



MEMORANDUM

TO: Knoxville-Knox County Planning Commission
FROM: Jessie Hillman, AICP | Principal Planner
DATE: August 8, 2023
SUBJECT: **8-A-23-HPA** Agenda Item #6
Level II Certificate of Appropriateness for 11 additional acres of disturbance in the Hillside Protection Overlay at 0 Central Avenue Pike, Parcel ID 068 075
Article 8.9: HP Hillside Protection Overlay Zoning District
Article 16.8.A.4 & B.4: Overlay Districts – Certificates of Appropriateness, Purpose and Applicability & Process for the HP Overlay Zoning District

STAFF RECOMMENDATION:

Approve the applicant’s Level II Certificate of Appropriateness (COA) request to develop within the HP (Hillside Protection) Overlay zoning district, on the condition that disturbance within the HP Overlay not exceed 5.23 acres outside of the Tennessee Valley Authority (TVA) utility easement on the site.

BACKGROUND:

The Hillside and Ridgetop Protection Plan was adopted by the City of Knoxville in 2011 to provide the vision and means for protecting hillsides and hillside development while minimizing offsite environmental damage. The basis for the plan stems from a recognition that forested ridges and hillsides are a defining characteristic of the region’s natural heritage and a primary contributor to maintaining long term property values, clean air and water, and wildlife protection.

The plan is codified in Knoxville’s Zoning Ordinance through Articles 8.9 and 16.8, which provide the regulatory framework and enforcement procedures for maintaining the HP Overlay District. Article 8.9 describes standards for how the overlay is to be applied, and it delineates disturbance and density limitations based on the severity of slopes. Disturbance is defined in the Hillside and Ridgetop Protection Plan as, “any activity that results in a change in existing soil, topography, or vegetation.”

Article 16.8 describes how disturbance limitations are enforced via a COA, which is administered by Planning staff. However, if a COA request requires a deviation from the applicability and/or disturbance standards of Article 8.9, the Planning Commission will evaluate whether the request is to be approved, approved with conditions, or denied (Article 16.8.B.4.d).

SUBJECT PROPERTY:

The applicant submitted a concept plan and special use request (7-SB-23-C / 8-A-23-SU) to develop 103 townhouses on the subject property, as shown on the site plan in Exhibit A. Approximately 80% of the property is within the HP Overlay and most of the steepest portions have not been previously disturbed. The Knob Fork River, which is the property's watershed, runs across the northernmost corner of the parcel and along its northern border.

Approximately 14 acres of the parcel have been previously cleared and are unbuildable due to a TVA utility easement. The original slope analysis conducted for the entire parcel as part of the concept plan review provides a disturbance budget of no more than 14.17 acres within the HP Overlay, as shown in Exhibit B. Since the TVA easement is equivalent in area to the disturbance budget, this limitation is a significant impediment to potential development of the site.

The applicant's COA request for 11 additional acres would clear almost the entirety of the remaining HP area. This request is based on an interpretation of Article 8.9.B, which enumerates scenarios where a property may be exempted from HP Overlay regulations. Exemption #4 reads, "Lots that have been previously legally disturbed or developed would also be excepted provided that any new/additional disturbance does not exceed the previously disturbed area or the maximum land disturbance permitted by Table 8.6 below, whichever is greater." From the applicant's perspective, since the proposed new/additional 11 acres of disturbance is within the disturbance budget and does not exceed the numeric value of the previous disturbance (11 acres new vs 14 acres previous), then it should be permitted.

This interpretation is not consistent with that of Planning staff or the City Plans Review and Inspections Department (PR&I), as reflected in the attached letter from PR&I (Exhibit D). The previously legally disturbed area within an HP Overlay is considered as part of the maximum land disturbance budget, not separate from it.

Planning Staff conducted an alternative slope analysis, shown in Exhibit C, which excludes the undevelopable TVA easement, and provides a disturbance budget of 5.23 acres within the HP Overlay of the remaining property. This alternative disturbance calculation is consistent with the intent of the Hillside Protection Plan, which acknowledges in its preface that, "flexibility will be needed in applying these general goals and principles to specific proposals and site conditions on unique parcels of land, and leaves room for approval of sound engineering and creative solutions to meet these objectives." Approving a COA based on a disturbance limit of 5.23 acres rather than the 11 acres requested balances the integrity of the HP Overlay District with practical development considerations.