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August 10, 2022

Knoxville-Knox County Planning Commission
400 Main Street, Suite 403
Knoxville, Tennessee 37902

Re: Planning Commission File No. 8-C-22-SU
Applicant: Thomas R. Gass / Andy's Frozen Yogurt
Address: 6217 Kingston Pike / Parcel ID 121AA023

Dear Chairman Hill and Planning Commissioners:

This firm represents Dr. Amanda Pittman, the Animal Wellness and Rehabilitation Center, PLLC ("AWRC"), and Brown Bear Properties, LLC ("Brown Bear"), in opposition to the above referenced application for a drive-through special use permit. Dr. Pittman has been a licensed veterinarian for 17 years. She has expertise in in small animal medicine, surgery, and physical rehabilitation. For the past 4 years she has maintained her practice at 6221 Kingston Pike on property immediately to the west of the proposed new drive through facility. We respectfully request that the commission deny the special use application.

1. The proposed plan shows unauthorized demolition and construction on Dr. Pittman's property.

Dr. Pittman has no objection to an ice cream shop being located near her veterinary practice. She objects to the drive-through facility because it will cause significant adverse impacts to her property. At a minimum, Planning Commission should not approve a special use that will result in an encroachment onto neighboring property. The revised site plan in this case shows demolition and construction on Dr. Pittman's property. Dr. Pittman has not authorized any demolition or construction on her property.

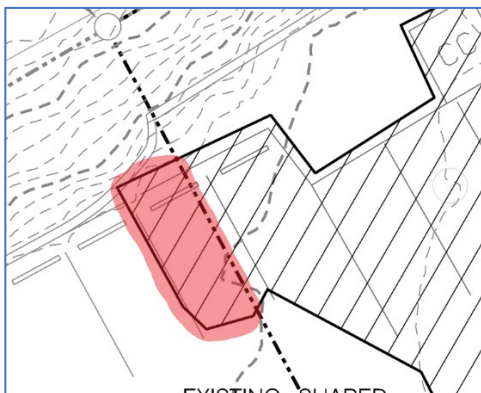


Figure 1 - Demolition Encroachment

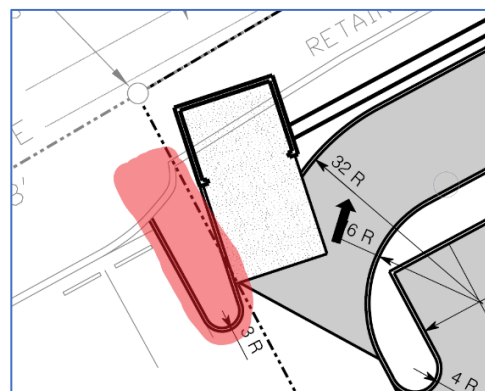


Figure 2 - Construction Encroachment

2. The drive-through will cause constant trespass on Dr. Pittman's property.

Dr. Pittman's property has a shared driveway easement with the subject property.¹ The shared driveway extends from Kingston Pike along a portion of the common side property line, terminating approximately 55' from the rear property line. The proposed drive-through facility would utilize the shared driveway to the point of termination. At that point, cars using the drive-through must remain within 12' of a terminal island in the proposed parking lot to avoid trespassing on Dr. Pittman's property. Vehicles traveling down the center of the shared driveway to access the drive-through will constantly trespass on Dr. Pittman's property. The dumpster pad configuration will cause garbage trucks to trespass on Dr. Pittman's property when removing waste from the subject property.

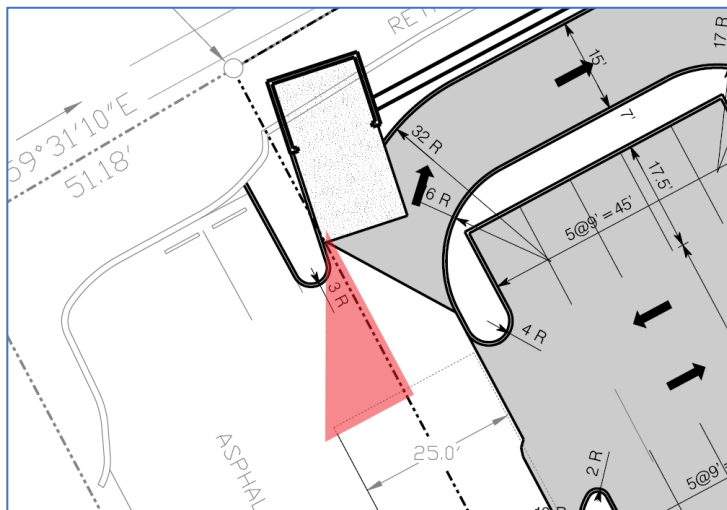


Figure 3 - Trespass Area

3. The drive-through facility will violate Dr. Pittman's parking easement and create unsafe points of conflict for Dr. Pittman's clients.

In addition to a shared driveway, Dr. Pittman has a parking easement on the subject property. The parking easement entitled Dr. Pittman to "eight (8) designated parking spaces for the use of [her] tenants and patrons..." Plans for the proposed new drive-through show demolition of Dr. Pittman's designated spaces. Dr. Pittman has not agreed to any modification of her parking easement.

The drive-through facility will create additional traffic and several new points of vehicle and pedestrian conflict that are a danger to Dr. Pittman's clients and to ice cream shop patrons. The shared driveway and proposed drive-through exit creates an uncontrolled five-way intersection.² The problem is compounded by the angled approach for cars exiting the proposed drive-through.³ There is broad agreement that right-angle intersections are the preferred design and that "skewed" intersections should be avoided.

¹ A copy of the Joint Driveway Agreement is attached hereto as Exhibit A. The agreement is recorded as instrument number 198312300022009, Warranty Book 1806, page 402, in the office of the Knox County Register of Deeds. The easement is referenced in the current deed of record for the subject property.

² Figure 4.

³ See, Highway Design Handbook for Older Drivers and Pedestrians, Sec. I, Intersections <https://www.fhwa.dot.gov/publications/research/safety/humanfac/01103/ch1.cfm#a> (Accessed August 10, 2022).

The proposal also shows three new 90-degree parking spaces along the side of the shared driveway. These spaces do not have the minimum 26' aisle width required for two-way traffic under Sec. 11.5(B) and Table 11.6 of the City of Knoxville Zoning Ordinance. If Dr. Pittman's clients are required use any of the new parking spaces on the subject property, they will be required to cross the increased drive-through traffic to access Dr. Pittman's clinic. The increased traffic together with the uncontrolled points of conflict will create a dangerous condition.



Figure 4 – Uncontrolled Five-Way Intersection

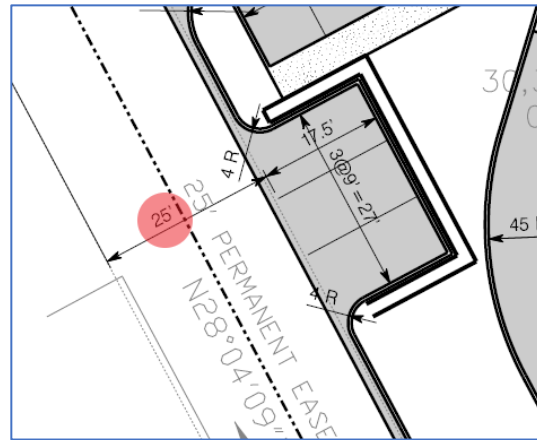


Figure 5 – Inadequate Drive Aisle Width

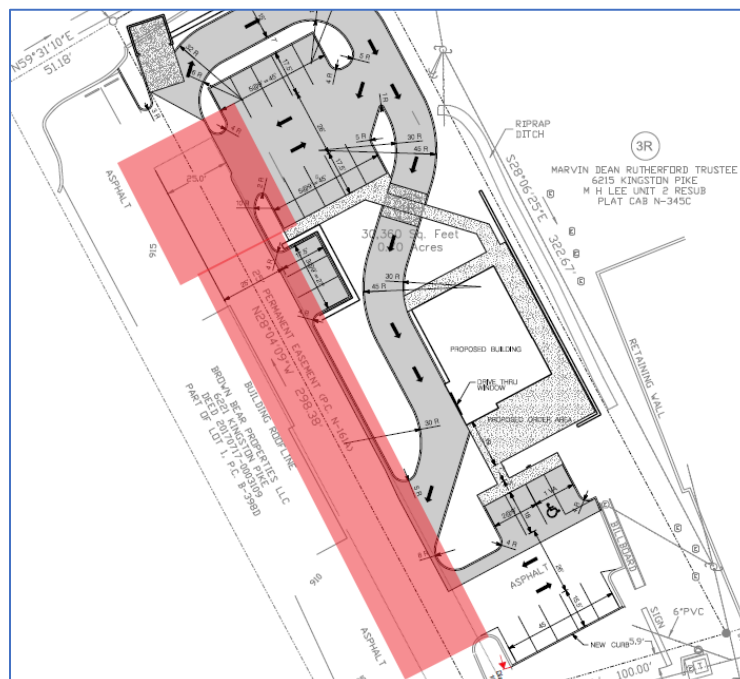


Figure 6 – Vehicle and Pedestrian Conflict Area

4. The proposed drive-through facility will cause noise, lights, fumes, odors, vibrations, and traffic that will significantly injure Dr. Pittman's property.

Drive through-facilities special use approval because of the adverse impacts that naturally accompany such uses. These adverse impacts include noise, lights, fumes, odors,

vibrations, and traffic. These uses are specifically identified in Sec. 16.2(F)(2)(e) of the Knoxville Zoning Ordinance as a basis for denying a special use application.

The proposed drive-through will cause significant adverse impacts to Dr. Pittman's property. The proposed drive-through is located within feet of Dr. Pittman's building and almost entirely between Dr. Pittman's property and the building it will service. The drive-through (and the stacking of vehicles at the drive-through service window) will substantially increase in noise, lights, fumes, odors, vibrations, and traffic perceptible from Dr. Pittman's property. The natural consequence of these impacts will be to significantly injure the value of Dr. Pittman's property.

5. A portion of the proposed drive-through lane is located between the building and Kingston Pike.

Sec. 9.3(F)(6) of the City of Knoxville Zoning Ordinance prohibits placing drive through windows or lanes "between the street and the associated building." The plan submitted by the applicant in this case clearly depicts a portion of the drive-through lane located between the building and the street.

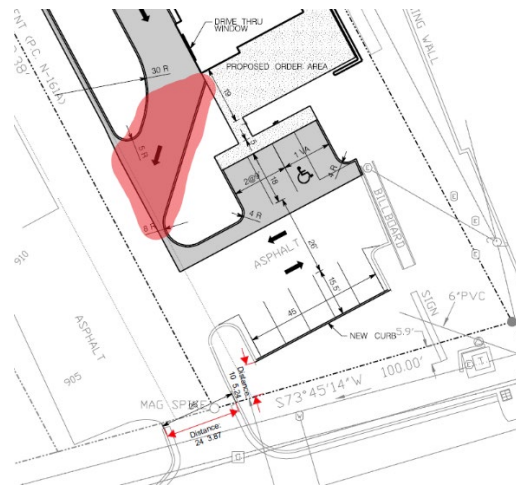


Figure 7 - Drive-Through Lane Between Building and Street

In addition to the foregoing, the applicant has failed to reach out to Dr. Pittman for any comment on the proposed development. This is not the kind of open and cooperative planning process your rules and regulations seek to achieve.

For all of the foregoing reasons, the proposed drive-through facility will cause significant injury to Dr. Pittman's property. We respectfully request that the special use application be denied. Please contact me if you have further questions.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Daniel A. Sanders'.

Daniel A. Sanders

THIS INSTRUMENT WAS PREPARED BY,
MYRON C. ELY
NAME
815 MARKET STREET

(2)
INSTRUMENT NO. 9271

JOINT DRIVEWAY AGREEMENT AND
PERMISSIVE USE AGREEMENT

THIS AGREEMENT, made and entered into on this the
29 day of September, 1983, by and between EDITH F. FERGUSON,
Surviving Tenant by the entirety of Bart F. Ferguson, deceased,
of Knoxville, Knox County, Tennessee, hereinafter referred to as
party of the first part, and JEAHOOK SIM and wife, HELEN SIM, of
Knoxville, Knox County, Tennessee, hereinafter referred to as the
parties of the second part, and RONNIE WAYNE ROCHELLE and wife,
SUZAN P. ROCHELLE, of Bristol, Sullivan County, Tennessee,
hereinafter referred to as parties of the third part;

W I T N E S S E T H:

WHEREAS, the party of the first part is the record
title owner of a lot or parcel of land situated on the Northwest
side of Kingston Pike in the 5th Civil District of Knox County,
the 47th Ward of the City of Knoxville, Tennessee, said property
being a part of the M. H. Lee Estate Addition to the City of
Knoxville as set forth in Map Book 21, page 95, in the Register's
Office for Knox County, Tennessee; said property having been
acquired in Warranty Deed Book 932, page 481 and Warranty Deed
Book 941, page 453, in the Register's Office for Knox County,
Tennessee, and

WHEREAS, the parties of the second part are the record
title owners of the adjoining lot and improvements which also
fronts on Kingston Pike in the 5th Civil District of Knox County,
Tennessee, the 47th Ward of the City of Knoxville, Tennessee;
said property is also a part of the M. H. Lee Estate Addition to
Knoxville as set forth in Map Book 21, page 95, in the Register's
Office for Knox County, Tennessee, and was acquired by the part-
ies of the second part in Warranty Deed Book 1774, page 473, in
the Register's Office for Knox County, Tennessee, and

Instr: 198312300022009
Pages: 1 of 5
Cross Ref: WB 1806/402
Back File Automation

BOOK 1806 PAGE 402

-1-

STEVE HALL

NOTE BOOK 96

Dec 30 4 04 PM '83

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WHEREAS, the parties of the third part are the possessors of a contract of sale of the property of the party of first part set forth in paragraph 1 above, which adjoins the property of the parties of the second part on the East side, and

WHEREAS, there is a driveway which is partially situated on the West side of the property belonging to the party of the first part and partially situated on the East side of the property of the parties of the second part; and

WHEREAS, the parties desire to memorialize their agreement with respect to said driveway, and

WHEREAS, a building or structure which is the property of the parties of the second part encroaches approximately 2 feet on the West boundary or side of the party of the first part's property; and

WHEREAS, the parties desire to memorialize their agreement with respect to said encroachment.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements of the parties to be hereinafter set forth, it is agreed as follows:

1. With respect to said driveway and the building or structure of the parties of the second part which encroaches on the party of the first parties property, the part of the first part and the parties of the third part hereto, their heirs and assigns, do hereby grant and convey unto the parties of the second part the right to use that portion of said driveway lying on the property of the parties of the first and third part for ingress and egress. Further, the parties of the third part hereby grant unto the parties of the second part eight (8) designated parking spaces for the use of second parties, their tenants or patrons, to be located on a paved portion of the parties of the third part's property which is to be located at the

rear of the building to be constructed by the parties of the third part. In consideration thereof, the parties of the second part do hereby grant and convey unto the parties of the third part, their heirs and assigns, the unrestricted right to use that portion of said driveway lying on the property of the parties of the second part for ingress and egress, on which there is now located parking, said parking to be removed from obstructing the driveway.

2. It is further agreed and understood that the encroachment of approximately 2 feet by the existing building along the West side of the party of the first part's property shall be a "permitted use" and said building or structure shall thusly be permitted to remain in its present position even though the underlying fee ownership of the "encroachment area" shall remain the property of the party of the first part. In the event said building is demolished or removed so that there is no longer an encroachment, then said permitted use shall cease.

3. It is further agreed and understood that in conjunction with the construction undertaken on the said adjoining property of first and/or third parties, third parties will, at their expense, resurface the joint driveway hereby established and the entire parking area presently existing on the property of the parties of the second part.

4. The parties of the third part further covenant and agree with the parties of the second part that the attached Site Plan is a true and accurate reflection of the location of the building to be constructed on the property of the party of the first part; and, that the location and/or dimensions of said building will not be changed or modified in any way so as to decrease the distance between buildings of the parties of the second part and said building to be constructed.



Instr: 198312300022009
Pages: 3 of 5

-3- Back File Automation

IN WITNESS WHEREOF, the parties have executed this instrument on the day and year first above written.

Edith F. Ferguson
EDITH F. FERGUSON

Jeawook Sim
JEAWOOK SIM

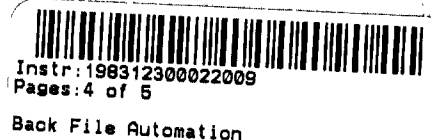
Helen Sim
HELEN SIM

Ronnie Wayne Rochelle
RONNIE WAYNE ROCHELLE

Suzan P. Rochelle
SUZAN P. ROCHELLE

STATE OF TENNESSEE:

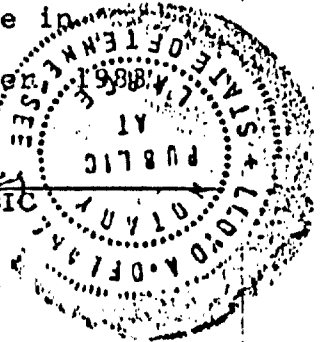
COUNTY OF KNOX:



Personally appeared before me, the undersigned, a Notary Public in and for said County and State, the within named Edith F. Ferguson, the bargainor, with whom I am personally acquainted, and who acknowledged that she executed the within instrument for the purposes therein contained.

Witness my hand and official seal at office in Knoxville, Tennessee on this the 29 day of September, 1988.

Lloyd A. Milam
NOTARY PUBLIC



My commission expires:

6-22-85

STATE OF TENNESSEE:

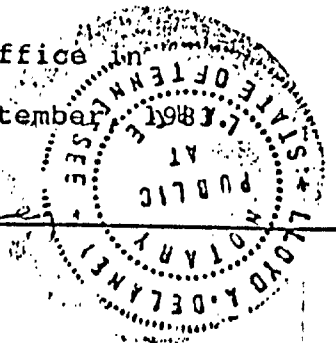
COUNTY OF KNOX:

Personally appeared before me, the undersigned, a Notary Public in and for said County and State, the within named Jeawook Sim and wife, Helen Sim, the bargainors, with whom I am personally acquainted, and who acknowledge that they executed the instrument for the purposes therein contained.

Witness my hand and official seal at office
Knoxville, Tennessee on this the 29 day of September

MY COMM EXPIRES
6-22-85

Lloyd A. Delaney



STATE OF TENNESSEE:

COUNTY OF SULLIVAN:

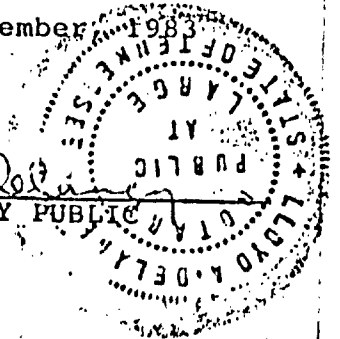
Personally appeared before me, the undersigned, a Notary Public in and for said County and State, the within named Ronnie Rochelle and wife, Suzan P. Rochelle, the bargainors, with whom I am personally acquainted, and who acknowledged that they executed the within instrument for the purposes therein contained.

Witness my hand and official seal at office in
Bristol, Tennessee on this the 29 day of September

My commission expires:

6-22-85

Lloyd A. Delaney
NOTARY PUBLIC



Instr: 198312300022009
Pages: 5 of 5

Back File Automation