tamika	Hudson
443	Natalie	Bricen
444	Harold	Cunningham
445	Brittany	Smith
446	Jhason	Smith
447	Christopher	Jones
448	Aimee	Byrd
449	Michael	Porter
450	Kenneth	Johnson
451	Patty	Robertson
452	Karista	Gallimore
453	Rebecca	Bricen
454	Brittany	Cherry
455	Heidi	Harrom
456	James	Eby
457	Tonya	Scott
458	Robert	Blevins
459	ronald	rains
460	James	Varallo
461	Colette	Bradley
462	AHMAD	BRADLEY
463	Ben	Young
464	Laura	Young
465	Juniper	Young
466	Roshaunda	Ross-Orta
467	Jorge	Orta
468	Kyle	Becker
469	Lori	Ramey
470	Marisa	Blank
471	Canaan	Kagay
472	Ginger	Bess
473	Patrick	Opelt
474	Elaine	Opelt
475	Linda	Morton

476	Robert	Dupler
477	Gunvant	Patel
478	Adair	Fryer
479	David	Fryer
480	Felicity	Sherrod
481	Oliver	Sherrod
482	Denise	VanBuren
483	Kristin	Bennecker
484	Kristin	Nadeau
485	Tristan	Swang
486	Brittany	Hernández
487	Tiffany	Potts
488	Thomas	Rodgers
489	Amanda	Byrd
490	Galen	Higgins
491	C.R.	Hunter
492	Gissely	Avalos
493	Deborah	Sadler
494	Howard Allums	Allums
495	Della	Bacote
496	Joel	Olson
497	Adam	Davis
498	Karen	Nations
499	H.	Smith
500	C.	Lindsey
501	Brian	Doyle
502	Hailee	Sells
503	Vanessa	Fenton
504	Tyler	Sounthonevichith
505	Rebecca	Fussell
506	Lee	Senter
507	Sherleta	Sanders
508	Roosevelt	Sanders
509	David	Van Buren
510	Tracy	Nicholson
511	Amanda	Barnett
512	John	Nicholson
513	Anne	Coverdale
514	Barry	Morrison
515	Barbara	Fields
516	Lauren	Garrison
517	Sergey	Olkhovskiy
518	Gin	Rawls
519	Kimberly	Roberts
520	Lyric	Roberts
521	Hudsyn	Roberts
522	Beckham	Roberts
523	Ryan	Roberts
524	Amanda	Aaseby
525	Skylar	Aaseby
526	Richard	Medley
527	Regina	Medley
528	Rebecca	Major

529	Alison	Jobe
530	Mary	Neville
531	Dale	Slivka
532	Rick	Mack
533	Cindy	Mack
534	Greg	Jackson
535	J	Carpenter
536	Melissa	Allen
537	Jared	Nenoit
538	Vanessa	McElreath
539	hollie	Jackson
540	Michael	Duke
541	Chris	Smith
542	Tonyia	Nelson
543	Deloris	Mcclenton
544	Audrey	Dunnebacke
545	Kevin	Dunnebacke
546	Peyton	McElhiney
547	Joshua	McElhiney
548	JAMIE	WILKES
549	Brian	Sexton
550	Edith	Rodda
551	Cheryl	Kinnaird
552	Andrea	Sawyer-Gray
553	Michael	Scrofne
554	Antonia	Rocha
555	Jessica	Schultz
556	Cindy	Reeves
557	Kallie	Mathews

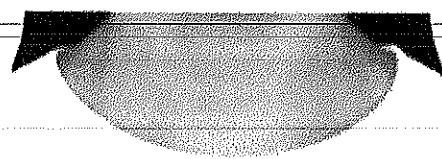


EXHIBIT B

EXHIBIT C:

COVERAGE BY LOCAL MEDIA

<https://www.wkrn.com/news/community-in-old-hickory-fights-against-application-for-cellphone-tower/>

WKRN:



Community in Old Hickory fights against application for cellphone tower



WSMV:

https://www.wsmv.com/news/neighbors-fighting-cell-tower-proposal-in-old-hickory/article_c21e16ba-c54d-11e9-95f5-8f811bb7b348.html).

4WARN SCHOOL CLOSING

Neighbors fighting cell tower proposal in Old Hickory

Cameron Taylor
Posted Aug 22, 2019

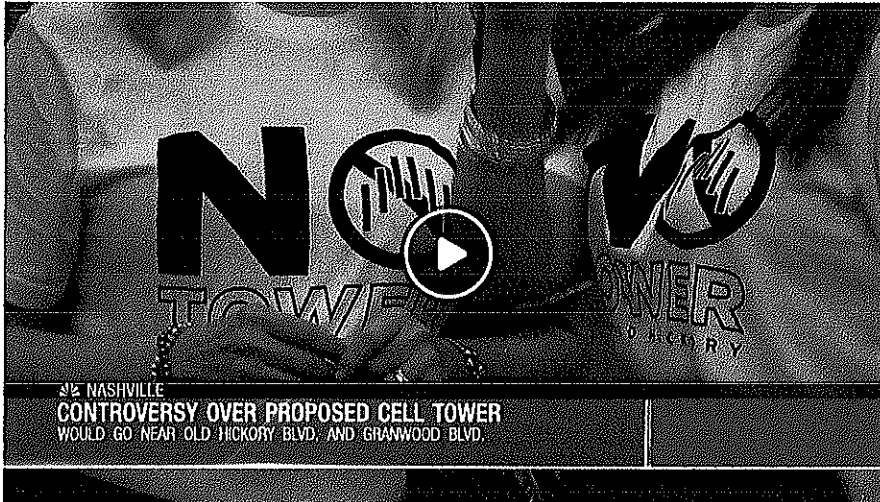



Exhibit D



DAVID BRILEY
MAYOR



METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

DEPARTMENT OF CODES & BUILDING SAFETY

OFFICE ADDRESS
METRO OFFICE BUILDING—3rd FLOOR
800 SECOND AVENUE, SOUTH
NASHVILLE, TENNESSEE 37210

MEMORANDUM

To: File

From: David Diaz-Barriga ^{NOB}

Date: August 20, 2019

Re: Office Visit by Laura and Chris Smith

MAILING ADDRESS
POST OFFICE BOX 196350
NASHVILLE, TENNESSEE 37219-6300
TELEPHONE (615) 862-6500
FACSIMILE (615) 862-6514
www.nashville.gov/codes

Mr. and Mrs. Smith appeared in person to appeal the determination of the Zoning Administrator regarding the construction of a cell tower at 4321 Old Hickory Boulevard. I informed them that the appeal is not yet available and that an appeal may be filed upon the issuance of a building permit—in keeping with the email from Mr. Jon Michael, dated July 12, 2019. See Attached.

Michael, Jon (Codes)

From: Michael, Jon (Codes)
Sent: Friday, July 12, 2019 1:57 PM
To: 'Laura Harris Smith'
Subject: RE: Old Hickory cell tower

Ms. Smith:

Thank you for your time and your thoughtful email.

My response may seem too narrow given the breadth of items covered in your email. But my role in your overall body of interest in all of this is similarly narrow.

Here's the most pertinent information that I can provide, based on the concerns and intentions you expressed. I apologize in advance for any of this being information that you may already have:

- The BZA appeal regarding a sidewalk requirement is just a sidewalk case. Whether the proposed construction was a cell tower, an office building, or an auto garage, the BZA hearing would just be focused on the sidewalk variance.
- You understand correctly that adversely affected citizens are allowed to file an appeal of a permit issued by our office. The legal standard by which that appeal is reviewed is whether the permit was issued in violation of the law. So if a permit is issued for the construction of a new cell tower at the location in question, then you would be able to file an appeal under the provisions of 17.40.180(A) of the Metro Zoning Code.
- That appeal has to be filed in person with our staff at Metro Codes. Our offices are located at 800 2nd Avenue South. We open each week day at 7:30am. Due to the historically long lines, we recommend being present when the doors unlock at 7:30am. That's the one way we can be certain to see you on that same day that you come to Codes.
- As you are aware, most of the law that governs cell tower locations is federal law. We have nothing to do with the drafting, consideration, voting, or implementing of those federal laws and regulations. At the local levels around the country, much of the focus is on safe construction details such as engineered break points and setbacks from property lines.
- Thus, challenging the issuance of a permit with a BZA hearing would need focus on why the permit was issued illegally or otherwise based on inaccurate application of the law.

The biggest obstacle faced by people who oppose cell towers, and there are several as you know, is that the federal laws and regulations that govern the location of cell towers is extremely broad, permissive, and generally favorable to the communications companies. Changes to federal law are the most direct way to alter those facts. So your work with the involved persons in Washington may be the best investment of time and effort.

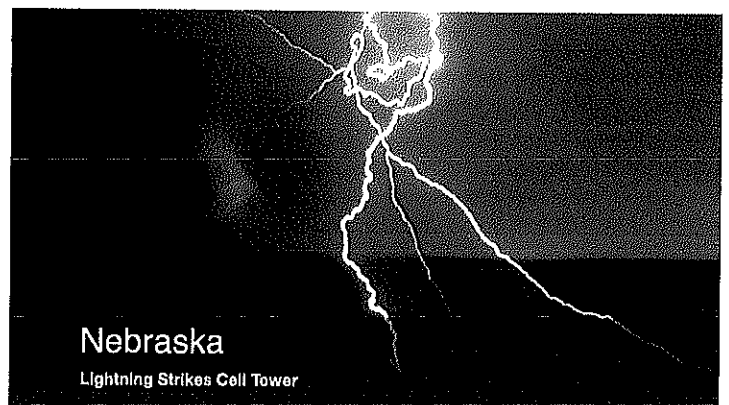
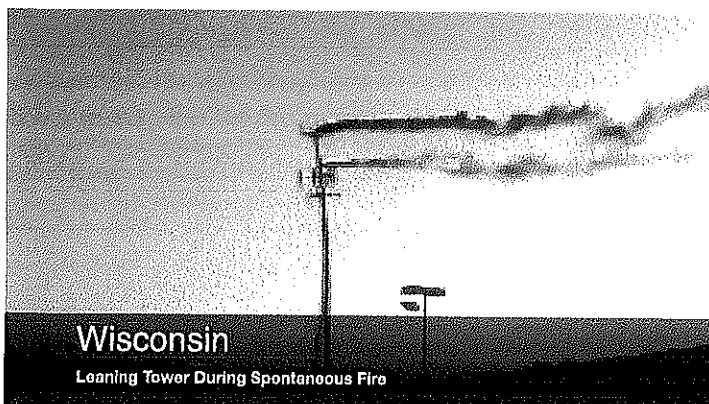
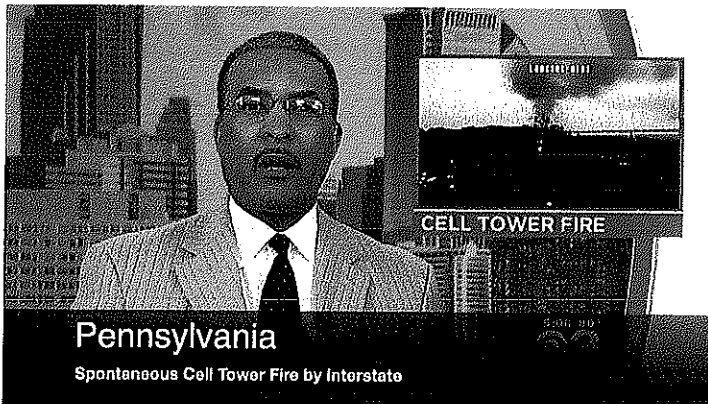
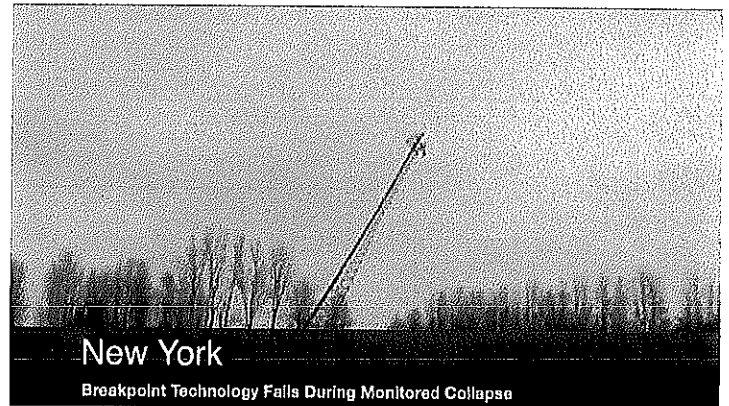
I'm sorry that my email is not more encouraging. I wanted you to have a thoughtful response that acknowledges your issue, but also provides an accurate view of the very limited role that we in local governments have been left to play in these situations.

I wish you the best,

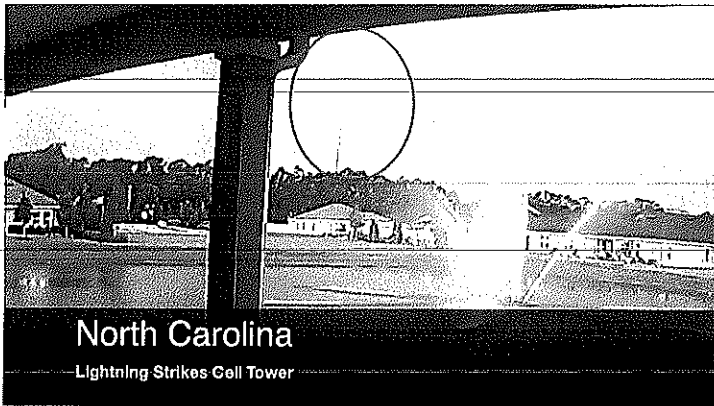
Jon Michael
Zoning Administrator

EXHIBIT E:

RECENT TOWER BREAKPOINT TECHNOLOGY FAILURES, FIRES, & COLLAPSES IN AMERICA
SEE OUR FULL VIDEO PRODUCTION TOWER MONTAGE AT: <https://youtu.be/NpDWZYCe5vU>



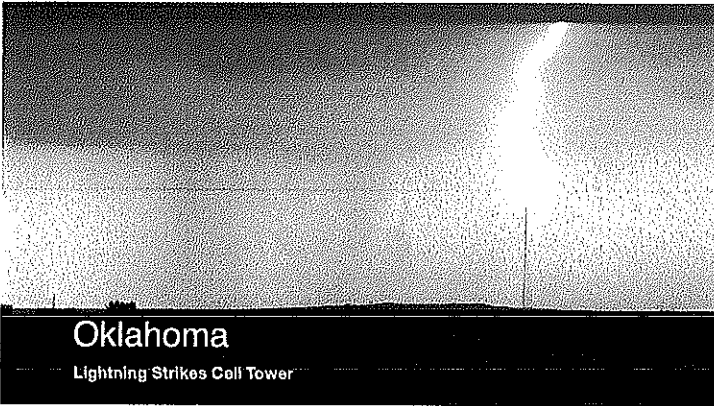
SEE OUR FULL VIDEO PRODUCTION TOWER MONTAGE AT: <https://youtu.be/NpDWZYCe5vU>



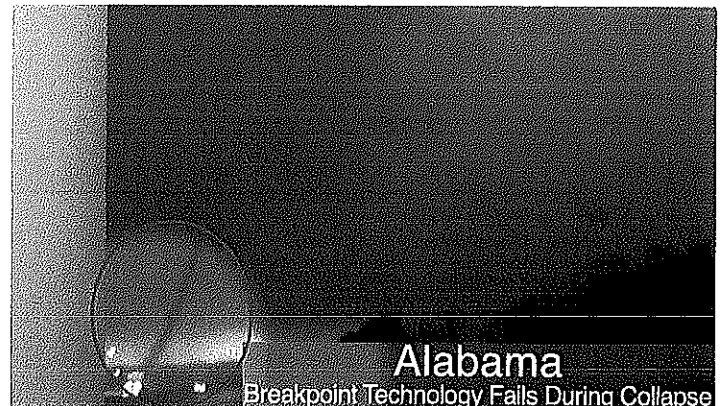
North Carolina
Lightning Strikes Cell Tower



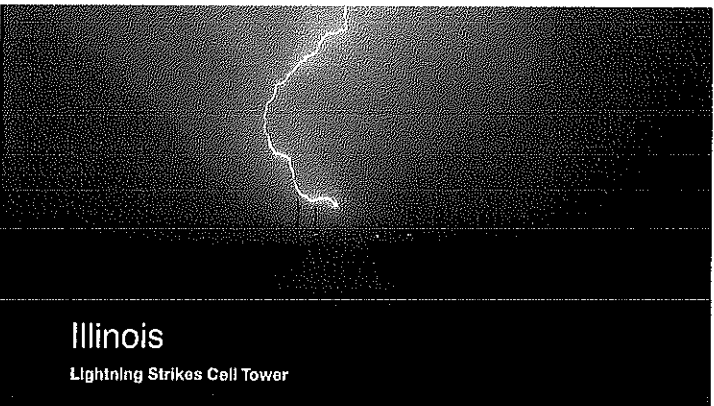
Philadelphia
Cell Tower Collapsing During Fire



Oklahoma
Lightning Strikes Cell Tower



Alabama
Breakpoint Technology Fails During Collapse



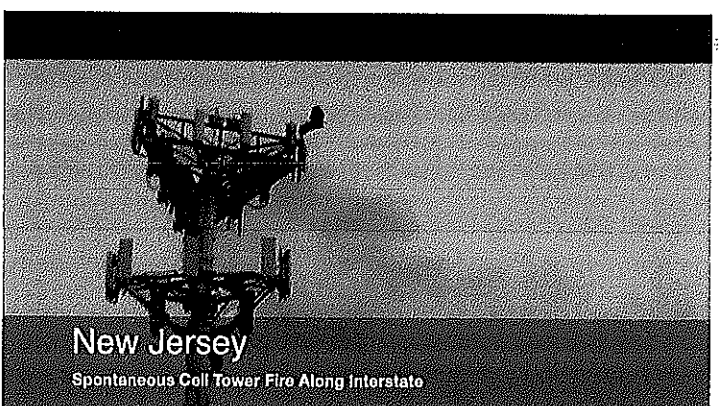
Illinois
Lightning Strikes Cell Tower



Texas
Breakpoint Technology Fails During Monitored Collapse

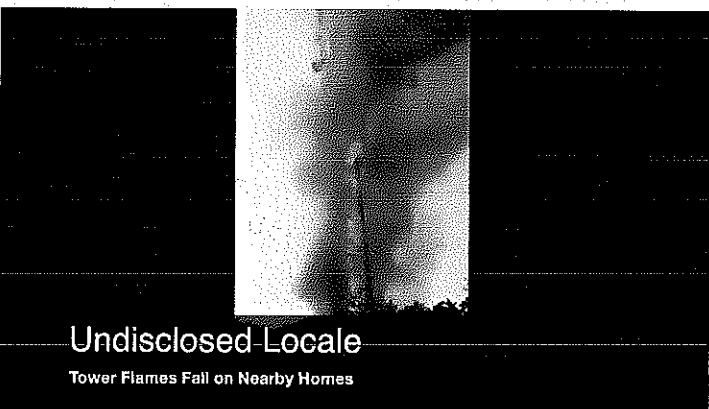
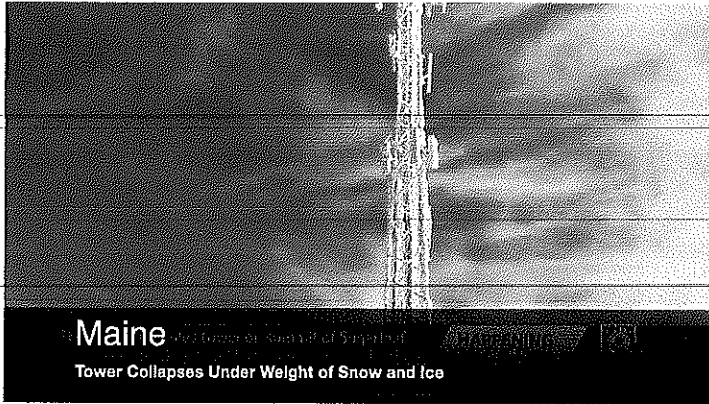


North Carolina
Lightning Strikes Cell Tower

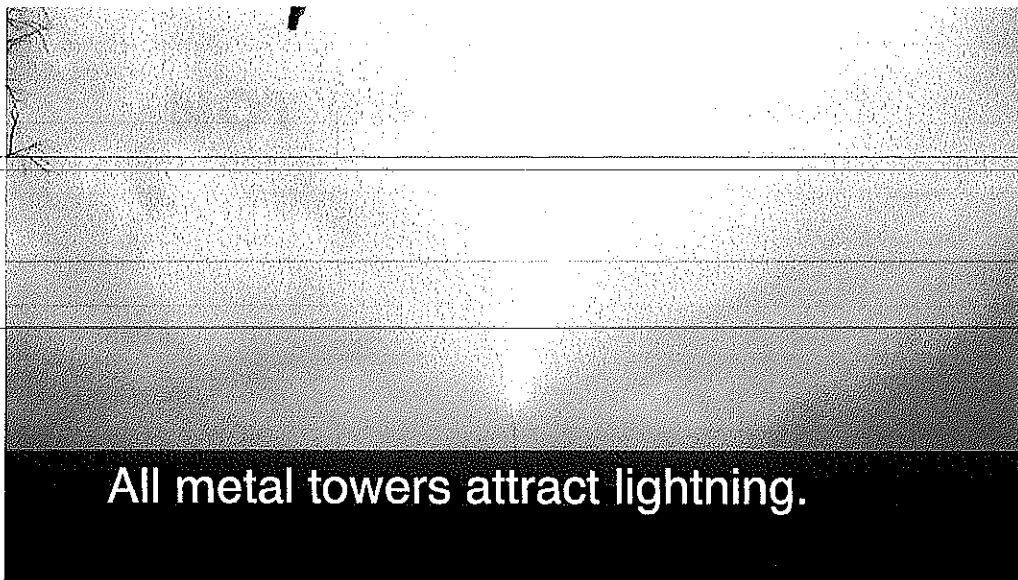


New Jersey
Spontaneous Cell Tower Fire Along Interstate

SEE OUR FULL VIDEO PRODUCTION TOWER MONTAGE AT: <https://youtu.be/NpDWZYCe5vU>



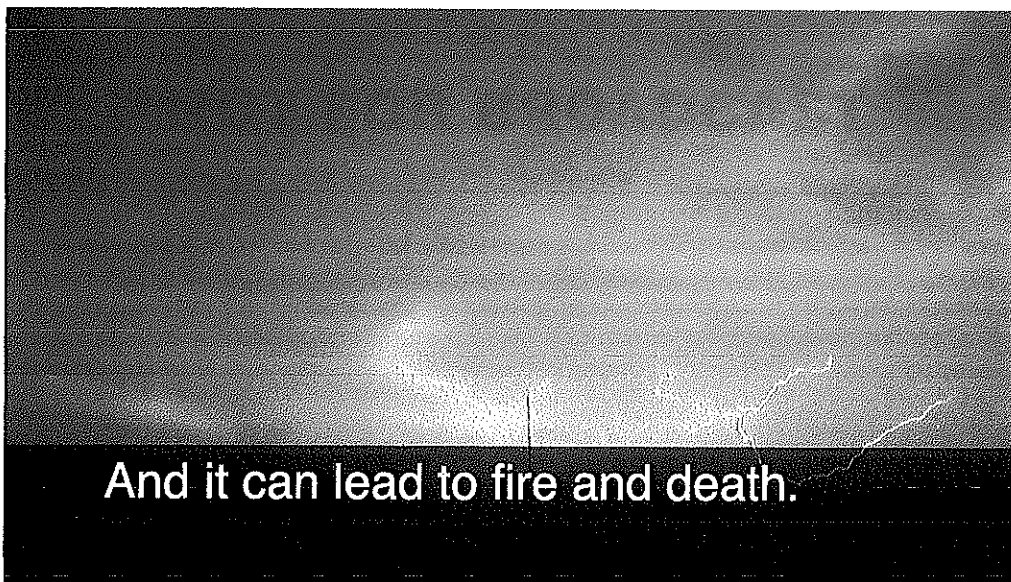
SEE OUR FULL VIDEO PRODUCTION TOWER MONTAGE AT: <https://youtu.be/NpDWZYCe5vU>



All metal towers attract lightning.



Lightning is dangerous for nearby homes.



And it can lead to fire and death.

EXHIBIT F**Michael F. Plahovinsak, P.E.**

18301 State Route 161, Plain City, Ohio 43064

(614) 398-6250 - mike@mfpeng.com

August 13, 2019

SCI Towers

Re: Proposed 140-ft Monopole
 Located in Davidson Co., TN: 70060 Berryville
 MFP Project #: 23519-529

I understand that there may be some concern on the part of local building officials regarding the potential for failure of the proposed communication monopole. Communication structures are designed in accordance with the Telecommunications Industry Association ANSI/TIA-222-G, "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures".

I have designed this monopole to support four carriers and withstand a 3-sec. gusted wind speed of 90 mph (Vasd) as recommended by ANSI/TIA-222-G for Davidson Co., TN. The design also conforms to the requirements of the 2012 International Building Code for an equivalent ultimate wind speed of 116 mph (Vult).

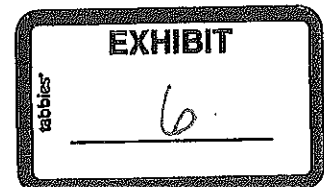
This monopole has been designed to accommodate a theoretical fall radius. The upper 85' of the pole has been designed to meet the wind loads of the design, however, the lower portion of the pole has been designed with a minimum 10% extra capacity. Assuming the pole has been designed according to my design, and well maintained, in the event of a failure due to extreme wind and comparable appurtenance antenna load (winds in excess of the design wind load), it would yield/buckle at the 55' elevation. The yielded section would result in a maximum 85' fall radius, but would most likely remain connected and hang from the standing section.

The structure has been designed with all of the applicable factors as required by the code. A properly designed, constructed and maintained pole has never collapsed; monopoles are safe structures with a long history of reliable operation.

I hope this review of the monopole design has given you a greater degree of comfort regarding the design capacity inherent in pole structures. If you have any additional questions please call me at 614-398-6250 or email mike@mfpeng.com.

Sincerely,

Michael F. Plahovinsak, P.E.



Michael F. Plahovinsak, P.E.
 Sole Proprietor - Independent Engineer
 P.E. Licensed in 48 Jurisdictions



MUSIC CITY
EXPERTS

Exhibit G

August 22, 2019

A Deliberately Different Real Estate Firm

To whom it may concern,

My name is Laura Dahl. I am the principal broker and owner of Music City Experts, LLC a local real estate firm. I have been a licensed real estate agent for over 20 years and have been a real estate broker in VA, SC and TN. I wanted to address the proposed cell phone tower at 4321 Old Hickory Blvd.

While I cannot speak to the possible percentage of lost value with 100% accuracy, I can say without a doubt that this tower will negatively affect the property values surrounding it. In my many years of experience, I have shown over 50 homes with both cell phone towers and power lines and have had great difficulty selling those homes. These towers are not only an eyesore but also pose a significant health risk. Buyers are well aware that these towers stigmatize the property and thus cause the homes to sit on the property much longer and result in lower sales prices.

In my professional opinion, having this tower will negatively impact the value of these homes and as such, should not be allowed. I urge you to reconsider this and consider the rights of these property owners to receive full market value of their properties.

Warmest Regards,

Laura Dahl

Owner/Principal Broker

EXHIBIT G:

Benchmark



REALTY_{LLC}

To whom it may concern:

My name is Michael Gomez, A Real Estate Broker with Benchmark Realty LLC and a Davidson County Resident with 8 years of experience selling homes in the Greater Nashville Area.

It is my professional opinion that if a tower is built where proposed at 4321 Old Hickory Blvd in Old Hickory it will devalue the homes in that vicinity as many of my clients have clearly expressed throughout the home buying process that they would in fact never buy a home where such a tower would exist.

I hope you take my opinion under consideration and please feel free to call me anytime with any questions,

Sincerely,

Michael Gomez

Broker, Benchmark Realty LLC 615.613.4461

EXHIBIT H

Laurel Hill Dr

Guidesac
MK

Aaronwood Dr

Stacy Mallon
Chlorine
Train

3D

Cordell Institute

+

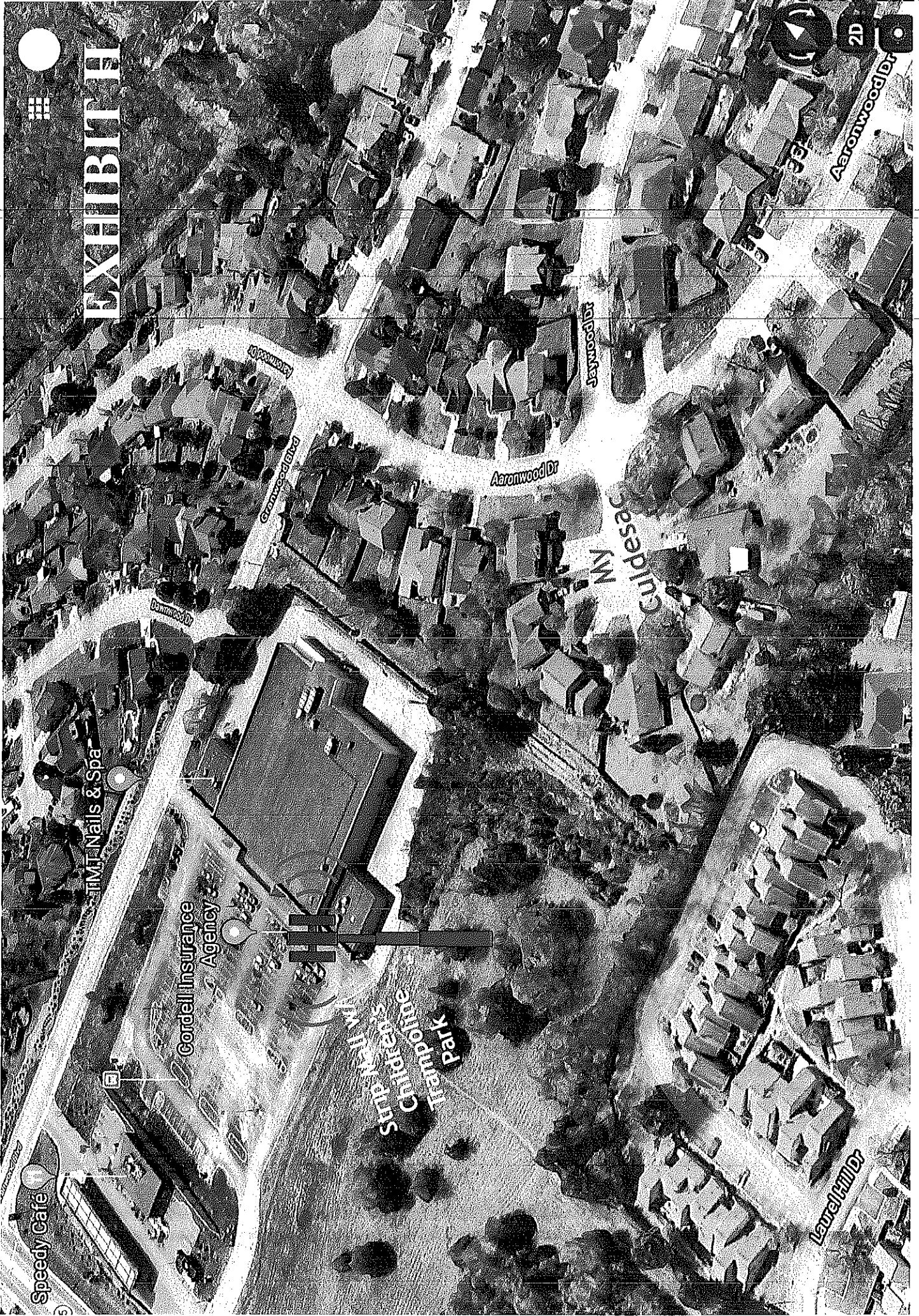
-

Google

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EXHIBIT H



Speedy Cafe

TMT Nails & Spa

Cordell Insurance Agency

Strip Nails
Children's Trampoline Park

Culpesc NY

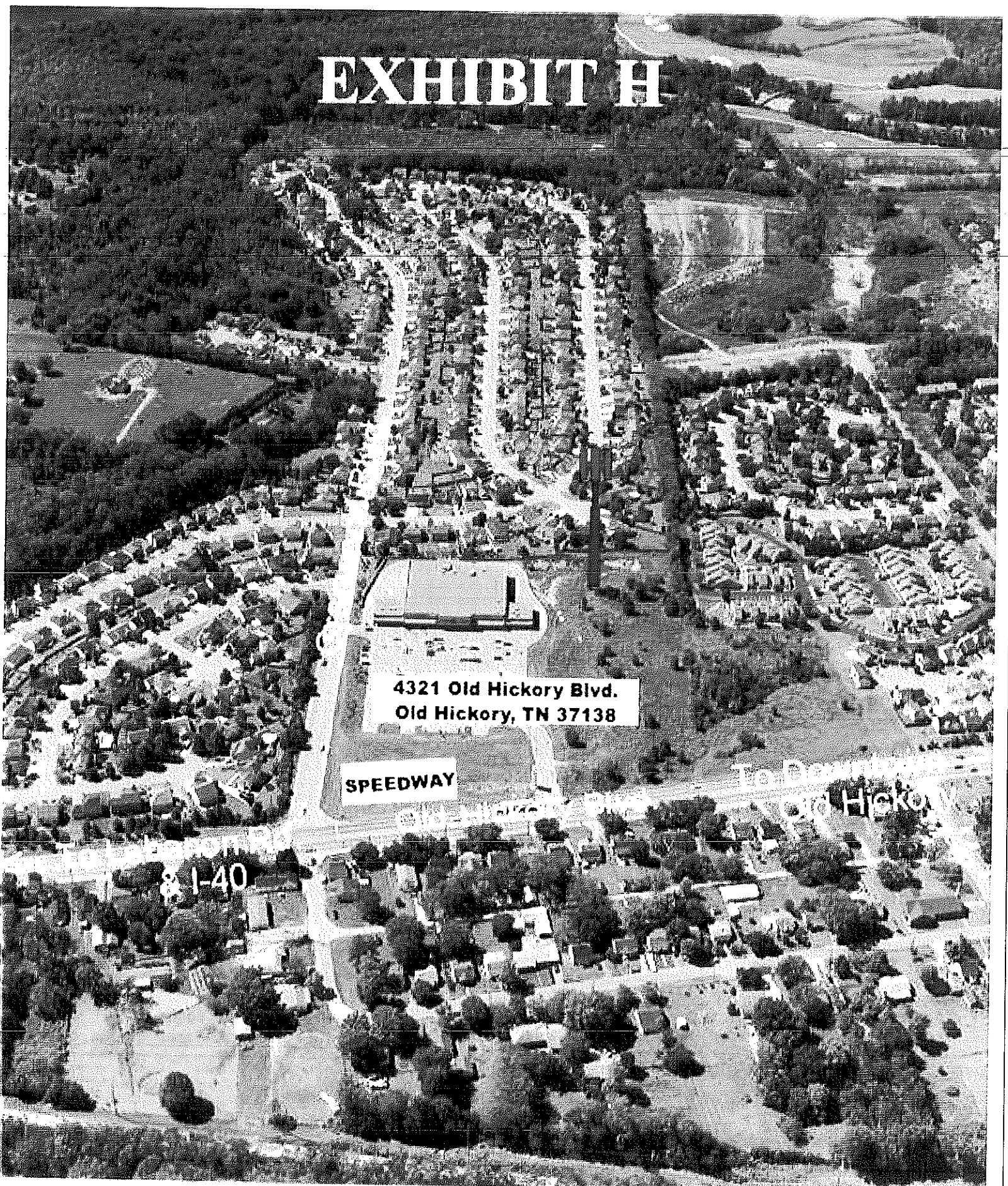
Aaronwood Dr

Jaywood Dr

Laurel Hill Dr



EXHIBIT H



4321 Old Hickory Blvd.
Old Hickory, TN 37138

SPEEDWAY

I-40

Old Hickory

EXHIBIT H



300+ HOMES
SOUTHFORK
+ HOPEWELL
SUBDIVISIONS

200+ HOMES IN
SOUTHFORK
SUBDIVISION &
LAUREL HILL

300+ HOMES IN
HAMPTON PARK
SUBDIVISION,
OLD HICKORY,
TN

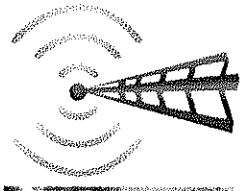
1,000+ HOMES
TO 1 1/2 MILE
RADIUS OF CELL
TOWER IN OLD
HICKORY, TN:
RESIDENTS OF
THOUSANDS.

BERRYVILLE
NEIGHBORHOOD
200+ HOMES
ALONG OLD
HICKORY

1,000 HOMES,
ROTARY PARK,
3 CHURCH
CHILDCARE
PROGRAMS,
TRAMPOLINE
KIDS PARK

3 CHURCHES IN IMMEDIATE VICINITY
WITH CHILDCARE PROGRAMS

ROTARY
PARK



Automotive Repair

First Church
of Jesus Christ

Berryville Baptist Church

CHICKEN
TRAMPOLINE
PARK

432 Tennessee 45

Temple Church

San Target 4 Vets

Cordell Insurance
Agency

Nails & Spa

Antonia's

Scarpis

Griffith Blvd

Griffith Blvd

Griffith Blvd

Antonia's

Griffith Blvd

Griffith Blvd

Griffith Blvd

Griffith Blvd

Griffith Blvd

Griffith Blvd

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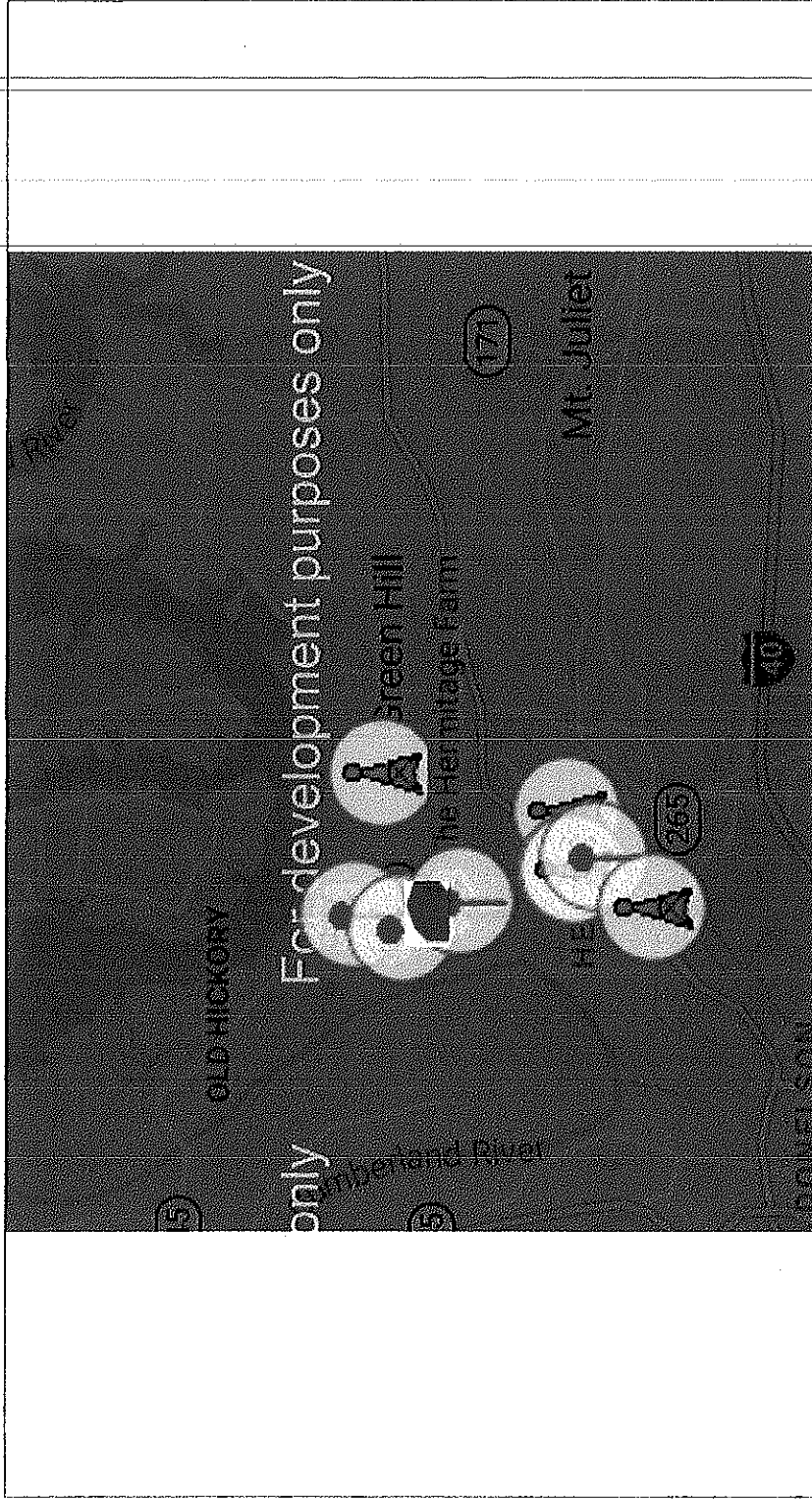
Griffith Blvd

Griffith Blvd

Griffith Blvd

Griffith Blvd

Griffith Blvd



• **Ownership Info**

Owner	Company:	SCI TOWERS	Address:	Not Recorded
	Contact:	Not Recorded		
	Phone:	Not Recorded		
	Email:	Not Recorded		

• **Structure Characteristics**

Filing #:	2019-ASO-1546-OE	Ground Elev:	464.9 feet
Latitude:	36.218	Height Of Structure:	172.9 feet
Longitude:	-86.626	Overall Height:	638.2 feet
Structure Type:	Tall Structure	Structure Address:	4321 Old Hickory Blvd. Old Hickory, TN 37138
Status:	Unknown		
Date Filed:	05/24/2019		

EXHIBIT J

Your report is ready!
* Use links below


History	Address	Search	Data	Check
New Site	County	County	County	County
Previous Search	County	County	County	County


Report Viewer


Your AntennaSearch Report is ready!
(4321 Old Hickory Blvd, Old Hickory, TN 37138)

- Results Summary -

Search Radius at max - 2.0 miles.

 **9 Tower Structures Detected!**

 **No New Tower Applications Found as of 11/13/19.**

 **27 Antenna Locations Found!**

- Detailed Results (Maps, Owners, etc.) -

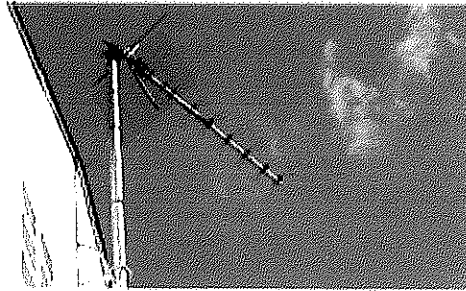
Click for Tower Results --> [VIEW TOWER RESULTS](#) [Download Records](#)

Click for Antenna Results --> [VIEW ANTENNA RESULTS](#) [Download Records](#)



Antenna Locations

Antennas are the actual signal emitters for cellular, paging and other radio services. Antennas can be placed on towers or be stand alone and placed on top of offices, condos, churches, light poles, signs, etc. Stand alone Antennas are small and difficult to spot as they are easily hidden/camouflaged.



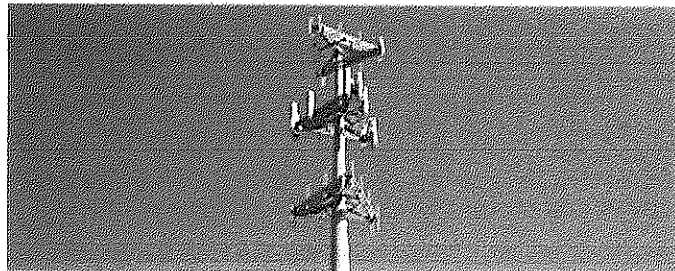
- Close Window -

EXHIBIT J



Tower Structures

Towers are tall structures (typically over 200 ft) used for Cellular, Paging and other radios services. Towers can contain multiple antennas owned by various companies.



- Close Window -

EXHIBIT J

sitetype	sitenum	latitude	longitude	call_sign	location_add	location_city	location_cou	location_stat	ground_elev
Multiple	1	36.1963889	-86.6175	WPSV318	4940 OLD HIC	HERMITAGE	DAVIDSON	TN	137.5
Multiple	1	36.1963889	-86.6175	WQHY512	4940 Old Hic	Hermitage	DAVIDSON	TN	137.5
Multiple	1	36.1963889	-86.6175	WQHY720	4940 Old Hic	Hermitage	DAVIDSON	TN	137.5
Multiple	2	36.1961667	-86.6225	WPQF311			DAVIDSON	TN	
Multiple	2	36.1961667	-86.6225	WPOD710			DAVIDSON	TN	
Multiple	2	36.1961667	-86.6225	WPOE576			DAVIDSON	TN	
Multiple	2	36.1961667	-86.6225	WPKE964			SHELBY	TN	
Multiple	3	36.2010556	-86.608556	WQJ568	431 TYLER DR	HERMITAGE	DAVIDSON	TN	149
Multiple	3	36.2008333	-86.608333	WPMZ837	431 TYLER DR	HERMITAGE	DAVIDSON	TN	147.5
Multiple	3	36.2008333	-86.608333	WQDB557	431 TYLER DR	HERMITAGE	DAVIDSON	TN	147.5
Multiple	3	36.201	-86.608528	WQIG399	431 Tyler Dr	Hermitage	DAVIDSON	TN	146.9
Multiple	4	36.1870556	-86.628028	WQLC817	3333 LEBAN	HERMITAGE	DAVIDSON	TN	151.2
Multiple	4	36.1870556	-86.628028	KNKA334	Stones River	HERMITAGE	DAVIDSON	TN	151.2
Multiple	5	36.23125	-86.600972	WQQV294	449 SHUTES	OLD HICKOR'	DAVIDSON	TN	162.5
Multiple	5	36.23125	-86.600972	WQLP588	451 SHUTE	LINASHVILLE	DAVIDSON	TN	162.5
Single	6	36.2106111	-86.6225	WNJE699	4343-47 LEB/	HERMITAGE	DAVIDSON	TN	152
Single	7	36.2156111	-86.613056	WNNY473	4580 RACHEI	HERMITAGE	DAVIDSON	TN	158
Single	8	36.2331111	-86.624722	WPOD973			DAVIDSON	TN	
Single	9	36.2059722	-86.61175	WQEK816	4343-47 LEB/	HERMITAGE	DAVIDSON	TN	162
Single	10	36.2403333	-86.632222	KLD764	3401 HADLEY	OLD HICKOR'	DAVIDSON	TN	144
Single	11	36.1938889	-86.6175	WQHE537	5010 Old Hic	Hermitage	DAVIDSON	TN	
Single	12	36.1931111	-86.628611	WPQG421			WILSON	TN	
Single	13	36.1947778	-86.636	WPXC887		Gallatin	SUMNER	TN	
Single	14	36.1933611	-86.635806	WPWF678		Gallatin	SUMNER	TN	
Single	15	36.2431111	-86.635556	WPFA984			DAVIDSON	TN	
Single	16	36.2006111	-86.620306	WQLP617	4900E Old Hi	Old Hickory	DAVIDSON	TN	146.2
Single	17	36.2355	-86.628694	WQLP571	130-D Legion	Old Hickory	DAVIDSON	TN	154.6

EXHIBIT J

CELL ANTENNAS IN 2 MILE RADIUS OF TOWER

licensee_city	licensee_stat	licensee_zip	licensee_po	licensee_att	contact_entr	contact_first	contact_last	contact_pho	contact_fax
RESTON	VA	20196			ROBIN J COH Sprint Nextel	Robert	McNamara	7034334000	7034334483
RESTON	VA	20196			ROBIN J COH Sprint Nextel Corporation			7034334000	7034334483
RESTON	VA	20196			ROBIN J COH Sprint Nextel Corporation			7034334000	7034334483
HERMITAGE	TN	66061			JOSEPH KULAH M ELECTRONICS INC				8585520139
HERMITAGE	TN	37076			GAYNELLE BUCHM ELECTRONICS INC				6195520139
Houston	TX	772104934	4934		BARBARA TYER EXXONMOBI	Barbara	Tyer	7134314134	7134316036
HERMITAGE	TN	37076			STORE MGR				
NASHVILLE	TN	372196300	196300		Metro Radio New Wave	Li Kay	Orndorff	7173340910	7173344739
NASHVILLE	TN	37212	196300		RADIO SHOP Metro Nashv	Joseph	Clinard	6158625111	6158625123
NASHVILLE	TN	37212	196300		RADIO SHOP Metro Nashv	Joseph	Clinard	6158625111	6158625123
NASHVILLE	TN	372196300	196300		ITS Radio Co Metro Nashv	Joseph	Clinard	6158625111	6158625123
Charlotte	NC	28211			VP Operator Conterra Ultra Broadband LLC			7049361777	7049361801
Alpharetta	GA	30022			Regulatory Verizon Wire Licensing	Manager		7707971070	2027835851
Dallas	TX	75202			FCC GROUP ATT Mobility	Cecil	Mathew	8556997073	2147466410
RESTON	VA	20196			Spectrum Lic Sprint Corp	Robin	Cohen	8005728256	7034334483
HERMITAGE	TN	37076			DAVID HAILE NASHVILLE COMMUNICATIONS CO				6152559967
HERMITAGE	TN	37076			RICHARD DRI Communicat	Beverly	Ash	6158894756	6153910300
OLD HICKORY	TN	37138			CHRIS EVERE ATLAS LICENSE COMPANY				3173514870
HERMITAGE	TN	37076			DAVID HAILE BUSINESS RA JERRY		WALKER	9493488510	9493488514
OLD HICKORY	TN	37138			POLICE DEPT FEDERAL LICENSING INC				7173346440
ATLANTA	GA	30339			LEGAL DEPT- ADVANCED v MICHELLE		MORTENSEN	9524695400	9524690170
MILWAUKEE	WI	53226			PAUL THOMPSON				
Gallatin	TN	37066			CARA Enterp	Doug	Thompson	8012789728	8012787239
Gallatin	TN	37066			CARA Enterp	Doug	Thompson	8012789728	8012787239
SPRINGFIELD	TN	37172	758		JAMES C SMILEY				
RESTON	VA	20196			Spectrum Lic Sprint Corp	Robin	Cohen	8005728256	7034334483
RESTON	VA	20196			Spectrum Lic Sprint Corp	Robin	Cohen	8005728256	7034334483

contact_ema	contact_stre	contact_city	contact_stat	contact_zip	contact_pö	contact_atte	emmitter_1	emmitter_2	emmitter_3
	12502 Sunris Reston	VA		20191			/859.3625	860.3625	
	12502 Sunris Reston	VA		20196			/935.2125	935.7125	936.2125/936.712
	12502 Sunris Reston	VA		20196			/935.2125	935.7125	936.2125/936.712
	6675 MESA F SAN DIEGO	CA		92121			/30.84	31.24/33.16	33.4/35.02/151.83
	6675 MESA F SAN DIEGO	CA		92121			/30.84	31.24/33.16	33.4/35.02/151.83
barbara.w.ty	GSC-GW3-36 Houston	TX		772104934	4934		/30.84	31.24/33.16	33.4/35.02/151.83
	4422 LEBAN(HERMITAGE	TN		37076			/30.84	31.24/33.14	33.16/33.4/35.02/3
kayorndorff@	517 Sachs Ro Gettysburg	PA		17325			/857.2625	856.4875	856.7125/856.987
its-mseradioshop@	nashvil Nashville	TN		372196300	196300		/857.2625	856.4875	856.7125/856.987
its-mseradio:	818 TANEY(Nashville	TN		372196300	196300		/851.55	852.075	853.05/853.6125/853
its-mseradio:	1417 Murfre Nashville	TN		372196300	196300		/6004.5	/6093.45	
regulatoryfcc	2101 Rexfor Charlotte	NC		28211			/11405		
licensingcom	5055 North F Alpharetta	GA		30022			/869.04	824./869.04	824./869.04/824.
FCCMW@att	208 S Akard ! Dallas	TX		75202			/18065	/18015	18115
fcclicensing@	12502 Sunris RESTON	VA		20196			/17815	1791/11305	11425
	720 FESSLER(NASHVILLE	TN		37210			/151.985		
beverly@cor	441 Donelsoi Nashville	TN		37214	148242		/464.675		
	1725-A N SH, INDIANAPOL IN	IN		462194893			/467.75	467.8/467.825	467.85/467.9/4
JERRY@BUSI	26941 CABO LAGUNA HILI CA	CA		92653			/152.885	153.26/151.595	153.665
	1588 FAIRFIE GETTYSBURG PA	PA		17325			/155.1	155.7	
FCC@ADVAN	20809 KENSI LAKEVILLE	MN		55044			/467.7625	467.8375	467.85/467.875/4
	Salt Lake City UT	UT		841170503	17503		/464.0125	464.0375	464.0625/464.087
	Salt Lake City UT	UT		841170503	17503		/461.1375	466.1375	
							/461.1375	466.1375	
fcclicensing@	12502 Sunris RESTON	VA		20196			/464.0125	464.0375	464.0625/464.087
fcclicensing@	12502 Sunris RESTON	VA		20196			/11305	1142/18015	18115
							/10815	1093/10735	1085/19375/1947

height_of_su	overall_heig	structure_ty	licensee_ent	licensee_first	licensee_last	licensee_phc	licensee_fax	licensee_em	licensee_stre
154.8632	154.8632	Pole	NEXTEL LICENSE HOLDINGS 1 INC			7034334000	7034334483		12502 Sunris
154.8632	154.8632	Pole	FCI 900 INC			7034334000	7034334483		12502 Sunris
154.8632	154.8632	Pole	FCI 900 INC			7034334000	7034334483		12502 Sunris
		NA	TACO BELL CORPORATION DBA TACO BI	2486143249					4430 LEBAN
		NA	EXXON			6153662230			4601 LEBAN
		NA	HERMITAGE EXXON TIGER MARKET DBA	7134314134	7134316036	barbara.w.ty	GSC-GW3-36		
		NA	TACO BELL			6158830017			4422 LEBAN
179.7988	194.8914	Tower	METROPOLITAN GOVERNMENT OF NAS	6158625111	6158625123	jody.clinard@	1417 Murfre		
179.7988	179.7988	Tower	METROPOLITAN GOVERNMENT OF NAS	6158628561	6158625123	JODY.CLINAR	2060 15TH A		
179.7988	179.7988	NA	Metropolitan Nashville Davidson Count	6158625111	6158625123	ITS-MSERADI	2060 15TH A		
179.7988	179.7988	Tower	Metropolitan Nashville Davidson Count	6158625111	6158625123	ITS-MSERADI	1417 Murfre		
99.7424	114.835	Tower	Conterra Ultra Broadband LLC			7049361777	7049361801	regulatoryfcc	2101 Rexforc
99.7424	114.835	NA	Cellco Partnership			7707971070		LicensingCon	5055 North F
187.017	198.1724	NA	New Cingular Wireless PCS LLC			8556997073	2147466410	FCCMW@att	208 S Akard
187.017	198.1724	Pole	Clearwire Spectrum Holdings III LLC			8005728256	7034334483	fcclicensing@	12502 Sunris
203.422	203.422	Building	MC KENDREE VILLAGE INC			6158718228	6158718697		4343-47 LEB/
		NA	LADIES HERMITAGE ASSOCIATION INC			6158892941	6158892989	rdreadon@tl	4580 RACHEI
		NA	HERMITAGE COUNTRY CLUB			6158474950	6158470713		3939 OLD HIL
196.86	206.703	Building w/A	MCKENDRES VILLAGE INC			6158718228			4343-47 LEB/
59.058	78.744	Tower	LAKWOOD CITY OF			6158473711	6158473524		3401 HADLE)
		NA	HOME DEPOT USA INC			7704338211	7703842739	ANNE_F_GEF	2455 PACES I
		NA	BRIDGEMAN FOODS DBA WENDYS			4143025650	4143025675		2500 N MAYI
		NA	Fairview Plantation			6152648000			993 Plantatic
		NA	Fairview Plantation			6152648000			993 Plantatic
		NA	J C S INC			6157937700			108 D THOM
149.9417	149.9417	Pole	Clearwire Spectrum Holdings III LLC			8005728256	7034334483	fcclicensing@	12502 Sunris
151.9103	151.9103	Pole	Clearwire Spectrum Holdings III LLC			8005728256	7034334483	fcclicensing@	12502 Sunris

tower_type	faa_study_id	registration_latitude	longitude	status_code	date_constructed	structure_name	city	state	structure_id	station_height_ft
Registered	2006-ASO-52	36.1870556	-86.628028	Constructed	8/2/94	3333 LEBANON	HERMITAGE	TN	NA	99.7424
Registered	95-ASO-0576	36.1997778	-86.620056	Constructed	5/26/95	4814 OLD HILL	HERMITAGE	TN	NA	120.0846
Registered	2008-ASO-15	36.2008333	-86.608333	Constructed	10/31/08	431 Tyler Dri	Hermitage	TN	NA	179.7988
Registered	2006-ASO-52	36.23125	-86.600972	Constructed	2/1/94	451 SHUTE LN	NASHVILLE	TN	NA	187.017
Non-Register	2019-ASO-17	NA	NA	NA	NA	NA	OLD HICKORY	NA	NA	49.1
Non-Register	99-ASO-2685	36.1964167	-86.617556	NA	NA	NA	GREEN HILL	NA	NA	47.2
Non-Register	2019-ASO-15	36.218	-86.626306	NA	NA	NA	OLD HICKORY	NA	NA	52.7
Non-Register	98-ASO-0716	36.2278056	-86.632194	NA	NA	NA	GREEN HILL	NA	NA	48.8
Non-Register	2016-ASO-28	36.2005556	-86.620278	NA	NA	NA	OLD HICKORY	NA	NA	58.8

CELL TOWERS IN 2 MILE RADIUS OF TOWER

EXHIBIT J

ground_elev	overall_height	overall_height_structure	ty	owner_entity	owner_licens	owner_first_owner_last	owner_phon	owner_interi	owner_stree
496.0872	114.835	610.9222	Tower	Crown Castle	L00220201	7244162000	Regulatory.D	2000	Corporat
478.0417	123.0375	601.0792	Pole	Crown Castle	L01324850	7244162000	Regulatory.D	2000	Corporat
483.9475	179.7988	663.7463	Tower	Nashville Da	L00001834	6158625111	jody.clinard@nashville.gov		
533.1625	198.1724	731.3349	Pole	Crown Castle	L00220201	7244162000	Regulatory.D	2000	Corporat
154.8	NA	203.9	NA	CROWN CAS	NA	NA	NA	NA	NA
137.5	NA	184.7	NA	NEXTEL COM	NA	NA	NA	NA	NA
141.7	NA	194.5	NA	SCI TOWERS	NA	NA	NA	NA	NA
140.2	NA	189	NA	POWERTEL II	NA	NA	NA	NA	NA
146.3	NA	205.1	NA	CROWN CAS	NA	NA	NA	NA	NA

rep_street_a	rep_po_box	rep_city	rep_state	rep_zip_cod	rep_attentio	hist1_purpos	hist1_status	hist1_date	hist1_addnl	hist2_purpos
2000 Corporate Drive		Canonsburg	PA	15317		Adm Update	Granted	5/6/16	NA	Adm Update
2000 Corporate Drive		Canonsburg	PA	15317		Adm Update	Granted	5/6/16	NA	Adm Update
2000 Corporate Drive		Canonsburg	PA	15317		Adm Update	Granted	6/30/09	NA	Constructed
NA	NA	NA	NA	NA	NA	FAA Filing	Issued	8/2/19	NA	Adm Update
NA	NA	NA	NA	NA	NA	FAA Filing	Issued	7/12/99	NA	NA
NA	NA	NA	NA	NA	NA	FAA Filing	Issued	5/24/19	NA	NA
NA	NA	NA	NA	NA	NA	FAA Filing	Issued	3/2/98	NA	NA
NA	NA	NA	NA	NA	NA	FAA Filing	Issued	12/6/16	NA	NA

November 14, 2019

EXHIBIT K

To Whom It May Concern:

Per FCC Title 47 CFR §1.1307 and the requirements therein, we are requesting

a *full* NEPA Environmental Impact Assessment for the property at 4321 Old Hickory Blvd. in Old Hickory, Tennessee. The cause for this respect is threefold and based upon this cited section:

“An EA must be submitted if the antenna structure may have a significant environmental impact as defined by the FCC’s 47 CFR §1.1307 of the Commission’s rules. An Environmental Assessment (EA) is required:

- If the facilities may affect listed threatened or endangered species or **designated critical habitats**; or are likely to jeopardize the continued existence of any proposed endangered or threatened species **or likely to result in the destruction or adverse modification of proposed critical habitats.** (Exhibit K shows the deer that freely roam the area in question. While they are not “endangered,” the language says “*or likely to result I the destruction or adverse modification of proposed critical habitats,*” which this would. These deer have been pushed out and have nowhere else to go and so they literally dwell on this patch of land and on the streets inside the Hampton Park Neighborhood. Please see Exhibit K).
- **If the facilities may physically or visually affect a property significant in American history that is listed, or is eligible for listing, in the National Register of Historic Places, as determined in accordance with the Nationwide Programmatic Agreement or the Collocation Programmatic Agreement.** (The Hermitage, historic home of President Andrew Jackson, approved a 140’ tower, but AntennaSearch.com already measures this tower at 172.9’. Plus, the Metro Ordinance which allows a builder to add up to 50% of an increase due to the fact that a tornado siren will be attached, coupled with the MIDDLE CLASS TAX RELIEF and Job Creation act of 2012 which would write the owners a blank check on increasing height, Appellants see premeditation that this tower will one day seek to be an eyesore towering over the skies by The Hermitage. Residents strongly object to this, as would The Hermitage, had they been told about this prior to their Section 106 letter. And perhaps they should be.)

- **Now, submitted herein evidence that the property is also on a sacred Indian site. Again, to cite the title:**

An Environmental Assessment (EA) is required”:

“If the facilities may affect Indian religious sites.”

Simply put, 4321 Old Hickory Blvd. is State Route 45, which is the Trail of Tears. On this very property has been found countless arrowheads by residents, and even reports of an American Indian burial ground approximately ¼ mile down on same side of the LEVOG property. Those grounds were excavated circa 1995 with exhumed bones according to testimony of neighbors and top committee members of the NO-TOWER Committee. This land is undoubtedly a sacred Indian site and needs to not be further disturbed more than it already has. Please see Exhibit J for proof of proximity.¹

Thank you,

The Old Hickory NO-TOWER Commission

Laura H. Smith

NoTowerCommission@gmail.com

¹ <https://www.nps.gov/trte/planyourvisit/tennessee.htm>

EXHIBIT L

~~“An Environmental Assessment (EA) is required: “If the facilities may affect ... designated critical habitats; or likely to result in the destruction or adverse modification of proposed critical habitats.”~~

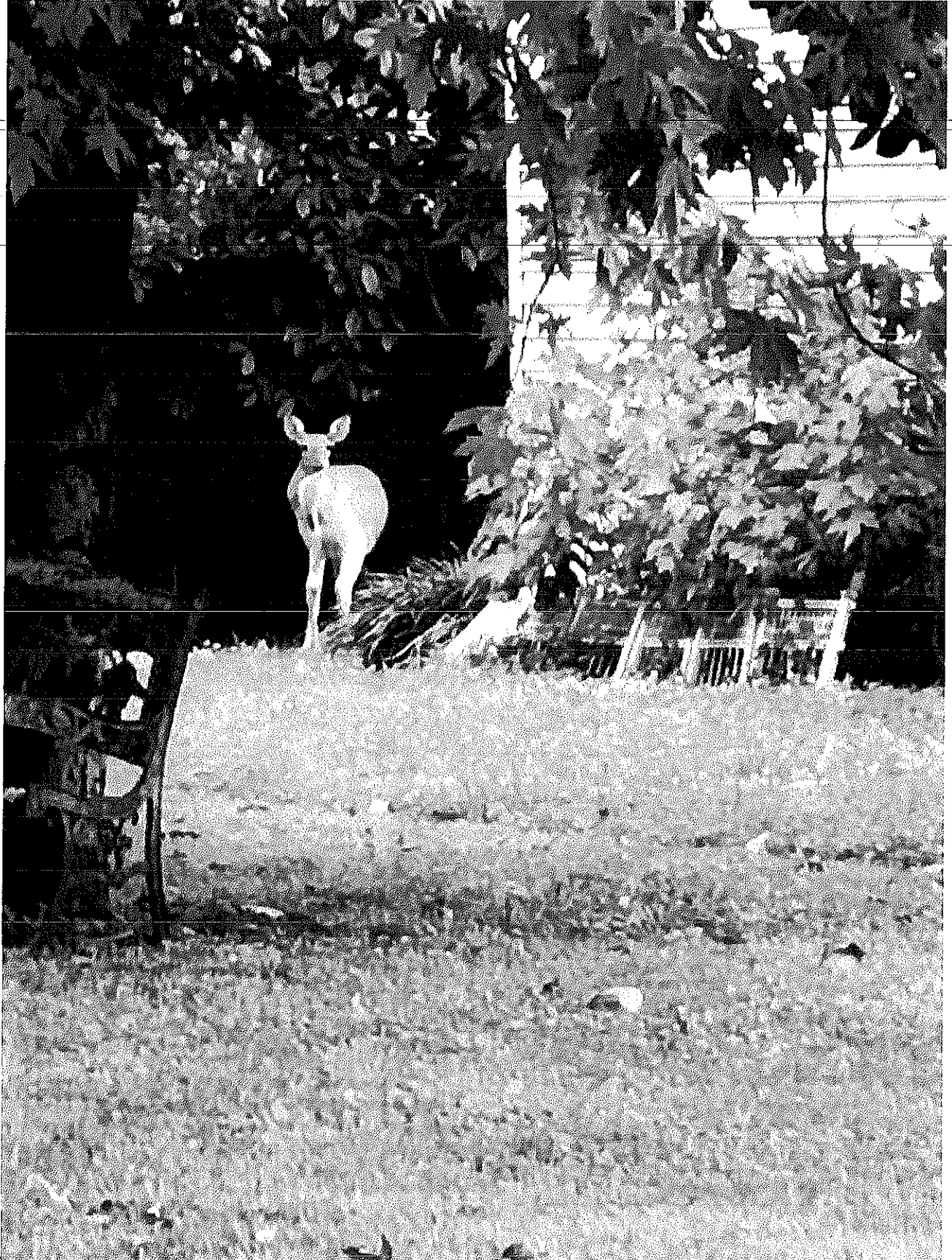
Section 1.1307 of the Commission’s rules

~~(These 12 pictures were taken from the Hampton Park Homeowner’s Facebook Page in recent months:
<https://www.facebook.com/groups/291615064272225/photos/> Subdivision sits just feet from tower site.)~~

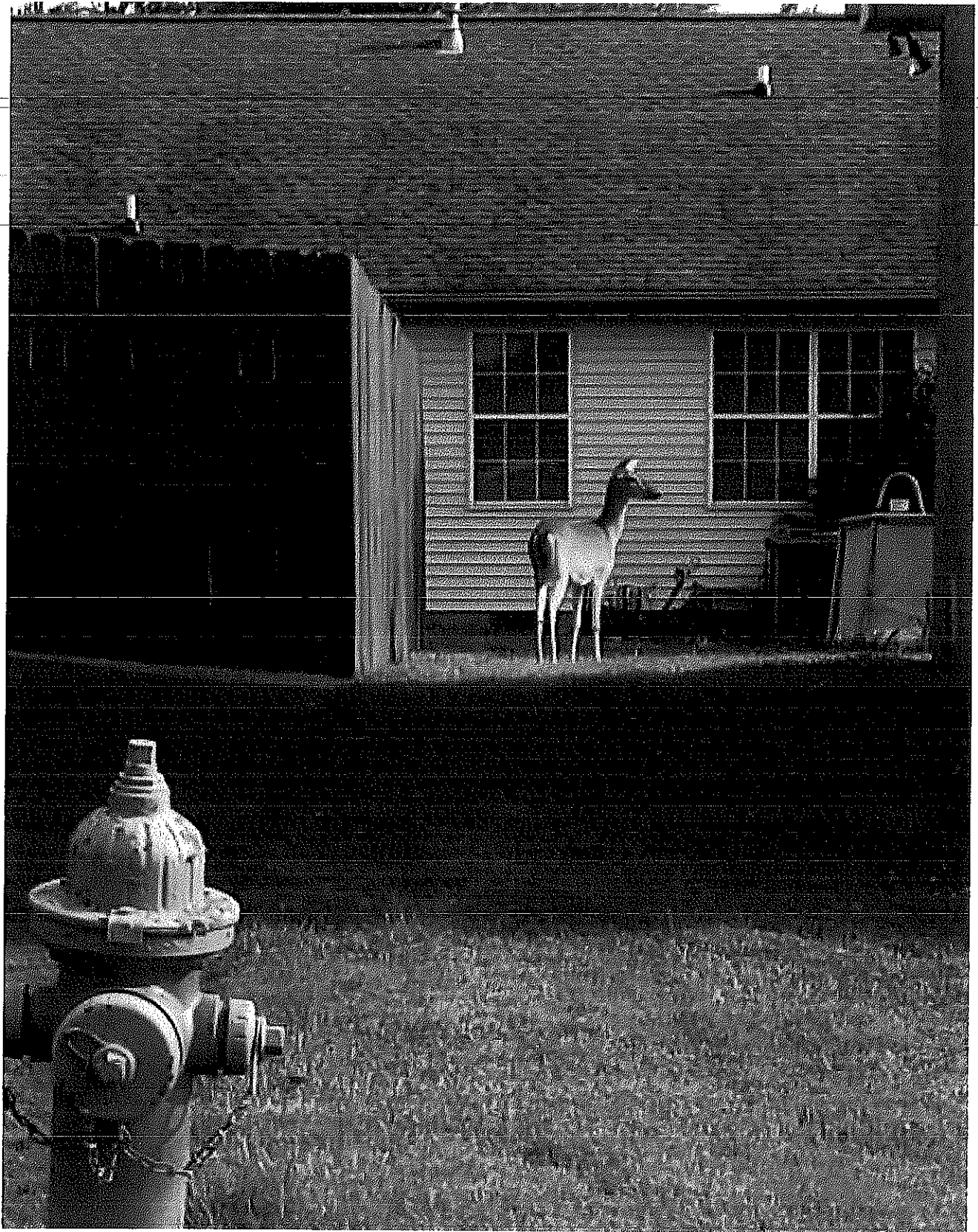




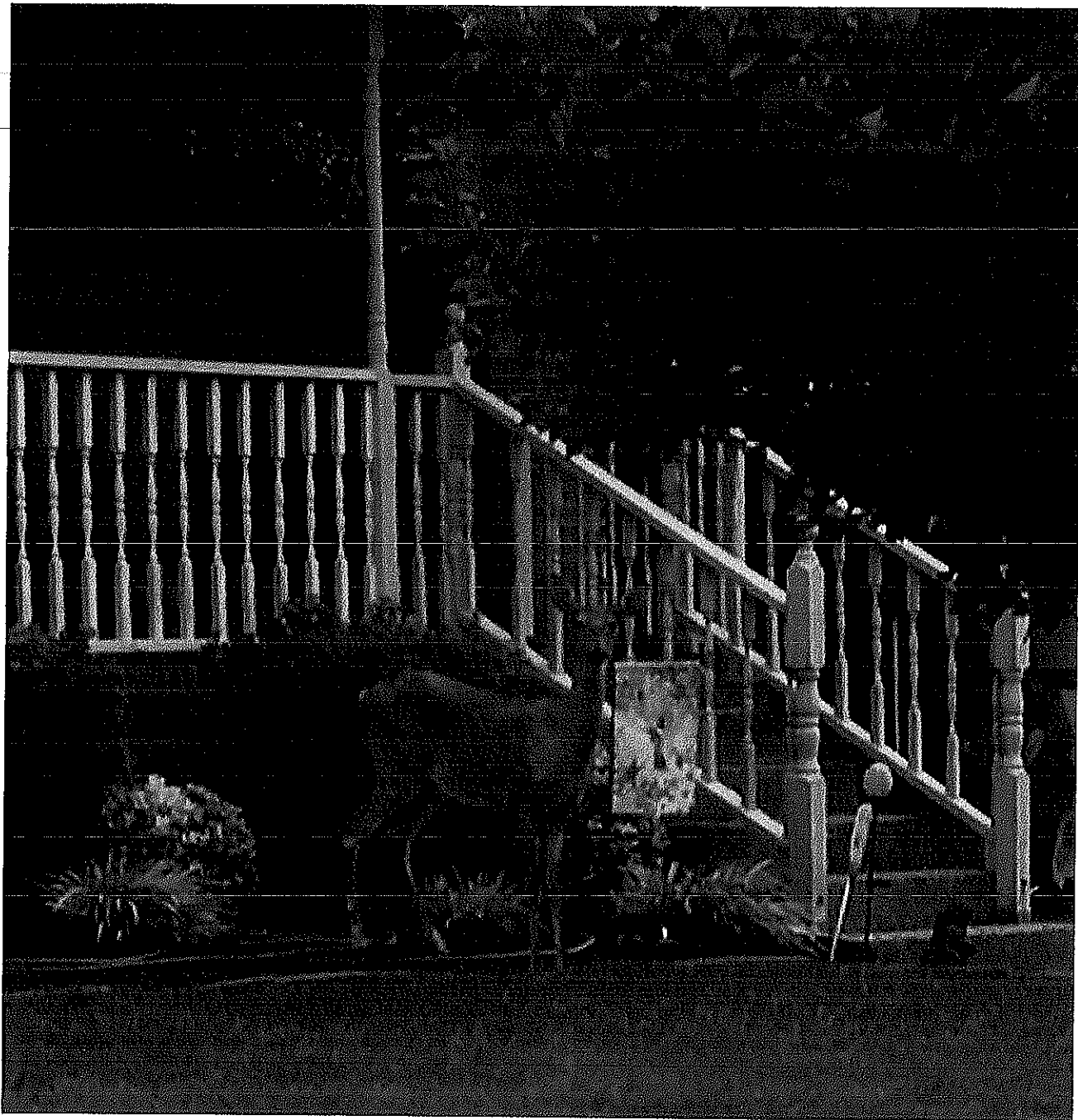


















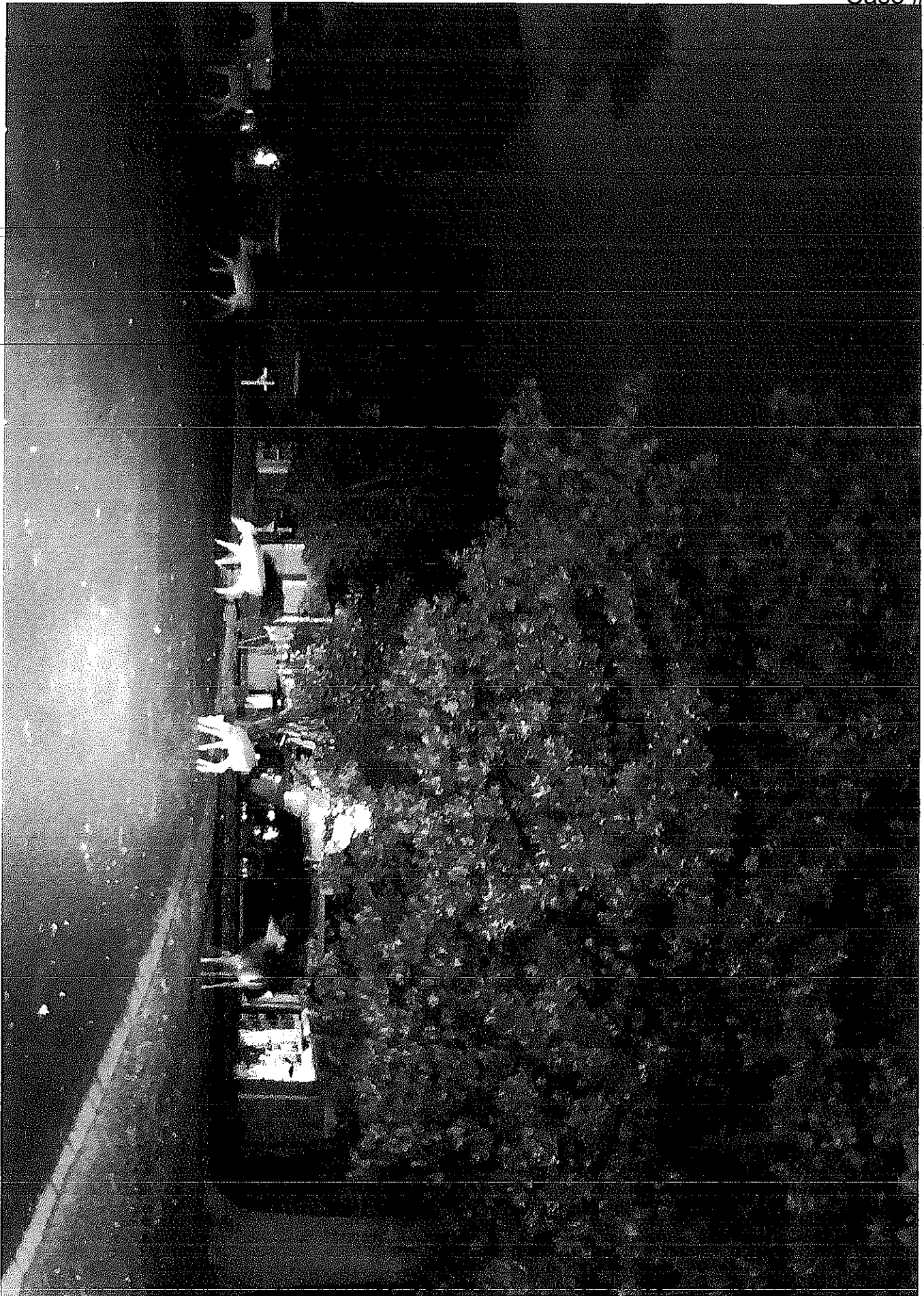
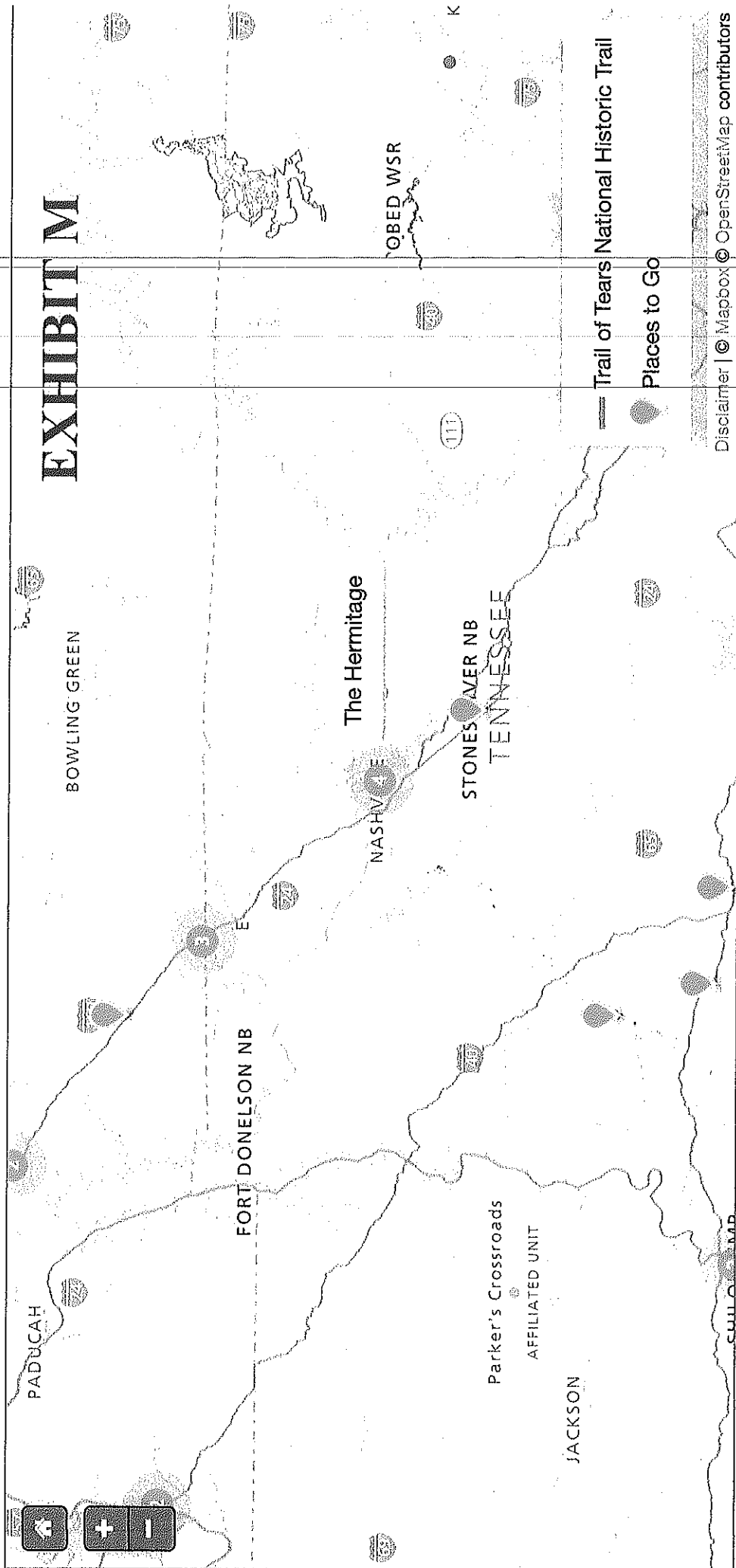
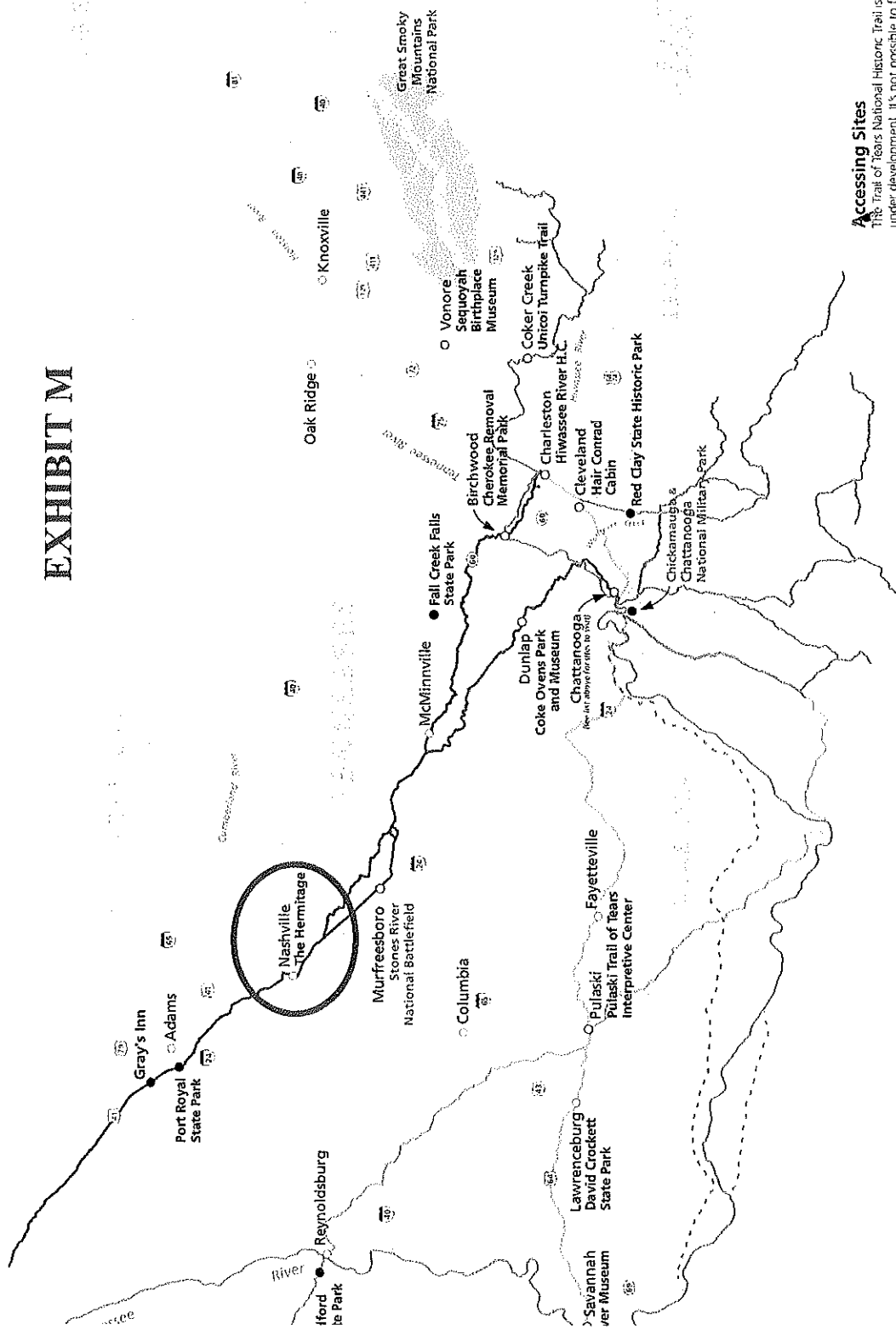


EXHIBIT M

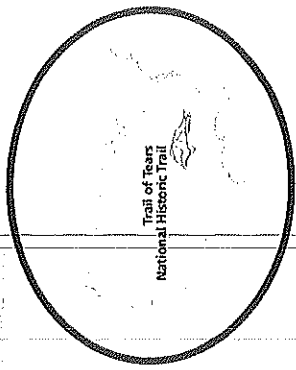


Disclaimer | © Mapbox © OpenStreetMap contributors

EXHIBIT M



Accessing Sites
 The Trail of Tears National Historic Trail is under development. It's not possible to follow



The Different Routes of Travel

Between the years of 1837 and 1839 the Cherokee were removed to Indian Territory (Oklahoma) via multiple routes across the country. The Round Up routes were used by the US government starting on May 24, 1838 to gather the Cherokee from their homes and forcibly place them in removal camps, where they awaited the start of their 800-mile journey. The Water, Northern, Taylor, Benge, and Bell routes were used by different removal detachments during this time period to escort thousands of Cherokee to their new land in the West. Many Cherokee perished along each of these routes as harsh weather conditions, poor food supplies, and the spread of sickness affected these traveling parties.

EXHIBIT N

To Whom it May Concern,

CONFIDENTIAL: HAMPTON PARK CELL TOWER ISSUES

My name is Tracy Nicholson, and I and my family own my home in Hampton Park Subdivision, Old Hickory, TN. I have been a resident for Hampton Park for approximately 13 years. I love my house and plan to be there a very long time, unless this cell tower is approved.

I share this story with you, though very personal and painful, because you need to be aware that cell towers and the resulting health consequences are very real.

In fact, you may be inadvertently contributing to highly dangerous health hazards to the residents of Hampton Park, be held legally responsible if this cell tower is installed where it is currently being considered.

There are a lot of young couples in Hampton Park, with young children, and with new pregnancies. Years ago, my husband and I lived in another state when I became pregnant with our daughter. We lived very close to a cell and microwave tower, which we thought nothing of at the time.

Several months into my pregnancy, the doctor noticed some abnormalities in my ultrasound of my baby. As I went back for further tests, there was great concern about the formation of my baby's brain. There are no congenital issues whatsoever in either of our family's history.

The doctor suspected that the proximity to the strong electromagnetic cell tower and its emissions might be to blame for the abnormality of my daughter's brain development.

Long and painful story summed up, we lost her at six months, due to health-related issues with her brain.

No one could tell me that the exposure to this tower was not the culprit, and since then, much more research has been done and more evidence shown that these towers are indeed a very real and toxic health threat.

In this time of litigiousness and liability, with the close proximity of this parcel of land to homes, I would think that it would be wise for the cell tower to be located in a place where you can be certain that it will not cause bodily harm to the residents of Hampton Park, or any other subdivision. I know for a fact that it can.

There is also the danger of it falling over due to structural failure or natural disaster, and then you have the shopping center and all of the young kids in the adventure park and the business owners who would likely sue in the event of such a disaster.

Thank you for your time,

Tracy Nicholson/Citi Cinemas LC owner
1117 Dawnwood Drive
Old Hickory, TN 37138
Tracypage1133@gmail.com615-428-2628

Lisa G. Robinson
4468 South Trace Boulevard
Old Hickory, Tennessee 37138

To Whom It May Concern:

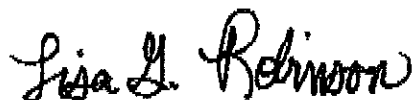
I am writing to express my opposition to the plans to build a cell tower near Hampton Park and South Fork Subdivisions in Old Hickory. I live in South Fork and have a personal and family history of breast cancer. Multiple independent studies referenced in the BioInitiative 2012 Report (<https://bioinitiative.org/table-of-contents/>) have shown that electromagnetic fields, such as those emitted by cell towers, can block the body's natural ability to fight cancer by blocking the impact of melatonin on cancer cells. If I lived near a cell tower, I would live in fear that constant exposure would trigger a cancer re-occurrence.

An additional concern is that my mother has a pacemaker. People with pacemakers have to avoid close or prolonged contact with strong magnetic fields. Cell tower technology works because of magnetic fields. I would have to consider that she should stop visiting to avoid an issue with her pacemaker.

And finally, the area around other cell towers in Nashville/Davidson County typically has few houses. Home builders of new subdivisions do not build near a cell tower because they know the homes will not sell. There has been a revival of home building in the Old Hickory / Berryville area. Some have even said this area will be the next East Nashville. If a cell tower is installed, this revival will likely end. Those of us who already live here can expect our home values to fall 20% or more.

Please do your part to stop the cell tower from being built near my home. The health risks and impact to property values are not worth it!

Sincerely,



Lisa G. Robinson

11-10-19

To Whom It May Concern,

The tower that you are planning to place in Old Hickory is more disturbing to me than I am sure any of you can fathom. I was diagnosed in January with stage three breast cancer and I literally just finished all treatments a week ago. The thought of a tower that will only be yards away from my home, which research has shown as a source of the same disease I just battled is more than unimaginable to me. Even having to write about such a possibility is difficult. I urge you to put yourself in my shoes, my husband's, daughter's, mother's, siblings,' other family members, church family, and lifelong friends; so maybe you can see the faces of real people who would be devastated by your plan for this telecommunication tower in my backyard. My family and I have all just gone through a year that pulled on every part of us. This journey has been one that, without God and the support of all the persons I have listed, would have been impossible to conquer. Yet you propose placing such a statistically high-risk tower yards away from me.

Now if there was any way for me to get past this journey with my health that God has kept me through, I would still have very real concerns about my property value. Area realtors and statistics show on average there is a twenty percent drop in property values in neighborhoods where cell phone towers are presence. My home is the largest financial investment I have ever made. Having my property value decrease and studies that say breast cancer is higher in areas where cell phone towers are located is a price too high for anyone to pay. Why would you ask it of me?

Susan Sawyer

108 Briar Oaks Court

Old Hickory TN. 37138

November 10th, 2019

~~To Whom This Concerns,~~

I'm writing this letter to express my concerns related to the proposed Cell Tower that has been permitted for construction on Old Hickory Blvd in Old Hickory, Tennessee.

My wife and I are thirty year residents of Old Hickory. Our home is located in the Hampton Park Subdivision, which is adjacent to the proposed cell tower site. I have several concerns, but my biggest concern is the negative impact the tower will have on our property values.

Our Homeowners Association has existed for more than 30 years with the stated purpose of protecting the integrity and value of our neighborhood's homes. We have remained organized and diligent in the effort of ensuring the protection and integrity of our homeowner's property values through a variety of association guidelines, regulations, and annual dues, and now face a threat against those protections by an out of state company seeking a business opportunity.

Our home's value represents a significant portion of our overall retirement investment portfolio.

Therefore, protecting our home's value is of utmost importance to us. Many of the people in the Hampton Park subdivision have a similar investment expectation. It has been brought to our attention by licensed Real Estate Agents that the proliferation of unnecessary cell towers is negatively impacting home values across the country. Agents agree, and historical data is proving, that home buyers view cell tower sites as a negative in their home buying decisions.

Furthermore, the close proximity of the cell tower site to the homes in my cal de sac presents negative safety issues beyond the loss of value to our property. The proposed tower will be 146' tall (including lighting rod) with an engineered break point fall zone of 85'. Research proves that the "engineered break points" designed by cell tower companies don't always break as engineered. If the proposed tower's engineered break point should fail and the entire tower fall, as some have, the tower would land 20' beyond the site tower property line into my neighbors back yard (west of the tower site), or could land on top of the shopping center directly to the south. The shopping center is heavily frequented by children who visit the the anchor tenant, Urban Air Trampoline Park. The negative impact of this scenario needs consideration! Imagine the tragic loss of life that could occur should the "engineered break point" fail!

In closing, this site may be permissible by law, but we need to consider if it is profitable for our community. The laws and ordinances of our city and state exist, ultimately, to ensure and preserve the safety, health, and well-being of each and every citizens. In this case, it seems the laws are serving business over the people. Is this cell tower

profitable to our community? There is no current "gap in service" in our area of the city. This tower is not vital for communication coverage, it is not vital to our well being as residents, and it is not a benefit to the value of our properties. It is simply a business opportunity that has successfully maneuvered through our governing authorities, so that they can conduct profitable business for themselves without concern for the neighboring owners. We, therefore, express our opposition and consideration for revoking SCI Tower's request for construction of this cell tower facility.

Thank you,



Christopher L. Smith
Homeowner - Hampton Park Subdivision
300 Aaronwood Court
Old Hickory, TN. 37138
(615) 310-1010

From: Scott and Cindy Knecht <cindyknecht55@gmail.com>

Subject: Cell Tower

Date: November 9, 2019 at 6:01:21 PM CST

To: NoTowerCommission@gmail.com

To whom it may concern

My husband and I are opposed to the cell tower in Old Hickory-we live less than 1/2 mile from proposed location. The major issue is everyone's health and property values. Recently property values have increased and we don't want to go backward. My father died from heart issues and my husband and I both have a parent who has put dementia and Alzheimer's into our genetics. My mother has also had cancer and I had thyroid cancer. Cell phone service would be diminished and most people no longer have landlines. The trampoline park Urban Air is there which would be bad for the children and also a gas station beside the property. Heaven forbid a tower would fall-a fire with a gas involved would be deadly for the neighborhood right at the location. I also believe, already knowing the dangers involved will be setting up for future lawsuits. Roundup and Johnson and Johnson both knew the dangers of their product, did not disclose it to the public and look where it has gotten them. I know of someone who just received word they have less than 5 weeks to live that was exposed to Roundup. We plead with you to please drop this project for the good of all. Human lives are of top priority.

Cindy and Scott Knecht
5206 Southfork Blvd.
Old Hickory TN. 37138

November 9, 2019

To Whom It may concern,

I am writing this letter to address the concerns that I have as part of the Hampton Park Subdivision in Old Hickory where a cell phone tower has been proposed and approved right in our neighborhood. The cell phone tower is to be placed adjacent to Aaronwood Court. My concerns are as follows:

- 1- There are 2 cell phone towers not half a mile from our subdivision. Why is one needed so close to us? It seems to not be necessary and overkill for the number of towers.
- 2- What studies have been done to prove that children and mature adults will not be harmed? None that will prove that we are not at risk for cancer or other diseases.
- 3- Our property values will decrease and yet, we will have to continue to pay taxes at the higher rate. You will destroy a neighborhood and for what? An unnecessary tower.
- 4- Visual impact will be a great concern. Instead of feeling a sense of relief at the night sky, we will be focused on the very thing that has been forced upon us that we do not want. It will be a constant reminder of the almighty dollar for the government. This is to our own detriment.
- 5- Proximity to the houses should the tower not withstand high winds. If it should break, the scene would be fatal to many, and I find this abhorrent. This is a risk that should not be placed upon us. Where is the worth in that? You opt to allow people to risk their life for a cell phone tower? Certainly not a government for the people but the almighty dollar.
- 6- There are three churches with childcare centers. This is another concern of how much harm will be placed upon these children. Again, this shows a lack of concern for human life. You can not say unequivocally that this is 100% safe for all. If you do say this, you are not telling the truth.
- 7- A trampoline park is not 500 feet from this tower. What if it falls on them? These are families that come from all over the Nashville area to spend quality family time. The parking lot is packed in the summer and winter. If they get hurt, what are you going to do, send thoughts and prayers? This will be totally useless and speaks volumes to the lack of concern for our citizens.

In closing this letter, I implore you to reconsider this tower and the permission to grant the build here. We have worked as a neighborhood to prevent this tower. Neighbors are concerned and we have signatures from people that have signed our petition. We are against it and please note that we have over 800 signatures. Please take our concerns into consideration and **DO NOT ALLOW THIS TOWER IN OUR NEIGHBORHOOD.**

Sincerely,

Linda Guffee

From: Leah Sherrod <lsherrod@godintl.org>

Subject: No-Tower Letter

Date: November 9, 2019 at 8:15:12 PM CST

To: Laura@eastgateccf.com

To whom it may concern,

As a resident of the Hopewell neighborhood in Old Hickory, Tennessee, frighteningly close to the location that you seek to erect a cell tower, on behalf of my family and myself, I do have grave concerns regarding this cell tower. My husband and I are raising our young family, with a four-year-old son and a one-year-old daughter, with hopes for bearing more children in the future. There are SO MANY children being raised right here in Hopewell alone, not to mention the surrounding area. Not only do I want my children to be raised in an environment that is safe for them - where they can grow and thrive without the threatening dangers of an ill-placed cell tower, but so too do we not wish to face the associative problems of infertility as a result of the proximity of this tower.

Our entire life exists here in one little bubble where our kids can run and play and go to school and church and grow/harvest healthy, organic food in our garden and learn without difficulty and walk to the nearby coffee shop for treats - all of the best parts of life without living in the shadow of danger. This tower cannot be prioritized over and above the health of this and future generations - it simply cannot and we beseech you to reconsider plans, selecting a new location for this and all future cell towers that is far, far away from where so much human living would be the cost.

In addition to this, our home is one of our greatest investments, outside of the upbringing of our children and the life that exists for our family as a part of this community. We have planned to live in this little home for the entirety of our years raising our family, and this tower puts that all at stake. We desperately want our home to remain as valuable as it deserves to be. This tower would significantly compromise its value, so we ask you again to please reconsider its location. Put it far, far away.

Thank you for taking the time and intentionality to hear my voice. May you be rewarded and receive the greatest blessing for any decision you make in my family and our neighbor's favor.

God bless,

Leah Sherrod
221 Hadleys Bend Blvd.
Old Hickory TN, 37138.
lsherrod@godintl.org
615-448-7058

From: Cindy Knecht <cindyknecht55@gmail.com>

Subject: Cell Tower

Date: November 9, 2019 at 6:01:21 PM CST

To: NoTowerCommission@gmail.com

To whom it may concern

My husband and I are opposed to the cell tower in Old Hickory-we live less than 1/2 mile from proposed location. The major issue is everyone's health and property values. Recently property values have increased and we don't want to go backward. My father died from heart issues and my husband and I both have a parent who has put dementia and Alzheimer's into our genetics. My mother has also had cancer and I had thyroid cancer. Cell phone service would be diminished and most people no longer have landlines. The trampoline park Urban Air is there which would be bad for the children and also a gas station beside the property. Heaven forbid a tower would fall-a fire with a gas involved would be deadly for the neighborhood right at the location. I also believe, already knowing the dangers involved will be setting up for future lawsuits. Roundup and Johnson and Johnson both knew the dangers of their product, did not disclose it to the public and look where it has gotten them. I know of someone who just received word they have less than 5 weeks to live that was exposed to Roundup. We plead with you to please drop this project for the good of all. Human lives are of top priority.

Cindy and Scott Knecht
5206 Southfork Blvd.
Old Hickory TN. 37138

Sam and Nelda Graham
305 Aaronwood Court
Old Hickory, TN 37138

November 11, 2019

To whom it may concern:

We are residence of Nashville, Tennessee living at 305 Aaronwood Court, Old Hickory, TN. I am writing this letter to express my strong opposition of the cell tower to be erected by SCI at 4321 Old Hickory Blvd. Nashville, TN. This cell towers will be virtually in our back yard.

We understand we need cell towers. Only a short ride either direction from our neighborhood there are already several cell towers. Is another cell tower needed so close to our neighborhood? I cannot think of a good reason.

Cell companies advertise praises of improved, faster and more coverage for their devices. But just a little bit of study shows the negatives that are not mentioned by these companies. These companies seem to avoid mentioning the risks of electromagnetic and wireless radiation. The World Health Organization studies have shown that children exposed to cell tower radiation health effects include increased rates of asthma, autism, cancer, and neurological. There is an elementary school only a couple of miles down the road from us. We are a neighborhood community of people, children and adults. We are young, old and in between working and striving for a healthy and rewarding life and ask that our government protect our environment.

We sit in the mist of many homes. Most of our neighbors, like us, have worked and invested in our home purchase. We have lived here since 1996. We are retired and worked hard for what we have. Our home is one of our prime investments. With the erection of this tower we will be facing a financial decrease in our home value due to, not only aesthetic of our neighborhood, but the perceived negative health effect of the electromagnetic signals from this cell tower. We are a neighborhood community of people, children and adults working for the American dream. We have paid taxes, supported our city, state and federal governments. We are registered voters and participate in elections. We ask that our government value our efforts, because we want our whole community to progress and have a good life.

Please protect us, your fellow citizens, and stop the erection of a cell phone tower at 4321 Old Hickory, TN 37138.

Sincerely,

Nelda Graham

Board of Zoning Appeals
Richard Fulton Complex
Nashville, TN

November 9, 2019

Dear BZA Board Members,

I am writing to urge you to disapprove a cell phone tower in Old Hickory, Tennessee near a residential area where my students live. As a teacher at Andrew Jackson Elementary just up the road, for 34 years I have worked to teach my students the value of good health and what it takes to maintain it. We work on fitness, motor skills, wellness, and preventive ways to avoid disease. Working there for over three decades, my first students are now the parents of the current generation. I consider them all part of my family.

The proposed cell phone tower so close to where these children live and play places them in danger of radiation that could lead to multiple diseases including cancers. I had a family member diagnosed this week with leukemia. They have worked near large TVA power grid for several years. Several people who live near the grid have had brain tumors and cancers. Researching the dangers of living next to electrical grids and cell phone towers, the research in the United States seems to be muffled by political powers. The research in Europe is very clear and out there. While these towers might make cellular connections more convenient for some, I ask is the danger to others worth the risk? The danger is very real.

I know from watching your meetings that you must make your findings based upon the law, but I beg you to search for some way to disapprove the location of this tower because of its proximity to our children and their homes.

The land owner who lives out of state was unaware of the proximity to homes and once informed does not approve a lease for a tower here. There are several towers nearby, but they are away from residential areas. Somehow, if another tower is really needed, we as adults must find a way to locate it away from homes where people live.

We must do the right thing for children, the unborn, and their families. No convenience or profit is worth the risk to the human beings most at risk. Sometimes doing what is right supersedes the rights of a property owner. Sometimes we need to think with our hearts. On behalf of the children, I beg you to consider my thoughts and help the company find a location with minimized risk of harming others. What if it were your children or grandchildren who lived here?

I thank you for your time and compassion when making this decision.

Susan Floyd
Physical Education Teacher
Andrew Jackson Elementary
Old Hickory, TN 37138

To whom it may concern:

My name is Tamatha Boyle (husband is John Boyle). I am a 59 year old married woman from Old Hickory, Tennessee. My address is 4404 South Trace Blvd. In the South Fork Subdivision.

I live in close proximity to the proposed cell tower site and have great concerns about not just the negative health effects from the radiation the cell tower will produce but also the decline in property values we will all be forced to suffer due to the tower radiation concerns and aesthetics of the tower and how it will affect the surrounding area.

My personal investigation of these cell towers has enlightened me to many disturbing facts. One being that our property values will tank 20% or more. The more that people become aware of this issue, the more increased the possibility that our property values could actually become entirely worthless and all the money we've paid over the decades of living here will have gone down the drain. Who in the world wants to live next to a cancer causing radiation cell tower that is putting out God only knows how much radiation 24/7. The thought is absolutely terrifying to me. They have problems with catching fire as well as falling down. The break point technology is faulty and is notorious for not performing correctly. This is terrifying to me as the proposed site for this tower is in extreme close proximity to a children's playground and a gas station. If this tower were to be built in the proposed location, and God forbid it catches fire and falls down in the direction of the gas station, we could witness one of the greatest catastrophes in Tennessee history.

I am not against cell towers or cell tower companies. I don't believe anyone who has signed the petition is against cell towers or the companies, which produce them. Cell towers are a recognized necessity in our modern world. However, We are justifiably and rightfully against cell towers being placed inside of neighborhoods where the tower can fall on houses and cause high levels of radiation exposure to the living occupants of the area. We are against these towers being put next to children's playgrounds where they can fall and kill a kid and we are against a cell tower being put so close to a gas station where a potential fire from the cell tower can cause a serious explosion taking out the whole area.

Unless and until these cell towers have been fully tested and deemed safe, they have no business whatsoever being placed in neighborhoods. Especially when we are told there are other locations available that aren't smack dab in the middle of 1,000 plus homes with families.

This tower, in this location, presents an insane number of serious catastrophic life threatening event issues. Not just for me and my neighbors but for anyone who may be in the area at the time if God forbid, something awful happens. It absolutely boggles my mind that this site is even being considered in the first place since it's to my understanding that the cell tower lawyer told us there are other sites available. Why put us all in such extreme danger if there are other sites available? Why put it next to a children's playground? It doesn't make sense to me, especially since we are always hearing our political figures tell us the reason they need to keep raising our taxes is because they are doing it FOR OUR CHILDREN... Our political figures have such big hearts it's always for the good of the children. So, they want to raise OUR taxes and make US pay an ever rising rate, so that the children can be protected and WE as a

collective society, whether we have children or not, must continue to sacrifice ever increasingly, whether we can afford it or not ... "For the children".

If our political figures REALLY CARED about the CHILDREN as they so often claim they do, why aren't they stepping up and protecting the children in our communities from this dangerous threat? Why won't they even recognize that a dangerous threat is being thrust upon everyone and eventually, this threat will come to their back door one day too? Why have they made this such an uphill battle?

The world health organization states that these towers are particularly dangerous for children because their little bodies haven't been fully developed yet, so the radiation goes through them like soft butter.

I met a woman out front of the trampoline park who told me that she lost her 6 month old grandchild to cancer only a few months ago due to the high levels of radiation the tower she lived next to caused her and her family. This is terrifying for me to know that this happened to that poor woman and her grandbaby in just 6 months of life on this planet. If that can happen to her and her family, it sure can happen to a family in my neighborhood. I'm horrified at the possibility that it will.

Studies also show that these towers have a negative impact on the environment. They radiate all the bugs that the birds need for food. If the bugs are gone, the birds go away too. How will the high levels of radiation affect the soil? What will be the impact on the other wildlife in this area? We have deer, opossums, raccoons, skunks, etc. How will this impact THEIR food supply? How will this affect THEM???

Some of us around here like to grow our own food in the spring and summer. How will the radiation affect OUR food supply? Will our food be radiated and when we eat the food will the inside of our bodies be radiated? This is a terrifying thought.

We are told that we can't even voice such claims as our concerns for our health and the environment as a means of preventing the cell tower from going into this location due to a law signed by then president Bill Clinton in 1996. That law needs to be rescinded and rewritten. It was signed into law when everything was a flip phone. It's outdated and it's putting countless American citizens lives in mortal danger. WHERE are our political figures? WHY isn't there a united effort to rewrite this law and protect the citizens of this country from the harmful effects of high level radiation produced by 4-6 G cell towers???

Were they bought off or something? How can they allow something like this to happen to all the folks that voted and trusted them to do the right thing?

Our political figures are always telling us that they need to raise our homeowner's tax to benefit "THE CHILDREN" We need to "protect" the "children" We "need" to "keep" the "children safe"... My question is, if our political figures care so much about the children then how come they aren't caring about the children who play at the trampoline park? How come, they don't care about the children growing up in our neighborhoods who will be directly impacted in a negative way? Why have we, as members in our community, had such an uphill battle with the very people who were elected to protect us and our neighborhoods from dangers such as the radiation these cell towers will emit?? Why did we as a community find out about this tower after the fact? Isn't it the job of our elected

council people, state senators and congressional individuals to see to it that all Tennesseans live and thrive in a safe environment?

Senator Blumenthal revealed in congressional hearings that no tests have been done by the cell tower companies or the FCC with regard to environmental or health impact. NONE!... ZIP.....ZERO... NADA! While over 250 scientists from around the world, who HAVE DONE TESTS are calling for a full moratorium on cell towers until the health and environmental impacts are revealed.

WHY in God's Good Name would such a dangerous tower be placed right next to a children's trampoline park? With all the political talk about protecting the children, WHY are the children not even being considered in this situation?

The knowledge of this possible event occurring in our neighborhood has already had a direct negative impact on my health and the tower hasn't even been built yet. I've spent several hundred dollars of my own money attempting to alert our neighbors to what is being considered in our area. I'm not a rich woman so this money was an extreme sacrifice for my husband and I to have to endure and we have yet to recover from the loss. There have been times where the stress and worry has given me migraines and made me physically sick. I'm terrified that this cell tower is going to be put in despite the negative impact it will have on so many of us. I'm so concerned about this that it has made me very nervous and in a heightened state of constant fear.

I am concerned that I will be forced to walk away from my home of 25 plus years, while still being responsible for the mortgage just to protect my health. I have concerns that although it is a proven fact that my property values will tank like a rock, I will still be responsible to pay my current tax rate on a severely devalued home! I'm concerned that if this tower goes into our neighborhood, we will be stuck with a house we can't sell and would most likely feel guilty for even trying to sell in the first place. (Do unto others as you would have done to yourself) I have many more concerns about this cell tower.

Respectfully,

John and Tamatha Boyle

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing

document was furnished to David Diaz-Barriga

at Metro Codes Dept.

800 2nd Avenue So. Nash, TN 37210

in person on November 15, 2019.

Served by: Laura H. Smith
Old Hickory NO-TOWER Commission
P. O. Box 415
Hermitage, TN 37076
NoTowerCommission@gmail.com

Laura H. Smith

From: [CONAN CURRY](#)
To: [Board of Zoning Appeals \(Codes\)](#)
Subject: Zoning Appeal Case: 2020-004
Date: Sunday, January 26, 2020 8:35:39 AM

To Whom it May Concern,

I am writing this communication because I do not plan on appearing in person on Thursday 2/6 for the hearing regarding the Old Hickory No-Tower Commission. This communication is to show my support for the appeal in hopes that the tower will not be built.

Thank you,
Conan Curry

645 Hardin Shire Drive
Old Hickory, TN
37138
Contact: 609-346-7446

Board of Zoning Appeals :

We are owners of 102 Laurel Hill ^{Dr. St} Ct in Laurel Hill Condominiums. This letter is regarding Case # 2020-004. It is challenging the issuance of building permit 2019044881 for a telecommunication tower. We Danny Chambers and Lisa Chambers; owners of above said address are in total support of The Old Hickory No - Tower appeal and in complete support of the building permit to be cancelled.

owners 102 Laurel Hill Drive 37138
Danny & Lisa Chambers Rose W. Chambers

Mailing address ↓



Daniel L. Chambers
 408 Beacon Hill Dr.
 Mount Juliet, TN 37122-2083

Board Of Zoning Appeals
 800 Second Avenue South
 P.O. Box 196300
 Nashville, TN 37219-6300
 Case # 2020-004

* Letter mailed 1/17/2020

Metropolitan Government of Nashville and Davidson County
Dept. of Codes & Building Safety
Board of Zoning Appeals
PO Box 196350
Nashville, TN 37219-6350

January 27, 2020

Board of Zoning Appeals Members:

We are writing this letter in FULL SUPPORT of the appeal filed by The Old Hickory No-Tower Commission (appeal case #2020-004). Our family does NOT want any telecommunications towers built near our property. It is a health hazard for the brain development of our 2-year old son. Moreover, it would interfere with our cellular phone service. This type of tower should only be built in remote areas, FAR from residential communities.

Please feel free to contact us with any questions at 313.595.6932 or roshaunda7@yahoo.com.

Best,



Jorge, Jr. and Roshaunda Orta
1625 Aaronwood Dr.
Old Hickory, TN 37138

From: [Laura Harris Smith](#)
To: [Board of Zoning Appeals \(Codes\)](#); [Michael, Jon \(Codes\)](#); [Lamb, Emily \(Codes\)](#)
Cc: [Cooper, Jon \(Council Office\)](#); [Hagar, Larry \(Council Member\)](#)
Subject: Urgent Appeal for METRO PERMIT NO. CATC 2019044881
Date: Friday, December 6, 2019 1:30:41 PM
Attachments: [OH NO-TOWER BRIEF.pdf](#)
[Laura Signature.png](#)
[Laura Email pic.tiff](#)

To: Emily Lamb, Jon Michael, and the Metro Board of Zoning Appeals:
Ms. Chappell
Ms. Davis
Ms. Karpynec
Mr. Lawless
Mr. Pepper
Ms. Sanford
Mr. Taylor

(cc: City Attorney Jon Cooper for reasons stated below, although I have also been in touch with him separately. Also cc:d is Councilman Larry Hagar since he is mentioned herein.)

My name is Laura Harris Smith and I represent the Old Hickory NO-TOWER Commission. We are the group of 930+ citizens in Old Hickory, TN who are in opposition to a cell tower being placed at 4321 Old Hickory Boulevard in Old Hickory.

First, I trust that your Holiday season is off to a good start.

By now, each of you have on your desks a hardcopy of our 49 page individually-notarized legal brief (plus 90 pages of exhibits) that we sent by U.S. certified mail last month. It outlines our 12 legal arguments, none of which center around health concerns or which violate the Telecommunications Act of 1996 or any other FCC ruling. Some of our 12 arguments address zoning ordinances which we believe are in danger of being violated, some outline the FCC's own *requirements* for an Environmental Impact Assessment according to The FCC's Title 47 CFR § 1.1307, and others address a wide variety of developing facts about this particular case. The brief also cites more than 25 court cases very similar to ours in which precedent was set which would result in a ruling in our favor should this go to trial.

One of those is that landowner, LEVOG (James Levin), after learning for the first time that there was such a community uprising (not against cell towers in general but against this one at its dangerously close location) has said to me in writing that he is willing to "negotiate an equitable exit" for SCI Towers if they are willing. Meanwhile, as I'm sure Councilman Larry Hagar has told you, Mike Eller (owner of Hermitage Golf Course) is open to discussions about receiving SCI's tower onto his golf course. I have confirmed this myself by speaking to the golf course's president, Ashley Eller-Cottrell (the owner's daughter). There is absolutely no reason at this point why this equitable exit cannot be negotiated. And as long as the tower is placed in the Northwest tip of the golf course, it would not be in danger of repeating the same exact situation all over again for the close-by subdivision residents of Cleveland Hall, Brandywine and more. If it is placed in the lower south tip of the golf course, it would present a similar violation to the people of Southfork and Hopewell subdivisions. Southfork is the place where Native American bones were exhumed and boxed up in 1995 during construction. The same has happened in my subdivision, Hampton Park where I have lived for 30 years (just 1/2 a football field

away from the loud tower construction going on). Old Hickory Boulevard is State Route 45 *which is* The Trail of Tears. We have the Cherokee Nation in Oklahoma involved in this opposition. This is the just one of the primary reasons we have requested a full EIA, seeing as how the FCC says that it is *required* under these circumstances (it says this in Title 47 CFR § 1.1307).

With all of this in mind, there is no logical, solid reason why an EIA should not be ordered since FCC law is violated if it is not (and thank you if it has been set in motion), but with that delay in mind, there is no reason why the proposed tower should not be moved to the Hermitage Golf Course's NW tip, further away from all residents' homes, and further away from a roadside front location on The Trail of Tears, State Route 45. As it is, the location at 4321 Old Hickory Blvd. sits directly on The Trail and presents an entirely different issue which is not addressed by the Section 106 approval that was granted by The Hermitage (for the Hermitage alone, which sits just south).

We have discovered three places in our legal brief where the exhibit citation letter (i.e., "A", "J", "K") did not correspond to the correct exhibit. They were always correct in the Table of Contents, but please find attached an electronic copy of the brief with the internal citations of the exhibits corrected. An electronic copy of the brief was requested of me by City Attorney Jon Cooper on 11/22/19 and so I assembled it for him and am forwarding it to you here for your convenience. The 90 pages of exhibits are too large to email but can be found at <https://www.dropbox.com/sh/6t1hjzn9yx6ji67/AABsODzzuVRaJEOkWpWb3eQua?dl=0> in a Dropbox folder. In fact, the brief and exhibits are both there. You may also receive an email directly from Dropbox once I add your addresses there to ensure your accessibility.

As I said, I am also cc:ing Jon Cooper on this email for the simple purpose of him knowing I have communicated these updates to you (concerning Hermitage Golf Course, LEVOG, and with the 3 exhibit citation corrections).

For your records, in addition to all of you, a hardcopy of the legal brief + exhibits was also sent to and has been received by: James Levin in NY, LEVOG in NY, SCI Towers in NC, Joel Hargis of Baker Donelson in TN, and Mayor John Cooper.

Thank you for your time and *please confirm receipt*.

Happy Holidays,

Laura Harris Smith
Old Hickory NO-TOWER Commission
NoTowerCommission@gmail.com



Laura Harris Smith, C.N.C.
author, [official site](#)

host, [theTHREE.tv site](#)
inventor, [Quiet Brain site](#)
pastor, [Eastgate church site](#)
Official [Facebook page](#)

Metropolitan Government of Nashville and Davidson County
Dept. of Codes & Building Safety
Board of Zoning Appeals
PO Box 196350
Nashville, TN 37219-6350

January 27, 2020

Board of Zoning Appeals Members:

We are writing this letter in FULL SUPPORT of the appeal filed by The Old Hickory No-Tower Commission (appeal case #2020-004). Our family does NOT want any telecommunications towers built near our property. It is a health hazard for the brain development of our 2-year old son. Moreover, it would interfere with our cellular phone service. This type of tower should only be built in remote areas, FAR from residential communities.

Please feel free to contact us with any questions at 313.595.6932 or roshaunda7@yahoo.com.

Best,



Jorge, Jr. and Roshaunda Orta
1625 Aaronwood Dr.
Old Hickory, TN 37138

IN THE STATE OF TENNESSEE FOR THE NASHVILLE METROPOLITAN BOARD OF ZONING APPEALS AND IF NECESSARY, THE TENNESSEE COURTS OF LIMITED JURISDICTION OR TRIAL COURTS

THE OLD HICKORY NO-TOWER COMMISSION,

APPELLANT,

v.

METRO PERMIT NO. CATC 2019044881

SCI TOWERS, EMPIRE CONTRACTING, AND LEVOG

APPELLEES.

_____ /

PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR PERMIT REVOCATION

Appellant files this Memorandum of Law in support of its Motion For Revocation of an Issued Building Permit, pursuant to the local ordinances of this Jurisdiction and the rights of the citizens herein.

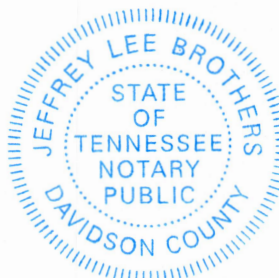
NOTARIZED AFFIDAVIT

We, residents and registered voters of Old Hickory of Davidson County, State of Tennessee, do hereby certify, swear and affirm under the penalty of perjury that we are competent to present the following declarations and information based on personal knowledge, research and counsel, and that the following pages, documents and exhibits are true and correct to the best of our knowledge:

Each signature on page 2 of this petition was affixed in my presence and is the true signature of the individual who signed the petition.

Subscribed and sworn to before me in my presence this 11TH day of November 2019, a Notary Public in and for the County of DAVIDSON, State Of TENNESSEE.

[Signature]
(Signature) Notary Public
My Commission Expires 9/17/20



JAMES TIMBERLAKE Jim Lill 11/11/2019
 (Print Name) (Sign Name) (Date)
 JAMES TIMBERLAKE | 76 YRS. OLD | 301 AARONWOOD CT. | 31 YEAR RESIDENT OF HOME

Audrey Timberlake Audrey Timberlake 11/11/2019
 (Print Name) (Sign Name) (Date)
 AUDREY TIMBERLAKE | 70 YRS. OLD | 301 AARONWOOD CT. | 31 YEAR RESIDENT OF HOME

Chris Smith Chris Smith 11/11/2019
 (Print Name) (Sign Name) (Date)
 CHRIS SMITH | 57 YRS. OLD | 300 AARONWOOD COURT | 30 YEAR RESIDENT OF HOME

Laura Smith Laura Smith 11/11/2019
 (Print Name) (Sign Name) (Date)
 LAURA SMITH | 54 YRS. OLD | 300 AARONWOOD COURT | 30 YEAR RESIDENT OF HOME

Tamatha Boyle Tamatha Boyle 11-11-19
 (Print Name) (Sign Name) (Date)
 TAMATHA BOYLE | 59 YRS. OLD | 4404 SO. TRACE BLVD. | 26 YEAR RESIDENT OF HOME

Nelda Graham (Holt) Nelda Graham (Holt) 11-11-2019
 (Print Name) (Sign Name) (Date)
 NELDA GRAHAM | 73 YRS. OLD | 305 AARONWOOD COURT | 23 YEAR RESIDENT OF HOME

Paul J Hughes Paul J Hughes 11-11-19
 (Print Name) (Sign Name) (Date)
 PAUL HUGHES | 59 YRS. OLD | 701 BUTLER ROAD | 20 YEAR RESIDENT OF HOME

Linda Guffee Linda Guffee 11/11/19
 (Print Name) (Sign Name) (Date)
 LINDA GUFFEE | 70 YRS. OLD | 1604 AARONWOOD DRIVE | 3 YEAR RESIDENT OF HOME

The aforementioned individuals comprise the Old Hickory NO-TOWER Committee and represent the Old Hickory NO-TOWER Commission, which is a group of almost 900 residents who have signed the included petition as a show of opposition to the cell tower proposed to be built by SCI Towers at 4321 Old Hickory Blvd., Old Hickory, Tennessee, which sits directly behind their homes. Of the 1,000 homes which would sit within a half-mile of this tower, about 900 signatures have been gathered opposing it. They are herein respectfully submitted (Exhibit A).

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6. Local Media Gets Involved, Does Two News Stories (WKRN, WSMV)	
7. Laura Smith Visits Codes to Appeal, is Denied on Grounds of No Permit Yet Issued. Told by Examiner How to Watch Daily Permit Progress Online.	
8. Neighbors Come Together By The Hundreds To Oppose Tower and They Spend The Summer Organizing and Researching.	
9. Neighbors Protest That a 140-150' Tower Should Not Be 85' from the Property Line of a Children's Trampoline Park, Nor Steps Away From a Gas Station, Which Sits on Same Property. These Present Dangers To Life.	
10. All Community, City, State and Congressional Elected Officials Notified	
11. Smith Reaches Out to James Levin (of LEVOG) in NY Seeking Intervention. Levin Offers To "Negotiate An Equitable Exit" for SCI Towers. He Mentions an EIA (Environmental Impact Assessment) Being Needed.	
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- 1. Permit Should Be Revoked Because From The Affected 1,000 Homes, 900+ People and Business Owners Have Signed the Online Petition Opposing Tower (see Exhibits A, B) and Involved Media (Exhibit C).**
- 2. Permit Should be Revoked Because Possible Metro Ordinance Violations By The Tower Will Endanger Nearby Residents And Cause Death If “Breakpoint Technology” Fails (see Exhibits D, E and F).**
- 3. Permit Should Be Revoked Because Precedent is Set in Multiple Court Rulings for Negative Aesthetic Impact Being Taken Into Account for Permit Denial; also: Local Realtor Letters Are Submitted Herein to Testify to The Truth of Cell Towers Devaluing Properties (see Exhibit G).**
- 4. Permit Should Be Revoked Because Circulating Site Plans and Photos Do Not Adequately Show the Close Proximity to the 1,000 Homes Within the 100 ft. - ½ mile Radius of Tower and are Misleading (see Exhibit H).**
- 5. Permit Should Be Revoked Because the Tower Could be Later Increased in Height Without Community Consent Under The Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96, H.R. 3630, 126 Stat. 156) and Appellants Submit Evidence of These Intentions (See Exhibit I).**
- 6. Permit Should Be Revoked Because Burden Of Proof by SCI to Prove Coverage Gaps Has Not Been Properly Met, Per Cited Court Precedent(s).**
- 7. Permit Should Be Revoked Because Appellees Never Disclosed Alternate Tower Sites That Was Requested on 8/8/19 & 8/22/19. Proof is Submitted Herein of 36 Towers/Antennas Found in a 2 Mile Radius (see Exhibit J).**
- 8. Permit Should Be Revoked or at Least “Stayed/Delayed” As Appellants Are Requesting an EIA based on Multiple Allowable Reasons In NEPA’s Own Requirements Per The FCC’s Rules in 47 CFR §1.1307 (See Ex. K, L)**
- 9. Permit Should Be Revoked Because Property is not In a Right of Way (ROW) and Owner (LEVOG) James Levin has offered to Negotiate An Equitable Contract Exit for SCI Towers in Light of Overwhelming Evidence of Community Opposition (letter available upon request).**
- 10. Permit Should Be Revoked Because Land is on Sacred Indian Site (Ex.M).**
- 11. Permit Should Be Revoked Because Local Officials Failed to Act.**
- 12. Permit Should Be Revoked WITHOUT Fear that Metro Will Be Penalized By The FCC Since Precedent Has Been Set in Multiple Court Rulings Protecting the Authority of Local Zoning Boards.**

Closing Statements.....48

Exhibits:

- A. Petition of 900+ Signors Opposing the Proposed Tower**
- B. Old Hickory NO-TOWER Logo and Apparel**
- C. Images of and Links to Local Media Coverage**
- D. Codes Memo from Examiner David Diaz-Barriga**
- E. Stills From Video of Failing Breakpoint Technology map**
- F. Letter from Tower Engineer Michael Plahovinsak**
- G. Negative Property-Value Impact Letters from Realtors**
- H. Maps and Area Pictures of Proposed Site and Affected Homes**
- I. Evidence of Appellee’s Plans to Increase Tower Height**
- J. Evidence of 36 Cell Towers or Antennas in 2 Mile Radius of Site**
- K. Environmental Impact Request Statement (EIA)**
- L. Proof of Area Being Home to Wildlife Habitats**
- M. Proof of Tower’s Close Proximity to Sacred Indian Site**
- N. Negative Impact Statements from Residents**

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The Bill of Rights, 1st Amendment

The Bill of Rights, 10th Amendment

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STATEMENT OF THE CASE

Appellants (900+ residents comprising the Old Hickory NO-TOWER Commission) are seeking revocation of Permit #CATC 2019044881, issued by Nashville Metro Codes Dept. to Empire Construction and SCI Towers, Inc. on November 6, 2019 for a telecommunications tower at 4321 Old Hickory Blvd. in Old Hickory, TN. This motion is supported by 12 arguments, one of which is that property owner, James Levin, (LEVOG), has learned that of the 1,000 homes within a 100 ft.-½ mile of the tower, more than 900 people have signed a petition opposing it for serious property setback and safety issues, and he has offered in writing to “negotiate an equitable exit strategy” for SCI Towers. The other 11 arguments focus on said setback safety issues, breakpoint technology failure concerns, unproven coverage gaps, undisclosed alternative sites, and other such arguments, none of which violate the 1996 Telecommunications Act but half of which do violate Metro Ordinances cited herein. Others violate FCC allowances made for sacred Indian sites, seeing as how said property rests on The Trail of Tears (State Route 45). Missing amongst the arguments are claims of human health hazards, which the Appellant acknowledges compromise the TCA of 1996. Exhibit N is of Resident’s Negative Impact Statements, some of which *do* cite very personal health concerns, but those citizens do so under their 1st Amendment “right to petition” and not as part of the overall appeal. Accumulatively, these 12 arguments represent the genuine concerns and fears of the 900+ petition signors, hundreds of which say they must move if the tower is built. These individuals are not anti-cell tower or pro-community prohibition, but merely petition Metro Codes to advise SCI Towers to pursue one of their other considered sites for this tower, preferably one not steps away from such a densely populated residential area.

STATEMENT OF THE FACTS

In early July of 2019, citizens of Old Hickory, Tennessee were finally hearing rumors of a proposed cell tower at 4321 Old Hickory Blvd., a project that was already months in the works without proper notice to them. A few of them researched and discovered that under METRO SUBSTITUTE ORDINANCE NO. BL2016-415, 4.e.(v), their local council member was supposed to be notified by the zoning administrator, “prior to the issuance of a zoning permit (was pre-approved) and immediately after receiving an application for a new tower.” That did not happen “immediately after receiving the application” and the law says it is “required when a tower is proposed within a residential district (*which it is*), a district permitting residential uses (*which it does*), or within one thousand feet of the zoning boundary line of a residential district or a district permitting residential uses (*which it is*). Such notification shall also be required when a telecommunications facility is within a Historic Overlay District or right of way abutting a Historic Overlay District (*which it does w/Andrew Jackson’s The Hermitage.*)

The ordinance goes on to say: “within thirty days from the date on which the tower application was filed, the district councilmember may hold a community meeting on the proposed tower” (*which Larry Hagar did, but residents were only alerted about a related sidewalk dispute*). Eventually, Councilman Hagar did call a community meeting as much as four months after the application was filed, but the meeting did not meet ordinance requirements. Residents learned that ORDINANCE NO. BL2016-415, 4.e.(v), states “if a meeting is held, the applicant shall attend and provide information about the tower's safety, technical necessity, visual aspects, and alternative tower sites and designs

considered,” and while SCI Tower’s attorney, Joel Hargis, did attend this August 8th meeting at Berryville Baptist Church, he did not answer residents’ heated questions about these issues. Residents videoed this meeting for the purposes of documentation and are ready to present it as evidence to show the failure to comply with this ordinance by not answering questions about anything besides basic tower measurements.

Since the Councilman was not notified by the zoning administrator “immediately after receiving the application” and since the Councilman’s office did not notify all residents “within one thousand feet of the zoning boundary line” about the called town-meeting as the ordinance requires, this caused residents to learn about it too late to have a strong show. Nonetheless, one local 30-year homeowner couple closest to the proposed tower, Chris and Laura Smith, quickly designed flyers and personally funded not only the printing of hundreds of copies but the delivery on-foot to neighbors’ doors—300 to be exact—in almost 100° weather. As a result, about 50 residents did show to the meeting and it proved to be those who had the most spirit-opinions about the issue. It should be noted that not a single resident was present who was in favor of the tower. That same day, Smith had started an online petition (see Exhibit A) for tower-opponents to be represented by, and the URL was listed on the distributed flyers that day just hours prior to the meeting. So even though only about 50 people attended the meeting, by the time it adjourned and the petition was checked, another 40 people had signed it, meaning that by the end of the first day people even learned about the tower, almost 100 were already rallying to oppose it. The Old Hickory NO-TOWER Commission was born (see Exhibit B for logo). From that emerged a small team of leaders, which refer to themselves as the Old Hickory NO-TOWER Committee.

Two days later, another resident, 70-year old Linda Guffee, set out on foot again door to door in near 100° weather, fell while canvassing and was cut, bruised her ribs, and required several days in bed to recover. Other residents, John and Tamatha Boyle, spent hundreds of both dollars and hours hand delivering notices to neighbors, a job that should have been done by local officials in compliance with previously cited Metro Ordinances.

Due to Metro Ordinance's required information not being provided by SCI Tower's representative at the meeting, citizens requested another meeting at which a better-informed representative could be present to answer important questions. Again, questions that are required to be answered in compliance with Metro Ordinance ORDINANCE NO. BL2016-415, 4.e.(v).

Two days before the second meeting, Smith visited Metro Codes to express concern over the dangers of failing "Breakpoint Technology" so close to human life and to file a permit appeal but was told by Examiner David Diaz-Barriga that appeals could only be filed after the permit was issued. Smith was given an online link where she could daily monitor tower progress, which she did throughout the summer. Diaz-Barriga presented Smith with a memo recognizing her attempt to file (See Exhibit D, which included original emails between Zoning Attorney Jon Michael to Laura Smith on 7/12/19).

The second town meeting was held two weeks after the first--on August 22nd 2019-- at Eastgate Creative Christian Fellowship in Old Hickory, TN. Present were about 150 residents who opposed the tower, without one person present who spoke in favor of it. Also present was Councilman Larry Hagar and Metro Codes Attorney Emily Lamb. So were members of the local television media and on the news that night were two feature

stories about the citizens organizing against the tower¹ (see Exhibit C). Although that meeting had been requested specifically to receive more answers about the tower, no new ones were given, and even Ms. Lamb admitted she could not answer certain questions with specificity. To her defense, it did not appear she had been informed that this meeting was called specifically to receive such answers. A full video documentation of this meeting is offered as evidence if so required of Appellant.

The Summer of 2019 became—for hundreds of Old Hickory residents—the summer that they learned to write their elected officials, discovered their 1st Amendment “right to petition”, researched how to better protect their health in the face of expanding technology, and connected with neighbors beside whom they had lived for decades and in some cases, had never met. These neighbors say they are already connecting better without the help of a telecommunications tower. They comprise the Old Hickory NO-TOWER Commission and are an army rallying in 100% agreement about their opposition to this tower.

Reasons for their strong opposition are centered on several factors and will be discussed in full in this document’s arguments. They begin first with inadequate property setback lines that do not account for breakpoint technology failure and that could cause loss of human life. An August 13th letter to SCI Towers from tower-engineer Michael F. Plahovinsak in Ohio raises many questions for the Old Hickory residents who live within steps of the tower. They also cite concerns over the WirelessEstimator.com statistics that

¹ “*Community in Old Hickory Fights Against Application for Cellphone Tower*” - WKRN: <https://www.wkrn.com/news/community-in-old-hickory-fights-against-application-for-cellphone-tower/> And “*Neighbors Fighting Cell Tower Proposal in Old Hickory*,” WSMV: https://www.wsmv.com/news/neighbors-fighting-cell-tower-proposal-in-old-hickory/article_c21e16ba-c54d-11e9-95f5-8f811bb7b348.html.

say that every month in America a cell tower catches fire with almost 100 articles on such fires.² The reason for residents' urgent concern is that said tower at 4321 Old Hickory Blvd. sits just feet away from Speedway Gas Station also on the same LEVOG property. Should a cell-tower fire occur, they argue that this could be a deadly, explosive event and result in massive loss to human life.

Appellants/Residents also state other arguments such as the 140-150' tower sitting within 85' of the property line for a strip mall containing a children's Trampoline park and other local areas of heavy traffic by children, including three area churches with childcare programs, and the Rotary Park Ball Field which sits less than ½ mile away and is visited by thousands of children monthly. This is all within walking distance of the tower, which also will not be protected by anything other than a chain link fence with warning signs, neither of which will keep curious children from climbing it.

Appellant also states that the permit should be revoked because SCI Towers never provided the requested disclosure of alternate tower locations that had been considered for the tower, and under Metro ORDINANCE NO. BL2016-415. 4.e.(v) it states, "applicant shall attend and provide information about the tower's safety, technical necessity, visual aspects, and *alternative tower sites and designs considered.*" This was requested at the August 8th meeting at Berryville Baptist Church and video documentation is available as evidence upon request. All of these points are discussed further in Arguments. Appellants also have proof that they have contacted all of their local elected representatives including all Council people, the Mayor, State Representatives, Senators and Congressmen, and yet

² <http://wirelessestimator.com/about-wirelessestimator-com/search-results/?search=fires>, WirelessEstimator.com, *Cell Tower Fires*

not heard back. Due to this they cite directly from the Telecommunication Act of 1996 which states,

“Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.”

Finally, and of utmost priority, is the fact that on October 19th, NO-TOWER Commission member, Laura Smith, reached out to LEVOG owner, James Levin, in NY by letter, introducing herself to him as his “neighbor of 30 years” since he has owned his property there for 31 years and she has owned her adjacent property for 30 years. She petitioned Levin to please consider the majority neighborhood uprising and organized efforts to oppose this tower, and sent a full 13-page report with all data, research and proof of the 900+ signature petition. Levin responded very compassionately to Smith the next week by stating three very important facts: 1) no one had told him about the NO-TOWER Commission or their months of organized efforts *or* their appearances on local media which involved *his* name (LEVOG), 2) he reasoned that an Environmental Impact Assessment would surely need to be done before issuing the permit (of which there is no public record), and 3) he states, “*Let me assure you that LEVOG would be willing to negotiate an equitable exit strategy with them (SCI Towers).*”

Appellants also are—inside this memo—submitting in writing their request for a full NEPA Environmental Impact Assessment. Reasons are stated in Arguments.

ARGUMENTS

Herein are the 12 arguments submitted by The Old Hickory NO-TOWER Commission as reason for Permit Revocation of METRO PERMIT NO. CATC 2019044881.

The Telecommunications Act of 1996, §704 (B) (iii) says:

“Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by **substantial evidence** contained in a **written record.**”

Through this provision, Appellants submit this “written record” and cite this case as precedent in the definition of “substantial evidence” (findings are **bolded**):

1. T-Mobile Northeast LLC v. Loudoun County Board of Supervisors

903 F. Supp. 2d 385 (E.D. Va. 2012)

” 47 U.S.C. § 332(c)(7)(B)(iii). **Courts have interpreted “substantial evidence” to mean “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”** *AT&T Wireless PCS v. City Council of Va. Beach*, 155 F.3d 423, 429 (4th Cir.1998) (quoting *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 477, 71 S.Ct. 456, 95 L.Ed. 456 (1951)). **Substantial evidence “is more than a scintilla” but “less than a preponderance.”**

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

There is another citation of this exact definition (findings are bolded)::

2. T-Mobile Northeast LLC v. Frederick County Board of Appeals

761 F. Supp. 2d 282 (D. Md. 2010)

"[S]ubstantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *ATT Wireless PCS v. City Council of Va. Beach*, 155 F.3d 423, 430 (4th Cir. 1998) (quoting *Universal Camera v. NLRB*, 340 U.S. 474, 488 (1951)). Significantly, "substantial evidence," while more than a scintilla, is also less than a preponderance.

It is through this same requirement of the TCA 1996 §704 that this appeal is submitted in legal brief form in order to provide written record, and it is done so with "substantial evidence" according to the legal definition of such.

Appellant submits these arguments in the spirit of the 10th Amendment of the Bill of Rights, which states:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Residents of the NO-TOWER Commission respectfully ask that these last three words be remembered as they, the people of Old Hickory, Tennessee, briefly make these arguments in representation of the majority vote of their community's voice.

Argument #1

Permit Should Be Revoked Because From The Affected 1,000 Homes, 900+ People and Business Owners Have Signed NO-TOWER Petition (see Exhibit A), Formed Commission (Exhibit B), and Involved Media (Ex C).

It has already been stated that Appellant is submitting a 900+ Signature petition with signatures in opposing to the tower (Exhibit A). But many residents have also sent letters and we have enclosed 10 such letters herein (Exhibit N). Some of them do express

health grievances but those are not a part of our legal argument. These individuals merely do so based on their 1st Amendment right:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to **petition the Government for a redress of grievances.**”

Argument #2

Permit Should be Revoked Because Possible Metro Ordinance Violations By The Tower Will Endanger Nearby Residents And Cause Death If “Breakpoint Technology” Fails (see Exhibits D, E and F).

This project does not afford safe fall-zone. Please consider the following

Metro Ordinances:

PROVISION 17.16.080 Section C Paragraph 4E it states: “Setbacks. A tower shall be set back from all property lines on which the tower is located by the distance equal to the height of the lowest engineered break point on the proposed structure or the height of the tower.”

This project’s Site Plan by SCI shows the “Required” Setback to be 150’ on the Rear, 150’ on the Left Side, 150’ on the Right Side and 150’ on the Front, but the “Proposed” Set Backs are listed as 126’ Rear, 85’ Left Side, 186’ Right Side, and 635 Front. Since two of the Set Backs are less than the overall height of the tower, homeowners and lives could be endangered if the Breakpoint Technology fails and the tower falls but does not split in its breakpoint zone. Appellant has produced the following video montage of towers all over the United States that have either collapsed or begun to collapse due to fire, ice, high winds or even lightning strikes. View video at: <https://youtu.be/NpDWZYCe5vU>) and see Exhibit E for video frame shots.

Appellant understands that “Breakpoint Technology” means the engineering design of a monopole, or any applicable support structure, wherein a specified point on the monopole is designed to have stresses concentrated so that the point is at least five percent (5%) more susceptible to failure than any other point along the monopole so that in the event of a structural failure of the monopole, the failure will occur at the breakpoint rather than at the base plate, anchor bolts, or any other point on the monopole.” Argument #1 centers on the fact that this is a very small margin of error and very dangerous when hovering so closely over houses containing human life. Since this tower has now been issued a permit to build, *Appellant officially requests SCI Towers to provide a Third Party Structural Engineer Certification of the “engineered breakpoint” for the proposed tower to verify the actual break point and fall zone.* Appellant has studied the letter from Engineer Michael F. Plahovinsak and does not consider it to be “third-party” since he designed the tower. The letter also raises several concerns (see Exhibit F). Among those concerns are: 1) He says he has only designed the tower to “withstand a 3-second gusted wind speed of 90 mph,” which sounds insufficient, especially during Tennessee Tornado Season. It does mention being built for a wind speed of 116mph but this does not list time span of sustainability. Appellant cites news reports from as recently as February 20, 2019 which recorded wind gusts in Tennessee of 123 mph.³ Even closer to home—and therefore more alarming-- is a 2017 report which stated:

“As the QLCS (quasi-linear convective system) moved across the region, widespread damaging winds were reported in nearly every county along and west of I-24 across Middle Tennessee, with winds estimated up

³ “123 MPH wind gusts recorded in Greene County,” WVLT Channel 8, <https://www.wvlt.tv/content/news/123-MPH-wind-gusts-recorded-in-Greene-County-506107901.html>

to *100 mph* in some areas. These intense downbursts winds damaged numerous homes and businesses...”⁴

The letter also mentioned a “theoretical fall radius” in its discussion on breakpoint technology. Appellant has known and opposed from the beginning that the tower is too tall in comparison to surrounding structures that if collapsed upon, would be impacted, including nearby residents or children. Plahovinsak also admits that while the upper 85’ of the pole has been designed to meet the wind loads of the design, “the lower portion of the pole has been designed with a minimum 10% extra capacity.” This is far too small a number with far too high a potential consequence. He continues with very uncertain promises on which human life depends:

“Assuming the pole has been designed according to my design, and well maintained, in the event of a failure due to extreme wind and comparable appurtenance antenna load (winds in excess of the design wind load), it would yield/buckle at the 55’ elevation. The yielded section would result in a maximum 85’ fall radius, but would most likely remain connected and hang from the standing section.”

When human lives are at stake, nearby residents find no comfort in words like “assuming,” “in the event of a failure,” or “most likely.” They appreciate the fact that the tower is well-designed but what is built by a human is subject to human error. Appellant also cites concerns over the WirelesssEstimator.com data that says that every month in America a cell tower catches fire, plus the site’s other research which includes 1530 total results upon searching cell tower fires (with almost 100 articles on tower fires).⁵ The reason for their urgent concern is that said tower at 4321 Old Hickory Blvd. sits just yards away from Speedway Gas Station also on the same LEVOG property. Should a cell-tower

⁴ <https://www.weather.gov/ohx/20170309>, National Weather Service, March, 2017

⁵ “Cell Tower Fires,” WirelessEstimator.com, <http://wirelessestimator.com/about-wirelessestimator-com/search-results/?search=fires>,

fire occur, they argue that this could be a deadly, explosive event and result in massive loss to human life. In keeping with this theme and with Appellant's request for the NEPA (National Environmental Protection Act) EIA (Environmental Impact Assessment), they request it be thoroughly researched as to what the impact would be of a cell tower collapse to neighboring communities. If not all goes according to planned and the breakpoint malfunctioned, it would do serious damage to property, structures, or even cause potential death to nearby lives, including children.

Again, please watch Appellant's exclusive cell tower montage video at <https://youtu.be/NpDWZYCe5vU> and see Exhibit E for images of its 25 examples in the United States where cell fires either caught fire, collapsed in full due to breakpoint technology failure, or due to other causes such as wind or ice.

Argument #3

Permit Should Be Revoked Because Precedent is Set in Multiple Court Rulings for Negative Aesthetic Impact Being Taken Into Account for Permit Denial; also: Local Realtor Letters Are Submitted Herein to Testify to The Truth of Cell Towers Devaluing Properties (see Exhibit G).

Under SUBSTITUTE ORDINANCE NO. BL2016-415, Appellant has found multiple violations being committed by the building of this proposed tower:

C.1.d. "The applicant shall demonstrate that through location, construction, or stealthing, the proposed facility or network of facilities will have minimum visual impact upon the appearance of adjacent properties and the views and vistas from adjacent residential neighborhoods and pedestrian environment, while retaining viable opportunities for future collocation, provided applications for designs consistent with the design guidelines provided for in subsection 5.f of this section shall be deemed to have met the requirement of this subsection."

This project's tower will have MAXIMUM (not "minimum") visual impact upon the appearance of adjacent properties and the views and vistas from adjacent residential neighborhoods and pedestrian environment. According to the National Institute for Science, Law and Public Policy in Washington, D.C., 94% of people polled say they will not rent or buy near a cell tower and that property values can drop up to 20%.⁶

Next:

- 5d. d. "New telecommunication facility support structures may not be erected to a height greater than the height surrounding utility poles or street lights, whichever is greater. If no utility poles are present, the total height shall be built to a maximum height of 35', including antennas, lightning rods or other extensions. All new proposed structures, or a stealth telecommunications support structure replacing an existing support structure or alternative structure, within the ROW shall be designed for a minimum of two PWSF providers."

This tower would be 140-150' high, much taller than the height of surrounding utility poles, which is no more than 40 ft., and much taller than the approx. 35' light poles.

Installation of proposed tower would inflict on surrounding community adverse impacts that Codes Ordinances were enacted to prevent. Appellant submits as evidence letters gathered from area Realtors and Brokers affirming the difficulty in selling homes near towers in the Nashville area (see Exhibit G). Residents argue that for most in this

⁶ "Survey by the National Institute for Science, Law & Public Policy Indicates Cell Towers and Antennas Negatively Impact Interest in Real Estate Properties," Emily Roberson, July 03, 2014, <https://www.businesswire.com/news/home/20140703005726/en/Survey-National-Institute-Science-Law-Public-Policy#.VNRBPp3F-So>

community, their homes are their main and only investment, and this tower is going to dilute and devalue that.

While many refuse to rent or buy near a tower for health concerns, an overwhelming majority says it is a loss of property value that they dread most immediately, mainly due to the loss of aesthetic appeal their homes will lose. Appellant cites the following article and study on “Visual Pollution” from John Copeland Nagle of Notre Dame, which also contains multiple citations on court precedents:⁷

“...Residents repeatedly object to the environmental, health, safety, and especially aesthetic harms of cell phone towers, which in turn lead to claims of reduced property values. As National Public Radio's Noah Adams reported in November 2004, "Americans everywhere from Manhattan to Hollywood take their cell phones for granted, but in many parts of the country where scenery is cherished, cell phone towers have been called visual pollution.”⁸

Cell phone towers are just the most recent target of visual pollution complaints. The term visual pollution has been used by courts, academics, and environmental groups to explain their distaste for ugly buildings, telephone towers, billboards, flags and signs, and numerous other images that have been derided as polluting the visual landscape.⁹ As Chief Justice

⁷ “Cell Phone Towers as Visual Pollution,” John Copeland Nagle, *Notre Dame Journal of Law, Ethics & Public Policy*, Vol. 23, Article 7, Issue 2, Symposium on the Environment, M, 1-1-2012

⁸ 3. *Day to Day: Squaring off Over "Frankenpines" in the Adirondacks* (NPR radio broadcast Nov. 22, 2004), available at <http://www.npr.org/templates/story/story.php?storyId=4182101>. For additional descriptions of cell phone towers as visual pollution, see *AT&T Wireless PCS, Inc. v. City Council of Va. Beach*, 155 F.3d 423, 427 (4th Cir. 1998); *Avoid Cell Tower Pollution*, CHATTANOOGA TIMES FREE PRESS, May 30, 2007, at B7; Eric Peterson, *Silo to Hide Cellular Tower, Schaumburg OK's Church's Request*, DAILY HERALD, Aug. 11, 2004, at 1; Richard Quinn, *New Cell Towers, Public Protests Rising Together*, VIRGINIAN-PILOT [NORFOLK, VA.], Oct. 7, 2007, at B1; *Visual Pollution*, BURLINGTON FREE PRESS [VT.], Feb. 23, 2003, at 10A; *The Early Show: Cell Phone Towers in Disguise* (CBS television broadcast Nov. 29, 2006), available at [http://www.cbsnews.com/video/watch/?id=2214391n%3fsource=search video; ScenicNevada.org, Taming Wireless Telecommunications Towers, http://www.scenicnevada.org/main/towers.html](http://www.cbsnews.com/video/watch/?id=2214391n%3fsource=search%20video;ScenicNevada.org,Taming%20Wireless%20Telecommunications%20Towers,http://www.scenicnevada.org/main/towers.html).

⁹ For judicial references to visual pollution, see, e.g., *Ballen v. City of Redmond*, 466 F.3d 736, 744 (9th Cir. 2006) (billboards); *Shivwits Band of Paiute Indians v. Utah*, 428 F.3d 966, 983 (10th Cir. 2005) (billboards); *Cleveland Area Bd. of Realtors v. City of Euclid*, 88 F.3d 382, 384 (6th Cir. 1996) (residential signs); *Kramer v. Gov't of V.I.*, 479 F.2d 350, 352 (3d Cir. 1973) (drive-in theater); *Lamar Adver. Co. v. Twp. of Elmira*, 328 F. Supp. 2d 725, 729 (E.D. Mich. 2004) (billboards); *People v. Amerada Hess Corp.*, 765 N.Y.S.2d 202, 205 (N.Y. Dist. Ct. 2003) (gas stations); *Blue Legs v. EPA*, 732 F. Supp. 81, 83 (D.S.D. 1990) (waste dumps); *State v. Watson*, 6 P.3d 752, 758 (Ariz. Ct. App. 2000) (trash); *Stearn v. County of*

Burger once wrote, "[E]very large billboard adversely affects the environment, for each destroys a unique perspective on the landscape and adds to the visual pollution of the city. Pollution is not limited to the air we breathe and the water we drink; it can equally offend the eye and the ear."¹⁰

Visual pollution is a fascinating example of pollution. Ordinarily, we associate pollution with air pollution, water pollution, and hazardous wastes. But we also worry about hostile work environments "polluted" by discrimination, claims of cultural pollution leveled against violent entertainment and internet pornography, and political processes polluted by excessive campaign spending. As I have argued elsewhere, a wide range of pollution claims have long appeared in the law and literature, with the idea of moral pollution preceding the contemporary understanding of pollution as a uniquely environmental phenomenon.¹¹ Some of these other pollution claims persist, as evidenced by the kinds of pollution discussed in legal and political debates and by the continuing role Offensive sights fit within this broader understanding of pollution. These offensive sights are polluting agents because their appearance is found objectionable. A polluting agent is placed into the environment by a sign, a tower, a building, or a disorganized pile of materials. The affected environment is the heretofore uncluttered outdoor landscape. The most common harm associated with visual pollution is the annoyance resulting from the perception of something that is judged unsightly. That is not the only harm, though. Signs, communications towers, and discarded cars have all been blamed for reducing property values and inhibiting the

San Bernardino, 170 Cal. App. 4th 434 (Cal. Ct. App. 2009) (billboards); *Am. Nat'l Bank & Trust Co. v. City of Chi.*, 568 N.E.2d 25, 35-36 (11. App. Ct. 1990) (building that blocked view); *Mayor & City Council of Balt. v. Mano Swartz, Inc.*, 299 A.2d 828, 833 (Md. 1973) (billboards); *John Donnelly & Sons, Inc. v. Outdoor Adver. Bd.*, 339 N.E.2d 709, 718 (Mass. 1975) (billboards); *Mtn. Cmty. for Responsible Energy v. Pub. Serv. Comm.*, 665 S.E.2d 315, 329 (W. Va. 2008) (affirming an administrative decision allowing the construction of 124 wind turbines because "[s]ome people consider them eyesores they do not want in their backyards. Others consider them elegant or beautiful."). For some of the other references to visual pollution, see Final National Pollutant Discharge Elimination System (NPDES) General Permits for the Eastern Portion of Outer Continental Shelf (OCS) of the Gulf of Mexico (GMG280000) and Record of Decision, 63 Fed. Reg. 55,718, 55,722 (Oct. 16, 1998) (noting that an Alabama coastal city had complained that offshore drilling structures constituted visual pollution); Sunrise Powerlink Project: Final EIR/EIS 3-1663 (Oct. 2008) (comment from the Sierra Club Visual Pollution Task Force objecting to "visual pollution and visual impacts of the 150 miles of 160 foot-tall and 65 foot-wide transmission towers covering some of San Diego's formerly most scenic parks and neighbourhoods"); Harvey K. Flad, *Country Clutter: Visual Pollution and the Rural Landscape*, 553 ANNALS AM. ACAD. POL. & SOC. SCI. 117 (1997); Lesley K. McAllister, *Revisiting a Promising Institution 7-Public Law Litigation in the Civil Law World*, 24 GA. ST. U. L. REV. 693, 730 (2008) (noting that Brazilian prosecutors regarded the reduction of visual pollution as one of their six priority areas); Peter J. Howe, *Storefront Tobacco Ads Said to Target Students*, BOSTON GLOBE, Sept. 11, 1998, at B2 (cigarette advertisements).

¹⁰ *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 560-61 (1980) (Burger, C.J., dissenting).

¹¹ 6. See John Copeland Nagle, *The Idea of Pollution*, 43 U.C. Davis L. REV. __ (forthcoming 2009).

enjoyment of neighboring property. Aesthetic concerns have also been linked to human health and blamed for depriving land-owners of the cultural identity of their neighborhood. Billboards have been accused of distracting drivers, degrading public taste, encouraging needless consumption, and desecrating the landscape. Billboards also illustrate the cumulative nature of visual pollution, for the sight of a solitary billboard proves much less objectionable than a highway that is filled with them. Visual pollution rarely results from a purposeful effort to offend the aesthetic sensibilities of others, though the person or organization that introduces the sight to the landscape may expect that the sensibilities of many viewers will be offended. Visual pollution also illustrates the three ways of responding to pollution. Toleration is the initial response. Toleration is championed by First Amendment scholars as the appropriate response to claims of cultural pollution resulting from violent entertainment and internet pornography (though not the appropriate response for hostile work environments). The idea of tolerating pollution may seem foreign to environmental law, but in fact many environmental laws prescribe the tolerable amount of air or water pollution, or they establish the permissible tolerances for pesticides. Prevention is the second response to pollution. Here the goal is to altogether eliminate pollution by preventing it from occurring. The Pollution Prevention Act states the national policy of the United States that pollution should be prevented or reduced at the source whenever feasible.¹² The act establishes a program for achieving that goal, but it is generally understood that zero pollution is a goal our society has so far been unwilling to pay to achieve. So the most common response to pollution is avoidance. The law variously encourages dilution, filtering, separating pollution and its victims, and the treatment and removal of pollution as methods to reduce the harms resulting from exposure to pollution.¹³

This Essay seeks to analyze the idea of visual pollution in the context of cell phone towers. Part I provides a general description of the nature of, and responses to, visual pollution. Part II examines the debate concerning the aesthetics of cell phone towers, which pits affected residents against cellular providers, with local governments exercising their traditional powers of land use regulation while being constrained by a federal law designed to promote wireless services. Part III reflects on the lessons that

¹² 42 U.S.C. § 13101(b) (2000). Pollution prevention also appears in other federal statutes. A primary goal of the Clean Air Act (CAA) is to encourage or otherwise promote reasonable actions for pollution prevention. 42 U.S.C. § 7401(c) (2000). The Clean Water Act (CWA) supports activities and programs for the prevention, reduction, and elimination of pollution. 33 U.S.C. §§ 1253(a), 1254(a) (2000). The Resource Conservation and Recovery Act declares that wherever feasible, the generation of hazardous wastes is to be reduced or eliminated as expeditiously as possible. 42 U.S.C. § 6902(b) (2000).

¹³ See generally John Copeland Nagle, *The Three Responses to Pollution* (Mar. 2009) (unpublished manuscript, on file with author).

the idea of pollution offers for controversies regarding cell phone towers, and the lessons that the cell phone tower controversies offer for understanding pollution in other contexts.

I. VISUAL POLLUTION

The first reported case to acknowledge "visual pollution" rejected a challenge to a gas station to be located in the downtown shopping area of a Detroit suburb.¹⁴ Two years later, the same court upheld another Detroit suburb's rejection of a proposed high-rise sign to advertise another gas station located along Interstate 75. The court enthusiastically embraced municipal aesthetic regulation: The modern trend is to recognize that a community's aesthetic well-being can contribute to urban man's psychological and emotional stability. It is true that the question of what is beautiful and pleasing is for each individual to decide. We should begin to realize, however, that a visually satisfying city can stimulate an identity and pride which is the foundation for social responsibility and citizenship. These are proper concerns of the general welfare. Yellin, *Visual Pollution and Aesthetic Regulation* 12, *The Municipal Attorney* 186 (1971). Madison Heights has determined that its citizens' well-being will be served best by preventing the visual pollution which occurs when high-rise signs dot major thoroughfares. It has sought to do this by limiting the height of freestanding signs within its boundaries. The use of such signs for advertising purposes is often done with little regard for their natural or man-made environment. Their garishness often intrudes on a citizen's visual senses. Property owners do have the right to put their property to profitable use. But, we do not think that the right to advertise a business is such that a businessman may appropriate common airspace and destroy common vistas. Nor do we believe that the right to advertise a business means the right to interfere with the landscape and the views along public thoroughfares."¹⁵

The concurring judge warned, however, that "[w]e will all live to rue the day that public officials are permitted to meddle in private affairs on aesthetic considerations since . . . each person has his own yardstick for the evaluation of matters aesthetic."¹⁶ Of course, the law struggled with aesthetic concerns long before the term visual pollution was coined.

¹⁴ *Pure Oil Div. of Union Oil Co. of Cal. v. City of Northville*, 183 N.W.2d 303, 304 (Mich. Ct. App. 1970). The suburb's website now boasts of the "charming and relaxed setting of downtown Northville." *Northville Downtown!*, <http://downtownnorthville.org/>.

¹⁵ *Sun Oil Co. v. City of Madison Heights*, 199 N.W.2d 525, 529 (Mich. Ct. App. 1972).

¹⁶ *Id.* at 530 (Targonski, J., concurring in the result).

Traditionally, aesthetic complaints were insufficient to establish a nuisance. As Horace Wood's treatise explained over a century ago, "[T]he law will not declare a thing a nuisance because it is unpleasant to the eye."¹⁷ The courts repeatedly rejected assertions that aesthetic objections to junk yards, fences, and other things as unsightly rendered those objects a nuisance.¹⁸ The basis for those decisions was the reluctance of courts to find that offenses to one's sense of aesthetics constituted an injury that could be remedied by the courts.¹⁹

"The cases rejecting aesthetic nuisances are now in tension with other areas of the law. Aesthetic concerns were once held insufficient to support zoning laws, but the modern trend is to uphold zoning conducted for aesthetic purposes."²⁰ Other areas of the law now accept aesthetic concerns as a valid purpose, too.²¹ Moreover, several academic commentators have favored the acceptance of aesthetic nuisance cases. Raymond Coletta has argued that "it seems somewhat incongruous to allow individuals redress for offenses to their senses of hearing and smell, but at the same time to deny them a remedy for offenses to their sense of sight."²²

¹⁷ HORACE G. WOOD, A PRACTICAL TREATISE ON THE LAW OF NUISANCES IN THEIR VARIOUS FORMS; INCLUDING REMEDIES THEREFOR AT LAW AND IN EQUITY 24 (3d ed. 1893); *see also* DAN B. DOBBS, THE LAW OF TORTS 1331 (2000) ("[B]ecause tastes differ and criteria for aesthetic judgment are deemed unreliable, courts have been reluctant to say that an inappropriate and ugly sight can be a nuisance."); W. PAGE KEETON ET AL., PROSSER & KEETON ON THE LAW OF TORTS 626 & n.3 (5th ed. 1984) (indicating that "mere unsightliness" does not constitute a nuisance, but that "aesthetic considerations . . . play an important part in determining reasonable use"); John Cope-land Nagle, *Moral Nuisances*, 50 EMORY L.J. 265 (2001) (discussing the application of nuisance law to aesthetic harms).

¹⁸ *See, e.g.*, *Bixby v. Cravens*, 156 P. 1184, 1187 (Okla. 1917) (holding that an unsightly fence did not constitute a nuisance because landowners are "not compelled to consult the 'aesthetic taste' of their neighbors" when building a fence); *Mathewson v. Primeau*, 395 P.2d 183, 189 (Wash. 1964) (holding that the unsightliness of a pig farm did not create a nuisance); *State Rd. Comm'n of W. Va. v. Oakes*, 149 S.E.2d 293, 300 (W. Va. 1966) (rejecting a nuisance claim against the storage of rubbish near a road).

¹⁹ *See generally* Raymond Robert Coletta, *The Case of Aesthetic Nuisance: Rethinking Traditional Judicial Attitudes*, 48 OHIO ST. L.J. 141, 145-48 (1987) (explaining that courts refused to find a nuisance based on mere unsightliness because of the belief that aesthetic harms are subjective and *de minimis*).

²⁰ Nagle, *supra* note 13, at 286.

²¹ *See, e.g.*, *Berman v. Parker*, 348 U.S. 26, 36 (1954) (holding that aesthetic concerns can justify a use of the government's eminent domain power). *See generally* Coletta, *supra* note 15, at 159 & n. 111 (citing cases illustrating that "many federal and state courts have upheld a wide variety of aesthetically oriented regulations" since *Berman*).

²² Coletta, *supra* note 15, at 165-66. Coletta adds that "there is no physiological reason for treating visual perceptions any differently from noise or smell." *Id.* at 166.

Also cited by Appellant as proof of Aesthetic Impact being given court precedent in previous rulings are the following 5 cases (findings are **bolded**):

1. *Voice Stream PCS I, LLC v. City of Hillsboro*

301 F. Supp. 2d 1251 (D. Or. 2004)

See St. Croix County. 342 F.3d at 831; Troup County. 296 F.3d at 1219; Todd. 244 F.3d at 61; Pine Grove Township. 181 F.3d at 408; *ATT Wireless PCS, Inc. v. City Council of the City of Virginia Beach*. 155 F.3d 423, 430-31 n. 6 (4th Cir. 1999); see also H.R. Conf. Rep. 104-458, at 208, reprinted in 1996 U.S.C.C.A.N. 124, at 222 (contemplating that localities properly can base decision on aesthetic impact). **Plaintiff does not cite, and the court could not find, any authority holding that the TCA renders aesthetic concerns an invalid basis upon which to base a permit denial.**

2. *Southwestern Bell Mobile Systems, Inc. v. Todd*

244 F.3d 51 (1st Cir. 2001)

Holding that the TCA does not prevent “municipalities from exercising their traditional prerogative to restrict and control development based on aesthetic considerations”

Town of Amherst, 173 F.3d at 14. But see *AT T Wireless PCS, Inc. v. City Council of Virginia Beach*, 155 F.3d 423, 428 (4th Cir. 1998) (**holding that the "prohibits" clause applies to general blanket bans on services and not to individual zoning decisions**). Nonetheless, Southwestern Bell does not seriously pursue an argument in its brief that the denial of its application was "an effective prohibition," and it specifically abandoned such a contention at oral argument.

3. *Southwestern Bell Mobile Systems, Inc. v. Todd*

244 F.3d 51 (1st Cir. 2001)

Finding there was adequate evidentiary support for denial when the tower was of a different magnitude than anything else in the vicinity" and was "out of keeping with the residential uses in close proximity to it"

Although some of the evidence before the Board did consist of general statements that the tower was an eyesore, these statements did not dominate the debate. The majority of the objections to the visual impact of the tower specifically addressed whether this 150-foot tower was appropriate for this particular location, on the top of a fifty-foot hill in the middle of a cleared field. The location has no trees, was in the geographic center of town, would be visible at all seasons of the year, and would be seen daily by approximately 25% of the Town's population. It was also located in close proximity to three schools and two residential subdivisions. The closest of these two subdivisions, the Carey Hill Estates, had houses that were located only 200 feet away. Indeed, this subdivision was in such close proximity to the tower that Southwestern Bell used Carey Hill Estates construction plans as a reference map when drawing up the proposed plans for the tower. Purchasers who had placed deposits on houses that were to be built in this subdivision indicated that the tower would be plainly visible from their land. Finally, we note that the Board also based its minimal visual impact conclusion upon the fact that the tower would be painted in alternating red and white sections and would have a night beacon. The tower would only have these features because the FAA requires them. Though the Leicester Wireless Bylaw prohibits bright coloration and night lighting, it allows deviations from that prohibition when required by the FAA. To the extent that the Board's objection was based upon the failure to paint the tower a neutral color, the Board improperly relied upon this evidence to justify its decision. Because we conclude that there was substantial evidence to support the denial without the inclusion of this factor, it does not affect the outcome of this case.

4. *Southeast Towers, LLC v. Pickens County*

625 F. Supp. 2d 1293 (N.D. Ga. 2008)

Finding that the local government's denial "was not based merely upon general objections to the aesthetic appeal of a telecommunications tower; rather, photographs and specific supporting testimony demonstrated that the proposed tower would have a specific and material impact"

Substantial evidence means "such relevant evidence which a reasonable mind might accept as adequate to support a conclusion." *American Tower LP v. City of Huntsville*, 295 F.3d 1203, 1207 (11th Cir. 2002) (quoting *AT T Wireless PCS, Inc. v. City Council of Virginia Beach*, 155 F.3d 423, 430 (4th Cir. 1998)). "It requires more than a mere scintilla but less than a preponderance."

5. *Sprint Spectrum v. Charter Tp. of West Bloomfield*
141 F. Supp. 2d 795 (E.D. Mich. 2001)

Distinguishing other cases on the ground that the tower in that case was opposed by a "significant number of community residents"

In *ATT Wireless PCS, Inc. v. City Council of Virginia Beach*, 155 F.3d 423 (4th Cir. 1998), the court held that the denial of a permit, based upon aesthetic concerns, was supported by substantial evidence in the record.

Argument #4:

Permit Should Be Revoked Because Circulating Site Plans and Photos Do Not Adequately Show the Close Proximity to the 1,000 Homes Within the 100 ft. - ½ mile Radius of Tower and are Misleading (see Exhibit H).

Appellants submit new photographic representations of the close proximity of the tower to the affected homes. The circulating photos do not adequately reveal the surrounding 1,000 homes and are therefore, misleading. Skeleton site maps are inadequate and aerial views (if too-high up) are insufficient to bring life to the neighboring homes affected. Please see Exhibit H for photos of maps.

Argument #5

Permit Should Be Revoked Because the Tower Could be Later Increased in Height Without Community Consent Under The Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96, H.R. 3630, 126 Stat. 156) and Appellants Submit Evidence of These Premeditated Intentions (See Exhibit I).

Due to the U.S. ordinance called the MIDDLE CLASS TAX RELIEF and Job Creation act of 2012²³, towers can be modified without restraint or further approval according to §6409A. This would cause even more adverse negative impact. The Middle

²³ *MIDDLE CLASS TAX RELIEF and Job Creation act of 2012*
“<http://www.naco.org/sites/default/files/Model-Ord-NACo.pdf>”

Class Tax Relief and Job Creation Act of 2012 (Pub.L. 112–96, H.R. 3630, 126 Stat. 156, enacted February 22, 2012), also known as the "payroll tax cut", was an Act of the United States Congress. Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 mandates that a State or local government approve certain wireless broadband facilities siting requests for modifications and collocations of wireless transmission equipment on an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station. Appellant submits that this flings wide open the door to future tower additions that would be out of their control with no way to appeal it.

In fact, research already shows this is being planned. According to AntennaSearch.com, this tower at 4321 Old Hickory Blvd in Old Hickory is already appearing on such tower-search sites and on those listings it documents the tower as being 172.9 feet tall (see Exhibit I). This surely is the ultimate intent of SCI Towers or whoever down the road will seek to grow the tower. And in a Statement of Compliance letter from Attorney Joel Hargis dated October 14, 2019, it does state:

- Additionally, Metro's ordinance in §17.16.080 C (4)(e)(vi) provides "Because tornado sires require additional tower space and have varying design qualities, applicants will be allowed a fifty percent increase in height over the otherwise applicable height limitation and ***will not be required to utilize camouflaged designs***, but shall comply with all applicable landscaping standards set forth in this section. (emphasis added). SCI Towers complies with this requirement.

It is obvious that SCI Towers has no intent on keeping this tower at 140'. Upon first learning of the tower, Appellants were told it was 150' tall but that The Hermitage (as a Historic Property) had requested it be reduced to 140' since it is abutting to their property and would be an eyesore. Furthermore, the site drawings show an unusually wide foundation for a tall, thin monopole, and so by all appearances it seems that SCI Towers is premeditating to plant and then quickly grow this tower. Between the AntennaSearch.com measurement of 172.9', the Metro Ordinance which allows them to add up to 50% of an increase due to the fact that a tornado siren will be attached, and the MIDDLE CLASS TAX RELIEF and Job Creation act of 2012 which would write the owners a blank check on increasing height, the residents strongly object to this, as would The Hermitage, Historic Home of President Andrew Jackson, had they been told about this prior to their Section 106 letter. And perhaps they should be.

Argument #6

Permit Should Be Revoked Because Burden Of Proof by SCI to Prove Coverage Gaps Has Not Been Properly Met, Per Cited Court Precedent(s)

Appellant argues that the burden of proof is upon Appellee to prove legitimate gaps in cell coverage in this vicinity. They understand that under Tennessee Code §13-24-305, Appellee is not required to provide justification of "radio frequency need." That is not necessarily what is requested. But, in a Statement of Compliance letter from Attorney Joel Hargis dated October 14, 2019 multiple inaccurate statements were found:

- Tennessee Code Annotated §13-24-305 (2) does not allow an authority to "require the applicant to provide any sort of justification for radio frequency need". To achieve Verizon Wireless' network goals and objectives a new structure is required. There are no existing wireless telecommunication towers within the search area which would meet its network objectives.
- The proposed site will greatly improve Verizon's capacity in the area and will alleviate heavy data usage in the vicinity, as shown in Exhibit 2, and will improve coverage for residents in the area.
- There are no existing towers within a one-mile radius of the proposed site nor are there existing structures with significant height in order to accomplish the network goals and objectives of Verizon Wireless without the construction of this new tower. This site will allow Verizon Wireless to offload existing network traffic and improve coverage and capacity to the network in the area.

Appellate notes that above in paragraph one it states, "There are no existing wireless telecommunication towers within the search area which would meet its network objectives," and it says in paragraph 3, "There are no existing towers within a one-mile radius of the proposed site..." but these statements are not true. According to AntennaSearch.com, there are 36 towers or cellular antennas within a TWO mile radius of proposed site at 4321 Old Hickory Blvd in Old Hickory (see Exhibit I). With this in mind, colocation is surely a better option that can be explored, and Appellants requested this on August 8, 2019. Appellants request further information be provided to prove that there is indeed a legitimate gap in this specific locale, since statements about achieving Verizon's "network goals" or network objectives" is not in the best interest of those petitioning, which is the community majority. They cite these 5 court cases that set precedent when using the "gaps" and "coverage" argument in such a preceding (finding are **bolded**):

1. *T-Mobile Northeast LLC v. Fairfax County Board of Supervisors*

672 F.3d 259 (4th Cir. 2012)

Affirming the denial of plaintiff's application where its “several declarations, along with some exhibits” simply presented “very general conclusions regarding the feasibility of alternative locations, including repeated assertions that the locations ‘would not allow T-Mobile to meet its coverage objectives’ ”

Our previous opinions addressing subsection (B)(i)(II) have established certain principles, which guide the review of challenges brought under that subsection. In our decision in *AT&T Wireless PCS, Inc. v. City Council of Virginia Beach*, 155 F.3d 423 (4th Cir.1998) (*Virginia Beach*), we considered a local governing body's denial of an application submitted jointly by four telecommunication companies, which sought approval to construct two communications towers in a residential area.

2. *T-Mobile Central, LLC v. Charter Township of West Bloomfield*

691 F.3d 794 (6th Cir. 2012)

Holding that T-Mobile's consideration and rejection of suggest alternative sites was "sufficient to make the requisite 'showing as to the intrusiveness or necessity of its proposed means of closing that gap'"

As a threshold matter, we must first determine whether the denial of a single application from T-Mobile can constitute an effective prohibition. The Township places great stock in precedents from the Fourth Circuit, which has held that only a general, blanket ban on the construction of all new wireless facilities would constitute an “impermissible prohibition of wireless services under the TCA.” *MetroPCS*, 400 F.3d at 730 (citing *AT & T Wireless PCS v. City Council of Virginia Beach*, 155 F.3d 423, 428 (4th Cir.1998) (holding that only “blanket prohibitions” and “general bans or policies” affecting all wireless providers count as effective prohibition of wireless services under the TCA)). However, the large majority of circuits have rejected this approach.

3. *APT Pittsburgh Ltd. Partnership v. Lower Yoder Township*

111 F. Supp. 2d 664 (W.D. Pa. 2000)

Holding that Defendant was entitled to summary judgment where Plaintiff failed to demonstrate that it was treated differently with respect to the erection of a telecommunications tower in a specific zoning district

Nonetheless, it is dicta that finds support in other cases. See *Town of Amherst*, 173 F.3d at 16 n. 7; *AT&T Wireless PCS v. City Council of Virginia Beach*, 155 F.3d 423, 426-28 (4th Cir. 1998) (Luttig J.). I will exercise my discretion and consider Mr. Tuttle's affidavit to the extent that it contains admissible evidence. Even when the facts adduced in Tuttle's affidavit are added to the mix, APT still cannot show that the defendants violated the TCA. First, APT has not tendered any evidence to demonstrate that there is a "significant gap in the ability of remote users to access the national telephone network."

4 & 5. (Metropcs Inc. v. City and County of San Francisco No. C-02-3442 PJH (N.D. Cal. Apr. 24, 2003) and *ATT Wireless PCS v. City Council of Virginia Beach*, 155 F.3d 423, 429 (4th Cir. 1998).

Distinguishing between a "gap" in coverage and a "dead spot"

See, e.g., *New Par v. City of Saginaw*, 301 F.3d 390, 395 (6th Cir. 2002) (explaining the range of requirements adopted); *Southwestern Bell Mobile Syst. v. Todd*, 244 F.3d 51, 59 (1st Cir. 2001) (same). **Some courts have held that the governing local body must issue full findings of fact and conclusions of law**, see, e.g., *Omnipoint Communications, Inc. v. Planning Zoning Comm'n*, 83 F. Supp.2d 306, 309 (D. Conn. 2000), **while others state that merely stamping the word "DENIED" on an application is sufficient**, *ATT Wireless PCS v. City Council of Virginia Beach*, 155 F.3d 423, 429 (4th Cir. 1998). **In Todd, the First Circuit reviewed these precedents, and noted that "[b]oth of these approaches seem flawed."**

PCS marketing materials claiming coverage throughout the Bay Area with Nahmanson Decl. ¶ 19 (describing "significant gap" in Richmond coverage); Schwartz Decl. ¶ 7 (describing degrading of network based on "seemingly small coverage holes and weak spots"); Tr. 163:1-7 (MetroPCS claiming it "can't service this neighborhood" without 5200 Geary installation). Summary judgment on this issue for both parties is thus denied.

Service Gap MetroPCS claims next that while it offers some service in the Bay Area, the City's refusal to permit it to install the antenna at the 5200 Geary site creates a gap in its service that is sufficiently wide to constitute a denial of service. To prevail on a claim under § 332(c)(7)(B)(i)(II) based on a service gap, MetroPCS must show first that "its facility will fill an existing significant gap in the ability of remote users to access the national telephone network," and next, that

"the manner in which it proposes to fill the significant gap in service is the least intrusive on the values that the denial sought to serve." APT Pittsburgh Ltd. Partnership v. Penn Township Butler County of Pennsylvania, 196 F.3d 469, 480 (3rd Cir. 1999); see also Cellular Telephone Co. v. Zoning Board of Adjustment of the Borough of Ho-Ho-Kus, 197 F.3d 64, 69 (3rd Cir. 1999).

a. "Significant Gap" There is a circuit split as to what constitutes a "significant gap" in services. The Third Circuit has held that a "significant gap" is a gap in coverage that no provider has been able to fill — so if any provider has provided coverage for the area, no significant gap exists. APT Pittsburgh, 196 F.3d at 480. **The First Circuit has held, on policy grounds, that a "significant gap" exists if any provider cannot provide general service in a certain area, even if other providers can. Second Generation, 313 F.3d at 634 (reviewing case law of other circuits, legislative history, and policies behind Telecommunications Act). In other words, APT Pittsburgh holds that a "significant gap" in services is a gap as perceived by all the users of a network, and Second Generation holds that a "significant gap" in services is a gap as perceived by a service provider, or an individual user subscribed to a specific service provider, in the network.**

The court finds the First Circuit position more persuasive. Second Generation argues that the policy considerations behind the Telecommunications Act were to encourage competition in the wireless telecommunications marketplace, and that the Third Circuit's position does not adequately do so.

To use an example from this case, it is of little comfort to the customer who uses ATT Wireless . . . who cannot get service along the significant geographic gap which may exist along Route 128 that a Cingular Wireless customer does get some service in that gap. of course, that ATT Wireless customer could switch to Cingular Wireless.

In addition, even if MetroPCS prevails on the "significant gap" issue, MetroPCS must next demonstrate that its proposed installation at 5200 Geary is the only acceptable option to provide coverage for the Richmond district.

Thus, the court finds that a "significant gap" is a gap in any individual service provider's coverage in a specific area. This gap, however, must be a significant gap and not merely individual "dead spots" within a greater service area. Therefore, once a provider has some general coverage in an area, even if certain "dead zone" holes exist in certain specific locations, no "significant gap" exists. Willoth, 176 F.3d at 643-44.

Argument #7

Permit Should Be Revoked Because Appellees Never Disclosed Alternate Tower Sites That Was Requested on 8/8/19 & 8/22/19. Proof is Submitted Herein of 36 Towers/Antennas Found in a 2 Mile Radius (see Exhibit J)

Appellant argues that Appellees never disclosed the alternative sites they were required to disclose in Metro ORDINANCE NO. BL2016-415 4.e.(v). Attorney Joel Hargis, was asked for this information at the August 8th Berryville Baptist Meeting and Attorney Emily Lamb was asked for it at the August 22nd meeting at Eastgate Creative Christian Fellowship. Herein are cited 5 court cases where precedent was set concerning this requirement:

1. *Airtouch Cellular v. City of El Cajon*

83 F. Supp. 2d 1158 (S.D. Cal. 2000)

Holding that the denial of Airtouch's tower did not have the effect of denying services because Airtouch could have explored alternative sites.

There is a split in authority, and no Ninth Circuit authority, on whether a telecommunications zoning decision can be based on constituent testimony alone. Compare *ATT Wireless PCS v. City Council of Virginia Beach*, 155 F.3d 423, 430 (4th Cir. 1998) (holding that it is proper for a legislature and its members to consider constituent testimony as "particularly compelling forms of evidence"); with *Cellular Telephone Co. v. Town of Oyster Bay*, 166 F.3d at 496 (2nd Cir. 1999) (finding that a "few generalized expressions of concern with 'aesthetics' cannot serve as substantial evidence"); *Hearing Zone Rd. of Pine Grove Tp.*, 181 F.3d at 409 (3rd Cir. 1999) (same). The Court agrees that a decision must be based on more than just residents' concern about neighborhood aesthetics.

2. *Omnipoint Communications v. White Plains*

430 F.3d 529 (2d Cir. 2005)

Holding that Omnipoint did not meet its burden of showing that the proposed facility was “more feasible than other options”, where there was an option for co-location available that surfaced during the damages trial in the district court, and, although the “more feasible” alternative was “not in the Board's administrative record, it was an available inference from the facts presented to the Board.”

Third, we reject Omnipoint's argument that the Board gave improper deference to community opposition. In *Town of Oyster Bay*, 166 F.3d at 495-96, we declined to rule whether constituent comments amount to substantial evidence, and noted tension between *Omnipoint Corp. v. Zoning Hearing Bd.*, 20 F.Supp.2d 875, 880 (E.D.Pa. 1998) (holding that "unsubstantiated personal opinions" expressing "[g]eneralized concerns . . . about the aesthetic and visual impacts on the neighborhood do not amount to substantial evidence"), and *AT&T Wireless PCS v. City Council of Va. Beach*, 155 F.3d 423, 430 (4th Cir. 1998) (holding that neighbors' aesthetic concerns could constitute "compelling" evidence for a city council). In this case, some of the residents' comments may amount to no more than generalized hostility, such as the objection that the tower was being dumped on them rather than on their more affluent neighbors in Scarsdale.

3. New Cingular Wireless PCS, LLC v. Town of Fenton

843 F. Supp. 2d 236 (N.D.N.Y. 2012)

Finding it relevant that unlike the plaintiff in *White Plains*, the plaintiff “provide[d] a photo simulation of the site from which the cell tower would be most visible ... when the deciduous trees were bare.”

See, e.g., R. 253 (Chairman suggesting the service gap might be better handled by another tower in neighboring Chenango County or elsewhere), 369 (Chairman joking that there are more cows than people in Chenango County, and both species might not care about a cell tower there), 375 (Chairman speculating that alternative, less intrusive sites might be available elsewhere), 379 (Chairman suggesting several alternative sites in other towns), 383 (Chairman proposing that ATT get “creative” in considering alternatives, e.g., in a neighboring town).

4. Michael Linet, Inc. v. Village of Wellington

408 F.3d 757 (11th Cir. 2005)

In *Michael Linet, Inc. v. Village of Wellington, Fla.*, 408 F.3d 757 (11th Cir. 2005), the court acknowledged that one relevant factor in determining if a provider had met its burden under § 332(c)(7)(B)(i)(II) was "whether

the company can reasonably place a cell site in an alternative location and eliminate the residents' concerns."

The phrase "unreasonably discriminate among providers of functionally equivalent services" was intended to provide localities with the flexibility to treat facilities that create different visual, aesthetic, or safety concerns differently to the extent permitted under generally applicable zoning requirements even if those facilities provide functionally equivalent services. H.R. Conf. No. 104-458, at 208 (1996), reprinted in 1996 U.S.C.C.A.N. 124, 222. Linet has not shown that he was precluded from proposing an alternative cell site and did not present any evidence that an alternative site would adversely effect Metro PCS' cellular coverage. Moreover the alternative site utilized by the other provider may have had less of an impact or no impact on property values or otherwise not raised the same concerns as the golf course site proposed by Linet. As the district court noted, the Telecommunications Act does not prevent the Village from treating two applicants different, it just prevents it doing so unreasonably.

The Village met this standard. It heard objections from residents and a realtor concerning the cell site's negative impact on real estate values. The Village also heard testimony that the proposed site was unnecessarily close to a local middle school. Under our case law this testimony was sufficient to support the board's determination. Linet's expert testimony contradicting the adverse property value impact concerns was provided by a telecommunications executive who placed a tower in a different part of the community and a realtor who based his knowledge on condominium sales in a different county. This does not change our conclusion. The residents were worried about the impact of this tower on the golf course within their community, not a different tower, different location, or different community. Linet also failed to show that an alternative location was unavailable or unfeasible.

5- *Southwestern Bell Mobile Systems, Inc. v. Todd*

244 F.3d 51 (1st Cir. 2001)

Holding that carrier, in bringing substantial evidence claim under the TCA, had the burden to establish that no feasible alternative site existed.

Southwestern Bell raises two objections to the Board's visual impact conclusion, arguing that there was no competent evidence in the record to support it, and that the Board could not deny the permit based upon the visual impact of the tower when there was no evidence of "available alternative site with a lesser visual impact." We deal with each of these arguments in turn.

Although some of the evidence before the Board did consist of general statements that the tower was an eyesore, these statements did not dominate

the debate. The majority of the objections to the visual impact of the tower specifically addressed whether this 150-foot tower was appropriate for this particular location, on the top of a fifty-foot hill in the middle of a cleared field. The location has no trees, was in the geographic center of town, would be visible at all seasons of the year, and would be seen daily by approximately 25% of the Town's population. It was also located in close proximity to three schools and two residential subdivisions. The closest of these two subdivisions, the Carey Hill Estates, had houses that were located only 200 feet away. Indeed, this subdivision was in such close proximity to the tower that Southwestern Bell used Carey Hill Estates construction plans as a reference map when drawing up the proposed plans for the tower. Purchasers who had placed deposits on houses that were to be built in this subdivision indicated that the tower would be plainly visible from their land.

Appellants request here for SCI Towers (or any other builder) to not build within a 2 mile radius of proposed site at 4321 Old Hickory Blvd. in Old Hickory, but to choose some place that is further away from such a densely populated area.

Argument #8

Permit Should Be Revoked or at Least “Stayed/Delayed” As Appellants Are Requesting an EIA based on Multiple Allowable Reasons In NEPA’s Own Requirements Per The FCC’s Title 47 CFR § 1.1307 (See Ex. K, L)

47 CFR §1.1307 states the following reasons that a tower site *must be required* to have an Environmental Impact Assessments, and the Appellant cites six as being pertinent to the proposed tower at 4321 Old Hickory Blvd. in Old Hickory:

“An EA must be submitted if the antenna structure may have a significant environmental impact as defined by the FCC’s 47 CFR §1.1307 of the Commission’s rules. **An Environmental Assessment (EA) is required:**

- If the facilities may affect listed threatened or endangered species or **designated critical habitats**; or are likely to jeopardize the continued existence of any proposed endangered or threatened species **or likely to result in the destruction or adverse modification of proposed critical habitats.** (Exhibit L shows the deer that freely roam this area. While they are not “endangered,” the language says “*or likely to result I the destruction or adverse modification of proposed critical habitats,*” which this would. These deer have been pushed out and have nowhere else to go and so they literally

dwell on this patch of land and on the streets inside the Hampton Park Neighborhood. Please see Exhibit L).

- **If the facilities may physically or visually affect a property significant in American history that is listed, or is eligible for listing, in the National Register of Historic Places, as determined in accordance with the Nationwide Programmatic Agreement or the Collocation Programmatic Agreement.** (See Argument #5, which states that The Hermitage, historic home of President Andrew Jackson, approved a 140' tower, but AntennaSearch.com already measures this tower at 172.9'. Plus, the Metro Ordinance which allows a builder to add up to 50% of an increase due to the fact that a tornado siren will be attached, coupled with the MIDDLE CLASS TAX RELIEF and Job Creation act of 2012 which would write the owners a blank check on increasing height, Appellants see premeditation that this tower will one day seek to be an eyesore towering over the skies by The Hermitage. Residents strongly object to this, as would The Hermitage, had they been told about this prior to their Section 106 letter. And perhaps they should be.)

Please see exhibit K for Appellant's official request for a NEPA EIA.

Argument #9

Permit Should Be Revoked Because Property is not In a Right of Way (ROW) and Owner (LEVOG) James Levin has offered to Negotiate An Equitable Contract Exit for SCI Towers in Light of Overwhelming Evidence of Community Opposition (letter available upon request).

On October 19th, NO-TOWER Commission member, Laura Smith, reached out to LEVOG owner, James Levin, in NY by letter, introducing herself to him as his "neighbor of 30 years" since he has owned his property there for 31 years and she has owned her adjacent property for 30 years. She petitioned Levin to please consider the majority neighborhood uprising and organized efforts to oppose this tower, and sent a full 13-page report with all data, research and proof of the 900+ signature petition. Levin responded very compassionately to Smith the next week by stating two three very important facts: 1) no one had told him about the NO-TOWER Commission or their months of organized efforts and appearances on local media which involved his name (LEVOG), 2) he

reasoned that an Environmental Impact Assessment would surely need to be done before issuing the permit (which there is no public record of such), and 3) he states, “Let me assure you that LEVOG would be willing to negotiate an equitable exit strategy with them (SCI Towers).”

Appellant strongly suggests that SCI Towers communicate with LEVOG to discuss this equitable exit.

Argument #10

Permit Should Be Revoked Because Land is on Sacred Indian Site (Ex.M)

As it pertains to the FCC’s 47 CFR §1.1307 and the aforementioned reasons that a site must be required to have an Environmental Impact Assessment, the Appellant cited two reasons (in Argument #8) to request the EIA. Now, they submit herein evidence that the property is also on a sacred Indian site.

“An Environmental Assessment (EA) is required”:

“If the facilities may affect Indian religious sites.”²⁴

Simply put, 4321 Old Hickory Blvd. is State Route 45, which is the Trail of Tears. On this very property has been found countless arrowheads by residents, and even reports of an American Indian burial ground approximately ¼ mile down on same side of LEVOG property. Those grounds were excavated circa 1995 with exhumed bones

²⁴ <https://www.fcc.gov/wireless/support/antenna-structure-registration-asr-resources/filing-environmental-assessment>

according to testimony of neighbors and top committee members of the NO-TOWER Committee. This land is undoubtedly a sacred Indian site and needs to not be further disturbed more than it already has. Please see Exhibit M for proof of proximity.²⁵

Argument #11

Permit Should Be Revoked Because Local Officials Failed to Act

Appellants also have proof that they have contacted all of their local elected representatives including all Council people, the Mayor, State Representatives, Senators and Congressmen, and yet not heard back. The letter writing campaign began on October 16th from the NO-TOWER Committee, but then on November 1st, all elected official's email addresses were published to Appellant's 900+ email data base and residents were encouraged to reach out to them (and many did so). No residents have reported hearing back from any elected official. One member of the Committee heard back from one councilman who said that was nothing he could do. Due to this, Appellant cites directly from the Telecommunication Act of 1996 which states,

“Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis.”

These citizens deserve to be heard. They are speaking loudly and require action
“on an expedited basis.”

²⁵ <https://www.nps.gov/trte/planyourvisit/tennessee.htm>

Argument #12

Permit Should Be Revoked WITHOUT Fear that Metro Will Be Penalized By The FCC Since Precedent Has Been Set in Multiple Court Rulings Protecting the Authority of Local Zoning Boards.

Appellant wishes to encourage the Board of Zoning Appeals that although the TCA of 1996 and the FCC pre-approves many telecommunication towers, the Zoning Board must approve the dirt upon which such towers are placed. Appellants ask the BZA to consider the following 5 court cases in which precedent is set when a court rules in favor of a local Zoning Board or Code's decision to deny or revoke a permit.

1. *Uscoc of Vir. v. Montgomery Cty. Bd. Sup'rs*

343 F.3d 262 (4th Cir. 2003)

Finding that the denial of an application to build a telecommunications tower found “ample support” in the form of “evidence regarding the proposed tower’s inconsistencies” with “zoning ordinances and guidelines”

To be entitled to relief under a(B)(i)(II) prohibition of service claim, the plaintiff’s burden is substantial. In AT T Wireless PCS, Inc. v. City Council of Virginia Beach, 155 F.3d 423, 428-29 (4th Cir. 1998), we held that a telecommunications provider could not prevail in a challenge to an individual zoning decision absent a general ban or policy to reject all applications. See also 360°o Communications Co. v. Board of Supervisors of Albemarle County, 211 F.3d 79, 88 (4th Cir. 2000) (“The burden for the carrier invoking this provision is a heavy one: to show from language or circumstances not just that this application has been rejected, but that further reasonable efforts are so likely to be fruitless that it is a waste of time to try.”).

2. *Omnipoint Corporation v. Zoning Hearing Board*

181 F.3d 403 (3d Cir. 1999)

Holding that a zoning board acted in a quasi-judicial capacity when it denied a conditional use permit.

See Aegerter v. City of Delafied, 174 F.3d 886, ___, 1999 WL 225310, at *2- *4 (7th Cir. 1999); Cellular Telephone, 166 F.3d at 494-97 (both

applying the substantial evidence requirement of § 332(c)(7)(B)(iii) without regard to state law evidentiary burdens). The Board relies heavily on *ATT Wireless PCS, Inc. v. City Council*, 155 F.3d 423 (4th Cir. 1998), where **the court affirmed the city council's denial of a conditional use permit to build two 135-foot wireless telephone transmission towers based on considerable community opposition. The Court of Appeals for the Fourth Circuit stressed the legislative nature of the city council.**

3. *A&T Wireless PCS v. Winston-Salem Zoning*

172 F.3d 307 (4th Cir. 1999)

Holding that the writing requirement was satisfied by the zoning board's notice to the applicant that consisted of a copy of the first page of the application with the word "denied" written on it when considered along with a transcript and minutes of the zoning board's hearing.

[A]ny decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record. As this court recently stated in *ATT Wireless PCS v. City Council of the City of Virginia Beach*, 155 F.3d 423, 429 (4th Cir. 1998), "[w]e treat separately the two requirements of section (B)(iii)."

4. *Sprint Spectrum L.P. v. Willoth*

996 F. Supp. 253 (W.D.N.Y. 1998)

Upholding a city's decision to deny a variance and stating that a carrier cannot unilaterally dictate the level of service it wishes to provide, nor does it have the right to construct any and all towers it deems necessary because that would nullify a local government's right to deny construction of WCFs

The Town Planning Board did not exceed its authority in considering whether adequate service could be provided with fewer than three towers. Although considerations for the "level of service" as such is not a specific factor listed in N.Y. Town Law § 274-a or in the Ontario Zoning Ordinance, the Town was nonetheless authorized to consider whether alternative sites are available for a public utility's facility which could provide safe and adequate service. *Niagara Mohawk Power Corp. v. Fulton*, 8 A.D.2d 523, 188 N.Y.S.2d 717 (4th Dept. 1959) ["In determining the reasonable necessity of a particular site, consideration must be given to the availability of other sites and to the degree of detriment that might be

caused by the various sites..."]; Bell Atlantic NYNEX Mobile, Inc. v. Lonergan, 172 Misc.2d 317, 659 N.Y.S.2d 402 (Sup.Ct. West. Cty. 1997)

5. *City of Medina v. T-Mobile USA, Inc.*

95 P.3d 377 (Wash. Ct. App. 2004)

Stating "the entity seeking a variance bears the burden of proof"

Second, the cases the City cites in support of its argument that T-Mobile cannot justify its variance requests with its desire to provide adequate coverage are distinguishable. Each of those cases involves analyzing whether a land use authority improperly refused to grant a variance in violation of the FTA. While these cases hold that local zoning authorities are not required by the FTA to grant variances unless denying the application would effectively constitute a ban on wireless services, they do not prohibit a zoning board from considering desired coverage for its citizens. **Those cases reinforce the FTA's purpose of preserving local zoning authority within the statutory limits. Accordingly, when a cellular company bases its variance requests in part on coverage, as in this case, the local zoning authority is free to consider those issues according to local law.** This conclusion is evident in the cases the City itself relies on where land use authorities considered service issues. For example in *Sprint Spectrum L.P. v. Willoth*, the Town of Ontario Planning Board denied Sprint's application to build three cell towers. In reaching...

Finally, Appellants encourage the BZA to not fear being accused by the FCC of "Prohibition of Service." Here are 5 such court cases where precedent was set ruling in a Zoning Board's favor.

1. *360° Communications Co. v. Board of Supervisors*

211 F.3d 79 (4th Cir. 2000)

Holding that provider has burden of demonstrating that "denial of its application for the one particular site is tantamount to a prohibition of service" and that "further reasonable efforts are so likely to be fruitless that it is a waste of time even to try"

We have interpreted the term "substantial evidence" to mean "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *ATT Wireless PCS, Inc. v. City Council of the City of Virginia Beach*, 155 F.3d 423, 430 (4th Cir. 1998) (quoting

Universal Camera Corp. v. NLRB, 340 U.S. 474, 477 (1951)). **It requires more than a mere scintilla but less than a preponderance.** See NLRB v. Grand Canyon Mining Co., 116 F.3d 1039, 1044 (4th Cir. 1997).

2. *APT Pittsburgh Ltd. Partnership v. Penn Township*

196 F.3d 469 (3d Cir. 1999)

Summary judgment in favor of the City on this issue is warranted. Finding an "effect of prohibiting" claim requires "evidence that the area the new facility will serve is not already served by another provider"

It is unclear at this point whether the requirement of a "decision ... in writing" is satisfied by a writing that simply memorializes the ultimate conclusion or requires findings of fact supporting the denial. *Compare ATT Wireless PCS, Inc. v. City Council of Va. Beach, 155 F.3d 423 (4th Cir. 1998)* (when Congress has intended to require a written decision with factual findings, it has expressly done so; it did not in § 322(7)(B)(iii)) with *Smart SMR of N.Y., Inc. v. Zoning Commission of the Town of Stratford, 995 F. Supp. 52, 56 (D. Conn. 1998)* (findings of fact required); *Illinois RSA No. 3, Inc. v. County of Peoria, 963 F. Supp. 732, 743 (C.D. Ill. 1997)* (same); *Western PCS II v. Extraterritorial Zoning Auth., 957 F. Supp. 1230, 1236 (D.N.M. 1997)* (same). **We find it unnecessary to resolve in this case whether memorialization of the denial will suffice.**

MetroPCS claims that the City has imposed a general ban on any new entrants into the San Francisco wireless communications market. The City has demonstrated that MetroPCS has been permitted to install 30 antennas within San Francisco, and has been granted 18 CUPs as well. Ionin Decl. ¶¶ 4-5; Exh. A. MetroPCS in fact has already entered, and offers service, in the Bay Area market. McCoy Decl. Exh. C. **MetroPCS thus cannot show that it has been denied entry into the San Francisco telecommunications market.**

3. *T-Mobile Northeast LLC v. Howard Cnty. Board of Appeals*

Civil Action No. RDB-11-729 (D. Md. Mar. 30, 2012)

Denying T-Mobile's motion for summary judgment on its effective prohibition claim where T-Mobile showed that it "had unreliable coverage in the area" but "coverage was not completely lacking."

T-Mobile's Proposed Facility was met with community opposition. The President of the Glenwood Estates Homeowner's Association testified that the community opposed the construction of the Proposed Facility in the area. Bd. of Appeals Decision and Order, j 15, at 7. Sharon Keeny, a real estate agent, testified that cell towers lowered the property values of nearby properties and also extend the time during which a property was on the market. Id. ¶16. The testimony presented by James Brent, a software engineer, indicated that T-Mobile could increase coverage in the area "by placing directional antennae on existing towers within the search range area." Id. ¶17. Additionally, a nearby resident testified that T-Mobile's "revised landscape plan . . . [would] negatively impact sight distance at an already troubled intersection of Hobbs and Burntwoods Road." Id. ¶ 18. Finally, two individuals respectively testified that (a) the Proposed Facility was "not in harmony with the land uses and policies" of the Howard County General Plan and (b) **T-Mobile "did not make a legitimate effort to locate the proposed communication facility on an existing structure.**

4. ATT WIRELESS PCS v. CITY COUN.

155 F.3d 423 (4th Cir. 1998)

Concluding that the TCA's anti-prohibition clause applies only to "blanket prohibition" and "general bans or policies," not to individual zoning decisions.

The City Council's vote concluded a months-long effort by appellees to secure a location for tower in Little Neck. ATT and PrimeCo both offer digital wireless personal communications services in the Virginia Beach area. Digital service is considered an advance over analog service. Like analog service, it relies on overlapping "cells," each centered on a communications tower. However, because digital signals are weaker than analog signals, and because of the thick tree cover in Little Neck, ATT and Prime Co found that their Virginia Beach service had a "hole" in portions of Little Neck. Aided by City staff, they investigated several possible tower sites in Little Neck and concluded that the Church's property was the most desirable. They therefore entered into leases with the Church allowing them, in exchange for approximately \$60,000 annual rent, to construct, maintain, and operate two 135-foot communications towers on the Church's property. Besides carrying digital signals, the towers were also to provide analog signals for GTE Mobile Net and 360o Communications (not parties to this case), who also sought to enhance their... *Metropcs Inc. v. City and County of San Francisco*, No. C-02-3442 PJH, at *1 (N.D. Cal. Apr. 24, 2003)

Closing Statements:

Appellant (900+ residents comprising the Old Hickory NO-TOWER Commission) is seeking revocation of Permit #CATC 2019044881, issued by Nashville Metro Codes Dept. to Empire Construction and SCI Towers, Inc. on November 6, 2019 for a telecommunications tower at 4321 Old Hickory Blvd. in Old Hickory, TN. In addition to this, Appellants request here for neither SCI Towers nor any other party to not build within a 2 mile radius of this proposed site, but to choose another location that is further away from such a densely populated area. This motion is supported by 12 arguments, one of which is that property owner, James Levin, (LEVOG), has learned that of the 1,000 homes within 100 ft.-½ mile of the tower, more than 900 people have signed a petition opposing it for serious property setback and safety issues, and he has offered in writing to “negotiate an equitable exit strategy” for SCI Towers (Levin’s words). The other 11 arguments focus on said setback safety issues, breakpoint technology failure concerns, negative aesthetic impact, the devaluing of property values, unproven coverage gaps, undisclosed alternative sites, and other such arguments, none of which violate the 1996 Telecommunications Act but half of which do violate Metro Ordinances cited herein. Others violate FCC allowances made for sacred Indian sites, seeing as how said property rests on The Trail of Tears (State Route 45); and disturbing this property would also affect hundreds of deer and their “designated critical habitats; or likely to result in the destruction or adverse modification of proposed critical habitats” (47 CFR §1.1307). Missing from this brief are arguments and claims of human health hazards, which the Appellant acknowledges compromise the TCA of 1996. Exhibit N is of Resident’s Negative Impact Statements, some of which *do* cite very personal health grievances, but

those citizens do so under their 1st Amendment “right to petition the Government for a redress of grievances.” and not as part of this overall appeal. Accumulatively, these 12 arguments represent the genuine concerns and fears of the 900+ petition signors, hundreds of which say they must move if the tower is built. These individuals are not anti-cell tower or pro-community tower prohibition, but merely petition Metro Codes to advise SCI Towers to pursue one of their other considered sites for this tower, preferably one not steps away from such a densely populated residential area.). As previously stated, precedent has been set in many cell-tower court cases cited herein, and a recurring phrase in many of them was that of “substantial evidence.” The Telecommunications Act of 1996, §704 (B) (iii) says:

“Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by **substantial evidence** contained in a **written record.**”

According to the precedent of *T-Mobile Northeast LLC v. Loudoun County Board of Supervisors* 903 F. Supp. 2d 385 (E.D. Va. 2012), substantial evidence “is more than a scintilla” but “less than a preponderance,” and that is exactly what the Appellant has sought to provide through the “written record” of this brief’s and its 12 arguments.

Appellant respectfully files this memorandum of law in support of its motion for Revocation of Issued Building Permit, pursuant to the local ordinances of this jurisdiction and the rights of the citizens herein.

From: rsbutler3@aol.com
To: [Hagar, Larry \(Council Member\)](#)
Cc: [Board of Zoning Appeals \(Codes\)](#)
Subject: Cell tower construction noise
Date: Monday, November 18, 2019 6:48:31 PM

Councilman Hagar:

It is one thing for the zoning appeals board to allow construction of said cell tower while completely ignoring the residential impact, but it is another when construction of heavy impact equipment continues to work into the night in such a tight pocket of dense residences! The noise is horrendous even at this hour, while children are probably trying to either study, have dinner, or just play in our neighborhoods surrounding this construction! Many of our residents are war veterans with PTSD. Can you imagine what this noise is having on them, or does the Zoning Appeals Board even care? Surely, the quality of life in Nashville is suffering severely due to this issue. As my elected official, whatever happened to representing residents instead of corporate interest? If we can't stop the construction of this tower, do we have to put up with after hours impact construction?

I believe that the Board of Zoning Appeals should really be renamed the Board of Zoning Appeasement for Business. Our community reps on this board have no backbone, worthless to Nashville residents!

If you can't help us, please direct us to who can?

Sincerely,
Randall Butler
629Hardin SHire Drive
Old Hickory

BAKER DONELSON

BEARMAN, CALDWELL & BERKOWITZ, PC

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January 30, 2020

Mr. Jon Michael
Metro Zoning Administrator
Metro Codes
800 2nd Avenue South
Nashville, TN 37210

Re: Item A Appeal – Case 2020-004
4321 Old Hickory Blvd ; APN: 06400010400

Dear Mr. Michael and Members of the Board of Zoning Appeals

Enclosed are submittal materials associated with the Item A appeal filed against our client's permit for a new 140' tall wireless telecommunications tower at the above-referenced location.

SCI Towers, LLC was issued a proper building permit on November 6, 2019 for a 140' tall monopole tower. Neighbors appealed on November 15, 2019.

The Planning Commission recommended approval of our client's tower request at its meeting on May 9, 2019 with the condition that a landscaping buffer be placed along the property's frontage and that sidewalks be constructed per the MCSP. Our client agreed to construct the landscape buffer as requested and obtained a variance from the Board of Zoning Appeals in appeal case 2019-299 and was granted approval of an alternative sidewalk plan by the BZA on August 1, 2019.

In response to the appeal filed by the neighbors, we are submitting the following documents to you on behalf of our client. If additional copies are needed, please let me know.

1. Document in support of the issuance of the permit along with Exhibits.
2. Structural Engineer's Letter (Exhibit A)
3. Aerial Map of Tower and Vicinity (Exhibit B)
4. Photo simulations (Exhibit C)

January 30, 2020

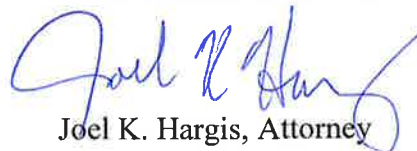
Page 2

5. Article on Property Values (Exhibit D)
6. PowerPoint of Metro Property Values and Tower Sites (Exhibit E)
7. FAA No Hazard Letter (Exhibit F)
8. Verizon RF PowerPoint (Exhibit G)
9. Archeologist Monitoring Report (Exhibit H)

Please confirm receipt of the materials that are enclosed with this letter and that you do not need any further information from us in order for the BZA to hear the case at its meeting on February 6, 2020. If additional information is needed, please contact me and I will deliver it to you as soon as possible. Thank you very much for your kind assistance regarding this matter.

Respectfully submitted,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC



Joel K. Hargis, Attorney

RESPONSE TO NEIGHBORS ARGUMENTS REQUESTING PERMIT REVOCATION

SCI Towers, LLC was issued a proper building permit on November 6, 2019 for a 140' tall monopole tower. Neighbors appealed on November 15, 2019. The Planning Commission approved our client's tower request at its meeting on May 9, 2019 with the condition that a landscaping buffer be placed along the property's frontage and that sidewalks be constructed per the MCSP. Our client agreed to construct the landscape buffer as requested and appealed the sidewalk requirement to the Board of Zoning Appeals. SCI obtained a variance from the Board of Zoning Appeals, in appeal case 2019-299, and approval of an alternative sidewalk plan on August 1, 2019.

The neighbors filed an appeal with the BZA on November 15, 2019 and below is our response to the 12 stated reasons for revocation of our client's properly and legally issued permit.

Argument #1

"Permit Should Be Revoked Because From The Affected 1,000 Homes, 900+ People and Business Owners Have Signed NO-TOWER Petition (see Exhibit A), Formed Commission (Exhibit B), and Involved Media (Ex C)."

Argument # 1 provides for three reasons why the legally issued permit issued for our permit should be revoked. The neighbors would contend that the first portion of Argument #1 gives Metro Government the right to revoke a permit solely because neighbors expressed their opposition to the issuance of a tower permit. The neighbors' exercising their First Amendment right to petition the government by the signing of a petition does not require that the government cease enforcement of zoning laws as written. The signing of a petition does not give the government permission to revoke a validly issued permit nor does the signing of a petition constitute a reason for revocation of our client's permit.

Secondly, the neighbors contend that their formation of a Commission and to "involve" the Media are grounds for revocation of a validly issued permit. None of the arguments expressed in "Argument #1" are valid reasons for the revocation of a permit.

Argument #2

"Permit Should be Revoked Because Possible Metro Ordinance Violations By The Tower Will Endanger Nearby Residents And Cause Death If "Breakpoint Technology" Fails (see Exhibits D, E and F)."

Argument #2 alleges that the permit should be revoked because of "Possible Metro Ordinance Violations". Metro ordinances at §17.16.080 C(4)(e) states "A tower shall be set back from all property lines on which the tower is located by the distance equal to the height of the lowest engineered break point on the proposed structure or the height of the tower."

The sentence states that the setback is a distance to the height of the lowest engineered break point on the proposed structure or the height of the tower.

Our clients submitted in our permit submittal a letter from a Tennessee licensed structural engineer (Exhibit 6 – Permit Application; Exhibit A of this application), Michael F. Plahovinsak that the tower was designed in accordance with the Telecommunications Industry Associations ANSI/TIA 222-G entitled “Structural Standards for Steel Antenna Towers and Antenna Supporting Structures”. Mr. Plahovinsak also certified that the proposed design conforms with the requirements of the 2012 International Building Code (IBC). The tower is designed with a maximum fall zone of 85 feet. This 85-foot measurement is the lowest engineered break point on the proposed structure as required by the Metro Code of Law. Our tower will be located far in excess of the 85-foot requirement. The tower will be located 126 feet from the rear property line

The neighbors state that the tower “sits *just yards* away from Speedway Gas Station also on the same LEVOG property.” (Emphasis Added). The truth is that the tower is located 135 feet from the nearest structure (dry cleaners) and approximately 638 feet (212 yards to be precise or over two football fields) away from the gas pumps cited in Argument #2. The gas station does not sit on property owned by LEVOG. Please refer to Exhibit B of our application

Argument #3

“Permit Should Be Revoked Because Precedent is Set in Multiple Court Rulings for Negative Aesthetic Impact Being Taken Into Account for Permit Denial; also: Local Realtor Letters Are Submitted Herein to Testify to The Truth of Cell Towers Devaluing Properties”.

Metro must apply its rules as they are written. The code requires in § 17.16.080 (1)(d) *“The applicant shall demonstrate that through location, construction, or stealthing, the proposed facility or network of facilities will have minimum visual impact upon the appearance of adjacent properties and the views and vistas from adjacent residential neighborhoods and pedestrian environment, while retaining viable opportunities for future collocation, provided applications for designs consistent with the design guidelines provided for in subsection 5.f of this section shall be deemed to have met the requirement of this subsection”*

Our clients submitted photo simulations of the proposed tower with views from adjoining properties (Exhibit 3 in permit submittal; Exhibit C BZA). Metro approved our tower permit after a review of all of the documents submitted with the permit application. A monopole was designed so as to provide the narrowest profile view while retaining possibilities for collocation.

The second part of the neighbors’ argument is that opinion letters from two realtors are proof that cell towers devalue properties. Time and time again, these arguments from neighbors have been shown to be false. As the May/June 2016 Probate and Property Journal states (a copy submitted as Exhibit D. The article states *“Studies have long shown that cell towers have no appreciable effect on property values, but opponents of towers, and some boards that consider these applications, refuse to believe these studies. Nonetheless, the results are supported by empirical data...”*

To address the opinion letters submitted by the neighbors, our firm reviewed data from the Metropolitan Property Assessors’ Office and compared property values of properties adjacent

to towers. The three locations shown in our PowerPoint entitled “*Existing Cell Sites and Values*” show that towers do not devalue property. Unlike the opinion expressed in the realtor’s letters, this presentation demonstrates that towers do not devalue property by utilizing Metro Government’s own assessment data. (Exhibit E). Each property near and adjacent to a tower saw an increase in value over time. We do not make the statement that towers increase property values, only that towers appear to not devalue property as the neighbors’ have claimed.

Argument #4:

“Permit Should Be Revoked Because Circulating Site Plans and Photos Do Not Adequately Show the Close Proximity to the 1,000 Homes Within the 100 ft. – 1/2-mile Radius of Tower and are Misleading (see Exhibit H).”

This statement does not provide grounds for the revocation of a legally issued permit. Our clients submitted site plans in conformance with Metro standards for commercial building permit applications. There is no requirement under the code that site plans include properties within a certain radius. The site plan submitted show full compliance with the requirements of the Zoning Regulations.

Argument #5

“Permit Should Be Revoked Because the Tower Could be Later Increased in Height Without Community Consent Under The Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96, H.R. 3630,126 Stat. 156) and Appellants Submit Evidence of These Premeditated Intentions (See Exhibit I).”

Our clients, SCI Towers, are required to file with the Federal Aviation Administration (FAA) a determination of no hazard. The FAA issues a determination of no hazard based upon a potential maximum height of a tower. The No Hazard Determination was included in our permit submittal as Exhibit 5 and is included as Exhibit F with this submission.

This submittal is done many months to years in advance in order for the FAA to determine if a potential tower that tall is possible. Once a tower is constructed, an as built update is submitted to the FAA with the actual tower height.

SCI met with members of the Hermitage long after this initial submittal to the FAA and the Hermitage asked that the tower be lowered to 140 feet. SCI agreed to lower the tower to its current height of 140 feet. 140 feet was the minimum needed in order for Verizon to meet their network goals and objectives.

The Middle-Class Tax Relief Act and Job Creation Act of 2012 (also known in the industry as a Section 6409 request. Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1455(a), reads in pertinent part:

“...a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.” (emphasis added).

The FCC has determined that a modification substantially changes the physical dimension of a wireless tower or base station if it meets ANY of the following criteria:

1. Increases height by more than 20 feet or 10 percent, whichever is greater;
2. Protrudes from edge of tower more than 20 feet or more than the width of the tower structure at the level of the appurtenance, whichever is greater;

Although the neighbors' correctly state that Section 6409 of the Middle-Class Tax Relief and Job Creation Act of 2012 does allow for this by federal law, SCI has no intentions of increasing the tower above the 140-foot height agreed to with the Hermitage.

Argument #6

“Permit Should Be Revoked Because Burden Of Proof by SCI to Prove Coverage Gaps Has Not Been Properly Met, Per Cited Court Precedent(s)”

Tennessee law at T.C.A. §13-24-305 (2) states that:

“In regulating the placement of a wireless telecommunications support structure, an authority may not:

- (2) Require the applicant to provide any sort of justification for radio frequency need;”*

State law is unambiguous and crystal clear. No local or county government can require that the applicant for wireless telecommunication services (antenna, towers, or any other facility) to prove there is a radio frequency need. The local or county governments shall not by extension determine or question the validity of information submitted by a carrier since they may not require **any sort** of justification.

SCI and its tenant in this case voluntarily provided information both at the time permitting and at this BZA hearing as to why Verizon is locating here. On behalf of our clients, we object to Metro or its Board of Zoning Appeals requiring that SCI or Verizon prove why they need the site. The state law is clear. There are no towers or structures within a 1-mile radius with sufficient height that Verizon needed in order to meet its network goals and objectives. Verizon has voluntarily prepared additional information to this Board and we submit the PowerPoint listed as Exhibit G.

Argument #7

“Permit Should Be Revoked Because Appellees Never Disclosed Alternative Tower Sites That Was Requested on 8/8/19 and 8/22/19. Proof is Submitted Herein of 36 Towers/Antennas Found in a 2 Mile Radius.”

See above response for Argument #7.

Argument #8

“Permit Should be Revoked or at Least “Stayed/Delayed” As Appellants Are Requesting an EIA based on Multiple Allowable Reasons in NEPA’s Own Requirements Per the FCC’s Title 47 CFR §1.1307”

The Board of Zoning Appeals has no authority to “stay” or “delay” a permit. SCI has voluntarily chosen to halt construction of the tower authorized by our building permit. Our permit was issued on November 6, 2019. The period between the filing of this appeal and the hearing on February 6 is 92 days.

Our clients have already filed an Environmental Impact Assessment (EIA) as required by NEPA. A copy of this completed NEPA report has been submitted to the Codes Department and to Metro Legal as requested by those departments. A NEPA EIA report is required to be performed for new tower sites and SCI has completed one as required by federal law.

Argument #9

“Permit Should Be Revoked Because Property is not In a Right of Way (ROW) and Owner (LEVOG) James Levin has offered to Negotiate An Equitable Contract Exist for SCI Towers In Light of Overwhelming Evidence of Community Opposition (letter available upon request.) “

This argument is not a valid argument for revocation of a legally and validly issued permit by the Codes Department. The letter referenced by the neighbors may be evidence of the tort of tortious interference of a contract both under the common law and by statute. TCA § 47-50-109 states *“It is unlawful for any person, by inducement, persuasion, misrepresentation, or other means, to induce or procure the breach or violation, refusal or failure to perform any lawful contract by any party thereto; and, in every case where a breach or violation of such contract is so procured, the person so procuring or inducing the same shall be liable in treble the amount of damages resulting from or incident to the breach of the contract. The party injured by such breach may bring suit for the breach and for such damages.”*

Additionally, the Tennessee Supreme Court in *Trau-Med of America, Inc. v. Allstate Ins. Co.*, 71 S.W.3d 691 (Tenn., 2002), which enumerated the elements of a prima facie case of tortious interference with a Contract. In order to make out a prima facie case, a plaintiff must prove the following:

(1) An existing business relationship with specific third parties or a prospective relationship with an identifiable class of third persons.

The Tennessee Supreme Court also adopted the § 766B comment c of the Restatement (Second) of Torts: "The relations protected against intentional interference by the rule stated in this Section include any prospective contractual relations, except those leading to contracts to marry, if the potential contract would be of pecuniary value to the plaintiff. Included are interferences with the prospect of obtaining employment or employees, the opportunity of selling or buying land or chattels or services, and any other relations leading to potentially profitable

contracts. Interference with the exercise by a third party of an option to renew or extend a contract with the plaintiff is also included. Also included is interference with a continuing business or other customary relationship not amounting to a formal contract.

(2) The defendant's knowledge of that relationship and not a mere awareness of the plaintiff's business dealings with others in general.

(3) The defendant's intent to cause the breach or termination of the business relationship.

(4) The defendant's improper motive or improper means.

With regard to this element, the Tennessee Supreme Court stated: "It is clear that a determination of whether a defendant acted "improperly" or possessed an "improper" motive is dependent on the particular facts and circumstances of a given case, and as a result, a precise, all-encompassing definition of the term "improper" is neither possible nor helpful. However, with regard to improper motive, we require that the plaintiff demonstrate that the defendant's predominant purpose was to injure the plaintiff. See Leigh Furniture & Carpet Co., 657 P.2d at 307-08. Moreover, in the attempt to provide further guidance, we cite the following methods as some examples of improper interference: those means that are illegal or independently tortious, such as violations of statutes, regulations, or recognized common-law rules, see *id.* at 308; violence, threats or intimidation, bribery, unfounded litigation, fraud, misrepresentation or deceit, defamation, duress, undue influence, misuse of inside or confidential information, or breach of a fiduciary relationship, see Duggin, 360 S.E.2d at 836 (citing Top Serv. Body Shop, Inc., 582 P.2d at 1371 n. 11); and those methods that violate an established standard of a trade or profession, or otherwise involve unethical conduct, such as sharp dealing, overreaching, or unfair competition, see *id.* at 837."

(5) Damages resulting from the tortious interference.

SCI and LEVOG have executed a lease contract for space upon the property and all parties intend to see the lease's terms executed. We ask that the neighbors' cease their attempt to interfere with a contract.

Argument #10

"Permit Should Be Revoked Because Land is on Sacred Indian Site (Ex. M)"

As a requirement of the NEPA EIA, the representatives of each affected Native American tribe are contacted as a part of the NEPA report. Each tribe then submits their comments on the proposed tower site with approval, disapproval, or no exceptions taken. The Eastern Band of the Cherokee Nation approved the proposed tower at this site with the condition that a monitor be present to witness the work performed on the foundation of the tower.

An archeologist on behalf of the Cherokee Nation was present on site when SCI began work on the foundation of the tower. A copy of the archeologist's report is included as Exhibit H. Additionally, copies of the report have been provided to Metro Legal at their request.

Argument #11

“Permit Should Be Revoked Because Local Official Failed to Act”

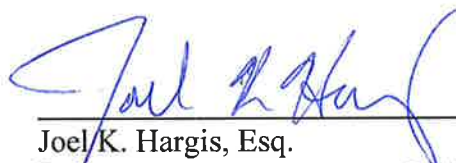
This argument states no reason upon which a permit may be revoked. We disagree with the assertion by the neighbors’ and contend that Metro Officials followed the law and acted properly as was required of them.

Argument #12

“Permit Should Be Revoked WITHOUT Fear that Metro Will Be Penalized By The FCC Since Precedent Has Been Set In Multiple Court Rulings Protecting the Authority of Local Zoning Boards.”

This argument states no reason at all why the permit should be revoked.

Respectfully submitted on January 30, 2020.



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Attorney for SCI

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(614) 398-6250 - mike@mfpeng.com

August 13, 2019

SCI Towers

Re: Proposed 140-ft Monopole
 Located in Davidson Co., TN: 70060 Berryville
 MFP Project #: 23519-529

I understand that there may be some concern on the part of local building officials regarding the potential for failure of the proposed communication monopole. Communication structures are designed in accordance with the Telecommunications Industry Association ANSI/TIA-222-G, "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures".

I have designed this monopole to support four carriers and withstand a 3-sec. gusted wind speed of 90 mph (Vasd) as recommended by ANSI/TIA-222-G for Davidson Co., TN. The design also conforms to the requirements of the 2012 International Building Code for an equivalent ultimate wind speed of 116 mph (Vult).

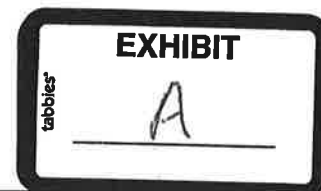
This monopole has been designed to accommodate a theoretical fall radius. The upper 85' of the pole has been designed to meet the wind loads of the design, however, the lower portion of the pole has been designed with a minimum 10% extra capacity. Assuming the pole has been designed according to my design, and well maintained, in the event of a failure due to extreme wind and comparable appurtenance antenna load (winds in excess of the design wind load), it would yield/buckle at the 55' elevation. The yielded section would result in a maximum 85' fall radius, but would most likely remain connected and hang from the standing section.

The structure has been designed with all of the applicable factors as required by the code. A properly designed, constructed and maintained pole has never collapsed; monopoles are safe structures with a long history of reliable operation.

I hope this review of the monopole design has given you a greater degree of comfort regarding the design capacity inherent in pole structures. If you have any additional questions please call me at 614-398-6250 or email mike@mfpeng.com.

Sincerely,

Michael F. Plahovinsak, P.E.



Michael F. Plahovinsak, P.E.
 Sole Proprietor - Independent Engineer
 P.E. Licensed in 48 Jurisdictions



Get Directions History

Places

- Kern 1ally Ho
- Bonnaroo
- Kennedy Road
- Highway 902
- Gum Springs
- Ella Lane
- Parker CLT
- Seven Creeks
- Berryville
- SCI Berryville Site
- 638 feet to gas pumps
- 137 feet to building
- 85 foot fall zone radius

Layers

- Primary Database
- Creation Tools
- Borders and Labels
- Places
- Photos
- Roads
- 3D Buildings
- Ocean
- Weather
- Gallery
- Global Awareness
- More



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EXHIBIT

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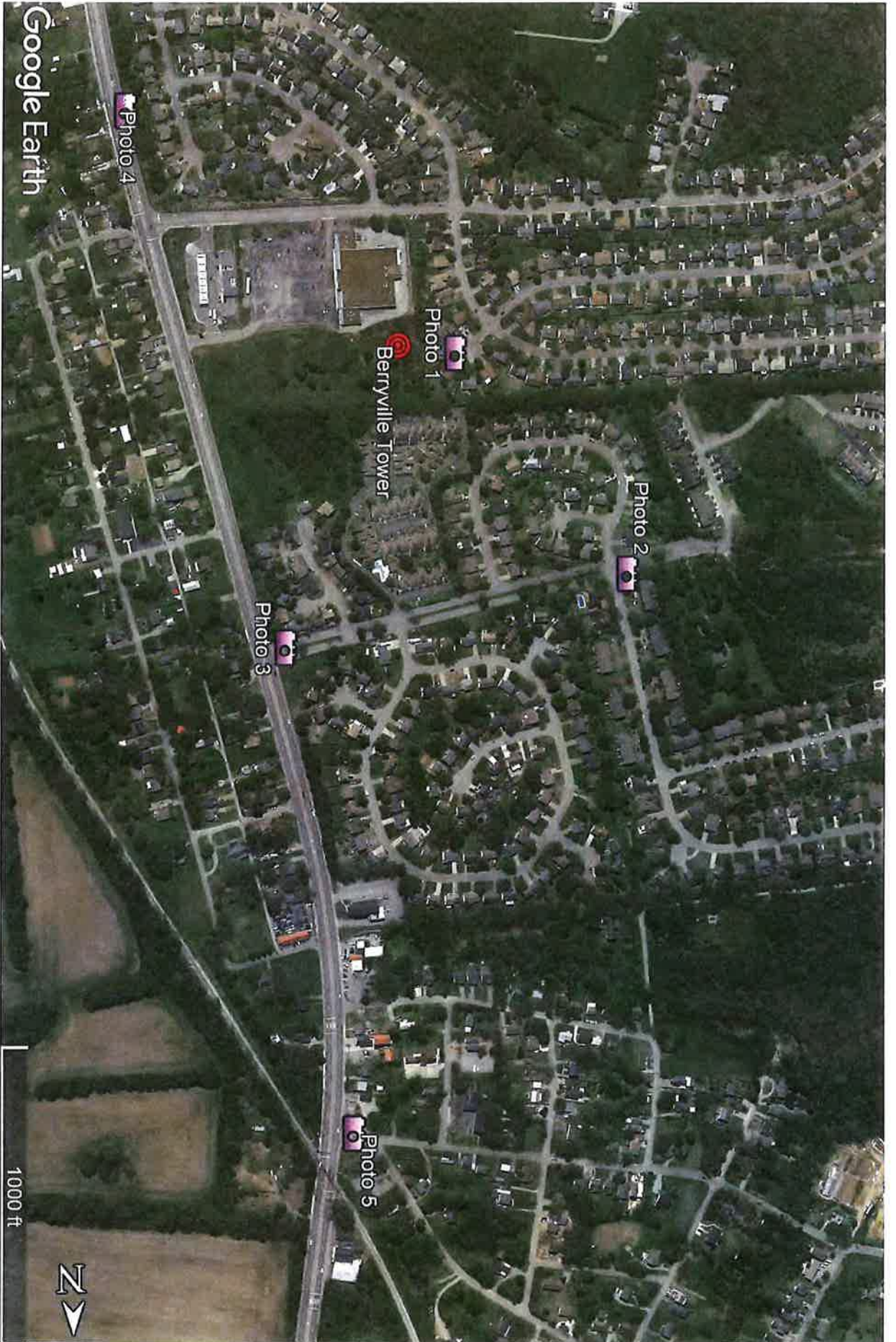
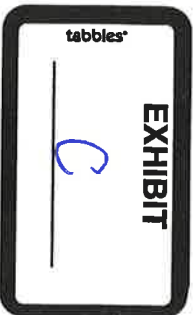
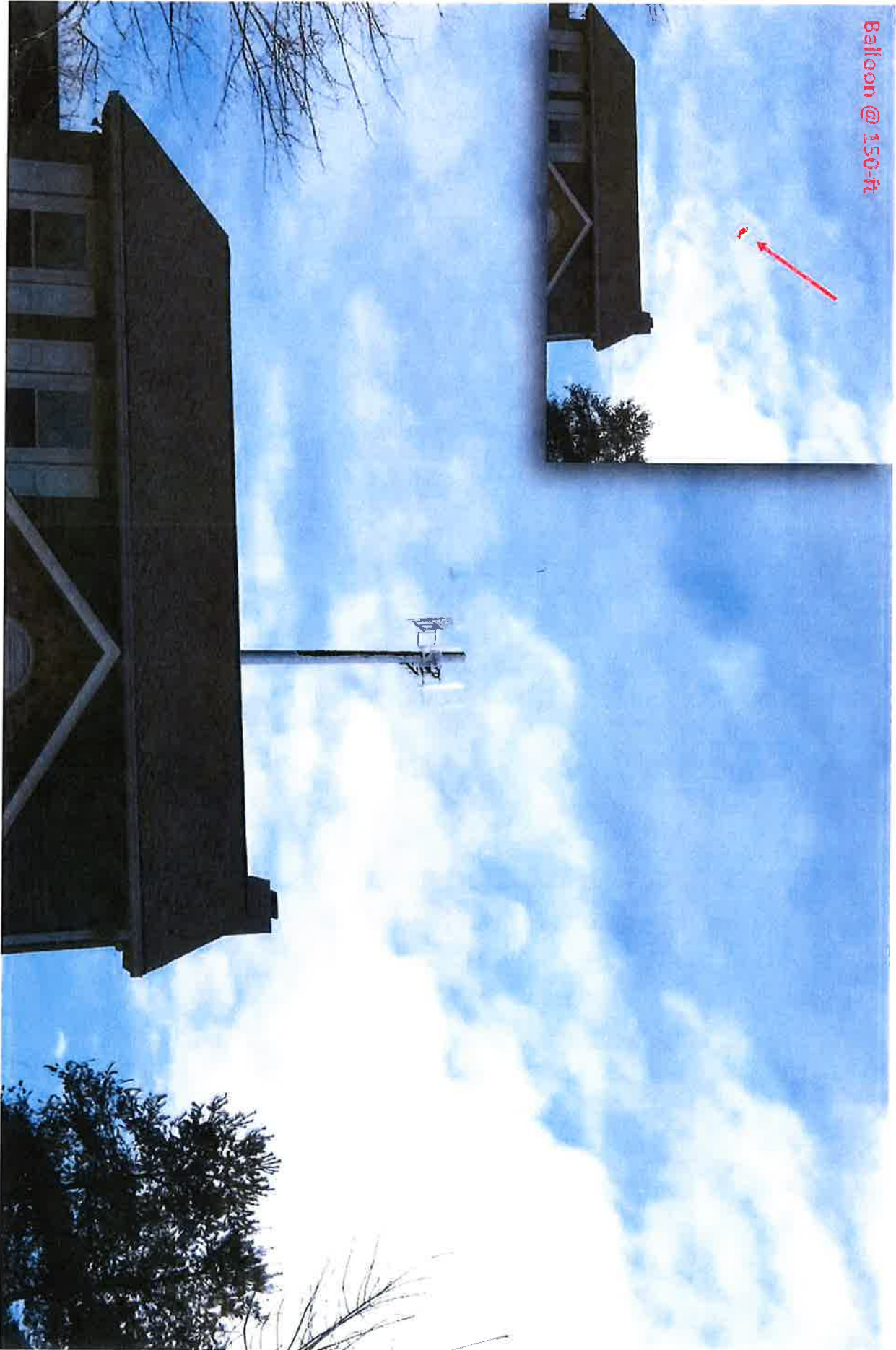


Photo Locations



Berryville
Old Hickory Boulevard
Old Hickory, TN 37138



Balloon @ 150-ft



Monopole Tower Simulation
140-ft AGL (146-ft with appurt.)
Photo #1 - approx. 300' W of site

Berryville
Old Hickory Boulevard
Old Hickory, TN 37138



Ballast @ 150-ft

HARDIN SHIRE DR



Monopole Tower Simulation

140-ft AGL (146-ft with appurt.)

Photo #2 - approx. 1,080' NW of site

Berryville

Old Hickory Boulevard
Old Hickory, TN 37138



Monopole Tower Simulation

140-ft AGL (146-ft with appurt.)

Photo #3 - approx. 1,100' NNE of site

Berryville

**Old Hickory Boulevard
Old Hickory, TN 37138**

Balloon @ 150-ft



Monopole Tower Simulation

140-ft AGL (146-ft with appurt.)

Photo #4 - approx. 1,250' SE of site

Berryville
Old Hickory Boulevard
Old Hickory, TN 37138

Balloon @ 150-ft



Monopole Tower Simulation

140-ft AGL (146-ft with appurt.)

Photo #5 - approx. 2,720° N of site

Berryville

Old Hickory Boulevard
Old Hickory, TN 37138

Time : 08:59

Date : 2020/01/30

Host : NA-12534-LTX16

Job : Submittal Docs 4843-3121-4505 v.1.pdf

JKH01

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August 13, 2019

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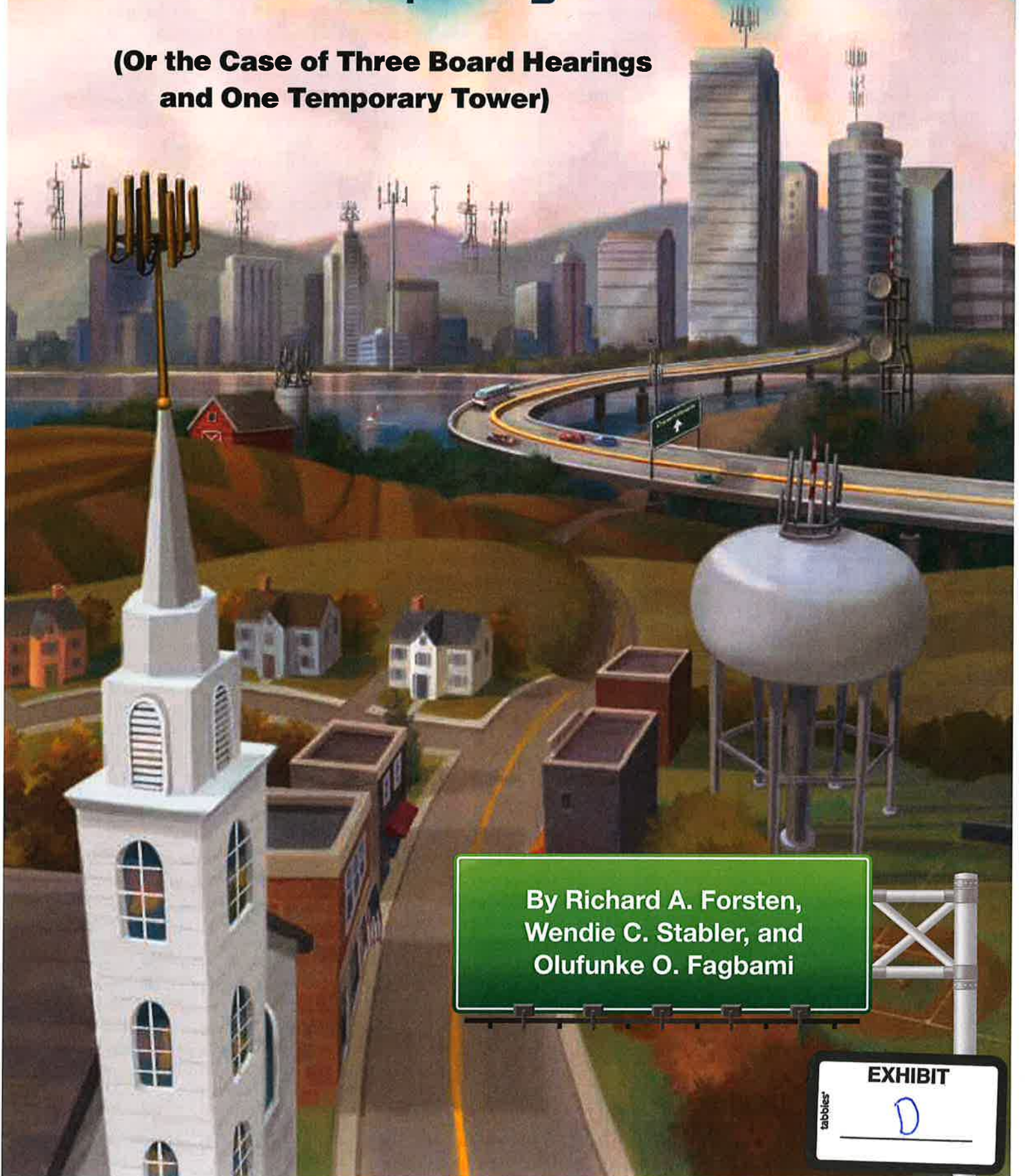


Michael F. Plahovinsak, P.E.
 Sole Proprietor - Independent Engineer
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Cell Phone Towers Do Not Affect Property Values

(Or the Case of Three Board Hearings and One Temporary Tower)



By Richard A. Forsten,
Wendie C. Stabler, and
Olufunke O. Fagbami

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EXHIBIT
D

on *Residential Property Values, Right of Way*, Mar./Apr. 1999, at 17, available at <https://www.irwaonline.org/eweb/upload/0399b.pdf>. A 2004 study of homes in Orange County, Florida, found a minimal effect of 2% on value. See Sandy Bond, *Using GIS to Measure the Impact of Distance to Cell Phone Towers on House Prices in Florida*, Appraisal J., Fall 2007. A 2013 study from Chatham County, North Carolina, concluded that “the proposed tower will not adversely affect property values in the general vicinity of the tower,” and a study from that same year in Holly Springs, North Carolina, concluded that for an existing tower, “there does not appear to be any significant or consistent change in value from the properties located [closer to or farther from the tower] . . . concluding that the tower does not affect the value of the properties as distance increases from [the] tower.” See David A. Smith, *Impact Analysis of a Proposed Telecommunications Tower on the Values of Properties in the General Vicinity of the Tower Located on Poythress Road, Chatham County, North Carolina* (Sept. 10, 2013), at 1, available at www.chathamnc.org/RezoningSubdivisionCases/2013/9-16-13_BOC/Meacham_Cell_Lot/PH_Comments/Impact%20Analysis%20SK011715.pdf; Tom J. Keith & Associates, Inc., *Impact of Cell Tower on Surrounding Properties*, available at http://d39pcpjksqjx5i.cloudfront.net/media/re-research/cell_tower_study.pdf (last visited Feb. 23, 2016). Finally, a 2005 study from New Castle County, Delaware, looked at eight tower sites and similarly concluded that “the market demonstrates no ascertainable diminution of value to surrounding neighborhoods due to the installation or presence of a nearby communications tower.” See Appraisal-Associates, Inc., *Impact of a Telecommunications Tower upon Values of Residential Properties* (Aug. 2005), at 93. “The data demonstrates that residences in close proximity to a tower (less than one quarter mile or 2,000 feet in the case of the vast majority of the sales studied) did not incur a measurable diminution in value after development of the tower.” Id. at 92.

A 2005 survey conducted by researchers in New Zealand found an interesting bias. Although the study concluded that proximity to a tower did seem to affect value, it also found that those in the “control group,” who did not live near a tower, expressed a great deal more concern over the effect of a tower on property value than those who lived near a tower. See Sandy Bond & Ko-Kang Wang, *The Impact of Cell Phone Towers on House Prices in Residential Neighborhoods*, Appraisal J., Summer 2005, at 256, 262–65. Specifically, almost half of the control group expressed concern about the effect on value, while only 13% of those living near a tower expressed concern, and more than 60% were not worried about the effect on value. Id. The researchers theorized that this difference between those who did not live near a tower versus those who did may be because those living near a tower did not want to express fears about property value decline that would then, in fact, lead to lower property values. Id. An explanation just as likely, if not more so, is posited by researchers whose studies find no general effect on value—that is, that because cell towers are perceived as part of today’s modern infrastructure, they simply fade into the background and are not noticed. Those living near towers do not express concern, or do not perceive the cell towers as having a negative effect on property values, because the towers have simply faded into the background as part of the existing landscape.

Despite the general consensus that cell towers do not adversely affect property values, courts have sometimes allowed boards and administrative bodies to ignore studies from other jurisdictions and locations, on the apparent theory that such studies fail to take local factors into account. For example, in *Cingular Pennsylvania, LLC v. Sussex County Board of Adjustment*, No. 05A-12-003-RFS, 2007 WL 152548 (Del. Super. Ct. Jan. 19, 2007), at *8, the Delaware Superior Court justified the board’s refusal to consider two out-of-state analyses because they “were not substantially similar to the proposed area in question.” The court then suggested that Cingular could have

studied the effect its proposed tower would have on properties in the immediate area, but how to study an un-built tower was not explained. Indeed, this is the conundrum facing many applications—while studies and data based on other towers indicate no significant effect on value, opponents claim that such studies involving other areas and other towers should not apply to their particular properties.

In 2013, though, AT&T would find itself in the unique and unanticipated position of demonstrating that its proposed tower would have no effect on value based on actual market data from the actual geographic area surrounding the actual proposed tower. Thus, the challenge of disproving a negative had just become much easier.

AT&T v. Sussex County: One Cell Tower, Three Hearings, No Effect on Value

The case that would become *AT&T v. Sussex County Board of Adjustment* began in the early 2000s, when New Cingular Wireless PCS (which would later be acquired by AT&T) first identified the need for a new cell tower as part of its network in the general vicinity of Bethany Beach, Sussex County, Delaware. After several years of fits and starts, Cingular finally found a suitable site with a willing property owner—the rear of a combination Arby’s Restaurant/BP Gas Station parking lot. The property was located on the east side of Route 1, the major north/south artery serving the Delaware beaches from Fenwick Island at the Maryland line to Rehoboth Beach to the north. A late night drive-thru for the Arby’s was located on the back side of the building (the same side as the proposed tower) and a water retention pond was located at the very rear of the property. To the immediate south of the property was a furniture store and to the immediate north, a small undeveloped parcel. To the east and a portion of the southern boundary was a small (46-unit) condominium community called “Sea Pines.” To the south of Sea Pines were a Holiday Inn Express and a seafood restaurant, and to the east of Sea Pines was the much larger, and considerably taller, Sea Colony

offered no appraisal or other direct evidence of any effect on value. In fact, some of their testimony actually bolstered AT&T's case when two residents testified that they had experienced no problems in fully renting their units during the rental season after the temporary tower was installed—or, put another way, the temporary tower did not affect the ability of unit owners to rent their units. Moreover, no unit owners complained of having to lower rents to secure tenants or of any other adverse economic effect. One of AT&T's appraisers also did a study of rental rates and found that Sea Pines's rental rates were consistent with the local market and that there was no effect on rental rates associated with the temporary tower.

In sum, then, the case of the Sussex County temporary tower confirms what studies have shown for years—that cell towers have become part of the suburban landscape and have no appreciable effect on value. Like telephone poles, power lines, streetlights, and the other infrastructure of modern life, cell towers fade into the background and draw no more attention than other infrastructure.

Some Other Lessons from the AT&T Case

AT&T's experience in this case provides two further lessons. First, a land use applicant needs to be absolutely certain that all procedures are followed properly; and, for better or worse, this means confirming that the local governmental body has given the proper notices and made the proper mailings and postings. But for the county's inadvertent error in posting notice of the hearing on the wrong property in 2009, AT&T could have avoided four years of additional litigation. One need not be heavy-handed in confirming that things are done properly, but confirmation should be obtained.

More importantly, the Delaware Superior Court's 2015 opinion, following the third hearing by the board, marks something of a watershed for Delaware courts in the way they deal with decisions by boards of adjustment. Under Delaware law, appeals from the board go to the Delaware

Superior Court, which, by statute, has the power to reverse, affirm, or modify a decision of the board. See Del. Code Ann. tit. 9, §§ 1314(f), 4918(f), 6918(f); Del. Code Ann. tit. 22, § 328(c). Significantly, unlike other Delaware statutes

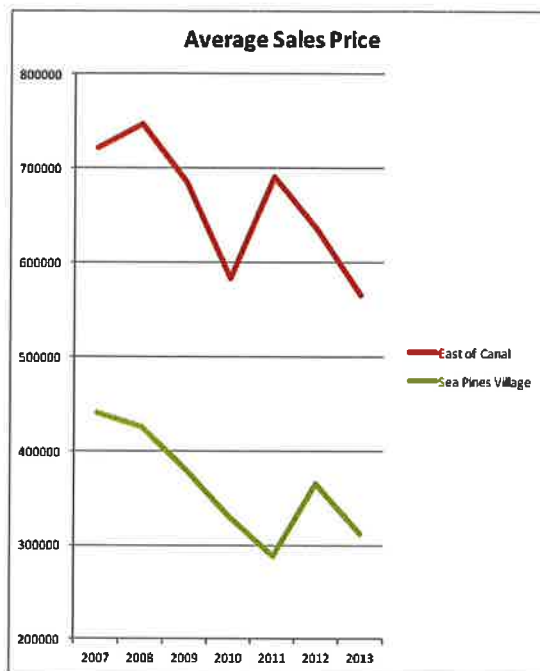


Figure 2.

regarding appeals from other boards and administrative bodies, there is no power to “remand” a decision back to the board of adjustment. (For examples of statutes in which remand is specifically listed as a remedy, see, e.g., Del. Code Ann. tit. 7, § 6612(b); Del. Code Ann. tit. 7, § 6214(b); Del. Code Ann. tit. 9, § 8312(c); Del. Code Ann. tit. 14, § 1414; Del. Code Ann. tit. 18, § 328(h); and Del. Code Ann. tit. 19, § 2350(b).) And this lack of remand is most likely not an accident.

Most matters before a board of adjustment involve homeowners seeking minor dimensional variances for things such as screened porches or additions to their homes. Judicial review, of course, can be a time-consuming and expensive process. Rather than remands and multiple hearings, the Delaware General Assembly gave the superior court the ability to decide the matter (reverse, affirm, or modify) as part of its decision on appeal, rather than remand back to the board for further proceedings. Indeed, although most appeals are on the record, the General Assembly further provided

that the superior court could receive additional evidence as part of the appeal process. Del. Code Ann. tit. 9, §§ 1314(e), 4918(e), 6918(e). The only reason for the court to receive additional evidence would be for the court to make findings on its own and resolve the matter once and for all, rather than remand a proceeding back to the board for another hearing and, potentially, another appeal. Homeowners should not be faced with years of litigation over whether they can build an additional two feet into a setback.

But, despite the lack of the power to remand, when reversing a board decision denying a permit or variance request, courts have almost always said that reversal does not constitute a grant of the permit or variance—rather, the court requires the applicant to go back to the board and re-apply for the permit or variance with a new hearing and an entirely new process. In other words, reviewing courts have done the functional

equivalent of a remand, even though the courts do not call what they’re doing a “remand.”

The superior court's 2015 decision is significant, then, because the court did *not* reverse the board and then require AT&T to go back to the board and re-apply (for what would have been the fourth time) for a special use exception for the cell tower. Rather, the court specifically recognized that it did not have the power to remand and therefore modified the board's decision by ordering the special exception granted. Specifically, the court explained:

At this stage, Appellant [AT&T] has been before the Board and the Court three times regarding this project. The first time, the Board's approval was reversed on procedural grounds. The second time, the Board applied the wrong standard and denied the application, resulting in the decision ultimately being reversed by the Supreme Court. Because the statute provides no authority to remand, Appellant has had to file

EXISTING CELL SITES & VALUES

A LOOK AT THREE TOWER SITES IN NASHVILLE



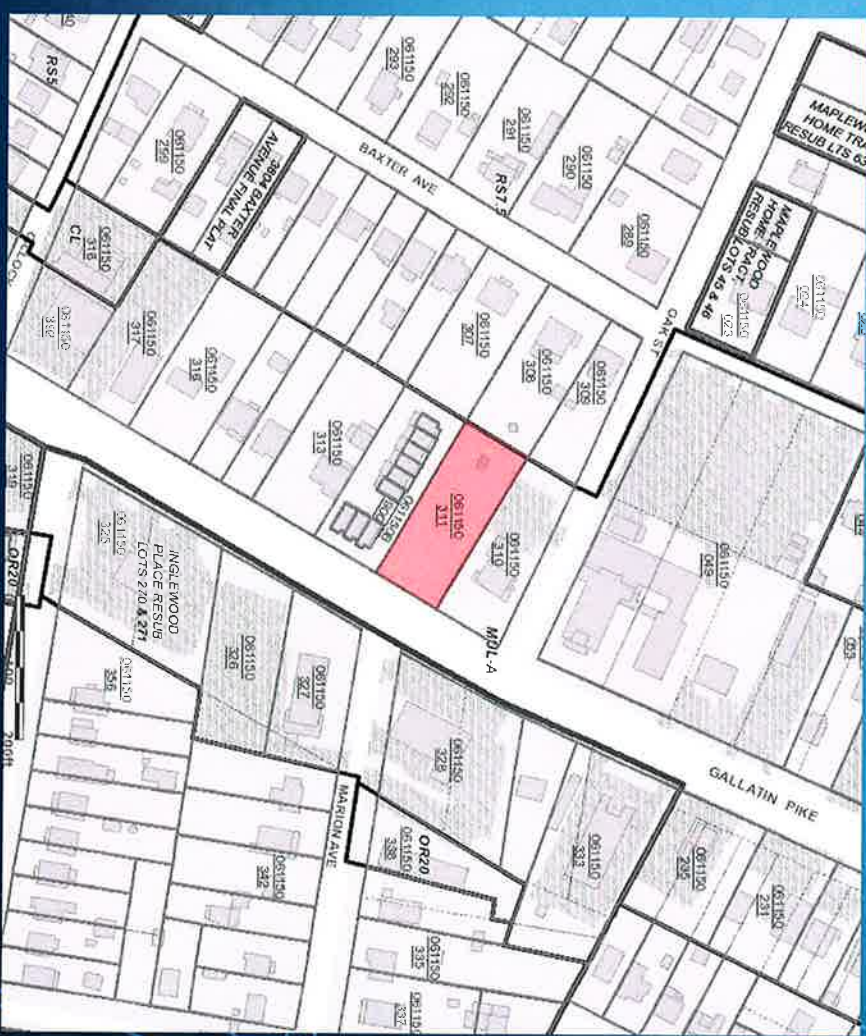
tabbles®

EXHIBIT

E

3827 GALLATIN PIKE

- Tower constructed in 2001
- 115 feet in height



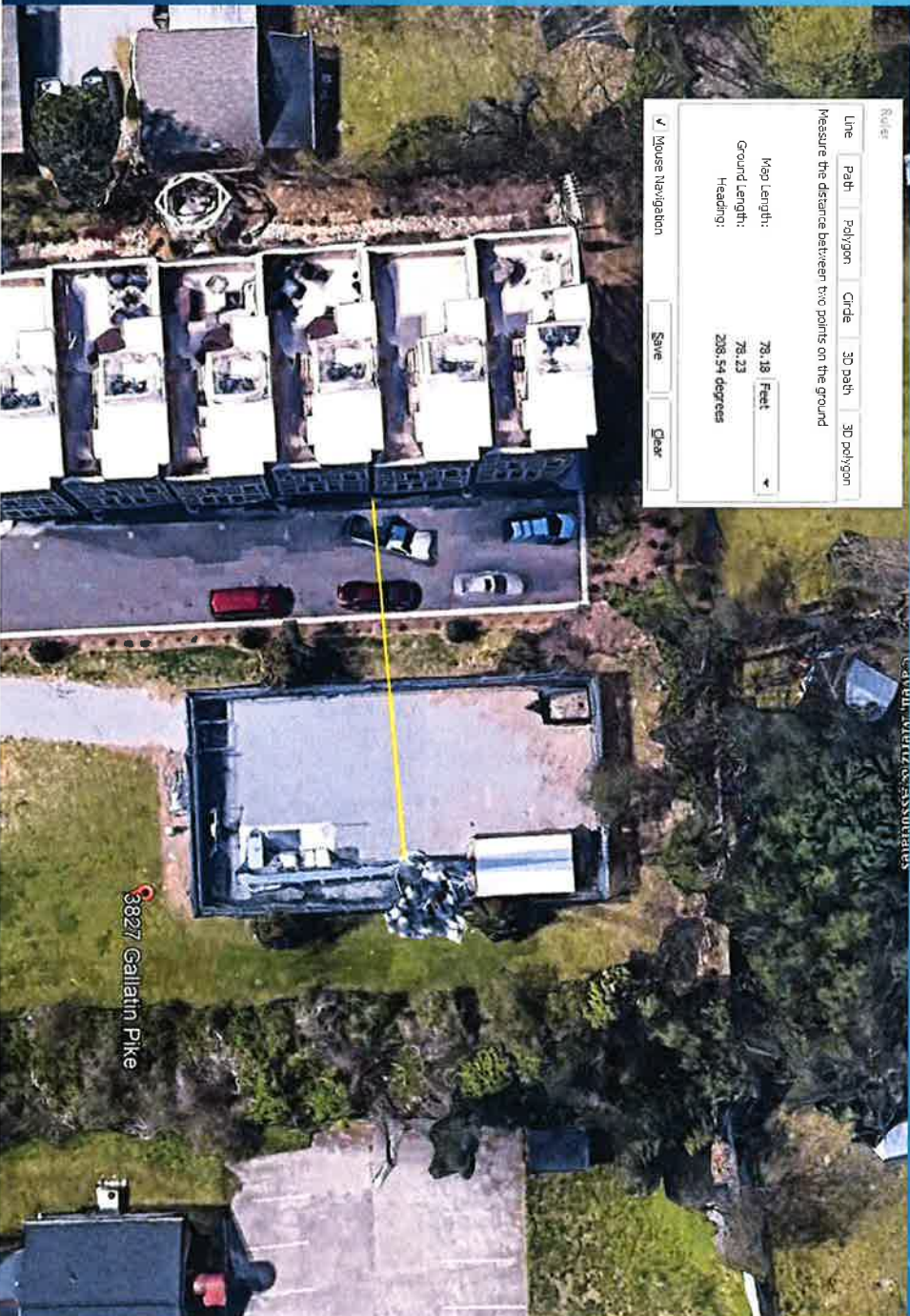
3827 GALLATIN PIKE



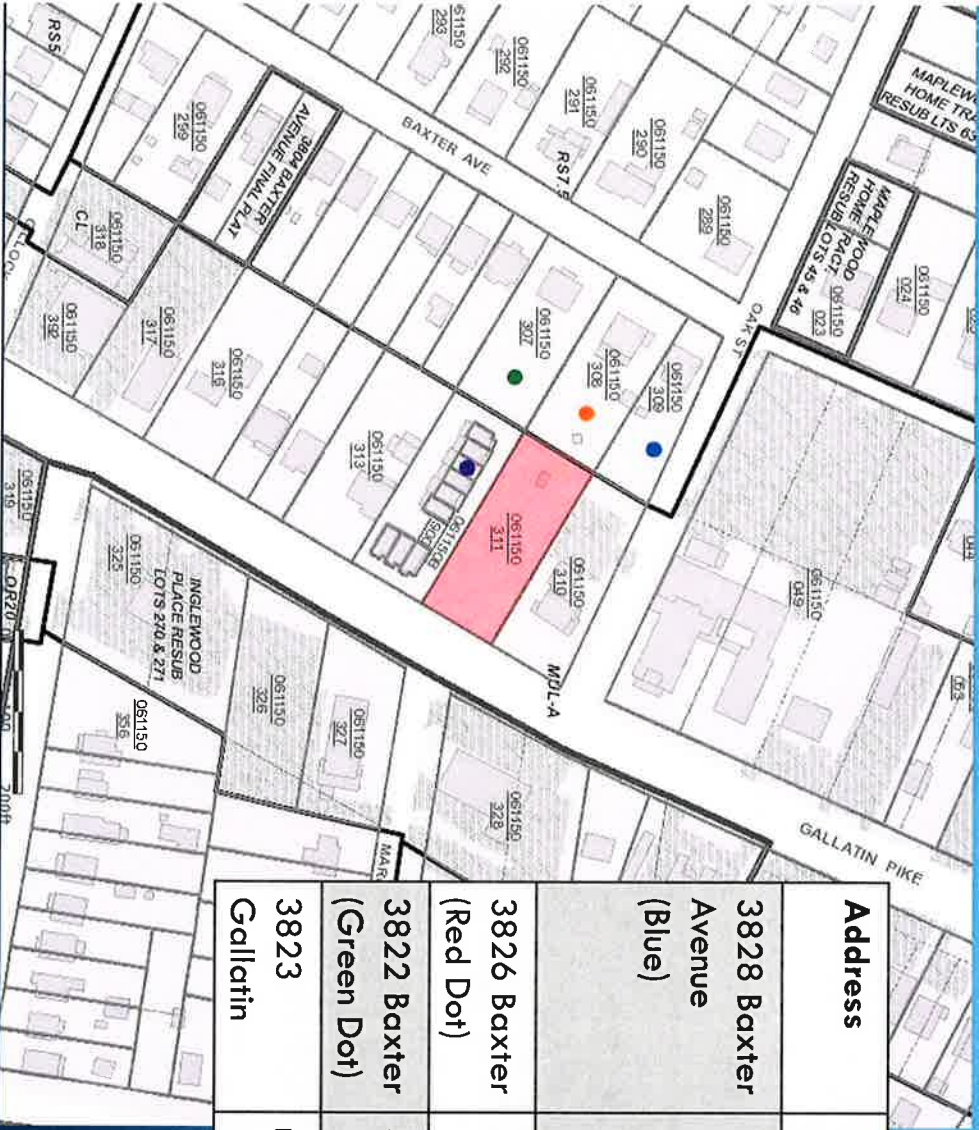
Google Earth

3827 GALLATIN PIKE

- Tower is 78 feet from nearest residence



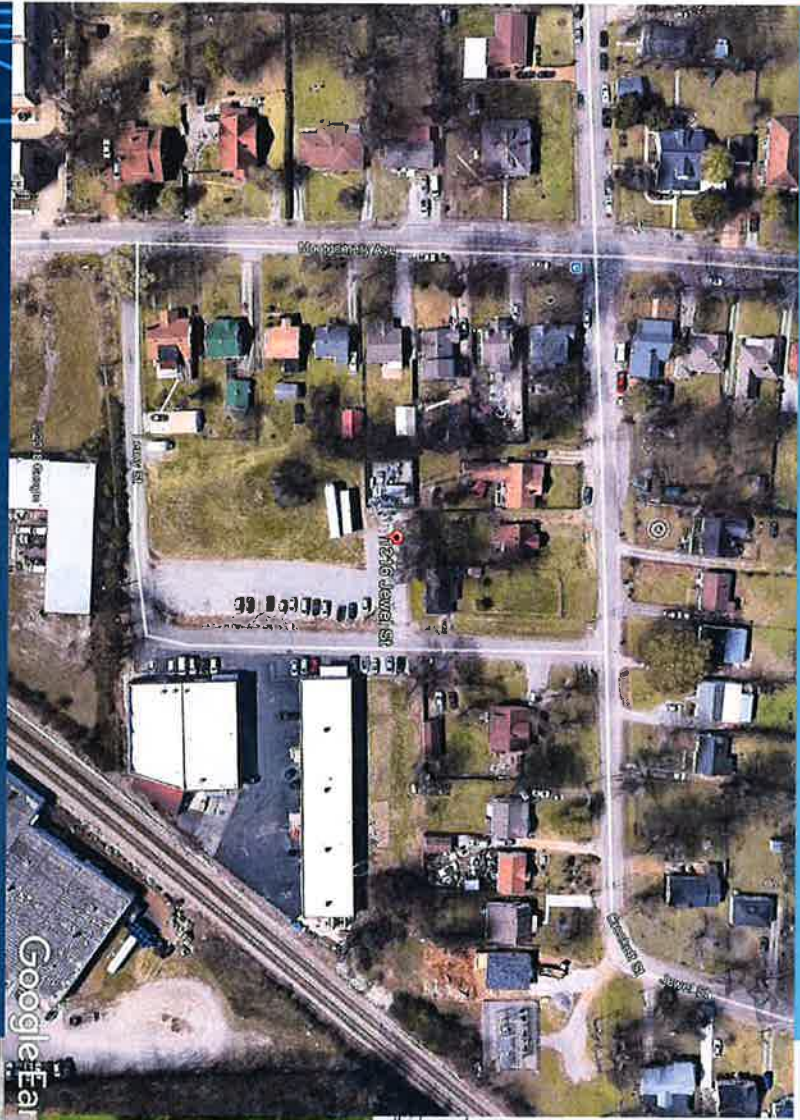
3827 GALLATIN PIKE



Address	2005 Assessment	2013 Assessment	Current Value -2019	% Change
3828 Baxter Avenue (Blue)	\$120,100	\$184,600	\$293,700 (2016 sale - \$291,500) (2019 sale - \$370,000)	59.1%
3826 Baxter (Red Dot)	\$157,800	\$251,900	\$373,400	57.73%
3822 Baxter (Green Dot)	\$116,200	\$182,100	\$313,300	62.9%
3823 Gallatin	n/a	365,400 (2016)	\$412,350 (2016 sale)	11.4%

Source: Metro Nashville Property Assessor's Office

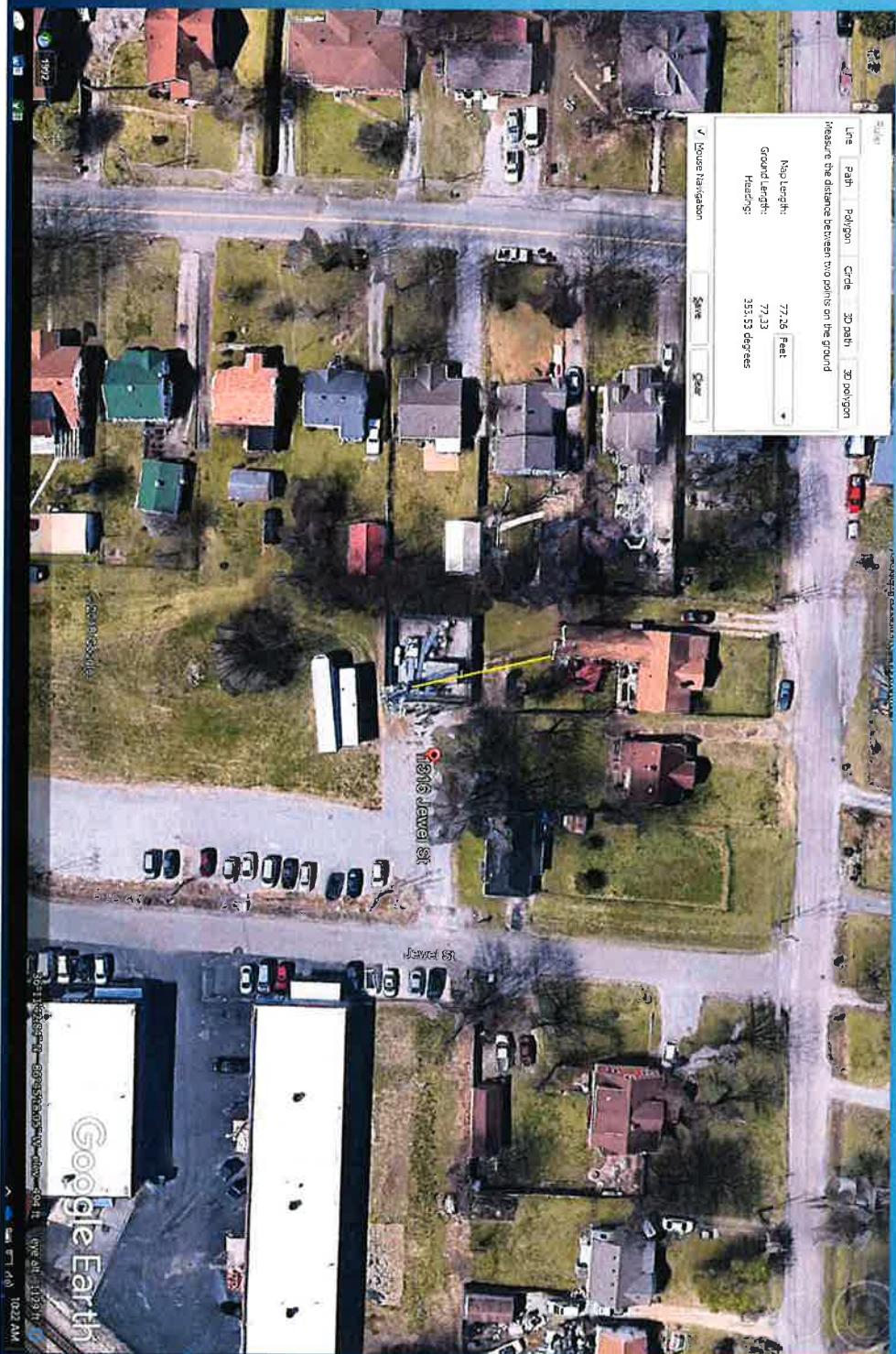
1316 JEWEL STREET



11/27/20 11:27:27 AM

1316 JEWEL STREET

- Tower is 77 feet from nearest residence



1316 JEWEL STREET

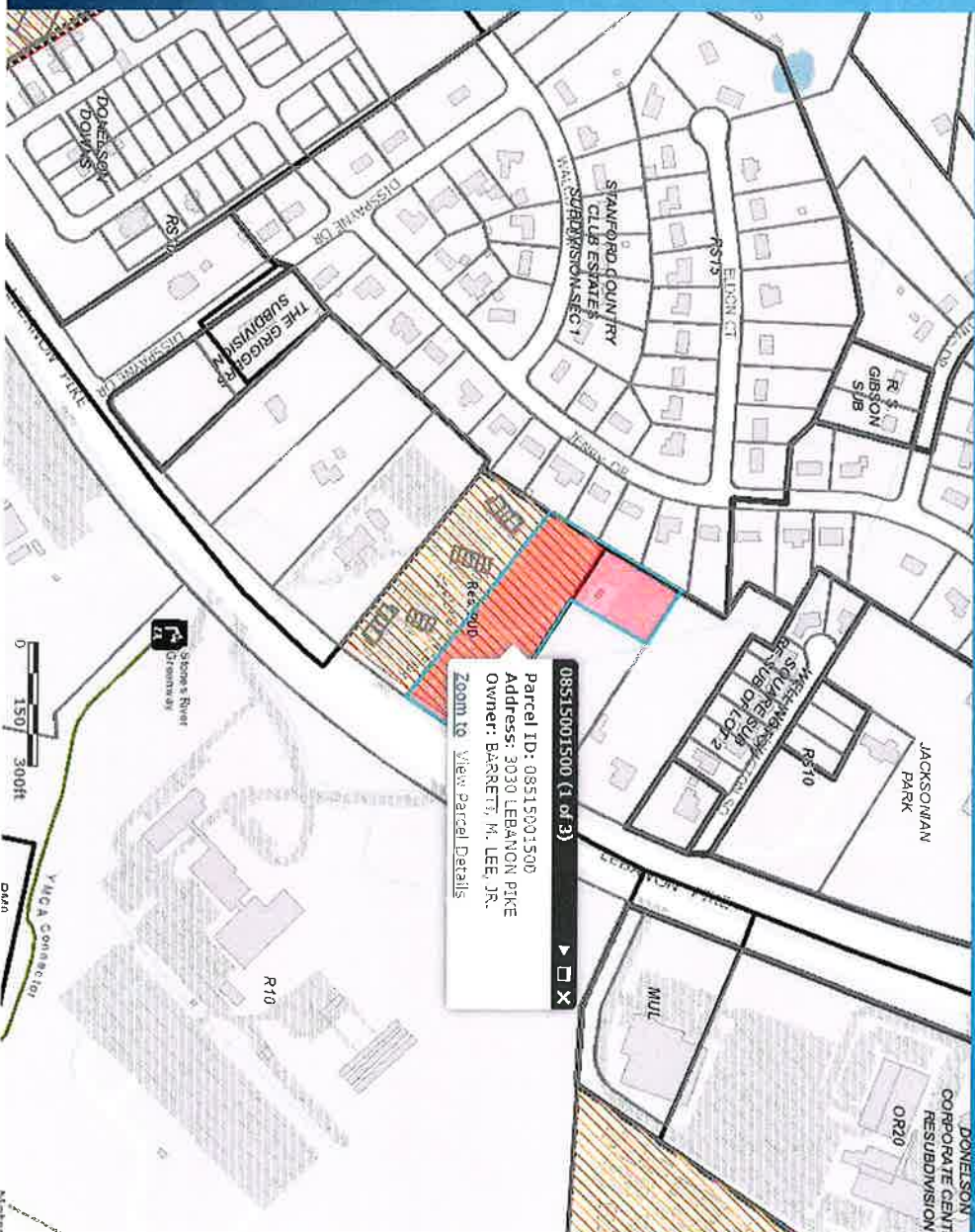


Address	2005 Assessment	2013 Assessment	Current Value	% Change
902 Crockett (Blue)	\$76,100	\$82,500	\$129,100	41%
900 Crockett (Red)	\$100,500	\$106,200	\$157,000	35.98%
1319 Montgomery (Purple)	\$74,400	\$80,900	\$278,300 (230,000- \$2014 sale)	73.2%
1317 Montgomery (Green)	\$106,400	\$115,300	\$381,200 (190,000 - 2017 sale)	72%

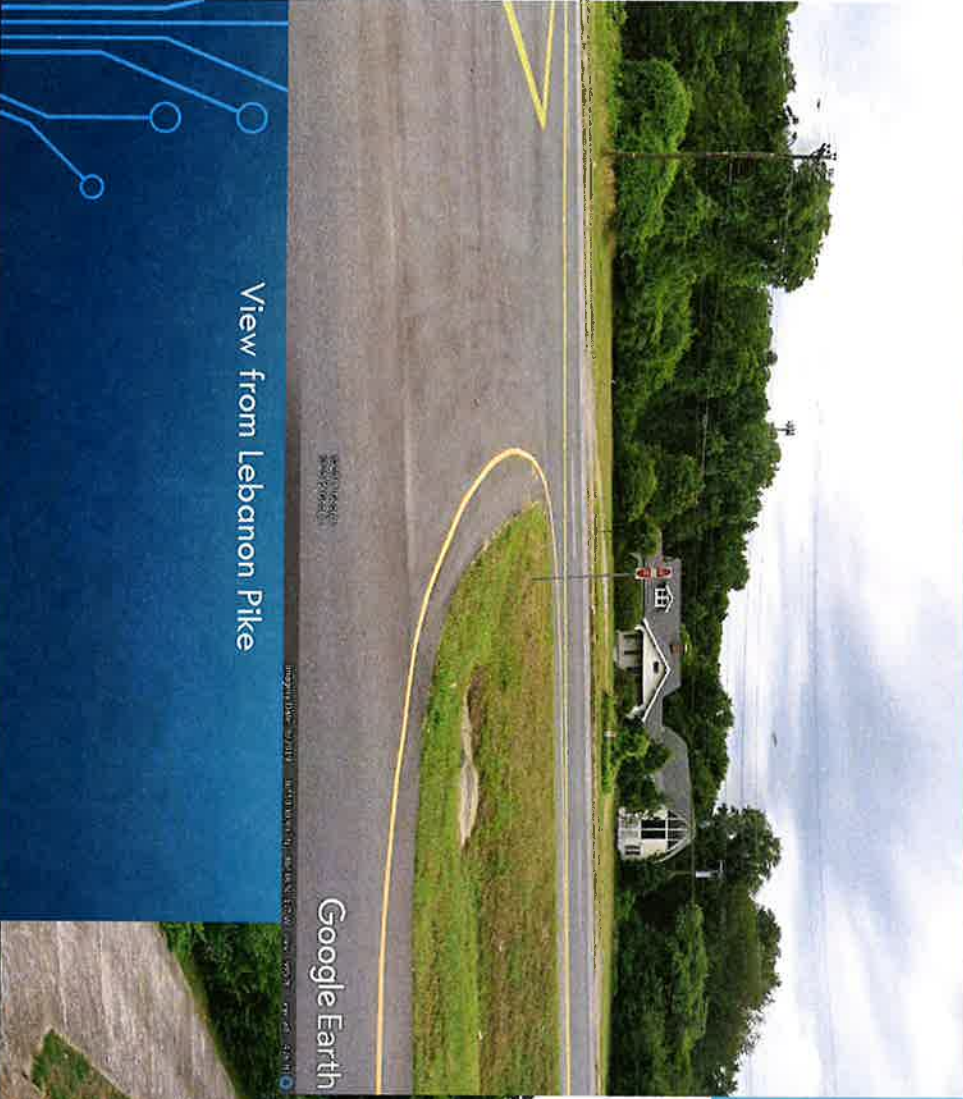
Source: Metro Nashville Property Assessor's Office

3030 LEBANON PIKE

- Tower constructed in 1997
- 120 feet in height



3030 LEBANON PIKE



View from Lebanon Pike



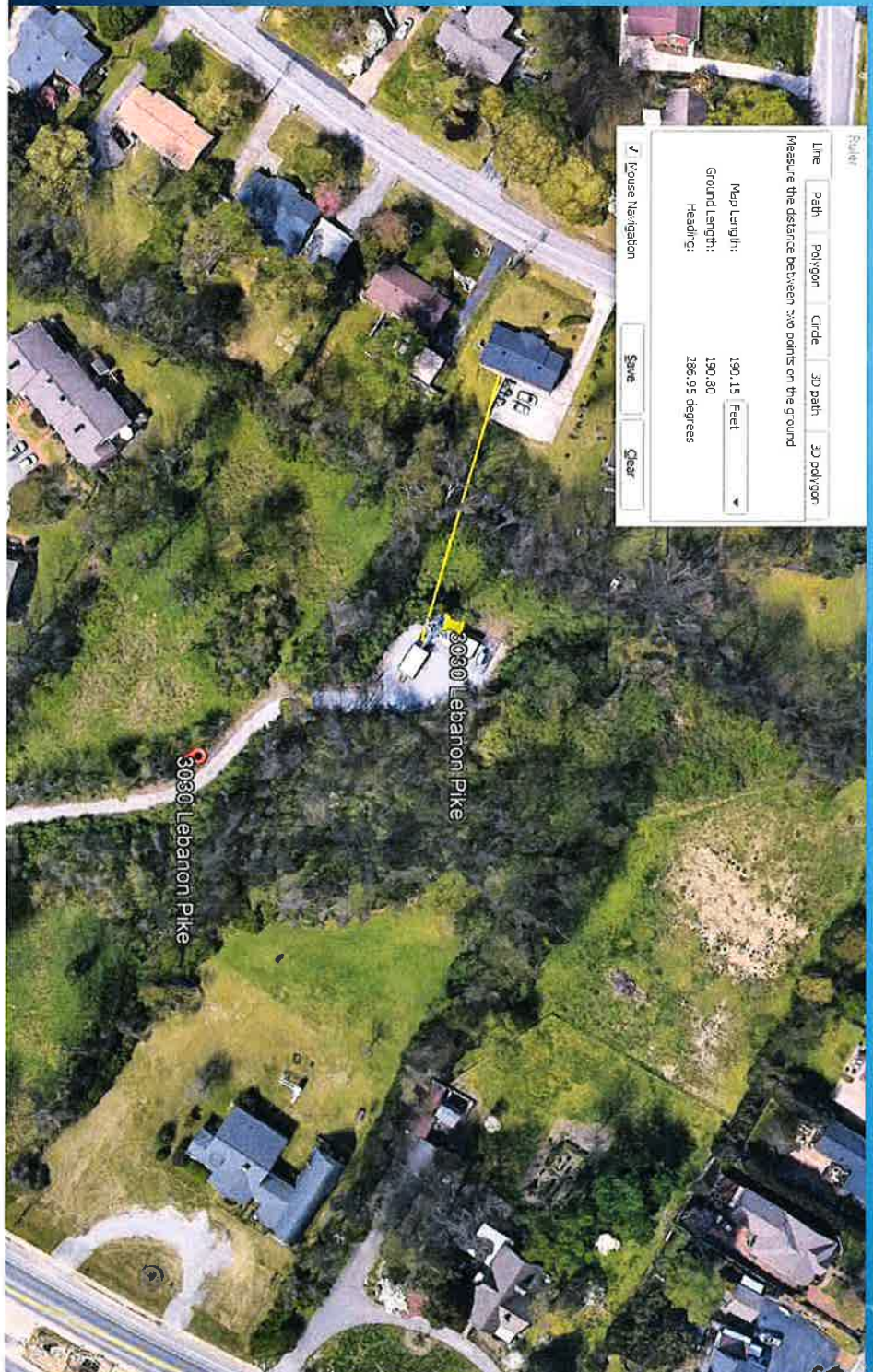
View from Jentry Drive



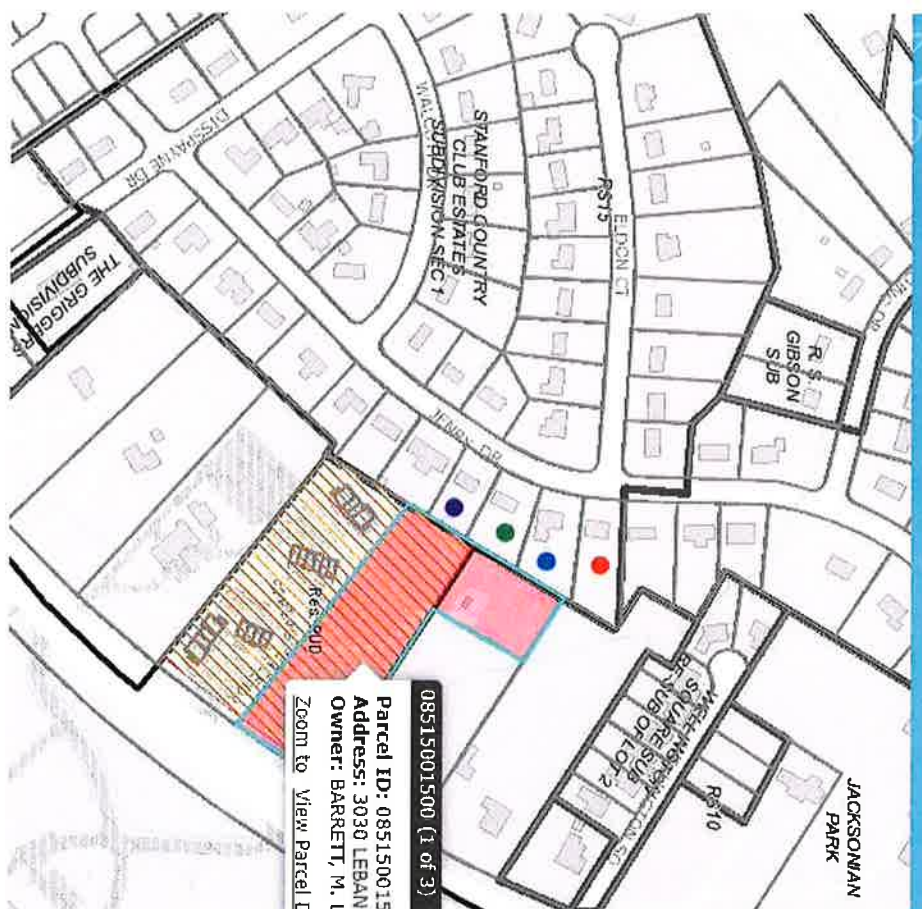
View from Jentry Drive

3030 LEBANON PIKE

• Tower is 190 feet from nearest residence



3030 LEBANON PIKE



08515001500 (1 of 3)
 Parcel ID: 085150015
 Address: 3030 LEBANON PIKE
 Owner: BARRETT, M. LEE, JR.
[Zoom to](#) [View Parcel Details](#)

Address	2005 Assessment	2013 Assessment	Current Value	% Change
3033 Jenry (Red)	\$120,200	\$161,300	\$201,700	40.4%
3031 Jenry (Blue)	\$156,500	\$205,600	\$253,800 (\$317,500 - 2019 sale)	38.3%
3029 Jenry (Green)	\$116,000	\$157,200	\$196,400	40.9%
3027 Jenry (Purple)	\$119,900	\$154,700	\$193,300	37.9%

Source: Metro Nashville Property Assessor's Office

CONCLUSION

- Proximity to wireless towers have no effect on property values
- All cases shown here show a large increase in growth of property values.
- Location of towers are all closer to residences than the subject tower.



Mail Processing Center
 Federal Aviation Administration
 Southwest Regional Office
 Obstruction Evaluation Group
 10101 Hillwood Parkway
 Fort Worth, TX 76177

Aeronautical Study No.
 2019-ASO-1546-OE

Issued Date: 05/24/2019

Lee Chapman
 SCI Towers
 PO Box 3469
 Cary, NC 27519

**** DETERMINATION OF NO HAZARD TO AIR NAVIGATION ****

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure:	Monopole Berryville
Location:	Old Hickory, TN
Latitude:	36-13-04.80N NAD 83
Longitude:	86-37-34.66W
Heights:	465 feet site elevation (SE) 173 feet above ground level (AGL) 638 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

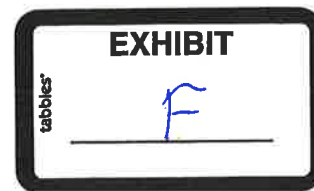
It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or:

- At least 10 days prior to start of construction (7460-2, Part 1)
 Within 5 days after the construction reaches its greatest height (7460-2, Part 2)

Based on this evaluation, marking and lighting are not necessary for aviation safety. However, if marking/lighting are accomplished on a voluntary basis, we recommend it be installed in accordance with FAA Advisory circular 70/7460-1 L Change 2.

This determination expires on 11/24/2020 unless:

- the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by this office.
- extended, revised, or terminated by the issuing office.
- the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.



NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, and frequencies or use of greater power, except those frequencies specified in the Colo Void Clause Coalition; Antenna System Co-Location; Voluntary Best Practices, effective 21 Nov 2007, will void this determination. Any future construction or alteration, including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA. This determination includes all previously filed frequencies and power for this structure.

If construction or alteration is dismantled or destroyed, you must submit notice to the FAA within 5 days after the construction or alteration is dismantled or destroyed.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

A copy of this determination will be forwarded to the Federal Communications Commission (FCC) because the structure is subject to their licensing authority.

If we can be of further assistance, please contact our office at (718) 553-2611, or angelique.eersteling@faa.gov. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2019-ASO-1546-OE.

Signature Control No: 394880693-406712219

(DNE)

Angelique Eersteling
Technician

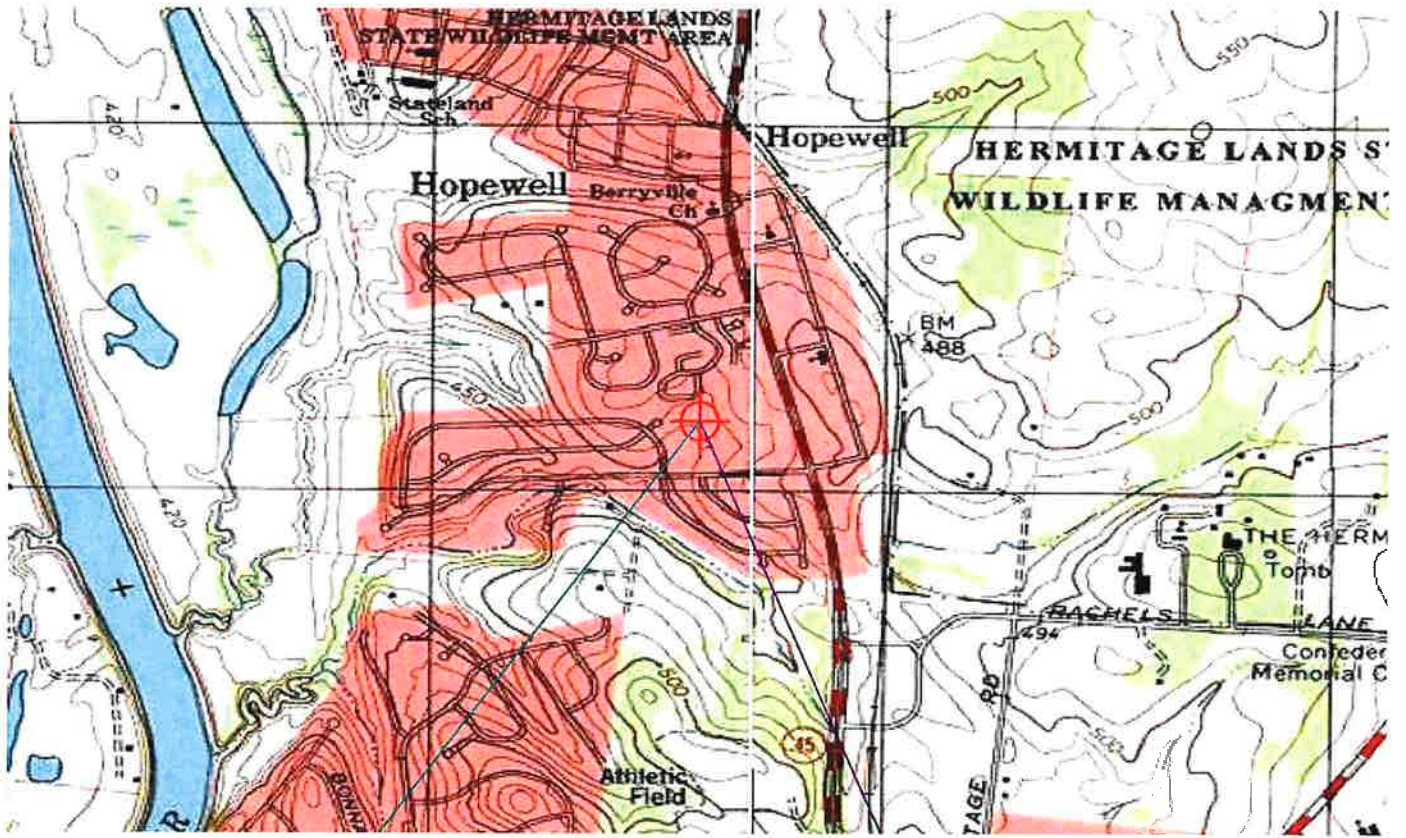
Attachment(s)
Frequency Data
Map(s)

cc: FCC

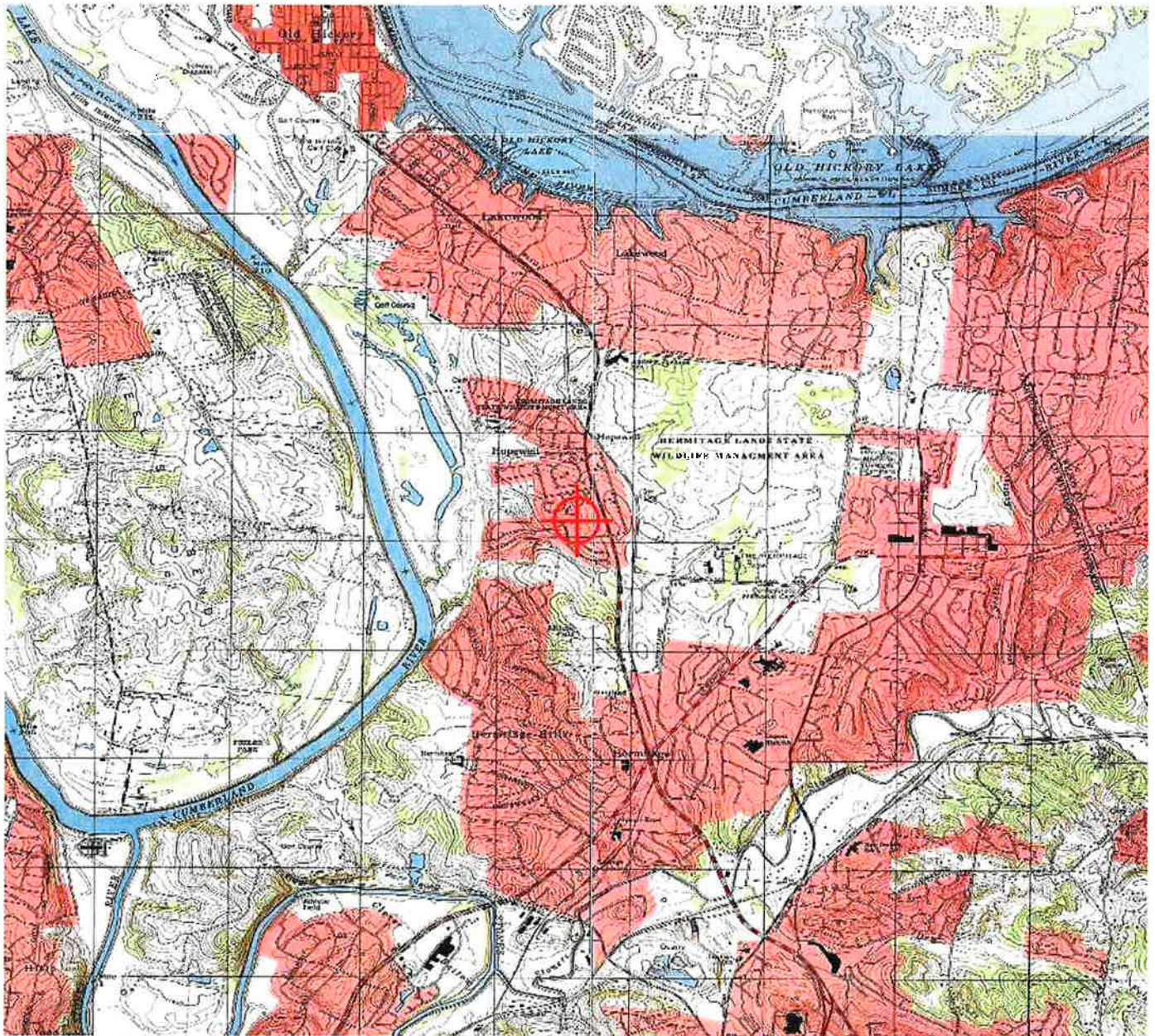
Frequency Data for ASN 2019-ASO-1546-OE

LOW FREQUENCY	HIGH FREQUENCY	FREQUENCY UNIT	ERP	ERP UNIT
6	7	GHz	55	dBW
6	7	GHz	42	dBW
10	11.7	GHz	55	dBW
10	11.7	GHz	42	dBW
17.7	19.7	GHz	55	dBW
17.7	19.7	GHz	42	dBW
21.2	23.6	GHz	55	dBW
21.2	23.6	GHz	42	dBW
614	698	MHz	1000	W
614	698	MHz	2000	W
698	806	MHz	1000	W
806	901	MHz	500	W
806	824	MHz	500	W
824	849	MHz	500	W
851	866	MHz	500	W
869	894	MHz	500	W
896	901	MHz	500	W
901	902	MHz	7	W
929	932	MHz	3500	W
930	931	MHz	3500	W
931	932	MHz	3500	W
932	932.5	MHz	17	dBW
935	940	MHz	1000	W
940	941	MHz	3500	W
1670	1675	MHz	500	W
1710	1755	MHz	500	W
1850	1910	MHz	1640	W
1850	1990	MHz	1640	W
1930	1990	MHz	1640	W
1990	2025	MHz	500	W
2110	2200	MHz	500	W
2305	2360	MHz	2000	W
2305	2310	MHz	2000	W
2345	2360	MHz	2000	W
2496	2690	MHz	500	W

Verified Map for ASN 2019-ASO-1546-OE

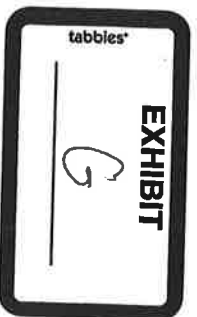


TOPO Map for ASN 2019-ASO-1546-OE

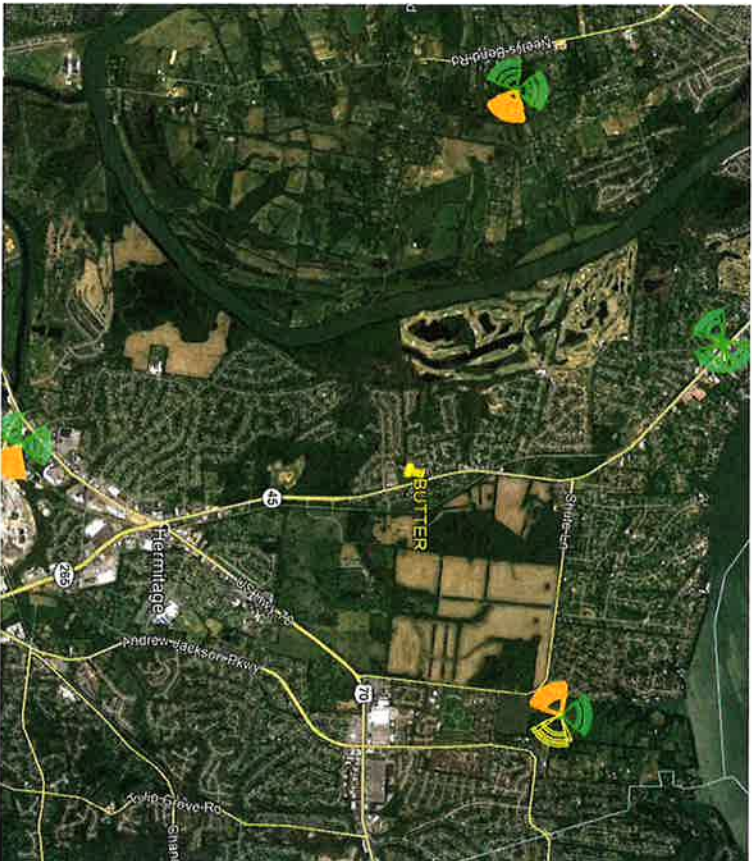


Butter RF Information

Verizon - RF



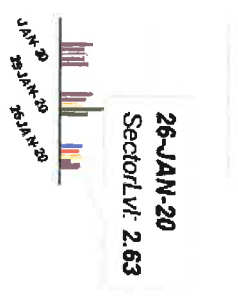
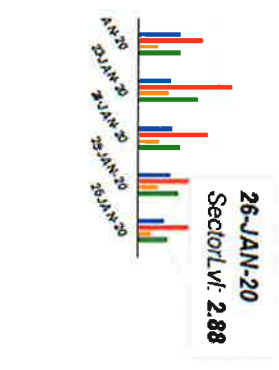
Area in Question



- Butter is a proposed macro spaced evenly between existing macros
- Macros that serve the area (east and west) have low throughput
 - This is represented by the orange pie shapes
 - Macro to the north does not have enough height to serve this area

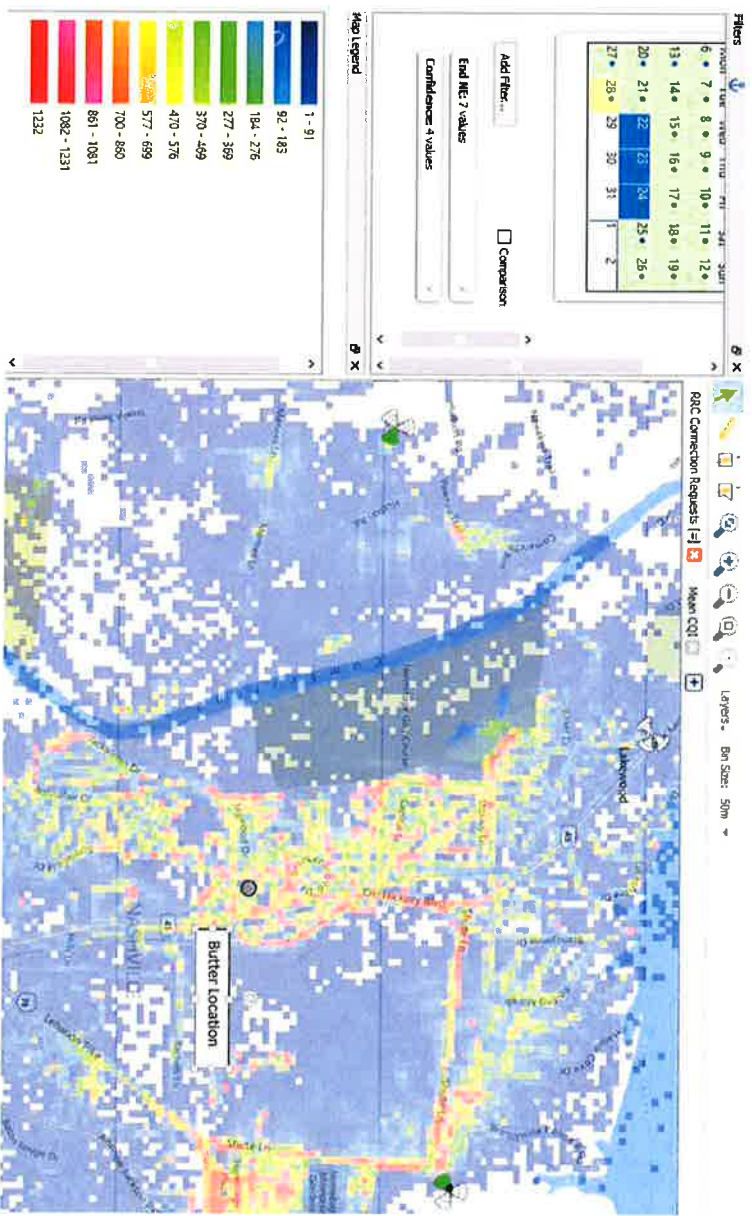
What speeds are we seeing?

- We want to look at the green bar since it takes into accounts all carriers on the existing macros
- Current speeds from Jan 26th are under 3Mbps
 - Verizon standard for a smooth customer experience is to be consistently above 4Mbps
 - In this case we have multiple days in a row under Verizon standard
- Customers are using more and more data each year
 - Overall data usage increased ~50% last year
 - If we do not provide more capacity, the network issues will get worse
- 4Mbps is the speed that Verizon has determined provides a good experience
 - This enables smooth social media pages as well as streaming video
 - Falling below this level leads to buffering and failures when the network is in heavy use



Why do we need a macro in this location?

- This is a heat-map from an internal Verizon tool
 - It is filtered on the macros with the slow throughput
 - This shows where people are using their phones
- Butter is located where both macros serve. It is a single solution for 2 network issues
 - Moving out of this area would require multiple other solutions to do the same job



**BERRYVILLE (146203) TOWER
DAVIDSON COUNTY, TENNESSEE
ARCHAEOLOGICAL MONITORING**



By: Nikki Mauro, MA, RPA and Garret Johnson, MA
Tower Engineering Professionals, Inc.
326 Tryon Road
Raleigh, NC 27603-3530

Lead Agency: Federal Communications Commission (FCC)

November 18, 2019

Tower Engineering Professionals, Inc. (TEP) is assisting SCI Towers with the construction of a proposed 140-ft (146-ft overall with appurtenances) monopole communications tower, to be located west off a portion of Old Hickory Boulevard, within the City of Nashville, in Davidson County, Tennessee (**Figure 1**). This project is located on a parcel of real estate identified as Parcel #06400010400 by the Davidson County Tax Assessor's Office. The project is identified by SCI Towers as Berryville (146203) and by the FCC as TCNS# 182291.

Tower Engineering Professionals, Inc. (TEP) SOI qualified archaeologists conducted archaeological monitoring, at the request of Cherokee Nation, for the initial ground disturbing associated with the construction of the tower compound and access & utility routes on November 11th, 12th and 18th, 2019 (**Figures 2-3**). A previous cultural resources assessment report was completed, with no cultural materials identified, and was submitted to Tennessee SHPO, interested tribes and local entities on March 6, 2017. Tennessee SHPO and the Andrew Jackson Foundation voiced concerns over the visual effects on Andrew Jackson's Hermitage located within the visual APE. The proposed tower height was eventually reduced, and new correspondence was submitted to Tennessee SHPO, interested tribes and local entities on May 24, 2019. Tennessee SHPO sent concurrence for the reduced tower height on June 6, 2019. Cherokee Nation requested that an archaeological professional be present throughout the ground-disturbing activities for the project.

TEP's SOI qualified archaeologist Nikki Mauro closely monitored the ground disturbing activities for evidence of cultural materials on November 11th and 12th. An excavator was used to clear major vegetation from the project area routes. The excavator malfunctioned on the 11th and the skid-steer loader was used for the remaining grading and clearing (**Figures 4-7**). Garrett Johnson, SOI qualified archaeologist of TEP, monitored continuing ground disturbance on November 18th. An excavator was used to dig out the 60-ft x 60-ft compound and continue grading the access & utility routes (**Figures 8-10**). A shallow rock layer was encountered approximately 10-ft below grade within the tower compound and jack hammer was used to break through the rock. In conclusion, no cultural materials were identified during the three (3) days of construction and no additional areas are anticipated to incur ground disturbance for the construction of the site.

As such, it is TEP's professional opinion that no further archaeological investigation of the location is necessary. If you have any questions or comments, please feel free to contact me at (919-263-3738) or nmauro@tepgroup.net.

Sincerely and respectfully,

Nikki Mauro, MA, RPA
Cultural Resources Staff Archaeologist - Tower Engineering Professionals, Inc.



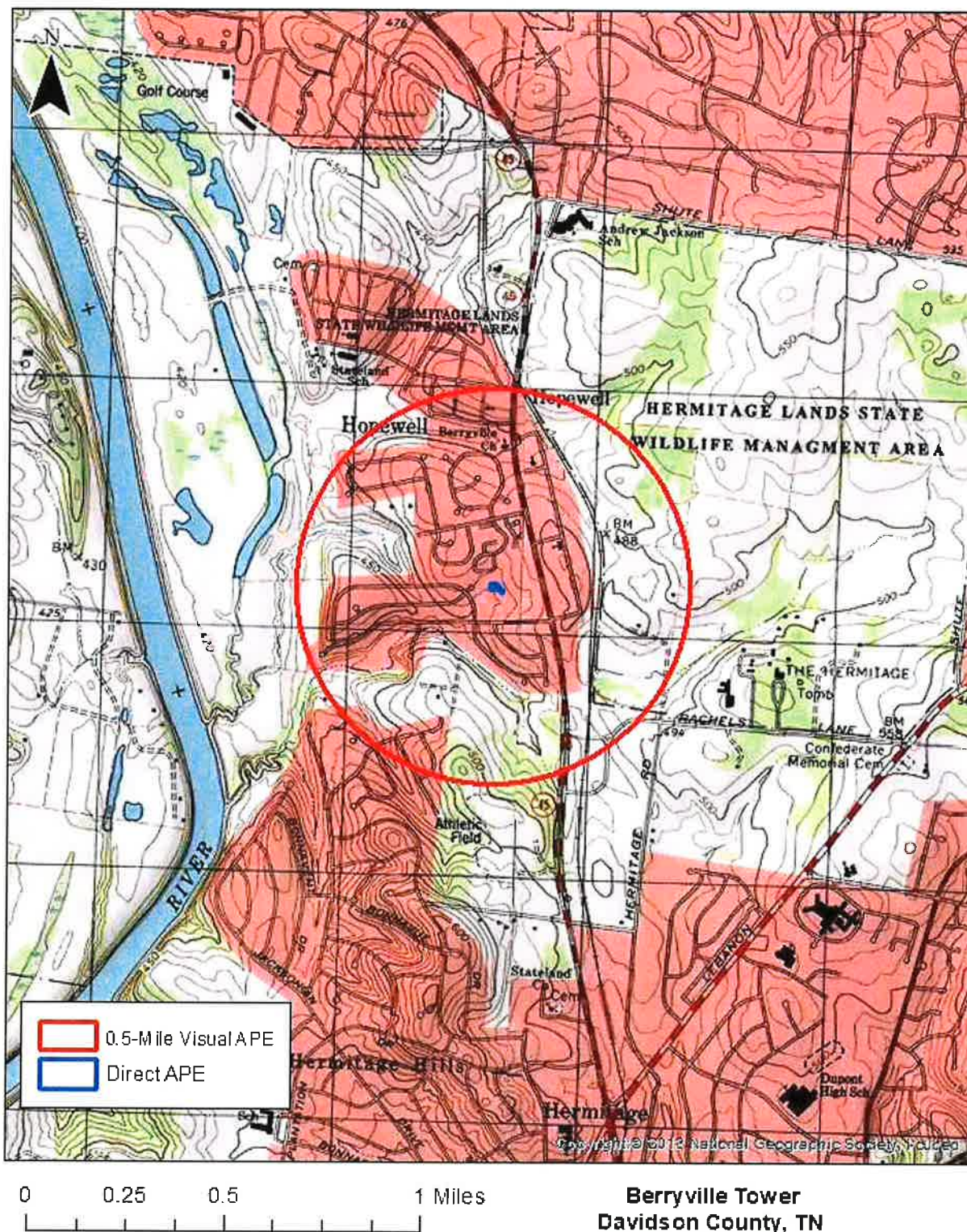


Figure 1: Project Location (Nashville East and Hermitage, TN USGS 7.5-Minute Topographic Quadrangles).



Figure 3: Aerial Photograph of Area Monitored



Figure 4: Excavator Clearing Major Vegetation on November 11th, 2019; view west



Figure 5: Conclusion of Clearing and Grading on November 11th, 2019; view west



Figure 6: Conclusion of Clearing and Grading on November 11th, 2019; view east



Figure 7: Conclusion of Clearing and Grading on November 12th, 2019; view west



Figure 8: Excavated Compound on November 18th, 2019



Figure 9: Cleared and graded project area on November 18th, 2019



Figure 10: Extended excavation to remove extensive rock

Metropolitan Board of Zoning Appeals

Metro Howard Building
800 Second Avenue South
Nashville, Tennessee 37210

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY



Appellant: Rolando Lopez / Leoncio Dominguez
Property Owner: Rolando Lopez
Representative: Krystal Lopez

Date: 11/18/2019
Case #: 2020- 005
Map & Parcel: 11903000900

Council District 16

The undersigned hereby appeals from the decision of the Zoning Administrator, wherein a Zoning Permit/Certificate of Zoning Compliance was refused:

Purpose: To permit 3 structure built without permits

Activity Type: RES. CONSTRUCTION

Location: 104 DESOTO

This property is in the RS10 Zone District, in accordance with plans, application and all data heretofore filed with the Zoning Administrator, all of which are attached and made a part of this appeal. Said Zoning Permit/Certificate of Zoning Compliance was denied for the reason:

Reason: SIDE SETBACK, REAR SETBACK AND BUILDABLE FOOTPRINT VARIANCES

Section(s): 17.12.020A, 17.12.040 E1b., 17.12.050A

Based on powers and jurisdiction of the Board of Zoning Appeals as set out in Section 17.40.180 Subsection _____ Of the Metropolitan Zoning Ordinance, a Variance, Special Exception, or Modification to Non-Conforming uses or structures is here by requested in the above requirement as applied to this property.

Rolando Lopez
Appellant Name (Please Print)

Krystal Lopez
Representative Name (Please Print)

104 Desoto Dr.
Address

104 Desoto Dr.
Address

Nashville, TN 37210
City, State, Zip Code

Nashville, TN 37210
City, State, Zip Code

(615) 496-8043
Phone Number

(615) 484-5075
Phone Number

Email

Krystaldereyes2016@gmail.com
Email

Zoning Examiner: LB

Appeal Fee: \$ 100

APPLICATION FOR A VARIANCE REQUEST

After your appeal is filed, Zoning staff will visit the site to take photographs for the Board members. So they will have a better ideal of the nature of your request. Zoning staff will notify the district council member of the hearing. You will be responsible for preparing the envelopes and notices for mailing to the owners of property within 1,000 feet pf the property at issue in the case. The envelopes must include the return address for the BZA and case number. Fold and insert notices into envelopes, seal the envelopes, and apply first class postage. These neighbor notices must be delivered to Zoning staff at least twenty-three (23) days before the public hearing. Additionally, you will be responsible for purchasing, posting, and removing the red Zoning Appeal signs for the subject property. (See attached Metro Code of Laws requirements regarding, sign placement.)

The day of the public hearing, it will be your responsibility to convey to the Board the nature of the hardship in your request that makes it difficult/impossible for you to comply with the Zoning Code. **It would be to your benefit to let your neighbors know about your request prior to all notices being sent to them from our office.**

Any party can appeal the Board's decision to Chancery or Circuit Court within sixty (60) days from the date the order in the case is entered. **Should your request be granted, we would remind you that it is your responsibility to obtain the permit for which you have applied.** You should also be aware that you have two (2) years to obtain the permit or you would have to re-file your request with the board.

Once your request is filed, the staff will review your request to verify that the submittal is complete. Incomplete submittals will not be scheduled for hearing until complete.

Any correspondence to the Board must be submitted to our office by noon, the Friday prior to the public hearing to be included in the record. You must provide eight (1) copy of your information to staff.

I am aware that I am responsible for posting and removing the sign(s) after the public hearing.

Rolando M Lopez
APPELLANT

11-18-19
DATE

In Simple terms, for the Board to grant you a variance in the zoning ordinance, you must convey to the Board what your hardship is. Hardships are narrowness, shallowness, irregular shape, and topography of property. The Board can also consider other practical difficulties such as mature trees, easements, and location of disposal systems which can affect your plan. Consideration can be given to the characteristics of neighborhood and the way it is developed. One or more of these conditions must affect your inability to build or occupy the property to provide your case.

At the public hearing, please be prepared to tell the Board what your hardship is, why you cannot build in accordance with zoning without requesting a variance and why you feel you have legitimate hardship.

The Board cannot grant a variance based solely on inconvenience to the applicant or solely on a financial consideration. It is incumbent on you as the appellant to complete this form by conveying a **HARDSHIP** as outlined. At the meeting it is important that you explain this hardship as effectively as possible.

WHAT SPECIFIC AND UNIQUE CIRCUMSTANCES (HARDSHIP) EXIST THAT WOULD AUTHORIZE THE CONSIDERATION OF THE BOARD UNDER THE REVIEW STANDARDS AS OUTLINED?

It would be very difficult and costly to bring to compliance these buildings that have already been built. My disability check is \$765. a month.

1) The building/shed in the back left of property was built at same distance at back of property as the existing shed built in 1955.

2) The car port will not allow cars to drive through it if I have to have 5' side setback

3) The shed in the back right of property is for their cars

Standards for a Variance

The Metropolitan Board of Zoning Appeals may grant variances from the strict application of the provisions of the Zoning Code based upon findings of fact related to the standards in section 17.40.370. This Section is included as follows:

Physical Characteristics of the property- The exceptional narrowness, shallowness or shape of a specific piece of property, exceptional topographic condition, or other extraordinary and exceptional condition of such property would result in peculiar and exceptional practical difficulties to, or exceptional or undue hardship upon the owners of such property.

Unique characteristics- *The specific conditions cited are unique to the subject property and generally not prevalent to other properties in the general area.*

Hardship not self-imposed- The alleged difficulty or hardship has not been created by the previous actions of any person having an interest in the property after date of Zoning Code.

Financial gain not only bases- Financial gain is not the sole basis for granting the variance.

No injury to neighboring property- The granting of a variance will not be injurious to other property or improvements in the area, impair and adequate supply of light and air to adjacent property, or substantially diminish or impair property values within the area.

No harm to public welfare- *The granting of the variance will not be detrimental to the public welfare and will not substantially impair the intent and purpose of this Zoning Code.*

Integrity of Master Development Plan- *The granting of a variance will not compromise the design integrity or functional operation of activities or facilities within an approved Planned Unit Development.*

The Board shall not grant variances to the land use provisions of section 2.3, nor the density of Floor Area Ratio (FAR) standards of Tables 3-B and 2-C, nor the required size of residential lots approved by the Planning Commission under the authority of section 3.7 (Lot Averaging), section 3.8 (Cluster Lot Option) or Section 9. E.3 (PUD). Further the Board shall not act on a variance application within a Planned Unit Development (PUD), Urban Design Overlay or Institutional Overlay district without first considering a recommendation from the Planning Commission.



**Metropolitan Government
of Nashville and Davidson County, Tennessee
Department of Codes and Building Safety
800 Second Avenue South, Nashville, TN 37210**



3733224

**ZONING BOARD APPEAL / CAAZ - 20190070559
Inspection Checklist for Use and Occupancy
This is not a Use and Occupancy Notification**

PARCEL: 11903000900

APPLICATION DATE: 11/18/2019

SITE ADDRESS:

104 DESOTO DR NASHVILLE, TN 37210
LOT 21 MERTIE MILWEE

PARCEL OWNER: LOPEZ, ROLANDO M.

CONTRACTOR:**APPLICANT:****PURPOSE:**

Requesting Variances for 3 structures built without permits.(structure 1) 17.12.020A required 5 ft side setback for Carport, requesting 0 ft side setback. (structure 2) 17.12.040 A1b. required 10 ft rear setback per easement on plat for 20 ft x 30 ft shed, requesting 4 ft rear setback. (structure 3) 17.12.040 A1b. required 10 ft rear setback per easement on plat for 20 ft x 30 ft shed, requesting 4 ft rear setback AND 17.12.050 A Maximum building coverage allowed is 858 sq ft for accessory structures on parcel and 792 sq ft of accessory structures already exist leaving 66 sq ft of remaining buildable area. Requesting approval of addition 192 sq ft.

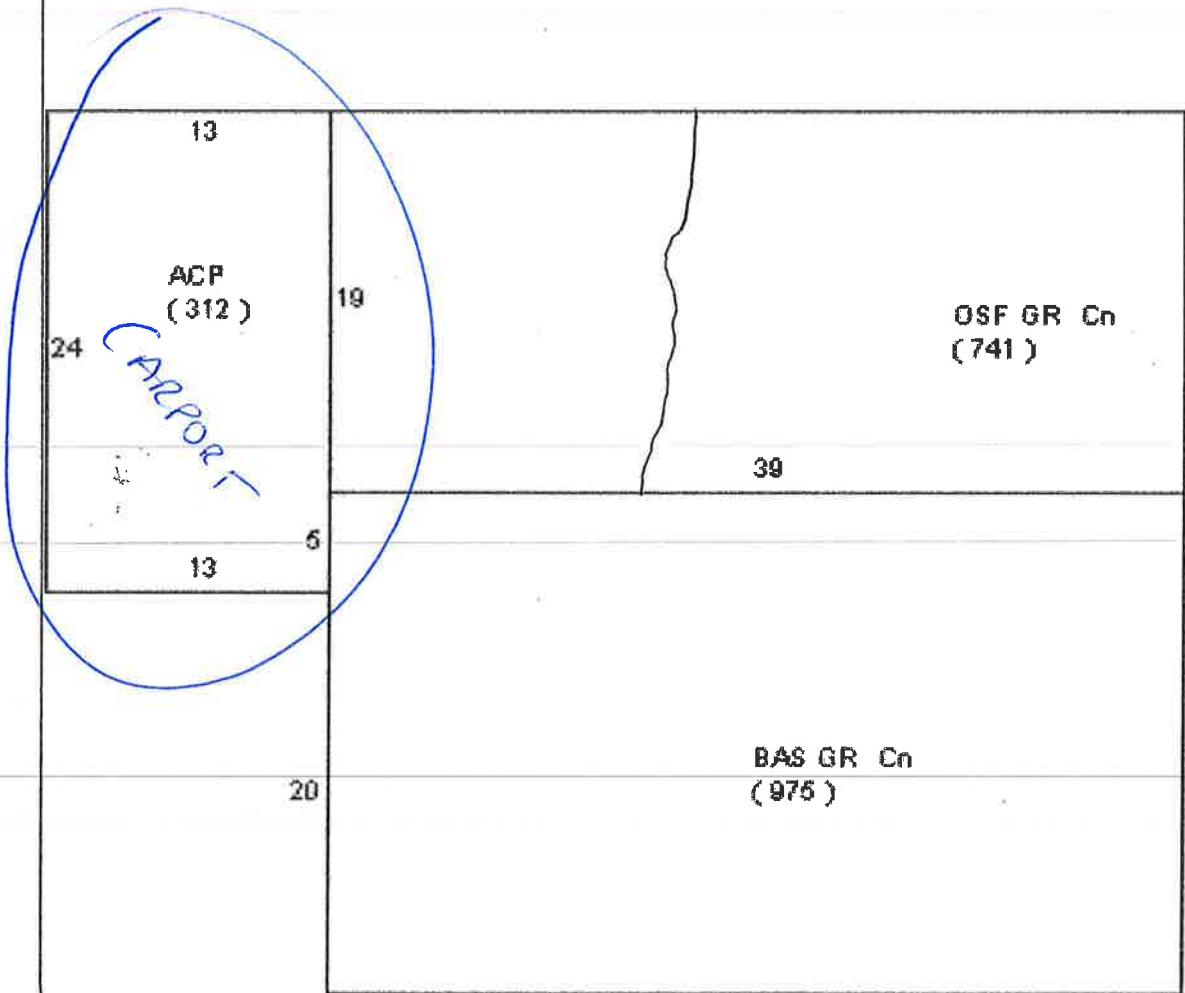
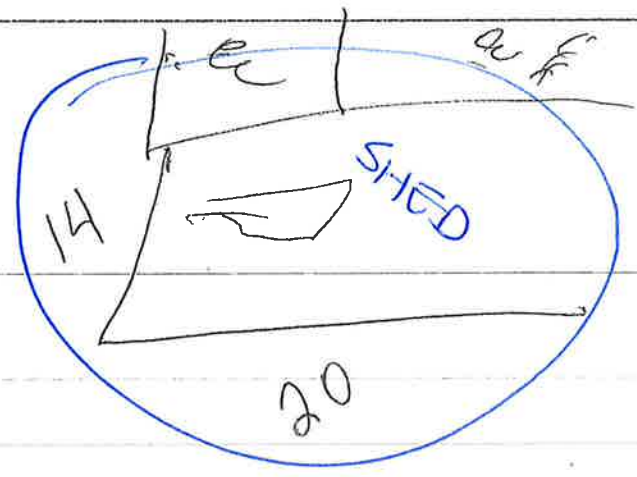
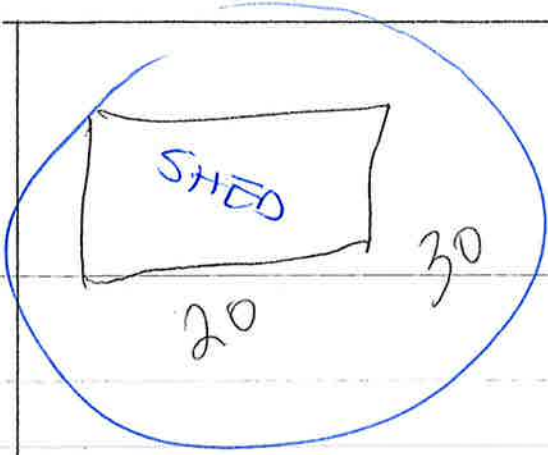
3 Permit Applications: 2019070539/2019070543/201905553

POC: Cristal Lopez 615-484-5075

*Before a Use and Occupancy Letter can be issued for this project, the following approvals are required.
Inspections Foundation = before concrete poured, Framing = before covering wall and after rough-in inspections.*

There are currently no required inspections

Inspection requirements may change due to changes during construction.



104

Desoto Dr

Nashville / Davidsor



November 18, 2019

Ownership Parcels

- Planned Unit Development
- Urban Design Overlay District
- Zoning

January 23, 2020

Board of Zoning Appeals
Metro Office Building
800 Second Avenue – South
P. O. Box 196300
Nashville, TN. 37219-6300

RE: Appeal Case Number 2020-005
 104 Desoto Drive
Map Parcel: 119030009000
Zoning Classification: RS10
Council District: 16

We, Thomas and Gail Jones have taken the opportunity to view the property in question and it is our request that the Lopez appeal be denied. It is our belief that to grant this request would visually harm and depreciate the value of the surrounding properties, ours included.

We have enjoyed living in this neighborhood for the past 45 years and while we are not against changes as a whole, we do not want to see our property values decrease.

Thank you for your consideration in this matter and we look forward to hearing the outcome of the appeal.

Sincerely,

A handwritten signature in blue ink that reads "Gail C. Jones". The signature is written in a cursive style with a large, sweeping initial "G".

Thomas Jones and Gail Jones
132 Stirton Road
Nashville, TN. 37210

Metropolitan Board of Zoning Appeals

Metro Howard Building
800 Second Avenue South
Nashville, Tennessee 37210



Appellant: Bard Graham

Date: 12/6/19

Property Owner: 11/Lone Oak Properties

Case #: 2020-024

Representative: Bard Graham

Map & Parcel: 105092I 00100C6

Council District 17

The undersigned hereby appeals from the decision of the Zoning Administrator, wherein a Zoning Permit/Certificate of Zoning Compliance was refused:

Purpose:

Construction of Unit #6 within
a 6 UNIT BUILDING WITH 4 STORIES.
Construction on Permit 2019024802 / MASTER 2018075024

Activity Type: Commercial

Location: 1033 WEDGEWOOD AVE #4

This property is in the RM20-A Zone District, in accordance with plans, application and all data heretofore filed with the Zoning Administrator, all of which are attached and made a part of this app. The primary entrance location required in 17.12.020 D note 3.c was denied for the reason: The glazing requirements of 17.12.020 D note 3.g

Reason:

The percentage of the building along the parcel frontage required in 17.12.020 Height AT BUILD-TO-ZONE, STEPPACK, D note 3.h.ii.
AND MAXIMUM HEIGHT

Section(s): 17.12.020D

Based on powers and jurisdiction of the Board of Zoning Appeals as set out in Section 17.40.180 Subsection B Of the Metropolitan Zoning Ordinance, a Variance, Special Exception, or Modification to Non-Conforming uses or structures is here by requested in the above requirement as applied to this property.

Bard Graham
Appellant Name (Please Print)

11
Representative Name (Please Print)

4204 Lone Oak Rd
Address

11
Address

Nash. TN 37215
City, State, Zip Code

11
City, State, Zip Code

615.804.7008
Phone Number

11
Phone Number

bard@bgc-construction.com
Email

11
Email

Zoning Examiner: [Signature]

Appeal Fee: _____



**Metropolitan Government
of Nashville and Davidson County, Tennessee
Department of Codes and Building Safety
800 Second Avenue South, Nashville, TN 37210**



**ZONING BOARD APPEAL / CAAZ - 20190074767
Inspection Checklist for Use and Occupancy
This is not a Use and Occupancy Notification**

PARCEL: 105092I00100CO

APPLICATION DATE: 12/06/2019

SITE ADDRESS:

1033 WEDGEWOOD AVE 6 NASHVILLE, TN 37203
UNIT 1 HOMES ON WEDGEWOOD AVENUE

PARCEL OWNER: LONE OAK PROPERTIES, LLC

CONTRACTOR:

APPLICANT:

PURPOSE:

Unit #6 within attached 4-Story, 6 Unit Residential Building. Construction started on Permit 2019024802. Master Permit 2018075024.

Variance to 17.12.020D Maximum 30 ft Height in Build-To-Zone, 15 ft minimum Step Back, and 45 ft maximum Height. Requesting height of 47'-2" in Build-to-Zone, no step back, and overall height of 47'-2".

- The primary entrance location required in 17.12.020 D note 3.c
- The glazing requirements of 17.12.020 D note 3.g
- The percentage of the building along the parcel frontage required in 17.12.020 D note 3.h.ii.

POC: Baird Graham 615-804-7008

*Before a Use and Occupancy Letter can be issued for this project, the following approvals are required.
Inspections Foundation = before concrete poured, Framing = before covering wall and after rough-in inspections.*

There are currently no required inspections

- Inspection requirements may change due to changes during construction.



**Metropolitan Government
of Nashville and Davidson County, Tennessee
Department of Codes and Building Safety
800 Second Avenue South, Nashville, TN 37210**



**BUILDING RESIDENTIAL - NEW / CARN - 2019024802
Inspection Checklist for Use and Occupancy
This is not a Use and Occupancy Notification**

PARCEL: 105092100100CO

APPLICATION DATE: 04/29/2019

SITE ADDRESS:

1033 WEDGEWOOD AVE 6 NASHVILLE, TN 37203
UNIT 1 HOMES ON WEDGEWOOD AVENUE

PARCEL OWNER: LONE OAK PROPERTIES, LLC

CONTRACTOR:

APPLICANT: GRAHAM, BAIRD COMPANY LLC, THE

GRAHAM, BAIRD COMPANY LLC, THE 57309 STBC-A

NASHVILLE, TN 37215 615-804-7008

PURPOSE:

to construct 2244Sf single family residence with 416Sf garage and 152SF porch. Master permit T2018075024. Not to be over any easements. Pursuant # 2006-1263 Metrocode of Laws, I (holder OF permit) hereby certify that all construction & demolition waste generated by any & all activities governed by this permit shall be disposed of in an approved landfill. Further, I certify that no construction & demolition waste shall be stored on the property in violation of any provision of Metro Code.; For every 30 feet of street frontage, or fraction thereof, one 2 inch caliper tree as listed in the Urban Forestry approved tree list shall be planted on the subject property. For every 50 feet of site frontage, a double-sided sign 24" x 36" in size must be posted in English and Spanish that contains the information required by Ordinance No. 2017-835. No more than three signs are required.***

Before a Use and Occupancy Letter can be issued for this project, the following approvals are required.

Inspections Foundation = before concrete poured, Framing = before covering wall and after rough-in inspections.

[B] Fire Sprinkler Review On Bldg App	615-862-5230
U&O Sewer Availability Final Approval	mws.ds@nashville.gov
WS Existing Service Cut and Capped	615-862-7225 mws.ds@nashville.gov
U&O Water Availability Final Approval	mws.ds@nashville.gov
WS Existing Service Cut and Capped	615-862-7225 mws.ds@nashville.gov
Building Framing - Ceiling	Charles.Hayes@nashville.gov
Building Floor Elevation	Charles.Hayes@nashville.gov
Building Footing	Charles.Hayes@nashville.gov
Building Foundation	Charles.Hayes@nashville.gov
Building Framing	Charles.Hayes@nashville.gov
Building Framing - Wall	Charles.Hayes@nashville.gov
CA Building Progress Inspection	Charles.Hayes@nashville.gov
Building Slab	Charles.Hayes@nashville.gov
Building Final	Charles.Hayes@nashville.gov
Codes Tree U&O Final Inspection	
U&O Letter	615-862-6527 tawanna.dalton@nashville.gov

Inspection requirements may change due to changes during construction.



**Metropolitan Government
of Nashville and Davidson County, Tennessee
Department of Codes and Building Safety
800 Second Avenue South, Nashville, TN 37210**



3582935

**BUILDING USE & OCCUPANCY / CAUO - 2018075024
Inspection Checklist for Use and Occupancy
This is not a Use and Occupancy Notification**

PARCEL: 10509028900

APPLICATION DATE: 11/30/2018

SITE ADDRESS:

1033 WEDGEWOOD AVE NASHVILLE, TN 37203
PT. LOT 31 A V JONES SUB PT CLOSED ST

PARCEL OWNER: LONE OAK PROPERTIES, LLC

CONTRACTOR:

APPLICANT: GRAHAM, BAIRD COMPANY LLC, THE

GRAHAM, BAIRD COMPANY LLC, THE/309 STBC-B-SM

NASHVILLE, TN 37215 615-804-7008

PURPOSE:

Master permit for 1033 Wedgewood Avenue to consist of six (6) residences. Tony Snyder 615-383-1699 Note that this is a multifamily residential unit 4 stories in height and will fall under IBC jurisdiction and NOT under the IRC.

*Before a Use and Occupancy Letter can be issued for this project, the following approvals are required.
Inspections Foundation = before concrete poured, Framing = before covering wall and after rough-in inspections.*

U&O Life Safety Final Approval	615-862-5230 FMORrequest@nashville.gov
[B] Fire Sprinkler Review On Bldg App	615-862-5230
CA - U&O Fire Sprinkler Final Approval	615-862-5230 FMORrequest@nashville.gov
SWGR U&O Sign-off	615-862-7225 mws.stormdr@nashville.gov
U&O Cross Connect Final Approval	mws.ds@nashville.gov
U&O Landscaping & Tree Final Approval - CA	615-862-6488 stephan.kivett@nashville.gov
U&O Sewer Availability Final Approval	mws.ds@nashville.gov
WS Existing Service Cut and Capped	615-862-7225 mws.ds@nashville.gov
U&O Water Availability Final Approval	mws.ds@nashville.gov
WS Existing Service Cut and Capped	615-862-7225 mws.ds@nashville.gov
Commercial Building Footing	John.Puckett@nashville.gov
Commercial Building Framing	John.Puckett@nashville.gov
Commercial Building Framing - Wall	John.Puckett@nashville.gov
Commercial Building Framing -Ceiling	John.Puckett@nashville.gov
CA - Commercial BLDG Framing - Above Ceiling Re-insp	
Commercial Building Floor Elevation	John.Puckett@nashville.gov
Commercial Building Progress	John.Puckett@nashville.gov
Commercial Building Slab	John.Puckett@nashville.gov
Commercial Temporary Final	John.Puckett@nashville.gov
Commercial Building Final	John.Puckett@nashville.gov
U&O PW Sidewalk FA - CA Final Approval	615-862-8758 Benjamin.york@nashville.gov
U&O Letter	615-862-6527 tawanna.dalton@nashville.gov
U&O PW Sidewalk FA - CA Final Approval	615-862-8758 Benjamin.york@nashville.gov

Inspection requirements may change due to changes during construction.

APPLICATION FOR A VARIANCE REQUEST

After your appeal is filed, Zoning staff will visit the site to take photographs for the Board members. So they will have a better ideal of the nature of your request. Zoning staff will notify the district council member of the hearing. You will be responsible for preparing the envelopes and notices for mailing to the owners of property within 1,000 feet pf the property at issue in the case. The envelopes must include the return address for the BZA and case number. Fold and insert notices into envelopes, seal the envelopes, and apply first class postage. These neighbor notices must be delivered to Zoning staff at least twenty-three (23) days before the public hearing. Additionally, you will be responsible for purchasing, posting, and removing the red Zoning Appeal signs for the subject property. (See attached Metro Code of Laws requirements regarding, sign placement.)

The day of the public hearing, it will be your responsibility to convey to the Board the nature of the hardship in your request that makes it difficult/impossible for you to comply with the Zoning Code. **It would be to your benefit to let your neighbors know about your request prior to all notices being sent to them from our office.**

Any party can appeal the Board's decision to Chancery or Circuit Court within sixty (60) days from the date the order in the case is entered. **Should your request be granted, we would remind you that it is your responsibility to obtain the permit for which you have applied.** You should also be aware that you have two (2) years to obtain the permit or you would have to re-file your request with the board.

Once your request is filed, the staff will review your request to verify that the submittal is complete. Incomplete submittals will not be scheduled for hearing until complete.

Any correspondence to the Board must be submitted to our office by noon, the Friday prior to the public hearing to be included in the record. You must provide eight (1) copy of your information to staff.

I am aware that I am responsible for posting and removing the sign(s) after the public hearing.



APPELLANT

12.6.19
DATE

Standards for a Variance

The Metropolitan Board of Zoning Appeals may grant variances from the strict application of the provisions of the Zoning Code based upon findings of fact related to the standards in section 17.40.370. This Section is included as follows:

Physical Characteristics of the property- The exceptional narrowness, shallowness or shape of a specific piece of property, exceptional topographic condition, or other extraordinary and exceptional condition of such property would result in peculiar and exceptional practical difficulties to, or exceptional or undue hardship upon the owners of such property.

Unique characteristics- *The specific conditions cited are unique to the subject property and generally not prevalent to other properties in the general area.*

Hardship not self-imposed- The alleged difficulty or hardship has not been created by the previous actions of any person having an interest in the property after date of Zoning Code.

Financial gain not only bases-Financial gain is not the sole basis for granting the variance.

No injury to neighboring property- The granting of a variance will not be injurious to other property or improvements in the area, impair and adequate supply of light and air to adjacent property, or substantially diminish or impair property values within the area.

No harm to public welfare- *The granting of the variance will not be detrimental to the public welfare and will not substantially impair the intent and purpose of this Zoning Code.*

Integrity of Master Development Plan- *The granting of a variance will not compromise the design integrity or functional operation of activities or facilities within an approved Planned Unit Development.*

The Board shall not grant variances to the land use provisions of section 2.3, nor the density of Floor Area Ratio (FAR) standards of Tables 3-B and 2-C, nor the required size of residential lots approved by the Planning Commission under the authority of section 3.7 (Lot Averaging), section 3.8 (Cluster Lot Option) or Section 9. E.3 (PUD). Further the Board shall not act on a variance application within a Planned Unit Development (PUD), Urban Design Overlay or Institutional Overlay district without first considering a recommendation from the Planning Commission.

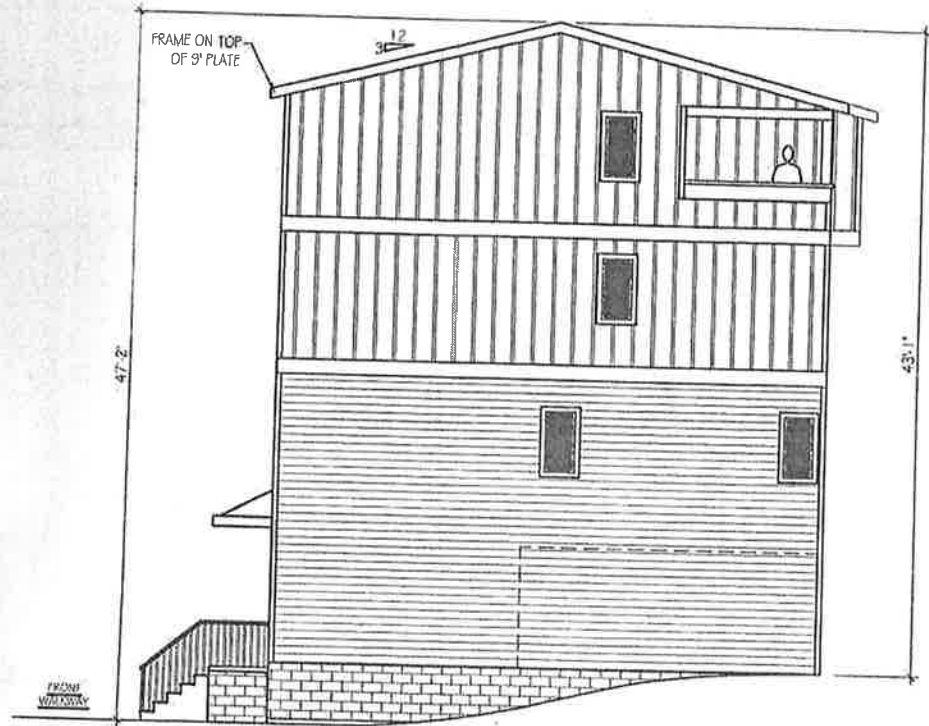
In Simple terms, for the Board to grant you a variance in the zoning ordinance, you must convey to the Board what your hardship is. Hardships are narrowness, shallowness, irregular shape, and topography of property. The Board can also consider other practical difficulties such as mature trees, easements, and location of disposal systems which can affect your plan. Consideration can be given to the characteristics of neighborhood and the way it is developed. One or more of these conditions must affect your inability to build or occupy the property to provide your case.

At the public hearing, please be prepared to tell the Board what your hardship is, why you cannot build in accordance with zoning without requesting a variance and why you feel you have legitimate hardship.

The Board cannot grant a variance based solely on inconvenience to the applicant or solely on a financial consideration. It is incumbent on you as the appellant to complete this form by conveying a HARDSHIP as outlined. At the meeting it is important that you explain this hardship as effectively as possible.

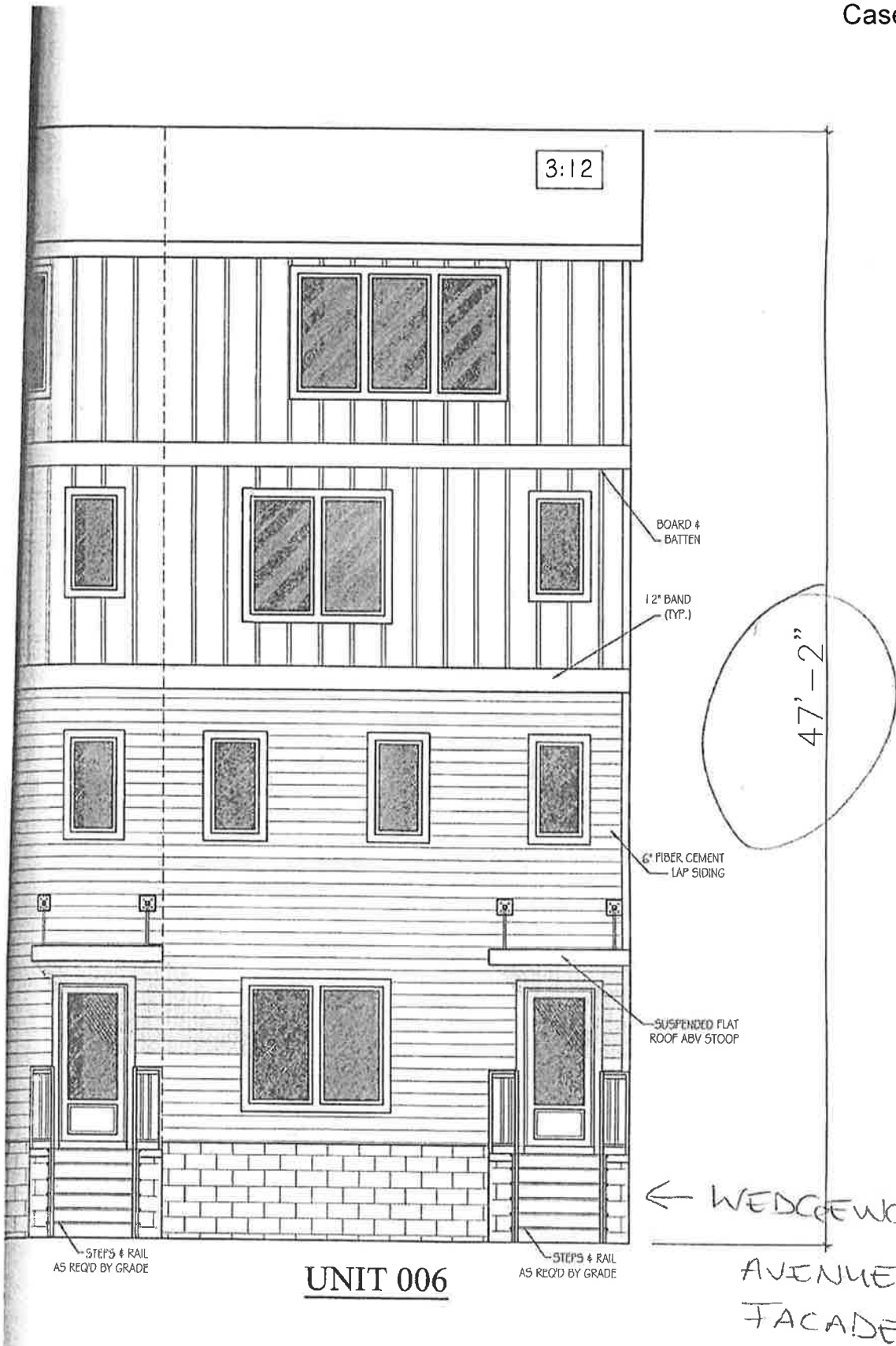
WHAT SPECIFIC AND UNIQUE CIRCUMSTANCES (HARDSHIP) EXIST THAT WOULD AUTHORIZE THE CONSIDERATION OF THE BOARD UNDER THE REVIEW STANDARDS AS OUTLINED?

Plans were submitted & approved as submitted & built. We were put on stop work order bc of height restrictions. This unit would have to be demolished down to a new height after being approved on multiple levels of times. We are more than willing to change front facade elevation as well as any suggestions.



RIGHT SIDE ELEVATION

SCALE: $\frac{1}{8}" = 1'-0"$



k Properties LLC
 ley Rd. St 12
 Grove, IL 60516
 ick Kirhofer

gineer
 yder
 engineering pllc
 nce Lane
 , Tennessee 37210
 .1699
 ler@comcast.net

il McRae & Assoc.
 ry Hill Dr.
 , TN 37204
 .2424

TIES

ric Service
 ville Electric Service
 Church St.
 ville, Tennessee 37246
 'alley 615-747-3261

r Service
) Water Service
 2nd Ave. N
 ville, Tennessee 37208
 tian Thompson -615-862-7229

r Service
) Water Service
 2nd Ave. N
 ville, Tennessee 37208
 62-4598

Service
 nont Natural Gas
 '52-7504

ssese One Call 800-351-1111

Building Application NO. : CAUO - T2018075024
 Permit NO. : SWCP - T2018073578



LOCATION: 1033 WEDGEWOOD
 PERMIT NO. 2018075024 FILE

228 Spel Nashville	
RECEIVED MAR 25 2019 DEPT. OF CODES ADMINISTRATION	
TITLE 1033 WEDGEWOOD 1033 Wedgewood Avenue 17th COUNCILMANIC DISTRICT NASHVILLE, DAVIDSON COUNTY, TENNESSEE	
DR.	DESCRIPTION
MSM	TR01 METRO COMMENTS
MSM	TR02 METRO COMMENTS
MSM	TR03 METRO COMMENTS
CHK.	DATE
APS	01/04/2019
APS	02/08/2019
APS	03/07/2019
FILE NO. 1113-04	

THIS SET
AT JOB

THIS SET OF PLANS TO BE AVAILABLE
AT JOB SITE DURING CONSTRUCTION

2018075024
 MASTER PERMIT

Metropolitan Board of Zoning Appeals

Metro Howard Building
800 Second Avenue South
Nashville, Tennessee 37210



Appellant : AMIR HAGHNEGHADAR
Property Owner: ASAD NARANGI FARD
Representative: JUSTIN CRANBALL

Date: 12/10/19
Case #: 2020-026
Map & Parcel: 08112025700

Council District 19

The undersigned hereby appeals from the decision of the Zoning Administrator, wherein a Zoning Permit/Certificate of Zoning Compliance was refused:

Purpose: to construct single family residence

Activity Type: Single Family
Location: 1533 ARTHUR AVE

This property is in the R6-A Zone District, in accordance with plans, application and all data heretofore filed with the Zoning Administrator, all of which are attached and made a part of this appeal. Said Zoning Permit/Certificate of Zoning Compliance was denied for the reason:

Reason: driveway requirements
Section(s): 17.20.020

Based on powers and jurisdiction of the Board of Zoning Appeals as set out in Section 17.40.180 Subsection B Of the Metropolitan Zoning Ordinance, a Variance, Special Exception, or Modification to Non-Conforming uses or structures is here by requested in the above requirement as applied to this property.

AMIR HAGHNEGHADAR
Appellant Name (Please Print)

JUSTIN CRANBALL
Representative Name (Please Print)

3201 NOLENSVILLE PIKE
Address

1064 TULIP GROVE RD
Address

NASHVILLE, TN, 37211
City, State, Zip Code

HERMITAGE, TN, 37076
City, State, Zip Code

615-473-7474
Phone Number

615-915-8288
Phone Number

amihagh@gmail.com
Email

justin@builderassisllc.com
Email

Appeal Fee: _____



**Metropolitan Government
of Nashville and Davidson County, Tennessee
Department of Codes and Building Safety
800 Second Avenue South, Nashville, TN 37210**



3738663

**ZONING BOARD APPEAL / CAAZ - 20190074528
Inspection Checklist for Use and Occupancy
This is not a Use and Occupancy Notification**

PARCEL: 08112025700**APPLICATION DATE:** 12/05/2019**SITE ADDRESS:**

1533 ARTHUR AVE NASHVILLE, TN 37208

PT LOT 356 MCGAVOCKS TOWN NO NASHVILLE

PARCEL OWNER: FARD, ASAD NARANGI & HAGHNEGHAHA **CONTRACTOR:****APPLICANT:****PURPOSE:**

Requesting a parking variance to be able to park in front setback and in front of proposed residence per METZO section 17.12.020 R6A ZONING. COUNCIL DISTRICT #19. POC JUSTIN CRANDELL 615-915-8288

*Before a Use and Occupancy Letter can be issued for this project, the following approvals are required.
Inspections Foundation = before concrete poured, Framing = before covering wall and after rough-in inspections.*

There are currently no required inspections

Inspection requirements may change due to changes during construction.

1/16 MEETING? ASK JESSICA -



**Metropolitan Government
of Nashville and Davidson County, Tennessee
Department of Codes and Building Safety
800 Second Avenue South, Nashville, TN 37210**



ZONING BOARD APPEAL / CAAZ - 20190074528

ISSUED ON:

I hereby certify that I am the agent of the owner, or other person in control of this property, and that the information given herein, and as shown on the application and the permit, is true; and that I am authorized by said owner, or other person in control of this property, to obtain this permit. I understand that if the construction and/or installation for which this permit is issued is contrary to the requirements of Metropolitan codes or regulations, said violations must be corrected, and the permit may be voided. I further certify that I am in compliance with the State of Tennessee statutes relating to licensing contractors for the work described in this permit. Work must start within six(6) months and must be completed within two(2) years of issue date. Permits become invalid if work does not start within six(6) months or is suspended for one(1) year after start date. Extensions of ninety(90) days each may be allowed in writing by the Director.

Approval (Where Required)

Date

SITE ADDRESS:

1533 ARTHUR AVE NASHVILLE, TN 37208
PT LOT 356 MCGAVOCKS TOWN NO NASHVILLE

PARCEL: 08112025700

Tax District: USD

Census Tr: 37019400

PARCEL OWNER:

PURPOSE:

Requesting a parking variance to be able to park in front setback and in front of proposed residence per METZO section 17.12.020 R6A ZONING. COUNCIL DISTRICT #19. POC JUSTIN CRANDELL 615-915-8288

PERMIT DETAILS:

Estimated Value:

Number of Floors:

Const Type:

Sewer or Septic:

Sq Footage:

Total # Buildings:

Parking Required: N

Total # Units:

Parking Provided: N

Garage: N

Sprinklers? N

Number of Bedrooms:

Metro Water:

Number of Kitchens:

Public Constr? N

ZONING ASSIGNMENTS:

OV-UZO URBAN ZONING OVERLAY

R6-A ONE&TWO FAMILY 6,000 SQUARE FOOT LOT



Metropolitan Government
of Nashville and Davidson County, Tennessee
Department of Codes and Building Safety
800 Second Avenue South, Nashville, TN 37210



3738663

ZONING BOARD APPEAL / CAAZ - 20190074528

ISSUED ON:

I hereby certify that I am the agent of the owner, or other person in control of this property, and that the information given herein, and as shown on the application and the permit, is true; and that I am authorized by said owner, or other person in control of this property, to obtain this permit. I understand that if the construction and/or installation for which this permit is issued is contrary to the requirements of Metropolitan codes or regulations, said violations must be corrected, and the permit may be voided. I further certify that I am in compliance with the State of Tennessee statutes relating to licensing contractors for the work described in this permit. Work must start within six(6) months and must be completed within two(2) years of issue date. Permits become invalid if work does not start within six(6) months or is suspended for one(1) year after start date. Extensions of ninety(90) days each may be allowed in writing by the Director.

Approval (Where Required)

Date

CAAZ

FEE / PAYMENT:

[2019/12/05] CA ZONING APPEAL...	\$ 250.00	\$ -
PERMIT FEE/PAYMENT.....	\$ 250.00	\$ -

Payment Detail:

Issue Date: This Permit Has NOT Been Issued

Pmt Total:

Issued By:

Inspection Scheduling E-Permit Inspection Scheduling

For registered contractors that use our E-Permit System login using your username and password at epermits.nashville.gov to schedule an inspection.

To become an E-Permit user and acquire a username/password for your company, email your company information to PermitIssuance@nashville.gov

E-PERMITS INSPECTION SCHEDULING IS ONLY AVAILABLE FOR REGISTERED LICENSED CONTRACTORS


To schedule an inspection by phone have your Metro permit number ready for each job before calling our offices to request an inspection.

7:30 AM UNTIL 4:00 PM, MONDAY - FRIDAY

Building Inspections	(615) 862-6550
Electrical Inspections	(615) 862-6560
Plumbing Inspections	(615) 862-6570
Gas/Mechanical Inspections	(615) 862-6570
Urban Forestry	(615) 862-6488
Fire Marshal Inspections	(615) 862-5230
Water & Sewer / Cross Connect	(615) 862-7225
Grease Control	(615) 862-4590
Stormwater - grading SWGR	(615) 880-2420
Residential Infill - Stormwater	(615) 862-7225
Public Works - Permits	(615) 862-8782
Fax Number for Inspection Division	(615) 862-6499
Fax Number for Zoning & Permits	(615) 862-6514

ARE YOU READY FOR U&O? epermits.Nashville.gov

ALLOWS ANYONE TO CONFIRM U&O APPROVALS AND TRADES PERMIT SIGNOFFS WHICH MUST BE DONE PRIOR TO ISSUANCE OF THE U&O LETTER

- Go to epermits.Nashville.gov**
- Find your building permit by entering the building permit # number in the search box** (you can also search by 'address', 'APN', 'owner' or 'contractor' to find your permit if you don't know the building permit #)
- Click on your building permit**
- Click on the  Available Reports button found on the top right hand side**
- Click on print next to 'CA Permit Status U&O REPORT'**
- CONFIRM any and all signoffs are APPROVED or signed off**
- CONFIRM any and all trades permits are on DONE status**
- Request U&O letter** (request letter only after all steps are completed)

SEE BELOW MOST COMMON SIGNOFFS THAT MUST BE APPROVED/SIGNED OFF PRIOR TO RECEIVING U&O LETTER FOR EITHER COMMERCIAL OR RESIDENTIAL BUILDING PERMITS

Building Final	U&O PW Sidewalk FA - CA
U&O Water & Sewer Availability	U&O PW ROW (<i>right-of-way</i>)
U&O Cross Connect (<i>backflows</i>)	SWGR U&O Sign-off (<i>grading</i>)
U&O Life Safety Final (Fire M.)	CA - U&O Fire Sprinkler Final
ALL TRADES PERMITS MUST BE FINAL / DONE STATUS	
CAEL - Electrical	CAGM, CAGA, CAGH-Gas/Mech
CAPL - Plumbing	Any other Trade Permit

APPLICATION FOR A VARIANCE REQUEST

After your appeal is filed, Zoning staff will visit the site to take photographs for the Board members. So they will have a better ideal of the nature of your request. Zoning staff will notify the district council member of the hearing. You will be responsible for preparing the envelopes and notices for mailing to the owners of property within 1,000 feet pf the property at issue in the case. The envelopes must include the return address for the BZA and case number. Fold and insert notices into envelopes, seal the envelopes, and apply first class postage. These neighbor notices must be delivered to Zoning staff at least twenty-three (23) days before the public hearing. Additionally, you will be responsible for purchasing, posting, and removing the red Zoning Appeal signs for the subject property. (See attached Metro Code of Laws requirements regarding, sign placement.)

The day of the public hearing, it will be your responsibility to convey to the Board the nature of the hardship in your request that makes it difficult/impossible for you to comply with the Zoning Code. **It would be to your benefit to let your neighbors know about your request prior to all notices being sent to them from our office.**

Any party can appeal the Board's decision to Chancery or Circuit Court within sixty (60) days from the date the order in the case is entered. **Should your request be granted, we would remind you that it is your responsibility to obtain the permit for which you have applied.** You should also be aware that you have two (2) years to obtain the permit or you would have to re-file your request with the board.

Once your request is filed, the staff will review your request to verify that the submittal is complete. Incomplete submittals will not be scheduled for hearing until complete.

Any correspondence to the Board must be submitted to our office by noon, the Friday prior to the public hearing to be included in the record. You must provide eight (1) copy of your information to staff.

I am aware that I am responsible for posting and removing the sign(s) after the public hearing.



APPELLANT

12/5/19
DATE

Standards for a Variance

The Metropolitan Board of Zoning Appeals may grant variances from the strict application of the provisions of the Zoning Code based upon findings of fact related to the standards in section 17.40.370. This Section is included as follows:

Physical Characteristics of the property- The exceptional narrowness, shallowness or shape of a specific piece of property, exceptional topographic condition, or other extraordinary and exceptional condition of such property would result in peculiar and exceptional practical difficulties to, or exceptional or undue hardship upon the owners of such property.

Unique characteristics- *The specific conditions cited are unique to the subject property and generally not prevalent to other properties in the general area.*

Hardship not self-imposed- The alleged difficulty or hardship has not been created by the previous actions of any person having an interest in the property after date of Zoning Code.

Financial gain not only bases- Financial gain is not the sole basis for granting the variance.

No injury to neighboring property- The granting of a variance will not be injurious to other property or improvements in the area, impair and adequate supply of light and air to adjacent property, or substantially diminish or impair property values within the area.

No harm to public welfare- *The granting of the variance will not be detrimental to the public welfare and will not substantially impair the intent and purpose of this Zoning Code.*

Integrity of Master Development Plan- *The granting of a variance will not compromise the design integrity or functional operation of activities or facilities within an approved Planned Unit Development.*

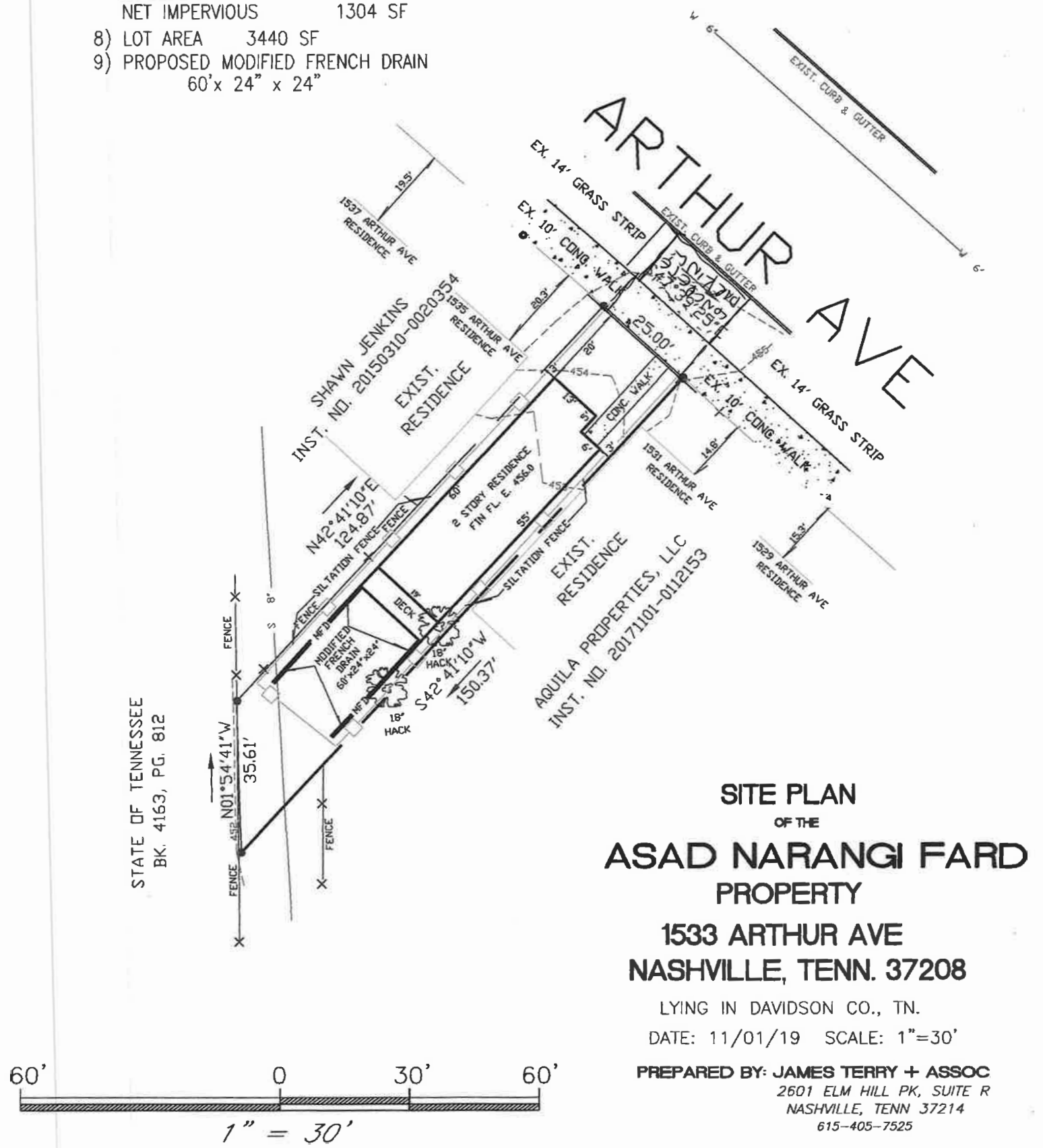
The Board shall not grant variances to the land use provisions of section 2.3, nor the density of Floor Area Ratio (FAR) standards of Tables 3-B and 2-C, nor the required size of residential lots approved by the Planning Commission under the authority of section 3.7 (Lot Averaging), section 3.8 (Cluster Lot Option) or Section 9. E.3 (PUD). Further the Board shall not act on a variance application within a Planned Unit Development (PUD), Urban Design Overlay or Institutional Overlay district without first considering a recommendation from the Planning Commission.-

NOTES:

- 1) DEED REFERENCES: INST. NO. 20100202-0008397, R.O.D.C., TN.
OWNER: ASAD NARANGI FARD
- 2) PROPERTY IS DESCRIBED AS BEING MAP 81-12, PARCEL 257.
- 3) NO TITLE REPORT HAS BEEN FURNISHED TO THIS SURVEYOR,
THEREFORE, THIS SURVEY IS SUBJECT TO THE FINDINGS OF AN
ACCURATE TITLE SEARCH.
- 4) PROPERTY IS ZONED R6A.
- 5) PROPERTY BEING THE SOUTHERLY HALF OF LOT NO 356 ON THE
MAP OF D.T. McGAVOCK, AS OF RECORD IN BK. 21, PG. 23,
R.O.D.C., TN.
- 6) FRONT YARD SETBACK CALCULATIONS

1529 ARTHUR AVE	15.3'
1531 ARTHUR AVE	14.8'
1535 ARTHUR AVE	20.3'
1537 ARTHUR AVE	19.5'
TOTAL	69.9'
PROPOSED UNIT	20'
- 7) IMPERVIOUS AREA CALCULATIONS

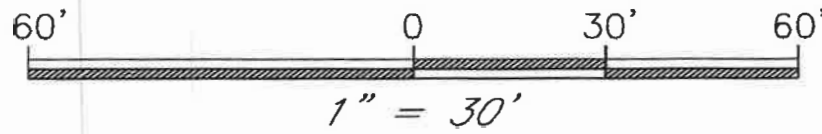
PRE IMPERVIOUS	0
POST IMPERVIOUS	1304 SF
NET IMPERVIOUS	1304 SF
- 8) LOT AREA 3440 SF
- 9) PROPOSED MODIFIED FRENCH DRAIN
60'x 24" x 24"



SITE PLAN
OF THE
ASAD NARANGI FARD
PROPERTY
1533 ARTHUR AVE
NASHVILLE, TENN. 37208

LYING IN DAVIDSON CO., TN.
DATE: 11/01/19 SCALE: 1"=30'

PREPARED BY: **JAMES TERRY + ASSOC**
2601 ELM HILL PK, SUITE R
NASHVILLE, TENN 37214
615-405-7525



Metropolitan Board of Zoning Appeals

Metro Howard Building
800 Second Avenue South
Nashville, Tennessee 37210



Appellant: Verleria Bridges
Property Owner: Jim Altar
Representative: _____

Date: 12/11/19
Case #: 2020-028
Map & Parcel: 68106016800

Council District 21

The undersigned hereby appeals from the decision of the Zoning Administrator, wherein a Zoning Permit/Certificate of Zoning Compliance was refused:

Purpose: To USE existing Building for A Fellowship Hall. No construction/renovations needed. No permit application started.

Activity Type: USE AND OCCUPANCY
Location: 2618 Buchanan St

This property is in the RSS Zone District, in accordance with plans, application and all data heretofore filed with the Zoning Administrator, all of which are attached and made a part of this appeal. Said Zoning Permit/Certificate of Zoning Compliance was denied for the reason:

Reason: SPECIAL EXCEPTION

Section(s): 17.16.170 E3

Based on powers and jurisdiction of the Board of Zoning Appeals as set out in Section 17.40.180 Subsection C Of the Metropolitan Zoning Ordinance, a Variance, Special Exception, or Modification to Non-Conforming uses or structures is here by requested in the above requirement as applied to this property.

Verleria Bridges
Appellant Name (Please Print)
Ag34 Peppertree Dr.
Address
Antioch TN 37013
City, State, Zip Code
615-204-6456
Phone Number
Verleria4@gmail.com
Email
Zoning Examiner: VB

Representative Name (Please Print)

Address

City, State, Zip Code

Phone Number

Email

Appeal Fee: _____

Verleria 4@gmail.com

APPLICATION FOR SPECIAL EXCEPTION REQUESTS

After your appeal is filed, zoning staff will visit the site to take photographs for the Board Members so they will have a better idea of the nature of your request. Zoning staff will notify the district councilmember of the hearing. You will be responsible for preparing the envelopes and notices for mailing to the owners of property within 1,000 feet of the property at issue in this case. The envelopes must include the return address for the BZA and case number. Fold and insert the notices into the envelopes, seal the envelopes, and apply first class postage. These neighbor notices must be delivered to zoning staff at least twenty-three (23) days before the public hearing. Additionally, you will be responsible for purchasing, posting, and removing the red Zoning Appeal signs for the subject property. (See attached Metro Code of Laws requirements regarding sign placement.) Finally, BZA Rules require that you conduct a community meeting regarding the special exception request before the BZA hearing date.

The day of the public hearing, it will be your responsibility to convey to the Board the nature of the hardship in your request that makes it difficult/impossible for you to comply with the Zoning Code. It would be to your benefit to let your neighbors know about your request prior to all notices being sent to them from our office.

Any party can appeal the Board's decision to Chancery or Circuit Court within sixty (60) days from the date the order in the case is entered. Should your request be granted, we would remind you that it is your responsibility to obtain the permit for which you have applied. You should also be aware that you have two (2) years to obtain the permit or you would have to re-file your request with the Board.

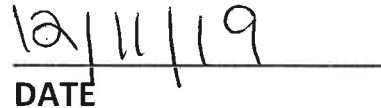
Once your request is filed, the staff will review your request to verify that the submittal is complete. Incomplete submittals will not be scheduled for a hearing until complete.

Any correspondence to the Board must be submitted to our office by close of business, the Thursday prior to the public hearing to be included in the record.

I am aware that I am responsible for posting and also removing the sign(s) after the public hearing. I am aware that I am required to conduct a community meeting.



APPELLANT



DATE

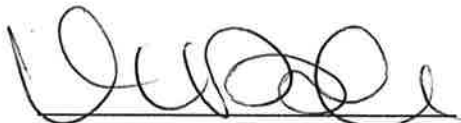
SPECIAL EXCEPTION REQUEST

BZA Rules of Procedure, Item 9(2) (e) requirements to conduct neighborhood meetings regarding the case that will later appear before the BZA. The BZA Rules specifies, "In the Interest of having informed stake holder in special exception cases. It is required that the appellant make contact with the district council person and neighbors within 1000 feet of the subject property from a mailing list provided by the board staff. Information by the applicant shall include a contact person and include a reasonable representation of the proposal and hold a meeting at a geographically convenient place, date, and time. We encourage you to have the meeting prior to the deadline for additional information to presented to the board. Applicant shall document to the Board that this requirement has been met. Failure to comply may result in deferral of your case."

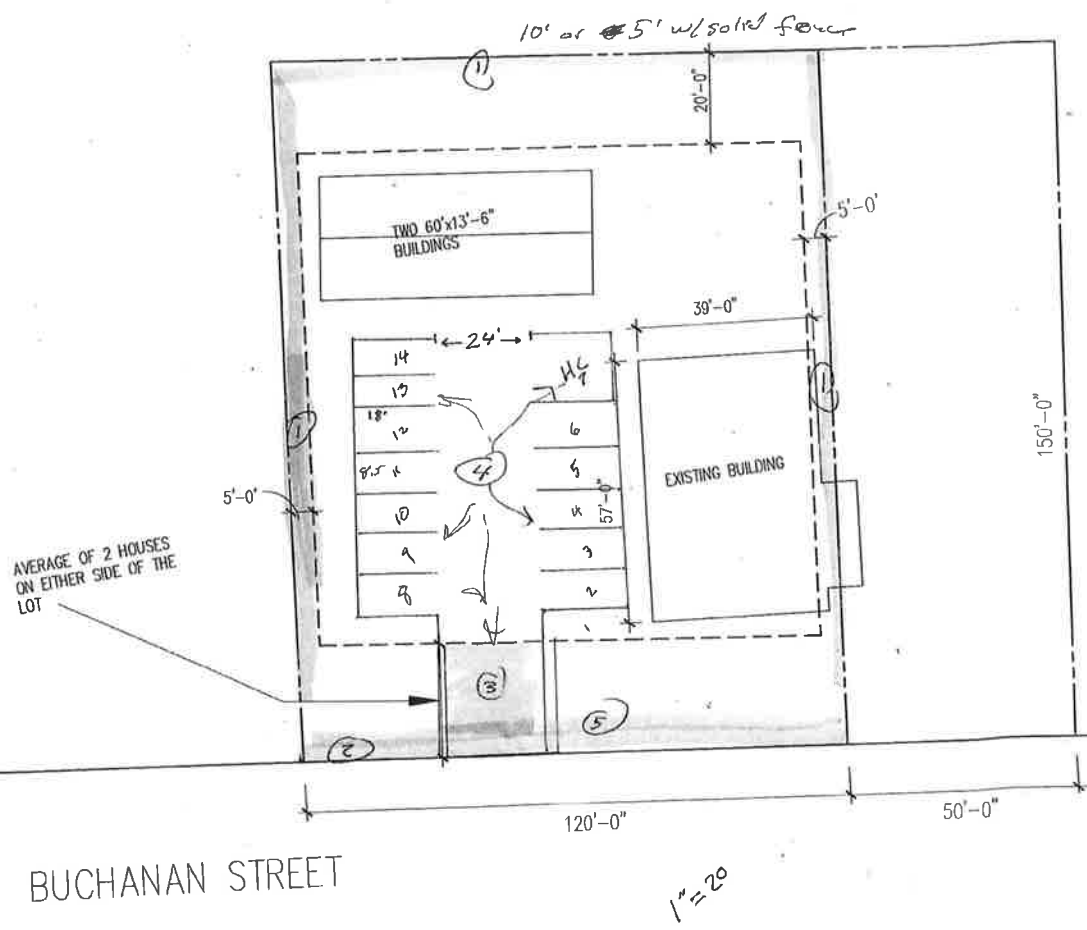
Zoning staff will provide you a mailing list of property owners in proximity to the location designated for a special exception permit. The BZA Rule then requires you to contact those persons on the mailing list, provide them with the date, time and place of meeting, and discuss your BZA request accordingly. If there is opposition to your case, this meeting gives you the chance to address those concerns prior to the public hearing at the BZA meeting.

You must create and provide documentation of your efforts to contact the neighboring property owners for the neighborhood meeting. Failure to do so can result in a deferral or denial of your appeal to the BZA.

I ACKNOWLEDGE MY RESPONSIBILITIES regarding the neighborhood meeting preceding the public hearing for by BZA appeal for a special exception


APPELLANT (OR REPRESENTATIVE)


DATE





**Metropolitan Government
of Nashville and Davidson County, Tennessee
Department of Codes and Building Safety
800 Second Avenue South, Nashville, TN 37210**



3740353

**ZONING BOARD APPEAL / CAAZ - 20190075725
Inspection Checklist for Use and Occupancy
This is not a Use and Occupancy Notification**

PARCEL: 08106016800**APPLICATION DATE:** 12/11/2019**SITE ADDRESS:**

2618 BUCHANAN ST NASHVILLE, TN 37208

LOT PT 9 SUB PT 10 H & B TRACT

PARCEL OWNER: ATTAR, JIM A.**CONTRACTOR:****APPLICANT:****PURPOSE:**

To use existing 2000 +/- sq ft building for Fellowship Hall with 75 seats. No construction/renovations needed, establishing Use & Occupancy only.

Previous S.E. (2017-117) for use as a church granted/expired. No Permit Application started.

POC: Verleria Bridges 615-294-6456

*Before a Use and Occupancy Letter can be issued for this project, the following approvals are required.
Inspections Foundation = before concrete poured, Framing = before covering wall and after rough-in inspections.*

There are currently no required inspections

Inspection requirements may change due to changes during construction.

From: [Gregory, Christopher \(Public Works\)](#)
To: [Lifsey, Debbie \(Codes\)](#)
Cc: [Shepherd, Jessica \(Codes\)](#); [Ammarell, Beverly \(Public Works\)](#)
Subject: RE: Emailing: 2020-028 application on our docket for 2/6/20
Date: Tuesday, January 21, 2020 1:55:50 PM

2020-028 2618 Buchanan St Use Existing Building as Religious Institution Facility

Variance: 17.16.170 E.3

Response: Public Works takes no exception on condition that adequate parking is provided on site per code. Align access to the site with Delk Ave. if feasible.

This does not imply approval of the submitted site plan as access and design issues will be addressed and coordinated during the permitting process.

-----Original Message-----

From: Lifsey, Debbie (Codes) <Debbie.Lifsey@nashville.gov>

Sent: Tuesday, January 21, 2020 9:54 AM

To: Gregory, Christopher (Public Works) <Christopher.Gregory@nashville.gov>

Subject: Emailing: 2020-028 application on our docket for 2/6/20

Your message is ready to be sent with the following file or link attachments:

2020-028 Special exception

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY
Planning Department
Metro Office Building
800 Second Avenue South
Nashville, Tennessee 37201
615.862.7150
615.862.7209

Memo

To: Metropolitan Nashville Board of Zoning Appeals

From: Metropolitan Nashville Planning Department

CC: Emily Lamb

Date: January 22, 2020

BZA Hearing Date: February 6, 2020

Re: Planning Department Recommendation for a Special Exception Case 2020-028

Pursuant to Section 17.40.300 of the Metro Zoning Code, the Metropolitan Planning Department is providing a recommendation on the following Special Exception case:

1. Case 2020-028 (2618 Buchanan Street) – Religious Institution

Request: A special exception to allow a religious institution use in an existing 2,000 square-foot building.

Zoning: Single-Family Residential (RS5) requires a minimum 5,000 square foot lot and is intended for single-family dwellings at a density of 7.41 dwelling units per acre.

Land Use Policy: T3 Suburban Neighborhood Maintenance (T3 NM) is intended to maintain the general character of developed suburban residential neighborhoods. T3 NM areas will experience some change over time, primarily when buildings are expanded or replaced. When this occurs, efforts should be made to retain the existing character of the neighborhood. T3 NM areas have an established development pattern consisting of low-to moderate-density residential development and institutional land uses. Enhancements may be made to improve pedestrian, bicycle, and vehicular connectivity.

Planning Department Analysis: The site contains 0.39 acres of land located in the North Nashville planning area. The site is located at 2618 Buchanan Street, east of Ed Temple Boulevard. Existing site conditions include an approximately 2,000 square foot building previously used for a day care use and an associated parking lot. The site plan includes a

proposed building to the north of the parking lot. The applicant has stated that the proposed building north of the parking lot will not be constructed.

Access for the religious institution is proposed from Buchanan Street. The sanctuary is to hold 75 seats, which requires a minimum of 13 parking spaces, which are provided. A Standard type B landscape buffer is required along the eastern, western, and northern property lines to buffer the use from the surrounding residential properties.

Religious institutions are allowed within residential zoning districts with the approval of a Special Exception. The existing building is currently used as a daycare non-residential building which will unlikely be used for residential use in the future. The building is existing, and the applicant is not proposing to expand it for their operation. This site is located on a collector street and less than 700 feet from Ed Temple Boulevard, a busy corridor. The T3 Neighborhood Maintenance policy lists institutional uses as an example of an appropriate land use for this policy. The T3 Suburban Neighborhood Maintenance policy does support Civic and Public Benefit uses, such as religious institutions. The proposal is consistent with the Suburban Neighborhood Maintenance policy.

Planning Recommendation: Approve

Metropolitan Board of Zoning Appeals

Metro Howard Building
800 Second Avenue South
Nashville, Tennessee 37210



Appellant: Robert Cummings
Property Owner: " "
Representative: " "

Date: 12-16-19
Case #: 2020- 030
Map & Parcel: 104-14-9

Council District 18

The undersigned hereby appeals from the decision of the Zoning Administrator, wherein a Zoning Permit/Certificate of Zoning Compliance was refused:

Purpose: Requesting front setback reduction of 28'
from 40' min. (required) to 12'

Activity Type: New Construction - D.A.D.U.

Location: 523 Chesterfield Ave.

This property is in the RM20 Zone District, in accordance with plans, application and all data heretofore filed with the Zoning Administrator, all of which are attached and made a part of this appeal. Said Zoning Permit/Certificate of Zoning Compliance was denied for the reason:

Reason: Does not meet minimum front setback

Section(s): 17.12.030(A)

Based on powers and jurisdiction of the Board of Zoning Appeals as set out in Section 17.40.180 Subsection _____ Of the Metropolitan Zoning Ordinance, a Variance, Special Exception, or Modification to Non-Conforming uses or structures is here by requested in the above requirement as applied to this property.

ROBERT CUMMINGS
Appellant Name (Please Print)
523 Chesterfield Ave
Address
Nashville TN 37212
City, State, Zip Code
615-351-8161
Phone Number
bobTV14@gmail.com
Email

SAME
Representative Name (Please Print)

Address

City, State, Zip Code

Phone Number

Email

Zoning Examiner: CH

Appeal Fee: \$ 100.00



**Metropolitan Government
of Nashville and Davidson County, Tennessee
Department of Codes and Building Safety
800 Second Avenue South, Nashville, TN 37210**



3741427

**ZONING BOARD APPEAL / CAAZ - 20190076546
Inspection Checklist for Use and Occupancy
This is not a Use and Occupancy Notification**

PARCEL: 10414000900**APPLICATION DATE:** 12/16/2019**SITE ADDRESS:**

523 CHESTERFIELD AVE NASHVILLE, TN 37212
W SIDE CHESTERFIELD AVE AND, N OF WESTMORELAND DRIVE

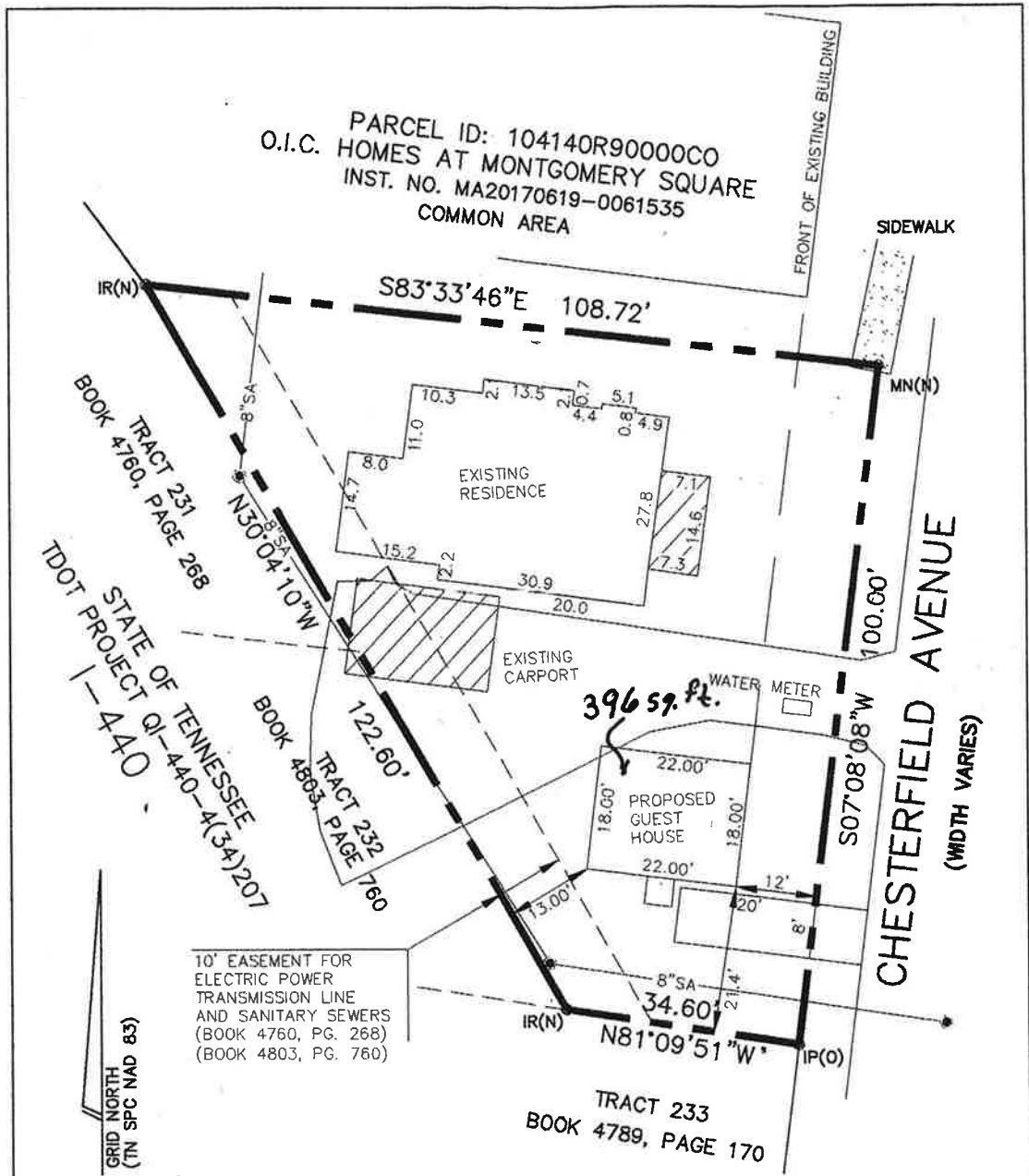
PARCEL OWNER: CUMMINGS, ROBERT H., JR. ET UX**CONTRACTOR:****APPLICANT:** Robert Cummings
615-351-8161**PURPOSE:**

requesting front setback variance reduction of 28'. minimum front setback is 40', requesting a 12' front setback.

*Before a Use and Occupancy Letter can be issued for this project, the following approvals are required.
Inspections Foundation = before concrete poured, Framing = before covering wall and after rough-in inspections.*

There are currently no required inspections

Inspection requirements may change due to changes during construction.



- NOTES:
1. THE SURVEY WAS DONE UNDER THE AUTHORITY OF TCA 62-18-126.
 2. THE SURVEY IS NOT A GENERAL PROPERTY SURVEY AS DEFINED UNDER RULE 082-03-07.
 3. ZONE: R-20

PLOT PLAN
 523 CHESTERFIELD AVENUE
 18TH COUNCILMANIC DISTRICT
 METROPOLITAN NASHVILLE, DAVIDSON COUNTY, TN

CONTAINING 0.16 ACRE OVERALL (7,086 SQUARE FEET)
 OWNERS: ROBERT H. CUMMINGS, JR. ET UX
 MARIA BETH CUMMINGS - OWNERS
 (INSTRUMENT NO. 20190827-0086423)

SCALE: 1" = 20' DATE: 09/03/2019

CRAWFORD & CUMMINGS, PC
 8161 HIGHWAY 100 STE. 163
 NASHVILLE, TN 37221
 (615) 292-2661
 alan@ccsurveyors.net



Job # 19-090

APPLICATION FOR A VARIANCE REQUEST

After your appeal is filed, Zoning staff will visit the site to take photographs for the Board members. So they will have a better ideal of the nature of your request. Zoning staff will notify the district council member of the hearing. You will be responsible for preparing the envelopes and notices for mailing to the owners of property within 1,000 feet pf the property at issue in the case. The envelopes must include the return address for the BZA and case number. Fold and insert notices into envelopes, seal the envelopes, and apply first class postage. These neighbor notices must be delivered to Zoning staff at least twenty-three (23) days before the public hearing. Additionally, you will be responsible for purchasing, posting, and removing the red Zoning Appeal signs for the subject property. (See attached Metro Code of Laws requirements regarding, sign placement.)

The day of the public hearing, it will be your responsibility to convey to the Board the nature of the hardship in your request that makes it difficult/impossible for you to comply with the Zoning Code. **It would be to your benefit to let your neighbors know about your request prior to all notices being sent to them from our office.**

Any party can appeal the Board's decision to Chancery or Circuit Court within sixty (60) days from the date the order in the case is entered. **Should your request be granted, we would remind you that it is your responsibility to obtain the permit for which you have applied.** You should also be aware that you have two (2) years to obtain the permit or you would have to re-file your request with the board.

Once your request is filed, the staff will review your request to verify that the submittal is complete. Incomplete submittals will not be scheduled for hearing until complete.

Any correspondence to the Board must be submitted to our office by noon, the Friday prior to the public hearing to be included in the record. You must provide eight (1) copy of your information to staff.

I am aware that I am responsible for posting and removing the sign(s) after the public hearing.

ROBERT H. CUMMINGS JR
APPELLANT

12-16-2019
DATE

In Simple terms, for the Board to grant you a variance in the zoning ordinance, you must convey to the Board what your hardship is. Hardships are narrowness, shallowness, irregular shape, and topography of property. The Board can also consider other practical difficulties such as mature trees, easements, and location of disposal systems which can affect your plan. Consideration can be given to the characteristics of neighborhood and the way it is developed. One or more of these conditions must affect your inability to build or occupy the property to provide your case.

At the public hearing, please be prepared to tell the Board what your hardship is, why you cannot build in accordance with zoning without requesting a variance and why you feel you have legitimate hardship.

The Board cannot grant a variance based solely on inconvenience to the applicant or solely on a financial consideration. It is incumbent on you as the appellant to complete this form by conveying a **HARDSHIP** as outlined. At the meeting it is important that you explain this hardship as effectively as possible.

WHAT SPECIFIC AND UNIQUE CIRCUMSTANCES (HARDSHIP) EXIST THAT WOULD AUTHORIZE THE CONSIDERATION OF THE BOARD UNDER THE REVIEW STANDARDS AS OUTLINED?

The exceptional ~~narrowness~~ narrowness and shallowness and shape of the property due to the 7:440 Right of Way

The granting of the variance will cause no harm to public welfare or neighbors

There are no other similar situations in the neighborhood therefore it is a Unique Situation.

Metropolitan Board of Zoning Appeals

Metro Howard Building
800 Second Avenue South
Nashville, Tennessee 37210



Appellant: Rob Terry + Pat Terry
Property Owner: 11 11
Representative: 11 11

Date: 12-16-19
Case #: 2020-031
Map & Parcel: 10214006000

Council District 23

The undersigned hereby appeals from the decision of the Zoning Administrator, wherein a Zoning Permit/Certificate of Zoning Compliance was refused:

Purpose: to construct an addition

Activity Type: single family

Location: 841 Clematis Dr.

This property is in the RS1S Zone District, in accordance with plans, application and all data heretofore filed with the Zoning Administrator, all of which are attached and made a part of this appeal. Said Zoning Permit/Certificate of Zoning Compliance was denied for the reason:

Reason: Variance from street setback

Section(s): 17.12.030 C.

Based on powers and jurisdiction of the Board of Zoning Appeals as set out in Section 17.40.180 Subsection B Of the Metropolitan Zoning Ordinance, a Variance, Special Exception, or Modification to Non-Conforming uses or structures is here by requested in the above requirement as applied to this property.

Rob Terry + Pat Terry
Appellant Name (Please Print)

Representative Name (Please Print)

112 Acklen Park Dr #B-1
Address

Address

Nashville, TN 37203
City, State, Zip Code

City, State, Zip Code

(615) 414-7912
Phone Number

Phone Number

Terryrentals112@gmail.com
~~Terryrentals@112gmail.com~~
Email

Email

Zoning Examiner: _____

Appeal Fee: _____



**Metropolitan Government
of Nashville and Davidson County, Tennessee
Department of Codes and Building Safety
800 Second Avenue South, Nashville, TN 37210**



**APPLICATION FOR BUILDING RESIDENTIAL - ADDITION / CARA - T2019075138
THIS IS NOT A PERMIT**

PARCEL: 10214006000

APPLICATION DATE: 12/09/2019

SITE ADDRESS:

841 CLEMATIS DR NASHVILLE, TN 37205
LOT 111 SEC 2 CREST MEADE

PARCEL OWNER: TERRY, ROBERT J. & PATRICK W.

APPLICANT:

PURPOSE:

Rejected Site Plan, does not meet 90 ft minimum platted setback along Shiloh Drive. Addition and complete renovations. To construct a 27 ft x 31 ft two story addition to front of existing single family residence with 837 sq ft of garage and 750 sq ft of living space on 2nd floor. Minimum 90 ft setback along Shiloh and 60 ft platted setback along Clematis, and 10 ft minimum side setbacks. Must conform with easements. Remains single family. Pursuant # 2006-1263 Metro Code of Laws, I (holder OF permit) hereby certify that all construction & demolition waste generated by any & all activities governed by this permit shall be disposed of in an approved landfill. Further, I certify that no construction & demolition waste shall be stored on the property in violation of any provision of Metro Code. For every 50 feet of site frontage, a double-sided sign 24" x 36" in size must be posted in English and Spanish that contains the information required by Ordinance No. 2017-835. No more than three signs are required.

*Before a building permit can be issued for this project, the following approvals are required.
The Applicant is responsible for providing any plans or other information to the individual agencies*

[A] Site Plan Review	REJECTED	(615) 862-4138 Lisa.Butler@nashville.gov
[E] Water Availability Review For Bldg		615-862-7225 mws.ds@nashville.gov
[E] Sewer Availability Review For Bldg		615-862-7225 mws.ds@nashville.gov
[A] Site Plan Review		
[A] Zoning Review		
[B] Fire Life Safety Review On Bldg App		615-862-5230
[B] Fire Sprinkler Requirement		615-862-5230
[G] Bond & License Review On Bldg App		
[D] Grading Plan Review For Bldg App		615-862-7225 mws.stormdr@nashville.gov

17.12.030 C

STREET

SETBACK

APPLICATION FOR A VARIANCE REQUEST

After your appeal is filed, Zoning staff will visit the site to take photographs for the Board members. So they will have a better ideal of the nature of your request. Zoning staff will notify the district council member of the hearing. You will be responsible for preparing the envelopes and notices for mailing to the owners of property within 1,000 feet pf the property at issue in the case. The envelopes must include the return address for the BZA and case number. Fold and insert notices into envelopes, seal the envelopes, and apply first class postage. These neighbor notices must be delivered to Zoning staff at least twenty-three (23) days before the public hearing. Additionally, you will be responsible for purchasing, posting, and removing the red Zoning Appeal signs for the subject property. (See attached Metro Code of Laws requirements regarding, sign placement.)

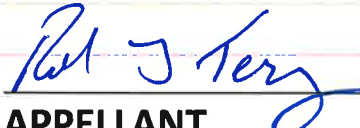
The day of the public hearing, it will be your responsibility to convey to the Board the nature of the hardship in your request that makes it difficult/impossible for you to comply with the Zoning Code. **It would be to your benefit to let your neighbors know about your request prior to all notices being sent to them from our office.**

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APPELLANT

12-16-19
DATE

Standards for a Variance

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Physical Characteristics of the property- The exceptional narrowness, shallowness or shape of a specific piece of property, exceptional topographic condition, or other extraordinary and exceptional condition of such property would result in peculiar and exceptional practical difficulties to, or exceptional or undue hardship upon the owners of such property.

Unique characteristics- *The specific conditions cited are unique to the subject property and generally not prevalent to other properties in the general area.*

Hardship not self-imposed- The alleged difficulty or hardship has not been created by the previous actions of any person having an interest in the property after date of Zoning Code.

Financial gain not only bases-Financial gain is not the sole basis for granting the variance.

No injury to neighboring property- The granting of a variance will not be injurious to other property or improvements in the area, impair and adequate supply of light and air to adjacent property, or substantially diminish or impair property values within the area.

No harm to public welfare- *The granting of the variance will not be detrimental to the public welfare and will not substantially impair the intent and purpose of this Zoning Code.*

Integrity of Master Development Plan- *The granting of a variance will not compromise the design integrity or functional operation of activities or facilities within an approved Planned Unit Development.*

The Board shall not grant variances to the land use provisions of section 2.3, nor the density of Floor Area Ratio (FAR) standards of Tables 3-B and 2-C, nor the required size of residential lots approved by the Planning Commission under the authority of section 3.7 (Lot Averaging), section 3.8 (Cluster Lot Option) or Section 9. E.3 (PUD). Further the Board shall not act on a variance application within a Planned Unit Development (PUD), Urban Design Overlay or Institutional Overlay district without first considering a recommendation from the Planning Commission.

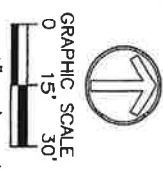
In Simple terms, for the Board to gran you a variance in the zoning ordinance, you must convey to the Board what your hardship is. Hardships are narrowness, shallowness, irregular shape, and topography of property. The Board can also consider other practical difficulties such as mature trees, easements, and location of disposal systems which can affect your plan. Consideration can be given to the characteristics of neighborhood and the way it is developed. One or more of these conditions must affect your inability to build or occupy the property to provide your case.

At the public hearing, please be prepared to tell the Board what your hardship is, why you cannot build in accordance with zoning without requesting a variance and why you feel you have legitimate hardship.

The Board cannot grant a variance based solely on inconvenience to the applicant or solely on a financial consideration. It is incumbent on you as the appellant to complete this form by conveying a **HARDSHIP** as outlined. At the meeting it is important that you explain this hardship as effectively as possible.

WHAT SPECIFIC AND UNIQUE CIRCUMSTANCES (HARDSHIP) EXIST THAT WOULD AUTHORIZE THE CONSIDERATION OF THE BOARD UNDER THE REVIEW STANDARDS AS OUTLINED?

Due to being a corner lot existing house is pushed to rear corner of lot. We have very little back yard to add on an addition. We wish to add on a garage outside the setback.



AREA PARCEL 60.00
 28,398.55 SQ. FT. OR 0.65 ACRES
OWNER INFORMATION
 TERRY, ROBERT & PATRICK
 841 CLEMATIS DRIVE
 NASHVILLE, TN 37205
 TAX MAP 102-14, PARCEL 60.00
 DB-20190918-0094525, R.O.D.C.

PLAT REFERENCE
 BEING LOT NO. 111, SECTION 2
 CREST MEADE
 PLAT BOOK 2331, PAGE 152, R.O.D.C.

- LEGEND:**
- ⊕ POWER POLE
 - LIGHT POLE
 - ⊙ SANITARY SEWER MANHOLE
 - ⊚ CONCRETE MONUMENT FOUND
 - IRON PIN SET

- NOTES:**
- 1) THE SURVEYOR'S LIABILITY FOR THIS DOCUMENT SHALL BE LIMITED TO THE ORIGINAL PURCHASER AND DOES NOT EXTEND TO ANY UNPAID PERSON OR ENTITY WITHOUT AN EXPRESSED RECERTIFICATION BY THE SURVEYOR WHOSE SIGNATURE APPEARS UPON THIS SURVEY.
 - 2) THE TOPOGRAPHY SHOWN HEREON IS FOR METRO PERMITTING PURPOSES ONLY.
 - 3) UPON RECEIVING FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP, MAP NUMBER 470270219H, DATED APRIL 5, 2017, IT HAS BEEN DETERMINED THAT THE LOTS OF THE DETAIL STUDY DO NOT REACH THE SUBJECT PROPERTY. (1000 ZONE X)
 - 4) BASIS OF BARRING, REFERENCES TENNESSEE STATE PLANS.
 - 5) FRONT SET BACK MINIMUM ON SUBJECT PROPERTY WAS DETERMINED BY ABBEYING THE THREE NEAREST ADJACENT EXISTING HOUSES ON CLEMATIS DRIVE = 117'.
 - 6) THE SUBJECT PROPERTY IS CURRENTLY ZONED RS40. SET BACKS AND RIR RESTRICTIONS TO BE DETERMINED BY METRO ZONING ORDINANCE AND METRO PLANNING DEPARTMENT.

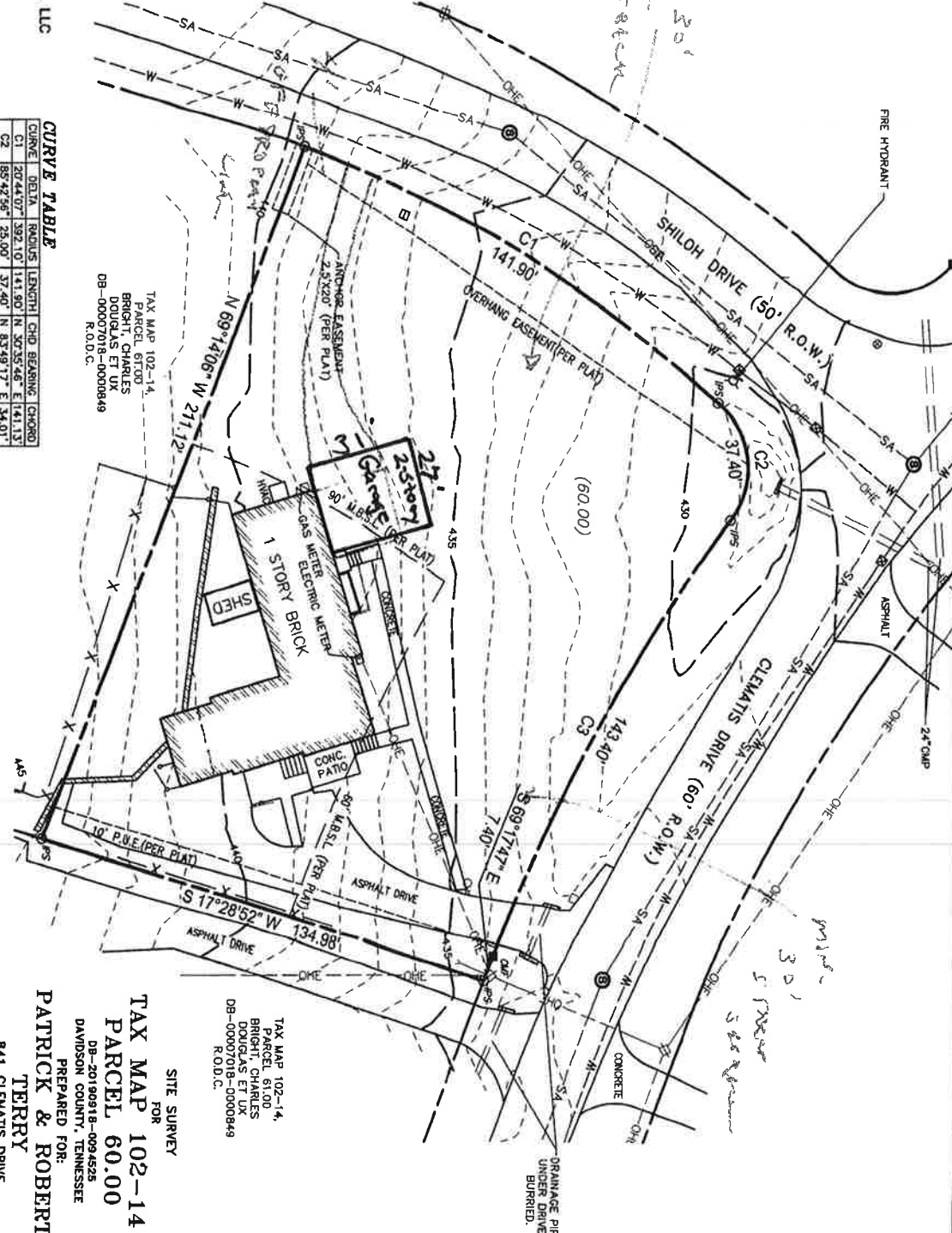


PREPARED BY:
DONLON LAND SURVEYING, LLC
 TIMOTHY MARK DONLON
 1438 BELLE FOREST CIRCLE
 NASHVILLE, TN 37205
 TEL: (615) 673-4116, FAX: (615) 673-4117
<http://www.donlonlandsurveying.com/>

CURVE TABLE

CURVE	DELTA	RADIUS	LENGTH	CHD BEARING	CHORD
C1	207.4470°	392.10'	141.90'	N 30°35'46" E	141.13'
C2	65°42'56"	25.00'	37.40'	N 83°48'17" E	34.01'
C3	15°58'32"	514.30'	143.40'	S 81°18'31" E	142.24'

TAX MAP 102-14,
 PARCEL 60.00
 BRIGHT, CHARLES
 DOUGLAS ET UX
 DB-00007018-0000849
 R.O.D.C.



*Eric Bergstrom
 615-673-4116*

SITE SURVEY
 FOR
TAX MAP 102-14
PARCEL 60.00
 DAVIDSON COUNTY, TENNESSEE
 PREPARED FOR:
PATRICK & ROBERT TERRY
 841 CLEMATIS DRIVE
 NASHVILLE, TN 37205
 DATED: NOVEMBER 5, 2019
 219098 DREWMAN

Metropolitan Board of Zoning Appeals

Metro Howard Building
800 Second Avenue South
Nashville, Tennessee 37210



Appellant : Terri Ramsey
Property Owner: Terri Ramsey
Representative: Terri Ramsey

Date: 12-17-19
Case #: 2020-032
Map & Parcel: 14604008900

Council District 26

The undersigned hereby appeals from the decision of the Zoning Administrator, wherein a Zoning Permit/Certificate of Zoning Compliance was refused:

Purpose: To construct a front porch addition.

Activity Type: RES. CONSTRUCTION
Location: 4810 Briarwood

This property is in the RS10 Zone District, in accordance with plans, application and all data heretofore filed with the Zoning Administrator, all of which are attached and made a part of this appeal. Said Zoning Permit/Certificate of Zoning Compliance was denied for the reason:

Reason: FRONT SETBACK VARIANCE TO 40FT PLATED AND CONTEXTUAL

Section(s): 17.12.030

Based on powers and jurisdiction of the Board of Zoning Appeals as set out in Section 17.40.180 Subsection B Of the Metropolitan Zoning Ordinance, a Variance, Special Exception, or Modification to Non-Conforming uses or structures is here by requested in the above requirement as applied to this property.

Terri Ramsey
Appellant Name (Please Print)

Representative Name (Please Print)

4808 Briarwood Dr
Address

Address

Nashville TN 37211
City, State, Zip Code

City, State, Zip Code

678-592-3262
Phone Number

Phone Number

TLR228@yahoo.com
Email

Email

Zoning Examiner: LB

Appeal Fee:

PERMIT APP 2019 076905



**Metropolitan Government
of Nashville and Davidson County, Tennessee
Department of Codes and Building Safety
800 Second Avenue South, Nashville, TN 37210**



**ZONING BOARD APPEAL / CAAZ - 20190076917
Inspection Checklist for Use and Occupancy
This is not a Use and Occupancy Notification**

PARCEL: 14604008900

APPLICATION DATE: 12/17/2019

SITE ADDRESS:

4810 BRIARWOOD DR NASHVILLE, TN 37211
LOT 26 SEC 2 ELYSAIN MEADOWS ADDN

PARCEL OWNER: LIND, JON & RAMSEY, TERRI L.

CONTRACTOR:

APPLICANT:

PURPOSE:

Site Plan rejected does not meet 40 ft platted front setback nor contextual front setback. Filing BZA Variance to 17.12.030 requesting a 16.13 ft front setback (23.87 ft reduction)

To construct a 6'6" x 16'6" front porch addition to existing single family residence. Minimum 40 ft front setback per plat and 5 ft minimum side setbacks. Must conform with easements on parcel. Must conform with all easements on property. 1. Acknowledges applying for this self building permit in own name, & will act as own contractor accepting full responsibility for code compliance, for hiring & employing individuals & has ultimate responsibility for my own work & for the work of others. Acting as my own general contractor, I further understand that I may forfeit certain protections, which might be available to me through the State of Tenn general contractor's licensing process. I further acknowledge that as a self building permit holder I am responsible for requesting all required inspections & completing all authorized work i

*Before a Use and Occupancy Letter can be issued for this project, the following approvals are required.
Inspections Foundation = before concrete poured, Framing = before covering wall and after rough-in inspections.*

There are currently no required inspections

Inspection requirements may change due to changes during construction.



**Metropolitan Government
of Nashville and Davidson County, Tennessee
Department of Codes and Building Safety
800 Second Avenue South, Nashville, TN 37210**



**APPLICATION FOR BUILDING RESIDENTIAL - ADDITION / CARA - T2019076905
THIS IS NOT A PERMIT**

PARCEL: 14604008900

APPLICATION DATE: 12/17/2019

SITE ADDRESS:

4810 BRIARWOOD DR NASHVILLE, TN 37211
LOT 26 SEC 2 ELYSAIN MEADOWS ADDN

PARCEL OWNER: LIND, JON & RAMSEY, TERRI L.

APPLICANT:

PURPOSE:

Site Plan rejected does not meet 40 ft platted front setback. Filing BZA Variance to 17.12.030 requesting a 16.13 ft front setback (23.87 ft reduction)

To construct a 6'6" x 16'6" front porch addition to existing single family residence. Minimum 40 ft front setback per plat and 5 ft minimum side setbacks. Must conform with easements on parcel. Must conform with all easements on property. 1. Acknowledges applying for this self building permit in own name, & will act as own contractor accepting full responsibility for code compliance, for hiring & employing individuals & has ultimate responsibility for my own work & for the work of others. Acting as my own general contractor, I further understand that I may forfeit certain protections, which might be available to me through the State of Tenn general contractor's licensing process. I further acknowledge that as a self building permit holder I am responsible for requesting all required inspections & completing all authorized work in compliance with applicable adopted codes. I further understand that separate permits are required for any proposed electrical, plumbing, & gas/mechanical work and is not part of this building permit.... 2. Pursuant # 2006-1263 Metro code of Laws, I (holder OF permit) hereby certify that all construction & demolition waste generated by any & all activities governed by this permit shall be disposed of in an approved landfill. Further, I certify that no construction & demolition waste shall be stored on the property in violation of any provision of Metro Code...3...You can dig your footers, but do not pour any concrete until you call for an inspection. Also do not put up any drywall until you call for an inspection. The idea is you do not cover up anything with concrete or drywall until an inspector has had a chance to review..***SITE PLAN SENT TO FILE

Before a building permit can be issued for this project, the following approvals are required.

The Applicant is responsible for providing any plans or other information to the individual agencies

[A] Site Plan Review	REJECTED	(615) 862-4138 Lisa.Butler@nashville.gov
[A] Site Plan Review		
[A] Zoning Review	APPROVED	(615) 862-4138 Lisa.Butler@nashville.gov
[B] Fire Life Safety Review On Bldg App		615-862-5230
[G] Bond & License Review On Bldg App		
[C] Flood Plain Review On Bldg App		615-862-7225 mws.stormdr@nashville.gov
[D] Grading Plan Review For Bldg App		615-862-7225 mws.stormdr@nashville.gov
[E] Sewer Availability Review For Bldg		615-862-7225 mws.ds@nashville.gov
[E] Water Availability Review For Bldg		615-862-7225 mws.ds@nashville.gov

APPLICATION FOR A VARIANCE REQUEST

After your appeal is filed, Zoning staff will visit the site to take photographs for the Board members. So they will have a better ideal of the nature of your request. Zoning staff will notify the district council member of the hearing. You will be responsible for preparing the envelopes and notices for mailing to the owners of property within 1,000 feet of the property at issue in the case. The envelopes must include the return address for the BZA and case number. Fold and insert notices into envelopes, seal the envelopes, and apply first class postage. These neighbor notices must be delivered to Zoning staff at least twenty-three (23) days before the public hearing. Additionally, you will be responsible for purchasing, posting, and removing the red Zoning Appeal signs for the subject property. (See attached Metro Code of Laws requirements regarding, sign placement.)

The day of the public hearing, it will be your responsibility to convey to the Board the nature of the hardship in your request that makes it difficult/impossible for you to comply with the Zoning Code. **It would be to your benefit to let your neighbors know about your request prior to all notices being sent to them from our office.**

Any party can appeal the Board's decision to Chancery or Circuit Court within sixty (60) days from the date the order in the case is entered. **Should your request be granted, we would remind you that it is your responsibility to obtain the permit for which you have applied.** You should also be aware that you have two (2) years to obtain the permit or you would have to re-file your request with the board.

Once your request is filed, the staff will review your request to verify that the submittal is complete. Incomplete submittals will not be scheduled for hearing until complete.

Any correspondence to the Board must be submitted to our office by noon, the Friday prior to the public hearing to be included in the record. You must provide eight (1) copy of your information to staff.

I am aware that I am responsible for posting and removing the sign(s) after the public hearing.

Terri Ramsey
APPELLANT

12/17/19
DATE

In Simple terms, for the Board to grant you a variance in the zoning ordinance, you must convey to the Board what your hardship is. Hardships are narrowness, shallowness, irregular shape, and topography of property. The Board can also consider other practical difficulties such as mature trees, easements, and location of disposal systems which can affect your plan. Consideration can be given to the characteristics of neighborhood and the way it is developed. One or more of these conditions must affect your inability to build or occupy the property to provide your case.

At the public hearing, please be prepared to tell the Board what your hardship is, why you cannot build in accordance with zoning without requesting a variance and why you feel you have legitimate hardship.

The Board cannot grant a variance based solely on inconvenience to the applicant or solely on a financial consideration. It is incumbent on you as the appellant to complete this form by conveying a **HARDSHIP** as outlined. At the meeting it is important that you explain this hardship as effectively as possible.

WHAT SPECIFIC AND UNIQUE CIRCUMSTANCES (HARDSHIP) EXIST THAT WOULD AUTHORIZE THE CONSIDERATION OF THE BOARD UNDER THE REVIEW STANDARDS AS OUTLINED?

The original platted setback requires a 40' setback. I want to increase the porch by a few feet. The porch will still be more than 30 feet from the street so it will not create a safety concern. I have the support of the next door neighbors. The improvements will add appeal to the entire neighborhood. The design of the plot makes this the most reasonable placement for the porch.

Letter from Abutting / Adjoining Property Owner

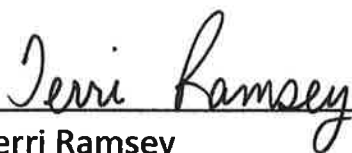
December 16, 2019

Metro Nashville Planning Dept
800 Second Avenue South
P.O. Box 196300
Nashville, TN 37219-6300

Subject: Amending the Briarwood Dr setback on 4810 for the addition of a porch

My neighbors, Jon Lind and Terri Ramsey, own the home at 4810 Briarwood Dr, next door to my property at 4808 Briarwood Dr. I understand they plan to amend their street setback along Briarwood. The existing house is located 24.5 feet back from the road easement. I understand the regulations at the time of construction required a 20-foot setback which excluded the protruding porch. I further understand they are requesting an amendment to extend the porch 4 feet and the new distance from the easement to the new porch is 16ft.

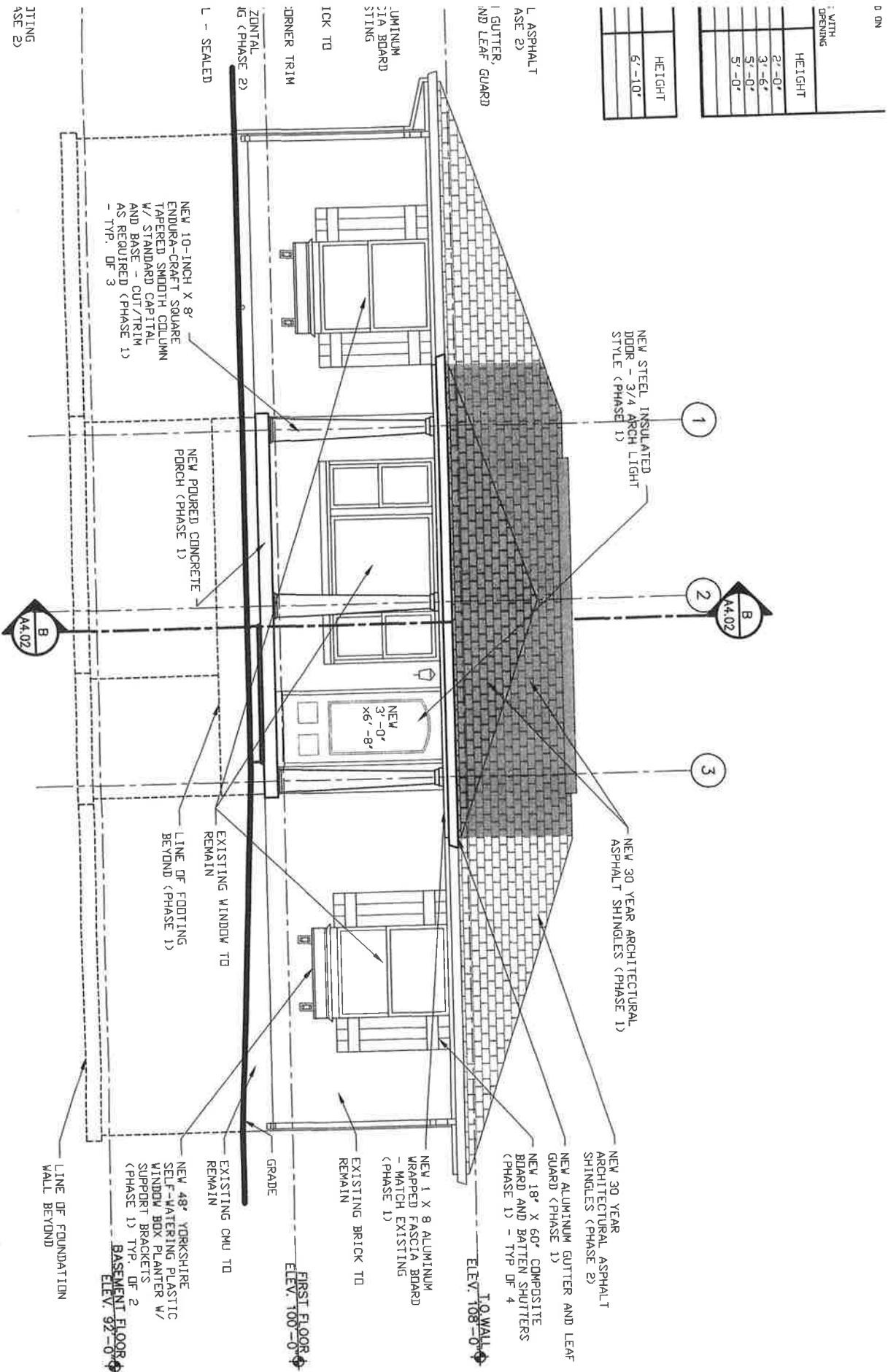
I have discussed and reviewed the plans and proposed changes and support their project.



Terri Ramsey
4808 Briarwood Dr
Nashville, TN 37211

HEIGHT
2'-0"
3'-6"
5'-0"
5'-0"

HEIGHT
6'-10"



A SOUTH ELEVATION
SCALE: 1/4" = 1'-0"



ROCHESTER

PROJECT
Lind Residence
Addition of

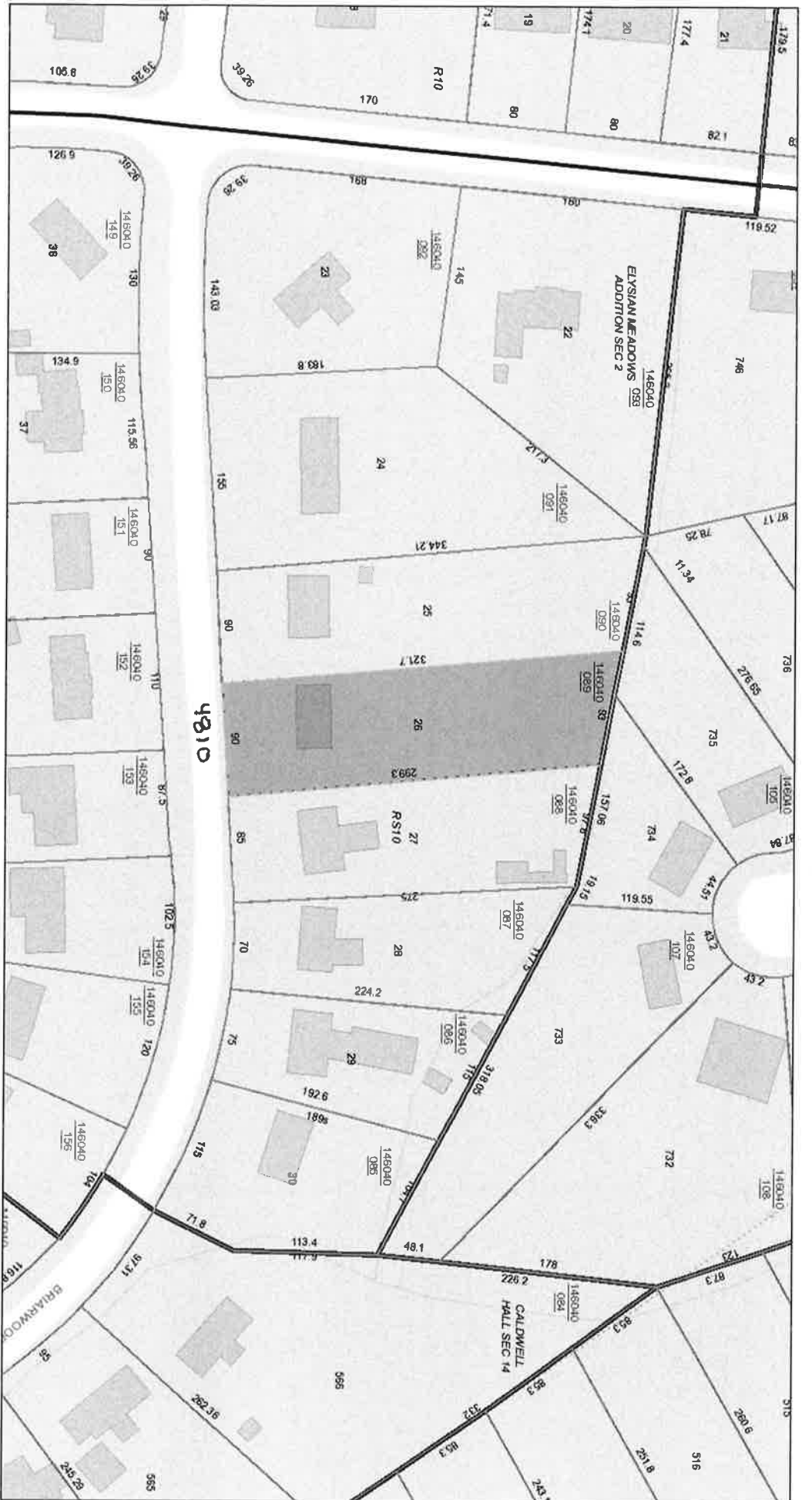
Nashville,
Tennessee

SHEET
Exterior E

PROJECT NUMBER
2019-

SHEET NUMBER

Nashville / Davidson County Parcel Viewer



December 17, 2019

polygonLayer

Override 1

Ownership Parcels

Planned Unit Development

Urban Design Overlay District

Zoning



1:1,128

Metro GIS

Letter from Abutting / Adjoining Property Owner

December 16, 2019

Metro Nashville Planning Dept
800 Second Avenue South
P.O. Box 196300
Nashville, TN 37219-6300

Subject: Amending the Briarwood Dr setback on 4810 for the addition of a porch

My neighbors, Jon Lind and Terri Ramsey, own the home at 4810 Briarwood Dr, next door to my property at 4812 Briarwood Dr. I understand they plan to amend their street setback along Briarwood. The existing house is located 24.5 feet back from the road easement. I understand the regulations at the time of construction required a 20-foot setback which excluded the protruding porch. I further understand they are requesting an amendment to extend the porch 4 feet and the new distance from the easement to the new porch is 16ft.

I have discussed and reviewed the plans and proposed changes and support their project.

Donald E. Mauldin

Donald Mauldin
4812 Briarwood
Nashville, TN 37211



METROPOLITAN COUNCIL

Courtney Johnston
Councilwoman, District 26

December 18, 2019

Terri Ramsey
4810 Briarwood Dr
Nashville, TN 37211

Re: Zoning Variance Request

Mrs. Ramsey,

Thank you for your call regarding the zoning variance you've requested as it relates to a porch you'd like to add to your home located at 4810 Briarwood Dr., Nashville, TN 37211 (parcel ID 14604008900). I'm in full support of this. Thank you for your investment in our neighborhood. Please let me know of anything else I can do to assist you in this endeavor.

All my best,

A handwritten signature in blue ink that reads "Courtney Johnston".

Courtney Johnston
Councilwoman, District 26
Metropolitan Government of Nashville and Davidson County
(615) 953-9395 (office)

Metropolitan Board of Zoning Appeals

Metro Howard Building
800 Second Avenue South
Nashville, Tennessee 37210



Appellant : Paul Boulifard

Date: 12/19/19

Property Owner: _____

Case #: 2020-036

Representative: : _____

Map & Parcel: 07202006900

Council District 08

The undersigned hereby appeals from the decision of the Zoning Administrator, wherein a Zoning Permit/Certificate of Zoning Compliance was refused:

Purpose:

to use existing structure for an animal boarding facility

Activity Type:

Animal Boarding facility

Location:

902 Huff Lane

This property is in the TR Zone District, in accordance with plans, application and all data heretofore filed with the Zoning Administrator, all of which are attached and made a part of this appeal. Said Zoning Permit/Certificate of Zoning Compliance was denied for the reason:

Reason:

variance from distance requirements

Section(s):

17.16.070 B1

Based on powers and jurisdiction of the Board of Zoning Appeals as set out in Section 17.40.180 Subsection _____ Of the Metropolitan Zoning Ordinance, a Variance, Special Exception, or Modification to Non-Conforming uses or structures is here by requested in the above requirement as applied to this property.

Same
Appellant Name (Please Print)

Paul Boulifard
Representative Name (Please Print)

Address

1222 EAST DALE AVE.
Address

City, State, Zip Code

NASHVILLE, TN 37216
City, State, Zip Code

Phone Number

615-913-3165
Phone Number

Email

PO BOULIFARD.COM
Email

Appeal Fee: _____



**Metropolitan Government
of Nashville and Davidson County, Tennessee
Department of Codes and Building Safety
800 Second Avenue South, Nashville, TN 37210**



**ZONING BOARD APPEAL / CAAZ - 20190077569
Inspection Checklist for Use and Occupancy
This is not a Use and Occupancy Notification**

PARCEL: 07202006900

APPLICATION DATE: 12/19/2019

SITE ADDRESS:

902 HART LN NASHVILLE, TN 37216

LOTS 13,14,15 PT 16 CROCKETT SUB MAPLEWOOD

PARCEL OWNER: BLUE HERON HOLDINGS, LLC

CONTRACTOR:

APPLICANT:

PURPOSE:

to renovate an existing space for a 3246 sq.ft. animal boarding facility. permitted with conditions.

*Before a Use and Occupancy Letter can be issued for this project, the following approvals are required.
Inspections Foundation = before concrete poured, Framing = before covering wall and after rough-in inspections.*

There are currently no required inspections

Inspection requirements may change due to changes during construction.

APPLICATION FOR A VARIANCE REQUEST

After your appeal is filed, Zoning staff will visit the site to take photographs for the Board members. So they will have a better ideal of the nature of your request. Zoning staff will notify the district council member of the hearing. You will be responsible for preparing the envelopes and notices for mailing to the owners of property within 1,000 feet of the property at issue in the case. The envelopes must include the return address for the BZA and case number. Fold and insert notices into envelopes, seal the envelopes, and apply first class postage. These neighbor notices must be delivered to Zoning staff at least twenty-three (23) days before the public hearing. Additionally, you will be responsible for purchasing, posting, and removing the red Zoning Appeal signs for the subject property. (See attached Metro Code of Laws requirements regarding, sign placement.)

The day of the public hearing, it will be your responsibility to convey to the Board the nature of the hardship in your request that makes it difficult/impossible for you to comply with the Zoning Code. **It would be to your benefit to let your neighbors know about your request prior to all notices being sent to them from our office.**

Any party can appeal the Board's decision to Chancery or Circuit Court within sixty (60) days from the date the order in the case is entered. **Should your request be granted, we would remind you that it is your responsibility to obtain the permit for which you have applied.** You should also be aware that you have two (2) years to obtain the permit or you would have to re-file your request with the board.

Once your request is filed, the staff will review your request to verify that the submittal is complete. Incomplete submittals will not be scheduled for hearing until complete.

Any correspondence to the Board must be submitted to our office by close of business, the Thursday prior to the public hearing to be included in the record.

I am aware that I am responsible for posting and also removing the sign(s) after the public hearing.

PAUL BOULIFAUD
APPELLANT

12-19-2019
DATE

In Simple terms, for the Board to grant you a variance in the zoning ordinance, you must convey to the Board what your hardship is. Hardships are narrowness, shallowness, irregular shape, and topography of property. The Board can also consider other practical difficulties such as mature trees, easements, and location of disposal systems which can affect your plan. Consideration can be given to the characteristics of neighborhood and the way it is developed. One or more of these conditions must affect your inability to build or occupy the property to provide your case.

At the public hearing, please be prepared to tell the Board what your hardship is, why you cannot build in accordance with zoning without requesting a variance and why you feel you have legitimate hardship.

The Board cannot grant a variance based solely on inconvenience to the applicant or solely on a financial consideration. It is incumbent on you as the appellant to complete this form by conveying a HARDSHIP as outlined. At the meeting it is important that you explain this hardship as effectively as possible.

WHAT SPECIFIC AND UNIQUE CIRCUMSTANCES (HARDSHIP) EXIST THAT WOULD AUTHORIZE THE CONSIDERATION OF THE BOARD UNDER THE REVIEW STANDARDS AS OUTLINED?

EXISTING STRUCTURE WITH ALLOWED ZONING (IR) AND EXISTING RESIDENTIAL UNITS WITHIN DISTANCE REQUIREMENT REQ'D. 200 FOOT. DISTANCE.

Standards for a Variance

The Metropolitan Board of Zoning Appeals may grant variances from the strict application of the provisions of the Zoning Code based upon findings of fact related to the standards in section 17.40.370. This Section is included as follows:

Physical Characteristics of the property- The exceptional narrowness, shallowness or shape of a specific piece of property, exceptional topographic condition, or other extraordinary and exceptional condition of such property would result in peculiar and exceptional practical difficulties to, or exceptional or undue hardship upon the owners of such property.

Unique characteristics- *The specific conditions cited are unique to the subject property and generally not prevalent to other properties in the general area.*

Hardship not self-imposed- *The alleged difficulty or hardship has not been created by the previous actions of any person having an interest in the property after date of Zoning Code.*

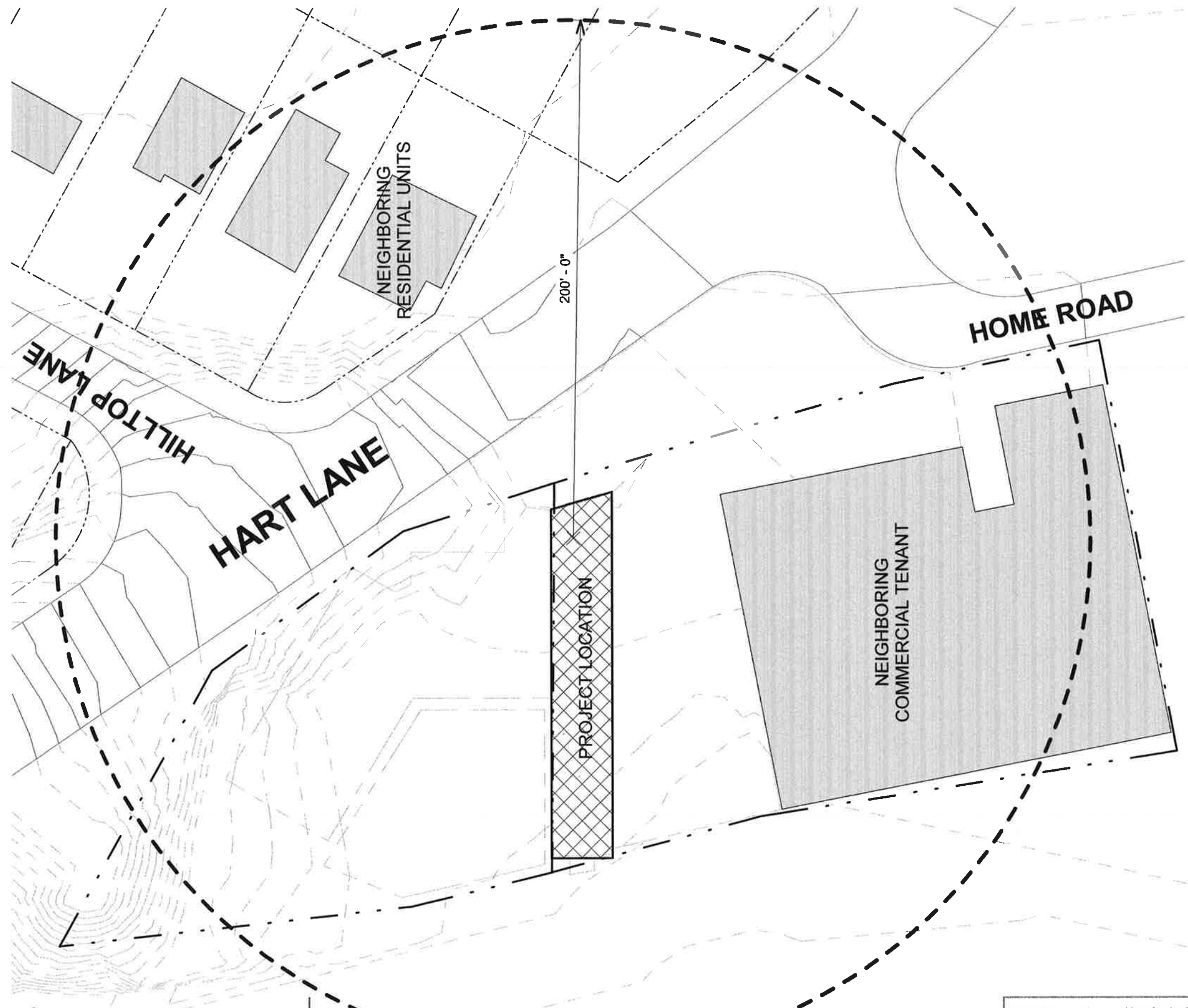
Financial gain not only bases- *Financial gain is not the sole basis for granting the variance.*

No injury to neighboring property- *The granting of a variance will not be injurious to other property or improvements in the area, impair and adequate supply of light and air to adjacent property, or substantially diminish or impair property values within the area.*

No harm to public welfare- *The granting of the variance will not be detrimental to the public welfare and will not substantially impair the intent and purpose of this Zoning Code.*

Integrity of Master Development Plan- *The granting of a variance will not compromise the design integrity or functional operation of activities or facilities within an approved Planned Unit Development.*

The Board shall not grant variances to the land use provisions of section 2.3, nor the density of Floor Area Ratio (FAR) standards of Tables 3-B and 2-C, nor the required size of residential lots approved by the Planning Commission under the authority of section 3.7 (Lot Averaging), section 3.8 (Cluster Lot Option) or Section 9. E.3 (PUD). Further the Board shall not act on a variance application within a Planned Unit Development (PUD), Urban Design Overlay or Institutional Overlay district without first considering a recommendation from the Planning Commission.



80'
40'
20'
0'

1 ARCHITECTURAL SITEPLAN - VARIANCE
1" = 40'-0"



1222 Eastdale Avenue - Nashville, TN 37216
Phone: 615 913 3165 - Mobile: 417 496 4286
www.boulifard.com email: pb@boulifard.com

TAIL-BLAZERS- DOGGIE DAYCARE
902 HART LANE, NASHVILLE TN 37216

SITEPLAN - VARIANCE APPLICATION	
Project #: 0000	V1.0
Date: 12-18-2019	

Metropolitan Board of Zoning Appeals

Metro Howard Building
800 Second Avenue South
Nashville, Tennessee 37210



Appellant : SCOTT MORTON

Date: 12/20/19

Property Owner: BD. TRS. LEAD MINISTER PRES. CHURCH

Case #: 2020-037

Representative: SCOTT MORTON

Map & Parcel: 061 150 227 00

Council District 07

The undersigned hereby appeals from the decision of the Zoning Administrator, wherein a Zoning Permit/Certificate of Zoning Compliance was refused:

Purpose:

COMMERCIAL CONDOMINIUM OFFICE SPACE
w/ SURFACE PARKING - 4 STORY w/ PARKING IN THE
REAR

Activity Type: COMMERCIAL NEW CONSTRUCTION

Location: 3928 CALLAHAN PIKE & 2 ADJUTING PARCELS (3932 & 3930) TO
BE COMBINED

This property is in the MUL-A ^{UDO} Zone District, in accordance with plans, application and all data heretofore filed with the Zoning Administrator, all of which are attached and made a part of this appeal. Said Zoning Permit/Certificate of Zoning Compliance was denied for the reason:

Reason:

INSUFFICIENT PARKING & EXCEEDS MAX HEIGHT IN
BUILD TO ZONE

Section(s): TABLE 17.12.020 D & TABLE 17.20.030

Based on powers and jurisdiction of the Board of Zoning Appeals as set out in Section 17.40.180 Subsection _____ Of the Metropolitan Zoning Ordinance, a Variance, Special Exception, or Modification to Non-Conforming uses or structures is here by requested in the above requirement as applied to this property.

SCOTT MORTON
Appellant Name (Please Print)

SCOTT MORTON
Representative Name (Please Print)

209 10TH AVE S SUITE 425
Address

209 10TH AVE S SUITE 425
Address

NASHVILLE, TN 37203
City, State, Zip Code

NASHVILLE, TN 37203
City, State, Zip Code

615-739-5555
Phone Number

615-739-5555
Phone Number

SMORTON@SMITHGEESTUDIO.COM
Email
smithgee2studio

SMORTON@SMITHGEESTUDIO.COM
Email
smithgee2studio

Zoning Examiner: DAVID O-B

Appeal Fee: \$200

Ababinchak@smithgee2studio.com



**Metropolitan Government
of Nashville and Davidson County, Tennessee
Department of Codes and Building Safety
800 Second Avenue South, Nashville, TN 37210**



3743328

**ZONING BOARD APPEAL / CAAZ - 20190077886
Inspection Checklist for Use and Occupancy
This is not a Use and Occupancy Notification**

PARCEL: 06115022700**APPLICATION DATE:** 12/20/2019**SITE ADDRESS:**

3928 GALLATIN PIKE NASHVILLE, TN 37216
LOT 10 AND PT 9 YOUNGS INGLEWOOD ANNEX

PARCEL OWNER: BD. TRS. EASTMINSTER PRES. CH.**CONTRACTOR:****APPLICANT:****PURPOSE:**

Applicant seeks 2 variances. Applicant seeks SHELL PERMIT to Construct 4-story commercial condominium office space with parking in the rear. Approximately 31662 GSF (29, 262 NSF). Build to zone established as back of sidewalk. Build to zone 0'- 80', min step back 15', max in build to zone, 3 stories and 45'. Max 4 stories, 60'. Max FAR: 1. Parking 1/300 sq. ft. 98 parking stalls required. Variance 1: Applicant seeks parking reductions, stall number to be determined by parking study. Variance 2: Applicant seeks "minor" height encroachment in build to zone. Determination to be made prior to BZA meeting. See Attached.

*Before a Use and Occupancy Letter can be issued for this project, the following approvals are required.
Inspections Foundation = before concrete poured, Framing = before covering wall and after rough-in inspections.*

There are currently no required inspections

Inspection requirements may change due to changes during construction.

APPLICATION FOR A VARIANCE REQUEST

After your appeal is filed, Zoning staff will visit the site to take photographs for the Board members. So they will have a better ideal of the nature of your request. Zoning staff will notify the district council member of the hearing. You will be responsible for preparing the envelopes and notices for mailing to the owners of property within 1,000 feet of the property at issue in the case. The envelopes must include the return address for the BZA and case number. Fold and insert notices into envelopes, seal the envelopes, and apply first class postage. These neighbor notices must be delivered to Zoning staff at least twenty-three (23) days before the public hearing. Additionally, you will be responsible for purchasing, posting, and removing the red Zoning Appeal signs for the subject property. (See attached Metro Code of Laws requirements regarding, sign placement.)

The day of the public hearing, it will be your responsibility to convey to the Board the nature of the hardship in your request that makes it difficult/impossible for you to comply with the Zoning Code. **It would be to your benefit to let your neighbors know about your request prior to all notices being sent to them from our office.**

Any party can appeal the Board's decision to Chancery or Circuit Court within sixty (60) days from the date the order in the case is entered. **Should your request be granted, we would remind you that it is your responsibility to obtain the permit for which you have applied.** You should also be aware that you have two (2) years to obtain the permit or you would have to re-file your request with the board.

Once your request is filed, the staff will review your request to verify that the submittal is complete. Incomplete submittals will not be scheduled for hearing until complete.

Any correspondence to the Board must be submitted to our office by close of business, the Thursday prior to the public hearing to be included in the record.

I am aware that I am responsible for posting and also removing the sign(s) after the public hearing.

Scott Morton
APPELLANT
 (Smith Gee Studio)

12/20/19
DATE

Standards for a Variance

The Metropolitan Board of Zoning Appeals may grant variances from the strict application of the provisions of the Zoning Code based upon findings of fact related to the standards in section 17.40.370. This Section is included as follows:

Physical Characteristics of the property- The exceptional narrowness, shallowness or shape of a specific piece of property, exceptional topographic condition, or other extraordinary and exceptional condition of such property would result in peculiar and exceptional practical difficulties to, or exceptional or undue hardship upon the owners of such property.

Unique characteristics- *The specific conditions cited are unique to the subject property and generally not prevalent to other properties in the general area.*

Hardship not self-imposed- The alleged difficulty or hardship has not been created by the previous actions of any person having an interest in the property after date of Zoning Code.

Financial gain not only bases-Financial gain is not the sole basis for granting the variance.

No injury to neighboring property- The granting of a variance will not be injurious to other property or improvements in the area, impair and adequate supply of light and air to adjacent property, or substantially diminish or impair property values within the area.

No harm to public welfare- *The granting of the variance will not be detrimental to the public welfare and will not substantially impair the intent and purpose of this Zoning Code.*

Integrity of Master Development Plan- *The granting of a variance will not compromise the design integrity or functional operation of activities or facilities within an approved Planned Unit Development.*

The Board shall not grant variances to the land use provisions of section 2.3, nor the density of Floor Area Ratio (FAR) standards of Tables 3-B and 2-C, nor the required size of residential lots approved by the Planning Commission under the authority of section 3.7 (Lot Averaging), section 3.8 (Cluster Lot Option) or Section 9. E.3 (PUD). Further the Board shall not act on a variance application within a Planned Unit Development (PUD), Urban Design Overlay or Institutional Overlay district without first considering a recommendation from the Planning Commission.



Monday, December 23, 2019

Metropolitan Board of Zoning Appeals
800 Second Avenue South
Nashville, TN 37210

RE: Request for Zoning Variance – 3928 Gallatin Pike

This letter is submitted to indicate the purpose to request two (2) variances for the proposed development at 3928, 3930, & 3932 Gallatin Pike.

The proposed development consolidates three parcels located along Gallatin Pike. The subject property is currently zoned MUL-A, located outside of the UZO, and is part of the Gallatin Pike Urban Design Overlay. The development proposes 4 stories of Office Condo with surface parking. The applicant requests the following variances for the proposed development:

Request 1 - Reduce office parking requirement to reflect current market demand per attached parking study.

- The proposed use is office condos. Office condos are a unique office subset that specifically targets small business owners and start-ups who operate with minimal staff. The parking study demonstrates that the current market demand for office condo parking is much lower than the minimum requirement by zoning code for general office use.
- A reduction in parking spaces will provide more horizontal development area to expand the building footprint along Gallatin Pike that better engages the public realm.
- The proposed development enhances the existing character of the Gallatin Pike corridor and meets existing Policy (T4CM) intent. The proposed building is prioritized to front Gallatin Pike and to screen parking internal to the development. This promotes a more active and pedestrian-friendly streetscape.

Request 2 - Allow for minor encroachment into required setback zone to accommodate architectural corner feature design considerations and a roof overhang over the rooftop amenity area.

- The subject property is irregular in shape and narrow in depth. A combination of the following factors further constrains the site and its development potential:
 - Overhead power lines exist along Gallatin Pike. OSHA requires a minimum safe distance of 10 ft. between the building and the power lines. The distance could increase based on the line's voltage.
 - An extensive 8.5 ft. R.O.W. dedication is required along Gallatin Pike to provide for future transit.
 - The subject property is zoned MUL-A and abuts a residential neighborhood zoned RS5. A 20 ft. transitional landscape buffer is required along the rear property line.

Request for Zoning Variance
3928 Gallatin Pike

December 23, 2019
Page 2 of 2

- The subject property is a corner parcel. Per zoning code, the front façade of the building shall extend across at least 45% of the parcel's frontage along both public streets.
- The proposed building is shallow in depth (40 ft.) to provide smaller office space at a more affordable price point to an underserved office market in this area. A continuous 15 ft. stepback on floor 4 would create a 25 ft. building depth that greatly restricts the potential use of this space.
- A reduction in building stepback at floor 4 promotes greater design flexibility to articulate the scale, massing, and architectural character of the building.
- Gallatin Pike is a major arterial boulevard that links East Nashville to Downtown and is served by active transit, MTA Bus route #26/56. The proposed project meets existing Policy intent, with specific focus to concentrating higher intensity development along major corridors or existing transit lines.

The applicant appreciates the Board of Zoning Appeals thoughtful consideration of the variance requests and looks forward to meeting with you.

Sincerely,



Scott Morton
Smith Gee Studio

REQUEST FOR ZONING VARIANCE

3928 Gallatin Pike



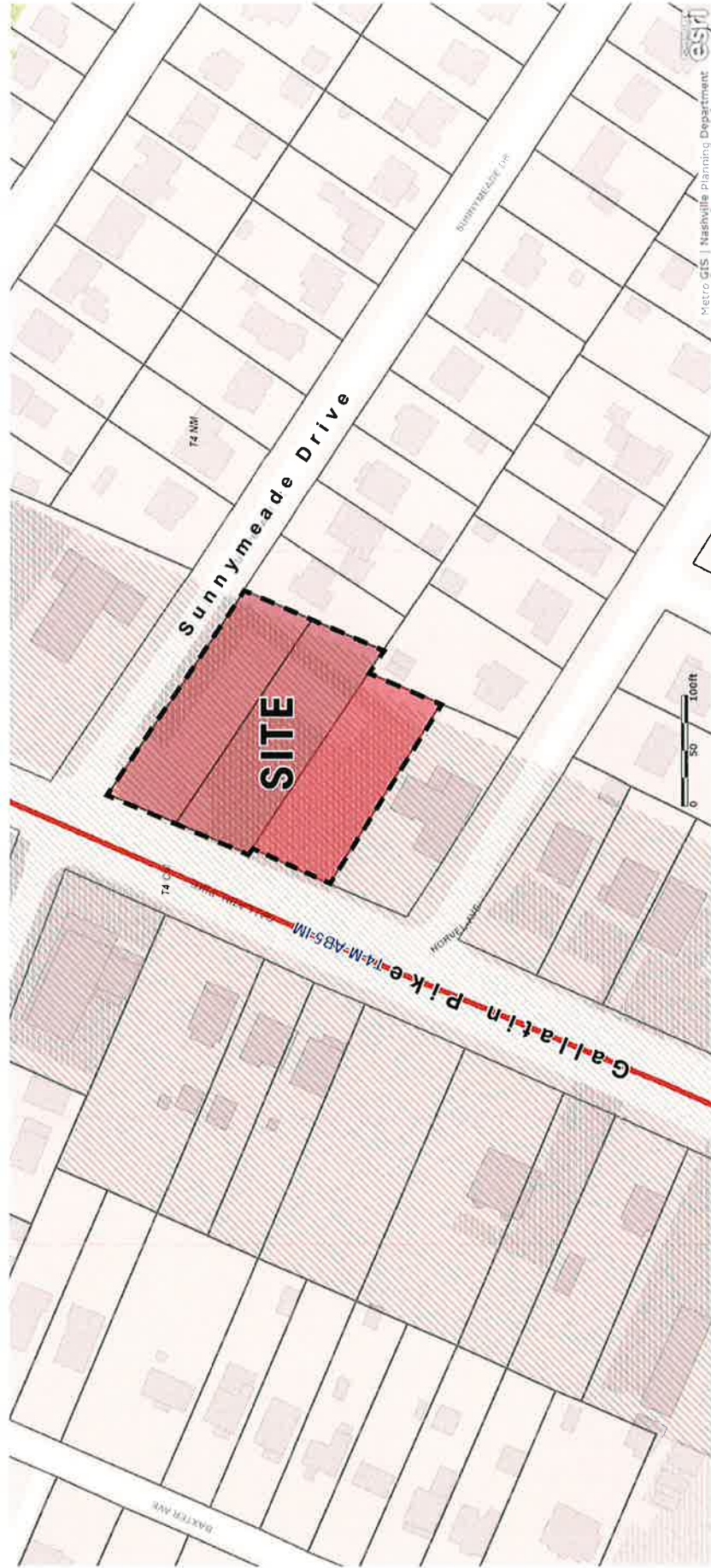
SMITHGEESTUDIO

Request 1

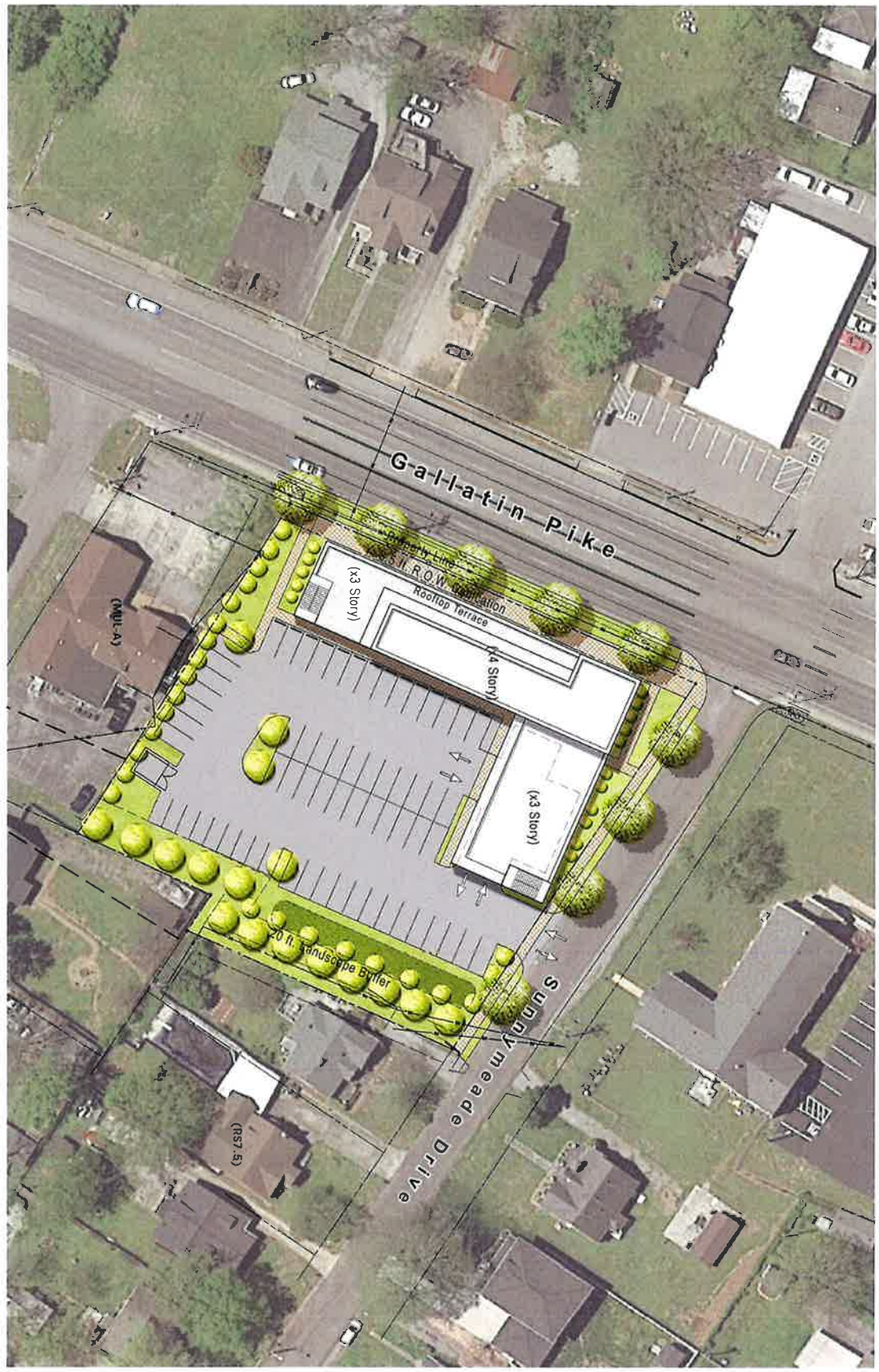
Reduce office parking requirement to reflect current market demand.

Request 2

Allow for minor encroachment into required setback zone on 4th floor.



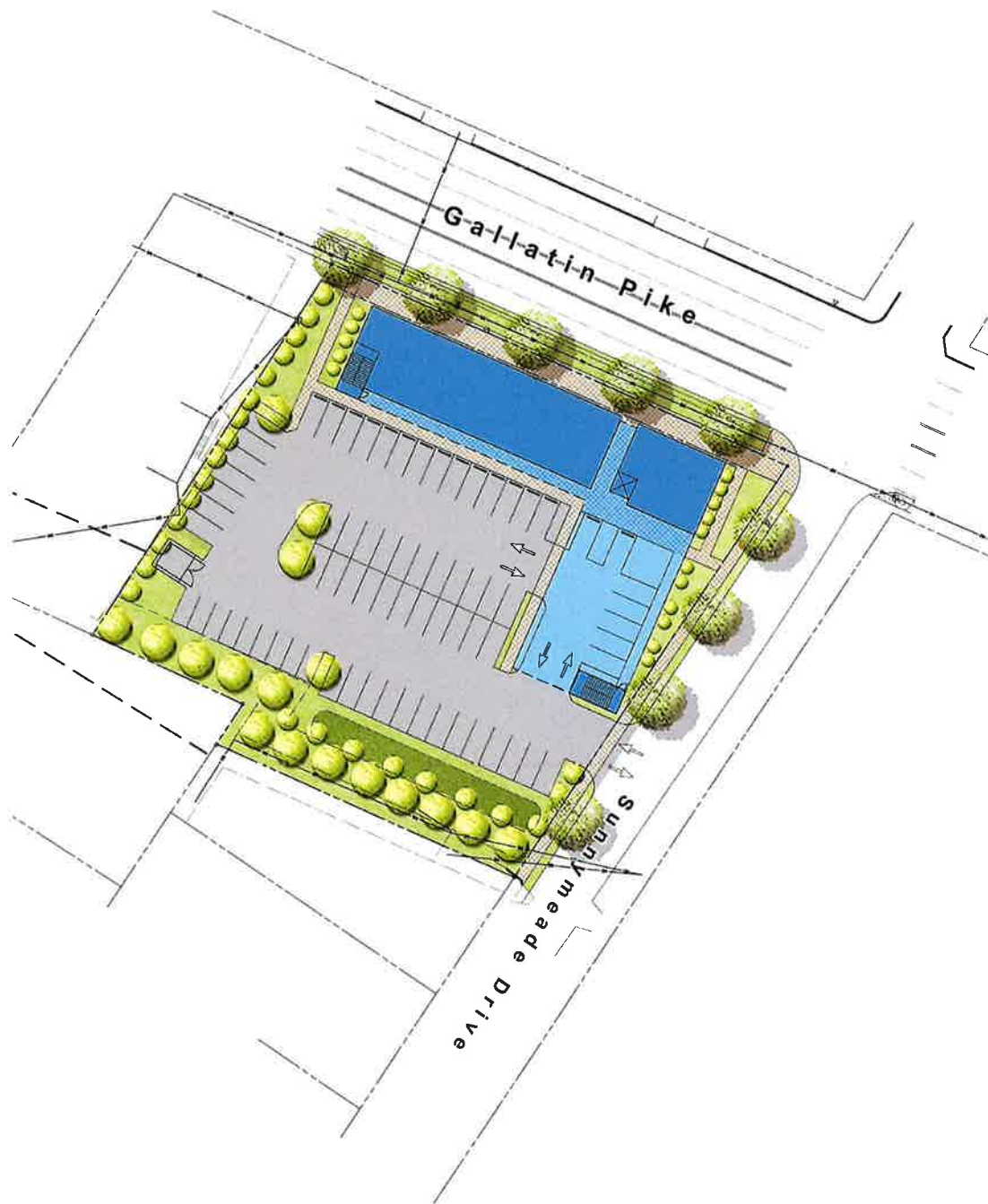
Site Location Map with Surrounding Context

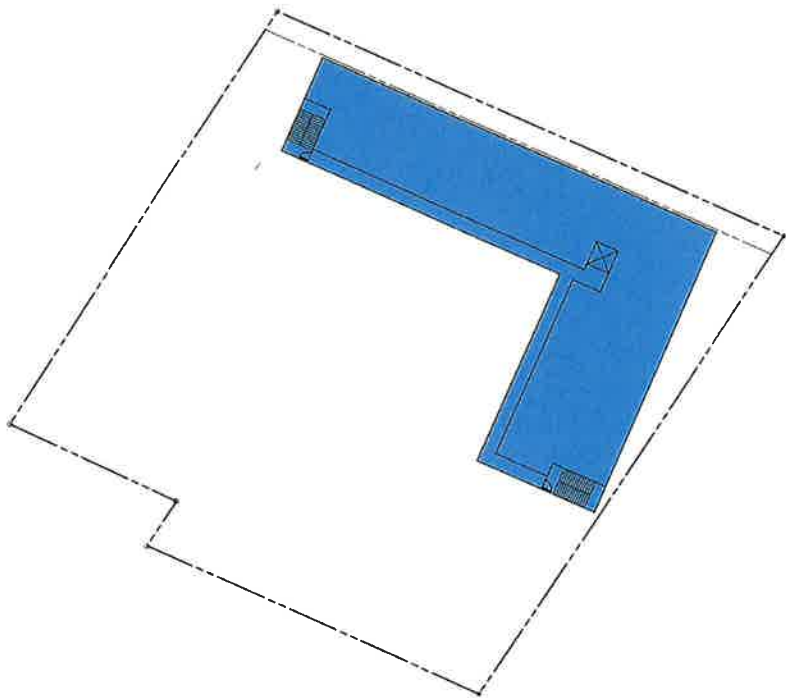


Proposed Site Plan

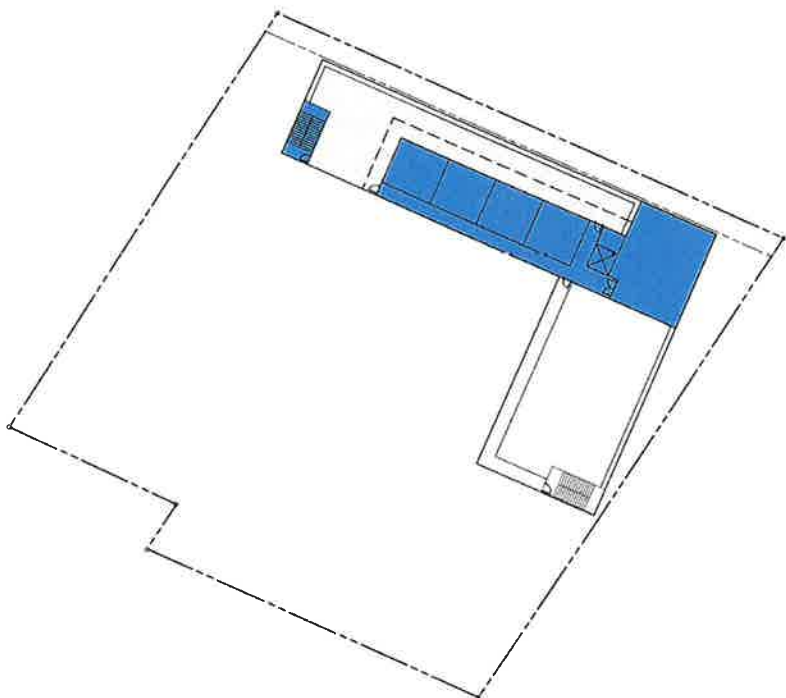


Proposed Floor Plan - Level 1





Proposed Floor Plan - Levels 2 & 3

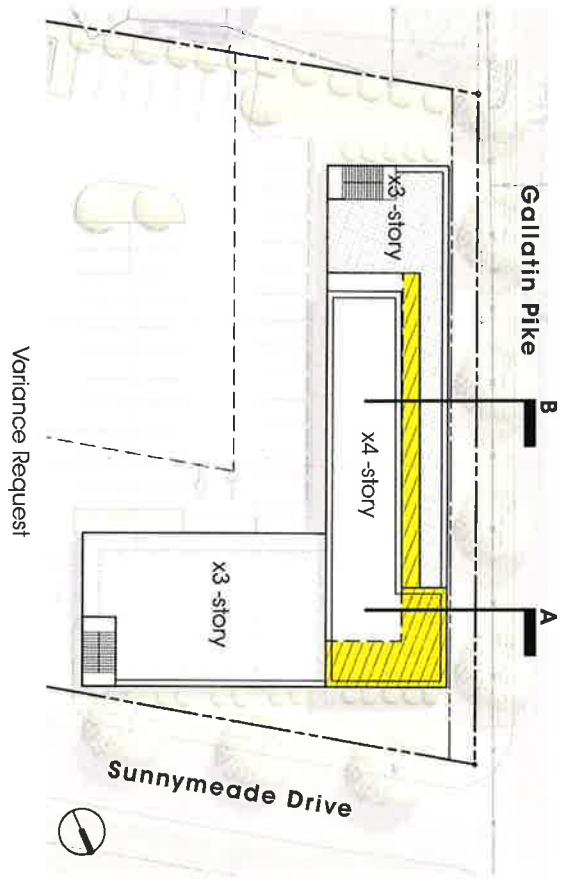
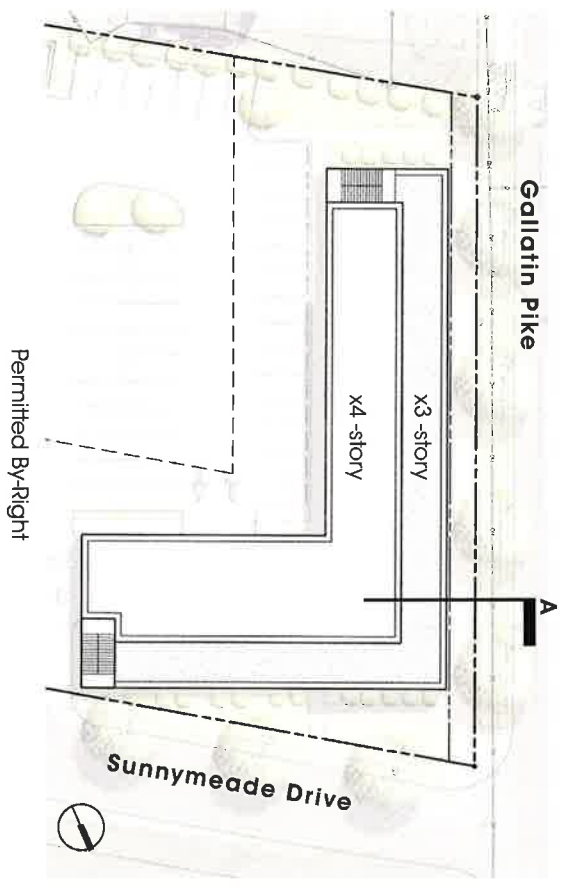
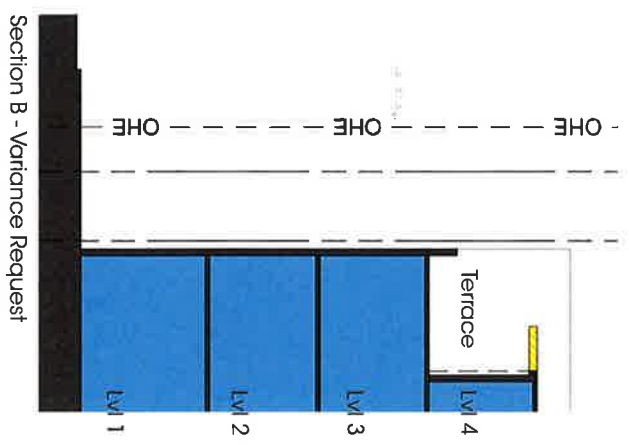
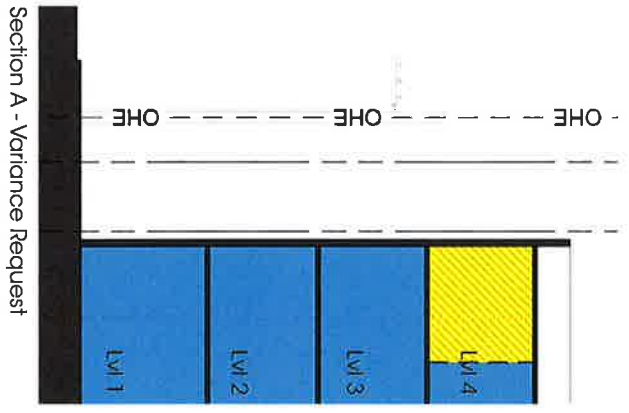
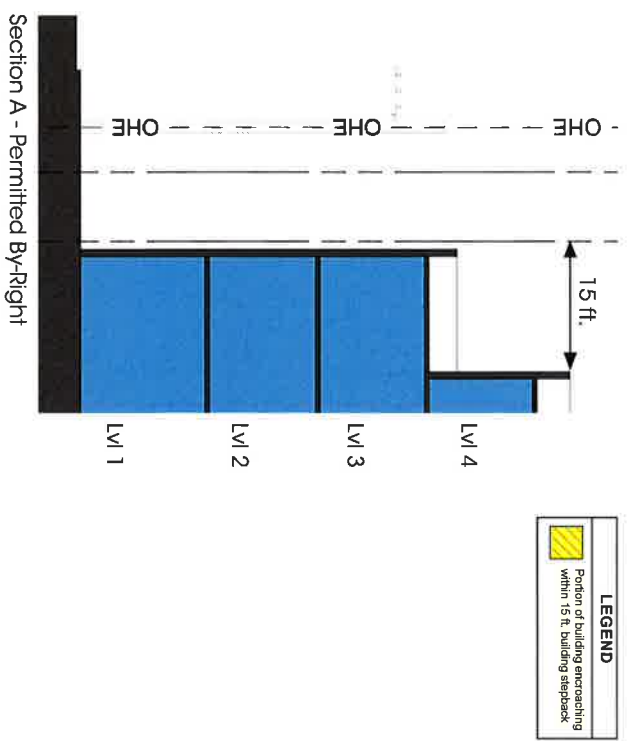


Proposed Floor Plan - Level 4

Parking Study - TBA by January 30

Variance Request #1
Reduction to Office Parking Requirement

3928 GALLATIN PIKE



Variance Request #2
Reduction to Building Stepback Required for 4th Story

3928 GALLATIN PIKE



Gallatin Pike Elevation

Variance Request #2

Reduction to Building Stepback Required for 4th Story

3928 GALLATIN PIKE



Sunnymeade Drive Elevation

Variance Request #2
Reduction to Building Stepback Required for 4th Story

3928 GALLATIN PIKE



Architectural Character Imagery

Variance Request #2
Reduction to Building Stepback Required for 4th Story



Wednesday, January 29, 2020

Metropolitan Board of Zoning Appeals
800 Second Avenue South
Nashville, TN 37210

RE: Request for Zoning Variance – 3928, 3930, 3932 Gallatin Pike

This letter is submitted to indicate the purpose to request two (2) variances for the proposed development at 3928, 3930, & 3932 Gallatin Pike.

The proposed development consolidates three parcels located along Gallatin Pike. The subject property is currently zoned MUL-A, located outside of the UZO, and is part of the Gallatin Pike Urban Design Overlay. The development proposes 4 stories of Office Condo with covered and surface parking. The applicant requests the following variances for the proposed development:

Request 1 - A 25% reduction to the required parking for general office land use recommended by the attached Parking Study. Current Site Plan would reduce required parking from 96 spaces to 72 spaces.

- The proposed use is office condos. Office condos are a unique office subset that specifically targets small business owners and start-ups who operate with minimal staff. The parking study demonstrates that the current market demand for office condo parking is much lower than the minimum requirement by zoning code for general office use as demonstrated in the attached Parking Study.
- A reduction in parking spaces will provide more horizontal development area to expand the building footprint along Gallatin Pike that better engages the public realm.
- The proposed development enhances the existing character of the Gallatin Pike corridor and meets existing Policy (T4CM) intent. The proposed building is prioritized to front Gallatin Pike and to screen parking internal to the development. This promotes a more active and pedestrian-friendly streetscape.

Request 2 – Request to eliminate the 15ft. building height stepback for up to 60 lineal feet along both street front elevations to allow flexibility for an architectural corner feature. Request to encroach up to 12ft. within the 15ft. building height stepback along the Gallatin Pike building elevation to allow for an architectural canopy.

- The subject property is irregular in shape and narrow in depth. A combination of the following factors further constrains the site and its development potential:
 - Overhead power lines exist along Gallatin Pike. OSHA requires a minimum safe distance of 10 ft. between the building and the power lines. The distance could increase based on the line's voltage.
 - An extensive 8.5 ft. R.O.W. dedication is required along Gallatin Pike to provide for future transit.
 - The subject property is zoned MUL-A and abuts a residential neighborhood zoned RS5. A 20 ft. transitional landscape buffer is required along the rear property line.

Request for Zoning Variance
3928 Gallatin Pike

January 29, 2020
Page 2 of 2

- The subject property is a corner parcel. Per zoning code, the front façade of the building shall extend across at least 45% of the parcel's frontage along both public streets.
- The proposed building is shallow in depth (40 ft.) to provide smaller office space at a more affordable price point to an underserved office market in this area. A continuous 15 ft. stepback on floor 4 would create a 25 ft. building depth that greatly restricts the potential use of this space.
- A reduction in building stepback at floor 4 promotes greater design flexibility to articulate the scale, massing, and architectural character of the building.
- Gallatin Pike is a major arterial boulevard that links East Nashville to Downtown and is served by active transit, MTA Bus route #26/56. The proposed project meets existing Policy intent, with specific focus to concentrating higher intensity development along major corridors or existing transit lines.

The applicant appreciates the Board of Zoning Appeals thoughtful consideration of the variance requests and looks forward to meeting with you.

Sincerely,



Scott Morton
Smith Gee Studio

REQUEST FOR ZONING VARIANCE

3928, 3930, 3932 Gallatin Pike



SMITHGEESTUDIO

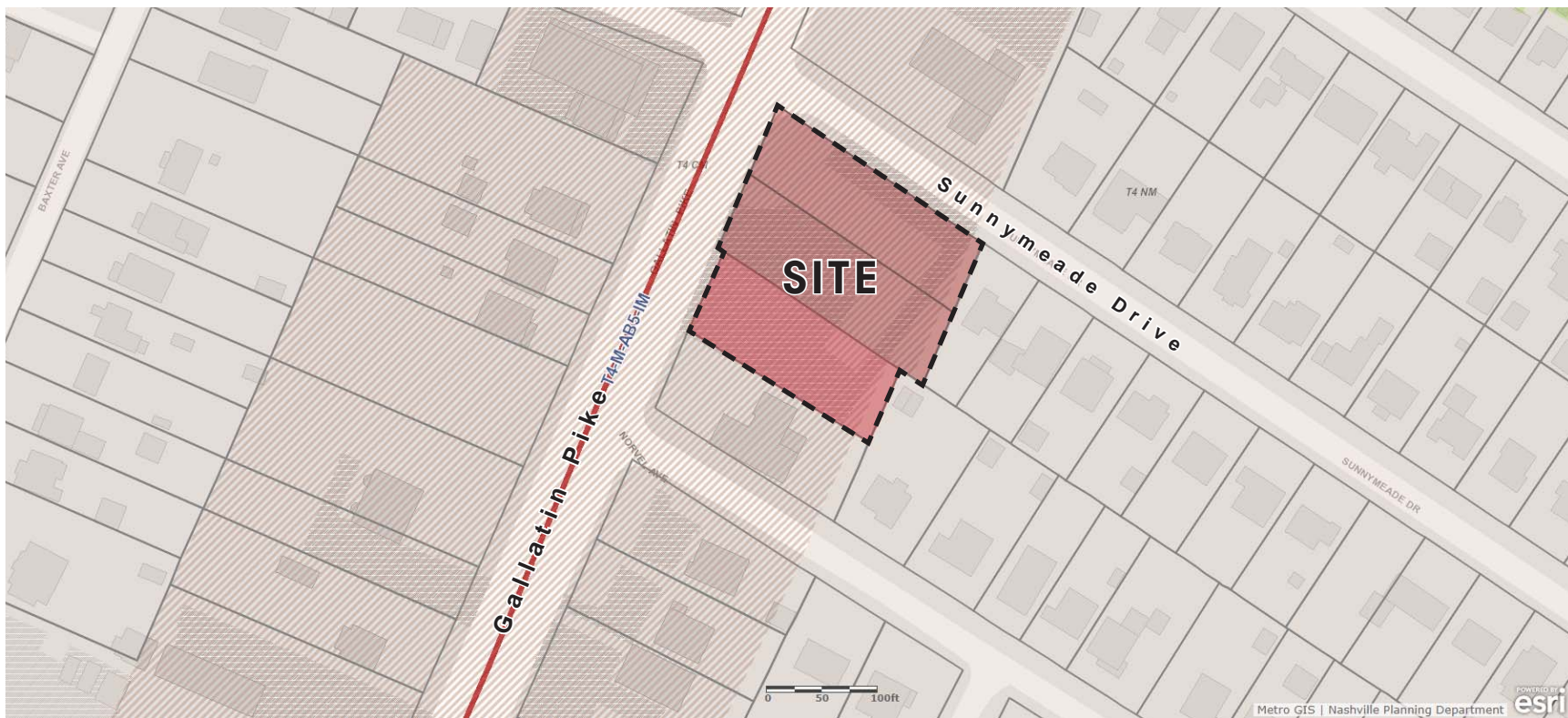
Request 1

A 25% reduction to the required parking for general office use.

Request 2

Eliminate 15ft. building height stepback for up to 60 lineal ft. along both street front elevations. Encroach up to 12ft. within height stepback along Gallatin Pike elevation to allow for an architectural canopy.

3928, 3930, 3932 GALLATIN PIKE



Site Location Map with Surrounding Context

3928, 3930, 3932 GALLATIN PIKE



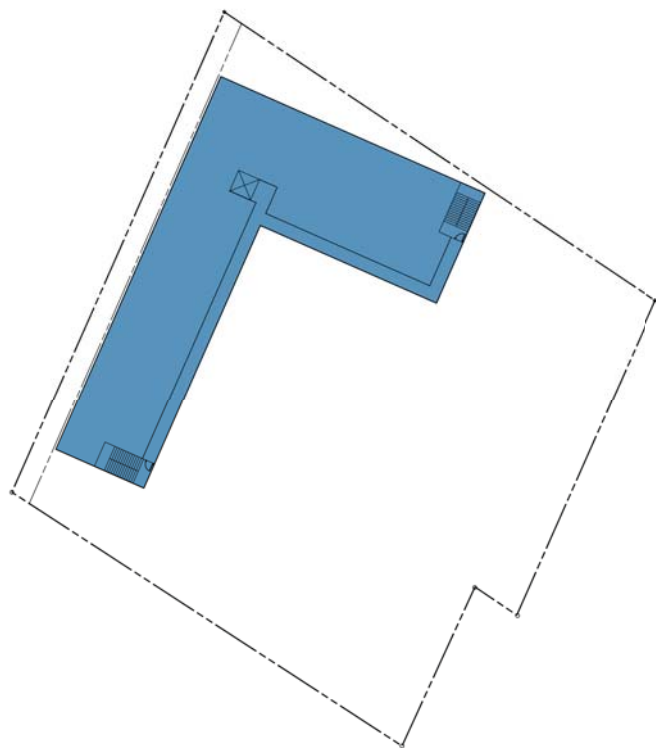
Proposed Site Plan

3928, 3930, 3932 GALLATIN PIKE

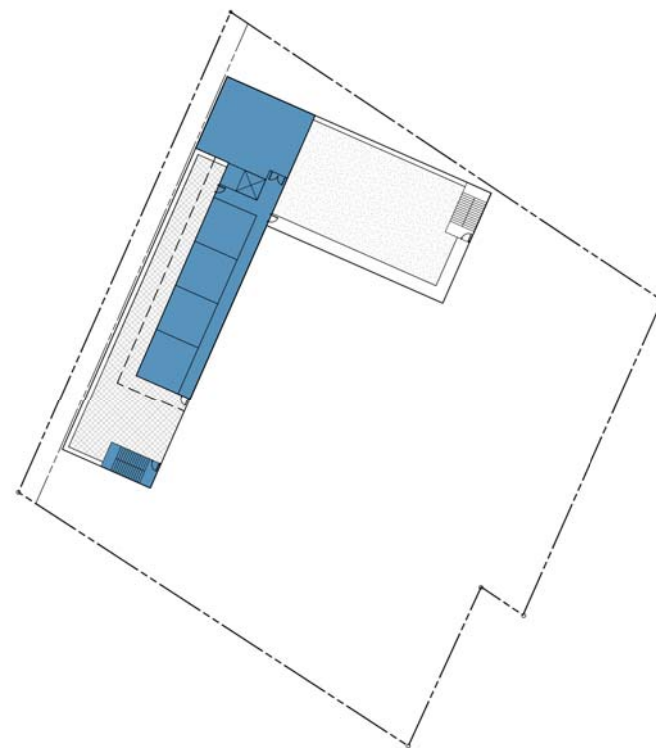


Proposed Floor Plan - Level 1

3928, 3930, 3932 GALLATIN PIKE



Proposed Floor Plan - Levels 2 & 3



Proposed Floor Plan - Level 4



3928, 3930, 3932 GALLATIN PIKE

Local Parking Occupancy Data

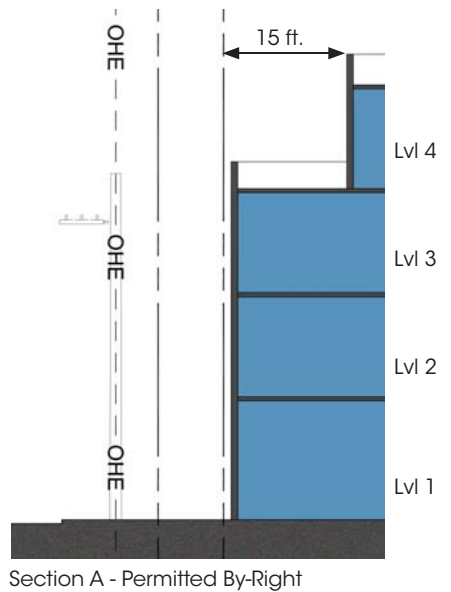
Location	Address	Size (sf)*	Peak Parking Demand (spaces)	Parking Demand Rate (spaces/1,000 sf)
Grassmere Park Building I	618 Grassmere Park	78,331	201	2.57
Grassmere Park Building II	624 Grassmere Park	132,801	326	2.45
Grassmere Park Building III	601 Grassmere Park	90,771	186	2.05
Two Grassmere Place	655 Grassmere Park	52,805	141	2.67
Armory Hill Oaks	3001 Armory Drive	36,460	105	2.88
Average	--	78,234	192	2.52
*Total building square footage obtained from Metro Property Assessor website. Vacant suites subtracted from total square footage per broker website where available.				

As shown above, the parking demand at each of the sites were lower than the Metro Zoning Code rate. The average peak parking demand for these sites was determined to be 2.52 spaces per 1,000 square feet. The parking demand rate at these similar sites ranged from 2.05 – 2.88 spaces per 1,000 square feet. It is also worth noting that none of the sites surveyed are located within the UZO, similar to the proposed office site. The Grassmere Business Park is served by WeGo Route #72 Grassmere/Edmondson, similar to the proposed office site, which is served by WeGo Route #56 Gallatin and #4 Shelby. The data presented above supports a reduced parking demand and parking requirement for similar types of office developments. The average parking demand rate for the local data set is 2.52 spaces per 1,000 square feet, which is nearly a 25% reduction from the Metro Zoning Code parking requirement rate.

The current site plan includes a total of 72 parking spaces to serve the office land use, which reflects a 25% reduction to the required parking. The average parking demand rate for the local office sites that were observed is 2.52 spaces per 1,000 square feet, which is approximately 25% less than Metro's base parking requirement rate of 3.33 spaces per 1,000 square feet for general office uses. The concept design of the proposed office development is expected to generate less traffic and parking demand than a typical office building since the development will be comprised of owned condominium office suites with greater square-footage per person than a traditional general office building. Therefore, these characteristics and the local data presented above provide justification for a parking requirement reduction of approximately 25%.

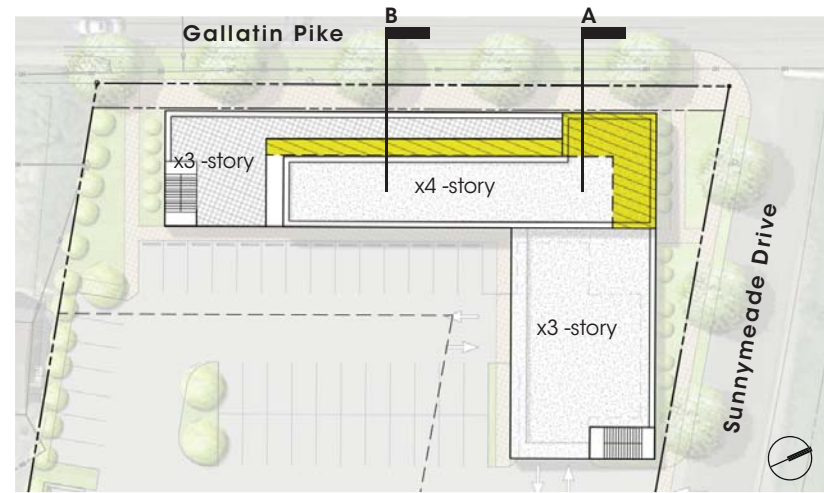
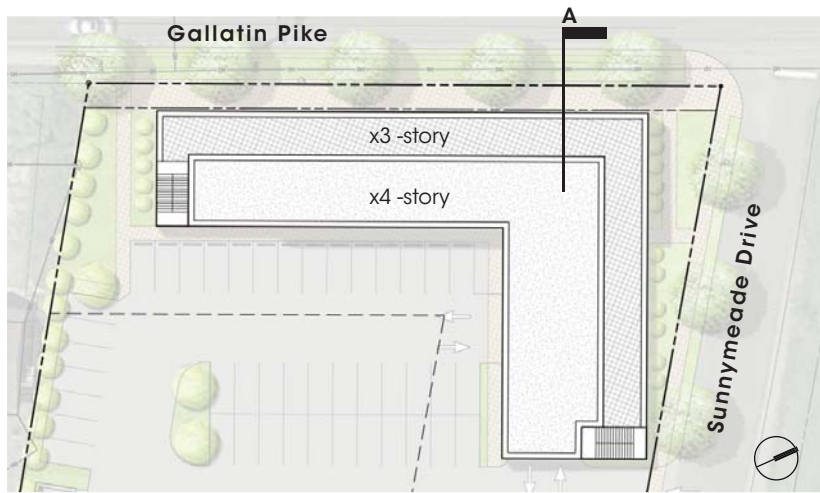
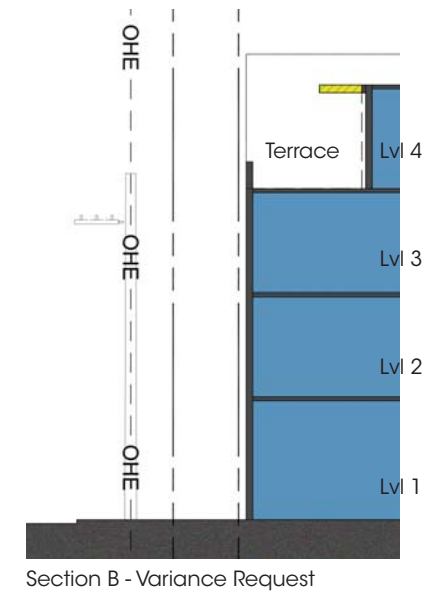
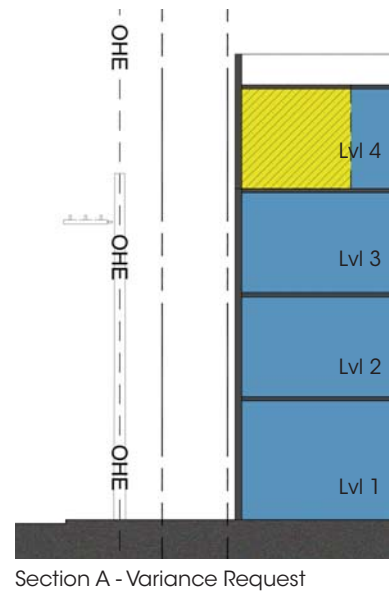
Excerpt from Parking Study. Please see full Parking Study attached.

3928, 3930, 3932 GALLATIN PIKE



LEGEND

Portion of building encroaching within 15 ft. building setback



Variance Request #2
Reduction to Building Stepback Required for 4th Story

3928, 3930, 3932 GALLATIN PIKE



Gallatin Pike Elevation

Variance Request #2
Reduction to Building Stepback Required for 4th Story

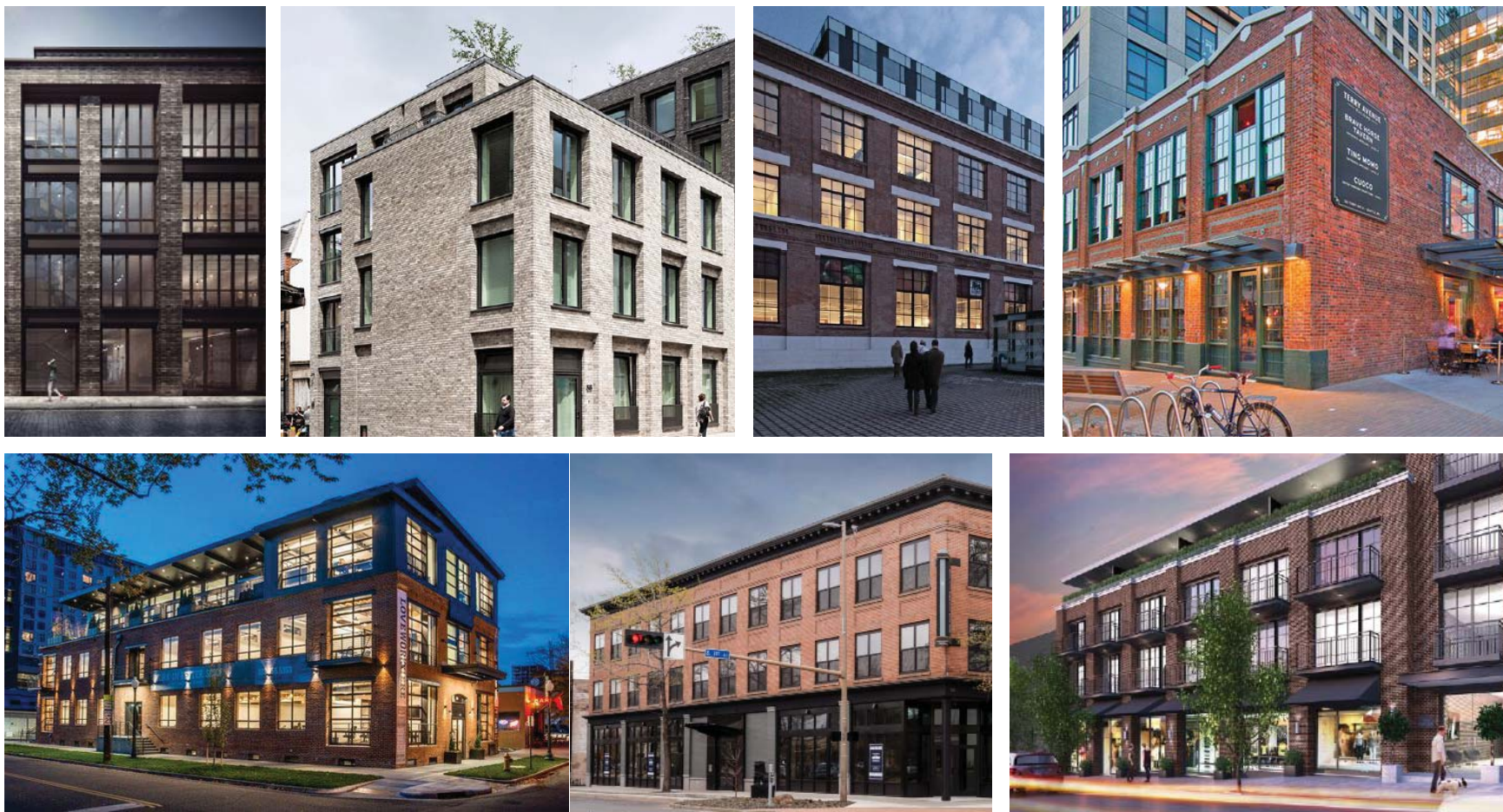
3928, 3930, 3932 GALLATIN PIKE



Sunnymeade Drive Elevation

Variance Request #2
Reduction to Building Stepback Required for 4th Story

3928, 3930, 3932 GALLATIN PIKE



Architectural Character Imagery

Variance Request #2
Reduction to Building Stepback Required for 4th Story



901 Woodland Street
 Nashville, TN 37206
 Phone: (615) 258-8551

January 28, 2020

Mr. Scott Morton
 Smith Gee Studio
 209 10th Avenue S, Suite 425
 Nashville, TN 37203
 smorton@smithgeestudio.com

Re: 3928, 3930, 3932 Gallatin Pike – Parking Study

Scott,

I am writing this letter to provide parking information regarding the proposed development of the three consolidated properties located at 3928, 3930, 3932 Gallatin Pike. It is my understanding that the consolidated properties are planned to be developed into an office building, which specifically would be office condominiums each sold after construction. The development is a unique office product that is not expected to require parking spaces like a traditional office building. Therefore, an alternative parking demand rate may be appropriate. The purpose of this letter is to present local data and industry standards, which are then used to make recommendation for an appropriate parking demand that can be expected for the proposed office development.

Development Details

According to the information provided, the Gallatin Offices development will have characteristics as listed below. These project details were utilized to estimate parking demand.

- Approximately 28,950 NSF
- Approximately 31,350 GSF
- 4-Story Building
- Consisting of Office Suites/Condominiums For Sale/Ownership
- Each unit will have its own restroom and kitchenette, which reduces efficiency and increases the office space square-footage per person as compared to traditional general office buildings.
- The building will have some shared amenity space with a rooftop terrace.
- The site plan includes approximately 72 parking spaces (a combination of surface lot and covered spaces).
- The site is located on the southeast corner of Gallatin Pike and Sunnymeade Drive with vehicular access on Sunnymeade Drive.

Parking Demand Analysis

The Metro Zoning Code identifies minimum parking requirements by land use. The zoning code also identifies reduced parking requirements for the Urban Zoning Overlay district (UZO). It is important to note that the proposed project is not located within the current UZO boundaries, but the UZO ends proximately one mile south of the site. The project site is located within the Gallatin Pike Urban Design Overlay district (UDO).

Initially, a parking calculation was conducted for the project site and proposed land use to determine the minimum number of parking spaces that will be required to accommodate the development based on Metro's Zoning Code. The base parking rates were utilized to calculate the minimum required parking spaces for the development since the site is not located within the current UZO district. The calculations and results are presented in the table below. As shown, the minimum number of parking spaces required for the development is 96 spaces using Metro's base parking rates.


Parking Requirement Analysis Per Base Metro Rates

Land Use	Size*	Unit GFA	Parking Rate Per Metro Zoning Code Section 17.20.030	Required Parking (spaces)
General Office	28,950	SF	3.33 spaces per 1,000 SF (1 space per 300 GSF)	96
*Parking required based on floor area, defined as the total of the gross horizontal areas of all floors excluding vertical penetrations through the building.				

As previously mentioned, the UZO district boundary is located approximately one mile to the south of the project site, and a new UZO district is being contemplated for areas along Gallatin Pike to the north in Madison. If the project site were located in a UZO district, approximately 54 parking spaces would be required without taking the allowable 10% reduction for access to transit. That is nearly half of the parking requirement per the base rates for properties not within the UZO.

The proposed office development is unique and is not characterized as a typical general office building. Instead, the building is made up of condominium offices, which will be sold likely to small business owners. The unit sizes will vary; however, each unit will have its own restroom and kitchenette as well as space for desks and collaborative space such as conference/meeting rooms or tables. These characteristics lead to higher square feet per person rates than a traditional office building, which typically have shared restroom facilities and larger office floor plans that allow for higher density of people per square foot. The number of people per square-foot is directly related to the parking demand for an office building. Therefore, it is appropriate to consider an alternative parking demand rate for this proposed office development.

In order to support a reduced parking requirement for the proposed office development, national data and industry standards were reviewed. According to *Parking Generation, 5th Edition*, an Institute of Transportation Engineers (ITE) publication, a General Office Building has an average peak parking demand rate of 2.39 occupied spaces per 1,000 square feet of gross floor area. This demand rate is considerably less than Metro's parking requirement. ITE data also identifies average parking supply for office uses (not within ½ mile of rail transit) is approximately 3.3 spaces per 1,000 square feet, which is the same as Metro's parking requirement. This data set indicates that parking supply sometimes exceeds the parking demand for office uses by nearly one (1) space per 1,000 square feet.

Burch Transportation collected local data for existing office developments that share some characteristics with the proposed office development at 3928, 3930, and 3932 Gallatin Pike. While office condominiums are not a new type of office product, there are few known office condo developments in Nashville. There are some relatively new live/work developments, but that product is not considered similar to the proposed project. Business parks are typically under one owner or management company and leased; however, this type of office land use may be similar to the office condo concept since business parks typically have separate suites and entrances; and therefore each suite has its own restroom and breakroom facilities on a smaller floor plan per individual office. Parking occupancy was collected at five (5) office buildings during mid-morning between 10:30 – 11:30 AM on Wednesday, January 15, 2020. ITE data indicates that peak parking demand for office land uses occurs on a weekday between 10:00 AM – 12:00 PM. The table below presents the parking occupancy data that was collected at five (5) local sites.



Local Parking Occupancy Data

Location	Address	Size (sf)*	Peak Parking Demand (spaces)	Parking Demand Rate (spaces/1,000 sf)
Grassmere Park Building I	618 Grassmere Park	78,331	201	2.57
Grassmere Park Building II	624 Grassmere Park	132,801	326	2.45
Grassmere Park Building III	601 Grassmere Park	90,771	186	2.05
Two Grassmere Place	655 Grassmere Park	52,805	141	2.67
Armory Hill Oaks	3001 Armory Drive	36,460	105	2.88
Average	--	78,234	192	2.52
*Total building square footage obtained from Metro Property Assessor website. Vacant suites subtracted from total square footage per broker website where available.				

As shown above, the parking demand at each of the sites were lower than the Metro Zoning Code rate. The average peak parking demand for these sites was determined to be 2.52 spaces per 1,000 square feet. The parking demand rate at these similar sites ranged from 2.05 – 2.88 spaces per 1,000 square feet. It is also worth noting that none of the sites surveyed are located within the UZO, similar to the proposed office site. The Grassmere Business Park is served by WeGo Route #72 Grassmere/Edmondson, similar to the proposed office site, which is served by WeGo Route #56 Gallatin and #4 Shelby. The data presented above supports a reduced parking demand and parking requirement for similar types of office developments. The average parking demand rate for the local data set is 2.52 spaces per 1,000 square feet, which is nearly a 25% reduction from the Metro Zoning Code parking requirement rate.

The current site plan includes a total of 72 parking spaces to serve the office land use, which reflects a 25% reduction to the required parking. The average parking demand rate for the local office sites that were observed is 2.52 spaces per 1,000 square feet, which is approximately 25% less than Metro's base parking requirement rate of 3.33 spaces per 1,000 square feet for general office uses. The concept design of the proposed office development is expected to generate less traffic and parking demand than a typical office building since the development will be comprised of owned condominium office suites with greater square-footage per person than a traditional general office building. Therefore, these characteristics and the local data presented above provide justification for a parking requirement reduction of approximately 25%.

Conclusions & Recommendations

The information and analysis presented in this letter addresses the parking demand expected for the proposed office development. Based on my review of the site plan and understanding of the proposed land use as well as local and national parking demand data, I have the following recommendation:

- A maximum 25% reduction to the required parking per Metro Zoning Code for general office land use is recommended for the proposed site at 3928, 3930, 3932 Gallatin Pike.

If you have any questions, please do not hesitate to contact me.

Sincerely,
Burch Transportation, LLC

Amy Burch, P.E.

From: [Michael, Jon \(Codes\)](#)
To: [Lifsey, Debbie \(Codes\)](#); [Shepherd, Jessica \(Codes\)](#)
Subject: FW: Application letter for BZA hearing, Thursday, February 6, 2020
Date: Monday, January 27, 2020 2:32:48 PM
Attachments: [2020-037 application.pdf](#)

Please add this email to the file for Case 2020-037

From: Benedict, Emily (Council Member) <Emily.Benedict@nashville.gov>
Sent: Monday, January 27, 2020 2:19 PM
To: Board of Zoning Appeals (Codes) <bza@nashville.gov>; Lamb, Emily (Codes) <Emily.Lamb@nashville.gov>
Cc: Michael, Jon (Codes) <Jon.Michael@nashville.gov>
Subject: Fw: Application letter for BZA hearing, Thursday, February 6, 2020

The appellant has been forthcoming, transparent, and communicative with the neighbors and community, and the plans fit the neighborhood. CM VanReece (across the street from this property) and I are working to extend the UZO north on Gallatin Pike, hopefully by the end of the year. The plans fit the UZO requirements that should be in place by the time they start construction.

I support this appeal and ask for your approval.

Emily Benedict
District 7 Councilwoman
emily.benedict@nashville.gov
she/her/hers/councilwoman

Check out hub.nashville.gov for assistance!

From: Fuqua, Barbara (Council Office) <barbara.fuqua@nashville.gov>
Sent: Friday, January 24, 2020 4:20 PM
To: Benedict, Emily (Council Member) <Emily.Benedict@nashville.gov>
Subject: Application letter for BZA hearing, Thursday, February 6, 2020

Barbara Fuqua
Metro Council Office
204 Metro Courthouse
615-862-6780

Metropolitan Board of Zoning Appeals
Metro Howard Building
800 Second Avenue South
Nashville, Tennessee 37210



Appellant : Scott Morken

Date: 12/23/19

Property Owner: _____

Case #: 2020- 039

Representative: : SCOTTMORTON

Map & Parcel: 069 64 000 300

Council District 01

The undersigned hereby appeals from the decision of the Zoning Administrator, wherein a Zoning Permit/Certificate of Zoning Compliance was refused:

Purpose:

to permit a single family residence without building sidewalks

Activity Type: Single Family

Location: 3809 Fairview Dr.

This property is in the RS15 Zone District, in accordance with plans, application and all data heretofore filed with the Zoning Administrator, all of which are attached and made a part of this appeal. Said Zoning Permit/Certificate of Zoning Compliance was denied for the reason:

Reason: sidewalks variance

Section(s): 17. 20. 120

Based on powers and jurisdiction of the Board of Zoning Appeals as set out in Section 17.40.180 Subsection _____ Of the Metropolitan Zoning Ordinance, a Variance, Special Exception, or Modification to Non-Conforming uses or structures is here by requested in the above requirement as applied to this property.

Scott Morken
Appellant Name (Please Print)

SCOTT MORTON
Representative Name (Please Print)

Address

209 10TH AVENUE S. STE 425
Address

City, State, Zip Code

NASHVILLE, TN 37203
City, State, Zip Code

Phone Number

(615) 415 -5520
Phone Number

Email

smorton@smithgeestudio.com
Email

Appeal Fee: 100



**Metropolitan Government
of Nashville and Davidson County, Tennessee
Department of Codes and Building Safety
800 Second Avenue South, Nashville, TN 37210**



**BUILDING RESIDENTIAL - NEW / CARN - 2018032154
Inspection Checklist for Use and Occupancy
This is not a Use and Occupancy Notification**

PARCEL: 06904000300

APPLICATION DATE: 06/05/2018

SITE ADDRESS:

3804 FAIRVIEW DR NASHVILLE, TN 37218
LOT 22 BLK DD FAIRVIEW SUB

PARCEL OWNER: VILLALOBOS, AMANDA TARASA

CONTRACTOR:

APPLICANT: SELF CONTRACTOR RESIDENTIAL (SEE
APPLICANT INFORMATION)
Amanda Villalobos 615-227-6160

SELF CONTRACTOR RESIDENTIAL (SEI MCN00000

PURPOSE:

to construct 1300SF single family residence with 200SSF porches. 10' min. side setback, 20' min. rear setback, front setback at 86.9' per avg. not to be over any easements.

Sidewalks are required, applicant may pay in lieu of sidewalk requirements

***PURSUANT TO ORDINANCE NO 2008-1263 of the Metropolitan Code of Laws, I, holder of this permit, hereby certify that all construction and demolition waste generated by any and all activities governed by this permit shall be disposed of in an approved landfill. Further, I certify that no construction or demolition waste shall be stored on the property in violation of any provisions of the Metropolitan Code* For every 30 feet of street frontage, or fraction thereof, one 2 inch caliper tree as listed in the Urban Forestry approved tree list shall be planted on the subject property.*

Before a Use and Occupancy Letter can be issued for this project, the following approvals are required.

Inspections Foundation = before concrete poured, Framing = before covering wall and after rough-in inspections.

U&O Sewer Availability Final Approval		mws.ds@nashville.gov
U&O Water Availability Final Approval		mws.ds@nashville.gov
SWGR U&O Sign-off		615-862-7225 mws.stormdr@nashville.gov
Building Framing - Ceiling		
Building Floor Elevation		
Building Footing		
Building Foundation		
Building Framing		
Building Framing - Wall		
Codes Tree U&O Final Inspection		
CA Building Progress Inspection		
Building Slab		
Building Final		
U&O Letter		615-862-6527 tawanna.dalton@nashville.gov
[F] Sidewalk Review For Bldg App	COND	615-862-6558 Jonathan.Honeycutt@nashville.gov
U&O PW Sidewalk FA - CA Final Approval		615-862-8758 Benjamin.york@nashville.gov
[D] Grading Plan Review For Bldg App		(615) 862-6038 Logan.Bowman@nashville.gov

Inspection requirements may change due to changes during construction.

APPLICATION FOR A VARIANCE REQUEST

After your appeal is filed, Zoning staff will visit the site to take photographs for the Board members. So they will have a better ideal of the nature of your request. Zoning staff will notify the district council member of the hearing. You will be responsible for preparing the envelopes and notices for mailing to the owners of property within 1,000 feet of the property at issue in the case. The envelopes must include the return address for the BZA and case number. Fold and insert notices into envelopes, seal the envelopes, and apply first class postage. These neighbor notices must be delivered to Zoning staff at least twenty-three (23) days before the public hearing. Additionally, you will be responsible for purchasing, posting, and removing the red Zoning Appeal signs for the subject property. (See attached Metro Code of Laws requirements regarding, sign placement.)

The day of the public hearing, it will be your responsibility to convey to the Board the nature of the hardship in your request that makes it difficult/impossible for you to comply with the Zoning Code. **It would be to your benefit to let your neighbors know about your request prior to all notices being sent to them from our office.**

Any party can appeal the Board's decision to Chancery or Circuit Court within sixty (60) days from the date the order in the case is entered. **Should your request be granted, we would remind you that it is your responsibility to obtain the permit for which you have applied.** You should also be aware that you have two (2) years to obtain the permit or you would have to re-file your request with the board.

Once your request is filed, the staff will review your request to verify that the submittal is complete. Incomplete submittals will not be scheduled for hearing until complete.

Any correspondence to the Board must be submitted to our office by close of business, the Thursday prior to the public hearing to be included in the record.

I am aware that I am responsible for posting and also removing the sign(s) after the public hearing.

Scott Morton

APPELLANT

12/11/2019

DATE

Standards for a Variance

The Metropolitan Board of Zoning Appeals may grant variances from the strict application of the provisions of the Zoning Code based upon findings of fact related to the standards in section 17.40.370. This Section is included as follows:

Physical Characteristics of the property- The exceptional narrowness, shallowness or shape of a specific piece of property, exceptional topographic condition, or other extraordinary and exceptional condition of such property would result in peculiar and exceptional practical difficulties to, or exceptional or undue hardship upon the owners of such property.

Unique characteristics- *The specific conditions cited are unique to the subject property and generally not prevalent to other properties in the general area.*

Hardship not self-imposed- *The alleged difficulty or hardship has not been created by the previous actions of any person having an interest in the property after date of Zoning Code.*

Financial gain not only bases- *Financial gain is not the sole basis for granting the variance.*

No injury to neighboring property- *The granting of a variance will not be injurious to other property or improvements in the area, impair and adequate supply of light and air to adjacent property, or substantially diminish or impair property values within the area.*

No harm to public welfare- *The granting of the variance will not be detrimental to the public welfare and will not substantially impair the intent and purpose of this Zoning Code.*

Integrity of Master Development Plan- *The granting of a variance will not compromise the design integrity or functional operation of activities or facilities within an approved Planned Unit Development.*

The Board shall not grant variances to the land use provisions of section 2.3, nor the density of Floor Area Ratio (FAR) standards of Tables 3-B and 2-C, nor the required size of residential lots approved by the Planning Commission under the authority of section 3.7 (Lot Averaging), section 3.8 (Cluster Lot Option) or Section 9. E.3 (PUD). Further the Board shall not act on a variance application within a Planned Unit Development (PUD), Urban Design Overlay or Institutional Overlay district without first considering a recommendation from the Planning Commission.

In Simple terms, for the Board to gran you a variance in the zoning ordinance, you must convey to the Board what your hardship is. Hardships are narrowness, shallowness, irregular shape, and topography of property. The Board can also consider other practical difficulties such as mature trees, easements, and location of disposal systems which can affect your plan. Consideration can be given to the characteristics of neighborhood and the way it is developed. One or more of these conditions must affect your inability to build or occupy the property to provide your case.

At the public hearing, please be prepared to tell the Board what your hardship is, why you cannot build in accordance with zoning without requesting a variance and why you feel you have legitimate hardship.

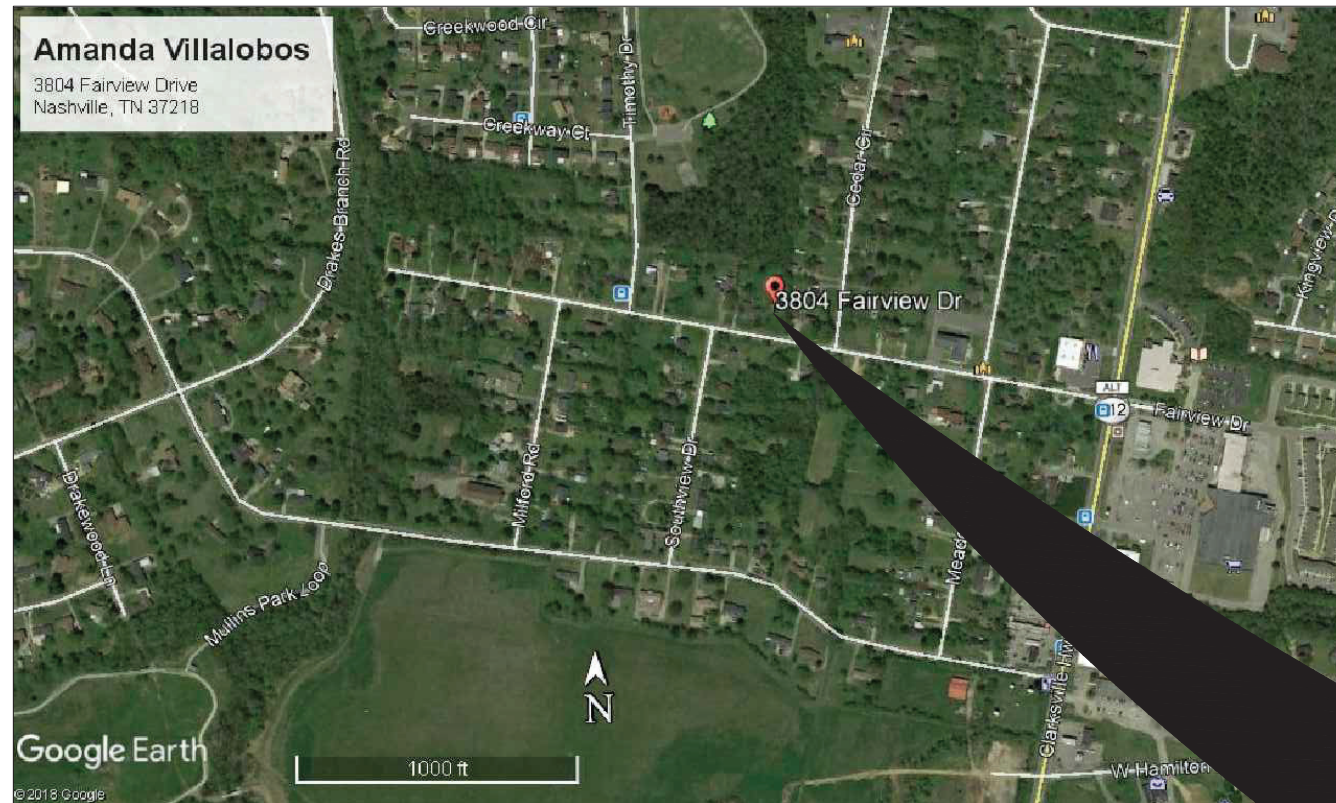
The Board cannot grant a variance based solely on inconvenience to the applicant or solely on a financial consideration. It is incumbent on you as the appellant to complete this form by conveying a **HARDSHIP** as outlined. At the meeting it is important that you explain this hardship as effectively as possible.

WHAT SPECIFIC AND UNIQUE CIRCUMSTANCES (HARDSHIP) EXIST THAT WOULD AUTHORIZE THE CONSIDERATION OF THE BOARD UNDER THE REVIEW STANDARDS AS OUTLINED?

The applicant would like to request a sidewalk variance to waive the requirements of Ordinance No. BL2019-1659, for parcel 06904000300 (3804 Fairview Drive). The site currently has an existing drainage ditch along the full street frontage where the required sidewalk is to be provided, as shown in the attached exhibit. The removal of the existing brick wall and culvert would also be an added cost to the construction of a sidewalk. The parcel is also located in a suburban neighborhood maintenance area in which a new sidewalk would not further the goal of extending or completing a sidewalk network. The sidewalk network in closest proximity to the site is approximately 1 mile away at the intersection of Clarksville Pike and Ashland City Highway.

A PRIVATE RESIDENCE FOR Amanda Villalobos, David Soriano & Yelu Villalobos

3804 FAIRVIEW DRIVE
NASHVILLE, TENNESSEE 37218
TAX MAP-PARCEL 069040-00300
SUBDIVISION NO.: LOT 22 BLOCK DD
FAIRVIEW SUBDIVISION PB 1130 PG 54



*Project
Location*

APPLICABLE CODE(S): (NASHVILLE, TN)

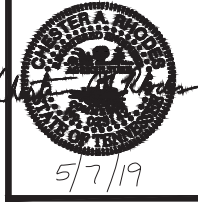
BUILDING CODE: 2012 International Building Code
 PLUMBING CODE: 2012 International Plumbing Code
 MECHANICAL CODE: 2012 International Mechanical Code
 ELECTRICAL CODE: 2011 National Electric Code
 FIRE CODE: 2012 International Fire Code
 ACCESSIBILITY CODE: 2009 ICC/ANSI A-117.1 Accessible And Usable Buildings And Facilities
 LIFE SAFETY CODE: 2012 Life Safety Code (NFPA 101) with local amendments

Sheet Index	
A-0.0	Cover Sheet w / Index
A-1.0	Site Plan
A-1.1	Site Details

Amanda Tarasa Villalobos
Nashville, TN, 37218
Phone

ENGINEER

 RHODES ENGINEERING
 AND ENVIRONMENTAL
 SERVICES, LLC
 PHONE: 615.480.7535
 EMAIL: Rhodes.Engineering@gmail.com
 1117 WHITNEY DRIVE
 COLUMBIA, TN 38401
 CIVIL, ENVIRONMENTAL,
 SITE DEVELOPMENT, WATER/WASTEWATER



5/7/19

AMANDA VILLALOBOS
3804 FAIRVIEW DRIVE
NASHVILLE, TENNESSEE 37218

PROJECT NUMBER:	
PROJECT MANAGER:	CAR
DRAWN BY:	PWB
CHECKED BY:	CAR
DRAWING DATE:	
DESCRIPTION:	
REVISIONS:	DATE

COVER SHEET
A-0.0



Exhibit A - Existing Conditions

December 12, 2019

3804 Fairview Drive
Nashville, Tn

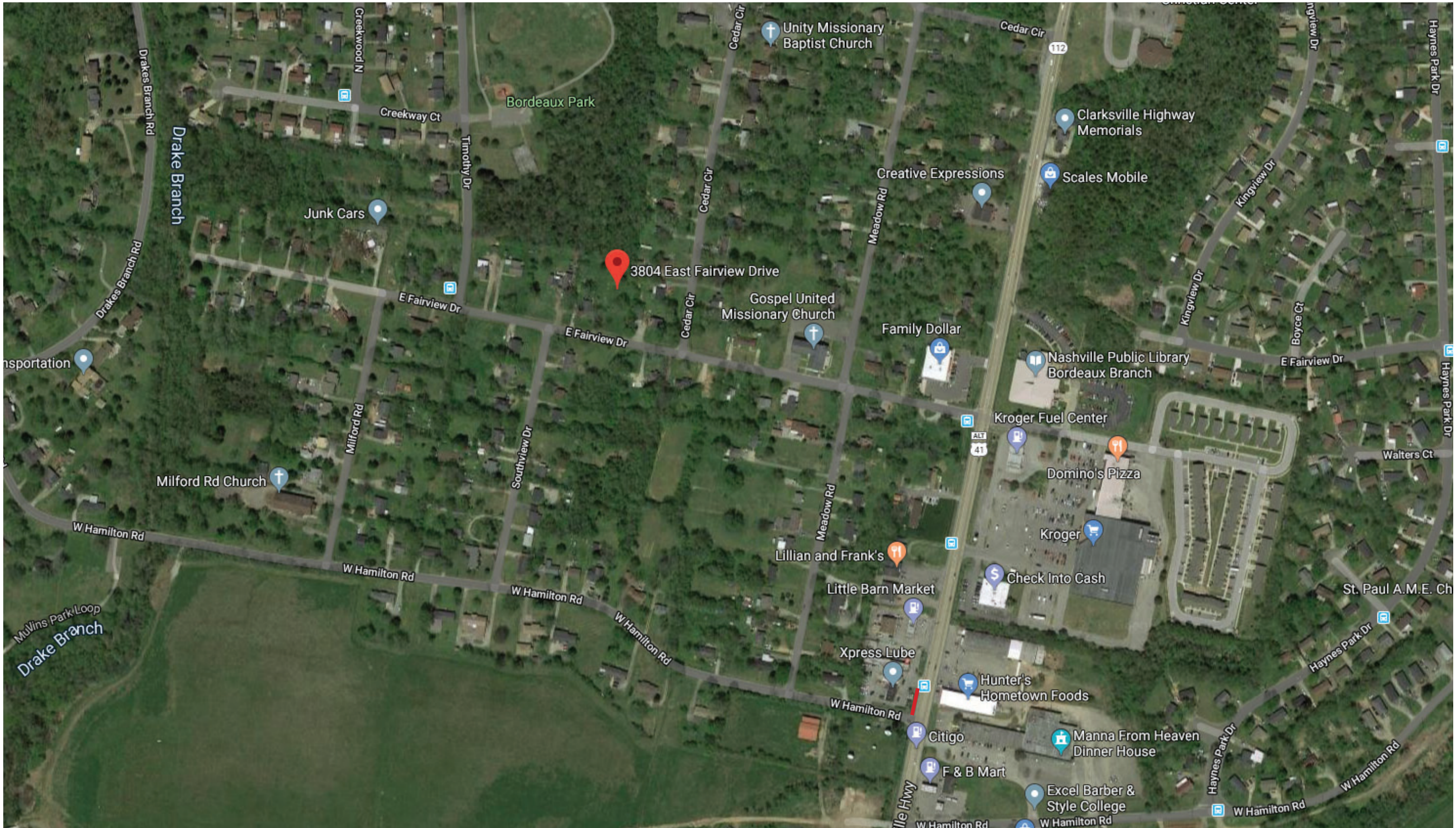


Exhibit B - Existing Sidewalks

December 12, 2019

3804 Fairview Drive
Nashville, Tn

PLANNING DEPARTMENT SIDEWALK VARIANCE RECOMMENDATION**BZA Case 2020-039 (3804 Fairview Drive)**

Metro Standard:	4' grass strip, 5' sidewalk, as defined by the Local Street Standard
Requested Variance:	Not construct sidewalks
Community Plan Policy:	T3 NM (Suburban Neighborhood Maintenance)
MCSP Street Designation:	Local Street
Transit:	500' from #22 - Bordeaux
Bikeway:	None existing; none planned

Planning Staff Recommendation: *Disapprove*

Analysis: The applicant is proposing to construct a single-family residence and requests not to construct sidewalks due to a lack of existing sidewalks along the block face. A previous request for relief from sidewalk construction or contribution in-lieu of construction was denied by the Board of Zoning Appeals at its August 2, 2018 public hearing (**Case number 2018-385**). Per the Zoning Ordinance, the applicant is eligible to contribute in-lieu of construction. Electing to make the contribution in-lieu of construction supplements Metro's annual sidewalk capital program by increasing sidewalk construction funds for areas surrounding this property, within one of Metro's sixteen pedestrian benefit zones. Staff finds no unique hardship for the property.

Given the factors above, staff recommends **disapproval as the applicant has the option to contribute in-lieu of construction**. The applicant shall also dedicate right-of-way for future sidewalk construction.

Metropolitan Board of Zoning Appeals

Metro Howard Building
800 Second Avenue South
Nashville, Tennessee 37210



Appellant: Aziz ASHUROV
Property Owner: CAPITAL INVEST, LLC
Representative: AZIZ ASHUROV

Date: 12/23/19
Case #: 2020-040 UPDATED
Map & Parcel: 09207014000
09207013900

Council District 21

The undersigned hereby appeals from the decision of the Zoning Administrator, wherein a Zoning Permit/Certificate of Zoning Compliance was refused:

Purpose:

CONSTRUCT SINGLE FAMILY RESIDENCE
(EXISTING RESIDENCE TO BE DEMOLISHED)

Activity Type: RESIDENTIAL CONSTRUCTION

Location: 823 21ST AVE N and 825 21ST AVE N

This property is in the RM20 Zone District, in accordance with plans, application and all data heretofore filed with the Zoning Administrator, all of which are attached and made a part of this appeal. Said Zoning Permit/Certificate of Zoning Compliance was denied for the reason:

Reason:

REQUIRE 20' MINIMUM REAR SETBACK
REQUEST 10' REAR SETBACK

Section(s): 17.12.020A

Based on powers and jurisdiction of the Board of Zoning Appeals as set out in Section 17.40.180 Subsection B Of the Metropolitan Zoning Ordinance, a Variance, Special Exception, or Modification to Non-Conforming uses or structures is here by requested in the above requirement as applied to this property.

Aziz ASHUROV
Appellant Name (Please Print)
728 Crestmark Dr
Address
Mt Juliet TN
City, State, Zip Code
615 707 7000
Phone Number
azizjona@yahoo.com
Email

Aziz ASHUROV
Representative Name (Please Print)
728 Crestmark Dr
Address
Mt Juliet TN
City, State, Zip Code
615 707 7000
Phone Number
azizjona@yahoo.com
Email

Zoning Examiner: TC

Appeal Fee: 100



**Metropolitan Government
of Nashville and Davidson County, Tennessee
Department of Codes and Building Safety
800 Second Avenue South, Nashville, TN 37210**



3743429

**ZONING BOARD APPEAL / CAAZ - 20190077950
Inspection Checklist for Use and Occupancy
This is not a Use and Occupancy Notification**

PARCEL: 09207014000

APPLICATION DATE: 12/20/2019

SITE ADDRESS:

823 21ST AVE N NASHVILLE, TN 37208
PT LOTS 10 11 J B DAVIS

PARCEL OWNER: HILL, RICHARD

CONTRACTOR:

APPLICANT:**PURPOSE:**

TO CONSTRUCT A NEW SINGLE FAMILY RESIDENCE ON 823 AND TO CONSTRUCT A NEW SINGLE FAMILY RESIDENCE ON 825 21ST AVE. N

PER 17.12.020A: 20' MINIMUM REAR SETBACK REQUIRED

REQUEST 10' MINIMUM REAR SETBACK... ..

*Before a Use and Occupancy Letter can be issued for this project, the following approvals are required.
Inspections Foundation = before concrete poured, Framing = before covering wall and after rough-in inspections.*

There are currently no required inspections

There are currently no required inspections

Inspection requirements may change due to changes during construction.

In Simple terms, for the Board to grant you a variance in the zoning ordinance, you must convey to the Board what your hardship is. Hardships are narrowness, shallowness, irregular shape, and topography of property. The Board can also consider other practical difficulties such as mature trees, easements, and location of disposal systems which can affect your plan. Consideration can be given to the characteristics of neighborhood and the way it is developed. One or more of these conditions must affect your inability to build or occupy the property to provide your case.

At the public hearing, please be prepared to tell the Board what your hardship is, why you cannot build in accordance with zoning without requesting a variance and why you feel you have legitimate hardship.

The Board cannot grant a variance based solely on inconvenience to the applicant or solely on a financial consideration. It is incumbent on you as the appellant to complete this form by conveying a **HARDSHIP** as outlined. At the meeting it is important that you explain this hardship as effectively as possible.

WHAT SPECIFIC AND UNIQUE CIRCUMSTANCES (HARDSHIP) EXIST THAT WOULD AUTHORIZE THE CONSIDERATION OF THE BOARD UNDER THE REVIEW STANDARDS AS OUTLINED?

Due to current structure is beyond repair condition we would like to demolish and rebuild new one with the same 10 feet setback. They took most of the backyard when they built railroad in the back and if we keep the contextual front setback and build new structure with current year setback we would have to build really shallow building, which makes it almost impossible unless we keep the existing building foot print setback area.

On 825 21st Ave N, the existing dwelling was built less than 3 feet close to side street and had the same issue with Railroad and Rear setback.

APPLICATION FOR A VARIANCE REQUEST

After your appeal is filed, Zoning staff will visit the site to take photographs for the Board members. So they will have a better ideal of the nature of your request. Zoning staff will notify the district council member of the hearing. You will be responsible for preparing the envelopes and notices for mailing to the owners of property within 1,000 feet pf the property at issue in the case. The envelopes must include the return address for the BZA and case number. Fold and insert notices into envelopes, seal the envelopes, and apply first class postage. These neighbor notices must be delivered to Zoning staff at least twenty-three (23) days before the public hearing. Additionally, you will be responsible for purchasing, posting, and removing the red Zoning Appeal signs for the subject property. (See attached Metro Code of Laws requirements regarding, sign placement.)

The day of the public hearing, it will be your responsibility to convey to the Board the nature of the hardship in your request that makes it difficult/impossible for you to comply with the Zoning Code. **It would be to your benefit to let your neighbors know about your request prior to all notices being sent to them from our office.**

Any party can appeal the Board's decision to Chancery or Circuit Court within sixty (60) days from the date the order in the case is entered. **Should your request be granted, we would remind you that it is your responsibility to obtain the permit for which you have applied.** You should also be aware that you have two (2) years to obtain the permit or you would have to re-file your request with the board.

Once your request is filed, the staff will review your request to verify that the submittal is complete. Incomplete submittals will not be scheduled for hearing until complete.

Any correspondence to the Board must be submitted to our office by noon, the Friday prior to the public hearing to be included in the record. You must provide eight (1) copy of your information to staff.

I am aware that I am responsible for posting and removing the sign(s) after the public hearing.



APPELLANT

12/20/19

DATE

Standards for a Variance

The Metropolitan Board of Zoning Appeals may grant variances from the strict application of the provisions of the Zoning Code based upon findings of fact related to the standards in section 17.40.370. This Section is included as follows:

Physical Characteristics of the property- The exceptional narrowness, shallowness or shape of a specific piece of property, exceptional topographic condition, or other extraordinary and exceptional condition of such property would result in peculiar and exceptional practical difficulties to, or exceptional or undue hardship upon the owners of such property.

Unique characteristics- *The specific conditions cited are unique to the subject property and generally not prevalent to other properties in the general area.*

Hardship not self-imposed- The alleged difficulty or hardship has not been created by the previous actions of any person having an interest in the property after date of Zoning Code.

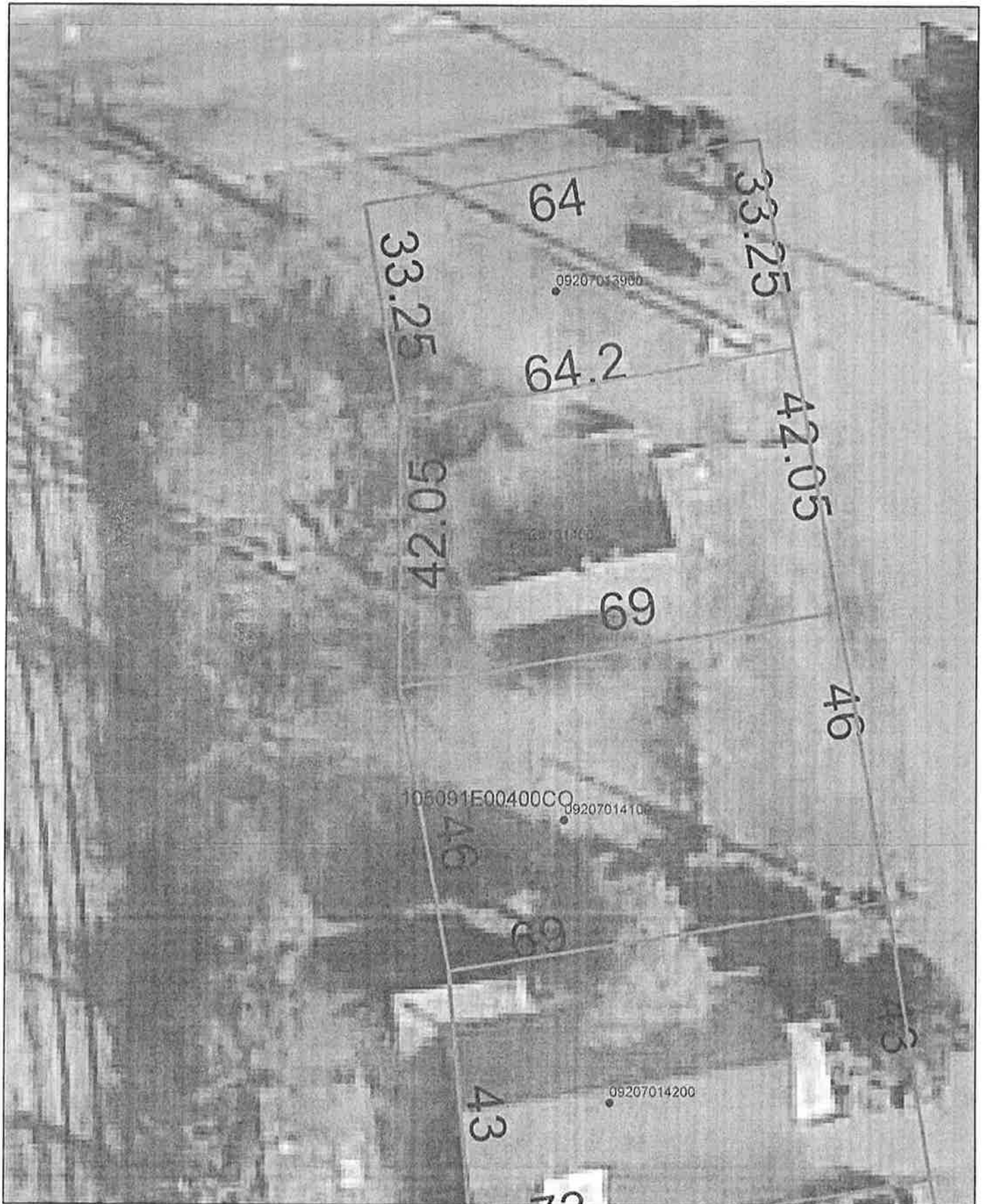
Financial gain not only bases-Financial gain is not the sole basis for granting the variance.

No injury to neighboring property- The granting of a variance will not be injurious to other property or improvements in the area, impair and adequate supply of light and air to adjacent property, or substantially diminish or impair property values within the area.

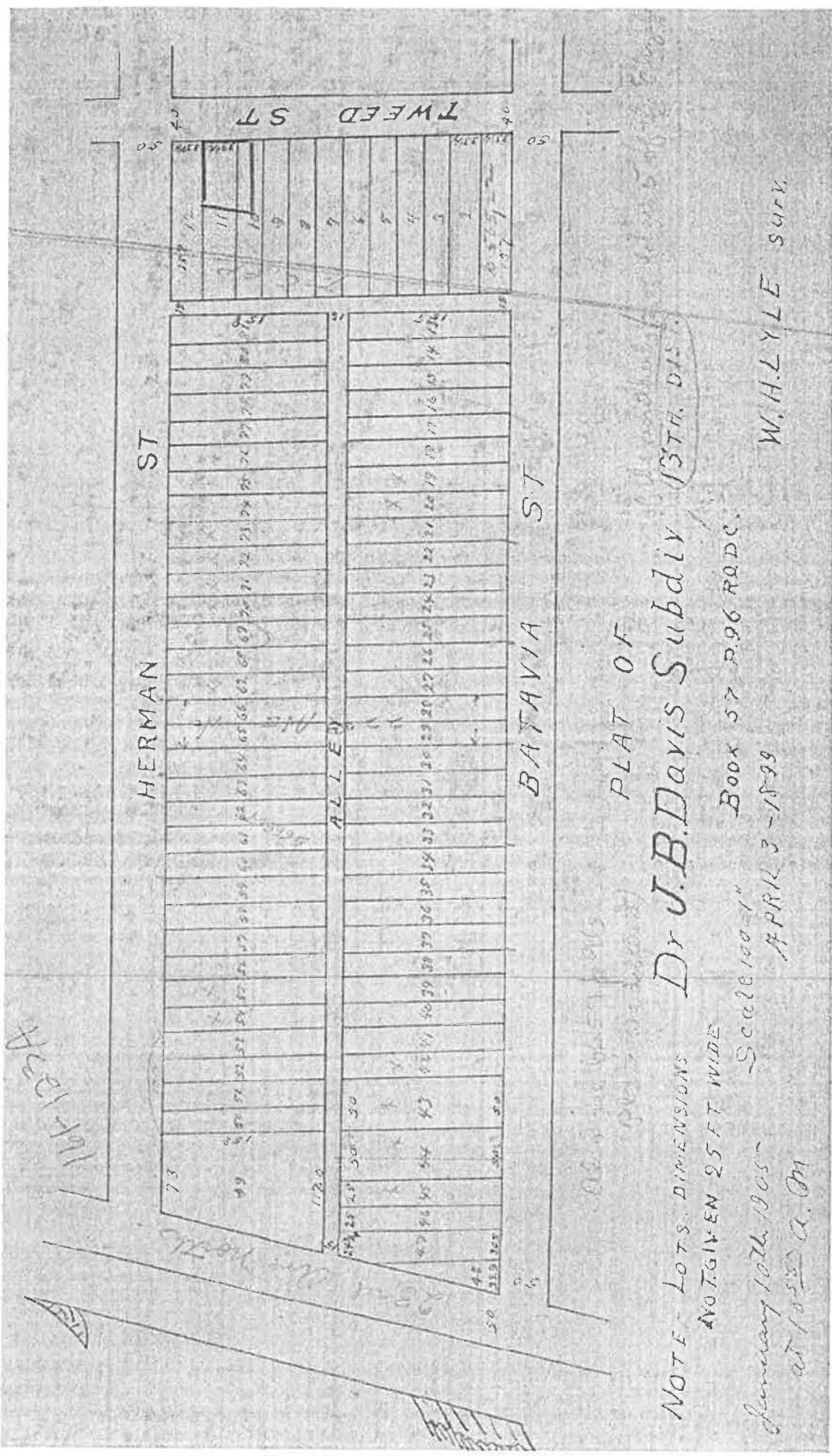
No harm to public welfare- *The granting of the variance will not be detrimental to the public welfare and will not substantially impair the intent and purpose of this Zoning Code.*

Integrity of Master Development Plan- *The granting of a variance will not compromise the design integrity or functional operation of activities or facilities within an approved Planned Unit Development.*

The Board shall not grant variances to the land use provisions of section 2.3, nor the density of Floor Area Ratio (FAR) standards of Tables 3-B and 2-C, nor the required size of residential lots approved by the Planning Commission under the authority of section 3.7 (Lot Averaging), section 3.8 (Cluster Lot Option) or Section 9. E.3 (PUD). Further the Board shall not act on a variance application within a Planned Unit Development (PUD), Urban Design Overlay or Institutional Overlay district without first considering a recommendation from the Planning Commission.



1 inch = 20 feet



PLAT OF
 Dr J.B. Davis Subdiv. 13TH. DIS.

NOTE - LOTS DIMENSIONS
 NOT GIVEN 25 FT WIDE
 January 10th 1905 -
 at 10:55 A.M.

Scale 100' = 1"

APRIL 3 - 1899

W. H. LYLE SURV.

114-123A

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Metropolitan Board of Zoning Appeals

Metro Howard Building
800 Second Avenue South
Nashville, Tennessee 37210



Appellant : Elmington Capital Group

Date: 12/23/2019

Property Owner: MDHA

Case #: 2020-042

Representative: David Kleinfelter

Map & Parcel: 044140D01100CO

Council District 11

The undersigned hereby appeals from the decision of the Zoning Administrator, wherein a Zoning Permit/Certificate of Zoning Compliance was refused:

Purpose: Request side setback variance to permit existing single family cottage.

Activity Type: Single Family Cottage

Location: 415 Creedmore Drive

This property is in the R10 Zone District, in accordance with plans, application and all data heretofore filed with the Zoning Administrator, all of which are attached and made a part of this appeal. Said Zoning Permit/Certificate of Zoning Compliance was denied for the reason:

Reason: See attached letter - Irregular shaped parcel on bend in road, adjacent landscape buffer

Section(s): Table 17.12.020A

Based on powers and jurisdiction of the Board of Zoning Appeals as set out in Section 17.40.180 Subsection _____ Of the Metropolitan Zoning Ordinance, a Variance, Special Exception, or Modification to Non-Conforming uses or structures is here by requested in the above requirement as applied to this property.

Elmington Capital Group
Appellant Name (Please Print)

David Kleinfelter
Representative Name (Please Print)

118 16th Ave South, Suite 200
Address

424 Church Street Suite 2910
Address

Nashville, TN 37203
City, State, Zip Code

Nashville, TN 37219
City, State, Zip Code

615-490-6711
Phone Number

615-866-2320
Phone Number

hunter@elmingtoncapital.com
Email

dkleinfelter@menocavanaugh.com
Email

Appeal Fee: 106

APPLICATION FOR A VARIANCE REQUEST

After your appeal is filed, Zoning staff will visit the site to take photographs for the Board members. So they will have a better ideal of the nature of your request. Zoning staff will notify the district council member of the hearing. You will be responsible for preparing the envelopes and notices for mailing to the owners of property within 1,000 feet of the property at issue in the case. The envelopes must include the return address for the BZA and case number. Fold and insert notices into envelopes, seal the envelopes, and apply first class postage. These neighbor notices must be delivered to Zoning staff at least twenty-three (23) days before the public hearing. Additionally, you will be responsible for purchasing, posting, and removing the red Zoning Appeal signs for the subject property. (See attached Metro Code of Laws requirements regarding, sign placement.)

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Once your request is filed, the staff will review your request to verify that the submittal is complete. Incomplete submittals will not be scheduled for hearing until complete.

Any correspondence to the Board must be submitted to our office by close of business, the Thursday prior to the public hearing to be included in the record.

I am aware that I am responsible for posting and also removing the sign(s) after the public hearing.

Elmington Capital Group (PILOT lessor)

APPELLANT

12-23-19

DATE

Standards for a Variance

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RENO & CAVANAUGH PLLC

December 23, 2019

David L. Kleinfelter
(615) 866-2320
(615) 866-2321 fax
dkleinfelter@renocavanaugh.com

VIA HAND DELIVERY

Mr. Jon Michael, Metro Zoning Administrator
Ms. Emily Lamb, Metro Chief Zoning Examiner
METROPOLITAN BOARD OF ZONING APPEALS
800 2nd Ave. South
Metro Office Building
Nashville, TN 37219-6300

RE: Setback Variance Request
415 Creedmore Drive
Property ID: 044140D01100CO

Jon Michael and Emily:

This letter is submitted to provide further information for the variance application for the above-captioned property that is being filed with the Board of Zoning Appeals for the Board's February 6, 2020 meeting.

415 Creedmore Drive is one of 11 cottages that were built this year by Elmington Capital Group (ECG) in partnership with MDHA. The overall project is an affordable senior housing community called Robinson Flats, with an address of 1205 Robinson Road. The multifamily section of the community is constructed on property zoned MUN and the cottages are constructed on lots within R10 zoning. ECG or an affiliate manages and is the owner of the leasehold interest and reversionary interest in the property, but MDHA is currently shown as the title owner because the project received a PILOT associated with its use as affordable housing.

The requested variance is needed to address an issue that arose during the construction process. As a result of the exceptional shape of the lot, the house at 415 Creedmore was inadvertently laid out in a way that resulted in the northeastern corner encroaching 4.3 feet into the Code-required 5-foot setback. A 20-foot landscape buffer is located between the lot and the adjacent lots that are not part of the Robinson Flats project. Therefore, although the house encroaches into the setback, it remains more than 20 feet from the plat boundary.

ECG requests a variance from the strict application of the standard 5-foot setback requirement for the following reasons:

- The lot has an exceptional and unique shape. The shape of the lot was required by a curve in the new road and the existing location of adjacent lots.

Mr. Jon Michael, Metro Zoning Administrator
Ms. Emily Lamb, Metro Chief Zoning Examiner
METROPOLITAN BOARD OF ZONING APPEALS
December 20, 2019
Page 2 of 2

- An additional exceptional characteristic of the property is the narrowness of the rear portion of the lot which is caused by allocation of 20-feet of property to the required landscape buffer.
- There are unique steep slopes on the northern portion of the Robinson Flats property, which constrained the single family lots. ECG also preserved the landmark Robinson family home near Robinson Road, which placed further exceptional constraints on the ability to develop the site.
- Requiring compliance with the conventional setback would result in undue hardship upon ECG and MDHA because of the difficulty of locating the rear of the house within the narrowed area that results from provision of the required landscape buffer.
- The hardship was not self-imposed.
- There is no injury to the neighboring property because the existence of the landscape buffer means the 415 Creedmore house will still remain more than 20-feet from the boundary of the nearest neighboring parcel. The existence of the landscape buffer also ensures that there is no harm to public welfare from approval of this variance request.

For these reasons ECG requests that the BZA approve a variance to reduce the setback from 5-feet to 0-feet in the specific location of the existing house at 415 Creedmore as shown on the plan submitted with the application.

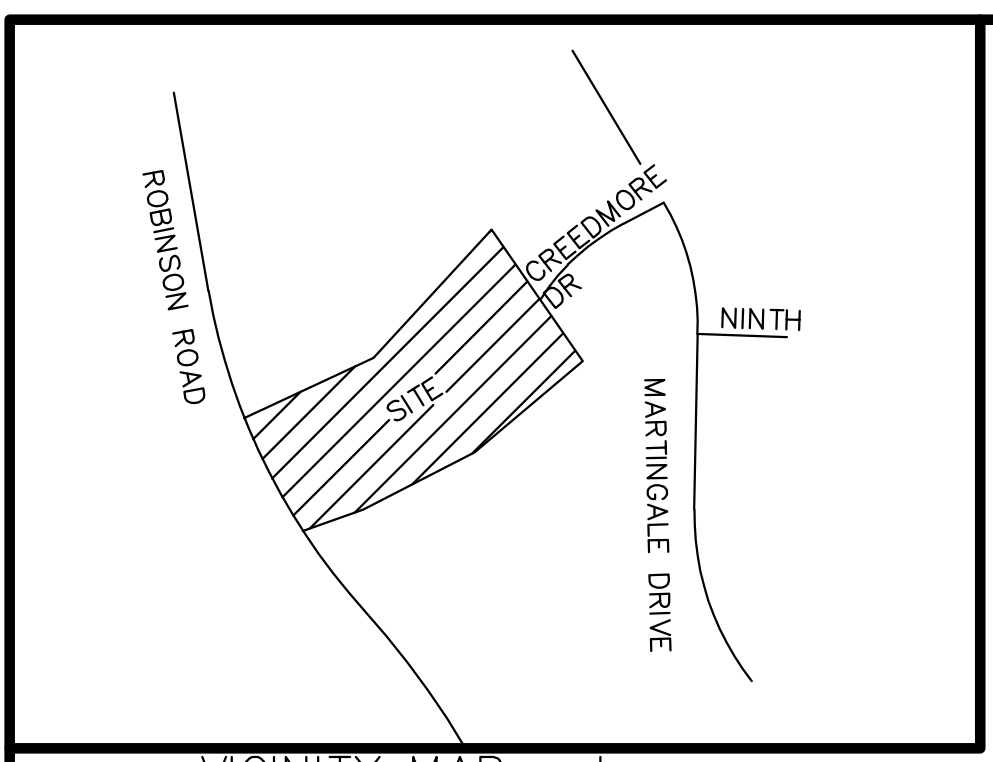
Please note that ECG has discussed this matter with the district councilmember. Also, ECG has consistently communicated with neighboring property owners throughout development of the new homes – including multiple community meetings – and will reach out to the nearest neighbors to explain the nature of this request. As part of the construction of Robinson Flats, ECG constructed new driveways for 2 of the neighboring property owners, including the property abutting the property line nearest to 415 Creedmore. We do not anticipate opposition to the request from nearby property owners.

Sincerely,



David L. Kleinfelter
Reno & Cavanaugh, PLLC

Copy: John Shepard, VP, Elmington Capital Group



LEGEND

- SS - STOP SIGN
- DMH - DRAIN MANHOLE
- LP - LIGHT POLE
- ATT - ATT BOX
- TRANS - TRANSFORMER
- HW - HEADWALL
- CO - CLEAN OUT
- SCO - SEWER CLEANOUT
- FIP - FOUND IRON PIN
- SMH - SEWER MANHOLE
- EP - ELECTRIC PANEL
- FDC - FIRE DEPARTMENT CONNECTION
- COMM - COMMUNICATION
- IR - IRRIIGATION
- HCS - HANDICAP SIGN

THE PROPERTY DESCRIBED HEREON IS THE SAME PROPERTY DESCRIBED IN STEWART TITLE GUARANTY COMPANY COMMITMENT NO. TN692-135-T WITH AN EFFECTIVE DATE OF OCTOBER 11, 2019 AND THAT ALL EASEMENTS, COVENANTS AND RESTRICTIONS REFERENCED IN SAID TITLE COMMITMENT OR APPARENT FROM A PHYSICAL INSPECTION OF THE SITE OR OTHERWISE KNOWN TO HAVE BEEN PLOTTED HEREON OR OTHERWISE NOTED AS TO THEIR EFFECT ON THE SUBJECT PROPERTY.

THE ACCOMPANYING SURVEY WAS MADE ON THE GROUND AND CORRECTLY SHOWS THE LOCATION OF ALL BUILDINGS, STRUCTURES AND OTHER IMPROVEMENTS SITUATED ON THE ABOVE PREMISES; THERE ARE NO VISIBLE ENCKROACHMENTS ON THE SUBJECT PROPERTY OR UPON ADJACENT LAND ABUTTING SAID PROPERTY EXCEPT AS SHOWN HEREON AND WAS MADE IN ACCORDANCE WITH THE LAWS AND/OR MINIMUM STANDARDS OF THE STATE OF TENNESSEE.

SAID DESCRIBED PROPERTY IS LOCATED WITHIN AN AREA HAVING A ZONE DESIGNATION "X" BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA), ON FLOOD INSURANCE RATE MAP NO. 473073C, WITH A DATE OF IDENTIFICATION OF APRIL 5, 2017, FOR COMMUNITY PANEL NO. 0143H, IN DAVIDSON COUNTY, TENNESSEE, WHICH IS THE CURRENT FLOOD INSURANCE RATE MAP FOR THE COMMUNITY IN WHICH SAID PREMISES IS SITUATED.

THIS PROPERTY HAS DIRECT PHYSICAL ACCESS TO ROBINSON ROAD AND MARTINGALE ROAD, BEING DEDICATED PUBLIC STREETS OR HIGHWAYS

THE TOTAL NUMBER OF STRIPED PARKING SPACES LOCATED ON THE SUBJECT PROPERTY IS 118, INCLUDING 12 AS HANDICAPPED SPACES.

- TITLE EXCEPTIONS:
3. MATTERS AS SET FORTH ON THE PLAT OF ROBINSON PLATS RECORDED ON MAY 8, 2019 AS INSTRUMENT NO. 20190508-0043075, IN SAID REGISTER'S OFFICE, AS SHOWN ON ATTACHED PLAT.
 4. DECLARATION OF RECIPROCAL EASEMENTS AND RESTRICTIVE COVENANTS OF RECORD AS INSTRUMENT 20020715-0084518, SAID REGISTER'S OFFICE. (TRACT 1/ LOT 1B) AS SHOWN ON ATTACHED PLAT.
 7. SEWER EASEMENT OF RECORD IN BOOK 1424, PG 49, SAID REGISTER'S OFFICE, AS SHOWN ON ATTACHED PLAT.
 8. MEMORANDUM OF LEASE FILED FOR RECORD AS INSTRUMENT NO. 20171122-0120217, IN SAID REGISTER'S OFFICE. APPLIES TO SUBJECT PROPERTY
 10. DECLARATION OF LAND USE RESTRICTION COVENANTS FOR LOW INCOME HOUSING TAX CREDITS BETWEEN EGG OLD HICKORY, LP, A TENNESSEE LIMITED PARTNERSHIP AND TENNESSEE HOUSING DEVELOPMENT AGENCY, DATED AS OF NOVEMBER 14, 2017, RECORDED ON NOVEMBER 22, 2017 AS INSTRUMENT NO. 20171122-0120224, APPLIES TO SUBJECT PROPERTY.
 11. GRANT OF EASEMENT BY AND BETWEEN EGG OLD HICKORY, LP (GRANTOR) AND COMCAST OF NASHVILLE 1, LLC (GRANTEE), AND FILED FOR RECORD AS INSTRUMENT NO. 20181029-0106568, IN SAID REGISTER'S OFFICE. APPLIES TO SUBJECT PROPERTY.
 12. TEMPORARY CONSTRUCTION AND GRADING EASEMENT OF RECORD AS INSTRUMENT NO. 20180620-0059398 IN SAID REGISTER'S OFFICE. APPLIES TO ADJACENT PROPERTY.
 13. TEMPORARY CONSTRUCTION AND GRADING EASEMENT OF RECORD AS INSTRUMENT NO. 20180620-0059399 IN SAID REGISTER'S OFFICE. APPLIES TO ADJACENT PROPERTY.
 14. GRANT OF EASEMENT OF RECORD AS INSTRUMENT NO. 20181029-0106568, SAID REGISTER'S OFFICE. APPLIES TO SUBJECT PROPERTY.
 15. SANITARY SEWER SERVICES AGREEMENT BETWEEN METROPOLITAN GOVERNMENT AND EGG OLD HICKORY, LP, DATED SEPTEMBER 16, 2019, AND OF RECORD IN INSTRUMENT NO. 20190920-0095844 IN SAID REGISTER'S OFFICE. APPLIES TO SUBJECT PROPERTY.

NOTES:

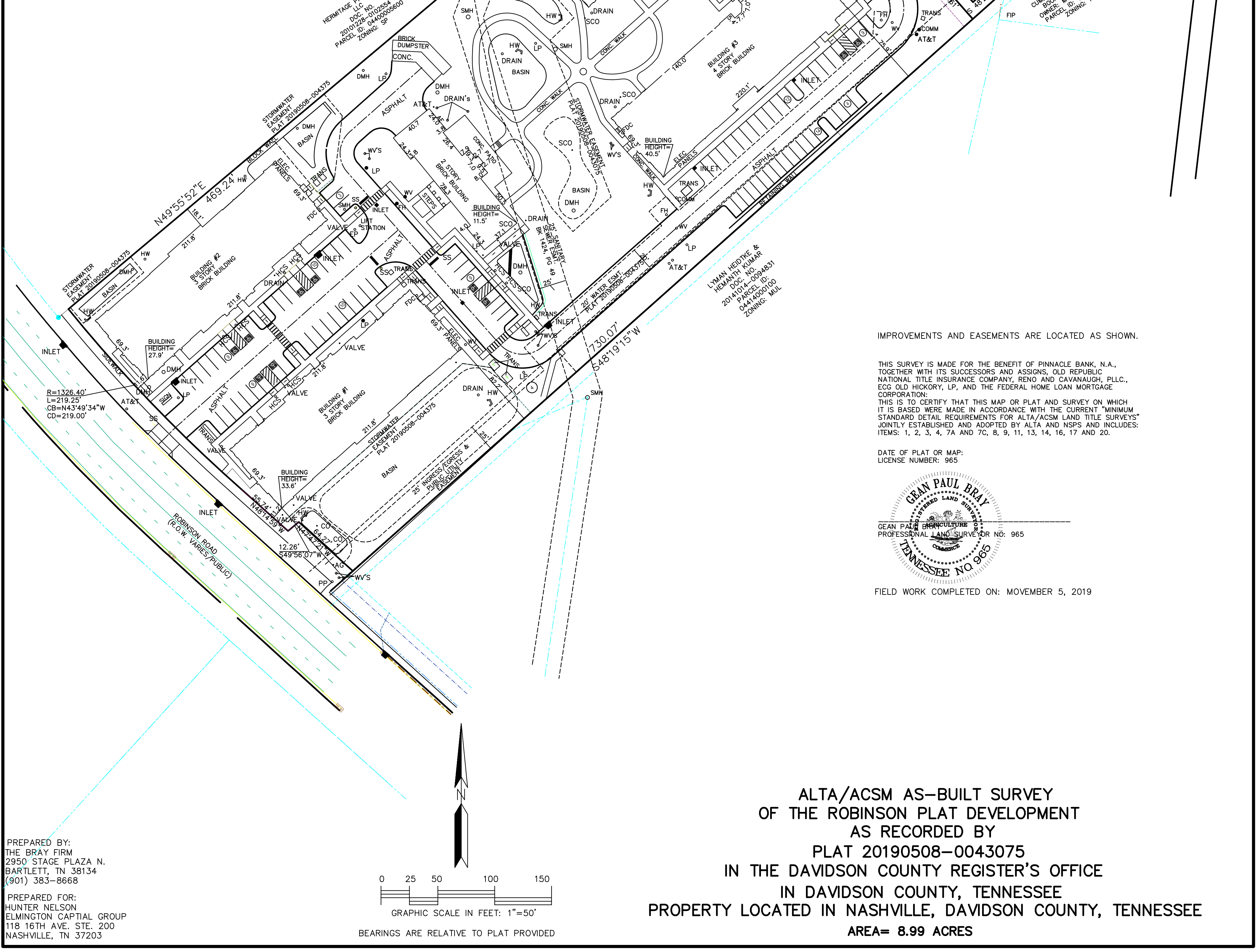
THERE WERE NO VISIBLE SIGNS OF EARTH MOVING WORK, BUILDING CONSTRUCTION OR BUILDING ADDITIONS WHEN THE SITE WAS VISITED NOVEMBER 5, 2019.

THERE WAS NO OBSERVED EVIDENCE OF SITE USE AS A SOLID WASTE DUMP, SUMP SANITARY LADFILL WHEN THE SITE WAS VISITED NOVEMBER 5, 2019.

CHANGES IN STREET RIGHT OF WAY LINES ARE SHOWN. THERE WAS NO EVIDENCE OF RECENT STREET OR SIDEWALK CONSTRUCTION ON THE SITES SIDE OF THE STREET AT THE TIME OF THIS SURVEY.

A PORTION OF THIS PROPERTY IS FURTHER IDENTIFIED AS 1205 ROBINSON ROAD.

OVERALL DIMENSIONS FOR APARTMENT BUILDINGS WERE GIVEN FOR CLARITY.



IMPROVEMENTS AND EASEMENTS ARE LOCATED AS SHOWN.

THIS SURVEY IS MADE FOR THE BENEFIT OF PINNACLE BANK, N.A., TOGETHER WITH ITS SUCCESSORS AND ASSIGNS, OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, RENO AND CAVANAUGH, PLLC, EGG OLD HICKORY, LP, AND THE FEDERAL HOME LOAN MORTGAGE CORPORATION. THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE CURRENT "MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/ACSM LAND TITLE SURVEYS" JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS AND INCLUDES ITEMS: 1, 2, 3, 4, 7A AND 7C, 8, 9, 11, 13, 14, 16, 17 AND 20.

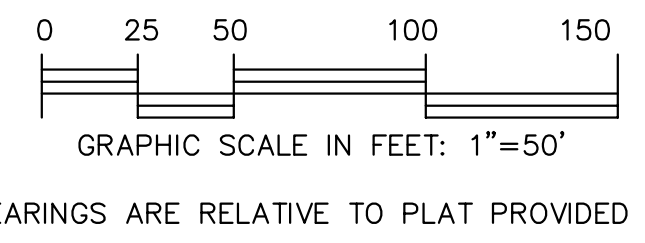
DATE OF PLAT OR MAP:
LICENSE NUMBER: 965



FIELD WORK COMPLETED ON: NOVEMBER 5, 2019

PREPARED BY:
THE BRAY FIRM
2950 STAGE PLAZA N.
BARTLETT, TN 38134
(901) 383-8668

PREPARED FOR:
HUNTER NELSON
ELMINGTON CAPITAL GROUP
118 16TH AVE, STE. 200
NASHVILLE, TN 37203



ALTA/ACSM AS-BUILT SURVEY
OF THE ROBINSON PLAT DEVELOPMENT
AS RECORDED BY
PLAT 20190508-0043075
IN THE DAVIDSON COUNTY REGISTER'S OFFICE
IN DAVIDSON COUNTY, TENNESSEE
PROPERTY LOCATED IN NASHVILLE, DAVIDSON COUNTY, TENNESSEE
AREA= 8.99 ACRES

Metropolitan Board of Zoning Appeals

Metro Howard Building
800 Second Avenue South
Nashville, Tennessee 37210



X Appellant: JAMESON NORTON
Property Owner: JAMESON NORTON
Representative: _____

Date: 12/23/2019
Case #: 2020-043
Map & Parcel: 11608014100

Council District 24

The undersigned hereby appeals from the decision of the Zoning Administrator, wherein a Zoning Permit/Certificate of Zoning Compliance was refused:

Purpose: to construct an attached garage.

Activity Type: Single family

X Location: 905 WILSON BLVD, NASHVILLE, TN 37215

This property is in the RS15 Zone District, in accordance with plans, application and all data heretofore filed with the Zoning Administrator, all of which are attached and made a part of this appeal. Said Zoning Permit/Certificate of Zoning Compliance was denied for the reason:

Reason: side setback variance

Section(s): 17.12.020A

Based on powers and jurisdiction of the Board of Zoning Appeals as set out in Section 17.40.180 Subsection B Of the Metropolitan Zoning Ordinance, a Variance, Special Exception, or Modification to Non-Conforming uses or structures is here by requested in the above requirement as applied to this property.

Appellant Name (Please Print) _____

X JAMESON NORTON
Representative Name (Please Print)

Address _____

905 WILSON BLVD
Address

City, State, Zip Code _____

NASHVILLE, TN 37215
City, State, Zip Code

Phone Number _____

615-785-5550
Phone Number

Email _____

jameson.norton@gmail.com
Email

Appeal Fee: _____

APPLICATION FOR A VARIANCE REQUEST

After your appeal is filed, Zoning staff will visit the site to take photographs for the Board members. So they will have a better ideal of the nature of your request. Zoning staff will notify the district council member of the hearing. **You will be responsible for preparing the envelopes and notices for mailing to the owners of property within 1,000 feet of the property at issue in the case. The envelopes must include the return address for the BZA and case number.** Fold and insert notices into envelopes, seal the envelopes, and apply first class postage. These neighbor notices must be delivered to Zoning staff at least twenty-three (23) days before the public hearing. Additionally, you will be responsible for purchasing, posting, and removing the red Zoning Appeal signs for the subject property. (See attached Metro Code of Laws requirements regarding, sign placement.)


The day of the public hearing, it will be your responsibility to convey to the Board the nature of the hardship in your request that makes it difficult/impossible for you to comply with the Zoning Code. **It would be to your benefit to let your neighbors know about your request prior to all notices being sent to them from our office.**

Any party can appeal the Board's decision to Chancery or Circuit Court within sixty (60) days from the date the order in the case is entered. **Should your request be granted, we would remind you that it is your responsibility to obtain the permit for which you have applied.** You should also be aware that you have two (2) years to obtain the permit or you would have to re-file your request with the board.

Once your request is filed, the staff will review your request to verify that the submittal is complete. Incomplete submittals will not be scheduled for hearing until complete.

Any correspondence to the Board must be submitted to our office by close of business, the Thursday prior to the public hearing to be included in the record.

I am aware that I am responsible for posting and also removing the sign(s) after the public hearing.



APPELLANT

12/20/2019
DATE

Letter of Hardship in Support of Variance Request
905 Wilson Blvd, Nashville, TN 37215

December 20, 2019

To the Metropolitan Board of Zoning Appeals,

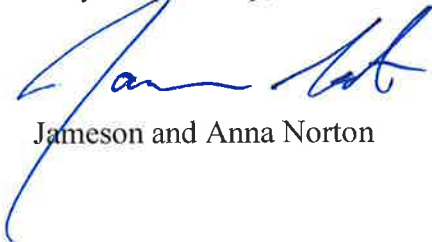
This letter along with the enclosed site plan is intended to specify the unique circumstances that necessitate a variance request to the side yard setback requirement for our existing single-family residential home zoned in RS 15 at 905 Wilson Blvd, Nashville, TN 37215. Our intention is to build an attached 2-car garage to the existing single-family residence, and the side yard setback requirement for this particular lot is 10'-0" for an attached structure based on Table 17.12.020A. We would like to respectfully request a 5' variance for the following reasons:

1. The original placement of our home is not square on the lot and thus the spacing from the house to the southern side of the lot becomes narrower toward the front of the house. The original placement and historic structure of the home remains unaltered in the plans and all other sides of the lot conform to current code requirements.
2. The intended garage is of average size for two cars and, in an effort to minimize the overall width of this structure, it does not include a pedestrian door.
3. The southern side of the lot in question is immediately adjacent to Woodmont Park separated by a dense border of trees along the lot line. Thus the variance creates no undue burden to any neighboring residence and will not be noticeable from the Park.
4. The proposed style and structure of the garage is in line with the existing house and tradition of the neighborhood.
5. We desire to have a garage because it will improve safety and security for our family with three small children living next to the Park. The Park is unlit in the evening, and it would be difficult to see someone in the dense tree border.
6. All other aspects of the garage conform to current code requirements.

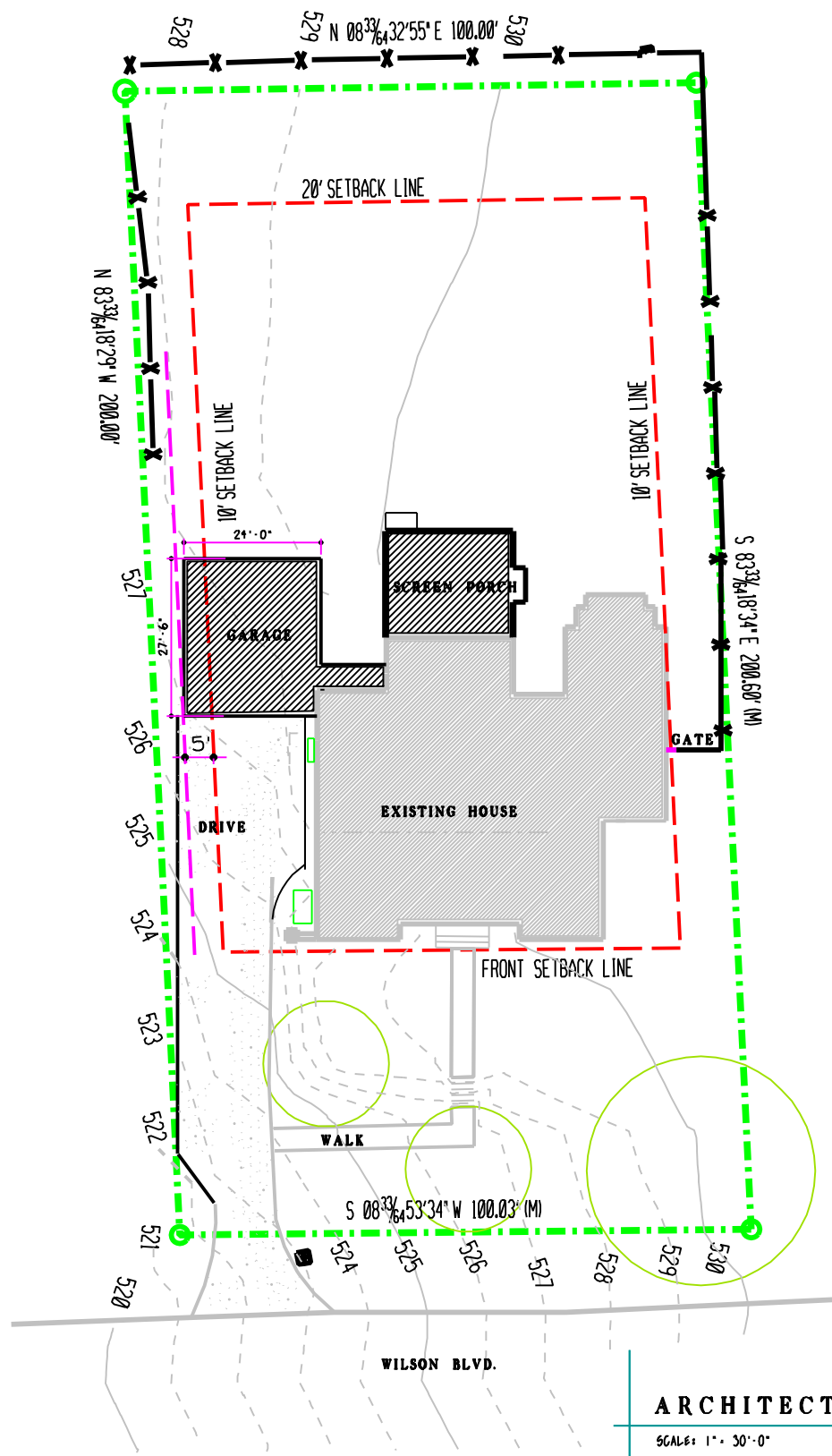
We understand that a free standing garage that would not be connected to the house would not need a variance. However, the connection to the house would improve the safety and value of the garage to the house. In summary, the proposed project would be an improvement to the neighborhood, to the safety of the home, and to the property value.

Thank you for your thoughtful consideration. Please contact us at jameson.norton@gmail.com or 615-785-5550 for any questions or additional information that might be needed regarding this request.

Very Respectfully,



Jameson and Anna Norton



ARCHITECTURAL SITE PLAN
 SCALE: 1" = 30'-0"

ELIZABETH POGUE
 ARCHITECT

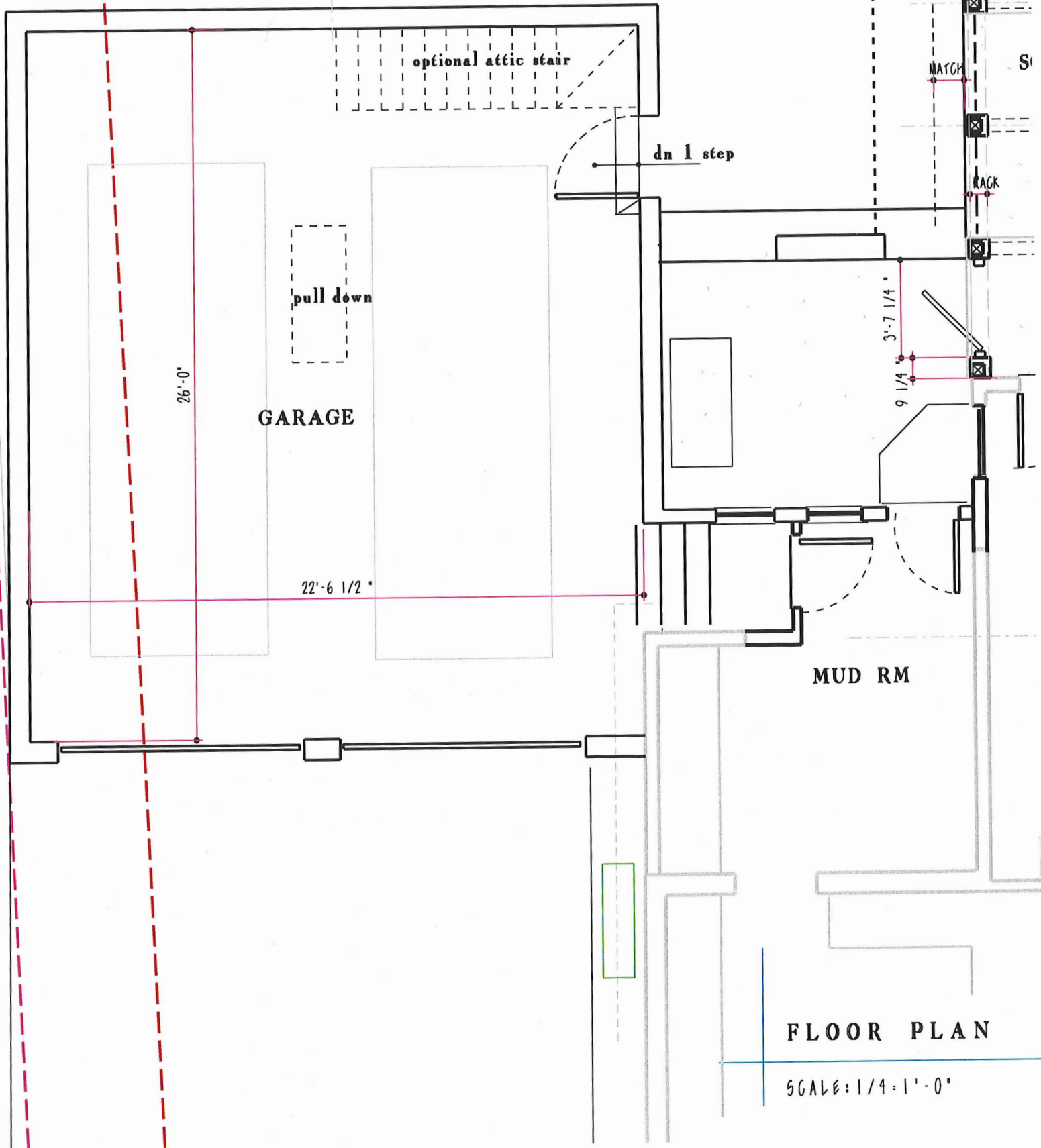
817 SOUTH WILSON BLVD.
 NASHVILLE, TENNESSEE
 3 7 2 1 5

T . 6 1 5 . 4 6 3 . 0 4 9 5
 C . 6 1 5 . 3 3 7 . 7 1 6 7

T H E
 N O R T O N
 R E S I D E N C E

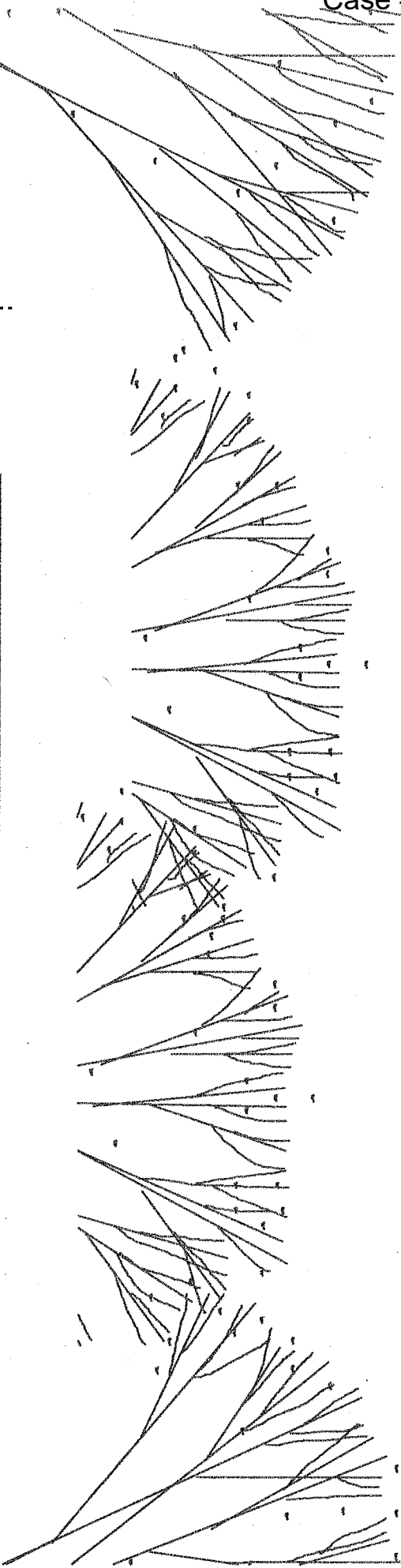
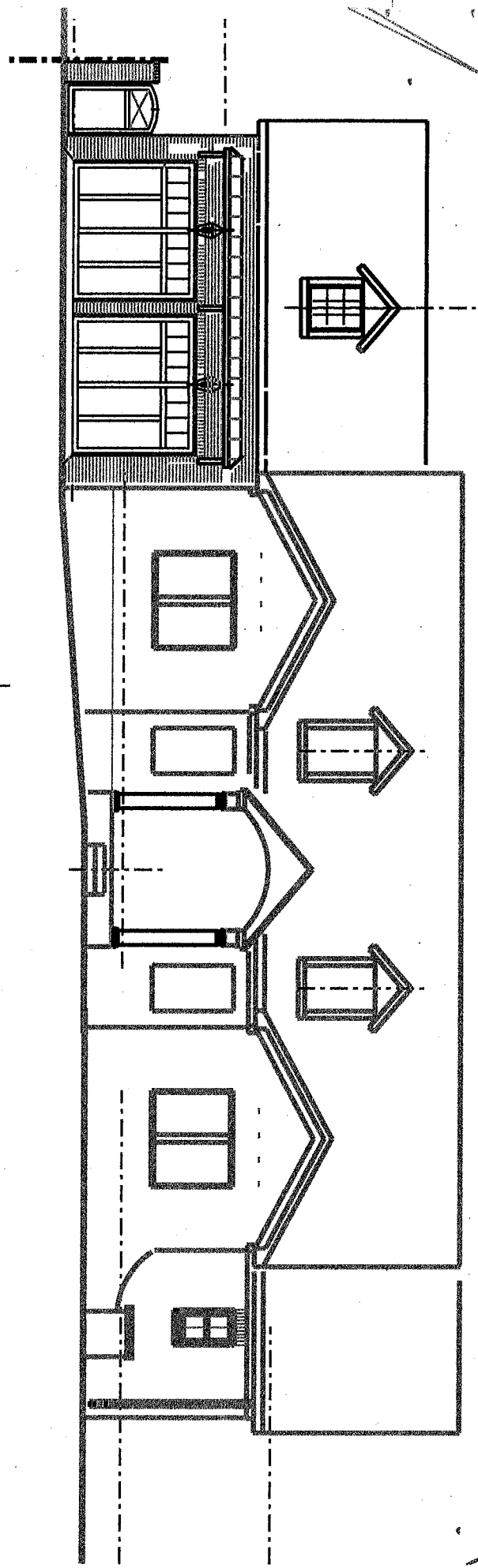
9 W I L S O N B O U L E V A R D
 N A S H V I L L E
 T E N N E S S E E
 3 7 2 1 5

S 1 . 1
 S I T E P L A N
 22 DECEMBER 2019
 DESIGN DOCUMENTS

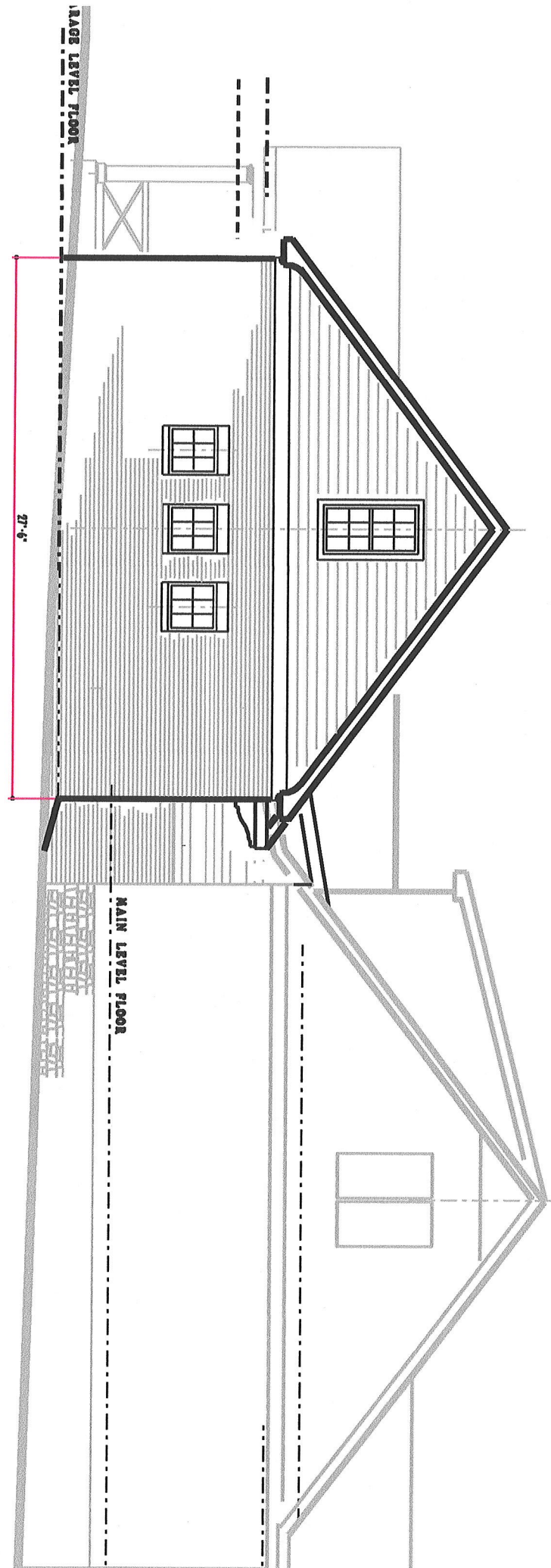


FLOOR PLAN

SCALE: 1/4" = 1'-0"



FRONT ELEVATION
SCALE: 1/8" = 1'-0"



GARAGE DRIVE ELEVATION

SCALE: 1/4" = 1'-0"

From: [James Bristol](#)
To: [Board of Zoning Appeals \(Codes\)](#)
Subject: Zoning Appeal 2020-043, 905 Wilson Boulevard
Date: Friday, January 17, 2020 12:17:29 PM

Dear Board of Zoning Appeals,

I write to express my support in favor of the variance requested by Jameson Norton, 905 Wilson Blvd, in Case No. 2020-043. I have reviewed the design for the structure that Mr. Norton wants to build and understand the variance requested from the ten foot setback requirement.

Mr. Norton's property at 905 Wilson Blvd. is adjacent to Woodmont Park. I am the Treasurer of Friends of Woodmont Park, a non-profit supporting organization that has raised funds and volunteer efforts for improvements to Woodmont Park. The variance to the setback requirement that has been requested makes sense and in my opinion will not detract from Woodmont Park in any way. The planned improvements to Mr. Norton's property will only enhance the view from Woodmont Park. I ask that you act to approve the variance request.

James Bristol
500 Oaklawn Avenue

(615) 243-2422

Molly & Stewart Bronaugh
3702 Woodmont Blvd., Nashville, TN 37215

January 22, 2020

Metro Codes & Building Safety
ATTN: Board of Zoning Appeals
800 Second Ave. South, 3rd Floor
Nashville, TN 37210

Re: Appeal Case Number 2020-043
Map Parcel: 11608014100
Zoning Classification: RS15
905 Wilson Blvd. Council District 24

To whom it may concern:

We are writing in **support** of Jameson Norton's appeal request for a variance setback to construct an attached garage.

We live near, take walks on Wilson Blvd., and enjoy the adjacent Woodmont Park. Mr. Norton's addition will enhance the home's appearance, livability, and value. We encourage your approval.

Thank you,



Molly & Stewart Bronaugh

From: [Jeff Carr](#)
To: [Board of Zoning Appeals \(Codes\)](#)
Subject: 2020-043 Support
Date: Wednesday, January 22, 2020 8:25:23 PM

I support the appeal. This property borders the public park and special consideration should be provide to my neighbor, Jameson Norton, given the impact of the public use directly adjacent to his property.

I fully support the appeal to construct an attached garage.

Pamela & Jeff Carr
715 Cantrell Ave
Nashville, TN



Metropolitan Board of Zoning Appeals
 Metro Howard Building
 800 Second Avenue South
 Nashville, Tennessee 37210

Appellant: Glenn Smith Date: 12-11-19
 Property Owner: Glenn Smith Case #: 2020- 029
 Representative: Glenn Smith Map & Parcel: 02615001400
 Council District: 10

The undersigned hereby appeals from the decision of the Zoning Administrator, wherein a Zoning Permit/Certificate of Zoning Compliance was refused:

Purpose: To obtain a STRP permit
 Activity Type: Short Term Rental
 Location: 208 Northside Dr.

This property is in the RS40 Zone District, in accordance with plans, application and all data heretofore filed with the Zoning Administrator, all of which are attached and made a part of this appeal. Said Zoning Permit/Certificate of Zoning Compliance was denied for the reason:

Reason: Item A appeal, challenging the Zoning Administrator's denial of a STRP permit. Appellant operated after the issued STRP permit expired.

Section: 17.16.250 E

Based on powers and jurisdiction of the Board of Zoning Appeals as set out in Section 17.40.180 Subsection ___ of the Metropolitan Zoning Ordinance, a Variance, Special Exception, or Modification to Non-Conforming uses or structures is here by requested in the above requirement as applied to this property.

Appellant Name: Glenn Smith Representative: Same
 Phone Number: 615 260-2430 Phone Number: _____
 Address: 208 Northside Dr. Address: _____
Madison, TN 37115 _____
 Email address: glendales60@yahoo.com Email address: patriciasmith1981@yahoo.com

Appeal Fee: \$100.00

P.D.F.



**Metropolitan Government
of Nashville and Davidson County, Tennessee
Department of Codes and Building Safety
800 Second Avenue South, Nashville, TN 37210**



3740451

**ZONING BOARD APPEAL / CAAZ - 20190075803
Inspection Checklist for Use and Occupancy
This is not a Use and Occupancy Notification**

PARCEL: 02615001400**APPLICATION DATE:** 12/11/2019**SITE ADDRESS:**

208 NORTHSIDE DR MADISON, TN 37115
LOT 55 SEC 1 NORTH HILL ESTATES

PARCEL OWNER: SMITH, GLENN C. ET UX**CONTRACTOR:****APPLICANT:****PURPOSE:**

Item A appeal, challenging the zoning administrator's denial of a short term rental permit. Appellant operated after the issued STRP permit expired.

*Before a Use and Occupancy Letter can be issued for this project, the following approvals are required.
Inspections Foundation = before concrete poured, Framing = before covering wall and after rough-in inspections.*

There are currently no required inspections

Inspection requirements may change due to changes during construction.



METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

DEPARTMENT OF CODES & BUILDING SAFETY

OFFICE ADDRESS

METRO OFFICE BUILDING--3rd FLOOR
800 SECOND AVENUE, SOUTH
NASHVILLE, TENNESSEE 37210

MAILING ADDRESS

POST OFFICE BOX 196300
NASHVILLE, TENNESSEE 37219-6300
TELEPHONE (615) 862-6500
FACSIMILE (615) 862-6514
www.nashville.gov/codes

NOTICE

Pending your appeal of the denial of your application for a short term rental permit (STRP), you are prohibited from operating the STRP. Should you continue to advertise and/or operate the STRP at the subject property, the matter will be referred to Metro Legal for prosecution in Environmental Court.



APPLICATIONS FOR INTERPRETATION AGAINST THE ZONING ADMINISTRATOR AND NON-COMPLYING/NON-CONFORMING USES

After your appeal is filed, Zoning staff will visit the site to take photographs for the Board members so that they will have a better idea of the nature of our request. Zoning staff will notify the district councilmember of the hearing. You will be responsible for preparing the envelopes and notices for mailing to the owners of the property within 1,000 feet of the property at issue in this case. The envelopes must include the return address for the BZA and the case number. Fold and insert the notices into the envelopes, seal the envelopes, and apply first class postage. These neighbor notices must be delivered to zoning staff at least twenty-three (23) days before the public hearing. Additionally, you will be responsible for purchasing, posting and removing the red Zoning Appeal signs for the subject property. (See attached Metro Code of Laws requirements regarding sign placement.)

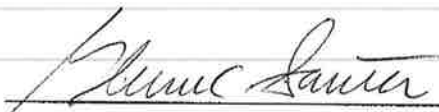
The day of the public hearing, it will be your responsibility to convey to the Board your request and the reasons for the request. In the case of questioning the Zoning Administrator in his interpretation of the Zoning Code, it is your job to explain to the Board why he is wrong and you are right. In the case of non-conforming or non-complying, it is your job to explain to Board how this change/enlargement, etc. would result in less of an impact on the surrounding area. **It would be to your benefit to contact your neighbors and explain to them what you are doing and attempt to obtain their support and evidence that support in some form at the public hearing.**

Any party can appeal the Board's decision to Chancery or Circuit Court within sixty (60) days from the date the order in the case is entered. Should your request be granted, we would remind you that it is your responsibility to obtain the permit for which you have applied. You should also be aware that you have two (2) years to obtain the permit or you would have to re-file your request with the Board.

Once your request is filed, the staff will review your request to verify that the submittal is complete. Incomplete submittals will not be scheduled for a hearing until complete.

Any correspondence to the Board must be submitted to our office by close of business, the Thursday prior to public hearing to be included in the record.

I am aware that I am responsible for removing the Sign(s) after the public hearing.


APPELLANT

12/11/19
DATE

Rental Unit Record

208 Northside Dr, Madison, TN, United States

Active ●
Identified ✓
Compliant X

PRINT
SEND A LETTER

Listing(s) Information

Airbnb - 11167415



Matched Details

Analyst 66D9

Explanation
Exterior photos from the listing match photos from Google Streetview

Listing Photos



Same back deck exterior

Matching 3rd Party Sources



Zip Code Match

City Name Match

Listing Details

Rental Unit Information



Identified Address

208 Northside Dr, Madison, TN, United States

Identified Unit Number

None

Identified Latitude, Longitude

36.302966, -86.684088

Parcel Number

02615001400

Owner Name

SMITH, GLENN C. ET UX

Owner Address

208 NORTHSIDE DR
MADISON, TN 37115, US

Registration / Permit Number

501932








Timeline of Activity


View the series of events and documentation pertaining to this property


12/11/2019

Matched property listing

Listing URL	— https://www.airbnb.com/rooms/11167415
Listing Status	● Active
Host Compliance Listing ID	— air11167415
Listing Title	— Rivergate Ranch
Property type	— Apartment
Room type	— Entire home/apt
Listing Info Last Captured	— Dec 11, 2019
Screenshot Last Captured	— Dec 10, 2019
Price	— \$69/night
Cleaning Fee	— \$25


-  3 Documented Stays
November, 2019
-  7 Documented Stays
October, 2019
-  6 Documented Stays
September, 2019
-  5 Documented Stays
August, 2019
-  4 Documented Stays
July, 2019
-  8 Documented Stays
June, 2019
-  6 Documented Stays
May, 2019
-  6 Documented Stays
April, 2019


 7 Documented Stays
March, 2019


 5 Documented Stays
February, 2019


● Listing air11167415 Reposted
February 15th, 2019


✕ Listing air11167415 Removed
February 10th, 2019


 7 Documented Stays
January, 2019

 4 Documented Stays
December, 2018

 7 Documented Stays
November, 2018

 6 Documented Stays
October, 2018

 5 Documented Stays
September, 2018

 9 Documented Stays
August, 2018


 8 Documented Stays
July, 2018


● Listing air11167415 Reposted
July 22nd, 2018


✕ Listing air11167415 Removed
July 20th, 2018

🚩 First Warning - No STR Permit: Delivered
July 15th, 2018 

🚩 First Warning - No STR Permit: Sent
July 4th, 2018 

 7 Documented Stays
June, 2018

 5 Documented Stays
May, 2018

 4 Documented Stays
April, 2018

Information Provided on Listing

Contact Name	— Dale And Patricia
Latitude, Longitude	— 36.303345, -86.683005
Minimum Stay (# of Nights)	— 2
Max Sleeping Capacity (# of People)	— 4
Max Number of People per Bedroom	— 2
Number of Reviews	— 265
Last Documented Stay	— 11/2019

Listing Screenshot History

 View Latest Listing Screenshot

October 4

November 8

December 3

- ✈ Airbnb Letter: In Local Area 📄
April 2nd, 2018
- ✈ Airbnb Letter: Sent 📄
March 28th, 2018
- 📄 3 Documented Stays
March, 2018
- 📄 6 Documented Stays
February, 2018
- 📄 5 Documented Stays
January, 2018
- 📄 5 Documented Stays
December, 2017
- 📄 5 Documented Stays
November, 2017
- 📄 8 Documented Stays
October, 2017
- 📄 5 Documented Stays
September, 2017
- 📄 8 Documented Stays
August, 2017
- ✓ Listing air11167415 Identified
August 2nd, 2017
- 📄 8 Documented Stays
July, 2017
- 📄 7 Documented Stays
June, 2017
- 📄 7 Documented Stays
May, 2017
- 📄 8 Documented Stays
April, 2017
- 📄 4 Documented Stays
March, 2017
- 📄 4 Documented Stays
February, 2017
- 📄 6 Documented Stays
January, 2017
- 📄 4 Documented Stays
December, 2016

- 📄 7 Documented Stays
November, 2016
- 📄 7 Documented Stays
October, 2016
- 📄 4 Documented Stays
September, 2016
- 📄 6 Documented Stays
August, 2016
- 📄 8 Documented Stays
July, 2016
- ✳ Listing air11167415 First Crawled
July 21st, 2016
- 📄 6 Documented Stays
June, 2016

- 6 Documented Stays
May, 2016
- 3 Documented Stays
April, 2016
- 6 Documented Stays
March, 2016
- Listing air11167415 First Activity
March 2nd, 2016

December 10, 2019 - 01:42AM America/Chicago



Search

English (US)

\$ USD

Become a host

Help

Sign up

Log

Dec 10, 2019 1:42am CT

Share

Save



View Photos

Rivergate Ranch

Nashville



Dale And Patricia

\$69 per night

★ 4.98 (265 reviews)

Dates

12/11/2019

→ Checkout

Guests

1 guest



Reserve

You won't be charged yet

11% off for Dec 11 - 12

Book within the next 2 days to get this special offer.

4 guests 2 bedrooms 3 beds 1 bath

Entire home

You'll have the apartment to yourself.

Self check-in

Check yourself in with the keypad.

Sparkling clean

17 recent guests said this place was sparkling clean.

Dale And Patricia is a Superhost

Superhosts are experienced, highly rated hosts who are committed to providing great stays for guests.

Private entrance to your 700 sq.ft., 2 BR/1 BA, full kitchen, and laundry room attached to our 60's ranch-style home. Master Bedroom offers a queen-size bed; 2nd Bedroom offers a twin-size bed; and a rollaway bed is also provided. This 1 acre property, in a quiet suburban neighborhood, is 15/20 min. from Downtown Nashville.

Shopping, restaurants, walking distance.

The space

Comfortable and clean fully-furnished apartment with private entrance on one-acre lot.

All amenities of home included: fully-stocked kitchen, Keurig coffee maker, full-size washer and dryer.

Help yourself to anything in the refrigerator and pantry.

1 Bedroom with Queen-size bed.

1 Bedroom with Twin bed.

1 Rollaway bed.

Pack & Play, Portable highchair, stroller and toys available for children.

Easy Access to major thoroughfares.

Report this listing

15/20 minutes from Downtown Nashville, Opryland Hotel, and Opry Mills Mall
 Many Restaurants and Shopping within walking distance, including Target (0.8 mi.), and Walmart Supercenter (0.5 mi.).
 Dollar General, Big Lots, Best Buy, Dollar Tree, Ollie's, Macy's, Dillard's, Sears, Penney's, Old Navy, all less than 1.0 mile away.
 Check out the "Guidebook" on our listing for "things to do in Nashville!"

Guest access

Our guests will enjoy the entire apartment with 24-hour access available.
 Private patio area.
 NO SMOKING anywhere on the property.
 NO PETS
 NO PARTIES . Please respect quiet time between 10pm-8am. Certainly you are welcome to come and go anytime between these hours. However, because we live on the property, we ask you to be considerate of us, as well.
 Check-in time is 2:00 pm central time.
 Check-out time is 10:00 am central time.
 (However, we can be flexible with check-in and check-out times based on availability.)
 Approval needed for more than one vehicle.

Other things to note

Short Term Rental Property Permit # - (PHONE NUMBER HIDDEN)
 Business License # - 195400
 Hotel Tax Acct. # - 501932

Hide ^

Contact host



Amenities

Basic

Wi-Fi
 Continuous access in the listing

Cable TV

Iron

Laptop friendly workspace
 A table or desk with space for a laptop and a chair that's comfortable to work in

TV

Dryer
 In the building, free or for a fee

Washer
 In the building, free or for a fee

Essentials
 Towels, bed sheets, soap, and toilet paper

Heating
 Central heating or a heater in the listing

Air conditioning

Hot water

Family features

Bathtub

Children's books and toys

Children's dinnerware

High chair

Pack 'n Play/travel crib

Facilities

Free parking on premises

Dining

Kitchen

Space where guests can cook their own meals

Coffee maker

Cooking basics

Pots and pans, oil, salt and pepper

Dishes and silverware

Dishwasher

Microwave

Refrigerator

Oven

Stove

Guest access

Keypad

Check yourself into the home with a door code

Private entrance

Separate street or building entrance

Logistics

Luggage dropoff allowed

For guests' convenience when they have early arrival or late departure

Bed and bath

Hangers

Hair dryer

Shampoo

Shampoo

Bed linens

Extra pillows and blankets

Outdoor

Patio or balcony

Garden or backyard

Safety features

Fire extinguisher

Carbon monoxide detector

Smoke detector

First aid kit

Sleeping arrangements



Bedroom 1
1 queen bed



Bedroom 2
2 single beds

Accessibility

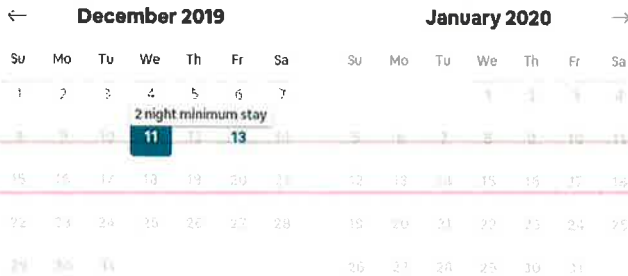
Step-free access to the main entrance

Well-lit path to entrance

[Show all](#)

Availability

This host offers a 10% weekly discount.








[Clear dates](#)

Reviews

★ 4.98 265 reviews



Sparkling clean	 57	Quick responses	 55
Outstanding hospitality	 53	Stylish space	 53
Amazing amenities	 48		

Search reviews



Tiffany
November 2019

My family of 4 (including two toddlers) stayed over the week of Thanksgiving. This place was absolutely perfect for us. Excellent location...freeway access, grocery stores, and restaurants extremely close by; safe and quiet neighborhood. Amenities reflected thoughtfulness and...[Read more](#)



Scott
November 2019

Incredible space about 20 minutes from downtown. The space is extremely clean and is well decorated to make you feel at home. Patricia and Dale are very quick to respond and the place was as advertised. Great hosts and highly recommend staying at this location



Response from Dale And Patricia:

Scott, it was our pleasure to host you and your family. We are sorry we never made personal contact with you. However, we appreciate the close communication you kept with us. Thank you for your kind review regarding the unit's cleanliness. This is our number 1 priority! Glad...
[Read more](#)

November 2019



Shannon
November 2019

Dale and Patricia are amazing hosts with a gorgeous place! Everything was perfectly decorated and very welcoming. My husband and I woke up well rested every day and loved to have the ability to cook our meals instead of eating out all the time. It was a 20 minute drive to...[Read more](#)



Response from Dale And Patricia:

Oh Shannon! You are so kind! Thank you for the lovely review. We thoroughly enjoyed meeting you and your husband. Glad our place provided a comfortable rest after your time in downtown Nashville. We welcome you back anytime!!!

November 2019



Anya
October 2019

Dale and Patricia were excellent hosts! Place was clean and very welcoming. We felt right at home. We highly recommend staying at their place and we will be back next time we visit Nashville. Thanks, Dale and Patricia!



Response from Dale And Patricia:

Anya, it was our pleasure to host you and your husband. Please come back if you are ever in Nashville again!

October 2019



Keshia
October 2019

My friend and I have stayed here twice and would stay again. It's cleaner than a hotel, and has very comfortable beds.



Response from Dale And Patricia:

Keshia, we always love to have repeat guests! Glad you and your friend were able to come again....Thanks for booking with us a second time!

October 2019



Raul
October 2019

Great and quite lovely place to stay. Nice country and peaceful for vacation.



Response from Dale And Patricia:

Raul, it was our pleasure to host you. Please come again if you should return to Nashville.

October 2019



Julie

October 2019

This is a super cute place! The beds are incredibly comfortable and everything is spotless. The hosts were so sweet and accommodating with a change in our plans. I highly recommend this AirBnB.



Response from Dale And Patricia:

Thank you for your kind review, Julie. We were happy to accommodate your change of plans. We always want to help our guests out if there's any way possible. Glad we could work together to get you an extra night's stay!

October 2019




Hosted by Dale And Patricia



Tennessee, TN · Joined in June 2015

★ 265 Reviews ✓ Verified

Dale And Patricia is a Superhost · Superhosts are experienced, highly rated hosts who are committed to providing great stays for guests. 

Fun-loving, happily married, retired couple. Sports-minded husband; southern belle wife.

Interaction with guests

Owners live in attached home. However, you will have your own private entrance to your private space. We are available to answer any questions or provide information/recommendations as requested. You will have as much privacy as you'd like. Please respect quiet time between...[Read more](#)

Response rate: **100%**

Response time: **within an hour**

[Contact host](#)

Always communicate through Airbnb · To protect your payment, never transfer money or communicate outside of the Airbnb website or app. [Learn more](#)

The neighborhood

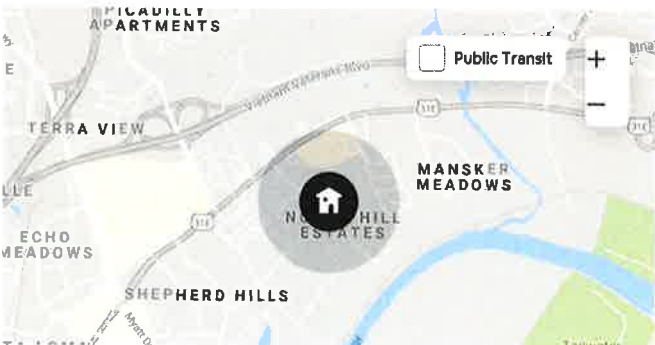
Dale And Patricia's place is located in Nashville, Tennessee, United States.

Quiet, established neighborhood, yet within walking distance of restaurants and shopping.

Deer and wild turkeys roam the neighborhood regularly.

Area lakes and marina nearby.

[Read more about the neighborhood](#) ▾





Exact location information is provided after a booking is confirmed.

Things to keep in mind

Check-in: After 2PM
Checkout: 10AM

Self check-in with keypad

House Rules

- No smoking
- No pets
- No parties or events

Additional Rules

- Check-in time is 2:00pm (Central Standard Time)
- Check-out time is 10:00am (Central Standard Time)
- No Smoking on the property
- No Pets
- More than 4 occupants must be approved by owners.

[Hide rules ^](#)

Cancellations

Free cancellation for 48 hours

After that, cancel up to 5 days before check-in and get a full refund, minus the service fee.



[Get full details](#)

[Hide policies ^](#)

More homes you may like



Entire loft • 1 bed
★ 4.95 (681)
Charming private apt. in hip area
\$77 / night



PLUS Entire guesthouse • 1 bed
★ 4.82 (656)
Cozy East Nashville Cottage with Relaxed...
\$79 / night



Entire bungalow • 3 beds
★ 4.89 (602)
1960's Downtown Bungalow 3 BR/ 1 BA Free...
\$125 / night



Explore other options in and around Nashville

Chronology of Appeal Case 2020-029 for Glenn and Patricia Smith
Submitted by Glenn Smith

Nov. 15, 2019 – Realizing our STRP Permit was overdue, I contacted Robert Osborn (codes). I thought I had submitted the payment for renewal in July 2019. When Mr. Osborn answered, he said he had no record of receiving the payment. Going back, I discovered he was right and my record showed July 2018 (not 2019). I immediately (that day, 11/15/19) sent a renewal check for \$313.00.

Dec. 5, 2019 – After hearing nothing from Mr. Osborn and seeing that the check had not cleared, I contacted Mr. Osborn by email to see if the check had been received. My email was answered with an out-of-office reply, stating Mr. Osborn will be out of town until 1/2/19 (I know he meant 1/2/20) directing me to Bonnell Mc Broom with any questions. I then directed my same questions to Bonnell McBroom (same date 12/5/19). I received no response.

Dec. 9, 2019 – After no response from Bonnell McBroom, I then directed my questions to David Frabutt. Mr. Frabutt responded the next day.

Dec. 10, 2019 – Mr. Frabutt stated that our permit had expired June 3, 2019 and that all STRP activity should cease. I responded apologetically, saying it was an oversight on my part. I headed to the codes office that day. I was told when I arrived and stated my purpose, that I should return the next day to see Mr. Frabutt.

Dec. 11, 2019 – My wife and I were at the Codes Office when the doors opened and waited most of the day to see Mr. Frabutt. He was straightforward and thorough in explaining the steps needed to appeal our case for possible reinstatement. He told us we would soon hear from Jessica Shepherd for further steps needed to start this process. Upon arriving back home that afternoon, we immediately contacted AirBnB and shut down our rental.

Dec. 20, 2019 – I sent an email to Jessica Shepherd for clarification of our responsibilities in this process. She replied that she would send all information to us on Dec. 27, 2019.

Dec. 27, 2019 – Jessica sent detailed instructions to us, outlining the steps we were to take in the Board of Zoning Appeals process.

Dec. 30, 2019 – We purchased Zoning Board Appeals signage and mailing list labels at Office Depot.

Jan. 9, 2020 – I delivered all letters (including letter to Council Member Zach Young) to Jessica Shepherd. Fee payment of \$100 was also paid.

Jan. 15, 2020 – I sent a letter to Council Member Zach Young, outlining our request for possible reinstatement (see attached)

Jan. 16, 2020 – BZA sign placed in front yard of our residence (208 Northside Drive, Madison, TN 37115)

Jan. 17, 2020 – Received email reply from Council Member Zach Young (see attached)

We recognize our failure to obtain our STRP renewal permit in a timely manner. Please know, it was an honest oversight. We have been faithful and unassuming AirBnB hosts for over 3 years. We live on site and have conducted our business with little fanfare or disruption to our quiet neighborhood. We are current with our Hotel Occupancy Privilege Tax (Account #501932). We respectfully ask to have our STRP permit reinstated. Thank you very much.

Glenn (I go by Dale) and Patricia Smith
208 Northside Drive
Madison, TN 37115

Dale – 615-260-2430

Patricia – 615-294-0182

Board of Zoning Appeals Meeting 2/6/2020; Appeal Case Number 2020-029

January 15, 2020

Councilman Young,

We are Glenn (Dale) and Patricia Smith of 208 Northside Drive, Madison, Tn. 37115. We have been faithful and unassuming Airbnb owners for over 3 years. We live on site and have conducted our business with little fanfare or disruption to our quiet neighborhood. Our place sleeps only 4, and we have prided ourselves on being selective hosts who cater to couples and families with children. We have always maintained 'Superhost' ratings and have been faithful to pay our fair share on a monthly basis in Hotel Occupancy Privilege Tax (Account #501932).

After realizing that I had failed to receive a notice concerning renewal of the STRP yearly permit, I made contact with the Department of Codes & Building Safety in November, 2019. Concurrent with the contact, I sent the required permit fee (\$313.00) along with the required affidavits to renew the permit. I was later contacted by Mr. David Frabutt, Zoning Examiner, telling us that our permit had expired on June 3, 2019 and that we would be required to appeal to the Board of Zoning Appeals. That process is now underway. You should have received the **ZONING APPEAL: NOTICE TO NEIGHBORING OWNERS** letter. Our case (2020-029) comes before the Board on Thursday, February 6, 2020.

We will install the required Zoning Appeals Signage in our yard tomorrow, January 16, 2020, 3 weeks prior to our hearing date.

We take full responsibility for the oversight on our part and hope to be able to resume hosting, following our appeal.

We understand that the process for (re-)application has changed a bit since our initial application in 2016.

We are a retired couple and DO depend on this income.

You are invited to attend the meeting, and/or we would be happy to meet with you, if you need more information.

Do you have any suggestions or comments that would be helpful for us when meeting the Board? Thank you in advance for any assistance.

Sincerely,

Glenn (I go by 'Dale') and Patricia Smith
208 Northside Drive
Madison, TN. 37115

Dale - (615) 260-2430

Patricia - (615) 294-0182

Jan. 17, 2020

Mr. and Mrs. Smith,

I apologize for the delay in responding to your email. This week has been extra busy for some reason.

I appreciate your explanation as this helps me understand what the situation truly is. I'll be honest and share that I've not had a short term rental case come up yet during my term so this is new to me. I truly believe that, if you go before the BZA and explain how you've explained to me and that you take full responsibility for it, they will allow you to continue operating without a permit revocation.

I wish I had a better suggestion but like I said, this is the first issue of this kind to come up in my district since taking office in September.

Zach Young
he/him/his
Metro Councilmember
District 10

January 17, 2020

Metropolitan Board of Zoning Appeals
RE: Appeal Case Number 2020-029
208 Northside Drive

Board of Zoning Appeals Members:

I write in support of the appeal by Glenn Smith to allow a short-term rental permit at 208 Northside Drive. The Smiths have operated a short-term rental there, attached to their primary residence, during my three years as their neighbor. Throughout that time, they have been model rental operators, requiring their guests to be considerate neighbors, as they, themselves, are. Their rental operation is so unobtrusive that, even though my home is within close sight and sound of their property, I was unaware that they had a short-term rental until a neighbor informed me of the fact.

I support Glenn Smith's appeal to continue operating a short-term rental at the above address.

Respectfully,


Carol S. England

2301 Marsha Drive
Madison, TN 37115

Notes

We are against
STRP permit
on the attached
case

Jubhi N.
Ludweel



OF NASHVILLE AND DAVIDSON COUNTY

DEPARTMENT OF CODES & BUILDING SAFETY

OFFICE ADDRESS

METRO OFFICE BUILDING—3rd FLOOR
800 SECOND AVENUE, SOUTH
NASHVILLE, TENNESSEE 37210

MAILING ADDRESS

POST OFFICE BOX 196350
NASHVILLE, TENNESSEE 37219-6350
TELEPHONE (615) 862-6500
FACSIMILE (615) 862-6514
www.nashville.gov/codes

GHBORING OWNERS

2020-029

02615001400

RS40

10

led an appeal for the property at the above referenced
in A appeal, challenging the zoning administrator's denial
perated after the issued STRP permit expired. Should this
applicant to obtain a permit.

A ZONE CHANGE REQUEST*****

Zoning Appeals will conduct public hearings on
p.m. in the Metropolitan Board of Education, 2601
ort or opposition to your neighbor's request, you may do
nce, you may submit written communication to the
g date. We cannot guarantee written communication to be a
close of business the Thursday before the meeting date.

*This letter is being sent to you because you are the owner of property located within 1000' of the
subject location. This request is only for the property at the above location. We are required
by law to notify you of what your neighbor wishes to do on his/her property.*

Should you have questions or require special accommodations (handicap accessibility), you may
email us at BZA@nashville.gov. You can view this case at epermits.nashville.gov and search by
permit # **20190075803** or search by the address.

METROPOLITAN BOARD OF ZONING APPEALS



Metropolitan Board of Zoning Appeals
 Metro Howard Building
 800 Second Avenue South
 Nashville, Tennessee 37210

Appellant: James Shadburne Date: 12-16-19
 Property Owner: James Shadburne Case #: 2020-033
 Representative: James Shadburne Map & Parcel: 11506000300
 Council District: 23

The undersigned hereby appeals from the decision of the Zoning Administrator, wherein a Zoning Permit/Certificate of Zoning Compliance was refused:

Purpose: To obtain a STRP permit
 Activity Type: Short Term Rental
 Location: 979 Windrowe Dr.

This property is in the RS40 Zone District, in accordance with plans, application and all data heretofore filed with the Zoning Administrator, all of which are attached and made a part of this appeal. Said Zoning Permit/Certificate of Zoning Compliance was denied for the reason:

Reason: Item A appeal, challenging the Zoning Administrator's denial of a STRP permit. Appellant operated prior to obtaining the legally required short term rental permit.
 Section: 17.16.250 E

Based on powers and jurisdiction of the Board of Zoning Appeals as set out in Section 17.40.180 Subsection ___ of the Metropolitan Zoning Ordinance, a Variance, Special Exception, or Modification to Non-Conforming uses or structures is hereby requested in the above requirement as applied to this property.

Appellant Name: James Shadburne Representative: Same
 Phone Number: 615 852-1420 Phone Number: _____
 Address: 979 Windrowe Dr. Address: _____
Nashville, TN 37205 _____
 Email address: jimshadburne@yahoo.com Email address: _____

Appeal Fee: \$100.00

P.D.K.



**Metropolitan Government
of Nashville and Davidson County, Tennessee
Department of Codes and Building Safety
800 Second Avenue South, Nashville, TN 37210**



3741653

**ZONING BOARD APPEAL / CAAZ - 20190076713
Inspection Checklist for Use and Occupancy
This is not a Use and Occupancy Notification**

PARCEL: 11506000300**APPLICATION DATE:** 12/16/2019**SITE ADDRESS:**

979 WINDROWE DR NASHVILLE, TN 37205
LOT 19 SEC 2 WEST MEADE HILLS

PARCEL OWNER: SHADBURNE, JAMES E. & JULIE A.**CONTRACTOR:****APPLICANT:****PURPOSE:**

Item A appeal, challenging the zoning administrator's denial of a short term rental permit. Appellant operated prior to obtaining the legally required short term rental permit.

*Before a Use and Occupancy Letter can be issued for this project, the following approvals are required.
Inspections Foundation = before concrete poured, Framing = before covering wall and after rough-in inspections.*

There are currently no required inspections

Inspection requirements may change due to changes during construction.

APPLICATIONS FOR INTERPRETATION AGAINST THE ZONING ADMINISTRATOR AND NON-COMPLYING/NON-CONFORMING USES

After your appeal is filed, Zoning staff will visit the site to take photographs for the Board members so that they will have a better idea of the nature of our request. Zoning staff will notify the district councilmember of the hearing. You will be responsible for preparing the envelopes and notices for mailing to the owners of the property within 1,000 feet of the property at issue in this case. The envelopes must include the return address for the BZA and the case number. Fold and insert the notices into the envelopes, seal the envelopes, and apply first class postage. These neighbor notices must be delivered to zoning staff at least twenty-three (23) days before the public hearing. Additionally, you will be responsible for purchasing, posting and removing the red Zoning Appeal signs for the subject property. (See attached Metro Code of Laws requirements regarding sign placement.)


The day of the public hearing, it will be your responsibility to convey to the Board your request and the reasons for the request. In the case of questioning the Zoning Administrator in his interpretation of the Zoning Code, it is your job to explain to the Board why he is wrong and you are right. In the case of non-conforming or non-complying, it is your job to explain to Board how this change/enlargement, etc. would result in less of an impact on the surrounding area. **It would be to your benefit to contact your neighbors and explain to them what you are doing and attempt to obtain their support and evidence that support in some form at the public hearing.**

Any party can appeal the Board's decision to Chancery or Circuit Court within sixty (60) days from the date the order in the case is entered. Should your request be granted, we would remind you that it is your responsibility to obtain the permit for which you have applied. You should also be aware that you have two (2) years to obtain the permit or you would have to re-file your request with the Board.

Once your request is filed, the staff will review your request to verify that the submittal is complete. Incomplete submittals will not be scheduled for a hearing until complete.

Any correspondence to the Board must be submitted to our office by close of business, the Thursday prior to public hearing to be included in the record.

I am aware that I am responsible for removing the Sign(s) after the public hearing.


APPELLANT

12/17/2019
DATE



METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

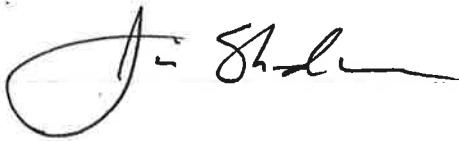
DEPARTMENT OF CODES & BUILDING SAFETY

OFFICE ADDRESS
METRO OFFICE BUILDING--3rd FLOOR
800 SECOND AVENUE, SOUTH
NASHVILLE, TENNESSEE 37210

MAILING ADDRESS
POST OFFICE BOX 196300
NASHVILLE, TENNESSEE 37219-6300
TELEPHONE (615) 862-6500
FACSIMILE (615) 862-6514
www.nashville.gov/codes

NOTICE

Pending your appeal of the denial of your application for a short term rental permit (STRP), you are prohibited from operating the STRP. Should you continue to advertise and/or operate the STRP at the subject property, the matter will be referred to Metro Legal for prosecution in Environmental Court.



12/17/2019

Rental Unit Record

979 Windrowe Dr, Nashville, TN 37205, USA

Removed ✕
Identified ✓
Compliant ✓

PRINT

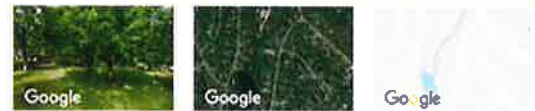
SEND A LETTER

Listing(s) Information

Airbnb - 35827070



Rental Unit Information



Identified Address

979 Windrowe Dr, Nashville, TN 37205, USA

Identified Unit Number

None

Identified Latitude, Longitude

36.118069, -86.903640

Parcel Number

11506000300

Owner Name

SHADBURNE, JAMES E. & JULIE A.

Owner Address

979 WINDROWE DR
NASHVILLE, TN 37205, US

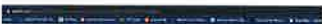
Matched Details

Analyst BQDE

Explanation

The exterior of the house and interior in a zillow listing matches the pictures in the listing. The owner's name also matches the listing.

Listing Photos



Matching exterior.

Matching 3rd Party Sources



Zip Code Match

Owner Name Match

City Name Match


Timeline of Activity

View the series of events and documentation pertaining to this property

✕ Listing air35827070 Removed December 11th, 2019

Listing Details

Listing URL	- https://www.airbnb.com/rooms/35827070
Listing Status	● Inactive
Host Compliance Listing ID	- air35827070
Listing Title	- Park-like setting but only minutes from downtown!
Property type	- House
Room type	- Private room
Listing Info Last Captured	- Dec 08, 2019
Screenshot Last Captured	- Dec 10, 2019
Price	- \$75/night
Cleaning Fee	- \$0

-  **5 Documented Stays**
November, 2019
- ✓ **Listing air35827070 Identified**
November 11th, 2019
- * **Listing air35827070 First Crawled**
November 5th, 2019
- **Listing air35827070 First Activity**
November 5th, 2019

Information Provided on Listing

Contact Name	- Julie
Latitude, Longitude	- 36.118840, -86.904830
Minimum Stay (# of Nights)	- 1
Max Sleeping Capacity (# of People)	- 4
Max Number of People per Bedroom	- 4
Number of Reviews	- 5
Last Documented Stay	- 11/2019

Listing Screenshot History

 [View Latest Listing Screenshot](#)

October 0

November 5

December 3



Park like setting but only minutes from downtown

1,200 sq ft • 3 bedrooms • 2 bathrooms • 2-car garage

Call for details: (408) 555-1234

View listing on Zillow

View listing on Realtor.com

View listing on Trulia

View listing on Redfin

View listing on Zillow

View listing on Realtor.com

View listing on Trulia

View listing on Redfin

View listing on Zillow

View listing on Realtor.com

View listing on Trulia

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View listing on Trulia

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View listing on Zillow

View listing on Realtor.com

View listing on Trulia

View listing on Redfin

View listing on Zillow

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Rental Unit Record

979 Windrowe Dr, I
37205, USA
979 Windrowe
Dr, Nashville, TN
37205, USA

access to the interstate
The space
Owner lives in home but guest have private entrance located at the back of the house and guest section of the home is divided from other living space by a secured door.
December 10, 2019 - 10:49AM America/Chicago
Hide

Contact host

Screenshots
Listing(s) Information

December 10, 2019 -
10:49AM America/Chicago
airbnb.com

December 07, 2019 -
05:26AM America/Chicago
airbnb.com



X

Amenities

Basic

Wi-Fi
Continuous access in the listing

Iron

Laptop friendly workspace
A table or desk with space for a laptop and a chair that's comfortable to work in

TV

Dryer
In the building, free or for a fee

Washer
In the building, free or for a fee

Essentials
Towels, bed sheets, soap, and toilet paper

Heating
Central heating or a heater in the listing

Air conditioning

Facilities

Free parking on premises

Guest access

Keypad
Check yourself into the home with a door code

Private entrance
Separate street or building entrance

Bed and bath

11506000300

Owner Name

SHADBURNE, JAMES E. & JULIE A.

Owner Address

979 WINDROWE DR
NASHVILLE, TN 37205, US

Timeline of Activity

View the series of events and documentation pertaining to this property

Matched Details

Analyst

Explanation

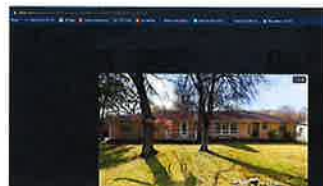
The exterior of the house and interior in a zillow listing matches the pictures in the listing. The owner's name also matches the listing.

Listing Photos



Matching exterior.

Matching 3rd Party Sources



Zip Code Match

Owner Name Match

City Name Match

Listing air35827070 Removed
December 11th, 2019

Print

Download

Listing Details

5 Documented Stays
November, 2019

Listing air35827070 Identified

Close

Listing URL

https://www.airbnb.com/rooms/35827070

Listing Status

access to the Interstate.

The space

Owner lives in home but guest have private entrance located at the back of the house and guest section of the home is divided from other living space by a secured door.

December 10, 2019 - 10:49AM America/Chicago

Contact host

Host Compliance Listing ID

979 Windrowe

Listing Title

Dr. Nashville, TN
37205, USA

Property type

Screenshots

Room type

December 10, 2019 -
10:49AM America/Chicago

Listing info last captured

December 07, 2019 -
05:29AM America/Chicago
www.airbnb.com

Price

December 03, 2019 -
08:00PM America/Chicago
www.airbnb.com

Cleaning Fee

November 30, 2019 -
10:25AM America/Chicago
www.airbnb.com

Information Provided on Lis

November 18, 2019 -
11:11PM America/Chicago
www.airbnb.com

Contact Name

Latitude, Longitude

November 15, 2019 -
04:04PM America/Chicago
www.airbnb.com

Minimum Stay (# of Nights)

November 10, 2019 -
www.airbnb.com

Max Sleeping Capacity (# of People)

November 06, 2019 -
07:58PM America/Chicago
www.airbnb.com

Max Number of People per Bedroom

Number of Reviews

Last Documented Stay

X

Amenities

Basic

Wi-Fi
Continuous access in the listing

Iron

Laptop friendly workspace
A table or desk with space for a laptop and a chair that's comfortable to work in

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Keypad
Check yourself into the home with a door code

Private entrance
Separate street or building entrance

Bed and bath

Print

Download

October 0

November 5

December 3

Listing Screenshot History

Theodosia D Clark
1703 Cedar Lane
Nashville TN 37212
January 29, 2020

Board of Zoning Appeals
Case Number 2020-033
979 WINDROWE DR
Permit # 20190076713

Dear Sir/Madame:

My house at 972 Windrowe is diagonally across from 979 Windrowe, the home of the permit applicant. I wish the Board of Zoning Appeals to uphold the decision of the permit administrator if the applicant needs to follow steps to be in compliance BUT can then properly apply for a permit as soon as the conditions have been met.

Recently I have talked with the applicant's wife and with other affected neighbors. The applicant's wife stated that they intend to rent simply a room/bath structure to a single person or a couple and will be present during each short-term stay. We have NO objection to a permit granted for these specific conditions: owners are present for each stay, occupancy limited to one suite, number of guests limited to 3 or fewer.

We do object if the plan is to rent out on a short-term basis the entire premises and the owners will be absent. This type of use is really a hotel, not home sharing, and has no place in a residential neighborhood for the following reasons:

1. inability to enforce regulations for peace and quiet in STRs with no resident owners: a residence with absentee owners that permits a succession of strangers, different ones every weekend, has no on-site front desk to handle complaints and deal with disturbances. The hapless neighbors are left to call our overworked police. Even if the police arrive, the neighbors face a different group of partiers the next weekend.
2. property interest of residents: residents owning their homes and living in them bought them and put significant time and resources into them in order to enjoy neighbors and have peace and quiet to get enough sleep to go to work or for their children to go to school. Expecting a neighborhood zoned residential to act residential is a reasonable property interest that should not be infringed by a commercial operation, particularly when potential short-term renters have many, many other options in commercial or mixed use districts.
3. prior experience: a property on Currywood Drive that backed up to my property had a STR going for several years (it has since reverted to a traditional residence) and neighbors were disturbed every weekend by noise during the wee hours of the morning. There was also drug use which caused 6 police cars and an ambulance to descend upon our quiet neighborhood.

Respectfully submitted,

Theodosia D Clark
972 Windrowe, 37205