

CASE SUMMARY

APPLICATION TYPE: ORDINANCE AMENDMENT

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

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File Number: 2-B-14-OA **Related File Number:**
Application Filed: 1/27/2014 **Date of Revision:**
Applicant: CITY OF KNOXVILLE LAW DEPARTMENT

PROPERTY INFORMATION

General Location:
Other Parcel Info.:
Tax ID Number: 999 999 **Jurisdiction:**
Size of Tract:
Accessibility:

GENERAL LAND USE INFORMATION

Existing Land Use:
Surrounding Land Use:
Proposed Use: **Density:**
Sector Plan: **Sector Plan Designation:**
Growth Policy Plan:
Neighborhood Context:

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

Street:
Location:
Proposed Street Name:
Department-Utility Report:
Reason: Amendments to the City of Knoxville Zoning Ordinance regarding the removal of certificates of appropriateness for demolition within the D-1 (Downtown Design Overlay) District

ZONING INFORMATION (where applicable)

Current Zoning:
Former Zoning:
Requested Zoning:
Previous Requests:
Extension of Zone:
History of Zoning:

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.: Amendments to the City of Knoxville Zoning Ordinance regarding the removal of certificates of appropriateness for demolition within the D-1 (Downtown Design Overlay) District

MPC ACTION AND DISPOSITION

Planner In Charge: Buz Johnson

Staff Recomm. (Abbr.): Staff recommends that the Planning Commission recommend to Knoxville City Council approval of the amendments to the D-1 District, as shown in Exhibit A.

Staff Recomm. (Full):

Comments:

At the request of the City of Knoxville Law Department, the MPC staff has prepared the attached amendments to the zoning ordinance which, if approved, would remove the certificate of appropriateness for demolition from consideration within the D-1 (Downtown Design Overlay) District. In addition, the law department has asked that the staff also present for consideration companion changes to the Downtown Design Guidelines removing guidelines related to the demolition of and removal of buildings, building features and non-contribution buildings. The changes to the Design Guidelines appear in this agenda under Other Business, at Item #46.

BACKGROUND

The Downtown Design Overlay District (the "District") was created when the Knoxville City Council adopted Ordinance No. O-8-07 on January 30, 2007. This overlay district is intended to foster attractive and harmonious development and rehabilitation in Downtown Knoxville that reflects the goals of adopted plans, and the principles of the downtown design guidelines that are to be adopted when the zoning map is amended to create this district. Additionally, a Downtown Design Review Board (DDRDB) was established to review and approve the plans for public and private improvements in the district. Design Guidelines were created and then adopted by the Knoxville City Council on March 27, 2007.

Pursuant to the Downtown Design Overlay District portion of the Knoxville City Code, developers of private property are required to file an application for a Certificate of Appropriateness before receiving a building permit in the District. Although not originally included in the Downtown Design Overlay District portion of the Knoxville City Code, the Code was amended on August 26, 2008 to state that "a building permit shall not be issued for demolition of buildings and building features facing a publicly-oriented space without the issuance of a Certificate of Appropriateness" from the DDRB.

The Design Guidelines adopted by the Knoxville City Council provide the following guidelines for the DDRB when considering demolition within the District:

- If a building is demolished, all visible unutilized building material must be removed and the site must be vegetated or otherwise brought into compliance with the guidelines.
- Any building features facing a publicly-oriented space (not including alleys) shall not be removed/demolished without a Certificate of Appropriateness.
- See Section 1. C: Historic Resources for guidance on demolition and removal of building features in National Register Districts.

At its June 19, 2013 meeting, the DDRB requested that "staff review the guidelines with regard to demolition policy and improve the current guidelines with more definitive direction with regard to demolition of old structures." As a result of this request, MPC staff member Mike Reynolds presented proposed amendments to the administrative rules, overlay district, and design guidelines for consideration at the October DDRB meeting.

ANALYSIS

Upon researching the legality of various aspects of the proposed amendments, the City Law Department assistant attorney Crista Cuccaro encountered Tennessee Code Annotated § 6-54-133, Design review commission; duties; membership; appeal. This statute falls within Part 1, General

Provisions, of Chapter 54, Municipal Powers Generally. The language of the statute, which went into effect on May 28, 2008, is:

Any municipality may create a design review commission (DRC) having the authority to develop general guidelines for the exterior appearance of nonresidential property, multiple family residential property, and any entrance to a nonresidential development within the municipality. The municipal governing body may designate the planning commission as the DRC. When the municipality creates a separate DRC, the mayor shall appoint the members of the DRC from residents of the municipality and shall strive to ensure that the membership is representative of the municipality as a whole, including, if possible, members with either architectural or engineering knowledge, or any other person having experience in nonresidential building. Any property owner affected by the guidelines may appeal a decision of the DRC to the municipality's planning commission or, if there is no planning commission or if the municipality has designated the planning commission as the DRC, to the municipality's governing body. See Tenn. Code Ann. § 6-54-133 (emphasis added).

The plain meaning of the statute enabling municipalities to create design review commissions is clear and unambiguous. Specifically, a design review commission is limited in its purview to three things: the exterior appearance of nonresidential property, multiple family residential property, and any entrance to a nonresidential development. If property rights are characterized as the proverbial bundle of sticks, demolition is one of those rights. A design review commission is not authorized to review demolition under this statute.

In contrast, the state statute enabling the Historic Zoning Commission states, in part, the following: "All applications for permits for construction, alteration, repair, rehabilitation, relocation or demolition of any building, structure or other improvement to real estate situated within a historic zone or district shall be referred to the historic zoning commission or the regional historic zoning commission, which shall have broad powers to request detailed construction plans and related data pertinent to thorough review of the proposal." See Tenn. Code Ann. § 13-7-407(a) (emphasis added). The inclusion of demolition in this statute gives the Historic Zoning Commission the authority to review it.

Although the City of Knoxville is a home rule municipality, and therefore Dillon's Rule does not apply, the City cannot interfere with property owners' rights to demolish their property, unless the City has direction from the legislature or is acting in a police power capacity.

The attached amendments have been introduced by the City of Knoxville to remedy these defects in the Knoxville City Code. Pursuant to the Downtown Design Overlay District portion of the Knoxville City Code and the Administration Section of the Downtown Design Guidelines, the Downtown Design Review Zoning Overlay Ordinance text, zoning map, Downtown Design Guidelines, and subsequent changes to those items, must be submitted to both the MPC and City Council for adoption. The only governing document required to be adopted by the DDRB is the administrative rules; presumably, this adoption includes subsequent changes to the rules. Then, the administrative rules must be approved by the MPC. Therefore, the attached amendments are to the zoning ordinance, and the changes to the Downtown Design Guidelines following at Item #46. Amendments to the administrative rules will be submitted to the MPC after they are heard at the Feb. 19, 2014 meeting of the DDRB.

Action: Approved **Meeting Date:** 2/13/2014

Details of Action:

Summary of Action: Recommend the Knoxville City Council approve the amendments to the D-1 District, as shown in Exhibit A.

Date of Approval: 2/13/2014 **Date of Denial:** **Postponements:**

Date of Withdrawal: **Withdrawn prior to publication?:** **Action Appealed?:**

LEGISLATIVE ACTION AND DISPOSITION

Legislative Body: Knoxville City Council

Date of Legislative Action: 3/4/2014

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:

