

Minutes Planning & Zoning Commission
Tuesday, May 25, 2021
6:00 PM Midland Town Hall
4293-B Hwy. 24/27E, Midland, NC 28107

Attendance: Commissioners: Chair Darrell Page, Bob Caddell, Pam Carter, Vice Chair Darrell Helms, Jennifer Gallant, Jim Hoy, Josh Mendoza; Hilda Keeney, Planning & Zoning Clerk; Kassie Watts, Town Planner

Alternate: Stephen Scott

Others: Councilmember Rich Wise

Item #1 – Invocation & Pledge of Allegiance

Item #2 – Open – Chair Page called the meeting to order at 6:06 PM.

Chair Page announced the resignation of Commissioner Steve Clark and Alternate Commissioner Gallant will complete the term (January 31, 2024).

Item #3 – Approval of Agenda

Motion was made by Commissioner Hoy and seconded by Commissioner Mendoza to approve the agenda. **Motion carried 6-0.**

Item #4 – Approval of Minutes – Open Session 04-27-2021

Motion by Commissioner Helms and seconded by Commissioner Carter to approve open session 04-27-2021 minutes. **Motion carried 6-0.**

Item #5 – Public Comments

Paul O'Neil – 12643 Hill Pine Road:

I think most of you know me. A resident of Bethel Glen for over seven years. I am coming before you this evening as an observation of events that I observed at the last Town Council Meeting about the proposed zoning of the roughly 700 acre tract. Admittedly, I am not knowledgeable of our Planning and Zoning Regulations and that is not what I am here about.

I am not criticizing or pointing my finger at anyone. On the contrary, I am commenting on what I observed as many different interpretations of what may or may not be zoning requirements, restrictions and overall Midland Town Zoning regulations.

Having worked in business, industry, education, self-employed for over half a century, we worked under some very strong and strict guidelines. In the business world, the debate that I heard in the last Council Meeting would have made Mr. Fox to turn absolutely inside out. There were some liabilities.

I realize that our government does not operate under the same guidelines and has a lot more 'flexibility' in its interpretations of supposed rules and regulations. But when regulations are stated, they need to be stated FACTUALLY.

Case in point, Kassie in her opening presentation touted this proposed subdivision met a criteria of approximately 1.9 houses per acre (in my notes), speaking nothing of 'unusable space, streets, greenspaces, power lines, etc.', I was excited to hear the rest of the story of with all of the amenities there were coming out.

Minutes Planning & Zoning Commission
Tuesday, May 25, 2021
6:00 PM Midland Town Hall
4293-B Hwy. 24/27E, Midland, NC 28107

Then as the developer started talking and giving lot dimensions, numbers of lots, spacing between houses (that matches this room), a shaky adult living area, something did not jive. The map was difficult to make out as 'right side vs left side', different homeowners associations and on and on... It seemed as a diversion as what was really going on.

Then, after the discussion period which got pretty heated, three of the four commissioners started in with their different analyzations. All of them using more or less a business formula of gross area minus roads and non-usable space equaling net usable area. All of this highlighted the fact that there was very little space in actual housing. I looked at my notes today and there was something like 200 acres of that 600 taken out for fire departments (a tract that was unreal), anyway it came up to, depending on which one was giving the calculation, six to eight houses per acres with 42 foot lots... five foot side boundaries... really???

The bottom line to all of this is the inconsistencies and varied interpretations of regulations was blatantly obvious in this meeting. The Council, Planning and Zoning Board, and the Town need to be more closely solidify these irregularities and interpretations. I will point out two prime examples of how this holds true. In a time way before most of us here, Bethel Glen was proposed and laid out. There is almost zero waste in that subdivision. Properties, streets... very simple, very effective. You had property, overall gross property, you had streets and you had homeowners' property. Then there is a new subdivision up the pike up here, I can't remember the name of it and I did not call in today and get it but I was here for the presentation of that and when that was presented very open and straightforward. We have this many acres, we have a creek, we have a powerline, we are going to give this much to green space and developable home lots. It was very cut and dry. Taking out the green space, the creeks, it was a very upfront approach. Somehow both of these seem to have pointed out the realities and not the hidden true facts in what happened in the last Town meeting. Let's get the facts straight the first time and upfront with consistent wordings and interpretations and method of calculating the net usable area.

Thank you.

Chair Page asked Ms. Watts to respond.

Ms. Watts:

With the density and dwelling units, and with the other two projects you referenced, Cedar Creek is now being called Midland Crossing, and what we called the Shay or Wicker Park project, those were done the exact same way this last project was done. I have come to realize through rumblings, there are misunderstandings about the dwelling units and density that the lot sizes were this small. The way the density is calculated, you get the density for the overall tract because you get the highest and best use of your property. At least I can speak how it is calculated in North Carolina and under our code. The staff report used for this project is the same staff report (layout and conveyed) for the other two projects which were also conditional zoning districts. I don't disagree that it does sound misleading from a layperson's point of view. This is essentially called a "cluster" subdivision option where you have small lot and have more of the remainder of the tract used for open space, amenities, etc. You are the decision makers and

Minutes Planning & Zoning Commission
Tuesday, May 25, 2021
6:00 PM Midland Town Hall
4293-B Hwy. 24/27E, Midland, NC 28107

there was no attempt in any way to not convey that information the way it should be conveyed. If I failed to do that, I apologize it was not my intent. The fact is you must use the density for the overall tract. It does sound better from a developer's perspective, 1.9 units to the acre but this is a huge project and you always have to look at the conditions of the lot size. Hopefully, the PRD zoning will give the Town more options to negotiate, better terms and more leverage.

Comments from Commissioner Helms:

The guy kept saying it was going to be cluster houses and they were going to be close together. Several people brought it up and a guy was doing his math and saying there was no way you can have 1.9 acres but he said that they were going to be close together and be a cluster neighborhood. He disclosed that, he did not hold that back.

Comments from Commissioner Hoy:

They do give you the dimensions. 5,600 square feet – X number of square feet on the next level and X number of square feet on the other level – if you do the math, you are going to know what the depth is. People that buy those type of lots, in those type of developments, prefer to live in almost apartment-like setting on the ground. They appeal to a certain segment of the population and this is what developers are looking at as they move forward because of all the costs in building a development of that type and a very expensive outlay for them. So they are trying to shrink things down. That does not mean, we can't ask them to widen it up. If you drive around Union, Mecklenburg and Cabarrus Counties you will find a number of developments that are being developed on small lot sizes trying to appeal to an older segment of the population which apparently are the only ones that have enough money to pay \$350,000-\$500,000 for a home. Commissioner Hoy encouraged individuals to visit Epcon off Poplar Tent Road. They have 90 lots and are sold out. They have a zero lot line and 10 feet between houses, which is the same as a five foot setback on each lot.

Comments from Alternate Commissioner Scott:

His question referred to Commissioner Hoy's question negotiation phase. When does that occur, how often, or is there a time limit?

Ms. Watts responded before making a recommendation to Town Council, the P&ZC needs to negotiate as much as possible. A project cannot be held up indefinitely. When the P&ZC reviews a proposal, recommended changes can be made during the public forum and table the petition. The developer can then return with a revised proposal. Staff tries to guide the developer before it is presented to the P&ZC.

Item #6 – Planning, Zoning & Subdivision Reports

a. Zoning Permit Review

Ms. Watts reviewed the zoning permits since the April 27 meeting.

b. Update on Projects

Midland Crossing (former Cedar Creek) – have been discussing elevations with KB Homes; conditions on project, i.e. architectural requirements, parking pads, amenities but not timing on amenities

Minutes Planning & Zoning Commission
Tuesday, May 25, 2021
6:00 PM Midland Town Hall
4293-B Hwy. 24/27E, Midland, NC 28107

Commissioner Gallant – Fox Creek a discussion regarding trees looking dead or dead and who is responsible.

Ms. Watts stated the developer was advised not to plant trees at the beginning of May. The developer had to submit a bond to the Town to take roads and the trees had to be part of the bond. The Town has not taken possession of the roads and the HOA will be responsible for trees.

Item #7 – Zoning Map Amendment

ZMA-2021-05 - Zoning Map Amendment – Darren Ray Hartsell, located at 13951 Cabarrus Station Road, Midland, NC 28107 (3 +/- acres) Cabarrus County PIN# (5533-49-2713)

BACKGROUND

On March 31, 2021 the Town of Midland received an application for annexation of the property.

On April 13, 2021 the Midland Town Council approved Resolution #2021-239(A) certifying the sufficiency of the petition and Resolution #2021-240(A) setting the Public Hearing date.

On May 11, 2021 the Midland Town Council adopted Ordinance #2021-264(A) to officially annex the parcel into the municipal town limits.

The subject property, located 13951 Cabarrus Station Road, Midland, NC 28107; Cabarrus County PIN# (5533-49-2713) is approximately 3 +/- acres in size and is currently zoned Cabarrus County “Countryside Residential” (CR). The proposed zoning district is the Town of Midland “Agriculture” (AG) designation.

FINDINGS AND CONCLUSIONS

The property lies within the area designated on the adopted Town Plan 2030 Future Land Use Map for residential/neighborhood uses and is inconsistent with the Town Plan 2030 Land Use and Comprehensive Master Plan, Revision 2, adopted October 8, 2013 and amended March 8 and October 11, 2016, April 11, 2017, and July 10 and September 11, 2018 as shown on the adopted Land Use Map. This amendment is reasonable due to the existing surrounding agricultural uses as well as all adjacent properties currently being zoned as agriculture. Staff considers this amendment to be an extension of the surrounding agricultural zoning district. This amendment will allow the subject property to be used in accordance with the standards of the “Agriculture” (AG) Zoning District in the future.

POLICY IMPLICATIONS

The Town of *Midland Development Ordinance* and the North Carolina General Statutes require the P&Z Commission to make a recommendation on the zoning map amendment.

Notice of this meeting and this agenda item has been publicized, letters have been sent to

Minutes Planning & Zoning Commission
Tuesday, May 25, 2021
6:00 PM Midland Town Hall
4293-B Hwy. 24/27E, Midland, NC 28107

adjacent property owners within 500 ft. of the subject property, and a zoning hearing sign has been posted on the property.

Town of Midland Development Ordinance standards will apply following the:

1. P&Z Commission motion to make a recommendation to Town Council,
2. Public Hearing to held by the Town Council (June 8, 2021), and
3. Adoption of an Ordinance (ZMA-2021-05) including both Reasonableness and Consistency Statements designating the Town zoning classification.

The Commission may vote to recommend approval, denial, or to modify the recommended classification in accordance with the adopted *Town Plan 2030 Land Use & Comprehensive Master Plan, Revision 2* adopted October 8, 2013 and subsequently amended March 8 and October 11, 2016, April 11, 2017, and July 10 and September 11, 2018 by the Town of Midland Town Council.

Motion was made by Commissioner Caddell and seconded by Commissioner Hoy to recommend Town Council designate the subject property as “Agriculture” (AG), inconsistent with the *Town Plan 2030 Land Use and Comprehensive Master Plan, Revision 2*, adopted October 8, 2013 and subsequently amended March 8 and October 11, 2016, April 11, 2017 and July 10 and September 11, 2018 as shown on the adopted Land Use Map appearing therein which covers areas outside the city limits of the Town of Midland. This amendment is reasonable due to the existing surrounding agricultural uses as well as all adjacent properties currently being zoned as agriculture. Staff considers this amendment to be an extension of the surrounding agricultural zoning district. This amendment will allow the subject property to be used in accordance with the standards of the “Agriculture” (AG) Zoning District in the future. **Motion carried 6-0.**

Item #8 – Zoning Text Amendment

ZMA-2021-02 - Zoning Text Amendment – The Town of Midland will consider multiple text amendments to various sections of the Midland Development Ordinance in order to bring the text of the existing town ordinance into compliance with N.C.G.S. 160D, Local Planning and Development Regulation. The P&ZC will consider the amendments at the June 22, 2021 meeting.

Ms. Watts presented a PowerPoint presentation:

160D Legislation Background

- N.C. General Assembly adopted legislation creating Chapter 160D of the N.C.G.S. in 2019. (Session Law 2019-III)
- Chapter 160D consolidates current city and county enabling statutes. These were previously located in 153A and 160A.
- 160D also pulls in various other related statutes that were previously scattered throughout the General Statutes.
- There are still some intentional differences between city and county authorities, notably the exemption of agricultural uses from county zoning coverage, but otherwise the statutory provisions for city and county are now identical.

160D Legislation Highlights

- Terminology and citations will need to be changed throughout the MDO. (References to 160A will change to 160D)
- Conditional use permit, special exception, conditional use district zoning, and special use district zoning terms will be deleted and replaced with conditional zoning and special use districts.
- Replace/revise/add certain definitions – Building, dwelling, dwelling unit, bedroom, sleeping unit, etc.
- Must prohibit third-party down zonings.
- Must get written consent to conditions related to conditional zoning approval from the applicant/landowner.
- Must provide development approvals in writing. Must be protected from further editing.
- Must allow administrative decisions of any development regulations (not just zoning) to be appealed to the board of adjustment. (Ex. Code Enforcement)
- Must adopt broadened conflict-of-interest standards for both advisory and governing boards.
- Must incorporate new staff conflict-of-interest standards into ordinance.
- For revocation of development approval, must follow the same process as was used for the approval.
- Must conform subdivision procedures for expedited review of certain minor subdivisions.
- Must not exclude manufactured homes based on the age of the home.

Item #9 – Noise Ordinance Modification

Noise Ordinance #2005-44 Modification

Motion was made by Commissioner Hoy and seconded by Commissioner Gallant to recommend the draft of the Midland Noise Ordinance, #2021-258, to the Midland Town Council for approval and to rescind the existing Noise Ordinance #2005-44. **Motion carried 5-1. (Commissioner Helms opposed.)**

Item #10 – Adjournment

Motion was made by Commissioner Mendoza and seconded by Commissioner Carter to adjourn the meeting. **Motion carried 6-0.**

The meeting was adjourned at 7:41 PM.

Darrell Page, Chair, Midland Planning & Zoning Commission

Hilda Keeney, Planning & Zoning Commission Clerk to the Board