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# M E M O R A N D U M

## Rutherford County Regional Planning Commission

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**DATE:** August 26, 2013  
**TO:** Rutherford County Public Works Committee and Board of Commissioners  
**FROM:** Rutherford County Regional Planning Commission  
**RE:** Report on Activity at the August 12 Meeting of the Rutherford County Regional Planning Commission

The Rutherford County Regional Planning Commission acted on the following request at its scheduled meeting on August 12, 2013:

- A. George and Veronica Buchanan – 13-A013  
Recommendation for **APPROVAL** (9 for, 0 against, 1 abstained)  
Location: 1700 Butler Road (Tax Map 126, Parcels 41.00 and 41.01)  
Commissioner: Joe Frank Jernigan  
Size of Site: Approximately 14 acres  
Tax Map: 126.00, Parcel: 41.00 and 41.01  
Existing Zoning: Commercial Neighborhood (CN)  
Proposed Zoning: Light Industrial (LI)
- B. Consideration of the Draft Subdivision Regulations for Rutherford County.  
The Planning Commission voted to **APPROVE** (10 for, 0 against) the Subdivision Regulations as proposed with the exception of the language found in Article III Minimum Design Standards, Section D. Lots, Subsection 4.  
C. relating to fire sprinkler systems and established an effective date of October 1, 2013.

The Board discussed the following item, though the Board took no action as additional information was requested:

- C. Draft Zoning Ordinance Amendments (13-5002) – Exterior Storage and Exterior Display

# Rutherford County Regional Planning Commission Staff Report

Board of Commissioners Meeting Date: September 12, 2013

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Case Number: 13-A013

Staff Recommendation: **APPROVE**

Planning Commission

Recommendation: **APPROVE (9 For, 0, Against, 1 Abstained)**

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Request by: George and Veronica Buchanan

Property Address: 1700 Butler Drive

Commission District: 6 – Joe Frank Jernigan

Urban Growth Boundary: Murfreesboro UGB

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## Applicant Request

Rezoning: From Commercial Neighborhood (CN) To Light Industrial (LI)

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## Purpose of District

The LI Zone is intended to provide space for a range of industrial and related uses that conform to a high level of performance standards and have the least objectionable characteristics. It is required that all operations of such establishments with the exception of limited outdoor storage be carried on within completely enclosed buildings thus providing a standard of development which removes most adverse characteristics that affect neighboring properties. This district may provide a buffer between other districts and other industrial activities that have more objectionable influences. New residential activities except for those permitted as an accessory use are excluded, and community facilities and commercial establishments that provide needed services for industry and are complementary thereto are permitted. (Section 702 A).

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## Site Characteristics

Current Zoning: CN

Current Use: Daycare Center (Parcel 41.01) and Vacant Property (Parcel 41.00)

Adjacent Uses: Vacant property immediately adjacent. Industrial uses to the north and residential single-family to the south. Interstate 24 immediately to the east.

Adjacent Zoning: Residential Medium-Density (RM) to the south, Light Industrial (LI) to the north; Industrially zoned property in the City of Murfreesboro further to the north.

Size of Tract: Approximately 14 acres

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## Comprehensive Plan

The Rutherford County Comprehensive Plan shows this location as being included within the General Urban Character Area. The General Urban Character Area recommends more dense, urban-style development.

- Goal Statement 1, Objective B: Guide development to create commercial and residential nodes rather than residential sprawl.
  - Goal Statement 2, Objective F: Designate and reserve optimal employment areas from inappropriate development using the Comprehensive Plan.
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Proposal supported by Comprehensive Plan

Yes. Staff feels that this proposal would meet the goals of the Comprehensive Plan as noted above.

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## **Infrastructure**

**Roads:** Butler Drive is a 2-lane arterial road that has approximately 60 feet of right-of-way. The Tennessee Department of Transportation (TDOT) does not have any traffic count information on this stretch of road. The City of Murfreesboro does have a 12-hour traffic count at the intersection of Butler Road and General Mills Drive from 2011 that shows a total of 7,539 trips for the 12-hour period. County Engineering Staff will place a traffic counter in front of the subject properties to determine traffic counts for this segment of Butler Drive. The extension/expansion of Joe B Jackson Boulevard from the I-24 Interchange to Shelbyville Highway/South Church Street is currently underway and should be completed by June 2015.

**Utilities:** Consolidated Utility District has an 8-inch ductile iron waterline fronting Parcel 41.01. Any new development on Parcel 41.00 would also require an approved septic system to be installed.

**Fire Protection:** There are two fire hydrants located within 1,000 feet of the property.

**Stormwater:** A portion of Parcel 41.00 is impacted by the 100-year floodplain, as delineated by the Federal Emergency Management Agency (FEMA). The applicant will need to work closely with Engineering staff to ensure that a stormwater management system is designed to provide water quality and quantity control.

**Schools:** Not Applicable since this application is not for residential uses.

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## **Proposal Details**

**Proposed Use:** The applicant has not indicated a proposed use for the property being rezoned. It is anticipated at this point that the existing daycare will remain. The vacant property behind the daycare could possibly be sold in the future.

**Access & Parking:** At this time, no further development is contemplated for either property. Any new development would have to meet the requirements in the Zoning Ordinance.

**Landscaping:** While buffering variances were granted for the daycare center property, any future development of the remaining acreage would require a Type 3 buffer yard if adjacent to residentially zoned property. No buffering would be required between the existing Industrially zoned property to the north and the subject tracts.

**Performance Standards:** Section 1106 of the Zoning Ordinance creates performance standards for noise, dust, odor and hazardous materials that commercial or industrial activities must be able to meet.

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## **Background**

The subject properties were rezoned from R-10 to I-2 (Industrial) under the old Zoning Resolution in 1985. In 1999 the Board of Zoning Appeals approved a conditional use permit (CUP) application for a children’s daycare center, which is currently in operation. Based on the regulations in the previous Zoning Resolution, the daycare center is the only use that was approved for the property. Any other proposed uses would have had to be approved through the CUP process. Variances were also granted to the fire hydrant requirements (In 1999); and front setback/screening requirements (Both in 2004). The property with the daycare center was subdivided from the parent tract in 2012.

The current zoning map, which became effective on January 1, 2013, zoned both properties CN. When determining new zoning districts for existing businesses Staff looked at a number of factors including current use, tax records, etc. At the time, Staff felt that CN was an appropriate zone considering the use of the property. CN allows for a variety of retail and personal services establishments, but not larger and more potentially impactful commercial uses. The owner of the property has since requested that both properties be zoned to Light Industrial, similar to the zoning of the property prior to the current zoning map taking effect.

Joe B Jackson Boulevard is currently being extended from the existing I-24 interchange to the west, which also includes widening of the existing segment of Joe B Jackson Boulevard from the Stevens Bend Subdivision to Shelbyville Highway/South Church Street. Both Joe B Jackson Boulevard and Butler Drive have a pronounced industrial presence. Staff expects similar development in this area when the road improvements are completed.

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## **Staff Recommendation**

Staff recommends approval. With the improvements being made to Joe B Jackson Boulevard and the existing industrial development along Butler Drive and across the Interstate on Joe B Jackson Boulevard, Staff reasonably expects additional development of this nature in the future.

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## **Attachments**

Zoning Map  
Aerial Map

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Doug Demosi, AICP  
Planning Director

Eric Hill, P.E.  
County Engineer

## MEMORANDUM

**To: Rutherford County Board of Commissioners**

**From: Douglas B. Demosi, Planning Director**

**Date: August 26, 2013**

**Subject: New Subdivision Regulations and Residential Sprinkler Requirements**

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The Rutherford County Regional Planning Commission voted to approve the new Subdivision Regulations, effective October 1, 2013. Due to a recent Attorney General's Opinion (attached), the language regarding residential sprinkler systems was removed and forwarded to the Board of Commissioners for their consideration. The draft language has been attached with this memorandum. Staff has prepared answers to some commonly asked questions below. Staff will discuss these items in greater detail at the Board's September 12, 2013 meeting.

Please let me know if you have any questions.

### **Common Questions Regarding the Sprinkler Requirements in the County's Subdivision Regulations**

Is the proposed sprinkler requirement a new requirement?

**No. The original sprinkler requirement was added to the current Subdivision Regulations in March of 2009.**

When are residential sprinkler systems required under the current regulations?

**Residential sprinkler systems are required under the following circumstances:**

- **Major subdivisions (4 or more lots); and**



Doug Demosi, AICP  
Planning Director

Eric Hill, P.E.  
County Engineer

- ***Fire hydrants are not located within 1,000 feet of the lots and cannot be installed due to low water volume, inadequate water pressure or other factors***

***Sprinkler systems are not required in subdivisions with less than four (4) lots even if the lots are not within 1,000 feet of a fire hydrant and are not able to be installed.***

What has changed under the proposed Subdivision Regulations in regards to the sprinkler requirements?

***The only change is that the new requirements will be for subdivisions with three (3) or more lots, as compared with the current regulations. The rest of the sprinkler requirements have not changed.***

Why was this change made?

***Our current Subdivision Regulations categorize subdivisions based on the number of lots being divided. Our new Subdivision Regulations categorize subdivisions based on the type of improvements being made and not the number of lots. In order to continue exempting 1- and 2-lot subdivisions from the sprinkler requirements (also known as Partitions), it became necessary to change the regulations to keep them consistent with the new subdivision categories.***

If fire hydrants can be installed in the proposed subdivision are sprinkler systems still required?

***No. If fire hydrants can be installed that meet all of the requirements in the Subdivision Regulations, then sprinkler systems are not required.***



Doug Demosi, AICP  
Planning Director

Eric Hill, P.E.  
County Engineer

If someone wants to subdivide less than five (5) acres off of a 50-acre tract to build a house and there is not a fire hydrant within 1,000 feet, nor can one be installed, will the person building the house be required to install a sprinkler system?

**No. The applicant will still have to request a fire hydrant waiver from the Planning Commission, but 1- and 2-lot subdivisions (also known as Partitions) are exempt from the sprinkler requirement.**

What if there is an existing house in the proposed major subdivision. Will the house have to be retrofitted with a sprinkler system?

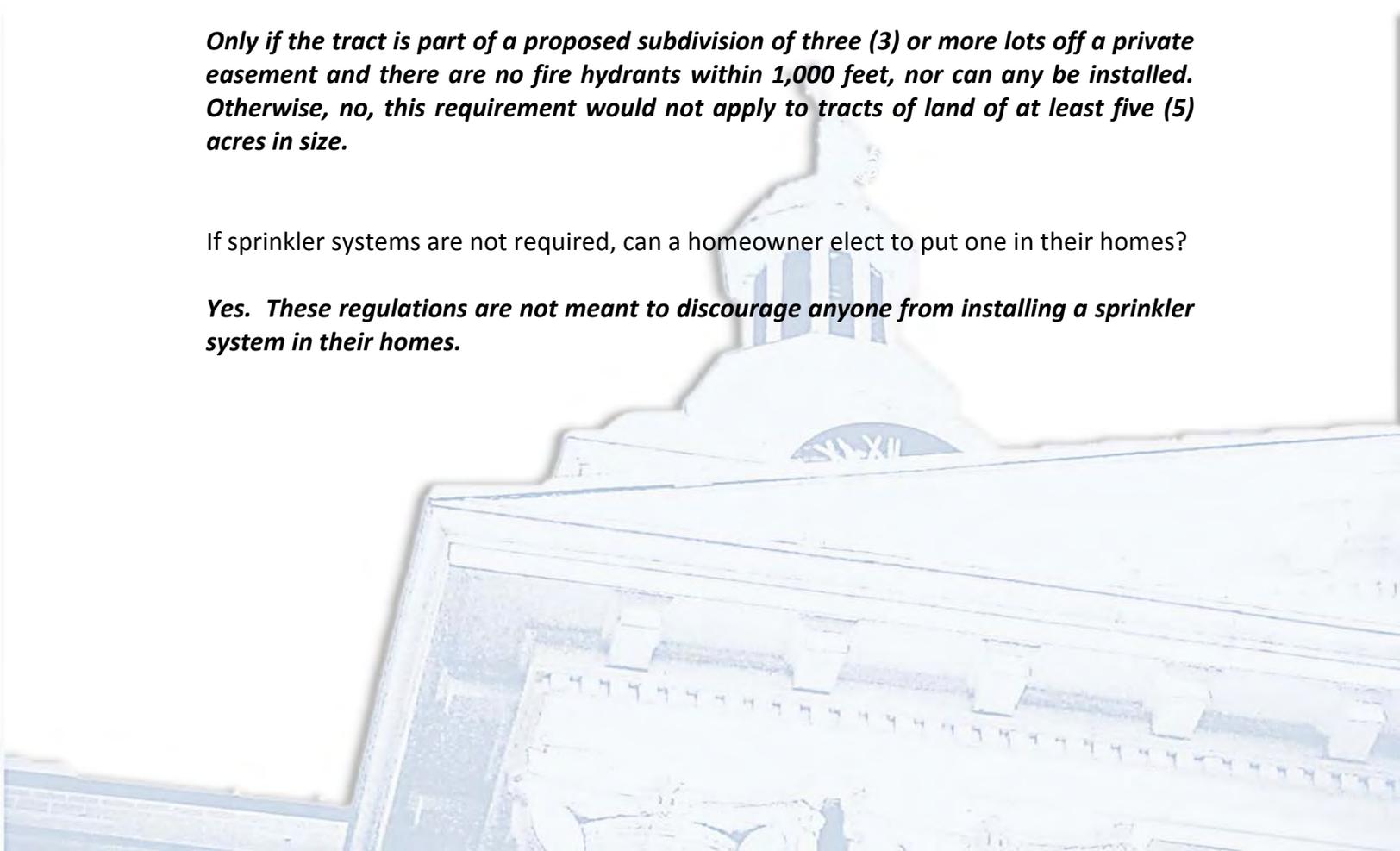
**No. Both the current and proposed regulations exempt previously existing houses from the sprinkler requirement.**

What about proposed properties of at least five (5) acres in size? Will the sprinkler requirements apply to them?

**Only if the tract is part of a proposed subdivision of three (3) or more lots off a private easement and there are no fire hydrants within 1,000 feet, nor can any be installed. Otherwise, no, this requirement would not apply to tracts of land of at least five (5) acres in size.**

If sprinkler systems are not required, can a homeowner elect to put one in their homes?

**Yes. These regulations are not meant to discourage anyone from installing a sprinkler system in their homes.**



## **Proposed Sprinkler Requirement**

In all subdivisions with the exception of Partitions as defined in Article II.B.3. of the Rutherford County Subdivision Regulations that are deemed to be minor or major plats due to the need for a fire hydrant waiver:

- i. In the event water lines in the area cannot support a fire hydrant, as determined by the water provider for the subject subdivision, or if the proposed development is not in close proximity to a line that can support a fire hydrant and extending such a water line is not feasible, a waiver may be granted at the discretion of the Planning Commission. The applicant for such waiver shall provide documentation from the water provider that the water lines available for the development cannot support a fire hydrant or that it is not feasible to extend a line of adequate size to serve the development. For the purposes of this section, a water line will be deficient if it does not conform to the following standards:
  - water volume is less than five hundred (500) gallons per minute; and/or
  - residual pressure would be less than twenty (20) pounds per square inch
  - other standards not listed here may also be cited by the water utility provider in their determination of whether a water line can support a fire hydrant.
- ii. The granting of a waiver from the fire hydrant requirement shall require any residential development in a subdivision to install a sprinkler system in accordance with NFPA 13D, also to include an audio alarm flow switch to be approved by the Rutherford County Building Codes Department.
- iii. The requirements of this subsection shall not apply to existing residential structures located in a proposed subdivision.

**STATE OF TENNESSEE**

OFFICE OF THE  
**ATTORNEY GENERAL**  
PO BOX 20207  
NASHVILLE, TENNESSEE 37202

August 1, 2013

Opinion No. 13-61

Mandatory Sprinkler Requirement for Residential Dwellings

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**QUESTIONS**

1. Does a proposed regulation by a Regional Planning Commissioner (hereinafter “Commission”) constitute a “mandatory sprinkler requirement” under Tenn. Code Ann. § 68-120-101, where the regulation would allow the Commission to waive a requirement that a lot in a residential subdivision be located within 1,000 feet of a fire hydrant in situations where the water lines in the subdivision cannot support the placement of a fire hydrant within 1,000 feet of that lot and the developer installs a sprinkler system in the residential development on the lot?

2. If so, does the Commission have the authority pursuant to Tenn. Code Ann. § 68-120-101 to impose a “mandatory sprinkler requirement”?

3. If the Commission is authorized to impose a “mandatory sprinkler requirement,” then what procedural requirements must the Commission follow to establish this requirement?

4. If the Commission’s actions do not conform with the aforementioned procedural requirements, what remedies, if any, are available to residential developers?

**OPINIONS**

1. Yes. A proposed regulation that requires the installation of sprinklers in all dwellings that are not within 1,000 feet of a fire hydrant is a “mandatory sprinkler requirement.”

2. Yes.

3. Any regulation adopting a mandatory sprinkler requirement established by a Commission must conform with the procedures set forth in Tenn. Code Ann. § 68-120-101(a)(8)(B)(i).

4. If a Commission’s actions do not conform with the procedures set forth in Tenn. Code Ann. § 68-120-101, residential developers aggrieved by the regulation may commence litigation to have the regulation declared void.

## ANALYSIS

1 & 2. Building construction safety standards are governed by Tenn. Code Ann. § 68-120-101. This statute directs the state fire marshal to promulgate rules “establishing minimum statewide building construction safety standards . . . [which] shall be designed to afford a reasonable degree of safety to life and property from fire and hazards incident to the design, construction, alteration and repair of buildings or structures.” Tenn. Code Ann. § 68-120-101(a). *See also* Tenn. Comp. R. & Regs. 0780-02-01 to -23.

These standards do “not include mandatory sprinkler requirements for one-family and two-family dwellings.” Tenn. Code Ann. § 68-120-101(a)(8)(A). However, “local governments may adopt more stringent requirements for one-family and two-family dwellings.” *Id.* Specifically, local governments may adopt mandatory sprinkler requirements. Tenn. Code Ann. § 68-120-101(a)(8)(B)(i).

The regulation in question, provided to this Office with this opinion request, addresses fire protection. *See Draft Rutherford County Subdivision Regulations*, Article III, Rule D.3 (Feb. 25, 2013) (hereinafter “Draft Regulations”).<sup>1</sup> According to the proposed regulation, developers shall provide fire hydrants in all subdivisions, and all subdivision lots must be within 1,000 feet of a hydrant. *Id.* In the event water lines cannot support a fire hydrant, the Commission may grant a waiver from the hydrant requirement but “[t]he granting of a waiver from the fire hydrant requirement *shall* require any residential development in a subdivision to install a sprinkler system.” *Id.* at D.3.c.ii (emphasis added).

Tennessee courts have recognized that “[w]hen ‘shall’ is used in a statute or rule, the requirement is mandatory.” *Bellamy v. Cracker Barrel Old Country Store, Inc.*, 302 S.W.3d 278, 281 (Tenn. 2009) (citing *Stubbs v. State*, 393 S.W.2d 150, 154 (Tenn. 1965)). Thus, use of the word “shall” in the proposed regulation creates a mandatory requirement. The regulation requires the installation of sprinkler systems; therefore, the proposed regulation is a “mandatory sprinkler requirement” as contemplated by statute. *See* Tenn. Code Ann. § 68-120-101(a)(8). The Commission is authorized to impose a mandatory sprinkler requirement pursuant to Tenn. Code Ann. § 68-120-101(a)(8)(B)(i).

3. To impose a mandatory sprinkler requirement for one-family and two-family dwellings, the Commission must follow the process established by Tenn. Code Ann. § 68-120-101(a)(8)(B)(i). The statute provides in pertinent part:

[i]f a local government seeks to adopt mandatory sprinkler requirements for one-family and two-family dwellings . . . then the local government may only adopt such requirements, by either ordinance or resolution, as appropriate, upon a n affirmative two-thirds (  $\frac{2}{3}$  ) vote on final reading; provided, that if passage of such ordinance or resolution requires two (2) readings, then such requirements may

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<sup>1</sup> These Draft Regulations are located at <http://www.rutherfordcountyttn.gov/planning/documents/SubRegs22513.pdf>.

only be adopted after reading such ordinance or resolution in open session of the legislative body at meetings specially called on two (2) different days that are no less than two (2) weeks apart; and if passage requires three (3) readings, then the last two (2) readings shall occur on two (2) different days that are no less than two (2) weeks apart. Mandatory sprinkler requirements shall be voted on in an ordinance or resolution separate from any other ordinance or resolution addressing building construction safety standards.

Tenn. Code Ann. § 68-120-101(a)(8)(B)(i).

The Draft Regulations provided to the Office contain the proposed mandatory sprinkler requirement but that regulation is just one regulation among fifty-five pages of proposed regulations. The applicable Tennessee statute mandates that any such proposal for a mandatory sprinkler “shall be voted on . . . separate from any other ordinance or resolution addressing building construction standards.” *Id.* (emphasis added). Accordingly, the Commission must present the mandatory sprinkler requirement separate from its other subdivision regulations, and the Commission must vote on the regulation separately. *Id.* The Commission must also follow the statutory process for reading and voting upon this regulation, including that the regulation to pass must receive “an affirmative two-thirds (2/3) vote on final reading.” *Id.*

4. The general rule is that an ordinance or regulation is considered invalid if its passage violates its authorizing statute. *See, e.g., Cherokee Country Club, Inc. v. City of Knoxville*, 152 S.W.3d 466, 475-77 (Tenn. 2004) (concluding that a city ordinance was invalid because the ordinance was not enacted in accordance with the applicable procedural statute); *Town of Surgoinsville v. Sandidge*, 866 S.W.2d 553, 557 (Tenn. Ct. App. 1993) (holding that failure to pass a zoning amendment according to the procedural statute renders the amendment void). One remedy available to aggrieved residential developers in such circumstances is to seek to have a court declare the regulation void by means of a declaratory judgment action. *See Ready Mix, USA, LLC v. Jefferson County*, 380 S.W.3d 52, 64-65 (Tenn. 2012); *State ex rel. Moore & Associates, Inc. v. West*, 246 S.W.3d 569, 581 (Tenn. Ct. App. 2005); *B.F. Nashville, Inc. v City of Franklin*, No. M2003-00180-COA-R3-CV, 2005 WL 127082, at \* 5-8 (Tenn. Ct. App. Jan. 21, 2005) (courts observing that a declaratory judgment may be commenced without exhausting administrative remedies where a party challenges the validity of an ordinance).

ROBERT E. COOPER, JR.  
Attorney General and Reporter

WILLIAM E. YOUNG  
Solicitor General

DEREK C. JUMPER  
Assistant Attorney General

Requested by:

The Honorable Joe Carr  
State Representative  
205 War Memorial Building  
Nashville, Tennessee 37243

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# M E M O R A N D U M

## Rutherford County Regional Planning Commission

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**DATE:** AUGUST 26, 2013

**TO:** PUBLIC WORKS COMMITTEE AND BOARD OF COMMISSIONERS

**FROM:** RUTHERFORD COUNTY REGIONAL PLANNING COMMISSION

**SUBJECT:** THE FOLLOWING REQUESTS WERE GRANTED APPROVAL BY THE RUTHERFORD COUNTY REGIONAL PLANNING COMMISSION AT ITS AUGUST 12, 2013 AND AUGUST 26, 2013 MEETINGS.

Waiver Request	
Garry Taylor (13-4007)	Request Details: 50' Access Easement Property Location: 5151 Leanna Road
Subdivision Plats	
Stewart Springs Subdivision Section IV (13-1006) (Preliminary)	Site Details: 42 Lots (41 Residential, 1 Stormwater Detention) on 32.30 acres, Zoned RM Applicant: Stewart Spring LLC Location: Along Burnt Knob Road
Ridge Crest Subdivision, Section I (13-1007) (Preliminary)	Site Details: 14 Lots on 6.53 acres, Zoned RM Applicant: New South Development Location: Along Barfield Crescent Road
Buchanan Estates, Section VI, Phase III (13-2031) (Final)	Site Details: 38 lots on 21.33 acres, Zoned RM Applicant: Farrer Brothers Properties Location: Along Epps Mill Road
Site Plans	
Dollar General (13-3020)	Site Details: New construction of approximately 9,100 square feet on approximately 2.9 acres zoned Commercial Services (CS). Applicant: Monte Turner Location: 5854 Shelbyville Highway



## RUTHERFORD COUNTY BOARD OF ZONING APPEALS

Regular Meeting, August 14, 2013

Location: Commission Chambers, 2<sup>nd</sup> Floor, Historic Courthouse

### PUBLIC WORKS REPORT

- I. Call to Order: 4:30 PM
- II. Invocation
- III. Pledge of Allegiance
- IV. Deferred Items
- V. Roll Call & Determine Quorum
- VI. Approval of July 10, 2013 Meeting Minutes  
**MOTION TO APPROVE AS PRESENTED**  
Motion Carried (Unanimous Voice Vote)  
**Minutes for July 10, 2013 were Approved**
- VII. Old Business
  - A. **David Stansberry – BZA 2013-039**  
Location: 6776 Old Nashville Highway, Map No.:57, Parcel: 34.01, Request for variance relief from the maximum building height of 40', relief from the maximum lot coverage standard of 50% and relief from the development standard requiring paved parking for a property located in the LI, Light Industrial zoning district.  
**MOTION TO APPROVE AS PRESENTED**  
Motion Carried (5 For, 0 Against)  
**Request was Approved**
  - B. **Stan Reed – BZA 2013-040**  
Location: 1192 Allen Road, Map No.:57, Parcel: 12.00, Request for special exception approval allowing the establishment of the major home-based business of a barber shop with variance relief allowing a detached sign for a property located in the RM, Medium Density Residential zoning district.  
**MOTION TO APPROVE AS PRESENTED**  
Motion Carried (5 For, 0 Against)  
**Request was Approved**
- VIII. New Business
  - A. **Noi Thampithak – BZA 2013-042**  
Location: 8818 Burlson Lane, Map No.:56C, Group: H, Parcel: 8.00, Request for variance relief from the side yard setback requirement of 10' to 1' for a property located in the RM, Medium Density Residential zoning district.  
**MOTION TO APPROVE AS PRESENTED**  
Motion Carried (5 For, 0 Against)  
**Request was Approved**
  - B. **John McFarlin – BZA 2013-043**  
Location: 4710 Lascassas Pike, Map No.:60, Parcel: 36.00, Request for variance relief from the 60' water quality buffer requirement for a property located in the CS, Commercial Services zoning district.  
**MOTION TO APPROVE AS PRESENTED**  
Motion Carried (5 For, 0 Against)  
**Request was Approved**

C. **Larry Davis, Sr. – BZA 2013-044**

Location: 3545 Almadale Road, Map No.:55, Parcel: 29.02, Request for variance relief from the development standard requiring paved parking on a property located in the AR-Agricultural Residential zoning district.

**MOTION TO APPROVE AS PRESENTED**

Motion Carried (5 For, 0 Against)

**Request was Approved**

D. **Kevin Ray Buck – BZA 2013-045**

Location: 3815 John Bragg Highway, Map No.:104, Parcel: 120.02, Request for temporary special exception approval for a seasonal attraction on a property located in the RM, Medium Density Residential zoning district.

**MOTION TO APPROVE AS PRESENTED**

Motion Carried (5 For, 0 Against)

**Request was Approved**

E. **Quintina Burton – BZA 2013-046**

Location: Located behind 4702 Cynthia Lane, Map No.:149J, Group: A, Parcel: 28.01, Request for special exception approval for the establishment of an accessory structure before the principal structure for a property located in RM, Medium Density Residential zoning district.

**MOTION TO APPROVE AS PRESENTED**

Motion Carried (5 For, 0 Against)

**Request was Approved**

IX. **Adjournment**