

In response to the use of the IBC definition of “separate” to justify exceeding the CN zoning code:

Notes from the case:

**C. The CN zone permits individual buildings or commercial establishments that are no more than 5,000 sq ft. The convenience store is approximately 4,600 sq ft, and the restaurant is approximately 3,115 sq ft (7,715 sq ft combined). Staff recommends that the two uses be separated by a firewall so that each business space is considered a separate building per the building code and meets the requirements of the CN zone.**

**1) Provide a firewall between the retail convenience store and the restaurant so each use is contained within a separate building per the building code.**

The IBC and zoning codes have completely different purposes and using the IBC to justify breaking zoning code is inappropriate. Using the IBC consideration of “separate building,” which is intended for the purpose of calculating limits based on occupancy classifications and construction type, **clearly circumvents the purpose and intent of the Knox County zoning regulations** in regards to building size limitations within a CN zone.

*As can be seen in 2018 IBC 101.3: Intent. The purpose of this code is to establish the minimum requirements to provide a reasonable level of safety, public health and general welfare through structural strength, means of egress facilities, stability, sanitation, adequate light and ventilation, energy conservation, and safety to life and property from fire, explosion and other hazards, and to provide a reasonable level of safety to fire fighters and emergency responders during emergency operations.*

There is nothing that shows the use of IBC in the context of defining the limits of a building size based on character or appearance, as the IBC’s pure focus is safety. When looking at the IBC section titled “Effective use of the International Building Code” it clearly states that Chapter 5 contains the provisions that regulate the minimum type of construction for area limits and height limits based on the occupancy of the building. This is the chapter that clarifies and uses firewall to “separate” buildings. Just because the IBC says it is safe for these two buildings to be combined into one with the use of a firewall it does not mean that it is in compliance with the zoning code. If that were the case, all zoning codes would be meaningless so long as whatever is built is technically safe.

The zoning code’s purpose of setting building size limitations within CN zones is to ensure that developments are **compatible with the character of the neighborhood and with the size and locations of buildings in the vicinity.**

The size limit's purpose in the CN zoning is again reflected and reinforced in **Knox County zoning regulation 4.93.02.E** Standards for the use-on-review approval of self-service storage facilities in the CN zoning district. **E. The footprint of any individual structure shall not exceed five thousand (5,000) SF.** This size limit is not placed on any of the zones listed in 4.93.03 (CA, CB, CR, LI) thus it is an intentional limitation placed on CN zoned properties.

It is absolutely inappropriate to use an IBC definition of "separate" meant for determining safe construction limits to fulfill the requirements of a zoning regulation that is based on **creating a continuity in character or appearance.**

This intent and purpose of the building size limitation is again reinforced by many of the previous cases UR cases for a CN zone (1-F-10-UR, 5-G-11-UR, 11-C-11-UR, 7-L-18-UR, 2-C-21-UR, 10-H-21-UR, 3-D-21-UR) the 5,000 sq ft limitation on an individual building zoned CN were adhered to by the developer, and the planning staff enforced the regulation and made their recommendations based on those regulations. The only exception is 12-D-21-UR (3216 Johnson Rd. 12/9/21 TOMMY HUNT CALLOWAY HUNT REAL ESTATE) a convenience store with a gas station and a restaurant with drive-through service. The Planning Commission failed to hold EZ Stop to the same size limitations as every other development.

When evaluating based on zoning standards (including character and appearance), clearly pictured below is a single building with four businesses vs four single buildings and businesses. **Which of these buildings is in line with the characteristics of neighborhood Commercial establishment?** Again this raises a question we've asked before - is the planning commission prepared to allow any building in a CN zone no matter the square footage so long as it has interior firewalls separating the floorspace into 5,000 sq ft bits? Where is the line? 20k sq ft? 50k sq ft? Are there now no size limitations at all so long as buildings are safe per the IBC?

