

CASE SUMMARY

APPLICATION TYPE: USE ON REVIEW

KNOXVILLE-KNOX COUNTY

M P C
METROPOLITAN
P L A N N I N G
C O M M I S S I O N

T E N N E S S E E

Suite 403 • City County Building
400 Main Street
Knoxville, Tennessee 37902
865 • 215 • 2500
FAX • 215 • 2068
www.knoxmpc.org

File Number: 11-C-09-UR
Application Filed: 9/28/2009
Applicant: 441 PARTNERSHIP

Related File Number:
Date of Revision:

PROPERTY INFORMATION

General Location: South side of Norris Frwy., west of Maynardville Pike
Other Parcel Info.:
Tax ID Number: 38 F A 013 **Jurisdiction:** County
Size of Tract: 12 acres
Accessibility: Access is via Norris Freeway, a three-lane, minor arterial street in this area.

GENERAL LAND USE INFORMATION

Existing Land Use: Vacant land
Surrounding Land Use:
Proposed Use: Shopping Center **Density:**
Sector Plan: North County **Sector Plan Designation:** C (Commercial) & STPA (Stream Protection)
Growth Policy Plan: Planned Growth Area
Neighborhood Context: This site is located between commercial and residential property that has developed under RB, A and SC zoning.

ADDRESS/RIGHT-OF-WAY INFORMATION (where applicable)

Street:
Location:
Proposed Street Name:
Department-Utility Report:
Reason:

ZONING INFORMATION (where applicable)

Current Zoning: SC (Shopping Center)
Former Zoning:
Requested Zoning:
Previous Requests:
Extension of Zone:
History of Zoning: The subject property was rezoned to SC in 2005 (12-M-05-RZ/12-G-05/SP). A development plan for a shopping center was approved by MPC on August 14, 2008 (8-D-08-UR). Subsequently the plan was denied on appeal.

PLAN INFORMATION (where applicable)

Current Plan Category:

Requested Plan Category:

SUBDIVISION INFORMATION (where applicable)

Subdivision Name:

No. of Lots Proposed: No. of Lots Approved: 0

Variances Requested:

S/D Name Change:

OTHER INFORMATION (where applicable)

Other Bus./Ord. Amend.:

MPC ACTION AND DISPOSITION

Planner In Charge: Dan Kelly

Staff Recomm. (Abbr.): APPROVE the development plan for the proposed shopping center, with a total building area of 31,000 square feet in the SC (Shopping Center) zoning district, subject to the following 13 conditions:

- Staff Recomm. (Full):
1. Meeting all applicable requirements of the Knox County Zoning Ordinance.
 2. Meeting all applicable requirements of the Knox County Department of Engineering and Public Works.
 3. Connection to sanitary sewer and meeting any other relevant requirements of the Knox County Health Department.
 4. Installing landscaping as shown on the landscape plan within six months of the issuance of occupancy permits for this project, or posting a bond in an amount acceptable to the Knox County Department of Engineering and Public Works to guarantee such installation.
 5. Installing canopy trees within the proposed landscaped islands per the Tree Species Recommendation Matrix contained in the Tree Conservation and Planting Plan
 6. Obtaining a driveway entrance permit from the Tennessee Department of Transportation (TDOT).
 7. Adherence to conditions outlined in the Traffic Impact Study conducted by Wilbur Smith & Assoc. in July of 2008.
 8. Conducting a geotechnical study on the on-site depression prior to issuance of a grading permit from the Knox County Dept. of Engineering & Public Works.
 9. Meeting all other applicable requirements of TDEC and the U.S. Army Corp of Engineers regarding the wetland area along with the previously approved Flood Study.
 10. Providing a greenway easement across the site as required to accommodate the future Halls Greenway.
 11. Meeting all applicable requirements of the Knox County Fire Marshall.
 12. Proposed signage will be required to meet all applicable requirements of the Knox County Zoning Ordinance (Art.3.90.09, H).
 13. Submitting a revised development plan to MPC staff for review and approval, reflecting the conditions of approval of this plan prior to any grading permits for this site.

With the conditions noted, this plan meets the requirements for approval of a use-on-review in the SC zoning district.

Comments: These same applicants were before MPC on August 14, 2008, at which time they received conditional approval of a development plan through the use on review process for a shopping center that would contain 31,000 square feet of retail shop space. MPC's decision to approve the development plan for the shopping center was appealed to the Knox County Board of Zoning Appeals (BZA). The BZA was presented arguments that raised concerns regarding the access to the proposed park across the shopping center site, the grading and drainage plan and the necessity of an additional shopping center in the Halls area. After hearing the arguments, the BZA approved the appeal of MPC's decision which resulted in a denial of the shopping center. The shopping center developers appealed the BZA's decision to Chancery Court. The Court sustained the action of the BZA. The Memorandum Opinion handed down stated that "It is not for the Court to decide whether or not it would be in the best interest of the park, the community, or this particular development for it to be approved. It is only for this Court to search the record to see if there is any possible reason to justifying the action of the BZA."

On more than one occasion, the Court opinion referred to undisputed testimony. Matters such as this when taken to court are heard on the record that has been built to that point. The developers of the shopping center did not build a record that refuted the testimony at the BZA hearing. They have now submitted a new application for essentially the same development with the hopes of creating a more complete record and provide additional information that addresses the issues that have been raised regarding the development.

Staff is recommending approval of the proposed development. We believe the use of this site for a shopping center was put into motion back in 2005 when this site and what is now the proposed park site were zoned SC (Shopping Center) zone. Since that time the applicant has relied on the zoning of the property to invest money to generate site plans, drainage plans, traffic studies and architectural plans for the proposed shopping center.

Article 4, Section 2 of the Knox County Zoning Ordinance contains "Development Standards For Uses Permitted on Review". The six general standards contained in that section will be addressed below:

1. The use is consistent with the adopted plans and policies: The North County Sector Plan was amended in 2005 to show this site and the adjoining property for commercial use. The Plan states that commercial development along the existing Maynardville Highway and Norris Freeway commercial areas be permitted in order to avoid the extension of the strip commercial development pattern further out these two highways. Additionally, the plan states that the Halls Crossroads area be maintained as a community shopping center. Staff believes that the plan as presented complies with this standard.
2. The use is in harmony with the general purpose and intent of the zoning regulation: The general purpose of the zoning regulations is to guide and control growth and development in accordance with the adopted plans through the regulations. As previously stated the SC (Shopping Center) zoning of the site conforms with the long range plans, and the proposed development plan conforms with the requirements of the SC zone regulations.
- 3: The use is compatible with the character of the neighborhood where it is proposed, and with the size and locations of buildings in the vicinity: Compatibility was a decision that was made at the time the property was rezoned. Commercial use of the site was determined to be an appropriate use for this site at that time. In this particular instance, the use on review process should be defining what the commercial development should look like, not if the site is going to be developed commercially. The development plan as presented is compatible with the surrounding area because the site adjoins other commercially developed property and other commercially zoned property. The existing floodway zoning buffers the commercial use of this site from the nearest residences.
4. The use will not significantly injure the value of adjacent property by noise, lights, fumes, odors, vibration, traffic congestion or other impacts...: The key word is "significantly". Development of this site will have an impact on all surrounding property. However, it is the opinion of the staff that development of this site as proposed will have minimal additional negative impact on the area because it is being constructed in an area that is characterized by commercial development and the associated noise and traffic that is typically associated with commercial uses.
5. The use is not of a nature or so located as to draw substantial additional traffic through residential streets: Norris Freeway is an arterial street that already carries thousands of vehicles per day. It is more likely that this development will "capture" existing traffic from this road as opposed to the number of new trips that it will generate. There are no residential streets that will be directly impacted by this project.
6. The nature of the development in the surrounding area is not such as to pose a potential hazard to the proposed use or create an undesirable environment for the proposed use. There are no uses in the area that would pose a hazard to the proposed use.

Article 6, Section 6.50.06 of the Knox County Zoning Ordinances addresses "Procedure for Authorizing Uses Permitted on Review", states that MPC may approve a development plan where it can be shown that the proposed plan or use is in harmony with the general purpose and intent of the Zoning Ordinance the General Plan and is reasonably necessary for the convenience and welfare of the community. The issue of conformity to long range land use plans and conformity with the Zoning Ordinance have already been discussed in this staff report.

The BZA in denying the development plan stated that they felt that the proposed shopping center was not reasonably necessary due the amount of other vacant commercial space in existing shopping centers in the area. Data was presented from the North County Sector plan to back up that opinion. The data that was being presented was approximately ten years old at that time. The 2008 Shopping Center Study, prepared by the MPC staff, states that the county wide vacancy rate in existing shopping centers is 9.2 percent. The study states that the vacancy rate in the Broadway/Maynardville Hwy. sub area is only one percentage point higher at 10 percent.

There is no doubt that some of the shopping centers in the Halls area have vacancy rates greater than 10 percent. Just like the businesses that occupy a shopping center, the operation of a shopping center is a business unto itself. As with other types of businesses, many factors determine whether or not a

shopping center will be successful. Some of these factors include rent structure, level of maintenance, proper management, tenant mix, convenient parking, safety and last but not least location. All of these elements and others must come together to operate a successful shopping center. Therefore, not all vacant space in a shopping center can be directly tied to a lack of market need. Because there are so many factors that go into the success or failure of a business/shopping center the MPC staff, MPC, Knox County BZA and the Knox County Commission have historically allowed the market to determine the necessity of a proposed business. At present, Knox County has over sixteen million square feet of shopping center floor space. It is very difficult to state that an additional 31,000 square feet would saturate the market and therefore not be reasonably necessary.

Another issue that was raised at the BZA meeting was the access that was proposed at the time the original proposal was reviewed that would provide access to the shopping center as well as the proposed park. Norris Freeway is a limited access highway. Access points to the highway were determined when the highway was constructed. The proposed shopping center is to be located at one of those predetermined access points. Due to the limited access points the proposed park was going to share access to the highway with the shopping center. There were concerns raised regarding the grade of the park's driveway. This issue has been resolved. The Tenn. Dept. of Transportation has granted the park its own access. Additionally, the shopping center will be permitted to keep its proposed access at the location previously approved.

The grading and drainage plans for this development have been reviewed and approved by the Knox County Dept. of Engineering and Public Works. Concerns have been raised regarding the grading plan for the site. In order to bring site up to the desired level, filling of the site will be a necessity. As much as 14' of fill will have to be put on the site at certain locations. The applicant has provided information that shows that neither the fill slope nor the buildings will be visible from the park unless the observer is very close to the common property line. The existing tree cover, which is protected by the conservation easement on the park property, will provide a wooded buffer that will be a minimum of forty feet deep.

In conclusion, the staff is recommending approval of this plan because it meets all of the requirements of the Zoning Ordinance, long range land use plans and will not have a negative impact on the surrounding property or the community as a whole.

Action: Denied

Meeting Date: 11/12/2009

Details of Action:

Summary of Action:

Date of Approval:

Date of Denial: 11/12/2009

Postponements:

Date of Withdrawal:

Withdrawn prior to publication?: **Action Appealed?:**

LEGISLATIVE ACTION AND DISPOSITION

Legislative Body: Knox County Board of Zoning Appeals

Date of Legislative Action:

Date of Legislative Action, Second Reading:

Ordinance Number:

Other Ordinance Number References:

Disposition of Case:

Disposition of Case, Second Reading:

If "Other":

If "Other":

Amendments:

Amendments:

Date of Legislative Appeal:

Effective Date of Ordinance: