

2021 December 6

RE: 12-D-21-UR - Use on Review at 3216 Johnson Rd for Convenience store with a gas station and a restaurant with drive-through service

<https://knoxplanning.org/cases/12-D-21-UR>

Comments from Knox County Planning Alliance

Dear Planning Commissioners,

This application requests authorization of uses permitted on review in the Neighborhood Commercial zone. That zone is well designed - it's for providing uses that would be compatible in a neighborhood - next to residences. So when you're thinking about this case - think about how you would want to look at it if it was next to your home.

CN has a number of uses that are uses by right. All of the requested uses are ones that are permitted on review. Restaurants are permitted on review, fueling stations with/without convenience store are permitted on review, and any permitted use with drive-thru facilities are permitted on review. So this application includes no use-by-right and **three (3)** uses that require review (restaurant, fueling station with convenience store, drive-thru facility).

The Use on Review process is, and I quote from 6.50:

“intended (1) to provide for uses which are beneficial to the community but that may involve a potential hazard to the development of an area unless appropriate provisions are made for their impacts, and (2) to properly integrate the uses permitted on review with other uses located in the district.”

Fueling stations create adverse impacts on neighbors. I live 800 feet from a fueling station but the headlights of vehicles maneuvering around the fueling area still flash and shine through my windows. Convenience stores and fueling canopies also are really brightly lit - intensely lit - for claims of safety and for visibility. The zoning ordinance only requires light be directed away from neighboring residences, but it doesn't set limits on light intensity, light trespass, light shielding... Until the Weigel's next to me adopted new canopy lighting and then responded to some complaints to Codes Enforcement, it had lights shining directly at me, and the fuel canopy lights stuck down and spilled light to all sides. It stood out starkly in the area. The CN zone only requires that lights be directed away from adjacent residential and agricultural uses, and the applicant has not submitted a lighting plan.

Let's talk about noise of a fueling station - a lot of cars, and motorcycles especially, are modified to produce extra engine noise. I listen to cars revving their engines over there all morning, day, and night. This has actually gotten worse in the last 5-10 years from my own experience. Bill Lyons wrote an excellent editorial that referred to excessive noise from cars downtown. At fueling stations, vehicles also pull in with radio blaring - motorcycles are especially egregious. Fueling stations are open long hours - the Weigles next to me is open 5 till midnight. That gives

me 5 out of 24 hours of peace during the day. Fueling stations generate significant noise for many hours of the day and dark, which is an adverse impact. And this isn't a small fueling facility like a small neighborhood 2 or 4 pump station. This is a 16 pump, 8 island fueling facility, which generates more traffic, more sources of noise and light.

Drive-thru facilities also create adverse impacts on adjacent residences. By necessity they usually wrap all the way around a building, so there's not a quiet side without vehicles - no place that's just a wall that you could place next to adjacent residences. Vehicles turning around a building shine their headlights across property lines and are a source of light trespass. The driveway and building have additional lighting, which has to be high enough to allow vehicles to pass under and is difficult to cut-off the visibility from adjacent property. If it's a motorcycle or a car with their windows down, the noise from the radio crosses the property line. Noise from loud exhausts crosses the property line. Exhaust fumes don't respect property lines. A drive-thru facility creates adverse impacts of noise, lighting from headlights and driveway lighting, and exhaust.

At least the internal restaurant use doesn't create adverse impacts.

This application and requested uses is not compatible with the character of the neighborhood and will injure the value of adjacent property - those two of the guidelines for planning commission set forth in Article 4.10 Section 2 of the Zoning Ordinance:

4.10.16. 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.

4.10.17. The use will not significantly injure the value of adjacent property by *noise, lights, fumes*, odors, vibration, traffic congestion or other impacts which may detract from the immediate environment.

The CN landscape screening requirements may help buffer the residential lots from the adverse light impacts of the commercial use. The requirements along the northern lot line which are met by the landscape plan are:

5.38.07.A: Where the side yard is adjacent to a residential zone, the building setback shall be not less than twenty (20) feet. The required side yard must be landscaped with a minimum of one (1) evergreen tree per every thirty (30) feet or portion thereof of side yard property depth outside of required front and rear yards. The evergreen trees must be spaced a minimum of thirty (30) feet apart at the time of planting. Shrubs and/or ground cover plantings must cover the remainder of the side yard, except for the space within ten (10) feet from the base of the evergreen trees

On the northern lot line the landscaping plan shows [Green Giant Arborvitae](#), which grows 3 feet a year and can reach 50-60 tall and "[Otto Luyken Laurel](#)" - a type of evergreen shrub that grows 3-4 feet high. If the Green Giant's are allowed to fully grow up and out (without trimming) they may shield the neighbors from light, but trees are not an effective shield from noise (you need a

solid structure like a wall) or fumes. It is unclear what this will look like when installed, and it is in Commission's purview to request additional information or drawings on what the landscape screen will look like at installation and after 3 or 5 years of growth.

The neighbor to the north, Mr. West, has a lot that is 95 feet wide and his house is 15 feet from the side adjacent to the proposed filling station. He has two bedrooms and a bathroom on that side of the house. Unless mature plants are installed *and properly maintained*, the landscaping will take years to act as a visual and lighting shield for his house. The drive-thru facility wraps around the building, so vehicles will look directly into and point their headlights into his garages in the back and bedrooms on the side - places we would like to think are private areas of our homes. When I spoke to Mr. West, he mentioned that if his garage door is up, you can see right inside the garage from where those cars would be. Would you want to have a drive-thru next to you that looks into your garage? If you have items in the garage, it means you have to keep your garage door down all the time. Unfortunately there are many property crimes of opportunity. I myself was the victim of one on Easter Sunday 2020 when I left my house for dinner at a cousin not 1,000 feet away. Somebody parked at the Weigels or Dollar General saw me leave and then helped themselves to several thousand dollars of my possessions.

When they get to the back side of the store waiting in line, they will sit idling and playing their radio about 20' from Mr. West's property line. And at that location, drivers will look directly at and point their headlights are pointed directly at the two houses across Johnson Rd.

After finishing at the drive through or store or fuel pumps, any vehicles going east on Schaad Rd must exit onto Johnson Rd, looking at the houses across the street. The traffic study estimates around 2,700 vehicles a day will enter/exit the store, with about 160 vehicles per hour using the Johnson Rd exit during AM and PM peak hours. Even if it's daylight and headlights are off, the residents will feel a lot more eyes looking at them - they won't want to leave shades open that face Johnson Rd and the convenience store, it's less desirable to be in your front yard when hundreds of total strangers are taking a good look at you.

KCPA believes the proposed uses have significant adverse impacts on the residential character and use of the property to the north and moderate adverse impacts on the property across Johnson Road due to noise, lighting from buildings and vehicles, fumes, and the very large expected traffic numbers.

From 6.50, the guidance on making your decision is:

"The planning commission may approve a development plan or use permitted on review where it can be shown that the proposed plan or use is in harmony with the general purpose and intent of the zoning ordinance and with the general plan and sector plan and is reasonably necessary for the convenience and welfare of the community.

The planning commission may deny a development plan or use permitted on review where the above cannot be shown or where it can be shown that approval would have an adverse impact on the character of the neighborhood in which the site is located.”

It then goes on to say that your options are to approve, approve with conditions, or deny.

We ask you to deliberate and discuss the impacts of this development, determine if they have an adverse impact on the character of the neighborhood (guideline 4.10.16), and potential injury to their value and the use/enjoyment of the areas (4.10.17), and rule appropriately.

In KCPA's view, the requested uses are the most intensive uses with the largest adverse impacts on adjacent property that are requestable in the CN zone. Other locations where these uses have been approved in CN usually have commercial adjacent and possibly on the back as well. Given the close proximity of adjacent residences and impacts, this is a location where intensity should be reduced.

KCPA believes it would be best to require the applicant to postpone and submit the following modifications to the development proposal and site plan:

1. Installation and maintenance of an opaque fence from 10 to 12 feet in height on the north and east parcels to mitigate the impact of light and noise on adjacent residences, constructed of a solid material that will block sound
2. Removal of the drive-thru facility, which places vehicles on all sides of the building and close to adjacent residences. This intense use is not possible to mitigate with an adjacent residence only 15 feet away from their property line.
3. Consider reducing the amount of fueling stations from 16 to 8 or 4, which would reduce the number of vehicles emitting noise and fumes.
4. Require the applicant to offer the residents across Johnson Rd to install privacy landscaping if those residents request it, at the applicant's expense, since there is no easy way to provide a barrier of the applicant's driveway.
5. Require a lighting plan to be submitted with concept plan and meet requirements that:
 - a. house-side shields be installed on lights directly visible from adjacent residences
 - b. Maximum vertical illuminance at the property lines be no more than 0.10 footcandles as calculated on vertical planes running parallel to the lighting boundary, with the normal to each plane oriented toward the property and perpendicular to the lighting boundary, extending from grade level to 33 feet (10 meters) above the height of the highest luminaire

When considering this, please think about how you would feel if you lived in Mr. West's house and somebody wanted to build this next to you. How would a convenience store opening at 5am and closing at midnight (or even a 24 hour one) impact your sleep in a bedroom next to it? Is this developer paying for your new triple-pane windows to dampen the noise, for new blackout curtains, and an improved air filtration system for the house?

Sincerely,

--Kevin

Kevin Murphy, Knox County Planning Alliance

Excerpt from [Editorial in the Knoxville News Sentinel by Dr. William Lyons published August 12, 2021](#):

Today's variant [of toxic individualism] is on display in cities all over the country, with altered motorcycles, ATVs, trucks and cars roaring down major streets and violating multiple local and state laws. The purpose of these not inexpensive alterations is to make as much aggravating, irritating noise as possible, apparently with bonus points for backfiring sounds resembling gunfire. What fun!

I recently politely asked one of the drivers about the appeal of ruining the experience of those who live, work or visit nearby. His retort was, "Everyone is going to hear me. I do it because I want to. It's a rush."