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December 9, 2024

Knox County Planning Commission

*Submitted Online and via email*

Re: Agenda Item 46; Use of Review for 1025 Concord Road; 11-B-24-UR

Dear Planning Commission:

I represent the applicant, Tommy Hunt/EZ Stop. At your upcoming December 12, 2024, meeting you will have before our second application<sup>1</sup> for a use on review for a fuel station and restaurant.<sup>2</sup> Staff is recommending approval subject to 11 conditions.<sup>3</sup> The applicant is in agreement with Staff's recommendations with **one exception**: The condition limiting the number of fuel pumps should be increased from four (4) gas pumps (dispensers) with no more than two (2) points of sale per gas pump to **seven (7)** gas pumps (dispensers) with no more than (2) points of sale per gas pump.

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<sup>1</sup> Previously, this Commission approved a use-on-review for a fuel-station, restaurant, and drive-thru facility. See 6-B-24-UR. That decision was appealed to the Knox County Board of Zoning Appeals where the BZA determined that the proposed building exceeded the 5,000 square-foot limitation of Section 5.38.04.B of the Neighborhood Commercial zone. In lieu of appealing this BZA decision to Chancery Court, the applicant elected to redesign its building to bring it within a 5,000 sq. ft. footprint by eliminating the separate *Calloway Kitchen* restaurant and drive-thru.

<sup>2</sup> Even though there will not be a separate *Calloway Kitchen* restaurant or drive-thru, since there will be hot-dogs and other self-serve food service within the convenience store then Planning Staff has determined that this service meets the definition of the 1997 NAICS code 722 for "Food Services and Drinking Places" because, *inter alia*, there will be prepared "meals, snacks and beverages to customer order for immediate on-premises and off-premises consumption." This definition is broad enough to encompass most convenient stores and other retail locations that provide pizza, hotdogs, pretzels, soft-drinks and other snacks. EZ Stop does not have inside seating for food consumption, but it may add some outside seating similar to seating provided at the Weigel's location at 12400 S. Northshore.

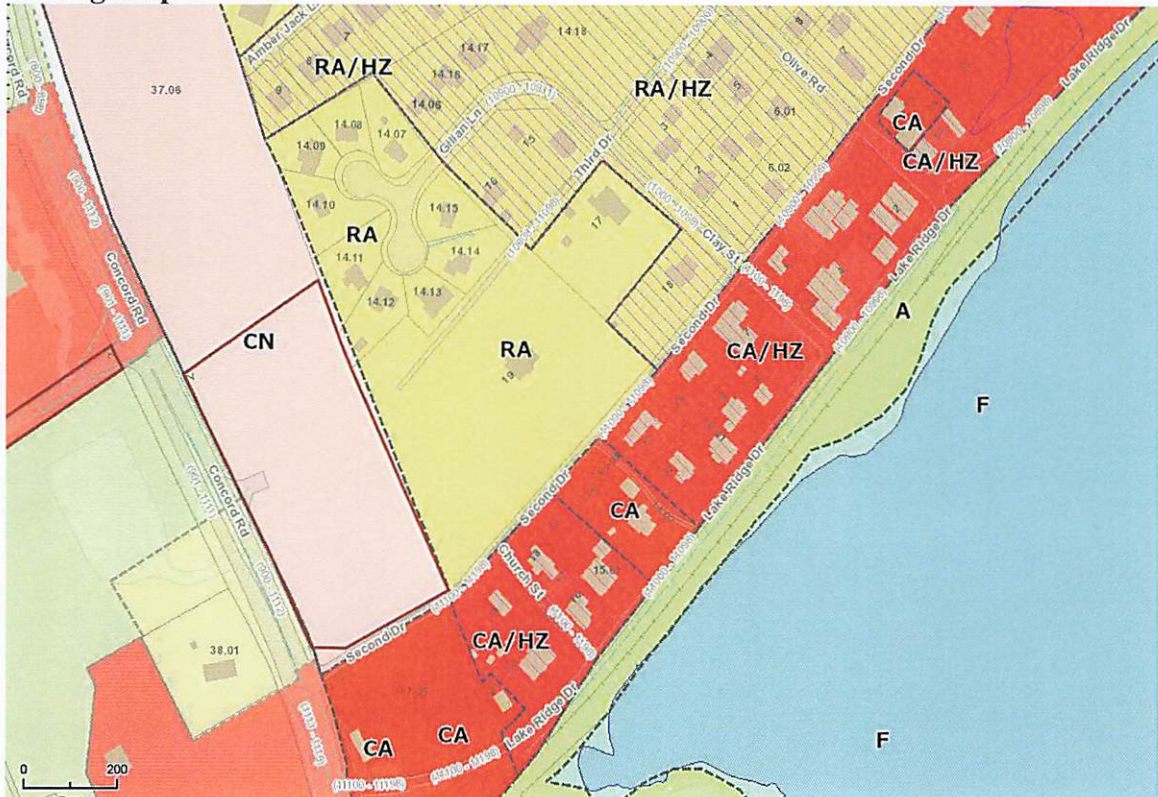
<sup>3</sup> These conditions are substantially similar to the conditions previously imposed on the approval in August with some minor modifications.

## 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 exists commercial zoning within the municipal boundaries of the Town of Farragut. The Property has approximately 650' linear frontage on Concord Road, 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. 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<sup>4</sup> with its closest proximity being a series CA/HZ zoned parcels across Second Dr. to the Property's southeast.

**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

<sup>4</sup> The Property is adjacent to a broader Concord Village Historic District; however, this does not create any legal zoning restrictions, and the Village of Concord Design Guidelines only apply to the portions of the district specifically subject to the overlay. That does not include this Property or any contiguous properties.

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 similar 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 16 points of sale at 8 pump locations. The proposed application contains proposal for the current application is for 14 points of sale at 7 pump locations.

## **II. Legal Standards Applicable to Considerations of Uses-on-Review:**

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). 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)(**emphasis added**).

The surrounding properties reveal similar commercial zoning in the area; therefore, there is no evidence to suggest that the use is incompatible with the surrounding areas. *Mullins v. City of Knoxville*, 665 S.W. 2d 393 (Tenn. Ct. App. 1983) . 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).

Article 6.50 outlines the procedure for authorizing uses permitted on review. The preamble to this procedure states, “[t]his review and approval process is intended (1) to provide for uses which are beneficial to the community but that may involve a potential hazard of an area unless appropriate provisions are made for their impacts, and (2) to integrate properly the uses permitted on review with other uses located in the district. However, case law is clear that while one may look to the preamble of a zoning ordinance in determining construction, the preamble is **not** part of the resolution’s controlling provisions. *Rogers Group, Inc. v. County of Franklin*, 1992 LEXIS 370 (Tenn. Ct. App. April 29, 1992) at \* 12. General purpose clauses do not contain substantive provisions concerns an ordinance requirements. *Id.* at \*13. See also *Father Ryan High School, Inc. v. City of Oak Hill*, 774 S.W.2d 184, 189-90 (Tenn. Ct. App. 1988); *Merritt v. Wilson County Board of Zoning Appeals*, 656 S.W. 2d 846, 854-55 (Tenn. Ct. App. 1983).

## **III. The condition that there shall be no more than four (4) gas pumps (dispensers) with no more than two (2) points of sale per gas pump should be removed.**

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 number of gas pumps proposed “to ensure consistency with intent of the CN zone

and compatibility with adjacent residential uses.”<sup>5</sup> 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. The case of *Demonbruen v. Metro. Bd. of Zoning Appeals*, 2011 Tenn. App. LEXIS 314 (Tenn. Ct. App. June 10, 2009), summed this up in the context of a use-on-review<sup>6</sup> by stating

[An administrative body] my grant or deny a special permit solely on the basis of the statutory authority delegated by the zoning ordinance or by the statute and subject to the limitations imposed thereby. It is without power to grant a special permit not expressly authorized by the zoning ordinance; **it is equally without power to deny a permit on grounds not expressly stated in the ordinance.**

*Id.* at \*26 citing 3 ANDERSON’S AMERICAN LAW OF ZONING § 21.9 (Kenneth H. Young, ed., 4<sup>th</sup> ed. 1996 (**emphasis** in original)).

Moreover,

A county planning board is **without power** to deny a special use permit on grounds **not expressly stated** in the zoning ordinance and it must employ the specific statutory criteria which are relevant.

*Id.* citing 101A C.J.S. *Zoning and Land Planning* § 258 (2011)(**emphasis** in original). 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 *rationaly* be articulated, why 4 pumps are more appropriate than 7. Or 8. Or 5. Or *any* other number. This is a subjective opinion and therefore an arbitrary condition. 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, or to reduce the height of the light poles to address lighting concerns. These are based on existing standards. Indeed, staff and Commission has appropriately made these recommendations in the other conditions, and they will be complied with. However, staff and Commission cannot 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 Knox County

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<sup>5</sup> Statements by staff to the effect of reducing the number of pumps is more in line with “the intent” of the CN zoning is not a legal basis upon which to base an approval or denial in the absence of specific standards or regulations. In the maxims of statutory construction, one does not reach the intent of an ordinance or statute unless the ordinance or statute is ambiguous. When a statute’s text is clear and unambiguous, we need look no further than the language of the statute itself. *Wallace v. Metro Gov’t of Nashville*, 546 S.W. 3d 47, 53 (Tenn. 2018).

<sup>6</sup> *Demonbruen* and other courts have explained that the terms Special Exceptions, Special Use Permits, Conditional Use Permits, and Uses-on-Review are interchangeable.

can, and should, legislatively amend their zoning ordinance 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. Consider the following examples of CN zoned gas stations:

- 12-D-21-UR:
  - 3216 Johnson Road
  - ~2.69 acres
  - CN zoning adjacent to a residential neighborhood
  - 16 individual points of sale
  - 8 gas pump locations
  - At the intersection of Schaad Rd (a minor arterial street) and Johnson Rd (a local street).
  - Per 2023 TPO data, 2,023 average daily trips in 2023.
  
- 3-D-21-UR:
  - 2718 Shipetown Rd
  - ~2.31 acres
  - CN zoning adjacent to residential and agricultural properties
  - 10 individual points of sale
  - 5 gas pump locations
  - At the intersection of Shipetown Rd (a local street) and Rutledge Pike (major arterial)
  - Per 2023 TPO data, 10,508 average daily trips on Rutledge Pike in 2023
  
- 1-F-10-UR:
  - CN zoning adjacent to a residential neighborhood
  - ~1.25 acres
  - 16 individual points of sale
  - 8 gas pump locations
  - Near intersection of S. Northshore Road (minor arterial street) and Choto Rd. (minor collector street)
  - Per 2023 TPO data, 13,910 average daily trips in 2023
  - Photo attached:



- 5-G-05-UR:
  - 5904 Washington Pike
  - ~1.4 acres
  - CN zoning near, but not adjacent to, residential and agricultural property
  - 16 individual points of sale
  - 8 gas pump locations
  - South of Washington Pike (minor arterial street) and near Murphy Rd (major collector)
  - Per 2023 TPO data, Murphy Rd has 13,486 average daily trips in 2023, and Washington Pike has 7,182 average daily trips
  - Photo attached below:



These 4 properties are the only CN-zoned properties to be approved for gasoline station use in Knox County. 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 should be taken into account. The more average daily traffic on adjacent streets, the more convenience and service for the existing traffic to be intercepted and not required to travel further for the same services.

During the July 11, 2024, Planning Commission meeting, planning staff cited to 3 other properties<sup>7</sup> with a smaller gas pump count near a residential neighborhood as a rationale for its recommendation to reduce the number of pump locations from 7 to 4. None of the examples noted by staff are an “apples-to-apples” comparison to the proposed location.

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<sup>7</sup> Planning staff also looked at gas stations at Kroger near Kingston Pike and the Watt Rd Travel Stations, but those properties are not near existing neighborhood residential areas.

- 2-K-06-UR<sup>8</sup>
  - 1116 Harvey Rd
  - ~1.19 acres
  - PR zoning (allowing for commercial development)
  - 8 individual points of sale
  - 4 gas pump locations
  - East of Harvey Rd. (a minor arterial) and near Boyd Station underpass
  - Per 2023 TPO data, Harvey Rd has 5,364 advts and Boyd Station has 3,309 advts.
  
- 8480 Gleason Dr.
  - BreadBox
  - Zoned CN, but no Use-on-Review is on file.
  - ~1.83 acres
  - 6 individual points of sale
  - 3 gas pump locations
  - At the corner of Gleason Dr. and S. Gallaher view
  - Per 2023 TPO data, Gleason Dr. has 8,240 advts and S. Gallaher View Rd. has 4,290 advts
  
- 600 Ebenezer Rd
  - Ebenezer Market
  - Zoned CA near residential property and no Use-on-Review is available online (apparently approved in 1984)
  - ~1.29 acres
  - 8 individual points of sale
  - 4 pump locations
  - East of Ebenezer near its intersection with Gleason.
  - Per the 2023 TPO data, Ebenezer averages 9,490 advts and

Compare the 4 approved CN-zoned properties to the 3 non-CN-zoned properties to the proposed development. The ADVTs are between 1,000 and 600 trips more per day than the examples offered by staff. The acreage is ~ 2 more acres than the largest tract offered as an example staff. A more accurate comparison is to the prior CN zoned parcels which obtained Use on Review approval for similar (although still smaller) lots on more heavily traveled roads. Those developments properly yielded a gas pump number similar to what is being sought now.

- 11-B-24-UR (Proposed Development):
  - 1025 Concord Rd
  - ~4.69 acres
  - CN zoning adjacent to residential property
  - 14 individual points of sale
  - 7 gas pump locations
  - East of Concord Rd (major arterial street) and Second Dr. (a local street)
  - Per 2023 TPO data, Concord Dr has 15,482 average daily trips in 2023

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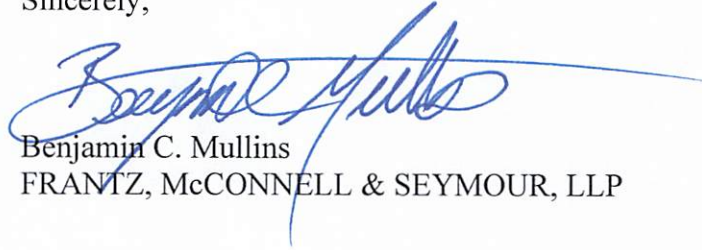
<sup>8</sup> This application was withdrawn because the gas station was previously approved as part of the overall PR development.

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

**IV. 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,

A handwritten signature in blue ink, appearing to read "Benjamin C. Mullins", with a long horizontal flourish extending to the right.

Benjamin C. Mullins  
FRANTZ, McCONNELL & SEYMOUR, LLP



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.

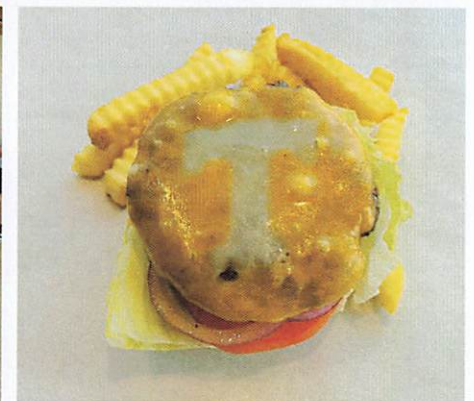


Trenton and Julia Langston have been named vice presidents of Maryville-based Calloway Oil Company & EZ Stop 2020

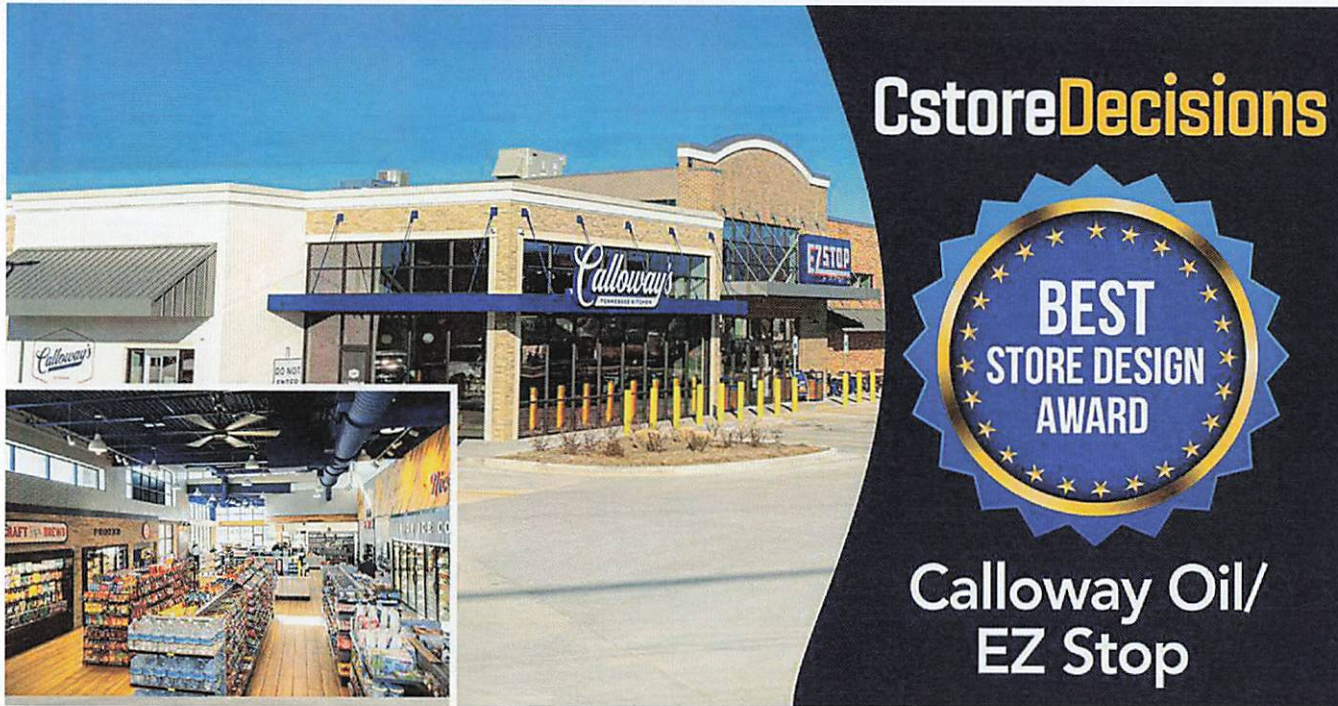


# Community Impact

- 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



Address: EZ Stop 31, 2125 Morganton RD Maryville 37801





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>

