

M I N U T E S
PLANNING AND ZONING COMMISSION
March 28, 2013

The Planning and Zoning Commission met in a regular session on March 28, 2013 at 2:00 p.m., in the City Council Chambers, 800 Municipal Drive, Farmington, New Mexico.

P&Z Members Present:	Chairman: Commissioners:	Dennis Ivie Bruce Buchanan Joyce Cardon Clint Freeman Rory Jaques Paul Thompson Amy Ziesmer
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P&Z Members Absent:	Commissioners:	Kristin Langenfeld Cheryl Ragsdale Daniel Arnold (Alt) Del Washburn (Alt)
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Staff Present:	Fran Fillerup Mary Holton Cynthia Lopez Dee Dee Moore
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Others Present:	Katie Gilbert Sherisa Hays Michelle Kimsey Craig Stoabs Jessie Swearingen Daniel Westbury
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Call to Order

The meeting was called to order at 2:00 p.m. by Chairman Ivie and there being a quorum present the following proceedings were duly had and taken.

Presentation of the Agenda

Senior Planner Cindy Lopez stated there were no changes to the agenda.

Approval of the Minutes

A motion was made by Commissioner Cardon and seconded by Commissioner Thompson to approve the minutes of the February 14, 2013 P&Z Meeting. This motion was approved unanimously by a 7-0 vote.

Swearing in for Quasi-Judicial Process

All of the attendees desiring to speak on the behalf of the petitions were sworn in by Secretary Dee Dee Moore.

COMMUNITY DEVELOPMENT PETITION REPORT
SUP 13-02 - 3609 Crescent Avenue
Operation of Daycare in the SF-7 Residential District

Planning and Zoning Commission Discussion of SUP 13-02 on March 28, 2013

Senior Planner Cynthia Lopez presented the staff report, a request from Michele Kimsey for a special use permit to allow a daycare for up to 12 children at a home located at 3609 Crescent Avenue in the SF-10 Single Family district. Staff received one letter of opposition. Ms. Lopez stated that the petitioner has indicated that she would like to have between 7-12 children on Monday-Friday from 7:15am - 5:45pm with a quiet time from 1:00pm-3:00pm. The garage, which is 24'x24', is located in the southwest corner of the property and is attached to the home with a covered carport. There is existing 6-foot

high fencing on the adjoining property lines to the west, south and north. Ms. Lopez stated that since the writing of the staff report that the petitioner has removed the chickens and is no longer out of compliance with the Unified Development Code (UDC). She added that there are protective covenants associated with this subdivision that restricts residential uses to the property. The covenants were put in place in the 1950's. The City does not enforce restrictive covenants.

The property currently meets the City's requirements for parking, fencing, and an area of recreation for the children. The petitioner is currently working with the state on obtaining her license. The original staff report recommended denial, because of the chickens, but with the removal of the chickens from the property, staff has amended their recommendation for approval for SUP 13-02.

Commissioner Jaques asked if there was room for the four parking spaces. Ms. Lopez stated yes. Commissioner Freeman asked if staff's new recommendation for approval was based on compliance with removing the chickens, and Chairman Ivie asked what happens if the chickens come back. Ms. Lopez answered that the recommendation changed because the property is now in compliance with the UDC; with the removal of the chickens and that the petitioner understands that another Special Use Permit (SUP) would be required to bring the chickens back to this property. Commissioner Buchanan asked if you can have chickens and a day care on the same property. Ms. Lopez clarified that the state looks at each location as presented, whether it be cats, dogs, or chickens. This SUP is for the daycare being allowed within the current zoning.

Michele Kimsey of 3609 Crescent Avenue stated that she had read the petition report and is in agreement with the recommendation for approval. She addressed the concerns in the letter received from a neighbor. She stated that this street is located just one block from Dustin and that this neighborhood is a child-friendly place. The daycare would be located at the rear of the property and she thought that the complainant is located closer to the elementary school than her location. Ms. Kimsey stated that by code she is permitted to care for four children without this SUP, so that the request is in fact, for an additional 3-8 children. She added that she had ran a daycare in her home in Durango for 12 children, and also ran a large daycare with 36 children, and the kids were inside until around 9:00am, with quiet time from 1:00pm-3:00pm, and the majority of kids were gone by 5:30pm.

Commissioner Thompson asked if she anticipates the children being dropped off all at the same time. Ms. Kimsey stated that she has found that the drop-off times generally stagger, and added that the front of the lot is 110-feet wide and approximately 5 cars could park there also. She stated that she would ask her parents to respect the neighbors and to park only on her side of the street.

Commissioner Buchanan asked why the limitation of 7-12 and not 10-15 children. Ms. Kimsey stated that 12 children are the maximum you can have with a minimum of 2 adults on staff. She added that her husband has seasonal work and could be available during off-peak work hours, or she could hire a second employee. Commissioner Buchanan asked about her previous daycare center and if any complaints were received. Ms. Kimsey stated that during the permit process there were concerns about a daycare being in a residential area. Commissioner Buchanan asked about the age of the children and if she had been successful. Ms. Kimsey stated that she had been successful and the age of the children she cares for range from 6 months to kindergarten with an option for 2 afterschool care.

Commissioner Freeman asked about the distances of the neighbor complaint in Durango and the neighbor protesting in Farmington. She stated that in Durango, it was a next door neighbor and a fence was placed at that location. Here in Farmington, the opposition is from across the street, and the children will be behind the house, except when being picked up or dropped-off. Ms. Kimsey informed the Commission that her neighbor researched the effects of daycare on property values and the research showed that only if the daycare is for more than 20 children does it affect property values.

Jessie Swearingen of 3709 Crescent Avenue stated that she has 2 houses between them and was asked by her neighbors, Marylou and Jim Jacobs (3505 Crescent Avenue) and Donald and Sharon Davis (3701 Crescent Avenue) to speak on behalf of the petitioner. She stated that the property had been vacant and neglected for 4 years and since Ms. Kimsey has purchased this property she has cleaned it up. This is a very good neighborhood and we all feel the daycare is a good thing, not a hindrance. She added that the main problem is the traffic from Ladera School, because when they leave

the school they cut over from Dustin on 38th Street to Crescent and zoom down the street. Ms. Kimsey is in the middle of the block and we do not think that traffic will be a concern. The houses are far enough apart and if she needs a backup for parking we told her she could use our house or the Davis's.

Sherisa Hayes of 3705 Crescent Avenue stated that she is located 2 houses to the north and that she attended today to voice her support for this daycare. She felt that Ms. Kimsey is an amazing neighbor in an already friendly neighborhood. She stated that Ms. Kimsey went through the neighborhood and introduced herself. She added that her 2 kids are noisy and are there all the time because they are home-schooled. Chairman Ivie asked Ms. Hayes if she felt there was a need for childcare. Ms. Kimsey responded that not all children fit into a large daycare environment, so there is definitely a need for smaller ratio child care.

Katie Gilbert of 3604 Crescent Avenue stated that she is located directly across the street from the proposed daycare and was the neighbor that submitted a letter of opposition to this SUP. She referred to Item #2 (letter attached) identifying why she moved from 1102 N. Orchard to this residential neighborhood. She stated she experienced living next to a daycare center and also working at one. When living next to one she was expected to restrict her lifestyle to accommodate the daycare schedule. She stated she would not have bought in this neighborhood if a daycare was located across the street. Her third item was regarding providing part-time care for her disabled son who prefers a quiet and less active environment. Ms. Gilbert stated that her biggest concern would be noise, distractions, and traffic.

Chairman Ivie responded to Ms. Gilbert's concerns, especially the curtailing of her activities at the other daycare location she mentioned. He also shared that large daycare centers are not allowed within residential districts, however, with a SUP the City's code allows for the operation of a daycare center in a home. Chairman Ivie stated if the chickens had still been in place, staff's recommendation would have been for denial, the petitioner would have had to have a SUP for the chickens before they could be approved for the daycare, in order to be in compliance with the code.

Commissioner Ziesmer asked Ms. Gilbert how long she has lived in this home, if the noise from Ladera Elementary School affects her son, and how does she describe part-time. Ms. Gilbert stated that she has lived here since 2005, and that the school is separated from her home by a block. She added that her care for her son varies; it could be for a few days, a week, or even 3 weeks at a time.

Ms. Gilbert stated that she would like to learn more about the covenants and that Ms. Kimsey's kids have been parking in her front yard and she feels that traffic is just going to increase. Chairman Ivie stated that the covenants are recorded at the County Courthouse and should have been in the documentation she received when she purchased her house. Ms. Lopez added that the City does not keep copies of covenants and that the petitioner provided the copy in the agenda. Chairman Ivie stated that the enforcement of the covenants is with the neighborhood.

Ms. Gilbert added that this business will be right in front of her home and she is not separated by any houses. Chairman Ivie identified that the daycare facilities would be to the rear of the petitioner's property. So the petitioner's house, then the distance of the street and then Ms. Gilbert's home, so there is a separation between the uses.

Ms. Gilbert pointed out while in Durango, Ms. Kimsey stated that she was in compliance with the codes, but in the short amount of time Ms. Kimsey has been in Farmington, she is already out-of-compliance because of the chickens.

Commissioner Jaques asked staff for clarification on daycare in private homes. Ms. Lopez stated that an individual is allowed to care for 4 children, including their own children as a home occupation. Ms. Lopez indicated that the State and City Code information was included in the agenda packet. Commissioner Buchanan asked if he heard Ms. Gilbert correctly in that the neighbor's children are parking in her yard. Commissioner Ziesmer asked Ms. Gilbert if they were parking in the driveway or on the street. Ms. Gilbert stated they were parked on the street in front of her home. Commissioner Ziesmer stating that streets are public roads and anybody can park along the street. Chairman Ivie reminded Ms. Gilbert that they can not park in her driveway, without permission, or block access to the driveway.

Ms. Gilbert stated to Chairman Ivie that she felt he did not understand her personal request and was being disrespectful. Chairman Ivie apologized, stating it was not his intent to make her feel that way, but as Chairman his duty is to provide explanations to the meeting participants.

There was no one else in the audience who wished to speak in favor of, or against, this petition.

Commissioner Thompson asked Ms. Lopez if there were any restrictions that could be in place for the neighbors. Ms. Lopez stated that all the restrictions and requirements in place are on the daycare, such as keeping their yards clean and to reduce any impact to the neighbors. Commissioner Freeman asked about the restriction on a daycare in distance from sex offenders. Ms. Lopez stated that the property is currently restricted because of the proximity to the school but that the licensing process with the state will require that as well.

A motion was made by Commissioner Freeman to approve SUP 13-02 as verbally recommended by staff for the daycare facility at 3609 Crescent Avenue. This motion was seconded by Commissioner Ziesmer and approved unanimously by a 7-0 vote.

Chairman Ivie stated that there would also be the opportunity to present argument and comments to the City Council on April 9, 2013. Additionally, he stated that if there are issues with noise that the Code Compliance Division of the Police Department would handle those complaints and if driveways are blocked by parked vehicles, then the non-emergency dispatch for the Police Department would handle those issues.

Planning and Zoning Commission Action of SUP 13-02 on March 28, 2013

A motion was made by Commissioner Freeman, seconded by Commissioner Ziesmer, to **approve** Petition SUP 13-02 as recommended verbally by staff, a request from Michelle Kimsey to operate a Daycare Facility, in a garage, in the SF-7 Residential District located at 3609 Crescent Avenue.

AYE: Chairman Ivie, Commissioners Buchanan, Cardon, Freeman, Jaques, Thompson, and Ziesmer
 NAY: None
 ABSTAINED: None
 ABSENT: Commissioners Langenfeld, Ragsdale, Arnold (Alt) and Washburn (Alt)

Motion passed 7-0.

**COMMUNITY DEVELOPMENT PETITION REPORT
 SUP 13-03 - 509 E. Hopi Street
 Amendment to Previous Conditions**

Planning and Zoning Commission Discussion of SUP 13-03 on March 28, 2013

Associate Planner Fran Fillerup presented the staff report, a request from Daniel Westbury for an amendment to a previous condition of SUP 11-11. The previous special use permit from 2011 was approved with a condition was attached by the City Council Meeting limiting the use of the accessory apartment to a family member. Mr. Fillerup stated that since that time there has been a family member in residence at this location, however that individual will no longer live there. The petitioner has requested is to have that condition removed. The dwelling would be used in accordance with Section 2.54. of the UDC. In Section 2.5.4 of the UDC the criteria states that the property owner must live in the principal or the apartment. Mr. Fillerup stated that the property to the east also has an accessory apartment, there are duplex located to the west, and directly across the alley to the south are multi-family apartments. Staff is recommending approval of SUP 13-03.

Chairman Ivie asked if the city addresses multi-generational housing. Mr. Fillerup stated that the UDC contains standards for guest houses, or an accessory apartment which is allowed in the SF-7 District. The UDC requires that the unit must not have separate utility services, but be included with the main home.

Ms. Lopez stated that there are family care units allowed in the UDC that are a type of multi-generational housing, and they are for individuals 50 years or older, or disabled. The family care units require that the individuals be related.

Commissioner Ziesmer asked about the parking requirement and if the alley would be used for parking. Mr. Fillerup stated that in 2011 additional parking was added to the front near the carport and that expansion meets the requirement of two parking spaces for the home and one parking space for the apartment.

Petitioner Dr. Daniel Westbury of 509 E. Hopi stated that he abided by City Council's condition since 2011 and feels that since his son has moved that this apartment be treated as others within this neighborhood. He re-emphasized that the character of this neighborhood is mostly rentals. He pointed out that 510 E. Hopi across the street to the north has a portable building that is being used as a rental. 508 E. Hopi has a camper trailer with someone living in it. To the west at 503 E. Hopi is a rental, to the east at 511 E. Hopi there is a house (rented to the owner's mother) and an accessory apartment that has a renter, and that 616 and 616 B N. Monterey, on the corner of Hopi, are also rentals, which he owns. He asked that this commission make the same recommendation as last time and remove this condition. He felt it was only fair that his property be treated with the same rights as other properties.

There was no one in the audience who wished to speak in favor of, or against, this petition.

Planning and Zoning Commission Action on SUP 13-03 on March 28, 2013

A motion was made by Commissioner Cardon, seconded by Commissioner Buchanan, to **approve** Petition SUP 13-03 to remove the limitation that the accessory dwelling at 509 E. Hopi must be rented to a family member, but may be used in accordance with Section 2.5.4 of the UDC.

AYE: Chairman Ivie, Commissioners Buchanan, Cardon, Freeman, Jaques, Thompson, and Ziesmer
 NAY: None
 ABSTAINED: None
 ABSENT: Commissioners Langenfeld, Ragsdale, Arnold (Alt) and Washburn (Alt)

Motion passed 7-0.

**COMMUNITY DEVELOPMENT PETITION REPORT
 ZC 13-01 - Messina & Pinon Hills Blvd
 OP Office and Professional District
 to LNC Local Neighborhood Commercial District**

Planning and Zoning Commission Discussion of ZC 13-01 on March 28, 2013

Associate Planner Fran Fillerup presented the petition information for 3.74 acres located southern of the intersection of Messina Drive and Pinon Hills Blvd. The petitioner, Capital S, LLC, has already installed a deceleration lane along Pinon Hills Blvd. and has stated they will provide an access easement to the City to maintain the Porter Arroyo. Mr. Fillerup stated that this property had previously been rezoned from SF-10, Single Family Residential to OP Office and Professional District in 2008. This request is to rezone the OP Office and Profession District to LNC Local Neighborhood Commercial District, which allows more retail uses which the OP district does not. However, it does not allow as many uses as in a GC General Commercial District. This development will act as a buffer to the residences along Kingsway and the property faces Pinon Hills Blvd. Staff feels that this request is compatible with the neighborhood and that residential protections will need to be met as required in the UDC. The residential protections will help make commercial development compatible with the adjacent residential development. Staff recommends approval with conditions a, b, and c. However, staff requests to make a change to condition b to read "That a Traffic Impact Analysis (TIA) may be required in the future depending on proposed uses and future development in the area of the zone change".

Petitioner's representative Craig Stoabs of 4800 College Blvd., stated that he had read staff's report and recommendations and has no questions. Mr. Stoabs stated that the deceleration lane has already been built. Chairman Ivie asked if an acceleration lane was also required. Mr. Stoabs stated that the City does not require an acceleration lane. Commissioner Thompson asked if this zone change request was needed in order to market the property. Mr. Stoabs stated that in this tough economy the flexibility in the types of businesses able to locate in this development may make it more marketable. Commissioner Thompson asked if Mr. Stoabs knew of any pending clients waiting to move in. Mr. Stoabs stated that there are no clients at this time. Ms. Stoabs added that in this economy it helps to have the utilities in and the paving done to attract new clients. Chairman Ivie thanked Mr. Stoabs for building new developments during this tough economy. Mr. Stoabs said he appreciated the comments and added that he is also building a new site on College Ave. and by doing so, he is sticking his neck out.

There was no one in the audience who wished to speak in favor of, or against, this petition.

Planning and Zoning Commission Action of ZC 13-01 on March 28, 2013

A motion was made by Commissioner Cardon, seconded by Commissioner Buchanan, to **approve** Petition ZC 13-01, a request from Capital S, LLC for a Zone Change from OP Office and Professional District to LNC Local Neighborhood Commercial District, for 3.74 acres located at the southeast corner of Messina Drive and Pinon Hills Blvd. as recommended by staff and with the rewording of condition b.

AYE: Chairman Ivie, Commissioners Buchanan, Cardon, Freeman, Jaques, Thompson, and Ziesmer
 NAY: None
 ABSTAINED: None
 ABSENT: Commissioners Langenfeld, Ragsdale, Arnold (Alt) and Washburn (Alt)

Motion passed 7-0.

Business from the Floor: There was no business from the floor.

Business from the Chairman: There was no business from the chairman.

Business from Members: There was no business from the members.

Business from Staff: Ms. Lopez reminded the Commission that the NMLZO Conference for Board Members and Commissioners is being held in May and that the registration for this training can be paid by the City, however, meals and lodging would be at the Commissioners' expense. Chairman Ivie stated that he had attended one of these conferences and found it extremely beneficial. Commissioner Cardon also stated that, having attended this conference, she encourages the other commissioners to attend, if possible. Ms. Lopez stated that some of the items on the schedule are; the History of Zoning; State Historical Preservation, a Jeopardy game on planning, and legal presentations by Randy Van Vleck, who has been to Farmington to speak with the ARB and P&Z before.

The petition ZC 12-14 for Waverly Lamb that was postponed in January 2013, is scheduled to be held on April 25, 2013 P&Z Meeting.

Ms. Lopez stated that the April 11, 2013 Planning and Zoning Meeting has been cancelled due to a lack of petitions. She reminded the Commission that all legal ads are run in the newspaper 2 weeks prior to a meeting and are also posted to the City's website.

Community Development Director Mary Holton encouraged the Commission to attend this year's NMLZO Conference because budget constraints may not permit funding their registrations next year.

Commissioner Buchanan stated he had heard about an Indoor Shooting Range and wondered when that would be brought before the commission. Ms. Lopez stated that there is an Indoor Shooting Range being built, but it is in the GC General Commercial District where it is permitted by right.

Commissioner Buchanan shared that he has a greater understanding of the City's requirement for handicap parking now that his wife is using a wheelchair. He added that this city is blessed to have such a large requirement for handicap parking.

Commissioner Buchanan stated he felt that Chairman Ivie was not disrespectful of Ms. Gilbert's situation but only tried to explain the UDC and the way the code is enforced.

Commissioner Buchanan also informed the Commission that he would be moving to Arizona around September but the actual date is based on the completion of the handicap accessible home they are building.

Adjournment

With no further business the Planning and Zoning Commission meeting of March 28, 2013 was adjourned at 3:29 p.m.

for 

Dennis Ivie
Chairman



Dee Dee Moore
Office Manager