



**KNOXVILLE/KNOX COUNTY METROPOLITAN PLANNING COMMISSION
PLAN AMENDMENT/REZONING REPORT**

▶ **FILE #:** 3-F-07-RZ
3-C-07-SP

AGENDA ITEM #: 67
AGENDA DATE: 5/10/2007

POSTPONEMENT(S): 3/8/2007-4/12/2007

▶ **APPLICANT:** DAN FISHER
OWNER(S): CHARLES FISHER

TAX ID NUMBER: 105 I C 002
JURISDICTION: Commission District 6

▶ **LOCATION:** North side of Middlebrook Pike, west of Andes Rd.

▶ **TRACT INFORMATION:** 1.61 acres.

SECTOR PLAN: Northwest County

GROWTH POLICY PLAN: Planned Growth Area

ACCESSIBILITY: Access is via Middlebrook Pike, a four lane median divided, major arterial street.

UTILITIES: Water Source: West Knox Utility District
Sewer Source: West Knox Utility District

▶ **PRESENT PLAN DESIGNATION/ZONING:** LDR (Low Density Residential) & SLPA (Slope Protection Area) / PR (Planned Residential)

▶ **PROPOSED PLAN DESIGNATION/ZONING:** O (Office) & SLPA (Slope Protection Area) / OB (Office, Medical, and Related Services)

▶ **EXISTING LAND USE:** Residence

▶ **PROPOSED USE:** Professional offices

EXTENSION OF PLAN DESIGNATION/ZONING: No

HISTORY OF ZONING REQUESTS: None noted

SURROUNDING LAND USE, PLAN DESIGNATION, ZONING
North: Residences / LDR/PR Planned Residential
South: Middlebrook Pike / LDR/PR Planned Residential
East: Residence / LDR/A Agricultural
West: Residence / LDR/PR Planned Residential

NEIGHBORHOOD CONTEXT: This residential site is part of the residential subdivision that has occurred along both side of Middlebrook Pike in this area under PR zoning.

STAFF RECOMMENDATION:

▶ **APPROVE O (Office) designation**

This residential property, and other parcels fronting directly onto this major arterial street, have been impacted by the widening of the right-of-way and four laning of Middlebrook Pike through this area. The office designation will afford this property owner, and others similarly situated, the opportunity to pursue a

compatible alternative uses for the site. The sector plan proposes low density residential use and slope protection for the area.

► **APPROVE OA (Office Park) zoning for the site (Applicant requested OB zoning.)**

OA zoning is intended to provide a compatible transitional zone between established residential uses and incompatible land uses such as commercial businesses or major rights of way carrying high traffic volumes. Other similarly situated lots in the area have been designated and rezoned in the manner requested by this applicant.

COMMENTS:

NEED AND JUSTIFICATION FOR THE PROPOSAL

1. Office uses are compatible with the scale and intensity of the surrounding development and zoning pattern.
2. Office use of this site will create a transition between the major arterial right-of-way and established residential uses to the north within the interior of the subdivision.
3. Although the request is not consistent with the sector plan proposal of low density residential use, the proposal would establish a precedent for extending limited office uses further along Middlebrook Pike for the lots directly fronting on this arterial street.

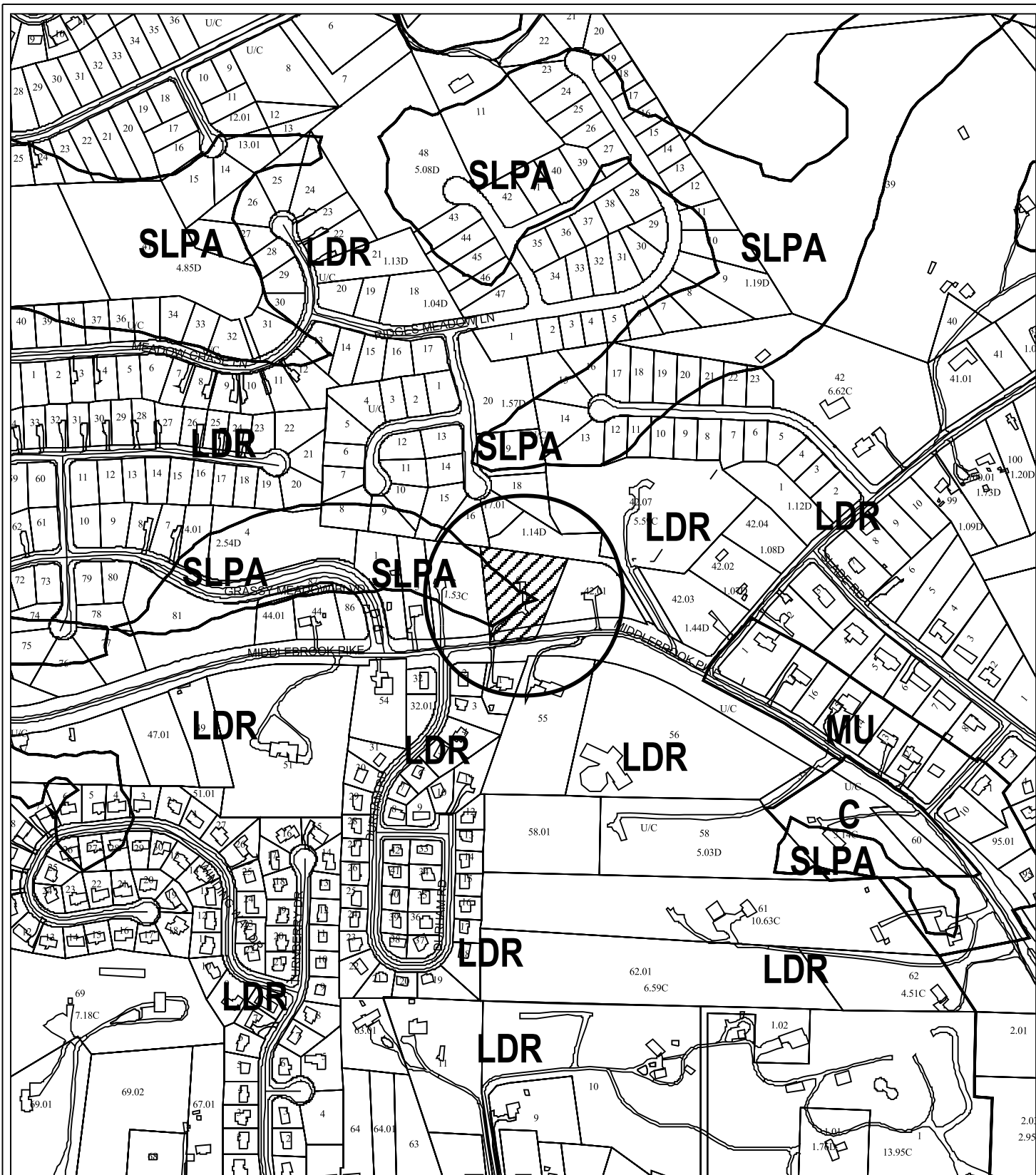
THE EFFECTS OF THE PROPOSAL

1. Public water and sewer utilities are available to serve this site.
2. The proposal will have no impact on schools. The impact on the street system will depend on the type of office development that is proposed for the property.
3. The proposed OB zoning could have greater impact on adjacent residential uses than the recommended OA zoning due to the wider range of office uses and multi family residential uses it permits.
4. OA zoning will allow continued residential use of the house or conversion to an office use, but not new, or more intense residential use of the property


CONFORMITY OF THE PROPOSAL TO ADOPTED PLANS

1. The Northwest County Sector Plan proposes low density residential uses for the site. The sector plan amendment is required for either OA or OB rezoning proposals.
2. The site is located within the Planned Growth Area on the Knoxville-Knox County-Farragut Growth Policy Plan map.
3. This request may generate similar requests for Office designation and OA or OB zoning along this section of Middlebrook Pike.

If approved, this item will be forwarded to Knox County Commission for action on 6/5/2007 and 6/21/2007. If denied, MPC's action is final, unless the action to deny is appealed to Knox County Commission. The date of the appeal hearing will depend on when the appeal application is filed. Appellants have 30 days to appeal an MPC decision in the County.



**3-C-07-SP/3-F-07-RZ
SECTOR PLAN AMENDMENT
NORTHWEST COUNTY SECTOR PLAN AMENDMENT**

 From: LDR (Low Density Residential) & SLPA (Slope Protection Area)
 To: O (Office) & SLPA (Slope Protection Area)

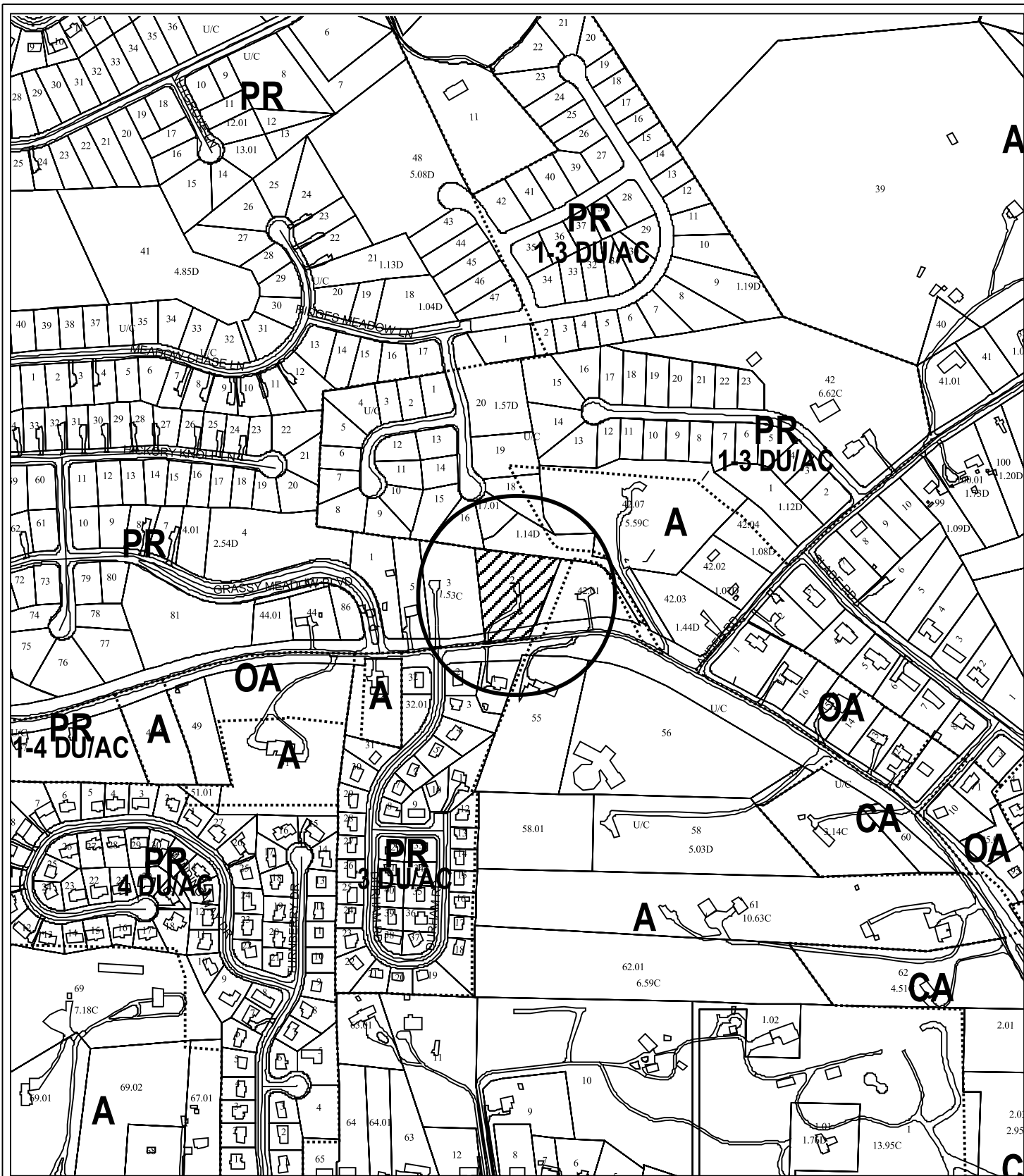
Original Print Date: 02/22/07 Revised:
 Metropolitan Planning Commission * City / County Building * Knoxville, TN 37902

Petitioner: Dan Fisher

Map No: 105

Jurisdiction: County





**3-F-07-RZ
REZONING**



From: PR (Planned Residential)
To: OB (Office, Medical, and Related Services)

Original Print Date: 02/22/07

Revised:

Metropolitan Planning Commission * City / County Building * Knoxville, TN 37902

Petitioner: Dan Fisher

Map No: 105

Jurisdiction: County



Dear Knox MPC,

March 1, 2007

This is in regard to the re-zoning of the property 9329 Middlebrook Pike (parcel ID 105IC002) file #'s 3-C-07-SP and 3-F-07-RZ (Dan Fisher), former owner John Atwell. My wife and I are opposed to this re-zoning from LDR and SLPA to O and PR to OB. With the location of our small sub-division (Wayne Provence) and the location of two other sub-divisions (Atlee Fields and Hunting Ridge) we feel this will change our neighborhood. When looking at the zoning map on your web site, this section of Middlebrook Pike is very residential and zoned accordingly PR, LDR and A. Once Atlee Fields came into being we felt that it firmly set a precedent for a residential zone. Heading east from Andes Road towards the Krogers at Cedar Bluff Road it has been gradually re-zoned to OA with various small business's opening up.

The addition of another office at this section of Middlebrook Pike would bring in needless traffic to a parcel that is surrounded by residential. The thought of a medical office next door is frightening with the likely change in crime, which has been non-existent in our area. You hear on the news all the time about break-ins and people looking for drugs. This also brings more attention to our adjacent lot with all the extra people frequenting the proposed medical office. We feel fortunate with our crime situation due to the neighbors watching out for each other and no other people going back deep onto our lots. My wife works in a medical office and sees first hand that when patients have to wait for appointments in non-smoking facilities, they go outside to smoke. We do not feel that our property would be protected with both of us working full time day jobs. There is also the issue of others using our driveway as a turn around if they miss the proposed Medical Office due to mistaking our house for the office because the homes share similar styling. The widening of Middlebrook did not leave an opening in the median for that property to enter or exit easily both east and west which would be problematic for the business and possibly us.

Please look at our attached "Declaration of Restrictions for Wayne Provence Sub-Division". This is what we used to comply with when constructing our home in the Fall 1997. Please pay special attention to numbers 1, 4, 9 and 12 of this declaration. My wife and I feel that these restrictions should not be discarded to make room for one business. The widening project of Middlebrook should not have been a springboard to have business's invade our residential neighborhood.

Please feel free to come and observe first hand our neighborhood. We would be glad to talk to you and show you our concerns.

Thank you,

Charles and Kathy Anderson
9333 Middlebrook Pike
Knoxville, TN 37931
Lots 3 and 4 of Wayne Provence Sub-division

Telephone: 865 604-4374

546-5606 3-F-07-RZ
Anderson C83 3-C-07-SP
CONCAT. MET

DECLARATION OF RESTRICTIONS
WAYNE PROVENCE SUBDIVISION 23168

WHEREAS, the undersigned, S. WAYNE PROVENCE, is the owner of a tract of land known as WAYNE PROVENCE SUBDIVISION, as shown on the map of same of record in Map Book 64-5, page 88, in the Register's Office for Knox County, Tennessee, and WHEREAS, the said owner is desirous that certain restrictive covenants be declared and recorded, which covenants shall be binding on the present owners and all subsequent owners of any lot or lots in said subdivision.

NOW THEREFORE, in consideration of the premises and the mutual benefit to be derived by all parties concerned the said S. Wayne Provence does hereby covenant and agree with all subsequent owners of lots in said subdivision that the following restrictive covenants shall be covenants running with the land and shall be binding on all subsequent owners thereof and shall inure to the benefit of all owners of any of said lots in the subdivision.

§ 9F2274 B00010.00CA

1. These covenants are to take effect immediately and shall be binding on all parties and all persons claiming under them until 1 January 1998, at which time said covenants shall be automatically extended for successive periods of ten years unless by vote of the majority of the then owners of the lots, it is agreed to change said covenants in whole or in part.

2. If the party hereto or his heirs or assigns shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning any real estate situated in said development or subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants, and either to prevent him or them from so doing or to recover damages or other dues for such violation.

THIS INSTRUMENT PREPARED FOR RECORDING BY
COMMISSION, SHAWNS & BLACKSTOCK, ATTYS. AT LAW
200 CHURCH AVE., S.W., KNOXVILLE, TENN. 37902

See WB 172289-334 Providence

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Instr: 19770609012076
Pages: 1 of 5
Cross Ref: 1612/207
Back File Automation

3. Invalidation of any one of these covenants by judgment or court order shall not in any way affect any of the other provisions which shall remain in full force and effect.

4. All numbered lots in the tract excluding that portion shown on the recorded map for future development shall be known and designated as residential lots. No structure shall be erected altered or placed or permitted to remain on any lot other than one detached single family dwelling not to exceed two stories in height and a private garage and the usual domestic servants quarters.

5. No building shall be located nearer than 10 feet to any interior lot line. For the purpose of this covenant, eaves, steps and open porches shall not be considered as a part of the building, provided, however, that this shall not be construed to permit any part of the building to encroach upon another lot. Carports or roofed porches shall be considered as a part of the building and shall not be nearer than 10 feet to any lot line or in front of any building set back line, as shown on map of record referred to above. No dwelling shall be located on any interior lot nearer than 25 feet to the rear lot lines. The Subdivider has the sole right to waive any violation of any building set back line.

6. Not more than one dwelling house may be erected on any lot as shown on the recorded map and no lot shown on said map may be subdivided or reduced in size by any device, voluntary alienation, partition, judicial sale or other process or process of any kind, except for the purpose of increasing the size of another lot.

7. No building shall be erected, placed, altered or permitted to remain on any lot in this subdivision having a floor area of less than 1350 square feet. In computing the said minimum floor area, measurements will be made from exterior walls, but will include no basement areas, porches, carports or garages. In computing the minimum floor area of a one-story house, only the main floor will be considered. In a one and

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Instr: 18778000012676
Pages: 2 of 8

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one-half or two-story house, the first floor must be not less than 1000 square feet where the total area is 1350 square feet and the remaining area in said house must have a minimum of 350 square foot area. In split-level or tri-level houses only the two top levels can be considered in computing the minimum square foot area, except 100 square feet can be counted in lower level if above grade and is finished. 100 square feet may be counted in basement of house if basement is finished and has two sides above grade.

8. No building shall be erected, placed, altered or permitted to remain on any building plot in the subdivision until the building plans and specifications and plot plans showing the location of such building or alteration have been approved in writing as to conformity and harmony with the existing structures in the subdivision by S. Wayne Provence. In the event the said S. Wayne Provence fails to approve or disapprove such design and location within 10 days after said plans and specifications have been submitted to him, such approval will not be required and this covenant will be deemed to be fully complied with. In the event said S. Wayne Provence rejects plans submitted for approval under this paragraph, upon written request or application of 75 per cent of the parties owning lots within a 200 foot radius of the lot in question at the time said approval is requested, stating that said owners of said property within the 200 foot radius desire that approval be given, the same shall be deemed approved. A complete set of plans and specifications of the house to be built shall be left with said S. Wayne Provence during the time of construction.

Powers and duties of S. Wayne Provence shall cease on or after 1 July 1982. Thereafter, the approval required in this covenant will not be necessary unless prior to said date and effective thereon, a written instrument shall be executed



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Page: 3 of 3

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612 209

by the then owners of the majority of the lots in this subdivision and duly recorded, appointing a representative or representatives to thereafter exercise the same powers previously executed by said S. Wayne Provence.

9. No noxious or offensive trade or activity shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

10. No trailer, basement, tent, shack, garage, barn or other outbuilding erected on the tract shall at any time be used as a residence temporarily or permanently nor shall any structure of a temporary character be used as a residence.

11. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and over the rear five feet on each lot.

12. No sign of any kind shall be displayed to the public view on any lot except one sign of not more than five square feet advertising the property for sale or rent or signs of not more than 5 square feet used by the builder to advertise the property during the construction and sales period.

13. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot except that dogs, cats and other household pets may be kept provided they are not kept, bred or maintained for any commercial purposes.

14. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage of such material shall be kept in a clean and sanitary condition.

15. Until sewage disposal facilities are available, every residence shall have a septic tank which shall be installed in such a manner as to fully comply with all laws and health regulations.

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Instr: 197780690612676
Page: 4 of 5

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IN WITNESS WHEREOF, the said S. Wayne Provence has
herunto caused these presents to be signed by him on this 9th
day of June, 1977.

S. Wayne Provence
S. WAYNE PROVENCE

STATE OF TENNESSEE)
COUNTY OF KNOX)

Before me, the undersigned Notary Public in and for said
County and State aforesaid, personally appeared
S. WAYNE PROVENCE, with whom I am personally acquainted, and who
acknowledged that he executed the within instrument for the
purposes therein contained.

Witness my hand and official seal at office, this 9th
day of June, 1977.

[Signature]
Notary Public



My Commission expires:
6-23-80


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Page: 6 of 6
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0001612 211

AMENDMENT TO RESTRICTIONS, INSTRUMENT NO.

6202

WAYNE PROVENCE SUBDIVISION

WHEREAS, the undersigned, S. Wayne Provence is the owner of all lots in a subdivision known as Wayne Provence Subdivision, as shown by map of record in Map Book 64-S, page 88, in the Register's Office for Knox County, Tennessee, and

WHEREAS, the said S. Wayne Provence desires to amend said restrictions as applicable to Wayne Provence Subdivision which are of record in Deed Book 1612, page 207, in the Register's Office for Knox County, Tennessee, as to paragraph seven, and does now delete said paragraph seven from the original restrictions of record in Deed Book 1612, page 207 and replaces the same with the following paragraph seven which is to become a part of the said original restrictions:

- 7. No building shall be erected, placed, altered or permitted to remain on any lot in this subdivision having a floor area of less than 1100 square feet. In computing the said minimum floor area, measurements will be made from exterior walls, but will include no basement areas, porches, carports or garages. In computing the minimum floor area of a one story house, only the main floor will be considered. In a one and one-half story house, or a two story house, the first floor must be not less than 800 square feet and the remaining area in said house must have a minimum of 300 square feet on the second floor. In split level or tri-level houses only the two top levels can be considered in computing the minimum square foot area, except 100 square feet can be counted in lower level if above grade and finished. Any house with a basement may count 100 feet of the finished basement floor space if said basement has two sides above grade.

All other provisions and conditions of said restrictions shall continue to remain in full force and effect.

IN WITNESS WHEREOF, the said S. Wayne Provence has hereunto caused these presents to be signed by him on this the 11th day of December, 1980.

S. Wayne Provence
S. WAYNE PROVENCE

RECEIVED FOR RECORDING

DEC 12 1 23 PM '80

NOTE BOOK

BOOK 1723 PAGE 334

THIS INSTRUMENT PREPARED FOR RECORDING BY SHANKS & BLACKSTOCK, ATTYS. AT LAW 12th FLOOR, VALLEY FIDELITY BANK BLDG. KNOXVILLE, TENNESSEE 37902



Instr: 198012120018012
Page: 1 of 2
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STATE OF TENNESSEE)

COUNTY OF KNOX)

Before me, the undersigned authority, a Notary Public in and for said County and State, personally appeared, S. WAYNE PROVENCE, the within named bargainor with whom I am personally acquainted and who acknowledged that he executed the within instrument for the purposes therein contained.

Witness my hand and official seal at office in Knox County, this the 11th day of December, 1980.

Susan L. Sutherland
Notary Public



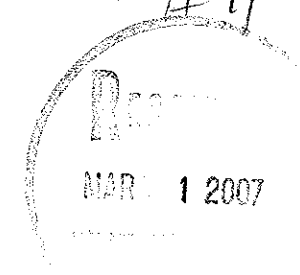
Commission Expires:

16, 1983

Instr: 198012120016312
Pages: 2 of 2
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BOOK 1723 PAGE 335

#71



February 27, 2007

Dear MPC and County Commissioners,

I am writing in opposition to the rezoning of a residential home on the north side of Middlebrook Pike, west of Andes Road at 9325 Middlebrook Pike. File number(s) 3-C-07-SP & 3-F-07-RZ. Residential homes are located on Middlebrook Pike west of Andes Road to Food City. I feel the rezoning of a residential home to OB in the middle of residential area will change the integrity of the neighborhood. Also this property is located in Wayne Provence Subdivision and there are restrictive covenants for this subdivision. One of the covenants states "No noxious or offensive trade or activity shall be carried on upon any lot nor shall anything be done thereon may be or become an annoyance or nuisance to the neighborhood."

I am also concerned about a medical office located in the middle of residential homes and possibility of individuals breaking in to steal drugs.

Another issue involves traffic flow along Middlebrook Pike. Traffic traveling west on Middlebrook Pike traffic will have to make a U Turn to enter the business. Drivers leaving the business office would have to make a U Turn if they wish to travel east on Middlebrook Pike. This fall road construction was completed on Middlebrook Pike and I am concerned that more construction would be needed to alleviate traffic problems.

Thank you for considering voting against the rezoning of 9325 Middlebrook Pike from LDR to OB. File number(s) 3-C-07-SP & 3-F-07-RZ

Sincerely,

Constance F. Silvey
9337 Middlebrook Pike
Knoxville, TN 37931
(865) 609-8033

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April 2, 2007

Dear MPC and Commissioners,

I am writing in opposition to the rezoning of a residential home on the north side of Middlebrook Pike, west of Andes Road at 9325 Middlebrook Pike. File numbers(s) 3-C-07-SP & 3-F-07-RZ. Residential homes are located on Middlebrook Pike west of Andes Road to Food City. I feel rezoning of a residential home to OB in the middle of residential area will change the integrity of the neighborhood. We need to stop the crawling of commercial and office rezoning along Middlebrook Pike. The rezoning needs to stop at the intersection of Middlebrook Pike and Andes Road. One of the residential homes that are rezoned office/commercial east of Andes Road is already for sell. Rezoning of this residential home to an office building is not compatible with the area. This section of Middlebrook Pike is part of the state scenic highway. The business would have to comply with state guidelines for scenic highways.

Also this property is located in Wayne Provence Subdivision and there are restrictive covenants for this subdivision. The restrictive covenants are filed with Register of Deeds in Book 1612, Page 207. One of the covenants states "No noxious or offensive trade or activity shall be carried on upon any lot nor shall anything be done thereon may be or become an annoyance or nuisance to the neighborhood."

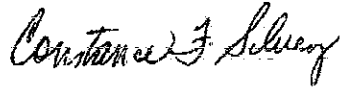
In the MPC staff recommendation notes it is stated that rezoning would "afford this property owner, and others similarly situated, the opportunity to pursue a compatible alternative uses for the site." Also in this report it was stated that the rezoning "would establish a precedent for extending limited office uses further along Middlebrook Pike for the lots directly fronting on the arterial street". I am not interested in selling my home. I own my home and I do not wish to move and start over. I built my home in 1984 under the covenants mentioned above. I was the first one to purchase and build a home in this subdivision.

Another issue involves traffic flow along Middlebrook Pike. Traffic traveling west on Middlebrook Pike will have to make a U Turn to enter the business. Drivers leaving the business office will have to make a U Turn if they wish to travel east on Middlebrook Pike. This fall, after several years, road construction was completed on Middlebrook Pike and I am concerned that more construction would be needed to alleviate traffic problems.

I am also concerned about a medical office located in the middle of residential homes and the possibility of individuals breaking in to steal drugs. There are several families with children located at Atlee Fields Subdivision which is adjacent to this home. Across the street from this home is Hunting Ridge Subdivision also with families with children.

Thank you for considering voting against the rezoning of 9325 Middlebrook Pike from LDR to OB. File number(s) 3-C-07-SP & 3-F-07-RZ.

Sincerely,



Constance F Silvey
9337 Middlebrook Pike
Knoxville, TN 37931
865.690.8033
Lot 5 of Wayne Provence Subdivision