

STATE OF TENNESSEE
TENNESSEE HISTORICAL COMMISSION

IN THE MATTER OF:)
)
MIDDLE TENNESSEE STATE)
UNIVERSITY)
)
TENNESSEE BOARD OF REGENTS)
Petitioners.)
)
)
SONS OF CONFEDERATE VETERANS)
NATHAN BEDFORD FORREST CAMP # 215)
Intervenor.)
)
RE:)
FORREST HALL)
(PETITION FOR WAIVER))
)
)
)

CASE NUMBER: 04-17-150473A

THC 16-0001

RECEIVED
2018 MAR 19 PM 4:24
SECRETARY OF STATE

FINAL ORDER

This matter was heard on February 16, 2018, before Thomas G. Stovall, Administrative Law Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting with the Tennessee Historical Commission, upon a petition for waiver filed by the Petitioners, Middle Tennessee State University (MTSU) and Tennessee Board of Regents (TBR), on October 13, 2016, pursuant to TENN. CODE. ANN. § 4-1-412. The Petitioners were represented by attorneys Heidi Zimmerman and Mary Moody, respectively. On December 20, 2017, a PETITION TO INTERVENE was filed on behalf of the Sons of Confederate Veterans Nathan Bedford Forrest Camp # 215 (SCV). On February 6, 2018, it was ordered that SCV qualified as an intervenor under TENN. CODE ANN. § 4-1-412. The Intervenor was represented by attorney

Douglas E. Jones. The Tennessee Historical Commission was represented by attorneys E. Joseph Sanders, Steven R. Stout, and Emily H. Urban, due to the status of the Tennessee Historical Commission as an agency administratively attached to the Tennessee Department of Environment and Conservation pursuant to TENN. CODE ANN. § 11-1-101.

ISSUE FOR DETERMINATION

Did Petitioners demonstrate, by clear and convincing evidence, that a material or substantial need for a waiver to change the designation of a building located on the campus of MTSU from Forrest Hall to Army ROTC Building based on historical or other compelling public interest exists and that therefore the petition for waiver should be granted?

SUMMARY OF DETERMINATION

It is **DETERMINED** that Petitioners failed to demonstrate, by clear and convincing evidence, that a material or substantial need for a waiver based on historical or other compelling public interest exists and therefore the petition for waiver is hereby **DENIED**. This determination is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Former Middle Tennessee State College was awarded an armored Army Reserve Officers' Training Corps (ROTC) in approximately 1950-1951. The cadets formed a Nathan Bedford Forrest club.

2. Construction of Forrest Hall on the campus was completed in 1954 and the building was dedicated in 1958. The building was dedicated along with other buildings that had been funded in the same funding cycle as Forrest Hall. The building was referenced in connection to Lieutenant General Nathan Bedford Forrest prior to its dedication.
3. Dr. Keathley gave a dedication speech in which he stated that the spirit of Lieutenant General Nathan Bedford Forrest resided on the campus.
4. There is no direct evidence, as there is in association with other institutions, that the naming of Forrest Hall was a defiant act related to desegregation.
5. Lieutenant General Nathan Bedford Forrest engaged the United States military forces twice in the Murfreesboro area.
6. Lieutenant General Nathan Bedford Forrest is known for his military tactics.
7. At the time of the designation, the campus was not integrated. The campus was integrated in 1962.
8. Confederate iconography and symbolism were utilized throughout the mid-twentieth century on the campus. This usage has diminished over time.
9. Objections to the name of Forrest Hall were voiced by students and interested parties following the shooting at a church in Charleston, South Carolina, in 2015.
10. Tennessee Board of Regents policy 4:02:05:01 Naming Buildings and Facilities and Building Plaques (2016) specifies that special consideration should be given to the historical significance of the individual or group to the institution. It also specifies that, in general, a person must have made a significant contribution to the field of education,

government, science, or human betterment. The process required includes that the institution president or director must charge a committee to consider and make recommendations for the naming of a building.

11. In accordance with the BOR policy, the president of MTSU, Dr. Sydney A. McPhee, appointed a task force in October 2015, to conduct an examination of the issue and to recommend whether MTSU should rename the building, retain the name of the building and provide more historical context, or retain the name and take no additional action.
12. The task force was comprised of members of the MTSU student body, MTSU faculty, MTSU alumni, and members of the surrounding community.
13. The task force held three meetings (November 12, 2015, April 14, 2016, and April 19, 2016) and three public forums (December 1, 2015, February 24, 2016, and March 24, 2016). At the public forums, members of the public were permitted to speak. Prior to the third public forum, position papers were accepted for consideration by the task force.
14. A position paper submitted by the Military Science Alumni Chapter to the task force states that 89% of alumni responding to an internal survey supported leaving the name of Forrest Hall unchanged.
15. Position papers supporting and opposing the proposed change were submitted to the task force.
16. Dr. Carroll Van West, State Historian, participated as a resource consultant on the task force. Dr. Derek Frisby was the chair of the task force.

17. By letter dated April 19, 2016, the majority of the task force recommended that MTSU rename the building. The letter stated that a "significant minority" of the task force recommended against changing the name.
18. Following further discussion with Dr. Carroll Van West and watching video footage of the task force proceedings, on April 28, 2016, Dr. McPhee determined that MTSU should rename Forrest Hall and that a historical timeline, with primary source set, should be developed and housed in the Albert Gore Research Center on the MTSU campus.
19. The TBR approved renaming the building "ROTC Building" on June 24, 2016.
20. Forrest Hall is a memorial as defined by TENN. CODE ANN. § 4-1-412(a)(7), because it is a building named in honor of Lieutenant General Nathan Bedford Forrest, a historic figure recognized as having served in the War Between the States, a historic conflict, on State-owned property.
21. Middle Tennessee State University and TBR, public entities exercising control of Forrest Hall, submitted a complete petition for waiver including a report, copies of publication notices, and a list of private entities, groups, or individuals that could have an interest in receiving notice of the petition. TENN. CODE ANN. § 4-1-412(c)(1)-(3).
22. An initial hearing was held June 8, 2016, more than sixty calendar days after the petition for waiver was submitted on October 13, 2016. TENN. CODE ANN. § 4-1-412(c)(4). The list provided by MTSU was accepted and additional individuals, entities, and groups were identified to be provided written notice. MTSU represented that notice was provided.

23. The Tennessee Historical Commission (Commission) has jurisdiction to hear and render a decision in this matter pursuant to TENN. CODE ANN. § 4-1-412. Pursuant to TENN. CODE ANN. § 4-1-412(c)(5), the Commission heard the matter February 16, 2018, more than one hundred eighty calendar days after the petition was submitted, sitting with Administrative Law Judge Thomas G. Stovall.
24. In this matter, the Petitioners have the burden of proof to 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 is a presumption in favor of preservation of the memorial. TENN. CODE ANN. § 4-1-412(c)(8)(A).
25. When rendering a decision, the Commission must evaluate considerations established by TENN. COMP. R. & REGS. 400-70-01-.01, and may also take into account other considerations.
26. The petition and testimony and evidence establish that Forrest Hall is not designated as a national historic landmark or listed on the national register of historic places; therefore, the presumption in favor of preservation does not apply. TENN. CODE ANN. § 4-1-412(c)(8)(A).
27. The Petitioners claim that a material or substantial need for a waiver exists because renaming Forrest Hall would serve the public interest by promoting a welcoming atmosphere conducive to learning and working and by reducing a drain on state resources

through removal of a flashpoint for controversy; would rename the building in a manner that has a reasonable relationship to the site and conforms with the character of the existing names in the area; and would allow MTSU to further its mission as an institution of higher learning. TENN. COMP. R. & REGS. 400-70-01-.01(1)(a), (d), and (e) and 400-70-01-.01(2).

28. Although the petition for waiver and testimony and evidence presented indicate that the presence of confederate iconography and symbols on the MTSU campus has declined over time and that there has been opposition voiced in protests and during the task force process regarding the continued designation of the building in question as Forrest Hall based on perceptions arising from his personal activities and role as an officer in the Confederate military, the Petitioners have failed to demonstrate that Forrest Hall was designated due to resistance to the nascent civil rights movement in the 1950s or racial animosity or that individuals have refused to attend or left MTSU due to the name of Forrest Hall. TENN. COMP. R. & REGS. 400-70-01-.01(1)(a).
29. The petition and testimony and evidence presented establish that despite demonstrated support from the MTSU campus community and the surrounding community, opposition was also demonstrated including a significant minority of the task force and a significant majority of Military Science alumni who chose to participate in a survey regarding the issue. TENN. COMP. R. & REGS. 400-70-01-.01(1)(d).
30. Testimony presented indicates that MTSU plans to demolish Forrest Hall, ultimately accomplishing the same result. TENN. COMP. R. & REGS. 400-70-01-.01(2).

31. The Petitioners presented evidence addressing criteria established by the Commission; however, the Petitioners failed to demonstrate that a material or substantial need for a waiver based on historical or other compelling public interest exists.

It is **CONCLUDED** that the Petitioners failed to demonstrate, by clear and convincing evidence, that a material or substantial need for a waiver based on historical or other compelling public interest exists to change the name of Forrest Hall to the Army ROTC Building.

Accordingly, the Petitioners' petition for waiver is **DENIED**.

It is so ORDERED.

This FINAL ORDER entered and is effective this the 19th day of March, 2018.

TENNESSEE HISTORICAL COMMISSION

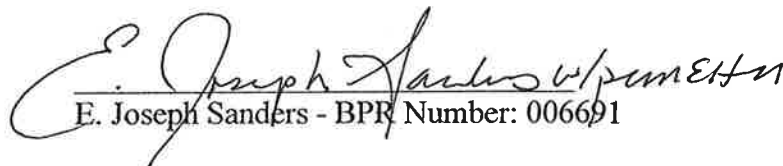
BY: E. Patrick McIntyre, Jr.
E. PATRICK MCINTYRE, JR.
EXECUTIVE DIRECTOR
TENNESSEE HISTORICAL COMMISSION

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the 19th day of March, 2018.

J. Richard Collier
Director, Administrative Procedures Division

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing has been sent to: **Heidi Zimmerman, Cope Administration Building 209, 1301 East Main Street, Murfreesboro, Tennessee 37132; Mary Moody, 1 Bridgestone Park, Third Floor, Nashville, Tennessee 37214; and Douglas E. Jones, 501 Union Street, Suite 701, P.O. Box 190676, Nashville, Tennessee 37219-0676** regular United States mail, this 19th day of March, 2018.


E. Joseph Sanders - BPR Number: 006691

Office of General Counsel
William R. Snodgrass TN Tower, 2nd Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243
Telephone: (615) 532-0122
E-Mail: joseph.sanders@tn.gov