

STATE OF TENNESSEE
TENNESSEE HISTORICAL COMMISSION

IN THE MATTER OF:)
)
THE METROPOLITAN GOVERNMENT OF)
NASHVILLE AND DAVIDSON COUNTY:)
BOARD OF PARKS AND RECREATION)
)
Petitioner,)
)
THE GENERAL JOSEPH E. JOHNSTON)
CAMP 28 SONS OF CONFEDERATE)
VETERANS)
)
Intervenor,)
)
RE: REMOVAL OF MEMORIAL)
FEATURING A LIFE-SIZE SCULPTURE)
OF A CONFEDERATE SOLDIER)
)
PETITION FOR WAIVER)

APD NUMBER: 04.48-222543A
THC 22-0011

FINAL ORDER DENYING PETITION FOR WAIVER

This matter came to be heard on February 17, 2023, before Administrative Law Judge Richard M. Murrell presiding with the Tennessee Historical Commission (the “Commission”). Macy Forrest Amos, Esq. represented the Metropolitan Government of Nashville and Davidson County (the “Petitioner”). H. Edward Phillips III, Esq. represented the General Joseph E. Johnston Camp 28 Sons of Confederate Veterans (the “Intervenor”). After considering the pleadings filed, the evidence presented, the arguments of counsel for the parties and instructions from Judge Murrell, the Commission made the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Centennial Park is a public park owned by Metro Nashville Davidson County’s Parks and Recreation Board (the “Board”). The Board supervises, controls, and operates Metro’s Park

system, including Centennial Park.

2. The Confederate Private Monument (“Confederate Memorial”), located within Centennial Park, features a bronze sculpture of a young Confederate private holding a rifle seated on a stone. The life-size soldier sits on a solid base adorned with several carved inscriptions and a bronze plaque naming the members of the Frank Cheatham Bivouac Number 1, Association of Confederate Soldiers, Camp 35, United Confederate Veterans (“the Bivouac”).

3. The Petitioner filed its Petition for Waiver pursuant to Tenn. Code Ann. § 4-1-412(c). The Intervenor is a “Historic Organization” as defined under Tenn. Code Ann. § 4-1-412(a)(6), and has among its primary goals, the preservation of historic memorials related to the history of the period of the War Between the States also known as the American Civil War.

4. On September 3, 2019, the Board voted to install contextual and interpretive signage near the side of the monument; however, the Board ultimately decided to seek removal of the monument instead of installing the signage.

5. Additionally, the Confederate Memorial located at Centennial Park is an element or object that supported the placement of Centennial Park on the National Register of Historic Places in 2008. Another memorial sculpted by artist George Zolnay, which is known as the “Gold-Star Monument” and dedicated to the memory of Nashvillians who perished while in the Armed Forces of the United States in the First World War. Moreover, the Gold-Star Monument is thought to be one of the last public works by Mr. Zolnay. The two memorials are supporting objects in the placement of Centennial Park on the National Register of Historic Places.

CONCLUSIONS OF LAW

1. The Petitioner as the “...public entity seeking the waiver shall demonstrate by clear and convincing evidence” under Tenn. Code Ann. § 4-1-412(c)(8)(A), “that material or substantial need for a waiver based on historical or other compelling public interests exists.” In consideration of

all the evidence, exhibits, and testimony presented at the hearing of this matter, the Commission finds and concludes that the Petitioner has failed to meet its burden of proof.

2. The Confederate Memorial is publicly owned by the Petitioner, the government of the City of Nashville in Davidson County, and the Confederate Memorial has been erected at a publicly owned park known as Centennial Park, located in west Nashville since June of 1909. The Confederate Memorial commemorates the service of Confederate Veterans and the residents of Nashville, Tennessee. These named veterans served in the historic conflict known as the War Between the States, or the American Civil War as set forth under Tenn. Code Ann. § 4-1-412(a)(2). Therefore, the Confederate Memorial is subject to the protections given to a “memorial” as defined under the Tennessee Heritage Protection Act (“Act”), Tenn. Code Ann. § 4-1-412(a)(7) and (a)(8).

3. The relief sought by the Petitioner is removal of the monument.

4. The Tennessee General Assembly has provided that the Act is to be liberally construed in favor of historic preservation. Even if a waiver is granted, 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. In a past case, *In the Matter of the State Capitol Commission Regarding Request to Relocate the Busts of Nathan Bedford Forrest, David Glasgow Farragut, and Albert Gleaves*, Administrative Procedures Division Docket Number 04.48-204639A, the Commission emphasized that relocation of a monument is paramount to public education.

6. Tennessee Comprehensive Rules and Regulation 0400-70-01-.01 sets-out criteria that the Commission may consider when an entity petitions for a waiver. Some of the criteria considered in this mater were:

a. Whether the proposed change detracts from or enhances the commemoration of the

conflict, event, entity, figure, or organization previously commemorated;

- b. Whether the proposed change diminishes or enhances the historic integrity of the site; and
- c. Whether the proposed change is relative to a historic site or memorial on the National Register of Historic Places or a national historic landmark.

7. Additionally, section 412(c)(8)(A) of the Act provides that if a memorial is designated as a national historic landmark or listed on the National Register of Historic Place, there shall be a presumption in favor of preservation of the memorial.

8. The Petitioner has failed to prove by clear and convincing evidence that a removal is needed under any compelling interest, as required by applicable law.

Based on the findings of fact and conclusions of law, the Petitioner's Petition for Waiver is **DENIED.**

POLICY REASON FOR THE DECISION

Denial is necessary in this case to effectuate the Act's policy of liberal construction in favor of historic preservation.

Entered this 9th of March, 2023. Pursuant to section 412(c)(8)(B) of the Act, this Order shall not be considered entered until and effective until it is posted to the Commission's website. Once posted, a Notice of Publication shall be filed with the Administrative Procedures Division.

TENNESSEE HISTORICAL COMMISSION

By: Derita Coleman Williams
Derita Coleman Williams
Chairperson
Tennessee Historical Commission

Approved as to form and legality:

/s/E. Joseph Sanders /wp SRP

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document was sent via email, to:

Administrative Procedures Division
APD.Filings@tn.gov

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On this, the 9th day of March, 2023,

/s/Sara Page