

**MINUTES OF THE MEETING OF THE MIDLAND CITY PLANNING
COMMISSION
WHICH TOOK PLACE ON TUESDAY,
NOVEMBER 10, 2009, 7:00 P.M.,
COUNCIL CHAMBERS, CITY HALL, MIDLAND, MICHIGAN**

1. Roll Call

PRESENT: Eyre, Hanna, King, Mead, Pnacek, Senesac and Stewart

ABSENT: Brown, and one vacancy

OTHERS PRESENT: Keith Baker, Planning Director; Cheri King, Community Development Specialist and six others.

2. Approval of Minutes

Moved by Eyre, seconded by Hanna, to approve the minutes of the regular meeting of October 27, 2009 as written. Motion passed unanimously.

3. Public Hearing

- a. Zoning Text Amendment No. 149A**, initiated by the City of Midland, to amend Section 3.03 of the Zoning Ordinance to further define permitting and foundation requirements for accessory structures in the City of Midland.

The City of Midland Building Department has identified a deficiency in the Zoning Ordinance where neither a zoning compliance permit nor a "rat wall" is required for an accessory building less than 200 square feet in area. While the city has been requiring "rat wall" foundations and zoning compliance permits for accessory buildings in practice, it is not necessarily supported by existing ordinance language. The following language is being recommended: Definition of Rat Wall: "A low perimeter foundation wall that is both below and above grade, intended to prevent rodents and burrowing animals from gaining access to the structure." Accessory structures from 50 sq. ft. to 200 sq. ft. would be subject to this change. The rat wall could be made of concrete or foundation-grade lumber.

Another proposed change would be to Section 3.03: 5. Applicability of Other Codes and Ordinances. Language would be added to define when a zoning gcompliance permit is required for accessory structures.

Another addition to Section 3.03 would be regarding foundations. All accessory buildings and structures with a floor area between 50 and 200 square feet shall be required to have a rat wall foundation that extends a minimum of 12" below surrounding grade. The rat wall foundation shall be constructed from concrete, block or foundation grade lumber and conforms to the Michigan Building Code. An accessory building may also be placed on a concrete slab.

The Master Plan provides the broad guidance for land use decisions and forms the basis for the zoning regulations. Clarity in the zoning regulations helps to carry out the goals for the Master Plan. Through use of the ordinance, it has become apparent that further discussion of the applicability of the zoning compliance permit and rat walls needs to be clarified in the text to help the building officials carry out their responsibilities and the public understand the regulations.

The ordinance applies to everyone and has been applied uniformly throughout the city with respect to this provision. This is strictly a clarification of the rules with respect to Accessory Buildings and Structures. The amendment will create greater consistency in the wording of the regulations and improve clarity for staff and the public. There is no specific property being discussed regarding this regulation.

This is the third time the Planning Commission has discussed this issue. Staff recommendation is for approval. No public comments have been received to date. Adoption of this language would institutionalize the existing practice. Building Department staff provided input at an earlier Planning Commission meeting. Staff will make this proposed text amendment available to the Midland Homebuilders Association for public comment.

Mary Spegel, of 5805 West Wackerly Street, asked if this was in reference to building a shed or adding on to your home. Mr. Mead stated this would include any structure being built that was over 50 sq. ft.

No one else spoke either in favor of or in opposition to this text amendment.

The public hearing was closed.

4. Public Comments (unrelated to items on the agenda)

None

5. Old Business

- a. **Conditional Use Permit No. 36**, the request of Daniel and Mary Spegel for a group daycare home (7-12 children) located at 5805 West Wackerly Street.

The property in question is at 5805 West Wackerly Street. The petitioners are requesting a conditional use permit for a group child day care for 7-12 children in a Residential A-1 zoning District. The Planning Commission must consider both discretionary and non-discretionary standards.

A "Group Day Care Home" is defined in Section 2.02 of the Zoning Ordinance. The discretionary standards include the protection of public health, safety and general welfare, compatibility with surrounding uses, detrimental effects, impact of traffic, adequacy of public services, protection of site characteristics, compatibility with natural environment, and compatibility with the zoning ordinance and Master Plan.

Staff recommends approval of the request with at least the following contingencies:

1. That no on-premises signs be permitted.
2. That the hours of operation be from 6:00 a.m. to 12:00 a.m. (midnight), Monday through Friday.
3. That no exterior or interior alterations to the building be permitted that would otherwise change the character or nature of the dwelling as a residential use.
4. That no more than one additional non-resident adult employee be present at any given time.

One written comment was received to date expressing no opposition to the request. No further comments have been received since the public hearing.

An aerial photo shows this property is across W. Wackerly Street from US-10, just west of Dublin Avenue. There are commercial properties to the north. Zoning in this area is residential on the south side of Wackerly and commercial on the north side of Wackerly Street.

Mary Spegel and Dan Spegel, of 5805 W. Wackerly Street stated the turn around area is asphalt and there are lights up by the garage. Two vehicles can easily pull up by the garage. They have been open for a year and they have had four vehicles in the yard at a time and there has not been a problem with traffic. They currently have children from three families so it is not like they have 12 families coming and going. The petitioner states the speed limit on Wackerly Street is 45 mph. Several members of the Planning Commission have issues with the turnaround and its proximity to the house. The petitioner stated the hours the children come are staggered so there are not several cars there at the same time.

Mr. Eyre asked the petitioners to expand on their hours of operation. Mr. and Mrs. Spegel stated there is a great need in the community for day cares that are open past 5:30 p.m. Mrs. Spegel stated she and her husband stagger their hours taking care of the children. Their daughter also lives nearby and they call upon her when they need additional assistance.

The petitioners stated the fence goes all the way to the back of their property and it goes out to the garage. It is a very large area.

No one from the public spoke either in favor of or in opposition to the conditional use permit.

Mr. Senesac asked Mr. Baker if there were any special considerations they should consider regarding the hours of operation. Mr. Baker stated that if the Planning Commission thinks the hours of operation or the number of vehicles accessing the site would be a problem, this would be something to be taken into consideration in their decision process.

Motion by Hanna, seconded by Eyre, to recommend approval of Conditional Use Permit No. 36, the request of Daniel and Mary Spiegel for a group daycare home located at 5805 West Wackerly Street with the following contingencies:

1. That no on-premises signs be permitted.
2. That the hours of operation be from 6:00 a.m. to 12:00 a.m. (midnight), Monday through Friday.
3. That no exterior or interior alterations to the building be permitted that would otherwise change the character or nature of the dwelling as a residential use.
4. That no more than one additional non-resident adult employee be present at any given time.

Mr. Senesac stated he still has a problem with the availability of parking on this site. Today the children's hours are staggered but if they add six additional children, this increases the probability that multiple cars would be showing up at one time. Mr. Eyre stated he does not see that as a problem. Since they will be open so many hours, it is more likely that the hours children are there will be staggered. Mr. King stated he agrees with Mr. Senesac, that the speed limit on Wackerly Street is 45 mph and this is significant for potential traffic from the day care.

Motion by King, seconded by Senesac, to amend the motion to add a contingency for a turnaround to provide some type of circular traffic motion in the driveway.

Vote on the amendment:

YEAS: King, Mead, Senesac and Stewart
NAYS: Eyre, Hanna, Pnacek
ABSENT: Brown
VACANCY: One

Amendment to the motion passes 4-3.

Vote:

YEAS: Hanna, King, Mead, Pnacek, Senesac and Stewart
NAYS: Eyre
ABSENT: Brown
VACANCY: One

Motion passes 6-1.

- b. Planned Unit Development No. 16** initiated by Gary DeShano for Carolina Cove Condominium Association, a request to eliminate the interior 4' walkway as shown on the previously approved site plan, west of Abbott Road north of Betsy Drive and south of Alta Court.

Mr. Baker showed an aerial photograph of the subject property. It is for the Carolina Cove Condominium Association. The road is named Kitty Hawk Circle. It encompasses 6.74 acres and is zoned RA-2 and RA-4. There are 47 units in 30

buildings planned in the development. The request is to remove the requirement to construct a 4' wide sidewalk on Kitty Hawk Circle as shown on the original approved development plan. At the time of the PUD approval by City Council, a sidewalk was required in this development. City Council placed the following contingencies on their approval:

1. Walkways be provided along at least one side of the street within the site, connecting to southwest on Abbott Road.
2. Site lighting shall not case off the subject parcel.
3. Utility easements, acceptable to the City of Midland, shall be provided prior to consideration of the final PUD plan.
4. A storm water retention plan is approved by the City of Midland Engineering Department.
5. Vertical separation between sidewalk and street to be a minimum of 4".

Section 3.17 Private Roads, states "Any private road built in the City of Midland must comply with the following standards: Sidewalks. Sidewalks are required on both sides of all private streets. The Planning Commission may waive the sidewalk requirement along private streets if an alternate pedestrian circulation system that provides access to all parts of a development is provided. The alternate circulations system may incorporate hard surfaced and non-hard surfaced paths."

Section 27.06 states each site plan shall provide a pedestrian circulation system which is insulated as completely as is reasonably possible from the vehicular circulation system.

A letter was received during the course of the public hearing on October 27th from an owner of one of the development's residences expressing support for elimination of the sidewalk requirement. A list of other existing condominium and apartment complexes in the city without sidewalks was also presented. A representative for the homeowner's association also stated that the idea of making Kitty Hawk Circle one-way for vehicular traffic was also under consideration.

Based on consideration of the overall site plan, the need to provide safe and efficient circulation for pedestrians and bicyclists and the specific requirement of the City Council and Planning Commission to require sidewalks within the development and connecting to Abbott Road at the time of the original approval of the project, staff feels approval of the request to amend the site plan to remove the requirement for sidewalks is not warranted. However, it is up to the discretion of the Planning Commission and the City Council.

Mr. Pnacek asked if staff had comments from the City Council public hearing when this PUD was initially approved regarding their rationale for requiring sidewalks in this area. Mr. Baker stated that City Council minutes are not as elaborate as Planning Commission minutes. The sidewalks were suggested or recommended by the Planning Commission and the City Council picked up on that.

Mr. Jim Siler, from 2644 Kitty Hawk Circle, spoke on behalf of the condominium association. Carolina Cove is all private property. The street is a private street. He does not know why City Council decided to require sidewalks in this area. The driveways are very short and barely provide room for a car. Sidewalks would make pedestrians walk into the street if there was a car parked in the driveway which would make it more hazardous for pedestrians than not having sidewalks. There are only two buildings in the affected area at the present time. Putting sidewalks all around the circle would make them susceptible to damage when there is further development in this area. In taking four feet for the sidewalks, it would make the front yards smaller and make them less desirable for prospective buyers.

Mrs. Hanna stated it does not make any sense to require sidewalks in this area. This is just one more burden that the property owners do not need. The driveways are currently 18-20 feet in length. Mr. Siler noticed cars parking in the driveways today and there is not much room between cars parked in the driveway and the road.

Mr. Mead asked if the condo association had further discussion about making Kitty Hawk Circle a one-way street. Mr. Siler stated they had not discussed this option further. The condo association does their own snow plowing.

Motion by Senesac, seconded by Pnacek, to recommend approval of Planned Unit Development No. 16 initiated by Gary DeShano for Carolina Cove Condominium Association, a request to eliminate the interior 4' walkway as shown on the previously approved site plan, west of Abbott Road north of Betsy Drive and south of Alta Court.

Mr. Senesac stated he feels sidewalks are safer than having people walk in the street. However, he pulled into one of the driveways today and had to walk into the street to get around his vehicle. Mr. Pnacek stated he agrees that it would be safer for people in this area to walk in the street rather than to require sidewalks. Mr. Stewart agrees with Mr. Senesac, with the contingency that they make Kitty Hawk Circle a one-way street. Mr. Stewart made this a motion. Motion failed for lack of a second. Mr. Eyre states he agrees with Mr. Senesac and Mr. Pnacek. It is too late now to require sidewalks without having the buildings set back further. Mr. King is also in agreement. Mrs. Hanna is not in favor of the sidewalk at all. She does not understand why they were required in the first place.

Vote:

YEAS: Eyre, Hanna, King, Mead, Pnacek, Senesac and Stewart
NAYS: None
ABSENT: Brown
VACANCY: One

Motion passes 7-0.

6. New Business

None

7. Communications

None

8. Report of the Chairperson

None

9. Report of the Planning Director

None

10. Commissioner Comments

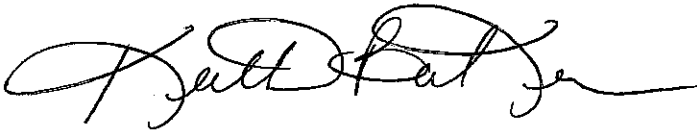
Mrs. Hanna asked people of the community to give respect to veterans on Veterans Day tomorrow. There will be a ceremony at the courthouse tomorrow at 11:00 a.m.

Mr. Eyre stated that, in the upcoming work session, the Planning Commission addresses the issue of day care and its fencing and hours of operation.

11. Adjourn

Adjournment at 8:25 p.m. was unanimously approved.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Keith Baker". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Keith Baker, AICP
Director of Planning & Community Development

MINUTES ARE NOT FINAL UNTIL APPROVED BY THE PLANNING COMMISSION