

Memo

To: Planning Commission/DDA Members
From: Julie Durkin, Zoning Administrator
Date: September 4, 2024
Re: Zoning Administrator's Report

Permits & Code Enforcement:

- 3 Land Use Waivers were issued (2 driveway seal/1 window replacement)
- 1 Commercial Re-occupation (Earth's Energy)

Planning Commission:

NEW BUSINESS: None

OLD BUSINESS:

1. For Kids' Sake Discussion

In the packet is a lot of information regarding the processes that have taken place with regard to the year around, full-time child care facility at 125 E. Unadilla. Ms. Amy, applicant, has appeared before the Commission several times in the past, and I have attempted to provide a timeline and description of the activities. The applicant last appeared before the Commission at their July 1st meeting to request an extension of the conditions of the Special Land Use approved November 2023.

The following is a reminder to those that have been on the Commission and to provide information for the newer members:

- The property at 125 E. Unadilla is zoned R-3, single family residential
- Child Care facilities are allowed within that district as a Special Land Use
- The criteria for approval of this type of Special Land Use is as follows:

152.243 SPECIFIC APPROVAL CRITERIA.

(F) Child care facilities.

(1) Family day care homes. Family day care homes serving six or fewer children shall be considered a residential use of property and a permitted use in all residential districts.

(2) Group child care homes. Group child care homes serving seven to 12 children shall comply with the following:

- (a) Appropriate licenses with the State of Michigan shall be maintained;
- (b) There shall be no more than one dwelling unit on the subject lot. Child care activities shall not be permitted within any structure other than the dwelling unit;
- (c) No structure on the subject lot shall be constructed or altered for nonresidential use;
- (d) There shall be a minimum of 35 square feet of indoor play area for every licensed child care slot. The play area shall not exceed 25% of the floor area of the dwelling unit. Indoor play areas shall not include bathrooms, kitchens, closets or storage areas, utility rooms, enclosed porches or similar spaces;
- (e) There shall be a useable outdoor playground on the premises:
 1. The playground shall not be located within the front yard, unless the Planning Commission specifically finds that it is the most appropriate location;

2. The minimum size of the playground shall be no less than 100 square feet for every licensed child care slot. The Planning Commission may reduce or waive this requirement if a public park is located within 500 feet of the subject lot;
 3. All playgrounds shall be enclosed by a wall or fence at least four feet but no more than six feet in height and designed for child safety; and
 4. The Planning Commission may require the playground to be obscured from abutting residential districts and uses by plant material.
- (f) The hours of operation shall not exceed 16 hours within a 24-hour period. Activity between the hours of 10:00 p.m. and 6:00 a.m. shall be limited so that the drop-off and pick-up of children is not disruptive to neighboring residents.
- (3) Child care centers. Child care centers shall comply with divisions (F)(2)(a) through (f) above.

With any Special Land Use request, it must be accompanied with a site plan

152.241 PERMIT APPLICATION AND PROCESS.

Applications for a special land use permit shall be submitted and processed as follows:

(A) Application submittal. No application shall be considered by the village unless it is accompanied by the following:

- (1) A village application form completed in full by the applicant and signed by all persons, firms or corporations having an ownership interest in the property. For the purposes of this section, OWNERSHIP INTEREST shall mean the titled owner(s) and land contract holder(s);
- (2) A preliminary site plan containing all of the information required by § 152.389;
- (3) A written statement by the applicant and any supporting evidence explaining how the special land use will comply with the following:
 - (a) The general criteria in § 152.242; and
 - (b) The specific criteria in § 152.243 as applicable.
- (4) A processing fee as established by the Village Council; and
- (5) An application for a residential open space development shall also include a parallel site plan prepared in compliance with § 152.353(A).

The above are requirements and must be complied with or variance request made to the ZBA for any deviation of those requirements. The applicant in this case was given the opportunity to seek a variance in the proper sequence on multiple occasions. She chose to move forward with the conditions as explained.

Unless otherwise approved, completion of the site plan with any contingencies must be done prior to the use of the Special Use Permit. In this case, the applicant was given approval to begin the use prior to the completion of the site plan under the condition that the site plan would be complete by July 1, 2024 along with other concessions to avoid the need to come back before the Commission. When asked in May about the status of meeting the completion of the site plan, she then inquired about obtaining a variance (though not enough time to meet the deadline). Yet, no request for variance was made. It was suggested that she request an extension of the July 1st deadline which was granted until September 1st. Yet, no request for variance was made. When appearing before the Commission in July, she was informed that she needed to either complete the site plan or request a variance. Yet, no application for land use permit to build the playground, etc. has been submitted nor application for variance submitted. As you can see from the timeline, every attempt has been made to explain, discuss, suggest meeting, etc. to assist the applicant in conforming to the ordinance, yet no effort has been made to do so. On the

surface, it may seem like a difficult process, but if the guidelines are followed and the applicant is willing to work with staff, requirements can be met fairly easily. Complete information, flowcharts, links, etc. are all available on the village website and the applicant did go through similar processes in 2005. I have made it clear that I am available by phone, email or in person to assist in the process, which the applicant has availed herself in the past. Unfortunately, the applicant has made it clear that she does not wish to communicate with the Zoning Administrator any further. That does not change the obligation of enforcement.

The applicant has been informed that if she wishes to not comply with the playground requirements, she would need to do the following:

- Make Application for variance to the ZBA (requires notification to surrounding property owners & publication of the hearing in the Livingston Daily). The applicant will need to prove a practical difficulty (non-financial) why the playground cannot be completed per ordinance.

If approved:

- Make application for a revision to the Special Land Use Permit (requires notification to surrounding property owners & publication of the hearing in the Livingston Daily)
- Make application for a revision to the Site Plan (both these applications can be done simultaneously)

Both of these requirements do take some time to meet the statutory requirements. Delaying the process by doing nothing only extends things now into inclement weather again.

If not approved:

- Complete the site as submitted

The applicant has referenced several times that the playground proposed was a \$50,000 proposal. She has been informed that we would not require that amount of detail and work to be done. The requirement is for 100 square feet per child. The PC approved a condition that the approval of the details involving the equipment/fencing/landscaping were left to the discretion of the Village Planner and ZA. There would be no reason to hold the applicant to such a large commitment.

At this point, the Special Land use Permit is non-compliant as of September 1st. I have received no further request for extension, etc. despite her communications with President Lavey. Section 152.241 of the Zoning Ordinance continues as follows:

(C) Permit expiration. A special land use permit issued pursuant to this subchapter shall be valid for one year from the date of issuance. If construction has not commenced and proceeded meaningfully toward completion by the end of this one-year period, the Zoning Administrator shall notify the applicant in writing, no more than 30 days before the expiration date, that upon expiration, the permit will become null and void.

(D) Permit amendment. Changes to an approved site plan shall comply with § 152.394. Changes to other condition(s) of approval, including but not limited to performance standards, shall be processed in compliance with division (B) above.

(E) Permit renewal. Upon written request by the applicant, a one-year extension may be granted by the Planning Commission if it finds that the approved special land use permit and site plan still comply

with the requirements of this chapter. A written request for permit renewal must be received by the village prior to the expiration date, or a new application for a special land use permit will be required. Upon expiration of the initial one-year extension on a special use permit. Planning Commission may grant, upon written request by the applicant, subsequent one-year extensions of the special land use permit, upon showing of good cause.

(F) Revocation. Based upon a recommendation by the Zoning Administrator, the Planning Commission shall have the authority to revoke any special land use permit after it has been proved that the holder of the permit has failed to comply with any of the applicable requirements of this chapter and/or permit approval. The Zoning Administrator shall give written notice of the violation to the holder of the permit, and correction must be made within 30 days. After a 30-day period, the Zoning Administrator shall give a second notice, and the use for which the permit was granted must cease within 60 days from the date of second notice.

(G) Re-application. No application for a special land use permit that has been denied wholly or in part by the Planning Commission shall be resubmitted until the expiration of one year or more from the date of denial, except on the grounds of newly discovered evidence or proof of change of conditions.

This is being placed on the agenda for discussion only as no further requests have come forward by the applicant. The Planning Commission will be asked to take action at a future meeting.

DDA

1. New Banner Ideas: In the packet are four designs for the next set of light pole banners for the district for the fall season. I think that Econoprint has done a good job providing us with some options to consider. I would like to move ahead with approval of the set of banners in an amount not to exceed \$6,500. I do not have a formal quote at this time, but we need to get them ordered and installed in time for the season.
2. Payables: We will need to defer the approval of payables (if any) for August as the Treasurer is out of the office for a few days.

OTHER BUSINESS

1. Ordinance Updates: The Village Council Ordinance Review Committee will be meeting prior to the regular meeting on September 9th. They will be discussing various zoning ordinances that they feel should be amended. These amendments will be brought before the Planning Commission for discussion and public hearing as required.