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July 9, 2024

Knoxville-Knox County Planning Commission

Submitted Online and via email

Re: Agenda Item No. 31
Use of Review for 1025 Concord Road
6-B-24-UR

Dear Planning Commission:

I represent the applicant, EZ Stop and Calloway's Kitchen. At your upcoming July 11, 2024, meeting you will have before you my client's request for use-on-review approval of a fuel station, restaurant, and drive-through facility at 1025 Concord Road, approximately a 4.7-acre parcel. (the "Property"). Planning Staff's recommendation to approve this application subject to 14 conditions. We respectfully request that you approve this application but with certain conditions modified as discussed more fully in this letter.

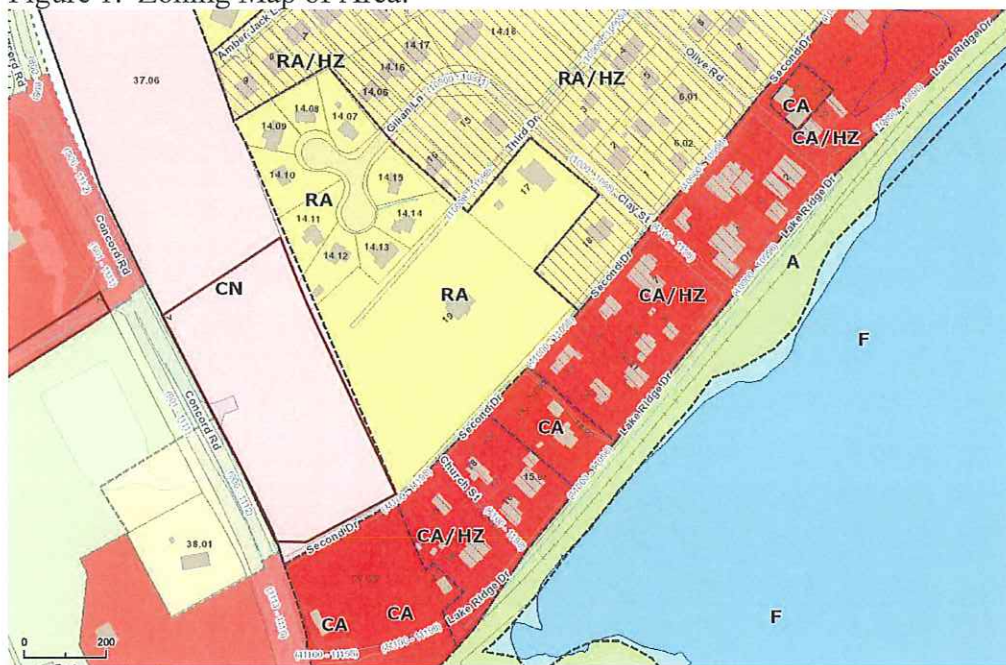
I. Zoning Context and Property Background

The Property has been zoned CN (Neighborhood Commercial) since 2004. The parcel to its north is also zoned CN and the parcel to its south is zoned CA (General Commercial). West of the Property are existing Commercial zoning within the municipal boundaries of the Town of Farragut. The Property has approximately 650' of linear frontage on Concord Road. Per staffs' report, Concord Road is a major arterial street with a center median and pavement width of 26-ft withing a 105 ft right-of-way. Per the most recent TPO traffic counts, this section of Concord Road between the roundabout at S. Northshore Drive and its intersection with S. Campbell Station Road has an average daily traffic count of 15,482 vehicles per day.

The Property primarily backs up to a Masonic Lodge and its cemetery. While there are a few plots remaining, the cemetery is over 95% full, with the majority of the grave sites being 100 years old or more. Behind the Masonic Lodge is the Village of Concord which is listed on the National Registry of Historic Places. The Village of Concord is also subject to a historical zoning

overlay. The Property does not share any border with the historic overlay with its closest proximity being a series CA/HZ zoned parcels across Second Dr. to the Property's southeast.

Figure 1: Zoning Map of Area:



The Calloway Oil Company, headquartered in Maryville, Tennessee, has been a part of the local community since 1957 with an established track record of quality development that enhances the tax base and quality of living for the surrounding community and its residents. Attached hereto as **Exhibit 1** is a packet of information on the company, the local business it partners with for its fuel stations and restaurant, and examples of past local projects it has developed. This proposal is almost identical to a proposal that was recently approved by this Commission in 2021 at 3216 Johnson Road (See: [12-D-21-UR](#)). The Johnson Road project was located on ~2.7 acres and was approved with a combined 6,472 sq ft with a convenience store and an internal restaurant and drive-through separated by a fire wall. The primary difference between the two projects is that the Johnson Road fuel station was approved with 16 points of sale at 8 pump locations and the proposal for the current application is for 14 points of sale at 7 pump locations. The proposed application contains a proposed convenient store building and restaurant building total 7,715 sq ft with the convenience store being approximately 4,600 sq ft. and the restaurant/drive-through being ~3,115 sq ft.¹

II. Conditions to be Modified:

A. Condition 4: “There shall be no more than four (4) gas pumps (dispensers) with no more than two (2) points of sale per gas pump.”

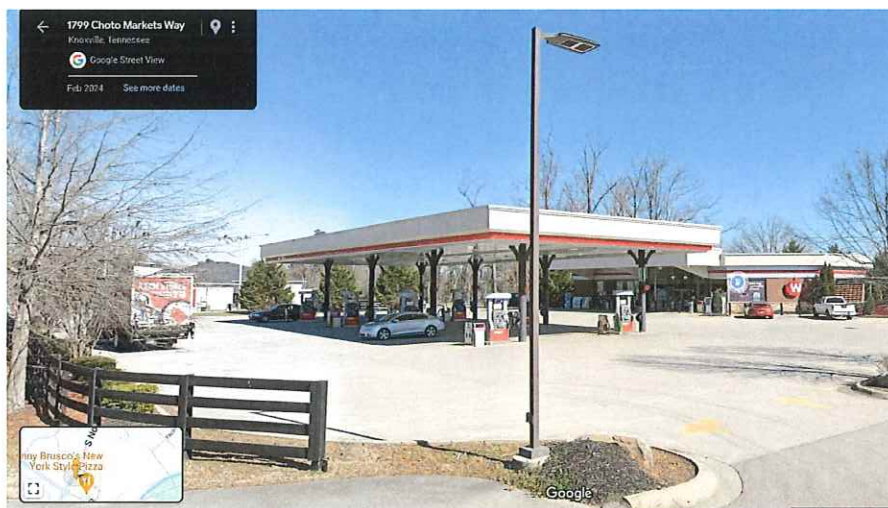
Staff correctly noted that there are no specific standards for the appropriate number of gas pumps within the CN zone in the Knox County Zoning Ordinance. Staff is recommending a reduction of the # of gas pumps proposed “to ensure consistency with intent of CN zone and

¹ Section 5.38.04.B states that no individual building or commercial establishment shall have a floor area exceeding five thousand (5,000) square feet. Per adopted building codes, a firewall separation of two separate spaces each constitute a separate building even if they share a roof.

compatibility with adjacent residential uses.” Not only is this an illegal and arbitrary condition, but it is also contrary to past examples of fueling stations approved in the CN zone.

In the case of *McCallen v. City of Memphis*, 786 S.W. 2d 633 (Tenn. 1990), the Tennessee Supreme Court noted that although local governments and administrative agencies have broad discretion when it comes to decisions involving local land-use matters, that discretionary authority must be **exercised within existing standards and guidelines**. *Id.* at 639. Because staff notes that there are no specific standards for the appropriate number of gas pumps in the CN zone, then staff, and therefore this body, lacks the discretion to arbitrarily create or impose a non-existent standard. It has not been articulated, nor can it rationally be articulated, why 4 pumps are more appropriate than 7. Or 8. Or 5. Or any other number. Compatibility with the zone is defined by the uses permitted in the zone and the applicable standards in place to mitigate against specific concerns. It would be appropriate for staff to condition additional landscaping along residential boundaries to address visual or audio screening. Indeed, staff has appropriately made these recommendations and they will be complied with. However, staff can't subjectively opine that 4 pumps are consistent with the CN zoning while 7 are inconsistent. If there's a concern about numbers of pumps in certain zones, then the County can, and should, legislatively amend the CN zone to articulate and impose those standards. Otherwise, their imposition, however well intended, is improper.

Arbitrarily reducing the number of pumps is also inconsistent with past approvals in the CN zone. As noted above, Planning Commission approved a fueling station in 2021 with 16 points of sale and 8 pump locations. That station was located on Johnson Road at its intersection with Schaad Road (a minor arterial street). Per the TPO traffic count data, that section of Schaad Road only had 2,866 Average Daily Trips in 2023. Yet 16 points of sale at 8 pump locations were approved in a CN zone that was adjacent to a residential neighborhood. Additionally, in 2010, a Weigel's was approved at 12400 S. Northshore Drive (a minor arterial street) with 16 points of sale at 8 pump locations (See 1-F-10-UR and photo below). Per the TPO traffic count data, that section of S. Northshore Dr had 13,910 Average Daily Trips in 2023. Since the purpose of the CN zone is to service a location based on compatibility, then the traffic counts on the streets where the fueling station is located must be taken into account.



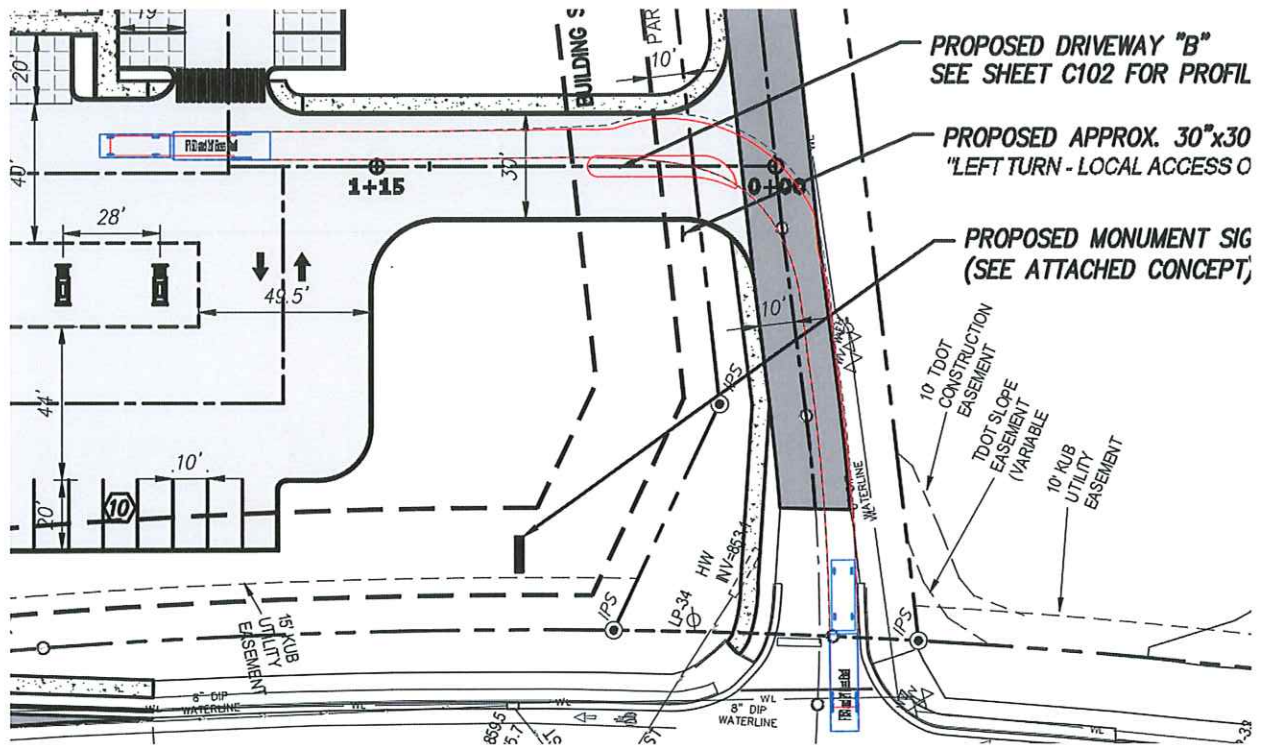
The applicant respectfully requests that the gas pump limitation of Condition 4 be removed as a condition of approval.

B. Condition 6: "The exit onto Second Drive shall be restricted to right turns only using a curbed island. This condition does not restrict the entry turn movements from Second Drive."

While we are not opposed to signage or other forms of traffic control to discourage or prohibit left turns onto Second Dr., we have asked our traffic engineer to study the potential implications safety implications of having a raised island at this location. Brian Haas, our Traffic Engineer noted:

My concern with #6 is that we will be requiring traffic wanting to exit and go left onto 2nd Drive to make many more movements with several more conflicts introduced. Instead of turning left onto 2nd they will have to turn right onto Concord, then make a U-turn on Concord, then make a left from Concord onto 2nd. Our analysis shows that the 95th percentile queue on 2nd at Concord is about 115', which falls short of the proposed E-Z Stop access point. Thus, I don't expect queuing on 2nd beyond the access to be a regular issue. In addition, the construction of a raised island would impede vehicles with trailers trying to turn left into the site.

For your reference, I've attached a screenshot of a quick turn template of an F-150 with a 21' boat trailer turning into the site. It conflicts with a 6' wide island.



Customers hauling boats to/from the lake may find making left hand turns in, or right hand turns out, difficult or unsafe because of a raised concrete island. Our request would be to remove the requirement that a curbed island be required, and this be addressed though signage and/or painting traffic controls on the pavement without a physical barrier. Proposed Signage attached hereto as **Exhibit 2**.

- C. **Condition 9: “All site lighting that is pole or building mounted shall have a maximum height of 15 ft from the finished grade, excluding the lighting installed on the underside of the gas pump canopy. All light fixtures shall be full cut off and installed with the light source perpendicular to the support structure or otherwise parallel to the ground if mounted to the underside of a roof or canopy.”**

Site lighting and a photometric analysis were submitted with the application. This plan meets or exceeds the standards set forth in Article 4.10.10 of the Zoning ordinance. If the plans fail to meet these standards, then the specific deficiencies should be noted so the plan can be revised.

As with the number of pumps discussed above, there is no specific condition that mandates or limits the height of light poles in the CN zone. Staffs’ report notes: “The CN zone requires that site lighting be directed away from all residential and agricultural zones and any public right-of-way. To further policy #2’s recommendations, staff recommend that all pole and building mounted site lighting have a maximum height of 15 feet.” There’s no rational articulation as to why 15 feet would further this policy. While we recognize that site lighting is a very common complaint, our photometric report indicates that the planned height of our poles, with a maximum of 22 ft, will only amount to a 0.1 to 0.3 footcandle of light transfer at the property line. See Photometric Plan Attached at Page 15 of Staffs’ Report. This photometric does not account for topography, existing vegetation, or landscaping. We will also add shields on the back of the fixtures adjacent to the rear property line to decrease the light spread to no more than a few feet, 3-5 feet, behind the fixture. Considering the 25’ vegetative buffer that will either remain or be replanted, the light transfer at the property line will likely be less than indicated in the photometric.

To put into context the light transfer based on our current photometric, the interior of a movie theater is between 1 and 3 footcandles whereas the impact at the property line would be 10 times less than the interior of a movie theater. By the time the light reached unvegetated portion of the cemetery, then the projected light impact is 0.

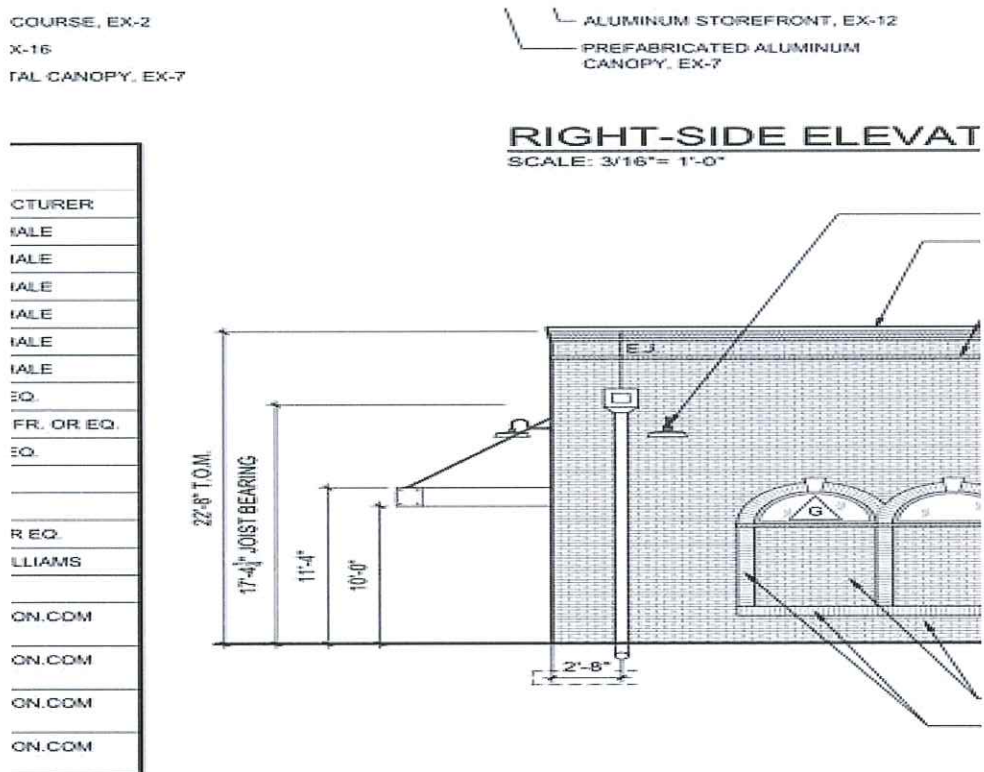
Lighting Plan

- **Unobstructed Sunlight: 1,000 FC or greater** 
- **Overcast Sunlight: 100 FC** 
- **Residential Space Living: 5-40 FC** 
- **Interior Movie Theater: 1-3 FC** 
- **Edge of EZ Stop Lighting Plan 0.1-0.3 FC**



Not only does the 15' height limitation lack a rational basis, and is arbitrary, it's unsafe for our vendors during delivery. Per our lighting engineer, not only does a 15' light pole not broadcast the light effectively, requiring more light poles, they are a potential hazard for the top of vending trucks striking the fixtures. See Neely Ford email, dated July 8, 2024, attached hereto as **Exhibit 3**.

Additionally, the submitted plans contain aesthetic lighting on the front and side elevations that staff's proposed condition would not allow even though these lights were factored into the submitted photometric plan. The provisions of the condition that calls for all lighting to be full cut off and installed with the light source perpendicular to the support structure or otherwise parallel to the ground if mounted to the underside of a roof or canopy" would not allow this proposed lighting on the front of the building even though there's no evidence of potential light transfer or light nuisance to the adjacent properties from these lights.



As Mr. Neely further noted, The LED light fixtures we are using at this EZ Stop, the Slice and/or the Mirada fixtures, have the lowest has lowest BUG fixture ratings² and are approved and endorsed by DarkSky International.³

² BUG rating stands, developed by the Illuminating Engineering Society (IES) and the International Dark-Sky Society (IDA) stands for Backlight, Uplight, and Glare rating. It is a system that measures how outdoor light fixtures perform and is used to help control light trespass, brightness, and glare to minimize light pollution.

³ DarkSky International is a non-profit organization which is committed to minimizing light pollution in communities. The "DarkSky Approved" program provides objective, third-party certification for lighting products, lighting designs, and installed lighting projects that minimize glare, reduce light trespass, and reduce light pollution. See <https://darksky.org/>.

Because the photometric plan exceeds the existing standards for all zones set out in Article 4.10.10 of the Zoning ordinance, the applicant respectfully requests that Condition 9 be removed as a condition of approval and replaced with a condition that **“Site lighting be installed in compliance with Article 4.10.10 of the Zoning Ordinance and consistent with the submitted lighting plan and photometric analysis.”**

D. Condition 10: The drive-through facility shall be closed between 10:00 p.m. and 6:00 a.m. This does not otherwise apply to the proposed restaurant's operating hours.

As with conditions 4 and 9, discussed above, there is not a specific standard in the zoning ordinance that governs hours of operation for a drive-through facility. That said, we are willing to consent to a condition limiting the hours of operation for our drive-through facility to be closed between 10:00 p.m. and **5:00 a.m.** These hours are reasonable given that breakfast for workers traveling to work on Concord Road is a key market for our restaurant and this would also allow us to serve fisherman on their way to the lake—especially during fishing tournaments. Given that the applicant is agreeing to an increased landscaping buffer, reduced decibel levels for our AVC drive-through (see Condition 11), and our AVC location is approximately 340 feet from the closest residence, the impact of operation hours should be minimal.

The applicant respectfully requests that Condition 10 be modified to allow for drive-through operating hours to be between 5:00 a.m. and 10:00 p.m.

II. Legal Standards applicable to Use-on-Review and Neighborhood Concerns:

Local governments, like Knox County, lack the inherent power to regulate or control the use of private property within their boundaries. Their power is derived solely from the state through specific delegations of the General Assembly. *421 Corp. v. Metropolitan Government of Nashville and Davidson County*, 36 S.W. 3d 469, 475 (Tenn. Ct. App. 2000); *Cherokee County Club, Inc. v. City of Knoxville*, 152 S.W.3d 466 (Tenn. 2004). These statutes are listed in the Knox County Zoning Code as the foundational legal basis for the County’s zoning authority. See Article 1.20. Yet, as these laws and regulations are in derogation of common law and operate to deprive property owners of a use of their property which would otherwise be lawful, they are to be strictly construed by the courts in favor of the property owners’ right to the free use of their property. *Anderson County v. Remote Landfill Services*, 833 S.W.2d 903 (Tenn. Ct. App 1991).

Many times, denials are based on objections by neighbors that the development is not compatible with the surrounding area or that the development have negative impacts such as increased traffic, noise, and light pollution; however, unsupported speculations, fears, or concerns of neighbors of a political or aesthetic nature, however sincere, do not amount to a legal basis to deny an otherwise valid use of property. Denials must be based on substantial material evidence. *Sexton v. Anderson County*, 587 S.W.2d 663, 666 (Tenn. Ct. App. 1979); *411 Partnership v. Knox County*, 372 S.W.3d 582 (Tenn. Ct. App. 2011) *perm. app. denied* (Tenn. 2011). Discretion can only be exercised based on existing standards and guidelines. *McCallen, supra*, at 639.

Specific to the concerns raised by some objecting neighbors in this case, it has been questioned whether this proposed Use on Review is compatible with the surrounding community. This issue is similar to the issue faced in the case of *Mullins v. City of Knoxville*, 665 S.W. 2d 393 (Tenn. Ct. App. 1983) *perm. app. denied* (1984). In *Mullins*, the City of Knoxville

illegally denied a commercial development under the pretextual rationale that the development “was not compatible” with the surrounding areas. *Id.* at 396. In finding the City Council in error in denying the development, the Court of Appeals found that the zoning map showed similar commercial developments in the area; therefore, there was no material evidence to suggest that the use was incompatible with the surrounding areas. *Id.* Here there is existing CN zoning on the Property and on other properties to the north. There are existing General Commercial (CA) properties to the south, southeast, and west. There is no rational basis to conclude that the CN zoning is therefore incompatible since it is already present in the community.

While there is an historic overlay to the east of the Property, the context of this Property is that it is part of an overall commercial node with frontage on Concord Road a *major arterial* road with daily traffic counts in excess of 15,400 cars per day. The intent of the CN zone, and this development, is to not bring additional traffic to the area but to service and intercept the traffic that is already in place. There is no rational basis to conclude that this, or any one of the uses allowed in the CN zone, would be incompatible at this location. The Property and building site are not backing up to any residentially developed property or any area subject to the historical overlay. It’s backing up to a cemetery. As addressed further below, the noise and light impact will meet and likely exceed current Knox County Standards. The impact on the neighboring properties, regardless of use, would be *de minimis*.

It has also been suggested in some of the posted comments that since Restaurants (Article 5.38.03.C), Fueling Service Stations (Article 5.38.03.D), and Drive-Through facilities (Article 5.38.03.E), are each only permitted in the CN zone through the use-on-review process of Article 6.50 of the Zoning Ordinance, these uses can be denied by the body because they are not “uses by right.” This is factually and legally incorrect. Sec. 5.38 of the Knox County Zoning Ordinance speaks of two classes of uses: Uses Permitted and Uses Permitted on Review. By referring to uses permitted as “by right” the implication is that uses permitted by review are somehow discretionary or “not by right.” This is incorrect. In specifically explaining the use-on-review process, the Tennessee Court of Appeals has unequivocally stated “ [w]hen a legislative body included a certain use within a given zone as a use on review, **such a use is intended in that zone.**” *Wilson County Youth Shelter v. Wilson County*, 13 S.W.3d 338, 342 (Tenn. Ct. App. 1999) *perm. app. denied* (2000). The *Wilson* court went on to hold:

[t]his means that an applicant for such use cannot obtain the necessary permit to proceed with its plans without going through the appeal process as outlined in the Zoning Ordinance; but once the applicant goes through the process and the requested use satisfies all other pertinent regulations of the local zoning regulations, **it must be granted.**

Id. at 342. Thus, the mandate for this body is to ensure that existing standards are met. If a use-on-review is denied, it is further incumbent on this Body to identify the existing standards which are not met so the applicant can revise its application to speak to the unmet existing standards.

Some of the comments online focused on the speculative fear that the proposal will have an impact on property values. Such an allegation requires affirmative material evidence that this development will have a **significant impact** on adjacent property values. See Section 4.10.17. Evidence of impact of property requires expert proof, not fears and speculations, however sincere. One only has to look at the residential properties adjacent to 12400 S. Northshore Rd. to see that

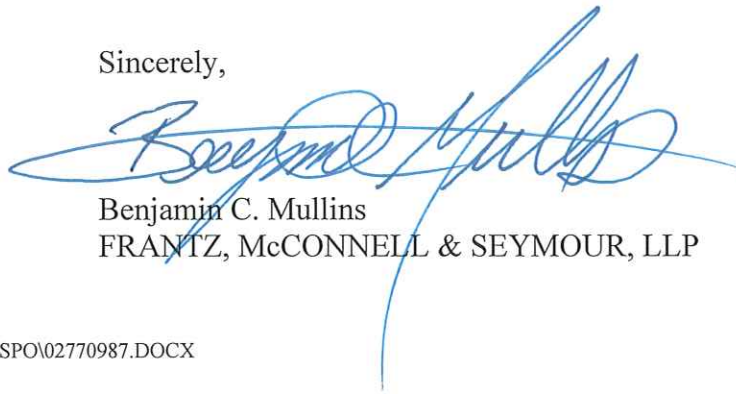
adjacent property values tend to increase, not significantly decrease, following the establishment of a fueling station in a CN zone.

It's clear from the number of comments, and the change.org petition circulating online that many of the neighbors do not want the Property to be developed as proposed; however, there is one over-riding principle for use-on review decisions: “[I]t is not the function of the board to conduct a referendum on public attitudes relative to [a] petition.” *Wilson County Youth Shelter v. Wilson County*, 13 S.W.3d 342 (Tenn. Ct. App. 1999) (citing *Sexton*, at 664, n. 1) (emphasis added). If the proposed use meets the applicable standards, then it must be granted. *Id.*

III. Conclusion:

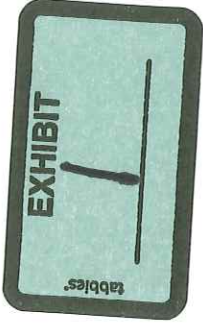
As noted above, staff is of the opinion that this application meets the standards for Use-on-Review. The applicant and I respectfully request the application be approved with the suggested modifications of the conditions discussed herein.

Sincerely,



Benjamin C. Mullins
FRANTZ, McCONNELL & SEYMOUR, LLP

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MARYVILLE, TENN

EZSTOP

Nice People. Good Stuff.

Servicing East Tennessee Since 1984



Mr. Calloway (left) at Grand Opening in 1960, converted to E-Z Stop #2 1984



Mr. Calloway, Tommy Hunt, Marty Calloway 1986: Mr. Calloway recruited son-in-law, Tommy Hunt, to join Calloway Oil Company. Shortly after, his son, Marty Calloway, also joined the business in 1989.



Trenton and Julia Langston have been named vice presidents of Maryville-based Calloway Oil Company & EZ Stop 2020

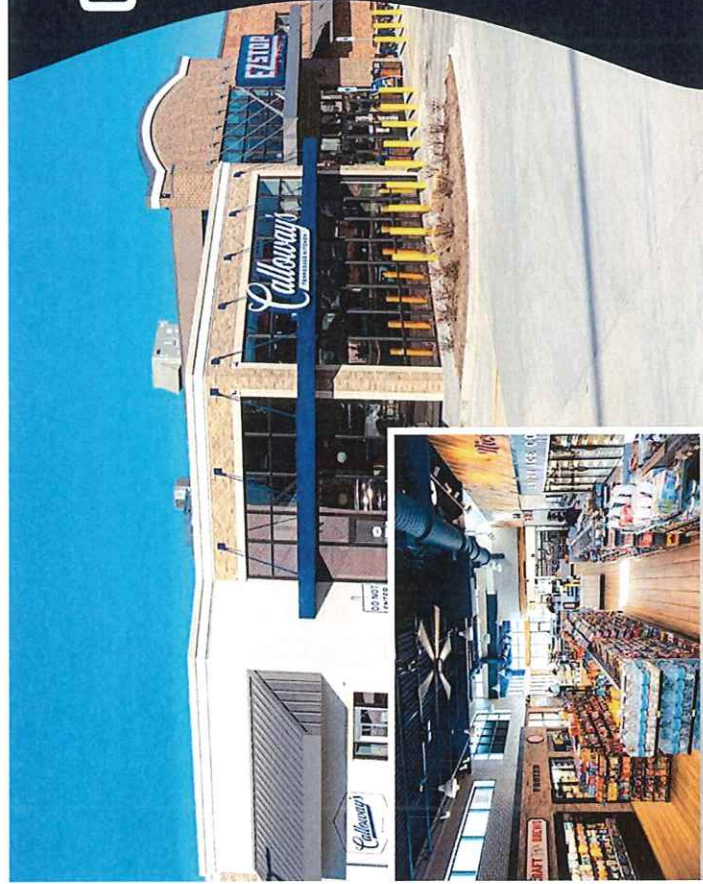


Community Impact

- Annual grants to local schools
- Pellissippi Community College
- Local Sponsorships & fundraisers
- All on-duty police officers and firefighters
 - Free Fountain drinks
 - Free Locally Roasted coffee
 - Free car washes
- Additional Community Partners



Designed with Intent



CstoreDecisions



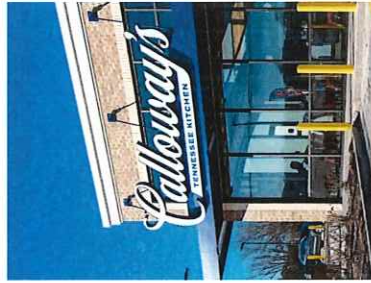
Calloway Oil/
EZ Stop



Address: EZ Stop 31, 2125 Morganton RD Maryville 37801

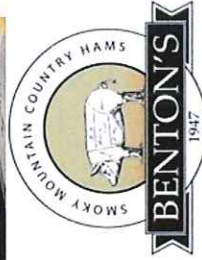


Supporting Local Sourcing



Calloway's

TENNESSEE KITCHEN





Appendix

EZ Stop Information

Company links:

- <https://www.callowaystnkitchen.com/>
- <https://www.ezstop.net/>
- <https://callowayoil.com/>

Social Media

- <https://www.facebook.com/CallowaysTNKitchen/>
- <https://www.instagram.com/callowaystennesseekitchen/>

Industry Articles

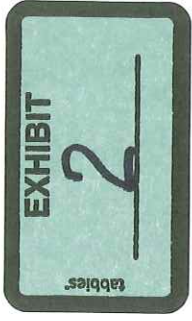
- Design award article: <https://cstoredecisions.com/2024/02/06/2024-best-store-design-awards-ez-stop/>
- C Store Decisions digital issue here: <https://cstoredecisions.com/2024/02/02/february-2024-the-2024-foodservice-report/>
- NACS Magazine Feature: <https://www.nacsmagazine.com/issues/November-2023/C-Store-Staples-With-Local-Flair>
- Convenience News Article: <https://csnews.com/calloway-oil-welcomes-fourth-generation-family-leadership>



County Revenue Generation

| COUNTY REVENUE GENERATION BY AN EZ STOP STORE | | |
|---|------------------------------|--------------------------|
| APPLICABLE STORE SALES | Tax Rate | Note |
| Local Option Sales Tax | 2.50% | |
| 50% County share of State Sales Tax 7% | 7% | 50% County Share |
| Beer Wholesale tax 17% of beer invoice | 17% | 75% Cost of Goods |
| State gas taxes | \$ 0.274 Cents Per Gallon | 50% County Share |
| Property Taxes | | |
| Business Taxes | | |





LEFT TURN SIGN CONCEPTS

4183 | CALLOWAY - EZ STOP | 2024.07.08



WHITE

RGB 255 255 255
HEX #FFFFFF
CMYK 00 00 00 00

PMS N/A

RGB 232 234 213
HEX #E8E0D5
CMYK 08 09 14 00

PMS 128C
PMS 128U

RGB 245 203 57
HEX #F5CB33
CMYK 4 18 91 0

PMS 2747C
PMS 2747U

RGB 28 32 69
HEX #1C2045
CMYK 100 95 34 28

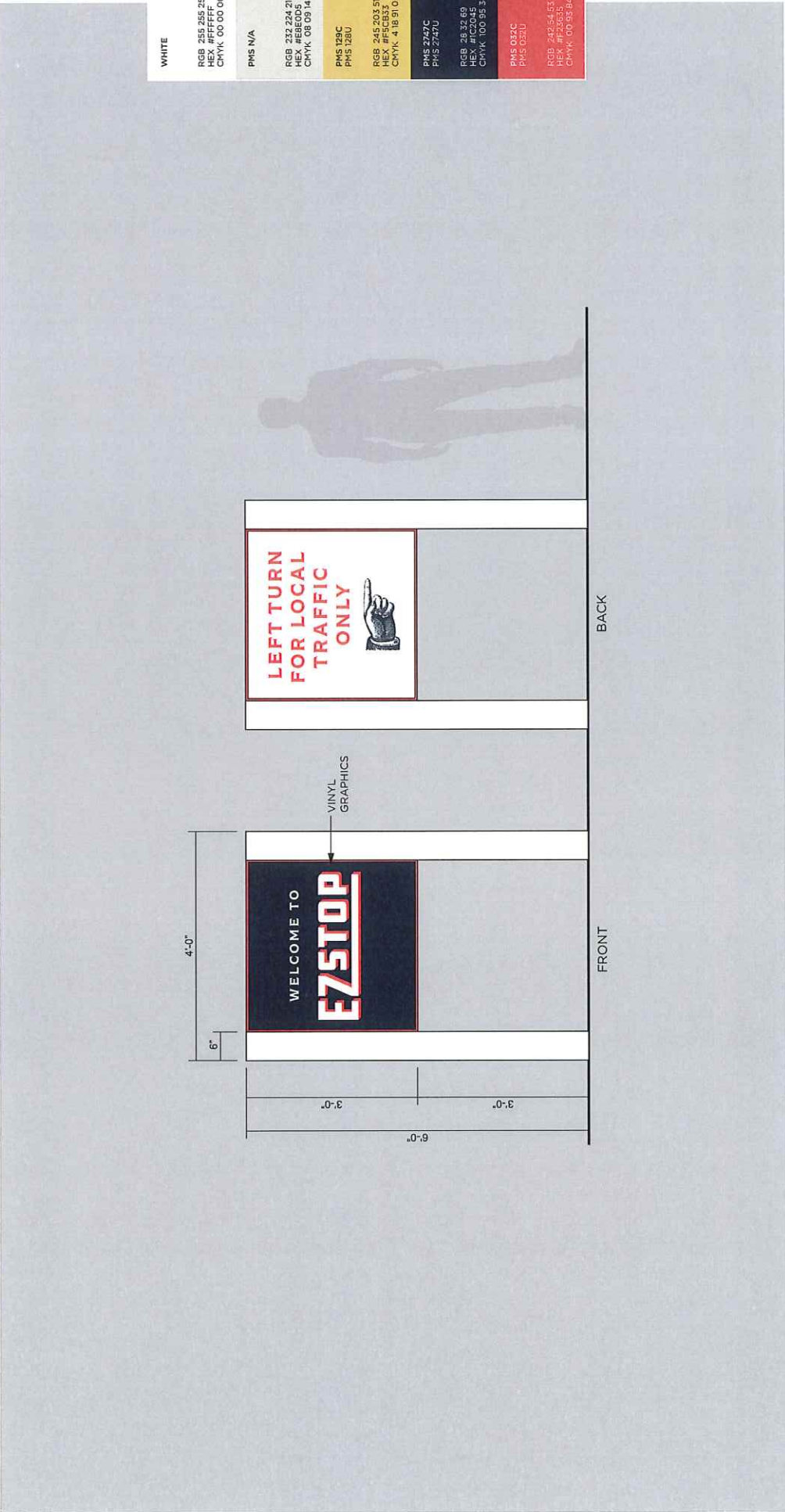
PMS 032C
PMS 032U

RGB 242 54 53
HEX #F23635
CMYK 00 93 84 00



LEFT TURN SIGN - EZ STOP - OPTION 1

| | |
|--------------------------------|--|
| WHITE | RGB 255 255 255 HEX #FFFFFF CMYK 00 00 00 00 |
| PMS N/A | RGB 232 234 233 HEX #EBE0D5 CMYK 08 09 14 00 |
| PMS 128C PMS 128U | RGB 245 203 51 HEX #F5CB33 CMYK 4 18 91 0 |
| PMS 2747C PMS 2747U | RGB 28 32 69 HEX #1C2045 CMYK 100 95 34 28 |
| PMS 032C PMS 032U | RGB 242 34 433 HEX #F22635 CMYK 00 55 84 00 |





Benjamin C. Mullins

From: Neely Ford <neely@lfa.net>
Sent: Monday, July 8, 2024 1:43 PM
To: Benjamin C. Mullins; 'Trenton Langston'; Tommy Hunt; Dave Farmer - LSI (Dave.Farmer@LSIcorp.com)
Cc: Petroleum Apps; Julia Langston
Subject: RE: E-Z STOP & CALLOWAY KITCHEN 35 CONCORD RD KNOXVILLE LO-160268-2

Dear Knox County Planning Staff,
Subject: Response to Staff Comment on Site Lighting Requirements

I am writing in response to the staff comment dated 7/3/2024 regarding the site lighting for the project located at 1025 Concord Road File # 6-B-24-UR. We appreciate your detailed feedback and have taken the necessary steps to address the concerns raised.

Regarding the height of the site lighting, we understand the recommendation for all pole and building-mounted lighting fixtures to have a maximum height of 15 feet from the finished grade, excluding the lighting installed on the underside of the gas pump canopy. However, we have significant concerns about the potential safety risks associated with reducing the height of light poles to 15 feet.

Given the nature of our site, which accommodates fuel delivery trucks and vending vehicles, lowering the height of the light poles to 15 feet may increase the risk of these vehicles making contact with the fixtures. This could lead to potential damage to the light poles, vehicles, and even pose safety hazards to drivers and pedestrians. Especially if the contact is made with a fuel tanker truck.

To address these safety concerns while adhering to the intent of the lighting guidelines, we propose maintaining the height of the light poles at a minimum of 20 feet. This adjustment will ensure that the lighting fixtures remain out of reach of trucks and vending vehicles, thereby reducing the risk of accidents.

The LED light fixtures we are using at this EZ Stop, the Slice and/or the Mirada fixtures are both approved and endorsed by the Dark Skies International as well as has lowest BUG fixture ratings. (B = Backlight. U = Uplight. G = Glare)

The Slice <https://darksky.org/what-we-do/darksky-approved/products-companies/#!/SLM-%E2%80%93-Slice-Medium-Area-Light/p/110701072>

The Mirada <https://darksky.org/what-we-do/darksky-approved/products-companies/#!/MRM-%E2%80%93-Mirada-Medium-Area-Light/p/114462112>

Should you have any further questions or require additional information, please do not hesitate to contact me at (615) 513-5132 or Neely@LFA.net. Thank you for your attention to this matter, and we look forward to your feedback.

Sincerely,
Neely Ford
Vice President
Lucas Ford Associates, Inc
www.LFA.net

From: Benjamin C. Mullins <bnullins@fmsllp.com>
Sent: Monday, July 8, 2024 1:01 PM
To: Neely Ford <neely@lfa.net>; 'Trenton Langston' <trenton@ezstop.net>; Tommy Hunt <tommy@ezstop.net>; Dave Farmer - LSI (Dave.Farmer@LSIcorp.com) <Dave.Farmer@LSIcorp.com>
Cc: Petroleum Apps <Petroleum.Apps@lsicorp.com>; Julia Langston <julia@ezstop.net>
Subject: RE: E-Z STOP & CALLOWAY KITCHEN 35 CONCORD RD KNOXVILLE LO-160268-2