



City of Ann Arbor

Formal Minutes - Draft

City Planning Commission

100 N. Fifth Avenue
Ann Arbor, MI 48104
<http://a2gov.legistar.com/Calendar.aspx>

Tuesday, December 21, 2010

7:00 PM

G. C. Larcom, Jr. Municipal Bldg. 2nd Flr.

Commission public meetings are held the first and third Tuesday of each month. Both of these meetings provide opportunities for the public to address the Commission. Persons with disabilities are encouraged to participate. Accommodations, including sign language interpreters, may be arranged by contacting the City Clerk's Office at 734-794-6140 (V/TDD) at least 24 hours in advance. Planning Commission meeting agendas and packets are available from the Legislative Information Center on the City Clerk's page of the City's website (<http://a2gov.legistar.com/Calendar.aspx>) or on the 5th floor of City Hall on the Friday before the meeting. Agendas and packets are also sent to subscribers of the City's email notification service, GovDelivery. You can subscribe to this free service by accessing the City's website and clicking on the red envelope at the top of the home page.

These meetings are typically broadcast on Ann Arbor Community Television Network Channel 16 live at 7:00 p.m. on the first and third Tuesdays of the month and replayed the following Wednesdays at 10:00 AM and Sundays at 2:00 PM. Recent meetings can also be streamed online from the CTN Video On Demand page of the City's website (www.a2gov.org).

1 CALL TO ORDER

Chairperson Mahler called the meeting to order at 7:00 PM.

2 ROLL CALL

Wendy Rampson took the roll call.

Present 6 - Pratt, Mahler, Carlberg, Derezhinski, Westphal, and Giannola

Absent 3 - Bona, Woods, and Briggs

3 INTRODUCTIONS

None

4 MINUTES OF PREVIOUS MEETINGS

None

5 APPROVAL OF AGENDA

Motion made by Commissioner Carlberg, seconded by Commissioner Giannola to approve the agenda as presented.

6 REPORTS FROM CITY ADMINISTRATION, CITY COUNCIL, PLANNING MANAGER, PLANNING COMMISSION OFFICERS AND COMMITTEES, WRITTEN COMMUNICATIONS AND PETITIONS**a City Administration**

None

b City Council

Derezinski reported that the City Council had unanimously approved the Resolution of Intent, which is the initial step in authorizing the review of a proposal of a Corridor Improvement Authority for Washtenaw Avenue. He mentioned there had been a lengthy discussion on the topic and some amendments had been added to the language. He noted that some of the comments brought forth involved the financial ramifications, yet they all realized that improvements were much needed for Washtenaw Avenue. Derezinski explained that the City had the opportunity for collaboration on this proposal with the neighboring communities, which he felt would make the proposal very successful. He mentioned that Ypsilanti Township was considering the same proposal at their scheduled meeting this evening.

c Planning Manager

Rampson distributed a report from Councilperson Christopher Taylor, who has been working with the City Council as well as the DDA on the Mutually Beneficial Committee. She explained they have outlined a process for the redevelopment of downtown City owned parcels that looks at underutilized parcels as well as making parcels available for private development. She explained that under the proposed process, the DDA would take the lead in creating site-specific plans for individual parcels in what has come to be known as the Parcel by Parcel plan. She noted this is consistent with the Downtown Plan, which recommends creation of "Area Urban Design Plans."

Rampson noted that the process also includes some roles for the Planning Commissioners to participate in the development of the plans as well as the review of any proposals on individual parcels. She requested the Commission review the proposal and forward their comments and suggestions to Councilmember Derezinski or herself so they could pass them along to Councilperson Taylor.

Mahler enquired in they were currently looking for a liaison from the Planning Commission.

Rampson responded, not at this time, but if and after the proposal passed City Council approval.

d Planning Commission Officers and Committees

Commissioner Westphal reported that the Downtown Design Guidelines Task Force is nearing completion on their guidelines document, which they feel is very readable and is down to its core priorities. He believed it would be presented at a City Council working session during the second week of January and will also be presented to the City Planning Commission as soon as minor process details in the guidelines are finalized.

Mahler mentioned that he had sent out an email letting the Commission know that the Systems Planning Unit is looking for focus group participants and volunteers for their Urban Forest Management Plan.

e Written Communications and Petitions

- e-1 10-1303** Communication from University Bank Employees to City Planning Commission
Received and Filed

7 AUDIENCE PARTICIPATION (Persons may speak for three minutes about an item that is NOT listed as a public hearing on this agenda. Please state your name and address for the record.)

No speakers.

8 PUBLIC HEARINGS SCHEDULED FOR NEXT BUSINESS MEETING

- 8-1 10-1317** 1-4-11 Public Hearing Notice: FY2012-2017 Capital Improvements Plan (CIP).
Mahler read the Public Hearing Notice as published.

- 9 **REGULAR BUSINESS - Staff Report, Public Hearing and Commission Discussion of Each Item (If an agenda item is tabled, it will most likely be rescheduled to a future date. If you would like to be notified when a tabled agenda item will appear on a future agenda, please provide your email address on the form provided on the front table at the meeting. You may also call Planning and Development Services at 734-794-6265 during office hours to obtain additional information about the review schedule or visit the Planning page on the City's website (www.a2gov.org).)**

(Public Hearings: Individuals may speak for three minutes. The first person who is the official representative of an organized group or who is representing the petitioner may speak for five minutes; additional representatives may speak for three minutes. Please state your name and address for the record.)

(Comments about a proposed project are most constructive when they relate to: (1) City Code requirements and land use regulations, (2) consistency with the City Master Plan, or (3) additional information about the area around the petitioner's property and the extent to which a proposed project may positively or negatively affect the area.)

- 09-1234** Public Hearing and Action on Arbor Dog Daycare Special Exception Use, 6.46 acres, 2856 South Main Street. A request to amend the approved special exception use to increase the total floor area from 3,200 square feet to a maximum of 8,800 square feet, to add five parking spaces for a total of 13 spaces, to extend the hours of operation, and to allow a maximum of 125 dogs on site and a maximum of 20 dogs outside at any one time. [Postponed at 12/5/09 Meeting] - Staff Recommendation: Approval

Mahler read the Public Hearing Notice as published.

Chris Cheng briefly reviewed the staff report along with the changes made to the staff's recommendation. He explained that the Special Exception Use proposal before them was tabled at the October 19, 2010 Planning Commission meeting.

Public Hearing Opened at 7:24 PM.

Jon Svoboda, 2856 South Main, Ann Arbor, spoke on behalf of the petition as the co-owner of the business, noting that he was in agreement with the presented proposals and conditions and stated that he was available to answer any questions the Commission might have.

Noting no further public speakers, Mahler closed the Public Hearing at 7:21 PM.

Moved by Derezinski, seconded by Pratt that:

The Ann Arbor City Planning Commission, after hearing all

interested persons and reviewing all relevant information, finds the petition to substantially meet the standards in Chapter 55 (Zoning Ordinance), Section 5:104 (Special Exceptions), subject to the following conditions:

- 1) limiting the size of the operation to a maximum of 10,000 square feet;
- 2) limiting the hours of operation from 6:00 a.m. to 8:00 p.m. Monday through Friday and 8:00 a.m. to 8:00 p.m. on weekends and allowing indoor boarding during the hours the day care is closed;
- 3) limiting the number of dogs in the building to 125;
- 4) limiting the number of dogs in the outdoor dog run to 15 at one time and limiting the outdoor dog run hours to 10:00 am to 5:00 pm;
- 5) supervision of all dogs taken outside of the facility by an employee or employees of the facility or by their owners;
- 6) compliance with Chapter 119 (Noise Control);
- 7) compliance with Chapter 107 (Animals), such that the owner of the dog daycare facility shall be considered the owner of the animal for purposes of enforcement of noise nuisance violations;
- 8) occupant complies with Fire Department requirements for additional fire extinguishers, No Parking Fire Lane signs on site and a future Fire Department review if the business changes use;

and, therefore, approves the Arbor Dog Day Care Special Exception Use.

COMMISSION DISCUSSION:

Carlberg stated that she had been painfully made aware of the limitations of granting a special exception use. She expressed that she had previously assumed that if conditions set forth in a special exception use weren't followed that the use would be forfeited; however, she now understands, that legally, when a special exception use is granted and if the conditions aren't met, the use may still operate. She appreciated the added condition of having dogs supervised while outdoors, but she stated that she would like to see some assurance in the conditions that barking dogs would not remain outside.

Carlberg stated that would like to add to the conditions (under Section 5) that barking dogs will be removed from the outdoors enclosure when they bark continuously for over three minutes.

Mahler asked if Section 7 didn't address that specific issue.

Carlberg responded, no, and that she felt Section 7 would generate a ticket if someone reported the barking dog. She stated that she needed

some affirmative action on the part of the owners if they intend to see that the barking does not go on for a continuous period of time outside. She reiterated that she didn't feel it should be a burden on the neighborhood to call to complain when there was excessive barking, rather the burden of the owners of the business to make sure the barking doesn't create a nuisance.

Mahler questioned if she had a definition in mind or a timeframe of what continuous barking would consist of. He asked if continuous would include a dog who had been barking but ceased when they brought it inside and then started again when it went outdoors.

Carlberg responded that she could only specify a limited time of three minutes, and she would assume that they would use their good judgment in removing the barking dog from the outdoor enclosure if it continued barking when brought outdoors.

Derezinski suggested that they review the language of the existing Noise Control ordinance definitions and possibly add to it that the owners of the premises shall be responsible for taking indoors any dogs who bark continuously for three minutes.

Mahler asked if that would be acceptable to Carlberg.

Carlberg said it would meet her concerns that they will take some action to remove the barking dogs from the outdoors enclosure.

Westphal questioned if the added condition would help the enforcement of the issue. He noted that the definition of nuisance, according to the Noise Ordinance, included "Barking, ...frequent or for a continued duration, which annoys, endangers, injures or disturbs a person or normal sensitivities on premises other than that occupied by the owner of the animal. After 10 pm and before 7 am, animal noises audible beyond the property line of the property where the animal is located and presumed to be an annoyance and disturbance and are presumed to constitute a noise nuisance."

Westphal said that if the barking could be heard beyond the property line it would constitute a nuisance and he wondered if they could apply the existing language to anytime of the day or night, making it easier for enforcement. Westphal said that someone could call in a complaint and it could take the police officer or zoning compliance officer 10 minutes to get to the site and then the nuisance could have stopped.

Carlberg asked if the language would then be added to that section that would state the barking dogs would be removed from the outdoor

enclosure.

Westphal responded that the enforcement would include tickets and through that process the barking dogs issue would be enforced.

Carlberg stated that she saw both of the specifics as being helpful, but she would still want the owners of the business to be responsible for bringing the barking dogs inside and then there wouldn't be a need for any tickets.

Giannola agreed with Carlberg, noting that if the problem is the barking dog, then the solution is to bring the barking dog inside, while a ticket is more of a punishment. She stated that if it required an action of behalf of the owners, then she would like to see that rather than wait for them to be punished through a ticket.

Giannola stated that she is concerned there is no recourse if the special exception use is granted, but the conditions aren't followed. She asked what the Planning Commission could do if the barking continued and complaints were received from the neighbors, if they couldn't revoke the granted permission.

Rampson responded that there are two ways in which enforcement could occur. Tickets could be issued and if that didn't curtail the problem, then as a last resort, the City could file suit in court and identify the nuisance issue. She mentioned that the City has done this in the past when property owners have needed to clean up their houses.

Mahler believed the City could receive an injunction in cases such as discussed.

Rampson explained that the use is allowed, but if how they were using the property is not consistent with the allowable use, staff would be treat it as any other zoning violation.

Cheng commented that if Planning staff starts receiving a large volume of complaints (he will most likely be the staff person who will do the enforcement), he will probably end up doing random site visits proactively before calls are received, to make sure the conditions set forth are followed.

Rampson asked for verification on the proposed language that the Commission requested to be added to the conditions; Remove dogs from outside if continuously barking for more than 3 minutes.

Carlberg noted that she wasn't concerned with who would be the one to

remove the dog, as long as the barking dog was removed to the inside.

Mahler stated that the business owners would be considered the owners, which would also encompass the employee.

Westphal suggested the following language be used; "Mitigation of barking noises, such that barking is not audible from the property line for more than three minutes at a time." He felt that would cover the removal of barking dogs from the outside or closing facility windows so barking couldn't be heard beyond the property line, or even informing a client that their barking dog couldn't be brought to the facility anymore.

Mahler asked if that language would be overly broad and could include barking dogs inside the facility before 10 am, which could mean they could be cited for that. He thought it would be very difficult and possibly be unreasonable to have 125 dogs inside the facility and not have any barking for three minutes from any of those dogs. He questioned if it would be creating a standard that Arbor Dog Daycare couldn't meet.

Derezinski read the following proposed language to be added to the end of Section 7 of the Planning Commission motion: if noise as defined by this chapter persists for more than three minutes, the owner shall take the animals back into the facility.

Carlberg commented that it did contain the required wording and her only concern was that it wasn't a separate section but added to the end of another section.

Derezinski mentioned that with the addition of a fine system that could cost them \$500 for each violation, and additional injunctive relief, he felt there would be plenty of enforcement mechanisms in place.

Carlberg commented on Westphal's remarks, noting that when she had been to the facility on a warm day, and with the large garage door open, the barking from inside the facility couldn't be heard from the property lines.

Giannola questioned if the language in the added conditions should read should, must or shall.

Derezinski responded that it needs to be shall.

Pratt asked if there was any decibel level set within the Animal Ordinance, under the noise nuisance definitions or if it was simply 'audible'.

Commissioners agreed that it was 'audible noises' without a set level.

**A motion was made by Carlberg, seconded by Derezhinski, that the Motion be amended to add the following to Condition 6):
"; if noise as defined by this ordinance persists for more than three minutes, the owner shall take the dog(s) inside."
On a roll call, the vote was as follows with the Chair declaring the motion carried**

**Amendment passed 6-0.
Main Motion passed 6-0.**

6 voted required to approve a Special Exception Use.

Yeas: 6 - Evan Pratt, Eric A. Mahler, Jean Carlberg, Tony Derezhinski, Kirk Westphal, and Diane Giannola

Nays: 0

Absent: 3 - Bonnie Bona, Wendy Woods, and Erica Briggs

10-1300

Brush and Frey Annexation and Zoning - A request to annex the 1.1-acre parcel at 2437 Newport Road into the City and zone it for single-family residential use - Staff Recommendation: Approval
Chris Cheng gave the staff report.

PUBLIC HEARING:

Noting no public speakers, Mahler declared the Public Hearing closed at 7:41 PM.

COMMISSION DISCUSSION:

[Enter Pratt at 7:42 PM]

Westphal inquired as to the configuration of the lot and it's abutting neighbors on the west side.

Rampson explained that the property in question had been developed in the Ann Arbor Township and therefore she was unable to answer questions as to why they were developed and split the way they were. She offered to do research with the Ann Arbor Township if the Commission would request her to.

A motion was made by Carlberg, seconded by Secretary Giannola, that the Resolution/Public Hearing be Recommended for Approval to the City Council, due back on 2/7/2011. On a roll call, the vote was as follows with the Chair declaring the motion carried.

Yeas: 6 - Evan Pratt, Eric A. Mahler, Jean Carlberg, Tony Derezinski, Kirk Westphal, and Diane Giannola

Nays: 0

Absent: 3 - Bonnie Bona, Wendy Woods, and Erica Briggs

- 10-1301** Resolution to Approve Allen Creek Preschool Site Plan, 1515 Franklin (CPC Recommendation: Approval - 6 Yeas and 0 Nays)
Chris Cheng presented the staff report and explained the proposed project, noting that a Special Exception Use for the preschool had been granted by the City Planning Commission in October 2008.

PUBLIC HEARING:

Andrew Boschma, 10436 Peidmont Dr. Brighton, representing the petitioner, was present to answer the Commission's enquiries. He explained that they had hopes of rehabing the existing house, but an evaluation showed that the existing house was in very poor condition and it would be too expensive, so they came up with a floor plan which would better meet the needs of the preschool.

Noting no further speakers, Mahler declared the Public Hearing closed at 7:49 PM.

Moved by Pratt, seconded by Derezinski, that the Ann Arbor City Planning Commission, after hearing all interested persons and reviewing all relevant information, finds the petition to substantially meet the standards in Chapter 55 (Zoning Ordinance), Section 5:104 (Special Exceptions), subject to (1) a limit of the size of the operation to a maximum of 1,200 square feet; (2) a limit of the hours of operation from 7:00 a.m. to 5:00 p.m. Monday through Friday; and (3) a limit of the occupancy of the building to no more than eight families (parents plus a child) and two staff members; and, therefore, approves the Allen Creek Preschool Special Exception Use, subject to recording of a parking easement on 2350 Miller Avenue and,

The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the Allen Creek Preschool Site Plan, subject to satisfaction of Fire Code requirements prior to issuance of building permits.

COMMISSION DISCUSSION:

Commissioner Westphal asked if the proposed project had required a

mailing to the neighbors.

Cheng responded yes.

Westphal enquired if the project had been required to undergo the Citizen Participation Ordinance requirements, or if they had contacted neighbors voluntarily.

Cheng responded that the petitioner had indeed mailed out the required notices to the neighbors within 500 feet of the parcel.

Rampson explained that the petitioner was required to mail out a postcard notice but was not required to hold a special meeting with the neighbors, as is the requirement for 'major' projects.

Westphal asked if there was a floodplain close by the site.

Cheng responded that there could be, but that the site was not located in a floodplain.

Carlberg commented that it seemed the new building would be a greater benefit to the neighborhood, since they would be moving the proposed building further away from the neighbor's property and closing off the driveway. She said that she particularly liked that they planned on using existing parking in the church vicinity, which would lessen the impact of having a business in the neighborhood and be in keeping the preschool looking like a home. She praised the program of the Allen Creek Preschool and said the project was an asset to the community which was well worth supporting.

Derezinski agreed with Carlberg and noted how important it is to recognize credible preschool programs and schools such as this one, which are unique and well suited to the neighborhood.

9-3 10-1301 Resolution to Approve Allen Creek Preschool Site Plan, 1515 Franklin (CPC Recommendation: Approval - 6 Yeas and 0 Nays)

COMMISSION DISCUSSION:

Commissioner Westphal asked if the proposed project had required a mailing to the neighbors.

Cheng responded yes.

Westphal enquired if the project had been required to undergo the Citizen Participation Ordinance requirements, or if they had contacted neighbors voluntarily.

Cheng responded that the petitioner had indeed mailed out the required notices to the neighbors within 500 feet of the parcel.

Rampson explained that the petitioner was required to mail out a postcard notice but was not required to hold a special meeting with the neighbors, as is the requirement for 'major' projects.

Westphal asked if there was a floodplain close by the site.

Cheng responded that there could be, but that the site was not located in a floodplain.

Carlberg commented that it seemed the new building would be a greater benefit to the neighborhood, since they would be moving the proposed building further away from the neighbor's property and closing off the driveway. She said that she particularly liked that they planned on using existing parking in the church vicinity, which would lessen the impact of having a business in the neighborhood and be in keeping the preschool looking like a home. She praised the program of the Allen Creek Preschool and said the project was an asset to the community which was well worth supporting.

Derezinski agreed with Carlberg and noted how important it is to recognize credible preschool programs and schools such as this one, which are unique and well suited to the neighborhood.

On a roll call, the vote was as follows with the Chair declaring the motion carried.

Yeas: 6 - Evan Pratt, Eric A. Mahler, Jean Carlberg, Tony Derezinski, Kirk Westphal, and Diane Giannola

Nays: 0

Absent: 3 - Bonnie Bona, Wendy Woods, and Erica Briggs

10 AUDIENCE PARTICIPATION (Persons may speak for three minutes on any item.)

None

11 COMMISSION PROPOSED BUSINESS

None

12 ADJOURNMENT

By a unanimous voice vote the meeting was adjourned at 7:55 PM.

Eric Mahler, Chair
mg