

A motion was made by Schroeder, seconded by Yukon, that this matter be Approved as Presented. The motion CARRIED by the following vote:

Aye 8 - Boswell, Dettloff, Hetrick, Hooper, Kaltsounis, Reece, Schroeder and Yukon

Absent 1 - Brnabic

COMMUNICATIONS

- A) Planning & Zoning News (2) dated October and November 2010
- B) Memo from M. Gentry dated December 7, 2010 re: 2011 Meeting Schedule
- C) Email from Scot Beaton, dated December 5, 2010 re: Sound Wall Designs
- D) Email from Melinda Hill, dated December 5, 2010 re: Sound Wall Designs

NEW BUSINESS

2010-0501 Conditional Land Use Recommendation (Public Hearing) - City File No. 10-007 - Miss Rita's Daycare, a proposed in-home daycare for up to 12 children at 3508 Summit Ridge, south of Dutton and west of Adams, Parcel No. 15-06-200-009, zoned R-2, One Family Residential, Rita Smith, applicant.

(Reference: Staff Report, prepared by Derek Delacourt, dated December 7, 2010 and documents from applicant, had been placed on file and by reference became part of the record thereof.)

Present for the applicant was Rita Smith, 3508 Summit Ridge, Rochester Hills, MI 48306.

Mr. Delacourt stated that the applicant was present requesting a Conditional Land Use (CLU) Recommendation for a residential daycare for up to 12 children at 3508 Summit Ridge, south of Dutton and west of Adams. He advised that the Zoning Ordinance previously only permitted daycares for up to six children, which was not in compliance with the State, which did allow up to 12 children. The Ordinance was changed to allow up to 12 with a Conditional Land Use Approval by City Council, if certain standards were met. The applicant had submitted the appropriate documentation, including a letter that explained how she felt she met all the requirements for a CLU. There was one letter from a neighbor with a concern about cars during pick up and drop off hours, but nothing else had been received from the neighbors.

Ms. Smith advised that the operation was not new for her; she has had a licensed daycare for 19 years and taken care of more than 200 children, all of which were children of Rochester Schools teachers. She started with two children, and it gradually grew. She stated that it would not be a year-round daycare, and that it would close in the summer and during all breaks and holidays. She stressed that she has never had a complaint from a neighbor or the State. The only thing she had been written up for was that she missed a couple of fire drills. She felt that anyone that had an objection to the parking and drop offs might have a misconception. She emphasized that she did not have 12 children - at the moment she had seven. Because the customers were teachers, there would not be seven cars at one time. There might be one at 7:00 a.m., one at 7:30 a.m. and one at 8:45 a.m., depending on when the teacher started. A couple of children were part time, and the only way she allowed that was if two children split the week - one came Tuesday and Thursday and the other came Monday-Wednesday-Friday, so there would be the same number of children each day. She advised that there would be no changes to the inside or outside of the home. There would not be a fence; there was a screened tree line and they used orange cones. The children knew they were not allowed past the cones. She added that fencing was not required by the State.

Mr. Yukon asked Ms. Smith if she would be the only one watching the children. Ms. Smith answered that if a second person was required (for more than six children), her daughter was available to help. She said that would not be very often. Mr. Yukon asked if the children would always be with her, or if, for example, on a nice day if half would be inside and half outside. He asked if they had the option of being in either place.

Ms. Smith said that the State required all children to go out every day. She had infants, and she might use a double stroller with two infants outside. She would never be inside if the children were outside. If some were out and some were in, she would have a second person (her daughter). The children would be in the backyard only, and people across the street would not even know she had a daycare. Mr. Yukon clarified that the basement met the ingress/egress requirements.

Mr. Schroeder indicated that he was concerned about the landscaping and trees being used as fencing to try to control six or seven little kids. He did not feel that was acceptable because kids could wander into other people's yards. He would rather see a more positive enclosure. Ms. Smith noted that she was now in the City of Rochester, and had been for the last 18 years, and her license was good there through the end of May.

She did not have a fence there, and never had a problem with anyone going off alone. Mr. Schroeder said he was not convinced it was a good thing. He asked if a daycare was allowed within the neighborhood association guidelines. Ms. Smith said she had just gotten a letter from Ben Jones, the President, saying it was allowed in her new sub. Mr. Schroeder asked if the basement was finished with a bathroom, which was confirmed, and Ms. Smith added that there was also a kitchen.

Mr. Dettloff referred to having only one citation regarding fire drills in 19 years, and he said he assumed that because it was State licensed that the State would conduct periodic inspections. He asked how many were generally done. Ms. Smith said that the license was good for two years for 12 children and three years for six. If there were no problems, she would usually not see the State because of the work load. When she started, they came once or twice a year. She was also with an association for child development, which was a food program with the State, and four times a year they conducted inspections. They talked with the children and inspected the food and the menus. She added that she loved what she did.

Mr. Kaltsounis said that Ms. Smith mentioned that the children rode bikes, and Ms. Smith said it was only on a patio in the backyard and someone would always be with them. They did not go on walks, and they were in the backyard or basement only.

Mr. Hetrick said he thought it was fantastic that Ms. Smith was passionate about her work. He asked if her property in Rochester abutted a large street like Dutton or if she was imbedded in the subdivision. Ms. Smith said that they backed to a commons area, which also had an overflow retention pond, so there was a small amount of water behind her property. The State did not object to that even without a fence.

Mr. Hooper asked how long Ms. Smith had been at the current location. Ms. Smith said that they moved about a month ago, but they had not sold the house in Rochester, so she was still running the daycare from the Rochester location. Mr. Hooper clarified that no one had seen a daycare operate at the new location, which Ms. Smith confirmed. Mr. Hooper agreed that her passion for her work showed.

Mr. Reece asked how old her daughter was, and Ms. Smith said 26. Mr. Reece referred to the letter from the neighbor, and he asked if she had any conversation with that person. Ms. Smith had not, but the neighbor next door asked if she could keep her children sometime. Mr. Reece

thought it might be a good idea to have a conversation with the person who sent the letter, to let her know how the daycare would be run, the hours of operation and the parking and to alleviate any misconceptions or concerns. He thought that not having the daycare open during the summer and vacation times was a positive point.

Mr. Schroeder asked the ages of the children, and Ms. Smith said that the youngest was three months and the oldest was three years. Mr. Schroeder asked the oldest child she had ever watched, and Ms. Smith said five, after which they started kindergarden.

Chairperson Boswell opened the Public Hearing at 7:21 p.m. Seeing no one come forward, he closed the Public Hearing. Hearing no further discussion, Mr. Kaltsounis moved the following:

MOTION *by Kaltsounis, seconded by Dettloff, in the matter of City File No. 10-007 (Miss Rita's Day Care), the Planning Commission recommends to City Council approval of the Conditional Land Use, based on plans and information dated received by the Planning Department on November 4, 2010, with the following five (5) findings.*

Findings:

- 1. The use is consistent with the intent and purpose of the Zoning Ordinance in general, and of Section 138-4.300 in particular.*
- 2. The proposed development has been designed to be compatible, harmonious, and appropriate with the existing character of the general vicinity and adjacent uses of land.*
- 3. The proposed development is served adequately by essential public facilities and services, such as highways, streets, police and fire protection, drainage ways, and refuse disposal.*
- 4. The development should be not detrimental, hazardous, or unreasonably disturbing to existing land uses, persons, property, or the public welfare.*
- 5. The development does not create additional requirements at public cost for public facilities and services that will be detrimental to the economic welfare of the community*

Mr. Schroeder mentioned an omission in the Environmental Impact

Statement about the Master Plan and not disrupting land surrounding the development - the EIS only mentioned an indoor daycare. Mr. Delacourt said that something would be added about the rear yard use.

Mr. Reece asked if the matter would have to come back before the Commission if the hours of operation changed from what was represented. Mr. Delacourt said it would not, but if the Planning Commission wanted the hours as shown, he would recommend adding a condition. The Staff Report referred to how the current owner intended to operate only. Mr. Reece asked Ms. Smith her thoughts about that, and if she would agree to a condition based on what was represented. Ms. Smith said she would. Mr. Kaltsounis and Mr. Dettloff (motion makers) agreed to add a condition about the days of operation.

Mr. Hetrick said that he knew Ms. Smith was passionate about her work, and he did not feel that any of the children would be in harm's way, but it concerned him that if they set a precedent, that not everyone that came before them with the same request might have the same passion. He did not know how to rectify allowing the day care to happen and then finding that the next person was not as prepared or qualified. He did not think there could be a condition - certain criteria by which someone could demonstrate a capability. He was bothered that, as someone who would allow business to go forward, even though he felt Ms. Smith would do well, the next person might not be quite so qualified.

Chairperson Boswell reminded that any applicant that came before the Planning Commission would be a totally different case. Decisions would be made based on the circumstances at that time. Mr. Hetrick said that what the Commission was suggesting was whether a person was in compliance with ordinances, not whether they were good at business. He felt those were different issues. Chairperson Boswell agreed, but said that as a Planning Commissioner, he would have wide discretionary latitude regarding health and welfare criteria to base decisions.

Condition:

- 1. That according to the applicant's representation, the hours of operation shall be based on the Rochester Schools calendar year - the day care will not be open during the summers, holidays, breaks or weekends, according to the schools' schedules.*

A motion was made by Kaltsounis, seconded by Dettloff, that this matter be Recommended for Approval to the City Council Regular Meeting. The motion CARRIED by the following vote:

Aye 7 - Boswell, Dettloff, Hooper, Kaltsounis, Reece, Schroeder and Yukon

Nay 1 - Hetrick

Absent 1 - Brnabic

Chairperson Boswell stated for the record that the motion had carried, and he wished Ms. Smith good luck.

2010-0534 Rear Yard Setback Modification Request - City File No. 00-041 - AutoZone Store #4319, a reduction of 22 feet to allow a 28-foot rear yard setback for a proposed 6,846 square-foot automotive supply and parts store on .94 acre, located on the south side of Auburn, west of John R, zoned B-2, General Business, Parcel No. 15-35-226-049, AutoZone, Inc., applicant.

(Reference: Staff Report, prepared by Derek Delacourt, dated December 7, 2010, and backup documents and Site Plans had been placed on file and by reference became part of the record thereof.)

Present for the applicant were Wade Davis, AutoZone, Inc., 123 S. Front St., Floor 3, Memphis, TN 38103 and Michael Motte Atwell, Two Towne Square, Suite 300, Southfield, MI 48076.

Mr. Delacourt advised that the applicant was requesting Site Plan Approval for a proposed 6,800 square-foot AutoZone facility on a vacant parcel zoned B-2 on the south side of Auburn, west of John R. The property was appropriately zoned and master planned for the proposed use. The Site Plan had been reviewed by all applicable City departments and all recommended approval. The applicant had met all screening and buffering and interior landscape island and parking requirements. He noted that a normal rear yard setback for commercial in a B-2 district was 50 feet, but the applicant was requesting a modification of 22 feet to allow a 28-foot rear yard setback. The Zoning Ordinance allowed the Planning Commission to grant a reduction if the parcel was not adjacent to residential and if the site warranted it for a better development. Staff reviewed it and agreed that the lesser setback would allow better parking, landscaping and building layout. There were also existing easements to consider. He stated that Staff recommended approval of the reduced setback and Site Plans.

Chairperson Boswell asked the applicants if they had anything to add, and Mr. Delacourt asked Mr. Motte to go over the Site Plan.