

**PLANNING COMMISSION MEETING
MUNICIPAL CENTER COUNCIL CHAMBERS
Tuesday, September 1, 2009**

The regular meeting of the Planning Commission was scheduled and held in the Council Chambers of the Municipal Center on September 1, 2009. Vice Chairman Owens welcomed everyone and asked the Commission members as well as the audience to please speak into the microphone so they could be heard. Vice Chairman Owens then called the meeting to order at 6:00 p.m., asking the secretary for the roll.

Ms. Rush called the roll of the Board to establish a quorum:

Commissioners Present: Rick Bennett, Alderman John Drinnon, Forrest Owens, Susan Burrow, Mike Harless, Lisa Parker and Dike Bacon.

Commissioner Absent: David Klevan.

Staff Present: David Harris, Jerry Cook, Wade Morgan, Josh Whitehead, Tim Gwaltney, and Pam Rush.

A quorum for tonight's Planning Commission meeting was established.

1. Approval of Minutes for July 7, 2009

Vice Chairman Owens stated for those people who just arrived, tonight's agenda is on the front table. The first order of business is the approval of the minutes for July 7, 2009. If there were no additions, corrections or deletions to the minutes of the July 7, 2009, meeting of the Planning Commission, he would entertain a motion for approval.

Mr. Bennett moved to approve the Planning Commission minutes of July 7, 2009, as submitted, seconded by Ms. Burrow.

Vice Chairman Owens asked for a roll call.

Roll Call: Bennett – yes; Burrow – yes; Drinnon – yes; Parker – abstain; Bacon – abstain; Harless – yes; Owens - yes; Klevan – absent. **The motion passed.**

2. Qureshi & Malik Homes P.U.D. – West side of Kimbrough Road at Beekman Place – Request Preliminary and Final Plan Approval

BACKGROUND: The subject property is owned by Kafait Malik and Zahir Qureshi, and is 1.14 acres in size. The applicant is seeking to subdivide the property into two (2) separate lots for residential use.

DISCUSSION: The specific request by the applicant is for preliminary and final plan approval of the two (2) lots Qureshi & Malik Homes Planned Unit Development (P.U.D.). Each lot will be approximately 0.57 acres. Access will be provided by two (2) curb cuts for each lot on Kimbrough Road. Please see the attached final plan.

STAFF COMMENTS:

Staff Planner – Katie Graffam

Staff Engineer – Jonathan Smith

The Technical Advisory Committee (T.A.C.) met on August 13, 2009, and made the following comments pertaining to the Qureshi & Malik Homes P.U.D. application:

A. Prior to Construction Plan Approval:

1. A grading and drainage plan shall be submitted. With the grading and drainage being conducted with the construction of the PUD, the applicant shall remove the note under the Outline Plan Conditions on the final plan, under Section IV (B): "Prior to the issuance of a footing and foundation permit for the first house, a grading and drainage plan must be submitted to the City Engineer for approval. The plan must address the storm water flow from Caylors Woods and from Lot 1 to Lot 2. The plan must be prepared and signed by a licensed civil engineer. Any drainage pipes installed will require the re-recording of the final plat to create easements for said pipes."
2. The applicant shall submit an erosion control plan.
3. A public easement shall be around the existing drainage structure #42 on the grading and drainage plan.
4. A private drainage easement shall be shown on the final plan.
5. The connection to the existing water main in Beekman Place shall be a wet tap.
6. All recorded easements shall be shown on the final plan. A five (5)-foot utility easement is required along all property lines, adjacent to and not within any other easement.
7. The applicant shall include a note on the final plan granting access to the City of Germantown to the public sanitary sewer easement due to its location behind the proposed gates.
8. The new fire hydrant specs shall be displayed on the plans.

B. General Requirements:

1. The Developer agrees to include in all contracts between the Developer and purchaser of any part of the Subdivision (Lot Purchasers) the following, unless otherwise authorized in writing by the City Engineer:
 - (a) All streets shall be kept clear and free of dirt and debris;
 - (b) All construction activity shall begin no earlier than 7:00 a.m. and end no later than 6:00 p.m., Monday through Saturday, and no construction activity shall be permitted on Sundays; and
 - (c) The Developer and Lot Purchasers shall provide the Department of Economic and Community Development with the name, address and phone number of person(s) to be contacted and responsible for correcting any of the above should the occasion arise to do so.
2. The applicant/developer shall enter into a Project Development Contract with the City of Germantown for this project after it has received Final approval from the Planning Commission and the Design Review Commission.

C. Additional Staff Comments:

1. Attached is a letter from Mr. Lew Wardlaw (Appendix A), legal representation for the residents of Caylors Woods. In that letter, Mr. Wardlaw designates the proposed

development as a double-frontage lot. Attached to that letter (Appendix B) is an earlier ruling refuting that comment based on the Common Open Space (COS) area adjacent to the west side of the property, within the Caylors Woods Planned Development (P.D.).

2. Appendix C is the final plat for Caylors Woods P.D. referencing COS B that borders the applicant's property.
3. Staff bases its recommendation of approval due to the proposed planned development's compliance with the City's PUD ordinance (see the following page). The proposed planned development contains two lots averaging 24,896 square feet, or 66 percent larger than the minimum lot size in the "R" residential zoning district. The requested variances are in keeping with the development throughout the area, including Caylors Woods PUD to the immediate west (with 30-foot front yards and 25-foot rear yards), Gardens of Wood Creek PUD one block to the west (with 20-foot front yards), St. Albans PUD on Dogwood to the east (with 25-, 30- and 35-foot front yards) and the numerous PUDs and multi-family development along Kimbrough to the north. Staff also feels the requested variances are reasonable due to the fact that the subject property was greatly reduced in depth due to the widening and improvements of Kimbrough Road, which necessitated acquisition from this property. Finally, staff believes the proposed PUD is preferable to the surrounding neighborhoods than the 3-lot subdivision that would be allowed by right under the zoning regulations on this site.

Sec. 23-567. Relation between planned development and zoning districts.

(b) *Modification of district regulations.* Planned developments may be constructed in any zoning district as outlined in subsection (a) of this section, subject to the standards and procedures set forth as follows:

- (1) Except as modified by the approved outline plan, a planned development shall be governed by the regulations of the district or districts in which the planned development is located.
- (2) The approval of the outline plan for the planned development may provide for such exceptions from the district regulations governing area, bulk, parking and such subdivision regulations as may be necessary or desirable to achieve the objectives of the proposed planned development, provided that such exceptions are consistent with the standards and criteria contained in this section and have been specifically requested in the application for a planned development; and further provided that no modification of the district requirements or subdivision regulations may be allowed when such proposed modification would result in:
 - a. Inadequate or unsafe access to the planned development.
 - b. Traffic volumes exceeding the anticipated capacity of the proposed major street network in the vicinity.
 - c. An undue burden on public parks, recreation areas, schools, fire and police protection and other public facilities which serve or are proposed to serve the planned development.
 - d. A development, which will be incompatible with the purposes of this division.
 - e. Detrimental impact on surrounding area including, but not limited to, visual pollution.

The burden of proof that the criteria of subsection (b) of this section are not being violated shall rest with the developer and not the staff or the planning commission. Such exceptions shall supersede the regulations of the zoning district in which the planned development is located.

Staff Recommendation: Approval.

PROPOSED MOTION: To grant preliminary and final plan approval to the Qureshi & Malik Homes P.U.D., subject to staff comments.

Harvey Marcom, with the Reaves Firm, 5880 Ridge Bend Road, stated Mr. Qureshi has been a Germantown resident for over 20 years. In 1991, he and his partner purchased this property and have held it since that time. The records show that they have paid over \$19,000 of City and County taxes of the property over the years. The time has come that they want to use that property to build their homes. In 2004, the City purchased from Mr. Qureshi 53 feet of Right of Way for the improvement to Kimbrough Road. Each lot will be approximately 0.57 acres. Access will be provided by two (2) curb cuts for each lot on Kimbrough Road.

Lew Wardlaw, with Martin, Tate, Morrow and Marston Law Firm 6410 Poplar Avenue, Suite 1000, Memphis, TN 38119, stated he represents many of the residents of Caylors Woods Cove. There has been several issues raised in the written application: 1) Is the widening of Kimbrough Road, 2) Double frontage lots and rear yard setbacks and a request for a 16 foot variance, 3) Visional, distance between and noise impact, 4) architectural gestures of the homes that will be built and the screening between.

Mr. Wardlaw stated my clients have attempted to come to a mutually acceptable agreement with the developers. Unfortunately, in what they termed their final proposal, the developers made clear their intentions if my clients do not unconditionally accept their plan as submitted, writing that:

Rejection of our reasonable proposal by the Caylors Woods will be sad indeed. In such a case, our backs will face the fronts of Caylors Woods. The trees will have to be cut down. Back walls will be barren with no architectural gestures to blend in with Caylors Woods. Such a situation will not increase the values of Caylors Woods homes. It may decrease their values. On our part, we will have two very nice looking homes open on Kimbrough.

(Section 23-232(1) (a) and (b) of the Zoning Ordinance provide that “there shall be a required front yard of not less than 40 feet” adding that “on double frontage and corner lots there shall be a required front yard on each street”)

Mr. Wardlaw stated by the developers’ own account, the threatened result would be both aesthetically and financially devastating to the residents of Caylors Woods Cove. My clients’ dependence on this body to enforce the setbacks is particularly important because they cannot rely on the developers to ensure the compatibility of the existing community with the proposed new residences. With this background, we request that the Planning Commission reject the plans as submitted and require that the setback from Caylors Woods Cove be maintained at 40 feet as required by the Zoning Ordinance. To the extent the developers desire a deeper buildable area, any encroachment should be made towards Kimbrough Road.

Mr. Wardlaw stated whether or not some variance is ultimately granted, we request that the developers be required to provide and maintain a dense landscape buffer along the entire length of the west line of the subject property (the “Landscape Buffer”), which Landscape Buffer shall be installed prior to the beginning of construction and shall be a minimum of 15 feet in width as measured from the west property line. The Landscape Buffer shall be such that, to the extent practicable, the proposed development shall be preserve and incorporate existing trees and plantings wherever possible and shall provide the additional of a dense planting of appropriate, indigenous evergreens and deciduous plantings of various species, varieties, sizes and heights, including low growing shrubs and tall canopy trees, in a three tiered plan. We also request that the new construction with the existing neighborhood. Appropriate language

should be included on the recorded plat to bring about these goals. The Caylors Woods Cove residents object to any variance allowing a taller house than is allowed by the Zoning Ordinance.

John Huggins, 2245 Wickersham Lane, stated we live across the street on Kimbrough Road. He has a concern about granting a parking pad on Kimbrough Road. If it is granted, how will it be screened?

Mr. Whitehead stated it would not be an on street-parking situation. It would be by the garage, not close to a right of way or house. It would be screened from the street. The screening would be located between the parking pad and the sidewalk. There will also be a six-foot wrought iron fence with the base being brick.

Ms. Huggins, 2245 Wickersham Lane, stated she has not received anything in the mail about this before this meeting until about ten days ago about this meeting, for the ones that back up to Kimbrough Road. They have already taken down many trees for the widening of Kimbrough Road, this is directly behind our house and I do not want any more trees taken down. How are they planning to grade the land?

Mr. Marcom stated the elevation of the southern lot is higher than the northern lot. As the two lots develop, I think there will have to be some changes in the topography to do some retaining walls that will be required to fit the footprints of the house on these lots.

Mr. Whitehead noted there were notices mailed out two weeks prior to the Planning Meeting to anyone within 300 feet of this property.

Alderman Drinnon asked Mr. Cook as the Director of Development, do you recalled any development that we had to deal with before of this nature?

Mr. Cook answered no I do not. I think the development of this property is kind of typical of infill development. Small parcels of ground for whatever reason that have been passed over for development in this particular case may have been because of the widening of Kimbrough Road. Because to develop two lots on the subdivision and foot the bill for the improvement of Kimbrough Road ten years ago may not have been very feasible. However, this particular property is typical of some of the infill parcels that are around the City that are going to be coming before the Planning Commission from time to time. Each parcel is going to have its own unique issues to deal with, whether it is access, drainage or the type of development going on the property.

Mr. Bennett stated I do agree with Alderman Drinnon about this. This is a very difficult situation for all the parties. However, if they came in with a three-lot subdivision and all the proper setbacks there would be nothing we could do. It looks like they were discussing their differences but did not get far enough along.

Lew Wardlaw stated I do want to correct one misunderstanding tonight about multiple conversations between the two. There has been one conversation and one letter and you have a copy of that. The failure to coming to a meeting of minds is on two critical points: the developer's refusal to use an approved architect, and his refusal to reply to the plans approval process with the exterior features of the house. Tonight the request is for preliminary and final plan approval. The conversation of this project has been limited.

After some discussion, Alderman Drinnon suggested that the two parties get together again to resolve their differences. Both agreed, and the applicant withdrew his request from consideration and will return at the October Planning Commission meeting.

Mr. David Harris stated the applicant could withdraw and ask the Planning Commission to hear this at the next meeting. If that is not the case, then you need to have a motion to approve the application and if that was seconded then Alderman Drinnon could make the motion to take under advisement or to table for a month. At this point, you have nothing in front of the Planning Commission, so you might ask the applicant first, if they would like to be heard next month. If not then we need the Planning Commission to make their own motion.

Mr. Marcom noted we have no objection to asking that it be withdrawn for the next meeting. In that time, we will have some conversations and see what can be brought to calmed ground.

3. Amendment to Chapter 23, Zoning, of the Germantown Code of Ordinances – Setting a Uniform 25-foot Rear Yard Setback for Single and Two Family Dwellings in the R, R-1, R-2, R-3 and R-T Zoning Districts, and Allowing up to a 10-foot Rear Yard Encroachment for Back Porches for Single and Two Family Dwellings in Residential Zoning Districts

BACKGROUND: Currently the City of Germantown Code of Ordinance has a complicated way to determine the rear yard setback, which depends on the depth of the lot, and, with no required rear yard less than 25 feet or more than 40 feet. This amendment is to make the current ordinance more user friendly. Required rear yards for single and two-family dwellings are 20 percent of the average lot depth. Calculating that distance is straight forward for rectangular lots, but can be very complicated and confusing for everything else (refer to Exhibit A). This amendment will also allow for rear porches to extend up to 10 feet into the required rear yard. This amendment was endorsed by the Board of Zoning Appeals at their July meeting.

DISCUSSION: The specific request is an ordinance to amend Chapter 23, Zoning, of the Code of Ordinances to set the required rear yard as 25 feet and allow for the rear porch to extend into the required rear yard up to 10 feet. This is similar to the front porch amendment approved on December 2, 2008, by the Planning Commission.

Article III. Districts is hereby amended by inserting the following underlined bolded text and deleting the following struck through bolded text:

ARTICLE III. DISTRICTS.

Section 23-232(R), 23-257(R-1), 23-282(R-2) and 23-307(R-3). Yard Requirements.

(3) *Rear yard.*

There shall be a required rear yard of not less than ~~40 feet or 20 percent of the average lot depth, whichever shall be less,~~ but not to be less than 25 feet. **An unheated rear porch may extend into the required rear yard by up to ten feet.**

ARTICLE III. DISTRICTS.

Section 23-158(R-E-10), 23-183(R-E) and 23-208(R-E-1). Yard Requirements.

(3) *Rear yard.*

An unheated rear porch may extend into the required rear yard by up to ten feet.

ARTICLE III. DISTRICTS.

Section 23-333 (R-T). Uses other than townhouses, multifamily structures and assisted-care living facilities.

(3) (c) *Rear yard.*

There shall be a required rear yard of not less than ~~40 feet or 20 percent of the average lot depth, whichever shall be less, but not to be less than~~ 25 feet. **An unheated rear porch may extend into the required rear yard by up to ten feet.**

STAFF COMMENTS:

1. On December 2, 2008, the Planning Commission recommended approval to the BMA to allow front porches to extend into the required front yard 10 feet, which the BMA approved on February 23, 2009. This request is to allow back porches to do the same.

Staff Recommendation: Approval, subject to staff comments.

PROPOSED MOTION: To recommend approval of the Amendment to Chapter 23, Zoning, of the Germantown Code of Ordinances – Setting a Uniform 25-foot Rear Yard Setback for Single and Two Family Dwellings in the R, R-1, R-2, R-3 and R-T Zoning Districts, and Allowing up to a 10-foot Rear Yard Encroachment for Back Porches for Single and Two Family Dwellings in Residential Zoning Districts.

Ms. Parker moved to approve the Amendment to Chapter 23, Zoning, of the Germantown Code of Ordinances – Setting a Uniform 25-foot Rear Yard Setback for Single and Two Family Dwellings in the R, R-1, R-2, R-3 and R-T Zoning Districts, and Allowing up to a 10-foot Rear Yard Encroachment for Back Porches for Single and Two Family Dwellings in Residential Zoning Districts, subject to staff comments, seconded by Mr. Harless.

Vice Chairman Owens asked for a roll call.

Roll Call: Bennett – yes; Burrow – yes; Drinnon – yes; Parker – yes; Bacon – yes; Harless –yes; Owens - yes; Klevan – absent. **The motion passed.**

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4. **Vice Chairman Owens asked if there was any old business or new business to come before the Commission.** Alderman Drinnon stated we have been notified that a group of 26 business executives is trying to promote the consolidation of government for Memphis and Shelby County. He has some concerns about the impact it would have on Germantown.

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5. **Vice Chairman Owens asked if there were any liaison reports.** Ms. Parker stated the Park and Recreation Commission has been in charge of issuing a name for the park on Poplar Pike. Basically, it is the Horse Show, C.O. Franklin or Morgan Woods Park. Therefore, they decided to have a work session on September 8, 2009 at 5:30. If you have a name, you would like to suggest, just get in touch with the Park and Recreation Commission. The policy is that the name is to be a geographical reference or a historical person.

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6. The meeting adjourned at 7:00 P.M.