



east and west and buildings on the north and south is approximately 400 feet long by 115 feet wide.

4. The street was the site of Chattanooga's original city market which was demolished in 1943 to make way for a new street configuration named after Mr. Z. C. Patten, of the Volunteer Life Insurance Company. Up until the 1940s the open space had historically featured the original City Market Square and Market house. Spanning approximately fifty (50) feet and set in the middle of the parkway, the historic market house would have been designed with a traditional clear span consisting of a center aisle with spaces for kiosks on either side.

5. The new park design for the monuments, dedicated in 1950, significantly reduced the size of this space to only twenty-five (25) feet, presumably to better accommodate movement and storage of automobiles on the flanking one-way pairs. From the beginning the new, smaller public space housed monuments dedicated to Hamilton County servicemen who died during World War II.

6. The three memorials in the space include (east to west):

A. 1949 - American Legion Post 14 Flagpole with inscription:

"THIS MEMORIAL SPONSORED BY POST 14 AMERICAN LEGION  
1949"

B. 1949/50 - World War II Monument with inscription:

"IN HUMILITY AND GRATITUDE THIS MEMORIAL IS  
DEDICATED TO THE MEMORY OF EACH SON OF THIS CITY AND  
COUNTY WHO GAVE HIS ALL AND TO HIS HOPE FOR A BETTER  
WORLD"

The inscription follows with individual names of six hundred eighty (680) names of deceased World War II servicemen. (Photos of all three memorials and names are transcribed and included as an attachment to the Petition for Waiver and have been introduced as Collective Exhibits during the hearing before the Historical Commission.)

C. Marine Memorial with inscription:  
“DEDICATED TO THE MEMORY OF THE MARINES OF HAMILTON  
COUNTY WHO GAVE THEIR LIVES IN SERVICE OF THEIR COUNTRY”

7. The memorials have been located since 1950 in the narrow public property that divides the existing eastbound travel lane and parking from the westbound travel lane and parking. They occur east to west, from Lindsay Street to Georgia Avenue and are shown in photos introduced as Exhibit 5.

8. In recent years efforts have been underway to focus Chattanooga’s attention on revitalization of the core of the city’s downtown. In 2013, the River City Company commissioned a City Center plan that included five hundred (500) participants and covered the central core of the downtown including the center of the city at Market Street and Martin Luther King Boulevard. Recommendations of the plan included a focus on housing, improving and updating the City’s public space, and making downtown street network friendlier to people.

9. Additionally, in 2014, Mayor Andy Berke led a year-long public engagement process called Chattanooga Forward. Chattanooga Forward featured three public meetings as well as dozens of task force meetings focusing on each of six focus areas. The Downtown Task Force included recommendations to renew Chattanooga’s focus on improving downtown public space which would support more opportunities for downtown living. The final report featured a recommendation to construct a new Patten Parkway.

10. Most recently, Chattanooga’s newly established Innovation District, built around technology-centered job opportunities in the city center, recently unveiled an Innovation District framework plan. As with the City Center Plan and Chattanooga Forward, the framework plan for the Innovation District also recommended key public space improvements throughout the city center, including mention of the reconstruction of Patten Parkway to accommodate a wide range of activities and to attract diverse audiences year-round to this location.

12. The City of Chattanooga along with River City Company and the Chattanooga Design Studio, with support from the Benwood Foundation, has already led the process to achieve a 30% developed design solution for the new Patten Parkway. A citizen steering committee has guided the development of the design with five key principles, including the marriage of history with innovation and need for the space to be resilient and flexible for a variety of uses. The spatial configuration is inspired by the layout of a historic market house, with a center aisle for circulation flanked by spaces for kiosks on either side which are shown in Exhibit 6.

13. Because there are active businesses along the parkway, the new design retains on-street parking and in order to maximize the flexibility of use of the whole space, building face to building face, focuses permanent pedestrian spaces on the north and south sides of the parkway. The center of the parkway will accommodate pedestrian-friendly low design speed car traffic during normal day-to-day operation, but for special events, because the space is envisioned as one continuous pave-stone shared street, the whole space is highly flexible for a variety of uses. The city envisions a market function in the center of the space with trees and overhead canopy mimicking the colonnade and clear span of the historic market house building as shown in Exhibit 6.

14. Additionally, the City is exploring two nearby spaces for relocation and rededication of the existing three World War II memorials subject to the granting of this Petition for Waiver. First, as befitting the dignity and memorial of the Hamilton County and Chattanooga veterans that have served and died for our country, the axis of the new Patten Parkway will terminate in a plaza at the end of the parkway at 814 Lindsay Street, on the east side of Lindsay Street, as shown on Exhibit 6. Currently a public parking lot is controlled by American Legion Post 14. This property is being designed for a new building that will be positioned at the formal

end of Patten Parkway. Through initial discussion with the developers of this property, who have consulted with General Carl Levi, of the American Legion Post 14 (support letter introduced as Exhibit 2), the City is proposing to pursue design and eventual construction of a New War Memorial Plaza at this location that would house all of the World War II monuments that are currently in the park space of Patten Parkway.

15. Alternatively, and because the City does not currently control the property at 814 Lindsay Street, the City has identified a second possible location in Phillips Park, two blocks away, in the shadow of the Soldiers and Sailors Memorial Auditorium. This new potential memorial site in Phillips Park would be on axis with McCallie Avenue and also positioned within view of the historic Hamilton County Courthouse.

16. A third viable alternative has been requested by Frank Hughes, on behalf of a small group of veterans which has begun the process of establishing a diverse and inclusive committee to pursue a community-wide consensus on how best for our region to honor the service of our veterans as shown by Exhibit 7. That group believes that the conclusion of this process will provide an ideal scenario(s) for relocation of all monuments that currently exist in the center of Patten Parkway. That group intends to propose a third viable alternative to these two specific locations that would be to consider relocating all of these monuments to an as-of-yet undetermined location that is the result of this inclusive and diverse volunteer-led process. The ultimate goal of this third group proposal is to create a centralized Veterans Memorial Park that will recognize and honor all area veterans of the major wars since World War I.

17. The City agreed that this additional option should be considered by the Commission at the time of the October 19 THC meeting for the final hearing on its petition for waiver, because this third alternative would include the protection and storage of all monuments currently located in Patten Parkway until such time that a new location can be determined,

funded, designed and constructed as a tribute to all national military veterans. The City, however, has proposed a deadline of December 31, 2020 for the completion of this process under the Frank Hughes proposal discussed in the previous section to identify that future location in the City so that all citizens may enjoy these important historical monuments to be maintained by the City and County for our future.

### **Conclusions of Law**

1. Pursuant to Tennessee Code Annotated (“Tenn. Code Ann.”) § 4-5-307 and the Tennessee Heritage Protection Act of 2016, Tenn. Code Ann. § 4-1-412, the Tennessee Historical Commission has provided formal notice of the commencement of a final hearing upon the above-referenced matter regarding the relocation and rededication of three memorials by the City of Chattanooga. A final hearing was held in the presence of Administrative Law Judge Tom Stovall, and in the presence of the Tennessee Historical Commission on October 19, 2018 at 9:00 a.m. located in House Hearing Room I, Cordell State Office Building, 425 5<sup>th</sup> Avenue North, Nashville, Tennessee 37243.

2. The procedures for a final hearing have been established as provided in Tenn. Code Ann. § 4-1-412, and the hearing was conducted in a manner consistent with the provisions of the Uniform Administrative Procedures Act governing contested cases, when such provisions are not in conflict with Tenn. Code Ann. § 4-1-412.

3. In order for a waiver to be granted by the Historical Commission, the public entity seeking the waiver shall demonstrate by clear and convincing evidence that a material or substantial need for a waiver based on historical or other compelling public interest exists; provided, that if a memorial is designated as a national historic landmark or listed on the national register of historic places, there shall be a presumption in favor of preserving the memorial.

4. At the final hearing, the Historical Commission may grant a petition for waiver, in whole or in part, by a two-thirds (2/3) vote of the entire membership of the commission by roll call vote. The commission may include reasonable conditions and instructions to ensure that a memorial is preserved and remains publicly accessible to the greatest extent possible.

5. Pursuant to the Rules of the Tennessee Historical Commission at Chapter 0400-70-01:

- (1) When an entity petitions the Tennessee Historical Commission for a waiver relative to Tennessee heritage protection the Tennessee Historical Commission shall evaluate the following considerations when rendering a decision:
  - (a) Whether the proposed change serves the public interest;
  - (b) Whether the proposed change has any commercial overtones;
  - (c) Whether the proposed change has a reasonable relationship to the site;
  - (d) Whether the proposed change has demonstrated support or opposition from local residents;
  - (e) If a change in name or rededication is proposed, whether the change is in conformance with the character of the existing names or dedications in the area;
  - (f) If a change in name or rededication is proposed, whether the change is duplicative of other nearby site names or dedications;
  - (g) Whether the proposed change is offensive or has a derogatory or defamatory implications;
  - (h) Whether the proposed change detracts from or enhances the commemoration of the conflict, event, entity, figure, or organization previously commemorated;
  - (i) Whether the proposed change is expected to have a significant positive or negative economic impact;
  - (j) Whether the proposed change could cause confusion for visitors interested in the site;
  - (k) Whether the proposed change diminishes or enhances the historic integrity of the site;

- (l) Whether the proposed change is relative to a historic site or memorial on the National Register of Historic Places or a national historic landmark; and
  - (m) If relocation is proposed, whether the new location is appropriate.
- (2) The enumeration of the considerations in paragraph (1) of this rule does not prevent the Tennessee Historical Commission from taking into account other considerations.

6. Based upon the testimony of the City's Transportation Department witness, Blythe Bailey, during the hearing and the factual findings in Paragraphs 8-17, it has been established by clear and convincing evidence that the proposed changes to relocate the World War II monuments in Patten Parkway to three potential locations provided by local veteran groups serves the public interest and have a reasonable relationship to other historic uses of this site as a downtown public space marketplace. These facts satisfy Chapter 0400-70-01-.01 (a) and (c).

7. Based on proof submitted to the Historical Commission, this proposed change has support from local residents and veteran groups and does not detract from the commemoration of the event previously commemorated and this proposed change is expected to have a significant positive economic impact; and will not cause confusion for visitors interested in the site. These facts satisfy Chapter 0400-70-01-.01(d), (h), (i) and (j).

8. The Commission has the authority to approve the three alternatives for relocation of the memorials at issue in this petition for waiver, subject to conditions as specified:

**Alternative 1: 814 Lindsay Street property currently owned and controlled by American Legion Post 14**

It is a condition of the approval by the Tennessee Historical Commission of this alternative that the property location be dedicated to the City of Chattanooga by the landowner in the event this alternative is used for relocation. Any relocation of markers must be to public



property or property dedicated by easement or some type of property interest to maintain public access.

**Alternative 2: Phillips Park**

This alternative to relocate to property used as a public park owned by the City of Chattanooga is approved without condition as it is already publicly-owned by the City.

**Alternative 3: Alternative to be developed in public process led by Frank Hughes and Chattanooga area veterans' organizations**

The third alternative does currently specify a site for relocation. Rather, the third alternative has been described as a public process to develop a specific location as a third alternative. Based on the recommendation of the City, it is a condition of the approval by the Tennessee Historical Commission of this alternative that the public process must be completed by December 31, 2020 in order for this alternative to remain viable. If this public process develops another specific viable alternative location by the deadline, then the City of Chattanooga must notify the Tennessee Historical Commission and make another appearance to present this third alternative for approval as a specific alternative. In effect, the Commission maintains jurisdiction on the original petition for waiver in order to be presented and approve or accept the third alternative. The City of Chattanooga shall not be required to file a new petition for waiver but is required to appear again to seek approval of a specific third alternative location if such is developed in time.

9. Based on the clear and convincing evidence submitted during this hearing that a material or substantial need for a waiver based on compelling public interest exists, Petitioner's request that the Tennessee Historical Commission issue a waiver allowing the relocation and

rededication of three World War II memorials currently located in Patten Parkway under the Tennessee Heritage Protection Act of 2016 is approved by two thirds vote of all members.

IT IS **CONCLUDED** that the Petitioners have demonstrated, by clear and convincing evidence, that a material or substantial need for a waiver based on historical or other compelling public interest exists to relocate memorials currently located at Patten Parkway as requested in the petition for waiver.

Accordingly, the Petitioners' petition for waiver is **GRANTED subject to the reasonable conditions imposed herein related to two of the three alternative relocation sites presented.**

It is so **ORDERED.**

This FINAL ORDER entered and is effective this 14<sup>th</sup> day of Nov, 2018.

**TENNESSEE HISTORICAL COMMISSION**

BY: Derita Coleman Williams w/p EJS  
**Derita Coleman Williams**  
**ACTING CHAIRMAN**  
**TENNESSEE HISTORICAL COMMISSION**

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 14<sup>th</sup> day of Nov, 2018.


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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing document was served upon counsel for all parties in this cause by hand delivery or by depositing same in the United States Mail, postage prepaid, addressed as follows:

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This 14<sup>th</sup> day of Nov, 2018.

  
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