

**MINUTES
URBAN COUNTY PLANNING COMMISSION
ZONING ITEMS PUBLIC HEARING**

August 27, 2009

- I. **CALL TO ORDER** – The meeting was called to order at 1:31 p.m. in the Council Chamber, 2nd Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Patrick Brewer; Marie Copeland; Mike Cravens; Ed Holmes; Mike Owens; Derek Paulsen; Carolyn Richardson, Acting Chair; Lynn Roche-Phillips; and Joan Whitman. Absent was Frank Penn.

Planning staff members present: Chris King, Director; Bill Sallee; Barbara Rackers; Traci Wade; Tom Martin; and Stephanie Cunningham. Other staff members present were: Rochelle Boland, Department of Law; Bob Carpenter, Division of Building Inspection; Tim Queary, Urban Forester; Hillard Newman, Division of Engineering; and Allen Case, Division of Fire and Emergency Services.

Moment of Silence: Ms. Richardson stated that the Commission would like to observe a moment of silence in memory of Carol Goes, who passed away the previous evening. She said that Ms. Goes had appeared before the Commission for many years, and she will be missed by all who worked with her.

Welcome new Planning Commission member: Ms. Richardson stated that the Commission members would like to officially welcome their newest member, Derek Paulsen.

- II. **APPROVAL OF MINUTES** – A motion was made by Mr. Owens, seconded by Ms. Whitman, and carried 9-0 (Penn absent) to approve the minutes of the July 23, 2009, Planning Commission meeting.

- III. **POSTPONEMENTS AND WITHDRAWALS** – No such items were presented.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, August 6, 2009, at 8:30 a.m. The meeting was attended by Commission members: Mike Cravens, Mike Owens, Marie Copeland and Carolyn Richardson. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Chris Taylor, Tom Martin, Denise Bullock, Cheryl Gallt, Jimmy Emmons, Kenzie Gleason and Barbara Rackers, as well as Rochelle Boland, Department of Law; Capt. Charles Bowen and Allen Case, Division of Fire & Emergency Services; Paul Hockensmith, Street Addressing Office; and Bob Carpenter, Division of Building Inspection. The Committee made recommendations on plans as noted.

General Notes

The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.

- 1. All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.*
- 2. All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.*

- V. **ZONING ITEMS** - The Zoning Committee met on Thursday, August 6, 2009, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Ed Holmes, Frank Penn, Lynn Roche-Phillips, and Joan Whitman. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. **ABBREVIATED PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS**

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

Abbreviated public hearings will be held on petitions meeting the following criteria:

- The staff has recommended approval of the zone change petition and related plan(s)
- The petitioner concurs with the staff recommendations
- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

B. **FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS** – Following abbreviated hearings, the remaining petitions will be considered.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)
 - (b) objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)
 - (b) citizen objectors (5 minute maximum)

* - Denotes date by which Commission must either approve or disapprove request.

- (c) staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s)

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

1. HOMESTEAD NURSING CENTER, LLC, ZONING MAP AMENDMENT & HOMESTEAD NURSING HOME PROPERTY ZONING DEVELOPMENT PLAN

- a. MARC 2009-10: HOMESTEAD NURSING CENTER, LLC (10/8/09)* - petition for a zone map amendment from a Two Family Residential (R-2) zone to a High Density Apartment (R-4) zone, for 1.288 net (1.49 gross) acres, for property located at 1612 Versailles Road. A conditional use permit appeal has also been filed in conjunction with this request.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 5) recommends Low Density (LD) future land use for the subject property, which is defined as 0-5 dwelling units per net acre. The petitioner proposes the rezoning in order to make an addition to the adjacent nursing home, which will convert all of the facility's three- and four-person occupancy rooms into private and semi-private rooms.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval**, for the following reasons:

1. The requested High Density Apartment (R-4) zoning is appropriate, and the existing Two Family Residential (R-2) zoning is inappropriate at this location, for the following reasons:
 - a. The subject property is surrounded on three sides by R-3 and R-4 zoning, thus the proposed zoning is compatible and consistent with the immediate area along the south side of Versailles Road.
 - b. The subject property is generally bounded by more intense land use than the single family residential use at this location. Surrounding land uses include high density apartments, a nursing home and its associated off-street parking lot, and a community residence.
 - c. The nearest R-2 zoned area is more than 200 feet from the subject property, at its closest point.
2. The 2007 Comprehensive Plan's Goals and Objectives support the provision of opportunities to satisfy the community's need for private, nonresidential facilities, such as hospitals; nursing homes; and social service facilities, which serve the public but are privately owned, developed and maintained (Goal #20, Objective P). The proposed redevelopment of the subject property supports this goal by improving the quality and privacy of existing nursing home beds. Such improvements will serve the needs of Lexington-Fayette County residents better than the existing facility.
3. This recommendation is made subject to approval and certification of ZDP 2009-52: Homestead Nursing Home Property, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
4. Under the provisions of Article 6-7 of the Zoning Ordinance, the following uses shall be restricted on the subject property via conditional zoning:
 - a. No more than six residential dwelling units may be permitted on the subject property.
 - b. No free standing signage may be permitted on the subject property.
 - c. Conditional Uses (Provided the BOA or Planning Commission approves such use) are to be limited to the following:
 1. Kindergartens, nursery schools, and child care centers for four (4) or more children.
 2. Home occupations.
 3. Churches, Sunday Schools, and parish houses.
 4. Schools for academic instruction.
 5. Bed and breakfast facilities, limited to the rental of not more than five (5) rooms.
 6. Hospitals, nursing homes, rest homes, and orphanages.
 7. Assisted living facilities.

This restriction is appropriate and necessary for the subject property in order to ensure compatible development; and if a conditional use does not develop on the subject property, then the property will develop in a manner recommended by the 2007 Comprehensive Plan.

b. REQUESTED CONDITIONAL USE

1. Nursing home

The Staff Recommends: **Approval**, for the following reasons:

- a. Should re-zoning of the property to R-4 be approved by the Urban County Council, granting the requested conditional use permit will not adversely affect either the subject or surrounding properties. The Homestead Nursing Home has been in existence at its current location on the property immediately to the east of the subject

* - Denotes date by which Commission must either approve or disapprove request.

- property since 1971, with no apparent adverse impacts. This conditional use permit will allow a needed expansion and modernization of that use, and will not add new beds or employees to the facility.
- b. More than the minimum required parking will be provided, and the parking area will be paved and screened/landscaped to comply with Articles 16 and 18 of the Zoning Ordinance. Adequate storm drainage and retention will be provided to comply with the requirements of the Engineering Manuals; and any future additional development to the property will require an amendment to the development plan, and will be subject to approval by the Planning Commission and/or the Board of Adjustment.
 - c. All necessary public facilities either are or will be available for the proposed use of the property.

This recommendation of approval is made subject to the following conditions:

1. Should the property be re-zoned, that it be developed according to the submitted Preliminary Development Plan, or as further amended by the Planning Commission via a Final Development Plan.
 2. A note shall be placed on the Preliminary Development Plan, indicating that the Planning Commission has granted a conditional use permit for a nursing home per Article 6-4(c) of the Zoning Ordinance.
 3. That any new or modified entrance from Versailles Road (US 60) be subject to the approval of the Kentucky Department of Highways (KYDOH).
 4. That the parking area be paved and screened/landscaped to comply with Articles 16 and 18 of the Zoning Ordinance.
- c. ZDP2009-52: HOMESTEAD NURSING HOME PROPERTY (10/8/09)* - located at 1612 Versailles Road.
(The Roberts Group)

The Subdivision Committee Recommended: Approval, subject to the following requirements:

1. Provided the Urban County Council rezones the property R-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory information.
6. Denote: There shall be no development of the property until the Planning Commission approves a final development plan.
7. Addition of dimensions to parking spaces, drive aisles and access points.
8. Clarify dumpster location(s).
9. Clarify existing access point on the eastern property line.
10. Clarify site statistics for each lot.
11. Addition of record plat and deed information to subject lot.
12. Denote the existing and proposed easements.
13. Denote the detention area.
14. Combine dual access to Versailles Road to only one access point.
15. Denote: The location of any LexTran transit stop will be resolved at the time of the final development plan.

Zoning Presentation: Ms. Wade began the zoning presentation by orienting the Commission to the location of the subject property. She noted that the subject property is located on the south side of Versailles Road, between Heartsbook Lane and Terrace View Drive. The subject property has frontage and direct access onto Versailles Road, and is currently occupied by a vacant single-family residence. The zoning in the nearby vicinity of the subject property includes R-1C zoning to the north along Versailles Road; R-3 zoning to the east and west; R-4 zoning to the south, which includes a parking lot and another nursing home facility; and R-2 zoning further to the east.

Ms. Wade stated that the petitioner is proposing to rezone the subject property to the R-4 zone in order to expand the existing nursing home use that is located on the adjoining property at 1608 Versailles Road. In order to accommodate the nursing home use, the subject property would need to be rezoned to either the R-3 or R-4 zone. In both of those zones, a nursing home is a conditional use; therefore, the petitioner is also requesting a conditional use permit at this time. The petitioner has indicated that they would like to expand the existing nursing home use onto the subject property, which would provide the necessary area to convert their existing three- and four-bed rooms to private and semi-private rooms.

Ms. Wade noted that some of the other uses in the general vicinity of the subject property include: single-family residential uses to the north, on the other side of Versailles Road; the nursing home immediately to the east; another nursing home to the south; two single-family residences along Versailles Road to the south; a community residence to the south; and a small apartment complex to the rear of the subject property, which has access to Hill Rise Drive.

The 2007 Comprehensive Plan recommends Low Density Residential use for the subject property, which is defined as 0-5 dwelling units per net acre. Ms. Wade stated that it is difficult to compare the number of beds in a nursing home to a number of dwelling units, so the staff could not conclude that the proposed rezoning to R-4 is in agreement with the Comprehensive Plan. Therefore, the staff reviewed the appropriateness of the proposed R-4 zoning, and noted that the

* - Denotes date by which Commission must either approve or disapprove request.

application is for property that is surrounded on three sides by R-3 and R-4 zoning. In general, a Low Density recommendation by the Comprehensive Plan does not correspond with R-4 zoning. The staff is therefore recommending a conditional zoning restriction to allow up to six dwelling units on the subject property in order to maintain a density that is in keeping with that Low Density recommendation. In considering the appropriateness of the proposed zoning, the staff also considered the 2007 Comprehensive Plan Goals and Objectives, particularly Goal 20, which recommends support for maintaining a range of community facilities services. Objective P refers to, "supporting provisions and opportunities to satisfy needs for private, non-residential facilities, such as hospitals, nursing homes, and social service facilities." Ms. Wade stated that the staff concluded that redevelopment of the subject property could improve the quality and privacy of the nursing home facility, which would benefit Fayette County in general, and the nursing home residents in particular. The Zoning Committee and the staff are recommending approval of this request, for the reasons as listed in the staff report and on the agenda. The staff is also recommending conditional zoning restrictions, as listed in the staff report and on the agenda.

Commission Question: Mr. Holmes asked if the requested conditional use would run with the property, or be limited to the nursing home use. Ms. Wade deferred the question to Mr. Sallee, who would be presenting the staff's report on the conditional use.

Development Plan Presentation: Mr. Martin presented the corollary zoning development plan, further orienting the Commission to the location of the subject property. He noted that the larger Homestead Nursing Home property has existing access points to both Versailles Road and Hill Rise Drive. The petitioner proposes to construct an additional parking area, a detention basin, and a new wing for the nursing home on the property that is to be rezoned. The new building is proposed to be 12,408 square feet in size. The existing driveway access to Versailles Road is proposed to be removed, which would leave one existing access to Versailles Road. Mr. Martin noted that there are some significant trees located on the subject property, which the staff highlighted on the rendered development plan.

Mr. Martin stated that the Subdivision Committee recommended approval of this preliminary development plan, subject to the 15 conditions as listed on the agenda. Condition #15 is a discussion item, which would require that the petitioner agree to the placement of a bus stop on the subject property at the time of the final development plan. The petitioner would like to defer the placement of that stop until the final development plan in order to determine the exact placement of the new wing of the nursing home facility. Mr. Martin noted that, should the Commission choose to approve this rezoning request with the conditional zoning restrictions as proposed, a new condition #16 would need to be added, to read: "Denote conditional zoning restrictions."

Conditional Use Presentation: Mr. Sallee presented the staff report, noting that the requested conditional use is for a nursing home, which is a conditional use in both the R-3 and R-4 zones. Until recently, the Planning Commission was only able to hear conditional use requests inside the defined Infill and Redevelopment Area, but the Zoning Ordinance was amended earlier this summer to allow conditional uses and variances to be considered by the Planning Commission at the time of any proposed rezoning.

Mr. Sallee displayed an aerial photograph on the overhead projector to further orient the Commission to the location and site features of the subject property. He said that the reason for this rezoning and conditional use request is to increase the size of the existing nursing home, but not the number of beds in the facility. That would effectively reduce the number of beds in the existing building, allowing newer rooms to be provided on the subject property. The proposed addition to the nursing home is approximately 12,200 square feet in size, and is proposed for approximately 40 nursing home beds in the new construction.

Mr. Sallee stated that, in their report, the staff had two points in support of this conditional use request: first, the staff found that granting this conditional use request would not adversely affect either the subject property or surrounding properties; and, second, allowing the facility to expand will enable the nursing home to offer more privacy to its residents and provide an upgraded facility. The staff is recommending approval of this conditional use request, for the three reasons as listed in the staff report and on the agenda. The staff's recommendation of approval includes four recommended conditions, which are also listed in the staff report and on the agenda.

With regard to Mr. Holmes's earlier question, Mr. Sallee stated that there is not a recommendation from the staff that this conditional use permit become null and void should the property be sold or transferred. That condition has been considered on occasion by the Board of Adjustment in the past, and could be considered by the Planning Commission in this case; but the staff believes that, since the property is controlled by a development plan, the other conditions will be adequate to protect the property, should there be a future change in ownership.

Commission Questions: Mr. Holmes asked what would happen on the subject property if the nursing home were to cease operations. Mr. Sallee answered that the primary reason for the staff's recommendation for conditional zoning on the zone change is to address that contingency. Should the conditional use not be engaged or be abandoned in the future, the conditional zoning restrictions would still run with the property. There would also still be a development plan controlling the property, which would need to be amended.

Petitioner Presentation: Bob Cornett, The Roberts Group, was present representing the petitioner. He stated that the petitioner has been pursuing ownership of the subject property for nearly 20 years. The existing nursing home was constructed and began operations in 1977. There are 136 beds in the facility, all of which are approved by the state governing body and covered under a Certificate of Need. The number of beds in the facility cannot be increased without approval from the state, which is very difficult to obtain. Mr. Cornett said that the sole purpose of the proposed rezoning is to provide additional building area into which the facility can expand, in order to convert the existing three- and four-bed rooms to semi-private rooms. The petitioner proposes to connect the existing facility to the new area with a corridor, while the existing dining room and other facilities remain in place to serve all of the residents.

Mr. Cornett stated that the petitioner proposes to maintain the existing main entrance at the front of the building, while constructing new emergency exits at the front and rear of the building. The proposed new parking area at the front of the building will be used for visitors to the facility, leaving the remainder of the parking in the rear of the building for employees of the nursing home.

Mr. Cornett said that the petitioner is looking forward to providing an improved, upgraded facility for the nursing home residents, and he requested that the Commission grant its approval.

Citizen Opposition: Joy Kokernot, 1616 Versailles Road, stated that her property adjoins the subject property immediately to the west. She said that she is not opposed to the nursing home facility itself, but she is concerned about the proposed R-4 zoning. She believes that higher-density residential zoning might reduce her property values, as well as diminish the attractiveness of the Versailles Road corridor.

Ms. Kokernot stated that she would like to see the former Utterback home and the existing mature trees on the subject property preserved, as they are very attractive and historic in nature.

Ms. Kokernot is also concerned that the proposed expansion of the nursing home facility might contribute to the "criminal element" that is already present along Versailles Road. She distributed copies of a police report of criminal incidences at the Utterback home within the past two years. There have been past instances of homeless individuals "camping out" on the nursing home property, and they tend to "blend in" with the staff activity in the parking lots. Since Ms. Utterback's death, those activities have spread across the entire subject property, and are now occurring nearer to Ms. Kokernot's home. Ms. Kokernot said that the subject property is not being properly maintained, and the overgrowth of shrubs provides a hiding place for individuals in the area. She added that she has also had raccoons in her home, which she believes were attracted to the area due to the lack of maintenance of the landscaping.

Ms. Kokernot stated that, should the Planning Commission choose to rezone the subject property, she would prefer lower density zoning. She would also like, for the safety of herself and her property, for the petitioner to construct a six-foot fence along the common property boundary and trim the hedges regularly; and, for the aesthetic appeal of the Versailles Road corridor, for the petitioner to maintain the existing large trees on the subject property.

Dr. Rosa Riggs, 1616 Versailles Road, stated that she shares Ms. Kokernot's concerns.

Petitioner Rebuttal: Mr. Cornett stated, with regard to Ms. Kokernot's concerns about the proposed R-4 zoning, that the subject property is surrounded by higher density zoning. He noted that the floor area ratio of the proposed new building, plus the existing facility, will equal approximately 22% coverage of the lot; the R-3 zone would allow up to approximately 35% FAR, and even more for the proposed R-4 zone, so the petitioner does not propose to develop the property nearly as intensely as it could be.

Mr. Cornett said that the petitioner will request a meeting with the Urban Forester prior to construction on the subject property to evaluate the health of all the trees, that the owner will maintain as many viable trees as possible, and that he does not intend to "level the lot." Some of the trees on the lot were damaged during the most recent ice storm, and one large limb fell on the corner of the existing nursing home, nearly injuring a resident. Mr. Cornett noted that the petitioner is currently considering whether or not to move the placement of the building over on the property in order to save more of the existing trees, and provide a garden area between the two buildings for the residents' use. The petitioner would construct a wrought-iron fence around that garden area for the residents' protection, as well as repairing and/or replacing the fencing along the boundary with Ms. Kokernot's property.

Citizen Rebuttal: Ms. Kokernot noted that there is a wire fence along her property boundary. Mr. Cornett stated that the petitioner would be willing to replace that fence with a six-foot fence along that boundary, in order to protect Ms. Kokernot's property as well as the nursing home property.

Ms. Kokernot stated that her concerns about the proposed rezoning extend beyond the fencing of her property, as she believes that R-4 zoning on the subject property could negatively impact the Versailles Road corridor as a whole. She

* - Denotes date by which Commission must either approve or disapprove request.

noted that, although the homes in the area are not listed on the National Register, they are still historic and worthy of preservation.

Staff Rebuttal: Ms. Wade stated that the Planning Commission could address Ms. Kokernot's concerns by adding a few prohibited uses that are currently principal in the R-3 and R-4 zones, including community residences and boarding or lodging houses. That addition might help mitigate Ms. Kokernot's concerns about the location of additional community-service facilities along Versailles Road.

Mr. Sallee stated that the staff could also consider a condition, either with the development plan or the conditional use permit, to require a six-foot fence, since no zone-to-zone screening will be required in this instance. Should the Commission choose to adopt such a condition, it could read: "Denote: A 6' fence shall be erected adjacent to 1616 Versailles Road." If the Commission chooses to include this requirement as a development plan restriction, it would be easier to remove in the future, should the parties agree to do so.

Commission Questions: Ms. Copeland asked to see the aerial photograph of the subject property on the overhead projector, in order to review Ms. Kokernot's property. Mr. Sallee displayed the aerial photograph, and noted the location of the existing nursing home; the property requested for rezoning; Ms. Kokernot's property; and the area where Ms. Kokernot would like for fencing to be constructed. Ms. Copeland asked what type of use is located adjacent to Ms. Kokernot's property, as shown on the left-hand side of the photograph. Ms. Wade answered that the area Ms. Copeland inquired about contains the Messner home, which is a community residence facility. Further west is a single-family residence, and to the east side of the existing nursing home is the former Knights of Columbus property.

Mr. Holmes stated that he would be concerned about the construction of a privacy fence, because that type of fencing sometimes suffers from lack of proper maintenance, and noted that a landscape buffer may be preferable at that location. Ms. Wade said that one of Ms. Kokernot's concerns is that the existing landscaping is not being properly maintained at this time. Ms. Kokernot stated that she is more concerned about the spread of crime than the appearance or maintenance of the fencing. Ms. Riggs added that the fencing between Ms. Kokernot's property and the Messner home property has prevented anyone from "wandering through." She noted that a privacy fence along the boundary with the subject property could provide protection for the nursing home, as well as herself and Ms. Kokernot.

Ms. Riggs asked if the petitioner proposes to construct parking between the existing building and Versailles Road. Mr. Sallee answered that the petitioner does propose to construct parking in that area, at approximately the same depth as their existing parking lot.

Mr. Paulsen stated that he echoes Mr. Holmes's concern about the privacy fence, but for safety reasons, rather than aesthetic ones. He noted that, since privacy fences are impermeable, an intruder would not be visible to passersby once they were in Ms. Kokernot's yard. As part of his work in criminal justice, Mr. Paulsen generally does not make recommendations for the construction of privacy fences, preferring instead to use permeable fencing such as wrought iron. Ms. Kokernot stated that wrought-iron fencing would be ideal, as it looks attractive, but would be difficult for an intruder to climb over.

Mr. Owens asked what is located behind Ms. Kokernot's property. Using the aerial photograph, Ms. Wade answered that she believed that that building houses apartments. Ms. Kokernot stated that the building is actually a tri-plex, which might possibly be sold at a later date.

Mr. Owens asked, with regard to the prohibited uses that Ms. Wade proposed, why bed and breakfast facilities were not included in the prohibited uses for the property. Ms. Wade responded that bed and breakfast facilities generally do generate a great deal of traffic, and they are highly regulated, both by the very definition of bed and breakfast, and by the Board of Adjustment.

Ms. Roche-Phillips asked Mr. Queary to indicate, using the rendered development plan, which trees need to be maintained per the Tree Protection Ordinance. Mr. Queary noted that he had not visited the site, but that the petitioner had included a tree inventory map with the development plan, as required. He said that he had only reviewed the trees up to this point using aerial photography, but he would be willing to meet with the petitioner on site and determine which trees are the healthiest and should be preserved. There appears to be a great deal of honeysuckle on the property, all of which could be removed.

Mr. Queary stated that he agrees with the concerned citizens, and he is "alarmed that the petitioner is trying to maximize the density" on the subject property, which will surely result in the elimination of some of the trees. An older version of the development included a driveway in the location that is now noted for the proposed detention basin, which would interfere with a large American Sycamore. Excavation will be required in order to construct the detention basin, which would disturb the tree, due to the five-foot setback along the property line. Mr. Queary said that only time would tell whether the American Sycamore could survive such a disturbance, but several other trees in the vicinity of the proposed detention basin would definitely be lost. The petitioner's plan includes a 40% tree canopy cover, which exceeds the 30% minimum

* - Denotes date by which Commission must either approve or disapprove request.

as required by the Zoning Ordinance, so the petitioner has the ability to remove some trees and still maintain the required cover. The petitioner could also augment that cover by adding tree plantings after the detention basin is constructed.

Ms. Roche-Phillips asked if the petitioner would be required to replace all of the removed trees in kind, or just maintain the 30% canopy requirement. Mr. Queary answered that the petitioner has not identified the species of each tree on the plan itself, but all of the species are listed in the development plan notes. He would need to meet on site with the petitioner at the final development plan stage, and would ask that the petitioner identify each individual tree species. The petitioner would not be required to replace the trees in kind, but to maintain the required 30% tree canopy. Mr. Queary noted that all of the trees might not be worthy of preservation, but it appears from the photograph that the large American Sycamore is healthy and worthy of preservation.

Mr. Owens asked if the petitioner intends to revise the development plan to move the proposed building further from the existing building, and provide more space between the two buildings. Mr. Cornett answered that the petitioner had discussed shifting the proposed building over in order to accommodate a courtyard between the two buildings. The petitioner has also proposed the addition of an atrium in the middle of the common area, in order to provide a space for visitors to meet with residents. Mr. Cornett noted that Ms. Utterback's had a large garden of perennial plantings in the rear of the subject property, and the petitioner would be willing to relocate some of those plantings to the proposed garden area, for the residents' enjoyment. With regard to the proposed detention basin, Mr. Cornett said that, at this plan phase, the petitioner must include proof that the subject property can accommodate a detention basin, but that basin could be moved or reconfigured on the final development plan in order to avoid the trees. If the Urban Forester determines that the trees will need to be preserved, construction fencing will be placed at the drip line of each tree, and the roots will not be disturbed during construction. Mr. Cornett noted that the petitioner is not trying to max out the density of the subject property, and the petitioner intends to preserve all of the trees along Versailles Road, as well as the ones along the existing driveway to the subject property.

Ms. Roche-Phillips asked if the additional parking proposed along the front of the property is required by the Ordinance based on the increase in square footage of the building. Mr. Sallee answered that he does not believe that there would be a huge increase in the required parking, but it would be dependent on the possible increase in the number of employees, since there are no additional beds proposed for the facility. There is currently a parking surplus on the property, and a small number of spaces are provided in the rear of the property as well. The staff could review those exact numbers at the time of the final development plan, particularly if the Commission is not inclined to approve that much additional parking on the property.

Zoning Motion: A motion was made by Ms. Copeland, and seconded by Ms. Whitman, to approve MARC 2009-10, for the reasons provided by staff.

Discussion of Motion: Mr. Owens asked if Ms. Copeland's motion should include the prohibited uses to which Ms. Wade had referred earlier. Ms. Copeland stated that she would like to amend her motion to include, under the uses prohibited by conditional zoning:

4d. Prohibited uses: Community residences, and boarding or lodging houses.

Ms. Whitman stated that she would agree with the amendment to the motion.

Ms. Roche-Phillips asked if it would be appropriate at this time to add setback requirements, or if that should occur at the time of the final development plan. Mr. Sallee answered that, if the Commission wished to have a minimum setback to create a buffer, they could do so through conditional zoning, or through consideration of either this plan or the final development plan. Ms. Roche-Phillips asked the Commission members whether they should consider a possible setback requirement and fencing requirements at this time.

Withdrawal of Motion: Ms. Copeland stated that she would like to withdraw her motion, to which Ms. Whitman agreed.

Commission Questions: Ms. Richardson asked if the staff had a recommendation for a new motion. Mr. Sallee responded that the staff had suggested that the fencing be considered either as part of the development plan, or the requested conditional use. The Commission could also impose a buffering restriction through conditional zoning if they wished.

Ms. Roche-Phillips stated that she was concerned about the Commission's ability to require the setback of any structures, in order to preserve the existing trees. She asked if the setback could be determined after Mr. Queary's on-site inventory of the trees. Mr. Sallee answered that, if the Commission wished to impose a conditional zoning buffer, it would need to be recommended at this time.

Mr. Brewer asked if that buffer could be imposed at the time of the final development plan. Mr. Sallee answered that a buffer could be imposed as part of the final development plan, but it could not be imposed at that time as a conditional zoning restriction.

Ms. Roche-Phillips stated that, if the Commission does not require the buffer as a conditional zoning restriction, any subsequent uses could encroach on that property line. Her intent is to protect the adjoining property owners. Ms. Wade noted that, unless the Commission opted to require a larger setback on the final development plan, the standard setback would still apply.

Mr. Cravens asked how far the new building is proposed to be located from the property line. Mr. Cornett answered that the building, as included on this development plan, is proposed to be approximately 55 feet off the property line. It may be moved over as much as 10 or 15 feet, however, in order to accommodate a garden area, as described earlier. Mr. Cravens asked if the petitioner could proceed with a 20-foot side yard. Mr. Cornett responded that the petitioner could accommodate a 20-foot side yard, provided it did not interfere with the area that is proposed for the parking lot. Mr. Cravens asked if a parking lot could be built over a required side-yard easement. Mr. Sallee answered that the parking lot could be built over the required side yard, but not over a buffer area as imposed by conditional zoning restrictions. Mr. Cornett noted that, should the Commission choose to impose such a buffer, the petitioner may not be able to meet the required number of parking spaces.

Zoning Motion: A motion was made by Ms. Roche-Phillips to approve MARC 2009-10, for the reasons provided by staff; adding the conditional zoning restrictions as proposed by staff, including #4d as recommended by Ms. Wade; and imposing a 25' side yard setback along the western property line.

Discussion of Motion: Mr. Brewer stated that the imposition of a 25' side-yard setback would prevent the petitioner from constructing the proposed parking lot. Ms. Roche-Phillips stated that the petitioner has excess parking. Mr. Cravens stated that he believed that Ms. Roche-Phillips was referring to the building line; and, if so, the petitioner could construct the parking area over the building line. Mr. Sallee stated that parking would not be permitted over the front building line, but the building is located far behind the building line. Imposing a 25-foot buffer would not allow parking within 25 feet of that line, in this case, along the western property line.

Mr. Cravens asked if a 25-foot side yard easement would allow the petitioner to construct the parking lot as proposed. Mr. Sallee answered that the Commission is only authorized via conditional zoning to require a landscape buffer or use restrictions. Instead of a landscape buffer, the Commission could impose a use restriction within 25 feet of that line that there could be no structures there; in that instance, parking could still be permitted.

Amendment of Motion: Ms. Roche-Phillips stated that she would like to amend her motion to impose a use restriction rather than a buffer, as explained by Mr. Sallee.

Ms. Richardson asked Ms. Roche-Phillips to repeat her motion in its entirety. Ms. Roche-Phillips stated that she moved for approval of MARC 2009-10, for the reasons provided by staff; including the conditional zoning restrictions as recommended by staff, including #4d as proposed by Ms. Wade earlier in this hearing; and to require a 25-foot side yard use restriction to prohibit structures along the western property line. Mr. Cravens seconded the motion.

Discussion of Motion: Ms. Whitman stated that she is opposed to Ms. Roche-Phillips's motion, since the 25-foot side yard may someday be needed by the nursing home facility. She said that she does not believe that it is appropriate to "re-do the development plan" at this stage; rather, these concerns could be addressed when the petitioner files a final development plan, so that the Commission does not impose restrictions that could impose a hardship on the petitioner in trying to develop the subject property.

Ms. Roche-Phillips stated that she had included the 25-foot use restriction in her motion to provide a more stringent setback requirement, in order to protect the adjoining properties.

Zoning Action: Ms. Roche-Phillips's motion passed, 8-1 (Whitman opposed; Penn absent).

Conditional Use Action: A motion was made by Mr. Owens, seconded by Mr. Cravens, and carried 9-0 (Penn absent) to grant the requested conditional use for a nursing home, for the reasons provided by staff, subject to the four conditions as recommended by staff.

Development Plan Action: A motion was made by Mr. Cravens and seconded by Mr. Holmes to approve ZDP 2009-52, subject to the 15 conditions as listed on the agenda; adding a new condition #16 to read: "Denote conditional zoning restrictions;" and adding a new condition #17 to require that a fence be added along the property line with 1616 Versailles Road.

Discussion of Motion: Mr. Owens asked if it would be appropriate to denote that the fence be six feet in height, but not be required to be a privacy fence. Mr. Brewer stated that he would suggest that the fence be termed as "adequate," rather than determining the size or color. Mr. Paulsen said that a six-foot fence could still be a negative, and the language should specify that the fence be permeable. Ms. Copeland suggested that the condition require a specification with regard to opacity of the fence. Mr. Sallee noted that this is a preliminary development plan; the note as recommended by staff should raise this issue at the time of a final development plan for this property. That will also allow time for Ms. Kokernot and the petitioner to converse and review the details of the fencing, and, hopefully, come to some agreement. The staff will raise this issue if and when a final development plan is filed for this property.

Amendment of Motion: Mr. Cravens amended his motion to include a new condition #17 to read: "Denote: A 6' fence shall be erected adjacent to 1616 Versailles Road." Mr. Holmes agreed to the amendment to the motion.

Development Plan Action: Mr. Cravens' motion carried, 9-0 (Penn absent).

V. COMMISSION ITEMS

- A. INITIATION OF ZONING ORDINANCE TEXT AMENDMENT FOR A GIS-BASED ZONING ATLAS - Mr. Sallee stated that the staff has asked the Commission to consider initiation of this text amendment following the staff's presentation at the July work session. There is a proposal to change the zoning atlas from the historical series of 81 maps, covering all of Fayette County, to use a system that would allow the LFUCG GIS system to be the official zoning atlas for the community. The staff has been discussing this with the GIS staff, and is working on exact language to accomplish this. If the Commission chooses to initiate this text amendment today, and the staff can finalize their discussions with GIS, the staff would assume to present the text to the Commission at a future work session, and conduct a public hearing sometime in the fall.

Action: A motion was made by Mr. Holmes, seconded by Ms. Copeland, and carried 9-0 (Penn absent) to initiate a Zoning Ordinance text amendment as proposed by staff.

VI. STAFF ITEMS – No such items were presented.

- VII. AUDIENCE ITEMS – Citizens may bring a planning related matter before the Commission at this time for general discussion or future action. Items that will NOT be heard are those requiring the Commission's formal action, such as zoning items for early rehearing, map or text amendments; subdivision or development plans, etc. These last mentioned items must be filed in advance of this meeting in conformance with the adopted filing schedule.

VIII. MEETING DATES FOR SEPTEMBER, 2009

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	September 3, 2009
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	September 3, 2009
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	September 10, 2009
Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	September 17, 2009
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	September 23, 2009
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	September 24, 2009
Planning Commission/Planning Committee Joint Meeting, Tuesday, 9:00 a.m., Central Library.....	September 29, 2009

- IX. ADJOURNMENT – There being no further business, Ms. Richardson declared the meeting adjourned at 2:49 p.m.