

**STAFF REPORT FOR CONDITIONAL USE & VARIANCE REQUESTED FROM
PLANNING COMMISSION**

PLN-MAR-17-00037: JASON L. JUSTICE

REQUESTED CONDITIONAL USE

1. Assisted living facility in an Expansion Area Residential (EAR-2) zone.

REQUESTED VARIANCE

1. To increase the maximum allowable height of the building from 35 feet to 48 feet.

ZONING ORDINANCE

Article 6-4(c) states: "The Planning Commission may hear and act upon requested conditional uses and variances associated with a zone change. If the Planning Commission should choose to hear a conditional use or variance request, the Planning Commission shall have all of the powers and responsibilities of the Board of Adjustment, as defined in Articles 7-6(a) and 7-6(b) of the Zoning Ordinance. All conditional use and variance applications shall be acted upon by the Planning Commission within ninety (90) days of the application, unless postponed further by the applicant."

Article 23A-6(d)2 lists an assisted living facility as one of several conditional uses in the EAR-2 zone, provided that any site for such use must front on a street with a functional classification of collector or arterial.

Article 23A-6(g) states that the maximum height of a building in an EAR-2 zone shall be 35 feet.

For elderly housing, Article 23A-6(j) requires three (3) on-site parking spaces for every four (4) dwelling units. For an assisted living facility in zones other than in the Expansion Area, required parking also includes a space for each employee on the maximum shift. The applicant in this case is proposing parking based on that requirement.

CASE REVIEW

This 37-acre property is located just south of Winchester Road, on the east side of Man o' War Boulevard, in Expansion Area 2a. It is currently zoned EAR-1 (1.51 acres in its southeastern corner) and EAR-2, having been re-zoned in 2001 from A-R (Agricultural Rural) to its current zoning. The development plan submitted with that zone change indicated a mix of multi-family, townhome and single-family residential development for the property, in agreement with the Expansion Area Master Plan (EAMP), which encourages new development in the Expansion Area to function as a community with a mix of uses, housing types and community facilities.

The applicant is now requesting a zone change to CC for approximately five acres of the property, in order to facilitate the development of a retirement community that will contain both residential and commercial uses – basically a mixed-use development for senior citizens. Along with this zone change, the applicant is requesting a conditional use and a variance to allow construction of an assisted living facility as part of the overall retirement community, although it will be located on the EAR-2 portion of the property (assuming the conditional use and variance are approved either now by the Planning Commission or at a later time by the Board of Adjustment). The assisted living facility is currently designed as a 3-story building with 120 beds. Parking spaces are proposed based on three spaces per four beds, plus one space for each employee on the maximum shift, for a total of 116 spaces.

The proposed facility will be part of an overall transitional residential development that, as currently designed, will contain 118 townhome-style, villa and cottage units for independent living. Once re-zoned, the CC portion of the property will provide services and amenities for the residents, such as a restaurant and retail or other commercial services, to help ensure and promote the independent living aspect of the project.

In the 2013 Comprehensive Plan it was acknowledged that there has been strong growth of the healthcare

industry in Lexington due to the large percentage of our population approaching retirement age. The applicant has stated his desire to create a situation that will allow area residents to transition from the typical housing unit to an independent unit within the development and finally to the assisted living facility, if and when needed. Fayette County has other transitional residential developments, but none in close proximity to the subject property, and none that have commercial uses as part of their development. What is proposed would not have an adverse impact on either the subject property or surrounding neighborhoods, but would expand the housing options and types in this part of Lexington, which supports both the EAMP and the Comprehensive Plan.

In conjunction with the conditional use request for the assisted living facility, the applicant is also requesting a height variance to allow its construction. The maximum height for buildings in the EAR-2 zone is 35 feet, which is stated in both the EAMP and the Zoning Ordinance, although it is only recommended in the EAMP. Typically, buildings that would be constructed in the EAR-2 zone would be no more than 35 feet in height (based on an approximate 10-foot floor-to-floor dimension). The applicant is requesting a variance to allow an overall height increase of 13 feet, for a total building height of 48 feet. This will provide greater floor-to-floor space (16 feet), which is required for all healthcare facilities (stipulated by AIA guidelines) to accommodate cabling and ductwork for HVAC, plumbing and the electrical needed for the necessary specialized equipment.

The CC zone has a maximum allowable height of 48 feet; however, as proposed on the preliminary development plan, the buildings that will be located in the CC zone (which adjoins the assisted living facility to the north), will be two stories and 35 feet in height. The residential structures to the south and east of the assisted living facility are proposed to be two stories and 30 feet in height. The assisted living facility will be centered along the frontage of the property; and constructing it with a 48-foot height, as requested, will provide a visual anchor for the development. Additionally, it will provide balance to the streetscape, thereby making the added height not only functional but a positive aesthetic consideration.

Although the EAMP states that the maximum allowable height in the EAR-2 zone should be 35 feet, it does not require it to be so; and although the 48-foot height is not in agreement with the EAMP's recommendation, the height of the building may be varied as a dimensional requirement of the Zoning Ordinance. Compared to the overall development concepts contained in the EAMP (e.g., creating a sense of community by providing a mix of housing and other uses on the property, which this is intended to do), granting a variance to the height of the building is minimal in scope and impact. In fact, rather than seen as not being in agreement with the EAMP, it will actually help to facilitate its implementation. And based on the location of the property and the topography of the area, the added height will likely be unnoticed.

The Staff Recommends: **Approval of the requested conditional use**, for the following reasons:

- a. Granting the requested conditional use should not adversely affect the subject or surrounding properties. The Expansion Area Master Plan recommends a variety of housing types, as does the 2013 Comprehensive Plan. What is proposed for the property is a variety of housing types as well as a variety of uses (including the assisted living facility), designed to create a cohesive retirement development for senior citizens with a sense of community, also recommended by the two Plans.
- b. As this is in the Expansion Area, if not already available, necessary public services and facilities such as fire and police protection, and sanitary and storm sewers, will be made available and adequate to serve the subject property.

The Staff Recommends: **Approval of the variance to increase the maximum allowable height of the building from 35 feet to 48 feet**, for the following reasons:

- a. Granting the requested variance will not adversely affect the public health, safety or welfare, nor will it alter the character of the general vicinity. The proposed building will be only 13 feet taller than the limitation of the EAR-2 zone but will be at the same height allowed in the CC zone, which is 48 feet. At the proposed height, the assisted living facility will create a visual anchor for the development and will provide a balance to the streetscape as it applies to the property and the general area.
- b. The special circumstance that serves to justify the variance is that this is a healthcare facility, which has greater floor-to-floor requirements for its mechanical and electrical systems. It will be a 3-story, 120-bed facility, and the increased height is necessary to accommodate its design.
- c. Strict application of the Zoning Ordinance would either restrict the building to two stories or would disallow construction in keeping with AIA guidelines for construction of healthcare facilities.

These recommendations of approval are made subject to the following conditions:

1. Should the portion of the subject property be rezoned to CC as proposed, the entirety of the property shall be developed according to the submitted Zoning Development Plan, or as further amended by the Planning Commission.
2. All necessary permits, including a Zoning Compliance Permit, Building and Paving permits, Land Disturbance permit and a Certificate of Occupancy, shall be obtained from the Divisions of Planning, Building Inspection and Engineering prior to any construction, and prior to occupancy of any of the buildings on the property.
3. The parking lot and driveway shall be paved, with spaces delineated, and landscaped/screened in accordance with Articles 16 and 18 of the Zoning Ordinance.
4. The final design of the parking lot, access drive and internal circulation shall be subject to review and approval by the Division of Traffic Engineering.
5. Any outdoor pole lighting for the parking lot shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing adjoining or nearby properties. Such lighting shall have a maximum height of twenty-five feet.
6. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
7. A note shall be placed on the Zoning Development Plan indicating the conditional use and variances that the Planning Commission has approved for this property [under Article 6-4(c) of the Zoning Ordinance].