

Jonathan D. Smith
Community Watch Director
655 Wedgewood Avenue
Nashville, TN 37203
July 1, 2005

Rick Shepherd
Zoning Appeals Board
700 Second Ave., South
Nashville, TN 37201

RE: 611 Wedgwood Avenue
Map 105-11
Parcel 238
Zoning R6/UZO

Mr. Shepherd:

I am submitting this letter in support of the Wedgewood-Houston neighborhood in an effort to have the original zoning variance that permitted Judge Beans BBQ to operate rescinded.

Since this is an ongoing problem, stemming from the very beginning, I will start in the beginning. Originally, Judge Beans opened for business in June of 2003 without obtaining multiple pieces of necessary legal paperwork. One of these was a variance from the Board of Zoning Appeals (BZA) to operate in a residentially zoned area. Even though it is remotely possible, and at the time seemed reasonable, that this could have been overlooked, I now believe that this was purposely neglected and only after someone pointed out that he should get a permit for additional seating area that he was constructing (which he didn't have a permit to build) did anyone start to take notice. The other piece of information that was not obtained was a Use and Occupancy Permit. Only after someone noticed and forced him to obtain one did he start the process of obtaining this permit. It had now been over 2 years since starting operation and he still has not obtained this permit.

At the first BZA hearing that was to allow him to operate as a restaurant and allow him to keep his illegally constructed porch, there was a letter submitted by Judge Bean's lawyers dated October 7, 2004. The three main points of agreement in this letter were:

- 1) close at 9:00 p.m.
- 2) not obtain a beer license; and
- 3) comply with the Metro noise ordinance.

The letter requested that the parking be approved for fifteen vehicles, from the previously approved limitation of "less than ten", and asked that the illegally constructed open air seating area be permitted, and allow the continued use of the property as a restaurant.

There were six reasons stated as to why Metro Code 17.40.650(c)(3) would be satisfied. As a preface to listing the six reasons, the Metro Code states:

3. In all residential districts, a change in nonconforming use shall be subject to the following provisions:

a. The nonconforming use of a building designed and constructed for residential activities may be changed only to a conforming use.

b. The nonconforming use of a building designed and constructed for nonresidential activities may be changed to another nonconforming use upon a determination by the board of zoning appeals that the new nonconforming use will be more compatible with surrounding land uses than the existing nonconforming use.

Reasons claimed as to why Judge Beans would comply with this section of code:

- a) The hours of peak operation occur during off-peak traffic hours
- b) Approximately one-third of this food business is taken off-site to catered events
- c) The deteriorated condition of the parking lot will be brought into compliance with current standards with new pavement, striping and landscaping (interior and perimeter)
- d) Local residents can walk to this neighborhood-scale restaurant thereby reducing vehicle trips
- e) The ingress/egress will be designated as “one-way”, thereby making traffic circulation safer for motorists and pedestrians
- f) The restaurant will allow the continuation and reuse of this non-confirming structure at this particular location, between I-65 and the Tennessee State Fairgrounds, in a manner that is contextually compatible and harmonious, rather than a detriment to surrounding properties.

Each of these reasons is either a bold-faced lie, or a businessman’s point of view. Here is a point by point listing of how each of the stated reasons have been a detriment to our neighborhood:

- a) First of all, I would question what “off-peak” traffic hours are. With the traffic created by the restaurant, the neighborhood now has new peak hours. The restaurant has approximately twelve automobiles parked no matter what the time of operation. During peak hours it is not unusual to have 35 vehicles parked on his property with overflow parking on both sides of Martin Street and Allison Place. He has even parked cars on both sides of Wedgewood Avenue (Figures 7,8)! Figures 1 through 8 show some examples of the parking exhibited by his customers and valet parking staff.



Figure 1. (5-5-2005, 10:21 PM)



Figure 2. (5-12-2005, 8:37 PM)



Figure 3. (5-12-2005, 8:40 PM)



Figure 4. (4-9-05, 8:35 PM)



Figure 5. (6-3-2005, 6:35 PM)



Figure 6. (5-24-05, 8:04 PM)



Figure 7. (5-24-2005, 8:06 PM)



Figure 8. (5-24-05, 8:00 PM)

- b) Is there any proof to substantiate this usage percentage? His smoker and panel van leave the premises rarely that I have seen (and I do pay attention).
- c) This is a bold faced LIE. Figure 9 shows that the parking lot was never striped and has had no landscaping changes, either interior or exterior (unless you count the BZA hearing notification sign from April 2005, still on the ground, Figure 10.)



Figure 9. (6-30-2005, 7:59 PM)



Figure 10. (6-30-2005, 7:59 PM)

- d) The local residents can walk, but if you look at the overall demographics, ours is a primarily low income neighborhood. Judge Beans is not an inexpensive restaurant, and I would break my food budget if I ate there often.
- e) Another bold faced LIE! The ingress/egress has not been designated in any way. In fact, there is now no way for a vehicle to travel all the way around the building because of the placement of restaurant equipment, construction debris and the additional seating area (Figure 11). The continuous curb cut in front of the building also poses a considerable safety hazard for pedestrians and motorists alike due to the extremely limited visibility and space to maneuver.



Figure 11. (5-30-2005, 10:18 AM)

- f) The manner in which Aubrey Bean conducts himself is far from inspiring any flicker of contextually compatible and harmonious behavior. Illegally constructing additions, misusing R6 zoned property as commercial parking and being a general neighborhood nuisance are what we as a neighborhood have come to expect from him.

The meat of the argument is contained in these preceding points: Judge Beans BBQ is not more compatible with the surrounding land uses than the preexisting non-conforming use. In the time past since the Appeal Case #2004-113 was approved we, as a neighborhood, have now had time to observe the regular goings-on of the business and have had many opportunities to document the continual abuse of the neighborhood and Bean's continual "thumbing of the nose" to the BZA. After lying to the BZA regarding what he would do, Aubrey proceeded to illegally construct an enclosed seating area. Most of the work was completed during a long weekend when the codes department could not be reached. After receiving a stop work order from the codes department, he went to the BZA asking for permission to use his newly constructed addition (Appeal Case #2005-055).

After reviewing the recording of that hearing, it was noted that he cited a building construction method in Texas called an ice house. Maybe we should remind him that he's not in Texas anymore and here in Tennessee we try to abide by the law. Also noted during the hearing was some discussion about the addition being an open air seating area. Two quotes that Aubrey made during that discussion were absolutely false. The statements were: "[the doors] stay open 24 until I go home at night", and "the only time they're shut though, Ms. Wilson, is whenever, er, at night and it keeps people from breaking in". This is yet another lie in the long line. Figure 12 is a photograph taken on Friday, April 8, 2005, about Noon and only one of the five doors are open. This photograph was taken six days before he made his false statement. Also shown is Aubrey's white pick-up truck parked right in front, so he had to know he was making a false statement. As can be seen from the number of cars parked outside he is most certainly open for business with only one door open.



Figure 12. (4-8-2005, 12:01 PM)

Figure 13 shows the building on Friday, June 10, 2005, about 1:15 PM, after the removal of the garage doors in favor of plywood boards. Still, the building is not open during all business hours.



Figure 13. (6-10-2005, 1:15 PM)

These photographs show that the doors were not always wide open during business operation. The doors were closed or partially closed during inclement weather and when the temperature was a bit too hot or cool for customer's tastes.

He was denied permission to use the enclosure. Instead of tearing down the unsightly addition and restoring the building to its previously approved state, he merely removed the garage doors. Now instead of doors, he puts plywood over the holes where the doors were as shown in Figures 14 and 15.



Figure 14.



Figure 15.

This structure as it exists is an extreme eyesore on the most traveled street in our neighborhood. It was my understanding that the BZA ordered him to remove the structure, not just take out the garage doors. Even as it stands, there is a set of French doors on the front of the building in the enclosed seating addition that were not removed either.

Another of the requirements stated in the order from the BZA appeal case #2004-113 stated that there was to be “no beer sold or served on the premises.” It seems like a very clear distinction between sold and served and would indicate to me that beer is not to be at the restaurant. Not only is there plenty of beer to go around, but it does not stay inside the building. It is regularly observed that people “hang out” outside in the parking lots on both sides of the building with open containers. This is blatantly against the law. There have been several occasions that I have observed people stumbling drunk walking through the parking lot. While I can not prove that alcohol is being sold, I have seen cases of beer being unloaded by Bean’s staff from a pickup truck that had a Judge Beans logo painted on the door. Why would the proprietor be stockpiling beer unless he was either selling or serving it to the customers? Figure 16 shows customers outside the building carrying glass beer bottles (it is somewhat difficult to see, but I can provide a high resolution larger print if required). Figure 17 shows customers with beer lined up across the window sill.



Figure 16.



Figure 17.

Another ongoing issue with this establishment is the misuse of an adjacent residential property. Aubrey Bean purchased the lot and removed the existing residence. He then graveled the entire lot and began using it for parking. The Figures 1-5 and Figure 12 show the usage of this area for his parking lot. He told the codes inspector, Scotty Chaffin that he had sold the property, but now he has a for sale sign up and has the property listed with a realtor. There seems to be no end to who Aubrey will lie to in order to get his way. Mr. Chaffin told him that it did not matter who owns it, Aubrey is not allowed to use it for parking, and even to this day it is being used.

There are two attachments included in this letter. One is my personal log of activity at the establishment, the other is a police summary of incidents at the building since January 1, 2005. There are three lines highlighted showing activity after 9:00 PM. This is proof that he is not in compliance with the part of the order that the restaurant close at 9:00 PM.

In summary, the neighborhood is tired of being abused by this tenant. SNAP (South Nashville Action People, Inc.), the active and involved community action group voted to pursue this show cause hearing, it is not a personal vendetta by just one or two residents. I would like for the BZA rescind the permission to allow the non-conforming use as requested by Jude Bean's BBQ in the Appeal Case #2004-113. It would also be nice if he were to obey the order to remove the unsightly addition as was ordered by the board in the Appeal Case #2005-055. Aubrey Bean is due back in environmental court on Wednesday, July 13, 2005. We would also like for the BZA to recommend to the environmental court judge that the court order the business to close or be in contempt. We really want to see this building in its original state with tenants that respect the neighbors and the unique position of being placed in the middle of a residential neighborhood.

Sincerely,

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cc: Councilman Ronnie Greer
enc: 2