

Minutes Planning & Zoning Commission  
Tuesday, March 22, 2016  
7:00 PM Midland Town Hall  
4293-B Hwy. 24/27E  
Midland, NC 28107

**Attendance:** Chair Darrell Page; Pam Barger; Ann Holland, Pam Carter, Scott Burroughs, Steve Clark; Hilda Keeney, Planning and Zoning Clerk; Richard Flowe, Planning, Zoning & Subdivision Administrator

**Late:** Michael Aldridge (arrived at 7:48 PM)

**Item #1 – Invocation & Pledge of Allegiance**

**Item #2 – Open** – Chair Page called the meeting to order at 7:00 PM.

**Item #3 - Approval of Agenda** – Add Item #12 - Waiver for Rob Wallace Park Phase 1 Landscaping and move the Adjournment to Item 13.

**Motion** was made by Commissioner Barger and seconded by Commissioner Holland to approve the agenda with the additional item #12 and renumber the remaining items. **Motion carried 6-0.**

**Item #4 – Approval of Minutes** – Open Session 01-26-2016

**Motion** by Commissioner Holland and seconded by Commissioner Burroughs to approve open session 01-26-2016 minutes. **Motion carried 6-0.**

**Item #5 – Public Comment** – no comments forthcoming.

**Item #6 – Planning, Zoning and Subdivision Reports**

**a. Zoning Permit Review**

Mr. Flowe summarized and answered questions regarding the zoning permits issued December through March 22, 2016.

**b. Update on Projects**

- Discussion continue regarding the Town Center project.
- Two Pepsi distributorships are joining forces and consolidating the Midland and Charlotte facilities into one facility closer to the interstate in Concord.
- Queens University received a donation of about 150 acres behind and beside Pepsi. Queens University is not interested in owning the property and by being adjacent to Pepsi, the Queens' property is very strategic. While working on economic development to market the Pepsi site with Cabarrus Economic Development group, the property had been shown with repeat visits, but the absence of sewer is a detriment to the property. The Town and Cabarrus Economic Development are working together with Queens and Pepsi, who have agreed to jointly fund a basin study (no public funds involved). Results of the study are expected soon with cost estimates on how to breakdown and share costs which enables WSACC, the Town Queens and private developers that have expressed an interest in sharing the cost to expand sewer in the area.

c. Trends

- Charlotte Among Top 10 Markets Sets Housing Boom in 2012
- Charlotte a Top Metro Area for Families
- Wells Fargo Predicts a Strong Job Growth for North Carolina in 2016
- Charlotte Ranks Among Top 10 Markets for Industrial Property Investment

**Item #7 – Initial Zoning Designation – Zoning Map Amendment Recommendation to Town Council Midland Volunteer Fire & Rescue Station 2 (annexed 3/8/2016) (Memo, Ordinance with Map)**

**Motion** was made by Commissioner Barger and seconded by Commissioner Holland that Ordinance #04-2016 (A)(IZ) is consistent with the Adopted Comprehensive Plan and Statement of Reasonableness. The Town Council finds that the zoning map amendment to the property of Midland Volunteer Fire & Rescue, Inc. (Station No. 2) located at 369 Hwy 24-27 West; Midland, NC 28107 (Cabarrus County PIN 5534-29-0594-0000) is currently zoned by Cabarrus County and the current County zoning classification is Limited Industrial – Special Use (LI-SU). The proposed zoning district is the Town of Midland “Civic” (CIV) designation, consistent with the Town Plan 2030 Land Use and Comprehensive Master Plan, Revision 2, adopted October 8, 2013 and amended March 8, 2016 as shown on the adopted Land Use Map appearing therein which covers areas outside the city limits of the Town of Midland, but lying within the area known as the Midland Service Area, as required by NCGS § 160A-383. This amendment is reasonable because the subject property is properly zoned land where the existing permitted activity is established. **Motion carried 6-0.**

**Item #8 - Ward Equestrian Facility – Conditional Use Permit Recommendation to Town Council (Memo)**

a. Presentation of information by staff

Mr. Flowe gave a brief summary of the project. The Technical Review Committee (TRC) reviewed the site plan in January and is required by the Ordinance for the P&ZC to consider a recommendation to the Town Council. Town Council will then conduct a public hearing at their April 12<sup>th</sup> meeting and accept sworn testimony due to the quasi-judicial nature of a conditional use permit. The purpose for the P&ZC is to review the site plan, make any determinations or recommendations and to hear any public comments from concerned citizens in the area.

b. Open public comment period

Chair Page opened the public comment period for those citizens desiring to express their concerns.

c. Comments by public

Amy Wilder:

- speaking for everybody present

Minutes Planning & Zoning Commission  
Tuesday, March 22, 2016  
7:00 PM Midland Town Hall  
4293-B Hwy. 24/27E  
Midland, NC 28107

- how will this affect the citizens in the area
- law suit just ended with Cabarrus County – will this make the residents bring the road up to code

Mr. Flowe stated he had many conversations with the county attorney. We had recommended the Town could be part of the solution but would require unanimous participation according to State law because the Town could not annex parts of the area, even though parts of the area were in the original incorporation which is a different part of the State law. There is not anything that this permit would require other people to do – in terms of spending money, road improvement, etc.

The property is at the corner of NC 24/27 and Ritchie Road. The Ordinance permits are typically based on technical standards alone. If it meets requirements for particular things, spelled out in the Ordinance, and specifications permits are issued. However, there are certain types of land uses that some people may find pleasant and others offensive. Those uses have been grouped into some categories that require a conditional use permit. The Ordinance allows the conditional use in a residential area if the various conditions established in the Ordinance and satisfy any condition the P&ZC or Town Council choose to place on it as a result of public input and feedback. The site plan submitted is very basic which designates on the property the location of various structures. The drawing meets the guidelines and the basic conditions for an equestrian facility. The P&ZC and Town Council have the ability to examine the site, listen to the folks concerns and place conditional conditions on it before being sent to Town Council or recommend against it.

Amy Wilder:

Is this facility for personal use? Boarding stables, riding arena, parking area, circle driveway, and all this is coming in off Ritchie Road which is considered a private road that all the property owners pay a road maintenance fee.

Julie Anne Ward – Her intention is to have her personal horses located there. When the plan was originally submitted, was asked if she planned to expand to include boarding because of the extra processes for additional improvements to be added. Her purpose is to get her horses on her property.

Amy Wilder:

I believe we are fine with the proposal but if there is something added in the future, something needs to be added to be looked it again. We just got out of a law suit with Cabarrus County and that was a whole ordeal in itself and frankly hoped she is dead and gone before she has to live through that again.

Minutes Planning & Zoning Commission  
Tuesday, March 22, 2016  
7:00 PM Midland Town Hall  
4293-B Hwy. 24/27E  
Midland, NC 28107

Mr. Flowe stated the best way to deal with the concerns is with conditions. That is what a conditional use approval is about. It allows the P&ZC to hear the concerns of the community to draft conditions that are acceptable to the applicant. It essentially opens up negotiating and bargaining room. This P&ZC needs to include those in any recommendation. If the concern is commercial stables vs. personal stables and the applicant is willing to accept those conditions, the P&ZC can formalize those conditions as part of their recommendations to Town Council. The applicant needs to address your concerns with the conditions. Mr. Flowe asked Ms. Ward to address the conditions and what she is willing to stipulate.

Julie Anne Ward:

Looking at the drawing, the part that is behind her house is where she intends to put her horses. The other side lot would be, when she could afford to do so, make the facility separately. She knows there would be issues on the road situation, making an entrance coming out on NC 24/27. If and when she were to make that decision, it would meet conditions.

Amy Wilder:

I think that would be better for us. The school bus stops on NC 24/27 at Ritchie Road. Some people are allergic to bees, etc. and have to have an EpiPen. Her child has to have an EpiPen because she is highly allergic to horses and she will obtain a letter from her physician to that fact. Ms. Wilder makes sure she gets to the bus stop without having to walk in the morning but sometimes in the afternoon she has to walk home. How many horses will there be?

Julie Anne Ward:

She currently has two (2) horses and possibly in the future may get another but not considering 10 to 20 horses.

Amy Wilder:

Will your conditions have a limit?

Mr. Flowe stated there is a limit:

Julie Anne Ward:

The maximum per the regulations was two (2) per acre but that is over kill in her opinion.

Mr. Flowe stated it is two (2) per acre inside the fence area.

Amy Wilder:

That is all the questions I have. I'll get the letter from my daughter's physician

and bring it to you.

Mr. Flowe announced the Town Council public hearing will be on April 12 at 7 PM and is a formal public hearing. Comments will be considered as fact and evidence in making their final determination. Evidence that state your concern will be required because Ms. Ward has the right to do this as long as she meets all the conditions and any other conditions that are placed. If she does not agree to the conditions that are added, then she could not receive the conditional use permit.

Amy Wilder:

She stated that only those property owners that live near her were the only property owners notified.

Mr. Flowe stated all property owners within 500 feet from her property were notified.

Amy Wilder:

This is part of Ritchie Road and we are all on that slippery slope of the road thing. She wished all the property owners were notified. If this is something that could go commercial in the future and a lot more traffic in the future.

Mr. Flowe stated the mail notice is done because the way the law is written in the local ordinance. A sign was placed at the intersection informing everyone using the street would see the sign.

d. Closed public comment period

No further comments, Chair Page closed the public comment period.

e. Recommendation to Town Council for their consideration following a public hearing (4/12/2016)

Chair Page asked the P&ZC if there were any conditions to be placed on the conditional use permit before making a recommendation to Town Council. Do you want to recommend personal use only and not commercial? The Ordinance limits the number of horses in the fenced area and not the open area.

Mr. Flowe stated a couple of other comments he heard, was:

- Access to Ritchie Road vs. NC 24/27 for a commercial operation. That in itself has issues and would require a NC Department of Transportation permit and proper designs for trucks or trailers that would be exiting or entering the property.
- Health concerns for additional steps taken to secure horses in that location to prevent contact with others.

Minutes Planning & Zoning Commission  
Tuesday, March 22, 2016  
7:00 PM Midland Town Hall  
4293-B Hwy. 24/27E  
Midland, NC 28107

Commissioner Barger:

At this point, setting as private use only, in the future could it be re-opened and looked at adding a commercial use. Which is basically what she has submitted giving it a possible future commercial use. It is a possible future use, she is not necessarily doing it. I don't know if we recommend making it for personal only would at some point in the future she would be able to re-open this and look at a commercial venture.

Mr. Flowe stated all it would require would be to apply again for a conditional use permit. The right to apply for that would still be there. They could come back and ask for a new permit to be issued that broadened the scope as long as it still met the conditions and met the conditions that were the concern at the time. They have the right to come back and start this process over. It would not be automatic, they would go back through the notices, public comment period, review period of the TRC and the public hearing would be required again. There are safety measures in place to protect both the applicant's rights and the concerned neighbor's rights.

Commissioner Barger:

Questioned the allergen issue – airborne, touch, what is the allergen issue?

Amy Wilder:

I'll ask the doctors to put that in the letter. An example is, my parents live in Stanly County. The recycling area they take their recycling to has a fenced area adjacent with a donkey in the pasture. If the wind is blowing right, it starts attacking her and like deathly.

Commission Barger:

Does your property align with one side of her piece?

Amy Wilder:

Up the hill from the property.

Chair Page:

Anymore comments or discussion. What are the wishes of the P&ZC?

Mr. Flowe pointed out that regardless of the PZ&C's recommendation, the April 12<sup>th</sup> Town Council public hearing will occur. If the P&ZC denies, it does not stop it from advancing to the Town Council for their consideration or vice versa. If the P&ZC recommends approval the Town Council could still reverse the P&ZC's recommendation.

Minutes Planning & Zoning Commission  
Tuesday, March 22, 2016  
7:00 PM Midland Town Hall  
4293-B Hwy. 24/27E  
Midland, NC 28107

Chair Page:

At the April 12<sup>th</sup> Town Council meeting, more than one person needs to express their concerns. You will be sworn in and cannot provide any false information only facts.

Someone from the audience:

What type of fence will she put up?

Julie Anne Ward:

Typical pasture fences – same type Mr. Ritchie has.

Commissioner Barger:

How tall will the fencing be?

Mr. Ritchie:

With the barbed wire, almost five (5) feet. The woven wire is on the bottom and barbed wire is on top.

Julie Anne Ward:

Just to clarify, I will not be doing the barbed wire because of the horses.

Chair Page:

How tall will your fence be?

Julie Anne Ward:

Probably five (5) feet.

Commissioner Aldridge arrived at 7:48 PM.

Chair Page:

What are the Commission's wishes on this recommendation?

Commissioner Clark:

She is a homeowner and I think we should proceed because she has meet all the Ordinance requirements.

Commissioner Barger:

Has a tendency to agree with Commissioner Clark. If she was going to put a stipulation on it, I probably would put a stipulation for personal use.

Chair Page:

Good idea for sure. Any other conditions?

Minutes Planning & Zoning Commission  
Tuesday, March 22, 2016  
7:00 PM Midland Town Hall  
4293-B Hwy. 24/27E  
Midland, NC 28107

Commissioner Barger:

Without having thought of this from the aspect enclosure other than pasture fencing, there might possibly be something we want to recommend. I don't know we can actually tell Ms. Ward what she can use for fencing because I don't believe that is our job. Perhaps we should consider something to try and keep the animals more confined with the concern of the health issues because we do deal with health, safety and welfare of the community. Not knowing how to word that at this point, I would have to leave that out. She does not have enough information to make a recommendation on that but certainly maybe a different type of fencing could be used to help assure the animals remain in the fences area. I have seen pasture areas with the lean to has a second fence that is similar to an easement. You would have your fence for your animals plus another fence in case they knock one down or a tree falls on it, that gives another barrier for the animals to be contained in before running loose in the neighborhood. Having horses in the past, they can knock a fence down fairly easily. Having done that in the past that might be something to consider. It is an extra expenses for the owner but also helps everyone in the area and allows the owner to have horses on the property with the conditional use.

Mr. Flowe informed the PZ&C stipulations of height or type of fence. However, regarding the materials concerned, it is recommended when stipulating the details of construction that it be done in such a way the applicant is in agreement with the condition and has to be a condition they agree to or else the condition is not a valid condition.

Chair Page:

Only stipulation I have heard is the personal use only and not commercial use. Fencing was discussed and can be a condition.

Julie Anne Ward:

Considering the cost of fencing and as long as it is maintained properly, having one or two fences is not going to have much bearing. If a tree comes down all in one area it will hit both fences.

Commissioner Barger:

In your situation, it is not trees I was thinking of, just a run through.

Julie Anne Ward:

As long as it is maintained, one fence line should be sufficient. Part of my comment is that I have old horses, as long as the food is there, they don't care to leave.

Chair Page:

Minutes Planning & Zoning Commission  
Tuesday, March 22, 2016  
7:00 PM Midland Town Hall  
4293-B Hwy. 24/27E  
Midland, NC 28107

What material is the fencing going to be?

Julie Anne Ward:

I can't remember the actual square, I think is 4x4, starts smaller and gets bigger. As far as the measurements, I'm at a loss there. Looking about five (5) feet high.

Mr. Flowe stated the height she stipulated could be a condition.

Commissioner Barger:

The five (5) feet is less likely the horses just persistently jump that. A four (4) foot fence I would be concerned about. That could be another stipulation.

Chair Page:

We could stipulate a minimum five (5) foot fencing of materials that are normally used to maintain or confine horses within an area.

Asked Mr. Flowe if he had any idea of the cost for an entrance off the property into 24/27? I know DOT approval must be obtained. If it were a commercial entrance, it would be treated completely different than a residential entrance, even if it were handling a horse trailer. On commercial that is going to be triggered based upon turn lanes, site distances, and separation from intersections. The criteria would probably be relatively costly to do a commercial grade. It would have to be a right in and right out. Usually on commercial you will have a deceleration lane.

Chair Page:

If re-opened in the future to make commercial, they would have to have something like that at the entrance.

Mr. Flowe stated because of the nature of the road or it would involve the road being improved from Ms. Ward's property to the highway. It is a privately maintained road approved by Cabarrus County prior to the Town's incorporation.

Commissioner Clark:

It's not commercial property right now.

Mr. Flowe stated it does not require commercial zoning for an equestrian facility in a residential area. It does require this conditional use process. It is close to a business in a neighborhood as you can have other than maybe a family child care facility. It does not have to be zoned commercial for this. It is eligible in the residential area provided it meets the criteria. First criteria is minimum of five (5) acres and additional criteria beyond that.

Minutes Planning & Zoning Commission  
Tuesday, March 22, 2016  
7:00 PM Midland Town Hall  
4293-B Hwy. 24/27E  
Midland, NC 28107

Commissioner Clark:

I was wondering about the concerns that the public has as far as becoming public access to the horses and riding area.

Mr. Flowe stated that would be up to the P&ZC and Town Council to determine whether that opportunity is granted at this time. If the opportunity is withheld and the condition under this permit, it would require them to come back through the process again if they decide to do a commercial operation.

**Motion** was made by Commissioner Barger and seconded by Commissioner Holland to recommend approval to Town Council with the following conditions: that it be for personal use only and not commercial use and the fence height be a minimum of five (5) feet and the fence materials would be that of normal use to confined horses.

Just for the record, Mr. Flowe stated the conditions placed on this should they be endorsed by and accepted by Town Council and are enforceable as if written into the statute itself. So the violation of those conditions is a violation of the Town of Midland Development Ordinance and is punishable by fines and penalties or the loss of the permit. The P&ZC should ask if the applicant is agreeable with these conditions.

Commissioner Barger:

Ms. Ward stated she agreed to the conditions. Mr. Flowe can give you the specifics on the penalties.

Julie Anne Ward:

Stated she was in agreement with the conditions.

**Motion carried 7-0.**

**Item #9 – Recess for Technical Review Committee (TRC) Meeting**

**a. Rob Wallace Park Phase I – Large Site Development Plan Review**

Mr. Flowe called the TRC to order at 8:03 PM

Mr. Flowe announced a formal application had been received from Rob Wallace. In this property, news has been released a company is locating in the area that makes water activated tapes, etc. The facility will go along the rail across from the McGee facility. Part of the park property is located inside the town limits and some is located outside in the county. Discussions with the county have been held and plan to bring the remainder of the park site inside the town limits at

Minutes Planning & Zoning Commission  
Tuesday, March 22, 2016  
7:00 PM Midland Town Hall  
4293-B Hwy. 24/27E  
Midland, NC 28107

some future point. Once the property line settlement has been determined it will all be under one jurisdiction from the stand point of the approval of improvements and permits. The Tow is excited about the commitment from the county. Mr. Flowe unveiled Phase I of the park plan to the TRC.

James Jones, Engineer with Amicus Partners, has worked with the county on the park project developing the concept plan. The park is a permitted use in the zoning classification. Buffers are required around the edges. Met with Town staff to review the plan and the aspects that needed to be addressed. The road has been brought in and shifted up toward the property line to put the parking at the top of the ridge on the inside of the road so no one has to cross the road except for one area designated for bicycles. Some of the features indicated an office, restroom area, shelter, playground area and proposed future facilities. Provisions for a walk around the lake are planned and considering small paddle boats on the water. Have provided walkways, concrete sidewalks for long term stability in the area and have proposed to save a lot of the large trees on the property. The Ordinance requires trees and parking lots and shrubs for those areas. Since there are an abundance of native trees they were requesting to be given credit for preserving tree line and some existing very large trees (60' to 100' trees) with large canopies providing shade for the area. Requesting to be given a waiver for installing small trees and shrubs in the parking lot area.

Mr. Flowe explained why a waiver is provided. Some Ordinances are written to exacting standards but not always allow for those standards to be met in a practical sense.

Commissioner Clark asked about the clearing and runoff.

Mr. Jones responded that the development is of very low density. There are a lot of green space areas to absorb and filter.

Mr. Jones wanted to know if the plan presented was in compliance with the Ordinance.

Mr. Flowe stated he wanted to get comments from the P&ZC members.

Proposed opening of the park is planned for September.

The TRC adjourned at 8:45 PM.

**Item #10 – Reconvene Planning & Zoning Commission Meeting**  
The P&ZC meeting reconvened P&ZC meeting at 8:46.

Minutes Planning & Zoning Commission  
Tuesday, March 22, 2016  
7:00 PM Midland Town Hall  
4293-B Hwy. 24/27E  
Midland, NC 28107

**Item #11 – Banks-Massey Grading - Zoning Map Amendment Request from SFR to C-24/27**  
(Memo, Ordinance with Map)

Commissioner Barger expressed the P&ZC to be careful and not continue to turn the Land Use Plan back to what it was before it was changed originally. If we are not careful and continue to look at these requests as there's commercial next to it, there's commercial down the street, let's put this in. Soon it will end up like Independence Blvd. Felt a need to say that because looking to the future we have to maintain what we are saying with our Land Use Plan vs. eroding it little by little. Personal comment that is a personal observation of the Land Use Plan and what we are doing with it. Other than that as far as this Ordinance change or making the change she had no further comment.

Chair Page stated this property was discussed in January with a little controversy at that time but nothing major. The vote at that time was 5 to 2 to approve the request.

Commissioner Carter asked about the additional traffic.

Mr. Flowe stated this is not about the site plan but re-zoning the property. It would have to meet standards for development regardless of what they have. A conventional zoning change if zoning commercial and they change their mind to something different in mind that is also allowed in the commercial district that is a right they would have. The traffic generation, the design of entrance improvements, all are handled at the specific site plan which would be reviewed by the TRC when submitted.

Commissioner Holland stated she agreed about being very careful because she worked on Independence Blvd. when it was bustling and now it is like a ghost town with dilapidated buildings.

Mr. Flowe stated the commercial will have to be back off the road. The purchasers of this property are actually representing two companies that are looking at one location together. The property has some big buffer areas around the creeks and things, the flood plains they will not be able to develop in, they will be using the usable part which is largely an open area now. They will have to meet the Ordinance requirements and can bring in for comments and have the right to make changes to the site plan. The request cannot be conditioned. If you feel that it is not time to change the zoning, you just don't change the zoning. If you feel it is time and open to consideration for plans to that site then the change would be appropriate.

**Motion** was made by Commissioner Holland and seconded by Commissioner Aldridge that Ordinance #04-2016 (B)(M) is consistent with the Adopted Comprehensive Plan and Statement of Reasonableness. The Town Council finds that the zoning map amendment to the property located at 3201 Hwy 24-27 West; Midland, NC 28107

Minutes Planning & Zoning Commission  
Tuesday, March 22, 2016  
7:00 PM Midland Town Hall  
4293-B Hwy. 24/27E  
Midland, NC 28107

(Cabarrus County PIN 55455071420000) changing the zoning designation of “Single Family Residential” (SFR) to “NC 24/27 Commercial” (C 24/27) is consistent with the Town Plan 2030 Land Use and Comprehensive Master Plan, Revision 2, adopted October 8, 2013 and amended March 8, 2016 as shown on the adopted Land Use Map appearing therein, as required by NCGS § 160A-383. This amendment is reasonable because the subject property is contiguously to existing commercially zoned land where an existing permitted activity is established. The amendment allows for the growth and expansion of the economic base of the Town and provides opportunities for local jobs for the community. **Motion carried 6-1** (Commissioner Barger opposed.).

**Item 12 –Waiver for Rob Wallace Park Phase I Landscaping**

**Motion** was made by Commissioner Barger and seconded by Commissioner Holland to authorize the landscaping waiver for using existing trees for the Rob Wallace Park Phase I. **Motion carried 7-0**

**Item #13 – Adjournment**

**Motion** was made by Commissioner Holland and seconded by Commissioner Aldridge to adjourn the meeting. **Motion carried 7-0.**

The meeting was adjourned at 9 PM.

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Darrell Page, Chair Midland Planning & Zoning Commission

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Hilda Keeney, Planning & Zoning Commission Clerk to the Board