

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

APRIL 19, 2010

NEW BUSINESS:

CASE NO. B-13553-09

Applicant(s): Trilogy Health Services, LLC
Leo Whitt, Senior Vice President
1650 Lyndon Farm Ct., Ste. 201
Louisville, Kentucky 40223-5007

Owner(s): ADJ Real Estate, LLC
Martin Carney
4500 Bowling Blvd., Ste. 250
Louisville, Kentucky 40207

Attorney: Glenn Price
Frost, Brown & Todd, LLC
400 West Market Street, 32nd Floor
Louisville, Kentucky 40202

Subject: An application for a Conditional Use Permit to allow a nursing home in an R-4 zoning district.

Premises affected: On property known as 4245, 4247 and 4249 Westport Road and being in the City of St. Matthews.

COUNCIL DISTRICT 7—Ken Fleming
Staff Case Manager: Jon Crumby, Planner II

Member Grisanti realized before business session that his position on the Glenridge Council Advisory Board could create a conflict of interest, so he recused himself from action taken by the Board on this case.

Appearances Public Works Official:
Paula Wahl, Public Works, 444 S. 5th Street, Louisville, Kentucky 40202.

Appearances for Applicant:
Glenn Price, Attorney, 400 West Market Street, 32nd Floor, Louisville, Kentucky 40202; who submitted booklets into the record.

Leo Whitt, Trilogy Health Services, LLC, 1650 Lyndon Farm Court, Ste. 201, Louisville, Kentucky 40223-5007.

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Jason Sams, Suburban Design Group, 802 Stone Creek Pkwy., Ste. 3A,
Louisville, Kentucky 40223.

Appearances- Interested Parties:

No one.

Appearances Against Applicant:

Carl Larson, 4304 Westport Road, Louisville, Kentucky 40207.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning & Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On January 19, 2010, Trilogy Health Services, LLC filed an application for a Conditional Use Permit to allow a nursing home in an R-4 zoning district.

On April 19, 2010, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The audio/visual recording of this hearing will be found on the DVD of the April 19, 2010 proceedings available in the Planning and Design Services Office.

SUMMARY OF STAFF PRESENTATION:

10:35:27 Staff case manager, Jon Crumby, gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said the three lots will need to be consolidated; and that the three existing homes will be removed. He said the subject property is in the City of St. Matthews, and reviewed under the old code. He said all the standard of review items have been met except Item A, so the building will be closer than 25 feet from the rear property line. All the technical review items have been met. He said area residents asked numerous questions about drainage at the neighborhood meeting, but that MSD has given preliminary approval. Public Works has also

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signed off on the request with conditions of approval 5-8 (page 7 of staff report). He said he also received a letter of opposition due to the heavy traffic along Westport Road (page 6 of staff report). A letter from Sherie Long, staff's landscape architect, has approved the landscaping. Member Proffitt asked when the extension will occur. Mr. Crumbie said the Board could ask Paula Wahl, with Public Works.

SUMMARY OF TESTIMONY – PUBLIC WORKS OFFICIAL:

Paula Wahl, with Public Works, said the extension is contingent upon construction of the adjacent parcel. She said there were some condos planned but Metro Council denied the request. Member Proffitt asked if the extension would lessen traffic in the area. She said possibly and that they're trying to set up connectivity for future development. She said they are currently setting up a temporary driveway for this request until the road improvements are complete along Westport Road.

SUMMARY OF TESTIMONY OF PROPONENTS:

10:44:22 Glenn Price, attorney for the applicant, submitted booklets into the record. He said all three lots will be consolidated. Mr. Price said the request is for a 94 bed skilled nursing and assisted living facility. He said there will be three shifts which won't interfere with rush hour traffic; and will not add to traffic in the area. He said nursing homes do not generate a lot of traffic with visitors coming after hours and on the weekends. Mr. Price presented a PowerPoint presentation to the Board. He said the Walden School athletic facility is under construction.

10:47:40 Leo Whitt, the applicant, said his company is local; and is happy to have the opportunity to develop another nursing home in their home state. He said they want the nursing home to feel more like a home-like setting with a broader range of services. He said the skilled nursing will be on one side and assisted living on the other.

10:52:43 Mr. Price showed the Board where the extension would be on the PowerPoint slide; and said they're dedicating 4/10 of an acre to the city for this purpose. He said the City of St. Matthews hasn't adopted Article 10, but they will more than double the amount of trees than what currently exists. He said they will be planting 54 trees with a 2.5 inch caliper and a minimum height of 12 feet. He said the residents will be able to watch the kids playing sports at the nearby

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Walden School. Chair Stewart said the trees are in the wrong area. Mr. Price said the tree canopy in the back is on the neighbors' property and will remain. He said they held two neighborhood meetings and most of the questions had to do with drainage. He said there will be a net improvement of 10% to the neighbors to the rear of the site. He discussed the encroachment and said it's insubstantial considering the deep lots along Rudy Lane. He discussed the conditions of approval (COA) that he said he just received and wanted to modify. He questioned COA #8 and said Westport Road should be finished early this year, but not by Derby. Member Wagaman said the widening will be done by June and the interchange by Derby. Ms. Wahl said the interchange will be done by Derby. Mr. Price said he would like to change COA #8 this language to: "The developer shall not request a final certificate of occupancy until KTC Westport Road improvements are complete however a temporary CO may be obtained with the concurrence of the City of St. Matthews and Kentucky Transportation Cabinet". Member Proffitt said a temporary CO would allow them to do the same as a final CO. Mr. Price said it would get them temporary access into the property. Ms. Wahl said access is not the issue since the state is building their entrances; and that they'll have access for construction. Member Proffitt said there's too much traffic now; and said it may not be an issue later once the construction is complete. Mr. Price said he could leave this condition as is and come back to Public Works and St. Matthews for the CO. The maximum number of employees was discussed and determined that the applicant could have a maximum of 51 employees instead of 30 with the overlap of employees during shift changes. Member Proffitt asked why they didn't flip the building and put the parking near the main entrance and have two entrances. Mr. Price said they tried to do this, having an access point near the Walden School, but they rejected this for safety of the students. He said Public Works is fine with where they have their access points. Ms. Wahl concurred with Mr. Price and said it is not acceptable to have two access points adjacent to each other and that there are distance requirements. She said the spacing was agreed to by the State Highway Department.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

Carl Larson said he lives on Westport Road and feels this development will change the character of the road. He said there are no traffic signals to allow

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people in and out of the subdivision; and that traffic is bumper to bumper from Hubbards Lane to Westport Road. He said the Walden School hires people to direct traffic. He said there are also flooding problems in the area. Member Proffitt asked him if he saw the renderings and what he thinks about this development. Mr. Larson said he thinks it will change the character of Westport Road. Member Proffitt said what about the nearby school. Mr. Larson said the school has been there many years. Chair Stewart said the additional proposed detention basin should help the drainage issues. Mr. Larson said he's not sure if that will help.

Member Proffitt said he would like to ask the engineer some questions.

SUMMARY OF TESTIMONY OF PROPONENTS:

11:31:49 Jason Sams, the applicant's engineer, said they will be putting in a series of detention basins as the development occurs. Member Proffitt asked if he took into consideration the additional impervious surface by the road widening. Mr. Sams said yes and that the pipes will be sufficiently sized to handle the water flow. He said the Kentucky Transportation Cabinet will be putting in large pipes for drainage to different tributaries and creeks.

REBUTTAL:

11:35:36 Mr. Price said the maximum number of employees should be 51 with the shift changes; and said he would like this condition of approval changed to reflect this. Member Proffitt asked if they would be hiring new employees. Mr. Whitt said yes, primarily new staff. Mr. Price said the neighborhood and the Walden School has been very generous with some people stating that they would like to volunteer at the nursing home.

There was more discussion about redesigning the project per Member Proffitt's idea.

Mr. Crumbie said the Board needs to modify listed requirement A (page 4 of the staff report) to reflect that the building extends to a point of 23.71 feet from the rear property line; or encroaches 1.29 feet into the required rear 30 ft. setback.

11:49:48 Member Grisanti realized that he needed to recuse himself from action on this case because he is on the Glenridge Council Advisory

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Board. He said he does not get paid for this position, but feels this could be considered a conflict of interest.

BUSINESS SESSION:

11:52:25 Member Liggin was concerned about the moratorium with regard to nursing homes and said there must be some reason why. Member Wagaman said it's the same number of beds; but that they're moving some from their other facility. Member Wagaman said he doesn't feel the applicant should have to redesign the project since Public Works has approved the plans. Chair Stewart said she appreciates all the trees they'll be adding, even though they didn't have to. Member Proffitt said he doesn't feel the applicant has done their due diligence using a prototype design and could have had a better layout. Chair Stewart said the Board is not here to redesign their proposal. Member Liggin said the number of employees has now grown and concerned about this and the traffic situation. Chair Stewart said Public Works doesn't have a problem with it. Chair Stewart said she wanted to ask Ms. Wahl a question.

BACK INTO PUBLIC HEARING:

12:01:27 Chair Stewart asked Ms. Wahl if 51 employees would affect the traffic along Westport Road. Ms. Wahl asked how many parking spaces are along Perryman. Mr. Crumbie said 51. She said they do try to have the interconnectivity, but even if they had this here, they would not eliminate the access point from Perryman. She said in the future they will only have one access from Westport Road and one from Perryman. She said there are also enough parking spaces which will decrease people coming back out onto Westport Road. Member Jarboe said some developers try to overbuild on their sites. Jon Baker, the Board's legal counsel, discussed modifying Listed Requirement A. Chair Stewart said they could just include in the motion to modify this as shown on the site plan. Mr. Baker said yes.

12:07:16 After the public hearing in open business session, Member Liggin moved to approve the Conditional Use Permit and that Listed Requirement A be modified to reflect what is shown on the site plan; incorporate the changes to the conditions of approval # 3 be changed to 51 maximum employees; and that 5, 6 and 7 be changed to what Mr. Price submitted into the record and was seconded by Member Wagaman and the following resolution was adopted:

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WHEREAS, the Board finds, from the file of this case, the staff report, the PowerPoint presentation and the evidence and testimony submitted at the public hearing that the applicant is requesting a Conditional Use Permit to allow a nursing home in an R-4 zoning district; and

WHEREAS, the Board finds that the property is within a Neighborhood Form District; and

WHEREAS, the Board finds that the proposal is consistent with the applicable guidelines of the Comprehensive Plan; and because the building design has been reviewed and approved by Urban Design staff and all landscaping requirements have been met; and because the lighting plan has not been submitted, but will meet the Land Development Code standards per note #20 on the site plan; and

WHEREAS, the Board finds that the proposal is compatible with the surrounding land uses and the general character of the area because the proposed nursing home will be a low profile, one story structure except for the cupolas'; and because all yard requirements will be observed except for an encroachment into the rear yard requirement by 1.29 feet (30 ft. requirement); and because the proposal will be compatible with surrounding land uses with respect to height, noise, odor, drainage, dust and lighting; and

WHEREAS, the Board finds that the necessary public facilities (both on-site and off-site) because Public Works and MSD have reviewed and approved the development plan; and because the site will have a dry detention basin that will preserve the "through" drainage capability of the site; and

WHEREAS, the Board finds that the proposal complies with the specific standards of review except for Item A, because the Board approved the request to allow the building to be 23.71 feet from the rear property line, instead of the 30 ft. requirement; and

WHEREAS, the Board finds the proposal to be in conformance with the Comprehensive Plan because it complies with all applicable guidelines, principles and objectives of the Comprehensive Plan, as it has received preliminary approval from Transportation Review and Louisville and Jefferson County Metropolitan Sewer District;

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NOW, THEREFORE, BE IT RESOLVED, that the *Conditional Use Permit* is hereby **APPROVED ON CONDITION**:

The conditions are as follows:

1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
2. The Conditional Use Permit shall be "exercised" as described in KRS 100.237 within two years of the Board's vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used for a nursing home without further review and approval by the Board.
3. There will be a maximum number of **51** employees on the site during any shift.
4. There shall be a maximum number of **94** residents on site at any given time.
5. **Trilogy Health Services, LLC will contribute funds for the design and construction of the Perryman Extension as indicated on the approved CUP plan of DPDS Case # B-13553-09 in an amount not to exceed \$27,000 as it pertains to the design and construction of the Perryman Extension that is 22' in width and 210 linear feet with concrete curb/gutters per Louisville Metro Public Works and City of St. Matthews requirements. The contribution of funds shall be made to the developer for (Tax Block W003, Lot 106) and/or his representative upon approval of the full construction plans and initiation of a construction project for the Perryman Extension, encompassing the existing entrance for Trilogy Health Services, LLC as depicted on the approved CUP plan for DPDS Case # B-13553-09.**
6. **Upon construction of the Perryman Extension, Trilogy Health Services, LLC will install an entrance/exit, minimum 24' wide, at the northeastern parking lot per Louisville Metro Public Works and City of St. Matthews requirements as indicated on the approved CUP plan of DPDS Case # B-13553-09.**

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- 7. Trilogy Health Services, LLC will dedicate 0.38 acres on the east property line as more particularly described on the approved CUP plan of DPDS Case # B-13553-09 within 60 days of request by Metro Public Works and the City of St. Matthews.**
- 8. Developer shall not request a certificate of occupancy until KTC Westport Road improvements are complete.**

The vote was as follows:

YES: Members Stewart, Liggin, Jarboe and Wagaman.

NO: Member Proffitt.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Allendorf.

NOT PRESENT DURING BUSINESS SESSION AND NOT VOTING FOR THIS CASE: Member Grisanti.

ABSTAINING: No one.

**CONDITION OF APPROVAL PER AGREEMENT
WITH LOUISVILLE METRO WORKS AND CITY OF ST. MATTHEWS**

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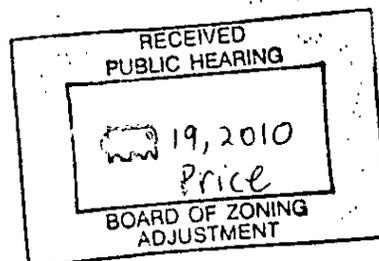
Trilogy Health Services, LLC will contribute funds for the design and construction of the Perryman Extension as indicated on the approved CUP plan of DPDS Case #13553 in an amount not to exceed \$27,000 as it pertains to the design and construction of the Perryman Extension that is 22' in width and 210 linear feet with concrete curb/gutters per Louisville Metro Public Works and City of St. Matthews requirements. The contribution of funds shall be made to the developer for (Tax Block W003, Lot 106) and/or his representative upon approval of the full construction plans and initiation of a construction project for the Perryman Extension, encompassing the existing entrance for Trilogy Health Services, LLC as depicted on the approved CUP plan for DPDS Case #13553.

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Upon construction of the Perryman Extension Trilogy Health Services, LLC will install an entrance/exit, minimum 24' wide, at the northeastern parking lot per Louisville Metro Public Works and City of St. Matthews requirements as indicated on the approved CUP plan of DPDS Case #13553.

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Trilogy Health Services, LLC will dedicate 0.38 acres on the east property line as more particularly described on the approved CUP plan of DPDS Case #13553 within 60 days of request by Metro Public Works and the City of St. Matthews.



PROPOSED FINDINGS OF FACT
Trilogy Health Services, LLC
4245, 4247, and 4249 Westport Road

WHEREAS, The Board Finds That the Applicant has proposed a conditional use permit pursuant to the Development Code effective in St. Matthews, Kentucky; and

WHEREAS, The Board Further Finds That the Applicant proposes a nursing home/home for the infirm and aged consisting of ninety-four (94) beds at 4245, 4247 and 4249 Westport Road in the R-4 Single-Family Residential District and within the city of St. Matthews, Kentucky; and

WHEREAS, The Board Further Finds That a demand exists at this location for the 94 beds proposed because the market for the services is presently underserved and there is a moratorium on additional beds, and the Applicant is transferring beds from the Franciscan Health Care Center/Franciscan Senior Estates at 3625 Fern Valley Road; and

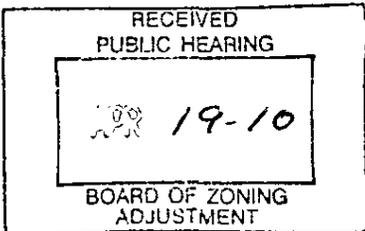
WHEREAS, The Board Further Finds That as the national and local populations age, additional facilities which provide nursing services are needed and the Applicant will provide this service to the community at this location; and

WHEREAS, The Board Further Finds That the proposed nursing home is a preferable land use to the other potential uses of the site, such as patio homes (which were previously denied by the St. Matthews City Council) or more intense development; additionally, new single-family development with individual access points onto Westport Road should be discouraged.

WHEREAS, The Board Further Finds That the Applicant has made provision for, and a guarantee to assure, the protection of the public health, safety, morals, general welfare, surrounding property, and neighborhood values because services to be provided by the nursing home will be extensively regulated by the Commonwealth of Kentucky; because the Applicant will comply with all requirements relating to the conditional use permit, and will strictly observe stormwater requirements imposed by the Metropolitan Sewer District before and during construction; and

WHEREAS, The Board Further Finds That the tenure of the operation at this location will continue into the foreseeable future; and

WHEREAS, The Board Further Finds That the proposed use will not have an adverse effect on neighboring property because the proposed nursing home will be a low profile, one-story structure except for the cupolas; because all yards will be observed except for an approximate 1.29-foot encroachment into the rear ~~30~~^{30.5} foot setback; because all required screening and buffering will be provided; because the character of the proposed use will be a quiet, home-like setting for older persons and persons recovering from illness, surgery, or in need of therapies; and



WHEREAS, The Board Further Finds That the proposed use is not in conflict the principles and guidelines of the Comprehensive Plan as indicated in these Findings; and

WHEREAS, The Board Further Finds That the proposal conforms to Community Form Guideline 1 and all applicable Policies adopted thereunder, including Policy 1.B. 3 because it lies within the Neighborhood Form District; because the Neighborhood Form District is characterized by predominantly residential uses that blend compatibly into the existing landscape and neighborhood uses; and because frontage to the site is located on Westport Road, a major arterial roadway; and

WHEREAS, The Board Further Finds That the proposal conforms to Compatibility Guideline 3 and all applicable Policies adopted thereunder, including Policies 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.11, 3.12, 3.21, 3.22, 3.23, 3.24 and 3.28. Building materials will be primarily brick and siding; because although the proposed use is residential in character, medical-related services will be provided to assist the residents and as such it has both residential and non-residential characteristics; because traffic generation to the site will be minimal; because appropriate vegetative buffers will be provided and signage will be minimal; because landscaping will be provided; because the orientation of the building minimizes impact to surrounding land uses, which consist of an athletic field and residences; because there will be no adverse air quality or traffic impact from the development; because there will be no adverse impacts from noise, excessive lighting or adverse visual impacts; because all facilities will observe federal, state and local laws pertaining to housing for the elderly and persons with disabilities; because the site is served by Transit Authority of River City ("TARC") Routes 55 (Westport Road) and Route 49X (Westport Road Express); because the site, and building and parking facilities are designed to provide an adequate transition to lower intensity single-family residential uses, and adequate buffers will be provided; because all height maximums and setbacks will be met, except for an approximate 1.29-foot encroachment into the rear 25-foot setback; and

WHEREAS, The Board Further Finds That the proposal conforms to Natural Areas and Scenic Resources Guideline 5 and all applicable Policies adopted thereunder, including Policies 5.1, 5.2, 5.3, 5.6, and 5.7 because the site has no natural, historic, cultural or archeological features and there are no soil or slope issues on site; and

WHEREAS, The Board Further Finds That the proposal conforms to Circulation Guideline 7 and all applicable Policies adopted thereunder, including Policies 7.1, 7.3, 7.4, 7.9 and 7.10 because the proposed nursing home generates insignificant volumes of traffic; because the property owner has previously dedicated frontage for the Westport Road Widening Project, consistent with other property owners located along this segment of Westport Road; and because parking facilities will meet the requirements of the parking regulations; and

WHEREAS, The Board Further Finds That the proposal conforms to Bicycle, Pedestrian and Transit Guideline 9 and all applicable Policies adopted thereunder, including

Policies 9.1, 9.2 and 9.3 because sidewalks will be provided along Westport Road and are located internal to the site; and because bicycle storage facilities will be located within the building; because Westport Road is a transit route (TARC Routes 55 and 49X serve the site); and

WHEREAS, The Board Further Finds That the proposal conforms to Flooding and Stormwater Guideline 10 and all applicable Policies adopted thereunder, including Policies 10.1, 10.2, 10.3, 10.4, 10.6, 10.7, 10.10 and 10.11 because the proposal uses Metropolitan Sewer District ("MSD") watershed plans as a guideline for the suitability of development on the site; because site disturbance is minimized; because floodplain management standards imposed by MSD are based on the full development of the watershed; because the site will have a dry detention basin and the development of this site will not adversely affect surrounding and nearby properties which presently have drainage issues and wet soil issues; because the site will preserve the "through" drainage capability of the site; because peak stormwater runoff rates post-development will not exceed pre-construction rates; and because it is anticipated that the proposal will receive the approval of MSD; and

WHEREAS, The Board Further Finds That the proposal conforms to Air Quality Guideline 12 and all applicable Policies adopted thereunder, including Policies 12.1, 12.3, and 12.8 because the proposal has been approved by the Louisville Air Pollution Control District; and because sidewalks will be provided along Westport Road and Westport Road is a transit route which passes the site; and

WHEREAS, The Board Further Finds That the proposal conforms to Landscape Character Guideline 13 and all applicable Policies adopted thereunder, including Policies 13.2 and 13.5 because adequate landscaping will be provided in accordance with the recommendations of the Landscape Architect of the Louisville Division of Planning and Design Services; and because buffers for surrounding land uses will be provided and native plant species will be utilized; and

WHEREAS, The Board Further Finds That the proposal conforms to Infrastructure Guideline 14 and all applicable Policies adopted thereunder, including Policies 14.2, 14.3, 14.4, 14.6 and 14.7 because the proposal has adequate service for all necessary utilities; because an adequate water supply for domestic and fire-fighting purposes serves the site; and because new utilities will be located underground wherever possible and will be situated where recommended by each utility for appropriate maintenance and repair access; and

WHEREAS, The Board Further Finds That the proposal conforms to Community Facilities Guideline 15 and all applicable Policies adopted thereunder, including Policy 15.9 because fire fighting services will be provided by the St. Matthews Fire Department; and

WHEREAS, The Board Further Finds That the proposal conforms to all other applicable Goals, Objectives, Guidelines and Policies of the Comprehensive Plan in effect for the City of St. Matthews, Kentucky.

3. **The proposed use is essential to or will promote the public health, safety, morals, and the general welfare in one or more zones.** The proposed nursing home provides a home-like setting with medical-related services to its residents. In doing so, it is essential to the public health, safety, morals and general welfare of the community in one or more zones.

4. **The proposed use is in compliance with all listed requirements for a nursing home [St. Matthews Code Article 15.D.8.] except Item A.**

Trilogy respectfully requests a modification of Item A. The building extends to a point 23.71 feet from the rear property line. As such, it encroaches 1.29 feet into the rear setback. The encroachment is necessary to allow the front of the building to meet the building setback line. This special circumstance makes the rear setback unduly burdensome.