

**PLANNING COMMISSION MEETING
MUNICIPAL CENTER COUNCIL CHAMBERS
Tuesday, November 3, 2009**

The regular meeting of the Planning Commission was scheduled and held in the Council Chambers of the Municipal Center on November 3, 2009. Chairman Klevan welcomed everyone and asked the Commission members as well as the audience to please speak into the microphone so they could be heard. Chairman Klevan 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, Susan Burrow, David Klevan, Lisa Parker, Mike Harless and Dike Bacon.

Commissioner Absent: Forrest Owens.

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

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

1. Approval of Minutes for October 6, 2009

Chairman Klevan 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 October 6, 2009. If there were no additions, corrections or deletions to the minutes of the October 6, 2009, meeting of the Planning Commission, he would entertain a motion for approval.

Mr. Bennett moved to approve the Planning Commission minutes of October 6, 2009, as submitted, seconded by Mr. Harless.

Chairman Klevan asked for a roll call.

Roll Call: Bennett – yes; Burrow – yes; Drinnon – yes; Parker – yes; Bacon – yes; Harless –yes; Owens - absent; Klevan – yes. **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 1.14-acre subject property is owned by Kafait Malik and Zahir Qureshi. 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. A subdivision fence with wrought iron and brick masonry materials will be six feet (6') in height and located at the Kimbrough property line. Details are provided on the final plan.

The applicant is requesting a variance from §23-88 of the Code of Ordinances which states, "no parking spaces shall be permitted within the required front yard." The applicant is requesting parking pads in the required front yard. The parking pads will be landscaped.

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. 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.

B. Prior to Construction Plan Approval

1. Rear and side yard setback lines shall be noted on the final plan.
2. The distance from the rear and side lot lines of the drainage easement shall be provided on the final plan.
3. A landscape easement or Common Open Space shall be provided on the final plan for the front yard subdivision fence and gate.

C. Additional Staff Comments:

1. Attached is a letter from Mr. Lew Wardlaw (Appendix A), legal representation for the residents of Caylors Woods regarding the applicant's previous submittal that included setback variances. 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.). Upon the applicant's re-submittal of the current application, Mr. Ken Dick, member of the Caylors Woods HOA, sent a follow-up letter requesting the proper screening of the rear wall of the development (Appendix C).
2. Appendix D is the final plat for Caylors Woods P.D. referencing COS B that borders the applicant's property.
3. Between Dogwood Villa Drive to the north and Dogwood Road to the south, 23 houses back up to Kimbrough and two are oriented perpendicular to Kimbrough on corner lots. Of these 25 houses, 11 are as close or closer to the Kimbrough Road ROW as the houses in the proposed PUD. Please see Appendix E for the distances of these homes from Kimbrough, which range from 20 feet (2175 Wickersham) to 194 feet (8140 Dogwood Grove).

4. The applicant's current neighbors have written letters of support attesting to Dr. Qureshi's home maintenance and his friendliness. Those letters are in Appendices F, G, H and I.
5. Staff bases its recommendation of approval due to the proposed planned development's compliance with the City's PUD ordinance (see next 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 request is in keeping with the development throughout the area, including Caylors Woods PUD to the immediate west, Gardens of Wood Creek PUD one block to the west, St. Albans PUD on Dogwood to the east and the numerous PUDs and multi-family development along Kimbrough to the north. 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.

Mr. Whitehead stated the Planning Commission, during its Executive Session, discussed the variances for parking within the required front yard and a wider than standard driveway. The Commissioners requested that the applicant withdraw from consideration the variances. Mr. Whitehead stated that Mr. Marcom, the applicant, agreed to withdraw those two variances from his PUD.

Harvey Marcom, with the Reaves Firm, 5880 Ridge Bend Road, stated when we first came to you there were three variances that we asked for, one was a front yard setback, a rear yard setback and a height variance. During this time, since we submitted our application we have worked with the project architect to eliminate both front and rear yard setback and the height requirement. We are coming before you with a two-lot plan that meets the bulk regulations for "R" zoning.

Mr. Harless stated two months ago, you were before us and there was a recommendation that you and your client meet with Caylors Woods to work something out.

Mr. Marcom stated we arranged for a meeting through Mr. Lew Wardlaw who represents the Caylors Woods Subdivision. The meeting was held in our office, Mr. Kenneth Dick and Mrs. Nancy Dick came to that meeting as well as Mr. Lew Wardlaw and we discussed what we felt like was a proposal of how it could tie into their private sewer system. In addition, there was a conversation that we could possibly connect to the water, although I am not sure that the City would have gone along with that. We were offering to tie into their lift station, we felt like the capacity was there and it is six lots now, it could easily handle eight lots based on what we have received. Mr. Dick said he would like to have his engineer or the person that maybe maintains that system to review that. We have not had any response back in that regard. We had offered to come up with a price that would represent one quarter of what would be eight lots.

Mr. Bacon asked if there any discussion of joining with the Caylors Woods Subdivision?

Mr. Marcom stated he did not recall that there were, at this point the parties have decided Caylors Woods would be Caylors Woods and this development would be out on Kimbrough Road.

Lew Wardlaw, with Martin, Tate, Morrow and Marston Law Firm 6410 Poplar Avenue, Suite 1000, Memphis, TN 38119, stated he is not so much speaking against the now revised P.U.D, that he is just asking this body to continue keeping Caylors Woods in mind. He appreciates the work Mr. Marcom has done with his client. He is right we do not have any subject of disagreements, with what he said about our meeting. The only thing we would ask is that this body take into consideration the possibility of putting a landscape screening in the rear yard on the new development property adjacent to the Caylors Woods side. We would like the screening to be tall growth trees.

Mr. Klevan asked if there were any other questions of the commission.

Mr. Bennett stated I have reviewed the application as presented and looked at the surrounding area there on Kimbrough and the seventeen other houses on the street that all back up to Kimbrough. There are nine in this particular location that all back up to Kimbrough. This particular subdivision will be the only one that will be inconsistent with that part of Germantown. I think this will be inconsistent with the City and damage the property of the neighbors that are already there. The home will also be out of place in that part of town. I think it is extremely inconsistent and it will stick out regardless of how aesthetically pleasing the homes are because there will be nothing else there. Nothing else is around it to blend it in. I have a problem with this regardless of the architectural nature of the home. As acting subcommittee chairman, I am going to vote against this particular application tonight.

Mr. Bennett moved to grant preliminary and final plan approval with exception to the requested variances to the Qureshi & Malik Homes P.U.D., subject to staff comments, seconded by Mr. Harless.

Chairman Klevan asked for a roll call.

Roll Call: Bennett – no; Burrow – yes; Drinnon – yes; Parker – no; Bacon – yes; Harless –yes; Owens - absent; Klevan – yes. **The motion passed.**

4. Chairman Klevan asked if there was any old business or new business to come before the Commission. None

5. Chairman Klevan asked if there were any liaison reports. None

6. The meeting adjourned at 6:20 P.M.