

**PLANNING COMMISSION MEETING
MUNICIPAL CENTER COUNCIL CHAMBERS
Tuesday, April 7, 2009**

The regular meeting of the Planning Commission was scheduled and held in the Council Chambers of the Municipal Center on April 7, 2009. Chairman Klevan welcomed everyone and asked the Commission members as well as the audience to please speak into the microphone so they could be heard. Chairman Klevan then called the meeting to order at 6:00 p.m., asking the secretary for the roll.

Ms. Rush called the roll of the Board to establish a quorum:

Commissioners Present: Rick Bennett, Susan Burrow, Alderman John Drinnon, David Klevan, Forrest Owens, Lisa Parker, Dike Bacon.

Commissioner Absent: Mike Harless

Staff Present: David Harris, Jerry Cook, Andy Pouncey, Wade Morgan, Lauren Johnson, Katie Graffam, Josh Whitehead, Tim Gwaltney and Pam Rush.

A quorum for tonight's Planning Commission meeting was established.

1. Approval of Minutes for January 6, 2009

Chairman Klevan stated for those people who just arrived, tonight's agenda is on the front table. The first order of business is the approval of the minutes for January 6, 2009. If there were no additions, corrections or deletions to the minutes of the January 6, 2009, meeting of the Planning Commission, he would entertain a motion for approval.

Alderman Drinnon moved to approve the Planning Commission minutes of January 6, 2009, as submitted, seconded by Ms. Burrow.

Mr. Bennett stated he would like a correction to the minutes regarding his opinion on gates. He is not against all gates. He opposes the idea of gates in some situations, not in all instances.

Chairman Klevan asked for a roll call.

Roll Call: Bennett – yes; Burrow – yes; Drinnon – yes; Parker – yes; Bacon – yes; Harless –absent; Owens - yes; Klevan – yes. **The motion was passed**

2. Garner Woods Subdivision – West side of Johnson Road at Garner Woods Cove – Request Approval for a Revision to the Plat Regarding Private Streets and the Installation of Gates in the “R-E” Residential Estate zoning district.

BACKGROUND: On February 5, 2001, the Planning Commission (PC) granted Preliminary Plat approval for Garner Woods Subdivision. The PC granted a one-year time extension on March 5, 2002, for the submittal of a Final Plat. On April 4, 2003, the PC granted another one-year time extension for the submittal of a Final Plat. The PC granted Preliminary and Final Plat approval on March 2, 2004, and August 6, 2004, respectively, for the revised Garner Woods Subdivision Plat. The Board of Mayor and Aldermen (BMA) approved Subdivision Contract No. 455 on September 13, 2004. The Design Review Commission (DRC) approved the subdivision entrance feature on September 25, 2007. A contract extension was granted by the BMA on January 26, 2009. The Developer must complete the punchlist from the development contract by January 26, 2010.

DISCUSSION: The specific request by the applicant is to approve a plat revision to convert the public street, Garner Woods Cove, to a private street, and to approve the installation of gates. The proposed gates will be located 83.1' from Johnson Road. The access reader will be located 72.94' from Johnson Road. Each gate will feature a 14.25' wide entrance for entry and exit into the subdivision. These measurements comply with the City's Private Street Policy. Utilizing the hammerhead, denied vehicles will be able to make a two-point turn onto Johnson Road.

When the subdivision was originally approved, sidewalks were part of the approved design of the subdivision. The applicant is requesting a variance from §17-69 of the Subdivision Regulations which require sidewalks. The applicant feels that sidewalks are not necessary in a six (6) lot subdivision. Staff had no objection to the applicant's request to delete the requirement to install sidewalks if the Planning Commission voted to approve the privatization of streets and installation of gates. When approving the minutes on May 5, 2009, the Commission requested that the April 7, 2009, minutes explicitly state that the approval of the privatization of streets included the deletion of the requirement to install sidewalks.

All drainage structures and inlets are private, and are the responsibility of the Homeowners' Association (HOA) to maintain.

STAFF COMMENTS:

Staff Planner – Katie Graffam

Staff Engineer – Jonathan Smith

The Technical Advisory Committee (T.A.C.) met on March 12, 2009, and made the following comments:

STAFF COMMENTS:

A. PRIOR TO CONSTRUCTION PLAN APPROVAL:

1. An erosion control plan shall be submitted.
2. The proposed elevations and drainage modifications associated with the hammerhead shall be shown. The hammerhead shall be graded properly to prevent the ponding of stormwater.
3. All plans submitted for construction review shall be stamped and sealed by a Professional Engineer.
4. The construction plans shall address the red-lined plans provided by the Staff Engineer.

B. PRIOR TO INITIAL ACCEPTANCE:

1. For the privatization of the internal street, the subdivision plat must be re-recorded with a corresponding note explaining the re-recording, including 100% of the current lot owners' signatures on the plat. Prior to Initial Acceptance, signatures of all owners must be provided to City staff expressing their acquiescence with the proposed conversion of the public street to private.

The following comments were generated at the T.A.C. meeting to address some of the revisions that must be made to the construction plans. Additional comments may be generated at the time of construction plan review.

C. GENERAL REQUIREMENTS:

1. The applicant/developer during the construction phases of the project shall do the following:
 - (a) Keep all streets clear and free of dirt and debris;
 - (b) Ensure that all construction activity begins no earlier than 7:00 a.m. and ends no later than 6:00 p.m., Monday thru Saturday, and no construction activity shall be permitted on Sundays; and,
 - (c) Provide the Department of Economic & Community Development with the name, address and phone number of person(s) to be contacted and responsible for correcting any of the above should the occasion arise to do so.

2. The applicant is required to include the following formal written statement by a certified and licensed professional engineer to be placed on the grading and drainage plans, signed, dated and sealed:

I, _____, a duly licensed professional engineer in the State of Tennessee, hereby certify that I have designed the drainage in accordance with the Design Standards of the City of Germantown and have considered upstream and downstream conditions that affect drainage to include topography, present and future land use, existing zoning, and location of natural water courses.

3. The applicant/developer shall enter into a development agreement with the City of Germantown for this project after it has received Final approval from the Planning. This agreement will include a \$500 Plans Review Fee due upon receipt of the construction plans.

Ken Sledd, 9403 Old Plantation Cove, stated the Garner Woods subdivision has six lots that will cost about \$400 to \$500 thousand dollars each, and the houses will be \$2 million. Mr. Sledd thinks it is necessary for this project of \$2 million homes to have a gate. One of the lots is two acres and the other five are one-acre lots. The lots will be more marketable if gated. He stated he has been in business for 40 years, and asks for help to make this work.

Alderman Drinnon stated Ken Sledd is one of the best developers in Germantown. If this is what you think is best, then I support it. Germantown is an upscale community and there have been other amenities that have been added to enhance the community.

Mr. Bennett stated there are many homes in the area without gates and selling well. Radford is gated and sales are no better than non-gated communities. He does not think there is any justification for gates in this area.

Ken Sledd asked what is different about Glen Echo and why were gates approved for them.

Mr. Bennett noted Glen Echo is a different situation because of the location. We must look at each situation individually concerning gates for crimes and safety.

Mr. Bacon stated he does not think there is any justification for gates in this area. It would set a bad precedent for Germantown. He agrees perimeter areas are different due to high crimes areas.

Ms. Parker stated her view of gates as an aesthetic issue. Gates also raise issue of malfunction and prevent access by emergency vehicles.

Mr. Owens stated he has known Mr. Sledd for a long time, since working for the City. His work has always been top quality. He is philosophically opposed to gates and fears that the commission will not be able to turn down gates anywhere else, if this is approved.

SUBDIVISION & SITE PLAN REVIEW SUBCOMMITTEE: (Forrest Owens, CHAIRMAN):

The Subdivision & Site Plan Review subcommittee met on March 18, 2009, and withheld recommendation due to a lack of a quorum.

PROPOSED MOTION: To grant the request for a revision to the plat to allow the privatization of Garner Woods Cove, and to allow to installation of gates, subject to staff comments.

Mr. Owens moved to approve the request for a revision to the plat to allow the privatization of Garner Woods Cove, and to allow to installation of gates, seconded by Ms. Burrow.

Chairman Klevan asked for a roll call.

Roll Call: Bennett – no; Burrow – yes; Drinnon – yes; Parker – yes; Bacon – no; Harless –absent; Owens - no; Klevan – yes. **The motion was passed.**

3. Saddle Creek IV Planned Development - Southwest corner of Poplar Avenue and West Street – Request 1) An Amendment to Outline Plan Conditions, 2) Final Plan Approval with Warrants and 3) Preliminary Landscape Plan and Preliminary Lighting Plan Approval

BACKGROUND:

A land use plan for the entire Smart Growth area, entitled *The Germantown Smart Growth Plan*, was approved by the Board of Mayor and Alderman by resolution on April 9, 2007. *The Germantown Smart Growth Plan* included a conceptual plan for the subject parcel that recommended an urban, mixed-use development on the site. The 35.425-acre parcel on which the development is proposed was rezoned to the T-5 Zoning District by the Board of Mayor and Aldermen on Third and Final Reading on October 22, 2007. The Planning Commission granted Final Plat approval for Saddle Creek IV at the March 4, 2008, meeting. On June 3, 2008, the Planning Commission granted Outline Plan approval, with the warrants. The Board of Mayor and Aldermen granted Outline Plan approval, with the warrants, at the July 14, 2008, meeting. The Planning Commission granted approval of an amendment to the Outline Plan and Warrant 1A, to move the building south 22.87 feet, and to reduce the total acreage from 36 acres to 35 acres on September 2, 2008. The Planning Commission granted approval of an amendment to the Outline Plan to relocate the restaurant located along Driveway A and Poplar Avenue to be forty feet from Poplar Ave and to add a sentence concerning banks with drive-up services on October 7, 2008. The Planning Commission granted approval to the amended Outline Plan to amend the total square footage in order to increase the maximum square footage for retail space, reduce the square footage for restaurant space and reduce the total square footage at its December 2, 2008, meeting. The Board of Mayor and Aldermen granted approval to the amended Outline Plan with warrants at its January 12, 2009, meeting.

Development Program	Approved
Retail Space	308,700 square feet
Restaurant Space*	33,500 square feet
Class “AA” Office Space	175,000 square feet
Hotel Space	160,000 square feet
Residential Space	490,000 square feet

*These figures include 18,100 square feet specifically allocated for two outparcel restaurant locations identified on the Concept Plan submitted with the Outline Plan in the following locations: 1) Poplar Ave. at Driveway A, and 2) at the current southwestern terminus of Arthurwood Drive. The 15,400 square foot balance may be anywhere else on the site allowed by the outline plan.

TOTAL BUILDINGS	1,167,200 square feet
Parking Spaces	2,064 spaces

The Outline Plan also indicates “Future Development,” which is not taken into consideration in the new traffic study. Should the applicant wish to develop this area in the future, it will be required to conduct and submit a traffic study for this area, which identifies potential impacts as well as mitigation recommendations. For information regarding the traffic, stormwater and sanitary sewer, please refer to the outline plan staff report.

DISCUSSION:

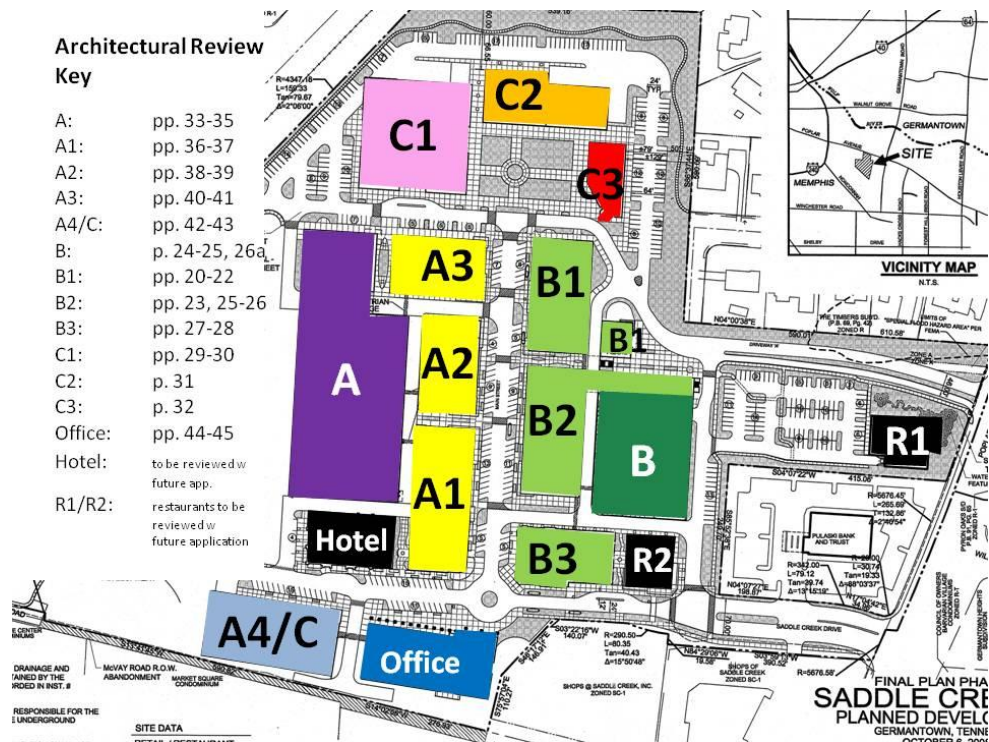
Outline Plan Conditions Amendment – The applicant is requesting an amendment to the Outline Plan Conditions in order to change the reference to “legislative bodies” to “legislative body” in paragraph VIII D. This is a standard comment used for PUD plans submitted to Memphis/Shelby County. Since the City of Germantown only has one legislative body, this amendment is necessary.

Final Plan Approval – The applicant is also requesting final plan approval of all buildings in Saddle Creek IV, except the 8-story hotel and the two outparcel restaurant buildings. These will be approved with separate final plan applications.

Preliminary Landscape and Lighting Plan – Finally, the application is requesting preliminary landscape and lighting plan approval. A final landscape and lighting plan with greater details will be submitted with a subsequent application.

DESIGN REVIEW CHECKLIST:

1. *Site Layout:* The mixed-use type of development will center on and around the Main Street. There will be one outparcel restaurant 40 feet from Poplar Avenue along “Driveway A”. This restaurant will have an outdoor eating area overlooking a water feature. On the western area of the development will be a plaza with more conventional type development surrounding it. The two 8-story buildings front on Arthurwood Drive towards the southern portion of the site. The southeast area is reserved for future development.
2. *Building Heights:* The two 8-story buildings will be up to 123’ in height from the ground to the roof midpoint. The 4-story buildings will be up to 63’ in height from the ground to the roof midpoint. The 2-story buildings will be up to 33’ in height from the ground to the roof midpoint. The one-level shops will be at least 20’ in height from the ground to the roof midpoint.
3. *Building Elevations:* The pattern book breaks the development into zones. This review will follow those zones, see attached graphic for legend of colors. **Materials shown in bold will need warrant approval.**



- a. *Buildings B1, B2 and B3 (Light Green):* 4-story buildings comprised of brick, break metal fascia, cast stone, oversize CMU (Concrete Masonry Units), **Hardiplank, Hardifascia**, steel pipe rail, metal coping, aluminum guardrail with bar stock, metal fascia with typon bracket, **EIFS (Exterior Insulation and Finish System) and sign foam**. The first floor will be retail while the upper three stories will be residential apartments (the section of Building B2, which is the liner building for Parking Deck B, will be a 4-story residential apartment building). The individual storefronts will be designed by the individual tenants and are subject to staff review. The applicant is requesting a warrant to allow the tenants to use materials other than those specified in the SmartCode: **Dryvit / EIFS** (refer to warrant section below, **staff comment A4**). (Refer to pages 20-23 and 25-28 in the Pattern Book for additional detail).
- b. *Parking Deck B (Dark Green):* 4-story building comprised of brick, cast stone, oversize CMU, metal fascia, steel pipe rail and precast concrete with brick appearance. The first floor facing west will be retail with three stories of parking garage above. (Refer to page 24-25 and 26a in the Pattern Book for additional detail).
- c. *Building C1 (Pink):* 2-story retail building comprised of **sign foam cornice**, brick, cast stone, metal column, metal canopy, brake metal fascia, oversize CMU, brick banding, **Hardi-trim** and **EIFS cornice**. This building will have theater graphic panels along all elevations. (refer to warrant section below, **staff comments A4**). (Refer to pages 29-30 in the Pattern Book for additional detail).
- d. *Building C2 (Orange):* 1-story building comprised of brick, metal coping, metal scupper and downspout, CMU with alternating bands of ground face and split face, **EIFS cornice**, cast stone, tile, painted metal canopy with tie rods and fiber reinforced concrete panel. This building will have bookstore graphic panels along the south elevation. (refer to

warrant section below, **staff comments A4**). (Refer to page 31 in the Pattern Book for additional detail).

- e. *Building C3 (Red)*: 1-story building comprised of brick, metal coping, CMU with alternating bands of ground face and split face, **EIFS cornice**, cast stone, tile, painted metal canopy with tie rods and fiber reinforced concrete panel. (refer to warrant section below, **staff comments A4**). (Refer to page 32 in the Pattern Book for additional detail).
- f. *Parking Deck A (Purple)*: 4-story building comprised of precast with brick appearance, brick soldier course accent, painted hollow metal door, galvanized cable railing, aluminum storefront system by tenant, cast stone band, prefinished metal finial, painted metal railings, brick veneer running board, prefinished aluminum coping, cast stone sill, aluminum window system, and prefinished aluminum canopy system. The individual storefronts will be designed by the individual tenants and are subject to staff review. The applicant is requesting a warrant to allow the tenants to use materials other than those specified in the SmartCode: **Dryvit / EIFS** (refer to warrant section below, **staff comment A4**). (Refer to pages 33-35 in the Pattern Book for additional detail).
- g. *Buildings A1-A3 (Yellow)*: 4-story buildings comprised of prefinished aluminum finial, **fiberglass dome, fiberglass cornice**, prefinished flat metal wall panel, cast stone sill, prefinished aluminum canopy system, aluminum storefront system by tenant, prefinished aluminum coping, brick veneer running board, soldier course accent, simulated wood trim panels, and **Hardiplank**. The first floor will be retail while the upper three stories will be residential apartments. The individual storefronts will be designed by the individual tenants and are subject to staff review. The applicant is requesting a warrant to allow the tenants to use materials other than those specified in the SmartCode: **Dryvit / EIFS** (refer to warrant section below, **staff comment A4**). (Refer to pages 36-41 in the Pattern Book for additional detail).
- h. *Parking Deck C/A4 (Light Blue)*: 5-story building comprised of precast with brick appearance, brick soldier course accent, painted hollow metal door, galvanized cable railing, aluminum storefront system by tenant, cast stone band, prefinished metal finial, painted metal railings, brick veneer running board, prefinished aluminum coping, cast stone sill, aluminum window system, prefinished aluminum canopy system, vision glass and ornamental metal gate. The first floor will be retail while the upper four stories will be residential apartments. The individual storefronts will be designed by the individual tenants and are subject to staff review. The applicant is requesting a warrant to allow the tenants to use materials other than those specified in the SmartCode: **Dryvit / EIFS** (refer to warrant section below, **staff comment A4**). (Refer to pages 42-43 in the Pattern Book for additional detail).
- i. *8-Story Office Building (Dark Blue)*: vertical aluminum sun shade finish, metal panel wall system, masonry veneer, aluminum curtain wall system, cast stone lintel, cast stone band, glass (refer to warrant section below, **staff comment A5**). (Refer to pages 44-45 in the Pattern Book for additional detail).
- j. *8-Story Hotel and Buildings R1 and R2 (Black)*: The applicant will need to apply for approval from the Planning Commission at a later date once the details have been decided.

4. *Street Improvements and Curb Cuts:* There will be three points of ingress / egress on this site. Driveway A is located on the northwest portion of the site, Arthurwood Drive is located on the northeast portion of the site and North Street access is located at the Southeast portion of the site. The applicant will be improving Poplar Avenue per TDOT's plans. The applicant is also providing a walking trail along the edges of the site.
5. *Parking Lots:* The applicant is providing 405 surface parking spaces and 1,659 parking spaces in four parking decks for a total of 2,064 parking spaces. With the shared parking ratio, only 1,575 parking spaces are required. (Refer to **staff comment F1**).
6. *Exterior Lighting:* The Lighting Plan submitted is for the overall development. Street lighting and lighting on parking decks and surface parking areas are all consistent with the SmartCode regulations. Lighting Plans for each individual storefront will need to be approved with the individual storefront plans. Lighting Plans for the two outparcel restaurants and hotel will require separate approvals. The Site Plan shows 140 SA PRM3-H3-100MH with 9500 lumens, nineteen SB1 Lithonia-AS2 400M SR3 HS with 34000 lumens, fourteen SB2 Lithonia-AS2 400M SR5S with 32000 lumens, eleven SB3 Lithonia-AS2 175M SR3 HS and twenty-eight SB Lithonia-AS2 400M SR3 light fixtures. According to the plan, the lighting will be 0.0 fc on the edges of the property. Refer to attached cut sheets and Lighting Plans. (Refer to warrant section below, **staff comments A6**).
7. *Garbage Collection Area:* Eight dumpsters shall service the development. In addition, the hotel and two outparcel restaurant buildings will need dumpsters. (Refer to **staff comment B5c**).
8. *Screening of Vents, Utilities, Meters & Mechanical Equipment:* The actual location of vents, utilities, meters and mechanical equipment is not known. The applicant has submitted a detail on the landscape plans showing typical screening of transformers and HVACs. Actual locations will need to be approved with the individual storefront plans.
9. *Landscaping:* The submitted plans do not meet City of Germantown standards. The applicant shall specify which planting shall go in which specific location and provide better details of each planting. The applicant is not requesting Final Landscape Plan approval at this time. (Refer to staff comments **section C**).
10. *Mailboxes:* N/A
11. *Signs:* Signs were not submitted with the application.

STAFF COMMENTS:

Staff Planner – Lauren Johnson

Staff Engineer – Tim Gwaltney

The Technical Advisory Committee (T.A.C.) met on March 12th and made the following comments:

- A. **REQUESTED WARRANTS** [numbering matches applicant's request, which includes the three warrants approved with Outline Plan Approval (See background on page 1)].
4. The applicant is requesting a warrant from Section 23-767(10)(b) stating that exterior finish material shall be limited to brick, stone, and/or hard coat stucco and from Section 23-767(11)(c) stating that balcony, galleries and arcades shall be limited to brick, stone, painted wood, metal or concrete. This provision specifically states that other materials may be

permitted by warrant. The applicant is requesting to use other materials, such as Hardiplank and EIFS, not allowed in the Code. The applicant has provided staff with the locations of where the bulk area will be made of material that will need warrant approval on page 11. Refer to pages 9 – 12 for justification.

The following are a few of the buildings in Germantown, which use EIFS in their façade material: Best Inn on Wolf River Blvd., Carrefour Mall, Germantown Village Square Mall, Germantown Athletic Club/GPAC, Hyatt Hotel, Village at Germantown, Comfort Inn at West Brierbrook and Wolf River Blvd. and Trustmark Bank at West Brierbrook and Germantown Road.

5. The applicant is requesting a warrant from Section 23-767(e) (5) stating that windows shall not exceed 50% of total building wall area for the office buildings. LEED requirements on natural lighting necessitate a warrant. The applicant has stated the percentage of fenestration proposed is 61.2%. Refer to pages nine and 13 - 14 for justification.
6. The applicant is requesting a warrant from Section 23-767(i) (5) stating that all street lights within the smart growth zoning districts shall be the standard MLGW decorative green fluted cast iron top streetlight due to its preference of metal halide lights over the high-pressure sodium lights used by MLGW. Details of the proposed street lighting can be seen on pages 9 and 15 -16 of the pattern book. Additional details will be provided with the final lighting plan application.
7. The applicant is requesting a warrant from Section 23-767(e) (13) stating that garbage dumpsters shall not be placed within the first layer of a lot nor shall they be within 150 feet of the property line of abutting, low density residentially zoned property that contains existing single-family uses.
 - a. The service courts located at the rear of the retail buildings forming the western end of the Park are located 106 feet from the western property line.
 - b. The service courts located at the rear of the retail buildings forming the western end of the Park are located 130 feet from the northwestern property line.

At each of these locations, the landscape screen is wider than required and each service court is completely screened by walls of at least six feet in heights plus landscaping. Refer to inserted pages nine and 16a of the pattern book for justification.

B. PRIOR TO FINAL LIGHTING PLAN APPROVAL

1. The lighting plan shall include the finish of the streetlights.
2. The lighting plan shall include all exterior lights for the residential areas.
3. The building-mounted luminaries shall not be over eight feet above the grade and shall be designed or shielded to direct light downward.
4. The parking garages shall either have four twenty-five foot poles, or replace all with fourteen-foot poles.
5. In accordance with the State of Tennessee Board of Architectural and Engineering

Examiners, “Any drawings prepared for the purpose of submittal to regulatory authorities must be sealed by the registrant.” As such, prior to approval, the applicant shall revise all plans to include the required seal and signature of the appropriate professional.

C. PRIOR TO FINAL LANDSCAPE PLAN APPROVAL

1. The applicant shall provide details of the gathering areas at the two ends of Main Street. Staff recommends outdoor benches and chairs in these areas.
2. The applicant shall specify which plantings shall be planted in what location.
3. The landscape plan shall contain a plant material schedule.
4. Provide a six-foot tall fence along the west and north property lines that abut residential property, as approved with the outline plan. The fence should be designed to minimize the size of footings to reduce tree root damage.
5. The landscape plan shall include details of the gathering areas on either side of Main Street.
6. The landscape plan shall provide the locations and details of all retaining walls and fencing.
7. In accordance with the State of Tennessee Board of Architectural and Engineering Examiners, “Any drawings prepared for the purpose of submittal to regulatory authorities must be sealed by the registrant.” As such, prior to approval, the applicant shall revise all plans to include the required seal and signature of the appropriate professional.

D. PRIOR TO BOARD OF MAYOR AND ALERMEN FINAL PLAN APPROVAL

1. The applicant shall submit its Public / Private Partnership Plan. This will be included in the Development Contract for the project.

E. PRIOR TO BOARD OF MAYOR AND ALERMEN CONTRACT APPROVAL

1. If it is anticipated that some buildings will seek certificates of occupancy before others, the applicant shall provide staff with a phasing schedule and traffic control plan. If the phasing plan is acceptable to staff, the development contract shall allow for partial acceptance for individual buildings. Initial acceptance will occur with the granting of partial acceptance for all buildings.
2. The Outline Plan shall be submitted with all owners and mortgagees’ signatures associated with the subject site. Once the BMA approves the Final Plan and Development Contract, the Outline Plan and / or the Final Plan may be recorded. This binds both parties to the submittal plans. See ordinances below:
 - a. Per Section 574(f), the recording of the Outline Plan “shall bind the applicant, owner and mortgagee, if any, and the Board of Mayor and Aldermen with respect to the contents of such plan.”
 - b. Per Section 575(e), “After a final plan is approved by the Board of Mayor and Aldermen, such plans shall be recorded after receipt of the resolution approving the final plan and any necessary contracts to provide improvements required in the subdivision regulations

and the required signatures for recordation have been secured.”

3. The applicant shall secure all easements, including temporary construction easements, associated with the following off-site improvements:
 - a. the Bavarian Village wall, if TDOT does not widen Poplar prior to BMA approval of this project development contract;
 - b. the Saddle Creek North fountain (West Farmington Partners, LP) , if TDOT does not widen Poplar prior to BMA approval of this project development contract;
 - c. Corporate Centre for the widening of North Street (including acquisition of right-of-way);
 - d. grading for the option parcel (Shops at Saddle Creek, Inc.); and
 - e. any other easement required for off-site construction.

F. PRIOR TO CONSTRUCTION PLAN APPROVAL

1. Per Section, 10-11 of the Code of Ordinances, all parking garages / structures / decks shall have an approved automatic sprinkler system installed in accordance with the City of Germantown Fire Prevention Bureau Fire Protection Development Standards.
2. Dumpster Enclosures:
 - a. The applicant will need to show how dumpsters will be screened. Per Section, 23-767 (e) (13) dumpsters shall be screened by a fencing that is composed of similar materials to the principal structure.
 - b. The applicant shall provide more details (finish, paint color, design, etc.) of the “ornamental metal gates” at the service areas.
 - c. The applicant shall screen the cooling towers on Parking Deck A4 with a decorative wall. The applicant shall provide details on the material, etc.
3. Drainage Comments:
 - a. All requirements of the Code of Ordinances, regarding floodways and fringe shall be met by the applicant. Prior to recording the final plat, the applicant shall submit a Conditional Letter of Map Revision (CLOMR) from the Federal Emergency Management Agency (FEMA), showing that the property has been brought above the 100-year flood elevation, if required. If not required, the applicant shall submit a letter from FEMA stating as such.
 - b. NPDES approval is required for the erosion control plans. Sedimentation shall not be permitted to exit the underground stormwater structure. The applicant shall submit the procedure used to ensure sediment does not exit the underground stormwater structure. This shall be submitted to TDEC with the SWPPP.

- c. All drainage plans including data for assessment of on-site detention requirements shall be submitted to the City Engineer's office for review.
 - d. The applicant shall show on the plans the specifications on how detention ponds are to be drained, mucked, and filled.
4. Sewer Comments:
 - a. All sewers should be under the public roadways. If not possible, the sewer shall be located within a public easement (i.e. the sewer manhole located outside the one-level shop around the plaza needs to be in an easement.)
 - b. The applicant shall provide abandonment procedure for the sewer bypass.
 - c. The applicant shall submit a phasing plan to show the existing sewer line going through the middle of the project to remain in service until the new sewer system is completed.
 - d. If the City has completed the downstream sanitary sewer project, the developer shall remove the bypass plan from its sewer plans.
5. A combination Utility Plan showing sanitary sewer / water / drainage lines, structures and individual service lines shall be submitted with construction drawings.
6. Water Comments:
 - a. The applicant shall comply with the City of Germantown Fire Prevention Bureau Fire Protection Development Standards. Specifically when submitting plans for the IFP, the applicant shall meet the criteria set forth in the Appendix section of Chapter 10, entitled Automatic Fire Sprinkler Systems.
 - b. The water main goes under the box detention in the Northwest corner; this is the wrong clearance.
7. Traffic Comments:
 - a. The applicant shall submit recommended traffic signal modifications to the City Engineer's office, if necessary.
 - b. All proposed striping should conform to TDOT standards for Poplar Avenue. The applicant shall provide a striping plan for the modifications to North Street and McVay Road.
 - c. A street signage plan shall be provided at the time construction plans are submitted. All public streets shall be green in color, private street signs shall be blue in color and are to meet the Manual on Uniform Traffic Control Devices (MUTCD) specification and approved by the City Engineer.
 - d. The applicant shall stripe the new crosswalk on Willey, Rhineland and Vienna if the Poplar Ave. improvements are not done by TDOT.
 - e. If not completed by TDOT, the applicant shall ensure that all handicap ramps on the

north side of Poplar Ave. conform to the current ADA standards.

8. North Street Comments:
 - a. The applicant shall design the improvements and show the improvements on the North Street plans.
 - b. Widening North Street could compromise the structural integrity of the Corporate Center wall. The applicant shall verify the structural integrity.
9. All modular retaining walls are to be a maximum of 10 feet in height. Heights greater than 10 feet, which are expected along the west property line behind the houses on Miller Farms, will require terracing or other approved measures. The applicant shall provide these details.
10. The applicant shall replace all references to the "City of Lakeland" to the "City of Germantown" on the Tree Protection Plan.
10. The applicant shall install curb and gutter to the entire length of the service road located behind the office building and parking garage A4.

G. GENERAL REQUIREMENTS

1. Subsequent Approvals:
 - a. The applicant will need to return to the Planning Commission for Final Landscape Plan Approval.
 - b. The hotel location and height was approved in the Outline Plan; however, site plans have not been finalized. These shall be approved with a subsequent Final Plan submittal and review specifically for the hotel.
 - c. The two outparcel restaurant locations were approved in the Outline Plan; however, site plans have not been finalized. These shall be approved with a subsequent Final Plan submittal and review specifically for the outparcel restaurants.
 - d. Prior to approval of any future development, the applicant shall submit a new traffic study. A railroad crossing, an additional access point to West Street, and/or other measures may be necessary for the additional square footage included Future Development. Any future development will require an amendment to the Outline Plan.
 - e. If the parking garages are to become public, an amended final plan shall be submitted indicating the necessary access easements.
 - f. Enclosed with this staff report is the proposed Maintenance Agreement (MA), which stipulates the manner in which the public infrastructure on this site will be managed by the developer. The MA will be approved with the contract by the BMA.
 - g. Enclosed with this staff report is the Fiscal Impact Analysis (FIA), which details the potential economic impact of this project. The FIA will be reviewed by the Industrial Development Board and BMA as they contemplate issuing bonds for the construction of this public infrastructure of this project.

2. All information concerning the hotel and two outparcel restaurant buildings shall be disregarded. Only the footprints have been approved by the Planning Commission.
3. Awnings will be reviewed with the individual storefronts.
4. All signage (banners, etc.) shall be disregarded. Signage approval will be through the Design Review Commission.
5. Sewer Comments:
 - a. The North Street sewer line and the McVay Road water line shall remain active during and after construction.
 - b. The plans say the existing sewer shall be removed / abandoned. If the line is deeper than ten feet, measured from existing grade, the pipe may be abandoned. If the line is shallower than ten feet, measured from existing grade, the pipe shall be removed.
 - c. One copy of the State-approved sanitary sewer and water plans shall be provided to the Engineering Division. Construction of the sanitary sewer and water system shall not begin until these approvals are received.
6. Water Comments:
 - a. Irrigation systems shall not be located within the right-of-way. The only exception would be within a median where irrigation is required.
 - b. The City of Germantown Fire Department requires that the applicant provide an approved water supply and driving surface prior to bringing any combustibles on site.
7. Individual tenant storefront elevations that do not adhere to approved materials in the pattern book will be reviewed and approved by the City staff prior to issuance of a building permit.
8. Drainage Comments:
 - a. If a Letter of Map Revision is required for:
 - i. Residential Development: A LOMR must be submitted to FEMA before the final plat is recorded.
 - ii. Commercial Development: A LOMR must be submitted to FEMA before a Certificate of Occupancy is granted.

Once the LOMR has been approved and received from FEMA, the revised floodplain/floodway elevation shall be shown graphically on the final plat. The developer/engineer will then have the final plat re-recorded to reflect this revision.
 - b. All construction activities of one acre or more must be permitted through the EPA Phase II Final Rule NPDES permit coverage. If the project reuses all stormwater runoff for irrigation, a NPDES will not be required.
 - c. All unenclosed watercourses lying partially or wholly within the boundary of this

development site shall be constructed to an adequate cross section to provide design flow without threat of erosion or flooding of any property within the development site of adjoining property. Such watercourses shall be stabilized in a manner satisfactory to the City Engineer and any other agencies that may have jurisdiction.

9. Proper erosion control and drip line tree protection measures shall be in place before clearing begins and regularly maintained throughout the construction phase until all areas are stabilized to the satisfaction of the City Engineer and TDEC. Upon completion of the project, a Notice of Termination (N.O.T.) shall be provided to the City's Engineering Division.
10. Traffic Comments:
 - a. Street names shall be approved by MLG&W. A copy of MLG&W Street Name Approval Form shall be submitted to the City's Engineering Division.
 - b. All traffic control devices, signage and striping shall be installed by the developer as per the MUTCD and approved by the City Engineer. The applicant shall submit a Striping and Signage Plan.
 - c. The design, location and number of curb cuts along Poplar Avenue and West Street shall be approved by the State through the City Engineer's office.
 - d. All drives shall be constructed to meet City standards and be a minimum pavement width of 26 feet inclusive of gutter.
11. Existing infrastructure that is not required for this development must be properly removed, relocated, abandoned, etc., in accordance with all local, State or Federal regulations. These items include, but are not limited to, wells, septic tanks, storage tanks, buildings, gas facilities, etc. Verification / certification of proper closure and / or removal must be submitted to the City's Engineer Division from the appropriate agency.
12. The applicant is required to include the following formal written statement by a certified and licensed professional engineer to be placed on the grading and drainage plans, signed, dated and sealed:

I, _____, a duly licensed professional engineer in the State of Tennessee, hereby certify that I have designed the drainage in accordance with the Design Standards of the City of Germantown and have considered upstream and downstream conditions that affect drainage to include topography, present and future land use, existing zoning, and location of natural water courses.
13. All survey data shall be tied to Tennessee State Plane Coordinates and the City of Germantown monumented survey control for Final Plan approval. The Final Plan, construction drawings and "as built" plans shall be submitted on electronic media in a format acceptable to the City.
14. The applicant/developer during the construction phases of the project shall do the following:
 - (a) Keep all streets clear and free of dirt and debris;

- (b) Ensure that all construction activity begins no earlier than 7:00 a.m. and ends no later than 6:00 p.m., Monday thru Saturday, and no construction activity shall be permitted on Sundays; and,
- (c) Provide the Department of Economic & Community Development with the name, address and phone number of person(s) to be contacted and responsible for correcting any of the above should the occasion arise to do so.
- (d) Any developer/contractor/subcontractor performing work in the City of Germantown valued over \$50,000 must possess a business license from the City prior to construction. The Finance Department can be contacted at (901)757-7280 for all the necessary forms and fees.

Staff Recommendation: Approval.

Smart Growth Review Subcommittee: (Dave Klevan, Chairman):

The Smart Growth Review Subcommittee met on March 18, 2009, and recommended approval. The Commission questioned whether or not the applicant would need to reapply to the Planning Commission if the location or amount of warranted materials were amended. If any revisions or alterations are minor, they may be reviewed administratively. (See below).

Sec. 2-176. Authority of the Development Director.

- (a) The Development Director shall have the authority to approve application relating to the following:
 - (1) Minor revisions to existing or approved architectural elements for a development in any zoning district. Minor revisions are alterations to the approved plans that maintain the major design elements but change, add or delete components of those elements due to changes in the availability of natural materials, unique needs of tenants, oversights in initial planning and similar events, and include, but are not limited to:
 - a. Exterior material or color changes that affects a minor area of each wall of building;
 - b. Changes to exterior roofing, masonry or siding material or color that are similar to the approved material/color and maintain the original intent;
 - c. Changes to exterior approved lighting features that are similar to the approved material/color and maintain the original intent;
 - d. Changes to approved landscaping that will substitute plants that will perform their intended purpose as well or better than the approved material;
 - e. The addition of accessory structures including, but not limited to: power transformers, emergency generator enclosures, dumpster enclosures, utility equipment and flagpoles, as long as said structures are not larger than 150 square feet.
- (b) If the development director determines an application is ineligible for administrative review, the applicant can make a submittal for the next commission meeting. If the development director does not approve the application, the applicant shall be advised of his or her right of appeal to the commission.

Roy Vice of Poag and McEwen, 6410 Poplar Avenue, Suite 850, described in detail the buildings and materials from which they will be constructed. He further stated the ways in which the materials for which warrants are requested will be used for the detail of the buildings. He justified the warrants by stating that they will form the details of buildings that, 100-years ago would have been of the primary materials.

Greg Lawson, 7480 Willey Road, stated his concerns on overall impact on the neighborhood and wants Willey Road closed or made into a right-in/right-out.

Sarah Freeman, 7684 Apahon Lane, voiced concerns over the process in which this Smart Growth project has been approved. She feels that some review should take place based on what the original site plan intended by a true Smart Growth expert, who has no conflict in this community because of all of the warrants that have been granted. This is really not Smart Growth anymore, it is something else. If we could get some sunshine as to who the other principals involved are, because there has been some conflict of interest.

Cary Mitchell, 7621 Willey Road, stated a traffic suggestion, to move the traffic signal. He is opposed to the traffic plan and has some concerns about the traffic flow. The Smart Growth Outline Plan is different from the current outline plan.

Kipp Butts, 7333 Magnolia Ridge Drive, stated he predicts a lot of traffic will flow through his neighborhood, which has not been adequately addressed. The Smart Growth Plan is neither pedestrian nor bicycle friendly.

Alderman Drinnon asked how long has this project been discussed?

Andy Pouncey noted two years. We thought we were going to have it in the ground this year. We hired the Lawrence Group after going through the Vision 2020 process in 2004-2005. They worked with us from September 2006 through the following year. They continue to work with us in smaller areas like the Municipal Park Master Plan.

Alderman Drinnon stated that he is aware of the ongoing work with the Lawrence Group, but that he wanted to remind those in attendance of the timeline of this Smart Growth project. While you are speaking, I know you and Mr. Cook have instructed the staff to be very sensitive to the development of the project in as much as it can hurt Smart Growth plans, but was necessary to ensure the process was carried through. Would you address the traffic situation that Mr. Mitchell mentioned because I am sure that it is important to all of us? Also, the effect that the restaurant will have on the people of Willey Road.

Andy Pouncey stated, if you remember, they requested two (2) lights, one was at Driveway A and one was at Arthurwood Drive. We did some analysis work and talked with the TDOT officials in Jackson and Nashville, and we determined that there was not just cause for the light. If you propose a traffic signal, justification for it (warrants) must exist. A couple of things as we went through to get the light at Arthurwood Road. That was located itself on the crest of a hill, and you automatically create a blind spot. Most people want to talk about Phase 1 and Phase 2 and all this, but this whole project is just one development under consideration. The green area is labeled Future Development. For future development on the south side, they would have to have south access. That is something that has not been worked out. Therefore, until those issues are resolved, we are happy with the access that is shown on the plans.

Mr. Gwaltney noted, going back to the original proposal on this site, there was a request for a signal at Driveway "A", and in that traffic study, and it pointed out the problems with potential backup at Driveway "A" beyond Miller Farms Road. The way that we were going to address that issue was a second traffic signal at Miller Farms Road. Therefore, in effect we would have four traffic signals within a fifteen hundred foot length from Farmington Road to Miller Farms Road. TDOT well as staff rejected that idea. There are no signals proposed for Miller Farms Road or at Driveway "A". Driveway "A" is a right-in/right-out/left-in access. We have been in contact with TDOT on the Poplar Avenue improvements project, which is now moving forward for the end of this year. The result is that before Saddle Creek is opened, the Poplar improvements have to be done. TDOT is on schedule to start construction before the end of this year on those road improvements. You mentioned access to the south

– North Street coming onto West Street. What has also been discussed along with an additional traffic study was access at this point: North Street onto West Street. If Germantown Road is realigned, and it is under design as we speak, that access from North Street will have to be modified. It will have to be modified into a right in/right out. The traffic projections for that area will be rerouted through the traffic analysis. The arterial travel time along Poplar does increase beyond what is there today. I believe the additional travel time along Poplar from New Riverdale to Germantown Road is going to be roughly in the 30-35 second timeframe.

Andy Pouncey stated that ever since we started the review process with Poag and McEwen, and I can say this about most developers, we have worked as a team. I always have felt like the rest of the community has been a part of this too. We have met sometimes as often as three times a month, and we sit down and work together. That has facilitated the process. We have always been working together and, we have disagreed with each other, but we have always tried to follow the principles of Smart Growth. There is more to it than a six-story building or an eight-story building. There is a sense of place. There is a strong relationship between the retail, the office and the residential, and that is what Smart Growth is all about. This is a huge project. Just think, you are creating a huge project with new residential units, and you are dropping that into the middle of the City. That is a real challenge. The neighbors have a 150-foot setback along the entrance driveway. Staff has worked very hard on this project and I would applaud them for working with the developer and look forward to the next development.

Alderman Drinnon asked do you feel comfortable with the progress of this project at this point from the standpoint of the impact of traffic and setbacks and the aesthetics, such as that?

Andy Pouncey say yes from two perspectives. One is, the quality of development. We are looking for something to set the bar from the very start. You do not want to start the bar out low with low expectations. We expect the best, and I know they do too. That is what we expect to come from the table and we present it to you.

Alderman Drinnon asked Mr. Cook, do you feel comfortable with the project up to this point from the respect of traffic, aesthetics, setbacks, impact on the neighboring areas?

Mr. Cook answered I do. I think there are several different reasons for that. When you look at traffic, when you look at utilities, when you look at infrastructure and the specific details of the building that is going into this development, I would feel very comfortable with the plans that have been presented. I know there are a lot of issues and a lot of discussion about the traffic. I think from the staff's standpoint, we have taken the traffic information that the developer has provided to us over the past two years, we have had our own engineering staff review that numerous times. We also had an independent traffic consultant work with us reviewing the traffic analysis, and we do feel comfortable that the proposed improvements that are going to be made by the developer on-site as well as off-site, will be able to accommodate this development at an acceptable level of service. One of the things that we have been looking at very recently, TDOT has the improvements of Poplar Avenue as a project that they are going to proceed on with and, like Mr. Gwaltney indicated, they are scheduled to stay on track. They may very well put this project out for bid in September. That remains to be seen if that schedule can even happen. Also, in looking at the details of the Poplar Avenue improvements, as it specifically relates to lane striping and the way the lanes are going to be set up, one of the things we have been in conversation with TDOT about is how they can accommodate a right-in/right-out on Willey Road. In my mind, that brings up two things. It not only helps the volumes of traffic on Willey Road, it also allows a little more free-flowing movement on Poplar Avenue by taking out some of these potential left turns off of Poplar Avenue onto Willey Road. With utilities, traffic, and the Smart Growth concept plan, I do feel comfortable with that.

Mr. Pouncey added that if you have this project go in, it will be very hard to say, this is how it was and this is how it is now because in the next five years, you are going to see Wolf River Boulevard constructed, which will take traffic off Farmington; it will lighten up the load at this intersection out here. If we do the realignment of Germantown Road, that is going to cut traffic off West Street, and send it straight through town down south of Germantown Road. When this development comes along, not to mention the hospital, there is going to be so much going on.

Mr. Gwaltney noted that the latest word from TDOT is that it should be bidding by the end of this year.

Mr. Pouncey continued that there is going to be so much construction going on, it is going to change people's driving patterns and set up new routes for folks. Let the dust settle and see what comes out.

Alderman Drinnon thanked the staff that spent the time on this project, especially the Assistant City Administrator. Since this is a first, we want it done right. Mr. Cook, the Director of Development for the City of Germantown, who has overseen the direction of the development in the City for a number of years. A lot of this is technical and the Planning Commission relies on your expertise. I want to express our appreciation to the staff.

Sarah Freeman, 7684 Aphon Lane, asked if the Lawrence Group signed off on this project as Smart Growth.

Andy Pouncey stated no. We did not need the Lawrence Group to sign off on this project. They set up the framework for warrants and codes. Warrants represent that flexibility in the system that still meets the intent of Smart Growth. Therefore, we took the Lawrence Group's master plan and the SmartCode, and followed the basic principles to achieve the result that we wanted to establish a sense of place, better commercial and office developments that have mixed use developments, greater density and one or two more things. That was our ultimate goal. We were given the framework from Vision 2020 we were given the code and warrants, which gave us flexibility within all that to be a trendsetter. This complies with the SmartCode.

Dike Bacon asked did we look at the closing of Willey Road and Miller Farms.

Tim Gwaltney stated our staff has looked at it. Traffic counts do not justify any modification of Willey Road at Poplar Avenue. There are projections that suggest right-in/right-out only modification might be warranted. As far as a complete closure of the road, we have not pursued that any further it would not be an engineering decision. The data does not indicate with even projected traffic that there is anything to justify closing the road. It would be a political decision to do that. We have not performed a traffic count in-house for Miller Farms Road as of yet. Today counts do not justify any modification. It can be look at again after the Saddle Creek traffic is realized.

Greg Lawson, 7480 Willey Road, stated he bought his house in November 2006 and I do love this City. He also noted I am happy with the way things are and I have had good experience with the staff here. We have been talking about this development for two years and traffic has been discussed but there is a lot of anxiety for those of us in Germantown Heights as to having to wait and see what might happen. The traffic study was done and there were six hundred cars that came down our street daily and with this large development placed across the street, it will increase the traffic flow.

Cary Mitchell, 7621 Willey Road, stated my understanding that the traffic flow will increase through Farmington Road, but since you are making a double left turn on to Germantown Road North, then we won't have any more problems with the back up traffic. He noted that the warrants have changed the plans. He mentioned changes and promises of Pulaski Bank landscaping being too small.

Kipp Butts, 7333 Magnolia Ridge Drive, noted there has not been any internal traffic study done in the Timbers Subdivision and we have no sidewalks for the safety of the children riding bicycles. Logic says cut-through traffic will increase.

Forrest Owens asked if that traffic study could be done.

Tim Gwaltney stated yes we can. The reason it has not been done is due to having one traffic counter and we now have three. The one traffic counter was in conformance use.

PROPOSED MOTION 1: To amend Paragraph VIII (D) of the Saddle Creek IV Outline Plan Conditions to read “legislative body.”

Ms. Parker moved to amend Paragraph VIII (D) of the Saddle Creek IV Outline Plan Conditions to read “legislative body”, seconded by Mr. Bacon.

Chairman Klevan asked for a roll call.

Roll Call: Bennett – yes; Burrow – yes; Drinnon – yes; Parker – yes; Bacon – yes; Harless –absent; Owens - yes; Klevan – yes. **The motion was passed.**

PROPOSED MOTION 2: To grant Final Plan approval, including the following warrants:

1. To allow exterior finish materials on buildings identified in the plans submitted with this staff report that are not specifically allowed in the SmartCode.
2. To allow windows on the facades of the office building identified in the Final Plan to exceed 50% of the total building wall area.
3. To allow streetlights that are not identified as standard MLGW streetlights.
4. To allow garbage dumpsters within 150 feet of the property line of abutting, low density residentially zoned property that contains existing single-family uses.

Subject to staff comments and plans submitted with the application.

Ms. Parker moved to grant Final Plan approval, including the following warrants, seconded by Ms. Burrow.

Chairman Klevan asked for a roll call.

Roll Call: Bennett – yes; Burrow – yes; Drinnon – yes; Parker – yes; Bacon – yes; Harless –absent; Owens - yes; Klevan – yes. **The motion was passed.**

PROPOSED MOTION 3: To grant Preliminary Landscaping Plan and Preliminary Lighting Plan approval.

Ms. Parker moved to grant Preliminary Landscaping Plan and Preliminary Lighting Plan approval, seconded by Mr. Owens.

Chairman Klevan stated this has been a long process over a two-year period and there have been five distinct entities involved heavily in all the discussions going on. I would like to thank all those people publicly. One of the great things we did was incorporate the input of the Design Review Commission (DRC) and Economic Development Commission (EDC) into the discussion, instead of keeping them all separated and moving the developer from one to the other. It was great idea for the Smart Growth Plan. Last year in 2008, Keith Saunders, John Walker, Mike Harless and Lyle Muller gave us input from different commissions. This year in 2009, Ralph Smith, Jerry Klein, Brian Pecon and Keith Saunders gave us some great input we would have never been able to understand some of the things we discussed. We thank all of them for their hours of community service. The second is the staff; Andy Pouncey, Jerry Cook and his entire Development Staff spent hundreds and hundreds of hours with all the paperwork. The third is the developer Poag and McEwen and Roy Vice with the time, effort and patience to keep this project moving. The fourth is our commission. We have had two changes this year, all who have spent hundreds and hundreds of hours going over piles of paper and trying to digest on something this brand new. We are not experts or developers. We are citizens and our job is reading and trying to take direction from the staff and come with the best opinions that we can voice on behalf of the citizens. The fifth is all the residents that have been involved. It is the input from everyone that makes the process work. When you add all five elements together, there is no way that every effort has not been made to ensure that this project is in the best interest of the community, the citizens and all others involved.

Chairman Klevan asked for a roll call.

Roll Call: Bennett – yes; Burrow – yes; Drinnon – yes; Parker – yes; Bacon – yes; Harless –absent; Owens - yes; Klevan – yes. **The motion was passed.**

4. Private Street Conversion Ordinance and Amendment to *Private Street Standards Policy*

BACKGROUND: The March 2007, Planning Commission Subdivision and Site Plan Subcommittee requested that Planning Division staff draft a policy or ordinance concerning the technical specifications for proposed developments with private streets. A policy detailing the technical specifications for private streets was approved by the Planning Commission on July 1, 2008. This policy, the *Private Street Standards Policy*, is attached to this staff report.

DISCUSSION: Two actions of the Planning Commission are requested with this item: 1) approval of a Private Street Conversion Ordinance, which will detail the procedure and specifications for public-to-private and private-to-public conversions, and 2) amend the *Private Street Standards Policy* to reflect requests by City staff and Planning Commission members since its original passage in 2008. Private streets are mentioned only once in the City's Code of Ordinances (Section 17-56 (d)):

There shall be no private streets platted in any subdivision except as may be approved in accordance with section 17-65 (the PUD Ordinance).

This brief citation is inadequate to address the many facets of private streets, including minimum construction standards for new private streets, requests by neighborhoods to convert public streets to private and vice versa and requests by associations and developers to install gates on private streets. The proposed ordinance addresses these issues either in its content or through its referencing to the *Private Street Standards Policy*. Deletions to both documents are indicated in ~~strikethrough~~; additions indicated in ***bold, italics***.

PROPOSED ORDINANCE:

Sec. 17-56. Streets.

~~(d) There shall be no private streets platted in any subdivision except as may be approved in accordance with section 17-65.~~ **Private streets. Private streets shall adhere to the following regulations:**

(1) Planning commission authorization.

The planning commission shall be authorized to approve the construction of private streets and the installation of gates, barricades or other barriers that limit the free movement of traffic. All private streets shall meet or exceed the city standards as outlined in the private street standards policy. These city standards are deemed necessary to protect the health, safety and general welfare of the residents of the city and to assure that private streets are designed, built and maintained to acceptable standards in the event they must be converted to public streets at a future time. All subdivisions with private streets shall be developed and maintained in compliance with these city standards.

(2) Failure to maintain private streets and related improvements.

The city shall have no obligation to maintain any private street or related improvements; however, in the event any private street or related improvements are not maintained properly, and after a public hearing before the board of mayor and aldermen, the city may exercise its right to take any and all actions necessary to bring the private street and/or related improvements up to the city's minimum standards for the health, safety and welfare of the city's residents. The Board of Mayor and Aldermen may authorize the city administrator and city attorney to take any necessary legal action to recover the cost of repairs from homeowners associations, individual property owners and/or other responsible parties.

(3) Disaster response.

The city shall reserve the right to limit its disaster response within a private street subdivision, such as collection of brush and debris, street clearing and similar measures, based on the availability of state or federal disaster relief funding.

(4) Conversion of private streets to public streets. Private streets may be converted to public under the following stipulations:

(a) The planning commission shall have the authority to review the conversion of private streets to public, dedicated streets. Prior to submittal to the planning commission, a proposal for a private-to-public conversion must be accompanied by a revised plat reflecting said conversion and appropriate utility easements, a petition from the required percentage of homeowners in the private street subdivision as outlined in the homeowners' association's master deed or bylaws and a copy of the section of master deed or bylaws where the percentage is enumerated.

(b) The planning commission shall have the authority to reject a submittal for a private-to-public conversion based on the technical standards of the private street(s) proposed for conversion. These technical standards include, but are not limited to the following:

- i. Water infrastructure must meet City standards.*
- ii. Sanitary sewer infrastructure must meet City standards.*
- iii. Stormwater infrastructure must meet City standards.*
- iv. Street subsurface must meet City standards.*
- v. Curb and gutter subsurface must meet City standards.*

(c) *The planning commission may consider approving a private-to-public conversion for private streets that do not meet City standards in the following areas:*

- i. Curb and gutter type, provided sufficient base is provided.*
- ii. Street width provided adequate emergency access can be utilized through parking restrictions.*
- iii. The absence of sidewalks on both sides of the street.*

(d) *Per section 17-56 (b), of this code, the planning commission shall have the authority to reject a submittal for a private-to-public conversion if the subject subdivision is not connected to surrounding streets.*

(e) *All street infrastructure, including but not limited to street pavement and subsurface, curbs and gutters, stormwater infrastructure, sanitary sewer services, water services and sidewalks shall become public with a private-to-public street conversion. However, parking spaces, parking lots and alleys are not eligible for designation as public right-of-way.*

(f) *The homeowners association of a subdivision or development requesting the conversion of private streets to public streets shall bear the full cost for surveying, plat recording, redesign, inspections, testing, certification and construction modifications required to bring streets into conformance with the technical standards and construction provisions for public streets and other improvements required in the city's subdivision regulations. In addition, the Board of Mayor and Aldermen shall establish reasonable application fees to recover administrative and legal costs associated with the review and processing of the application for conversion.*

(g) *The board of mayor and aldermen shall have final authority to accept a private street for perpetual maintenance by the city, and may impose minimum requirements of a property owners association or property owners to bring substandard private streets and other improvements up to city standards prior to acceptance by the city. In the event upgrades are made, the property owners association shall post a bond or letter of credit to provide a one-year warranty period for the upgrades. The Board of Mayor and Aldermen may reject any request if, in its opinion, acceptance of the streets would create an undue financial burden or excessive liability risk for the city.*

(h) *In the event a private street is converted to a public street by action of the board of mayor and aldermen, the homeowners' association shall remove any gates, barricades or other barriers that prevent the free movement of traffic, and install appropriate regulatory signs, street marking and street signs consistent with city standards within 30 days of the board of mayor and aldermen action. These costs shall be paid by the homeowners association and not by the city.*

(i) *In the event a homeowners association is unable to pay for the costs associated with a private-to-public street conversion, the board of mayor and aldermen may authorize the city administrator and city attorney to take any necessary legal action to recover the cost of repairs from homeowners associations, individual property owners and/or other responsible parties.*

(5) Conversion of public streets to private streets.

(a) *No public street within a subdivision may be converted to a private street except as follows:*

1. *No existing subdivision shall be eligible where the creation of private streets and gated communities would eliminate traffic movement between existing subdivisions or prevent reasonable vehicle access for development of future subdivisions on tracts adjacent to the site.*

2. *An application for conversion of an existing public street to a private street shall be accompanied by a petition containing the signatures of one hundred (100) percent of the lot owners in the subdivision. The petition shall be accompanied by a map, referenced in the text of the petition that designates the boundaries of the subdivision. The text of the petition shall identify a contact person representing the subject property owners, including address and telephone. The text shall also include an acknowledgment that the proposed change in street designation, if approved by the city, may affect both routine municipal and other emergency service delivery, will result in the elimination of street maintenance and associated services by the city and will result in the assessment of maintenance fees by a legally incorporated homeowners association to meet ongoing and future street maintenance obligations.*

3. *The incorporated homeowners association shall be responsible for all costs to convert a public street to a private street, including the costs associated with changing street identification signs, if necessary.*

4. *The conversion of a public street to a private street shall be processed through revisions to the existing final plat for the subdivision. In addition, the lot owners shall be required to meet all of the general, technical, legal and financial requirements for private street subdivisions as specified in this article, the city's subdivision regulations and the private streets standards policy.*

5. *The Board of Mayor and Aldermen shall establish reasonable application fees to recover administrative and legal costs associated with the review and processing of the application for conversion of a public street subdivision to a private street subdivision. In addition, the cost of all submissions required under this article shall be paid by the applicant.*

(b) *Any application by property owners requesting redesignation of a public street as a private street shall be subject to review and recommendation by the Planning Commission prior to formal consideration by the Board of Mayor and Aldermen.*

(c) *The board of mayor and aldermen shall have final authority to approve or reject the conversion of a public street to a private street, and may approve such conversion subject to any additional conditions that the board deems necessary for the public health, safety and welfare of the petitioning property owners and the residents of the city.*

PROPOSED MOTION: To approve the amendments to the *Private Street Standards Policy* and recommend approval to the Board of Mayor and Aldermen an amendment to the Private Street Ordinance in the Subdivision Regulations.

Mr. Owens moved to approve the amendments to the *Private Street Standards Policy* and recommend approval to the Board of Mayor and Aldermen an amendment to the Private Street Ordinance in the Subdivision Regulations, seconded by Alderman Drinnon.

Chairman Klevan asked for a roll call.

Roll Call: Bennett – yes; Burrow – yes; Drinnon – yes; Parker – yes; Bacon – yes; Harless –absent; Owens - yes; Klevan – yes. **The motion was passed.**

(see attached document for amendments to the Private Streets Standards Policy)

City of Germantown Private Street Standards Policy

- (a) Code of Ordinances
This policy is in accordance with Section 17-56 (d) of the Germantown Code of Ordinances.
- (b) Homeowners association
All subdivisions/PUDs with private streets must have an incorporated homeowners association.
- (c) Maintenance
The maintenance of all private streets, as well as all other private infrastructure and common areas, shall be the responsibility of the homeowners association. Private streets shall be maintained to City standards by the homeowners association. The City reserves the right to cite and fine the homeowners association that does not maintain its private streets to City standards. The City also reserves the right to repair private streets to City standards and recover the costs thereof from the homeowners association.
- (d) Surface and subsurface of roadway
The surface and subsurface materials of private streets shall meet or exceed the established standards for public streets, per the Subdivision Regulations (Chapter 17 of the Code of Ordinances) and the policies of the City's Public Services and Engineering Division.
- (e) Street details
 - i. Drivable surface. For the purpose of this policy, drivable surface shall be defined as the section of roadway that is suitable for sustaining fire equipment. Several scenarios are listed below for clarification:
 - 1. Standard curbs and gutters. Standard city streets are 30 feet in width from face-of-curb to face-of-curb. Standard city streets include 6-30 curbs and gutters (curbs that are 6 inches in height and 6 inches in width and gutters that are 24 inches in width). All curbs and gutters must be 6 inches below grade and constructed on a standard subsurface. Gutters without the appropriate subsurface are not to be included as part of the drivable surface of a street. TDOT No. 12 inlets are utilized as the standard drainage structure on these gutters.
 - 2. Other street edging. Standard, 6-30 curbs and gutters may be substituted with other forms of street edging, provided that the drivable surface on private streets is at least 24 feet in width. 6-18 curbs and gutters (curbs that are 6 inches in height and 6 inches in width and gutters that are 12 inches in width), rollover curbs, valley gutters and other forms of non-standard gutters may not be included as part of the drivable surface of the street. Concrete bands may be included as part of the drivable surface of

the street, provided a proper subsurface is constructed beneath the concrete bands so it can sustain fire equipment.

- ii. Streets with on-street parking. The minimum width of private streets with on-street parking shall be the same as public streets, 30 feet from face-of-curb to face-of-curb. Any variance from this section must be explicitly approved by the Planning Commission. When considering variances on street width, the Planning Commission shall adhere to the following:
 1. The absolute minimum face-of-curb to face-of-curb width of private streets with on-street parking shall be 26 feet. The minimum drivable surface of private streets shall be 24 feet.
 2. The density of the proposed development shall be taken into consideration. Developments with lots of more than 100 feet of street frontage (exclusive of lots fronting cul-de-sacs) enable greater spacing between vehicles parked on the street.
 3. The inclusion of alleys in a proposed development shall be taken into consideration. Lots with rear alley access typically lack curb cuts along their street frontage, enabling greater spacing between vehicles parked on the street.
 4. The number of units in a proposed development shall be taken into consideration. Streets that carry the collective traffic of less than 30 lots or units have lower traffic counts, and therefore may require less width than streets that carry the collective traffic of 30 lots or units or more.
 5. All housing on streets of less than 30 feet of face-of-curb to face-of-curb width with on street parking must be sprinkler protected. A note to this effect shall be provided on the plat.
- iii. Streets with parking stalls. Private streets with parking stalls in lieu of on-street parking shall have a minimum 24 feet of drivable surface width. Parking stalls shall adhere to the following provisions:
 1. Number. Typically, at least ½ spaces are provided for every lot in medium- and low-density developments (average lot size of at least 10,000 square feet; see examples below). Denser developments (average lot size of less than 10,000 square feet) may require additional parking stalls, as there will be less opportunities for turnaround drives in front yards.
 2. Location. Parking spaces shall be provided within reasonable walking distance to all lots.
 3. Style. Parking spaces may be perpendicular, angled or parallel to the street.
 4. Size. Individual parking spaces shall be 180 square feet, dimensioned either at 10 feet wide by 18 feet long or 9 feet wide by 20 feet long.

5. Drivable surface. Parking stalls shall be entirely outside of the 24-foot minimum drivable surface width of the private street.
6. Signage. Adequate signage restricting parking-to-parking stalls shall be provided in appropriate locations throughout private street subdivision/PUDs.
- iv. Medians and islands. The drivable surface width for one-way sections of streets around medians and islands shall be 24 feet for streets with on-street parking and 18 feet for streets without on-street parking or with on-street parking in stalls. The only exception shall be in the locations of call boxes and gates (see Section (k) (iii) below).
- v. Connectivity. In all instances, private streets of less than 30 feet of face-of-curb to face-of-curb width shall not connect into public streets for through traffic.
- vi. Cul-de-sacs. Cul-de-sacs shall be 80 feet from face-of-curb to face-of-curb (or edge-of-pavement to edge-of-pavement for streets without curbs). Cul-de-sacs of less than 80 feet in diameter may be permitted, provided on-street parking is restricted and rollover curbs and additional pavement are provided to the satisfaction of the Fire Marshal.
- vii. Alleys. Alleys shall have a minimum edge-of-pavement to edge-of-pavement width of 18 feet.
- viii. Design speed. The minimum design speed of private streets shall be at least 30 miles per hour. The SmartCode (Section 23-795, Table 2B, "Thoroughfare Assemblies," of the Code of Ordinances) permits streets with design speeds of less than 30 miles per hour; any streets with a design speed of less than 30 miles per hour, be they in a Smart Growth Zoning District or not, must be specifically approved by the Planning Commission as a variance from this policy.

(f) Sidewalks

Sidewalks shall be provided on both sides of all private streets. Private streets with no sidewalks or sidewalks on only one side must be explicitly approved by the Planning Commission. When considering a variance on sidewalks, the Planning Commission shall take the following into consideration:

- i. Aesthetics/density. Denser subdivisions (average lot size of less than 10,000 square feet) are often built in an urban style with vertical curbs and smaller front yards. Typically, sidewalks are part of this urban template. Larger-lot subdivisions (average lot size of more than ½ acre) are sometimes built in a more rural style, sometimes with no vertical curbs, that preserves existing grading and landscaping and may conflict with sidewalks on both sides.
- ii. Safety/road width. Private streets with less than 30 feet of face-of-curb to face-of-curb width may require sidewalks to provide a separation between vehicular and pedestrian traffic.

iii. Units. The number of units on a particular private street shall be taken into consideration, as this will increase the vehicular traffic along a given roadway.

(g) Intersection radii

Intersection radii at face of curb for minor public streets are 35 feet. Intersection radii at face of curb for private streets may be less than 35 feet, to a minimum of 15 feet, provided street width and on-street parking restrictions allow proper fire department movement.

(h) Sanitary sewer

Sanitary sewer infrastructure shall be public and constructed to city standards. A permanent sewer easement shall be indicated on the subdivision final plat or planned development outline plan from curb-to-curb to permit city maintenance. If a sanitary sewer easement is not located in a private street, the sewer easement shall be a minimum width of fifteen feet for proper city maintenance. An "S" shall be marked on the curb indicating the location of a sewer service line to every lot. If maintenance work is required on public sanitary sewer infrastructure that lies beneath a private street, the City shall repair the private street in a workmanlike manner, to meet the standard of workmanlike quality then prevailing at the time and place of construction. The City shall warranty its work for one calendar year.

(i) Water lines

Water line infrastructure, including fire hydrants, shall be public and constructed to city standards. A water easement shall be indicated on the subdivision final plat or planned development outline plan from curb-to-curb to permit city maintenance. If a water easement is not located in a private street, the water easement shall be a minimum width of fifteen feet for proper city maintenance. A "W" shall be marked on the curb indicating the location of a water service line to every lot. If maintenance work is required on public water line infrastructure that lies beneath a private street, the City shall repair the private street in a workmanlike manner, to meet the standard of workmanlike quality then prevailing at the time and place of construction. The City shall warranty its work for one calendar year.

(j) Drainage

Stormwater drainage infrastructure, including drainage structures and detention/retention ponds, shall be private, constructed to city standards and maintained to city standards by the homeowners association of the development. Detention and retention ponds, swales, ditches and other open forms of drainage infrastructure shall be properly mowed, cleaned and maintained to Environmental Phase II specifications by the homeowners' association. The materials used for said drainage infrastructure may be different from those used in city-owned and maintained drainage infrastructure, provided they are approved by the city engineer. The outlet structure connecting the private drainage infrastructure to the public drainage infrastructure shall itself be public and in a public drainage easement.

Plat notes on drainage

The following note shall be placed on all subdivision plats/PUD final plans with private streets: *The stormwater drainage system located in this development shall be private and maintained by the homeowners association.*

The following additional note shall be placed on all subdivision plats/PUD final

plans with private streets that utilize underground stormwater detention systems: *The homeowners association shall enter into a maintenance agreement with a licensed and certified contractor to perform maintenance of the underground stormwater detention system. An annual inspection of the underground detention facility is required and the report shall be submitted to the City Engineer.*

(k) Gates

Subdivisions/PUDs with private streets are permitted to be gated, provided the following conditions are met:

- i. Secondary Access. Secondary access must be provided for gated subdivisions/PUDs of more than 30 units, per Sec. 17-56 of the Germantown Subdivision Regulations regarding dead-end streets.
- ii. Emergency Access. All unmanned gates must be equipped with at least two emergency access devices, including, but not limited to, the following: 911 System, Click to Enter, Knox Box, Siren Activation, or any other like device that guarantees emergency access for fire, police, public services, code compliance, sanitation, United States Postal Service, fire and EMS services with which the City has entered into a mutual aid agreement and other like personnel. All devices must have a battery backup for the drive mechanism. The homeowners association shall maintain the gates in proper working order and shall hire a qualified company to inspect and test the gates and the emergency access system every six months. The results of this test shall be provided to the Fire Marshal.
- iii. Placement and Turnaround. Call boxes shall be located on the private entrance street(s) a minimum of 60 feet from the edge of pavement of an improved intersecting public street or the future edge of pavement of an unimproved intersecting public street. Turnaround capability, utilizing either hammerheads or a break in the median, shall be placed behind the call box. The hammerhead or break in the median shall provide suitable turnaround capability to the satisfaction of the City Engineer. At a minimum, street width at the location of the call box and gate shall be at least 13.5 feet for proper emergency access. Any such stretches of roadway less than 18 feet in width shall not exceed 15 feet in length.
- iv. Retrofits. As most existing non-gated private street subdivisions and PUDs were not initially designed for gates, the following set of provisions shall govern retrofits.
 1. Generally. The Planning Commission shall be authorized to permit the installation of gates on existing private street subdivisions and PUDs, provided it determines the installation of gates will not inhibit the general health, safety and welfare of the citizens of the City of Germantown, or the residents of the community to be gated. In no case shall a gate be installed in a subdivision/PUD that connects to another subdivision/PUD. When reviewing a retrofit, the Planning Commission shall take into account the considerations of paragraph vii. below.
 2. Technical standards. The standards for placement and turnaround as set out in Section iii. above shall apply to all proposals for gated

communities, including those for existing non-gated subdivisions/PUDs with private streets. However, the following factors may be taken into consideration by the Technical Advisory Committee and Planning Commission when considering variances from the placement and turnaround provisions to allow for proper vehicle maneuverability:

- a. The number of units in the development to be gated,
 - b. The average daily traffic of the private entrance street,
 - c. The width of the private entrance street,
 - d. The average daily traffic of the intersecting public street,
 - e. The width of the intersecting public street and
 - f. Any natural and built obstacles that may limit sight distance.
- v. State law. Gated communities must adhere to all pertinent state laws.
- vi. Engineered plans. All plans submitted to the City for the installation of gates must be signed and sealed by a professional engineer licensed with the State of Tennessee.
- vii. Planning Commission discretion. It shall be within the sound discretion of the Planning Commission to approve or reject any application for the installation of a gate, based upon all relevant factors, including, but not limited to the following:
- a. The effect the proposed gate(s) will have on pedestrian and vehicular connectivity both within the immediate area and within the City as a whole.
 - b. Opposing property owners both within the subdivision/PUD to be gated and in neighboring subdivisions/PUDs.
 - c. The location of the subdivision/PUD to be gated within the City.
 - d. Whether or not surrounding subdivisions/PUDs are gated.
 - e. Crime statistics both within the subdivision/PUD and in the surrounding areas.
 - f. Any other pertinent factors as determined by the Planning Commission.
- (l) Streetlights
Streetlights shall be private and maintained to city standards by the homeowners association of the development.
- (m) Signage and striping
Street signs and striping shall be private and maintained to City and Manual on Uniform Traffic Control Devices (MUTCD) standards by the homeowners association of the development. Street signs shall either meet or exceed the specifications as outlined in the City's decorative street sign policy.
- (n) Street sweeping
The City shall not sweep private streets.

(o) Disaster response

The City shall reserve the right to limit its disaster response within a private street subdivision, such as collection of brush and debris, street clearing and similar measures, based on the availability of state or federal disaster relief funding.

(p) Other

Any other provisions the Planning Commission may require for a particular site in the interest of the health, safety and general welfare of the city.

Approved by the Planning Commission, July 1, 2008.
Amended by the Planning Commission, April 7, 2009.

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5. Chairman Klevan asked if there was any old business or new business to come before the Commission.

Alderman Drinnon stated Mr. Chairman, I would like to commend you for the way you handled the meeting this evening.

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6. He asked if there were any liaison reports. **There was none.**

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7. The meeting adjourned at 7:45 P.M.