

2. **PLN-MAR-23-00010: URBAN COUNTY COUNCIL** – a petition for a zone map amendment from a Single-Family Residential (R-1C) zone with conditional zoning to a Single-Family Residential (R-1C) zone removing conditional zoning relating to landscaping and fencing along New Circle Road for 37.21 net (65.48 gross) acres, for properties located at 2500-2529 Bridle Court, 2501-2537 Dressage Way, 1200-1213 Equine Court, 1304-1476 Saddle Club Way, 1213 Viley Road.

**STAFF RECOMMENDS: APPROVAL OF STAFF ALTERNATIVE CONDITIONS**, for the following reasons:

1. The installation of concrete sound barriers by the Kentucky Transportation Cabinet along New Circle Road is a major physical change in the area that was not anticipated at the time of the initial rezoning.
2. Due to the installation of the sound barriers, portions of the required fencing and landscaping are no longer visible from New Circle Road to provide visual consistency with the adjacent Calumet Farm.
3. There has been no physical, social, or economic change in the area that has impacted the appropriateness of the required landscaping along Viley Road, or along the portions of New Circle Road frontage without a sound barrier.
4. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions shall apply to the Saddle Club Subdivision:

Conditional Zoning Restrictions:

- a. Along the Versailles Road frontage:
  1. A fifty (50) foot buffer area shall be provided, which will have the effect of decreasing the number of lots along Versailles Road;
  2. Large deciduous trees shall be planted forty-five feet on center;
  3. Small flowering trees shall be planted thirty (30) feet on center;
  4. The existing farm fencing shall be maintained

These conditions are reasonable and appropriate in order to preserve the scenic and historic character of Versailles Road.

- b. For the portions of the New Circle Road frontage where sound walls are not present:
  1. The existing farm fencing shall be maintained;
  2. One large deciduous tree shall be planted every thirty (30) feet;
  3. A continuous six (6) foot high hedge, three (3) feet high at planting shall be provided.
  4. A twenty (20) foot buffer area shall be provided;
- c. Along the Viley Road frontage one (1) street tree shall be planted every forty (40) feet. Conditions (b) and (c) are appropriate to assure compatibility of the development with the character of the neighboring properties.

The Zoning Committee Recommended: Referral, to the Planning Commission.

Staff Presentation – Mr. Crum presented the request that had been initiated by the Urban County Council, and oriented the Planning Commission to the area being discussed. He shared some history of the development and noted that it used to be a part of the Calumet Farm. He stated that at the time of the original zone change, there had been zoning conditions imposed on the development including the maintenance of the existing farm fence that was originally constructed for Calumet Farm. Mr. Crum stated that the original conditions were meant to keep the viewshed consistent with the farm across New Circle Road, but there had been significant change in the area recently. He displayed pictures of the sound barrier wall that had been installed by Kentucky Transportation Cabinet during New Circle Road improvements. He listed some issues that had been caused by the existence of the farm fence, including maintenance. The Neighborhood Association decided to take down the fence, but were alerted that this was a conditional zoning restriction, and they now have asked for those restrictions to be removed. He shared the findings and recommendation of staff that included alternative language. The staff alternative recommended removing the farm fence requirement only where the sound wall was present.

Commission Questions - Mr. Bell suggested, since Calumet Farms had begun painting all of their fences black, the requirement of the fence maintenance should not specify white. Mr. Crum acknowledged that the conditional zoning did not specify a color.

---

\* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.

Applicant Representation - Attorney Kamp Purdy was present to represent the Saddle Club Neighborhood Association. He began by stating that this application should have been an abbreviated hearing, except for a disgruntled neighbor. He displayed some photos mounted on presentation boards of the area and stated that the conditional zoning was added to maintain the consistency of the New Circle Road side of the Saddle Club Neighborhood with Calumet Farm. He continued by stating that the new sound barrier wall was doing well for the purpose it was intended. Mr. Purdy said the farm fence became a redundancy, and it was too expensive to maintain. He indicated that the HOA was in control of the easement, and was not required to get a 75% vote of approval to remove the fence. He stated that area between the two fences became difficult to maintain and a catch all for debris that came from New Circle Road. He said this is an internal HOA problem. He mentioned that several members of the HOA were planning to speak to the misinformation that was being shared regarding the actions of the HOA.

Opposition Representation – Attorney Bruce Simpson was present representing neighbors in the opposition. He stated that he would share his time with Dr. Davy Jones. Mr. Simpson claimed that the HOA had no right to take down the fence because it was on the private property of homeowners according to a survey that had been done. He added that an easement was irrelevant in this case. He said that conditional zoning stated that the fence was supposed to be maintained, but the fence had been removed. He displayed several before and after photographs of the new sound barrier wall and the removal of the farm fence. He also presented a letter of zoning violation that had been given to the HOA. Mr. Simpson lastly stated that the HOA was asking for forgiveness rather than permission.

Dr. Davy Jones continued the presentation. He shared pictures of his property and the farm fence. He stated that he had spread his wife's ashes in the area of the fence per her wishes. He argued that the HOA stopped maintaining the fence and then used the state of disrepair as a justification to take it down. He stated that he had proposed some alternatives to the HOA that were not considered, such as asking individual homeowners if they wanted to maintain their portion of the fence, and leaving the fence in the shared community space. At this time, he thanked Planning staff for the time that had been given to help him understand the process and beginnings of the subdivision. He shared some history of the development and why the conditional zoning was put in place at the time. He said that the Planning Commission, at the time, envisioned this fence to add to the character of the neighborhood, not just the look from New Circle Road. He asked that the fence be restored, for the sake of the look of the neighborhood.

Citizen Comments – Laina Miller, 2536 Dressage Way, and Saddle Club HOA president, said that she represents all 101 residents of the neighborhood and that there was too much disharmony being spread by one or two people. She suggested that the two neighbors in opposition to the fence removal should build their own fences, and not require the HOA to do it for them. She said that there are many misrepresentations being presented.

Karen Winizczyk, 2529 Bridle Court, stated that she is against the change in the conditional zoning. She said that she owned a portion of fence that was taken down because it was on her property. She said that the HOA did not own the fence and had no right to tear the fence down. She said that the community area where there was also a farm fence was not visible to New Circle Road, so it had more to do with the look of the neighborhood rather than the look of New Circle Road.

Clarissa Belle, 1464 Saddle Club Way, is on the board of the HOA and stated that they work tirelessly to represent every homeowner. She claimed that every homeowner had the right to do what they wanted on their own property, but not at the expense of the entire neighborhood. She said that trees had been planted in accordance to the conditional zoning, but the state removed them to put in the sound barrier wall.

Becky Wimsatt, 1316 Saddle Club Way, stated that she loves her neighborhood but hates how this has caused division. She said that it made sense to take the fence down, and the new wall solved more problems than the fence ever did. She did not want the fence back.

Marsha Petri, 1337 Saddle Club Way, expressed that the community area used to be beautiful, but now feels that it is not safe or beautiful anymore. She said that she would like to see the fence added back to the community area.

---

\* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.

Rick Petri, 1337 Saddle Club Way, shared some details of the timeline of the removal of the fence. He said that while there were other options presented, the HOA board members chose to tear the whole fence down rather than consider partial removal options.

Kevin Bennett – 1344 Saddle Club Way, wished that he had been given the option to keep his portion of the fence before it was removed, but now does not want to pay for it to be rebuilt. He enjoyed the look of the community area when the fence was present. He stated that the HOA board members have also ignored pleas from residents regarding the placement of rock in the pond area. He felt that the HOA members alone should be responsible for replacing the fence.

Monica Lindfors, 1368 Saddle Club Way, said that the HOA board has a history of taking actions without the permission of homeowners. She said she loved her neighborhood and community. She felt that the board members should be responsible for the restoration of the fence.

David Draggs, 2513 Bridle Court, stated that he does like the sound barrier wall and the HOA was only acting in the best interest of the neighborhood. He said that the wall helps the safety of the neighborhood.

Scarlett Devine, 1329 Saddle Club Way, and vice president of the HOA, spoke of the countless hours that the HOA had spent on this issue, both before the fence was taken down and since then. She said that the plat had been examined and that no one knew about the ordinance regarding the maintenance of the fence. She said that the ordinance has never been followed from the beginning of the subdivision. She felt that this was mostly an HOA issue and the Planning Commission was hearing from a very vocal minority. She explained that over 85% of the neighborhood did not want the fence to be replaced.

Richard Harlow, 1465 Saddle Club Way, said that there was the Ordinance issue before the Commission, but the politics of the neighborhood should be dealt with by the neighborhood.

Teresa Parks Crumbie, 1388 Saddle Club Way, said that the community used to be friendly, but the sound barrier wall has caused so much disagreement. She is against the fence.

Edye Dabney, 1452 Saddle Club Way, spoke about the voting process used by the neighborhood and the notification process. She presented a packet with specific information about how it worked. Personal issues should be put aside, and the change in the ordinance is the only issue to be addressed.

Carl Devine, 1329 Saddle Club Way, stated that this issue is not important to the community, and the old ordinance should be taken away. He asked the Planning Commission to agree with the staff recommendation and modify the ordinance.

Ken Westberry, 1472 Saddle Club Way, said that this was a neighborhood problem. He said that the breaks in the sound wall were a safety issue that has been caused by the removal of the fence. He asked for a compromise.

Opposition Rebuttal – Mr. Simpson stated there has been an intentional violation of the Ordinance, and the HOA should have asked for relief before the action was taken. He remarked that allowing this application will cause others to disregard zoning restrictions in the future. He displayed the plat of the property that did mention the conditional zoning requirements. He said that this fence was on private property, and the HOA should not get a pass for their actions.

Staff Rebuttal – Mr. Crum clarified that this zoning restriction was placed by Council, and unfortunately some of the language did not get placed on plats as it should. Despite the inconsistencies with the plats, the conditional zoning is still intact, and that is what is in question at this time. He said that staff still found that the wall was enough of a significant change to constitute the conditional zoning modification.

Commission Questions – Ms. Worth asked about the ownership of the fence. Mr. Crum replied that, based on the easements and notes on the plats, the maintenance of the fence was subject to the HOA. Ms. Wade added that the fence, and everything on the easement belonged to the HOA, but the land underneath belonged to the property owner. She also added that the HOA was responsible for the maintenance of the common areas and defined the LE, or Landscape Easement. Ms. Worth further asked if the HOA was responsible for the plantings required by the plat. Ms. Wade replied that the plantings were not specifically addressed in the staff report, but believed the trees should be planted.

---

\* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.

Mr. Wilson asked for information regarding the zoning violation that was sent to the HOA. Ms. Jones explained some of the history that led up to the zoning violation. The Division of Building Inspection was reacting to a complaint that was received, but held off on issuing fines until the Council makes a final decision on this issue.

Mr. Bell asked what would happen, if the Planning Commission voted in favor of the staff recommendation. Ms. Jones replied that only the fencing issue would be addressed, and reminded the Commission that the Council will ultimately decide what to do, and they could alter the recommendation of the Planning Commission. She said that hypothetically, if the Planning Commission and then the Council voted to adopt the staff alternative text, the HOA and Building Inspection would be responsible to make and enforce the required changes. Mr. Bell stated that he wanted there to be some framework for the neighborhood to move forward.

Mr. Michler stated that aesthetics and common areas are important, and hopes that there can be dialogue among the neighborhood to come to an agreement.

Action – Mr. Michler made a motion, seconded by Mr. Pohl and carried 8-0 (Owens, Nicol, and Davis absent) to approve the modified zoning restrictions for PLN-MAR-23-00010: URBAN COUNTY COUNCIL with staff alternative conditions.

---

\* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.