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March 8, 2022

Knoxville-Knox County Planning

City-County Building
400 Main Street
Suite 403
Knoxville, TN 37902

Re: Agenda Item 13, File No. 3-B-22-RZ
704 Irwin Dr.

Dear Planning Commission:

I have been recently retained by the applicant, MP Development Group, LLC, the owner of an option to purchase property located at 704 Irwin Dr. (the "Property") which is located under the jurisdiction of the Knox County Zoning Ordinance. Your March 10, 2022 meeting will include consideration of a rezoning from RA/HP (Low Density Residential/Hillside Protection) to PR/HP (Planning Residential/Hillside Protection) at a requested density of 3.5 du/ac. Due to the presence of sloped land and other environmental constraints, staff is supportive of the PR zoning; however, staff is only recommending 1 du/ac. The applicant respectfully submits that its request of 3.5 du/ac is more consistent with the Sector Plan, the surrounding development, the surrounding zoning, and the Growth Policy Plan and asks this Commission to approve its original application.

As noted by staff, the surrounding property is transitioning from larger agricultural tracts to low density residential zones. This property is a short driving distance from I-75 and the commercial node along Callahan Drive. This makes this location "an advantageous location for more residential opportunity." As shown more fully below, staff's recommendation of 1 du/ac actually unreasonably restricts the opportunity for more residential development.

Growth Policy Plan:

22 years ago, when the [Growth Policy Plan](#) was initially adopted, this property was designated to be part of the “Planned Growth” area of the GPP.¹ This Property is contiguous to the “Urban Growth Area.” Per Section 4.1 of the GPP, “the purposes of the Planned Growth Area designation are to encourage a reasonably compact pattern of development, promote expansion of the Knox County economy, offer a wide variety of housing choices, and coordinate the actions of the public and private sectors.” In contrast to the Planned Growth area is the Rural Area designation of the Growth Policy Plan which restricts residential density of 2 du/ac unless and until adequate infrastructure such as availability to water, sewer, and adequate roads to a Planned Growth area can be established. See Section 3.2 and 3.5 of the GPP.

The restriction of density to 1 du/ac upon a PR rezoning for property located in the Planned Growth area is not contemplated or supported by the Growth Policy Plan, but applicant’s request for 3.5 du/ac is supported with the GPP policies currently in place.

Sector Plan:

The Property is located in the LDR (Low Density Residential) area of the [2012 North County Sector Plan](#). The Property is contiguous with a Mixed Use Special District. LDR is defined in the County as primarily residential densities of up to 5 du/ac in the County. See 2012 North County Sector Plan, Section 2, page 23. Comparatively, per the Land Use Classifications in Appendix C of the 2012 North County Sector Plans “A or PR @ densities of one dwelling unit per acre where dwellings are clustered in one portion of a subdivision” are recommended for the Rural Area of the Sector Plan. There are no such density restrictions in areas designated Planned Growth under the Sector Plan. Staff notes that because of the hillside areas of the property the development would likely be clustered on the non-sloped areas; however, as discussed more below, the hillside protection overlay in the County does not restrict density or areas of disturbance. Moreover, the Sector Plan could have recognized this concern and changed the designation on this Property from LDR to Rural Residential.²

The applicant’s request for 3.5 du/ac is supported by the designations and location criteria of the 2012 North County Sector Plan.

¹ My legal opinion is that the Growth Policy Plan is no longer in full force and effect in Knox County; however, in cases as this where a public policy decision to encourage planned growth in an area was made over two decades ago, that decision should be extremely persuasive as this body makes land use decisions where the need for dense development to accommodate rapidly changing conditions based upon increase demand and suppressed inventory for housing.

² The 2012 North County Sector Plan was adopted by the County on August 27, 2012—almost 8 months after the Hillside Protection Plan was formally adopted.

Zoning and Zoning Precedent:

The zoning is currently zoned RA (Low Density Residential). RA zoning allows, as a permitted use, 4.35 du/ac where (as is the case here) there is water and sewer available to the property with minimum lot sizes of 10,000 sq. ft. If this property were sought to be developed at 4 units an acre under the current RA zoning, then there would not be any corresponding use on review. By seeking the Planned Residential zone, the exchange for allowing smaller lots and clustered development is to open up all development to a subsequent public use on review. For this reason, staff actually prefers the PR zone since it gives staff, and this body, a chance to review for compliance with the zoning ordinance and, “potential issues such as traffic, drainage, access, topography lot layout and other development concerns can be addressed.” See Staff’s March 3, 2022 report at page 13-2. However, by asking for a rezoning from RA to PR, the development should not be unreasonably restricted on its allowable density. Reducing the recommended density by 3 units an acre does not facilitate an applicant seeking to exchange is allowable 4 units an acre to move to a more intensive and expensive planned development review. In this case, an allowance of 3.5 du/ac is reasonable given the environmental challenges with the property. An allowed density assigned at the time of zoning is no guarantee that the property will or even can be developed at that density. Past precedent reveals that most properties are built at less than the allowable zone density in the PR zone, but the allowable density provides flexibility in design and comfort in the ongoing investment and diligence required for a successful development.

Not only is 3.5 du/ac more consistent with the current and surrounding RA zoning, it is consistent with the more recent rezonings in the area. In 2007, [File No. 11-K-07-RZ](#) was approved by this planning commission for PR at 4 du/ac. This development, now known as the Grizzly Creek Subdivision, was ultimately approved by County Commission for PR at 3.4 du/ac.³ This approved and developed subdivision is approximately 189 feet west of the Property. During the zoning consideration at that time, Planning Staff determined the following (which are equally applicable to the current application):

- PR zoning at up to 4 du/ac is consistent with the surrounding residential uses and RA zoning.
- Approval of the request [at 4 du/ac] would permit low density residential development in the middle of an established low density residential area and would encourage additional requests from surrounding property owners for similar low density residential uses.
- The proposal at 4 du/ac is in conformity with the adopted plans and is consistent with the surrounding properties, the North County Sector Plan, the General Plan and its goal to protect low density residential development, and the Growth Policy Plan.

³ There was no appreciable opposition to the case, but the density appears to have been reduced by County Commission after the developer proposed a concept plan that did not need the full 4 du/ac that was approved by the Planning Commission.

With the exception of the North County Sector Plan, which was amended in 2012, the other plans identified by staff in 2007 have remained the same. The current proposal is consistent with an established precedent of converting RA to PR at densities near 3.5 du/ac.

Hillside Protection and Environmental Concerns:

While current staff notes its concerns regarding the environmental/topographical challenges with the site, the PR zoning allows the development to be concentrated on the non-hillside portions. This is preferable to both planning and the developer due to the expense and engineering of hillside development; however, neither the PR zoning nor the sector plan require such a development to be clustered on the non-sloped land. The [Hillside Protection Plan](#) was not adopted by the County. Per the “Knox County Amendment” to the Hillside Protection Plan:

This plan and the principles, objectives, policies and guidelines included herein are advisory in nature and constitute non-binding recommendations for consideration in connection with development of steeply sloped areas. While this plan is being adopted as an amendment to the Knoxville-Knox County General Plan 2033, it is intended to provide background and supplemental information of an advisory nature and to serve as a guide to future MPC staff recommendations, but it is not intended to form an official part of the General Plan which would be binding on future land use decisions by County Commission, MPC, the County Board of Zoning Appeals pursuant to T.C.A. § 13-3-304. Any comparable provisions of the Knoxville-Knox County General Plan 2033 or any Sector Plan which relate to hillside and ridgetop protection shall also be considered advisory consistent with this plan. (emphasis added)

Using the Hillside Protection Plan as a guide, it reveals that 18.3 acres of the site is located on land that is sloped 15% or less. Per the Residential Density and Land Disturbance Guidelines, Table 3 of the HPP (found on page 33 of the plan), this part of the sloped land would allow for 100% of the Recommended Maximum Density Factor of 5 du/ac (or 91.5 units). Property in the 15% to 25% range accounts for 7.82 acres and would allow 2 units an acre, or another 15.6 units. Finally, under the recommended density guidelines, the remaining property could yield another 9.7 units. Therefore, *even if the Hillside Protection Plan were in full force and effect for this Property, the allowable density under the HPP would be 116.8 units or 2.19 du/ac*. This is over double staff’s recommendation of 1 du/ac. Given that the HPP is not binding, the proposed 3.5 du/ac is reasonable.

While some neighbors have submitted comments concerned about traffic and potential flooding, Irwin Dr. is a local road with 20 ft of pavement in a 46 foot right of way. Staff’s recommended 53 units would not trigger a TIA under Planning Commission Rules but the applicant’s requested density would require a TIA for more than 75 units. There was no concern for traffic for the prior PR zoning; however, the applicants request would allow the County more authority to review the potential traffic impact and partner with the developer for any identified improvements. Additionally, the Property has approximately 1,000 feet of frontage on Irwin Dr.,

which is an opportunity for dedication of ROW and improvements, if needed, along its frontage. Finally, while the neighbors speculate that flooding may be worse, the development will need to meet the stringent standards of County engineering to ensure that post development stormwater flows are equal to or less than current flows from the Property.

Neighborhood Engagement:

The applicant has reached out to several neighbors about their concern, and a meeting is tentatively set for the afternoon of March 8, 2022. The applicant's initial plans are for a small single family residential rental development⁴ on the Northwestern portion of the property. The applicant has successfully developed a similar SFR rental development in Laurel Meadows. Photos of the Laurel Meadows residences are attached hereto as **Exhibit 1**. There are no specific plans for immediate development of the balance of the Property; however, the developer, Chad Roberts, has contemplated developing the areas burdened with steeper topography into larger estate lots and has even considered building his private residence at this location. Those plans are still being formulated and the requested density allows the developer to think more creatively about a potential mix of housing options that could serve multiple markets.

The creativity to serve multiple markets is needed now more than ever. As reported in the 3-2-22 Compass daily email, Knoxville area home sales in January jumped 7.6 percent over December's figures and increased 3 percent from January 2021, according to Market Pulse, a monthly report from the Knoxville Area Association of Realtors. Market Pulse reported that the median sales price for houses was \$300,000, up 25.1 percent from the previous year. Thirty-six percent of homes sold for above the asking price, with 9.2 percent fetching at least \$25,000 more. Half the houses sold were under contract within six days. "All things considered, Knoxville's housing market continues to perform well," Market Pulse concluded. "Some areas experienced declining home sales in January, but this was mostly the result of low inventory. Looking forward, declining inventory and worsening affordability could impede the market in the coming months." Total housing inventory continued a decline, a signal that the market isn't slowing down. Increasing available inventory, especially with diverse housing options, is essential to maintaining affordable housing options in Knox County.

Conclusion:

Th PR zoning ensures that any consideration for future development will be reviewed by both the community and this body. While staff's raised valid considerations in their recommendation, given the trade-off of the allowable density of 4 du/ac now for switching to a planned review process, the applicant would respectfully request this body approve the PR (Planned Residential Zoning) at a density of up to 3.5 du/ac consistent with the allowable RA

⁴ Some submitted comments in opposition complain about the prospect of rental homes on the character of their neighborhood; however, the Knox County Zoning ordinance does not distinguish between single-family homes for sale and single-family homes for rent. Both are considered single-family homes for the purposes of zoning and development. Such considerations would violate principals or equal protection and federal laws governing fair and affordable housing.

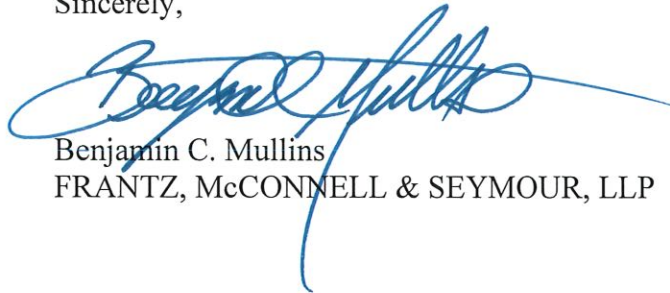
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density, the Sector Plan, the Growth Policy Plan, and other approved Planned Residential developments in the area.

Sincerely,



Benjamin C. Mullins
FRANTZ, McCONNELL & SEYMOUR, LLP

BCM:erl

Enc.

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Exhibit 1: File No. 3-B-22-RZ

