



**MEETING MINUTES**  
**Cadillac Zoning Board of Appeals**  
**5:30 P.M.**  
**November 17, 2016**

**CONVENE MEETING**

Chairperson Nichols called to order a meeting of the Cadillac Zoning Board of Appeals at 5:00 p.m. on November 17, 2016.

**ROLL CALL**

MEMBERS PRESENT: Allen, Bontrager, Genzink, Nichols, Ault, & Paveglio,  
MEMBER ABSENT: Engels, Walkley, & alternate Knight  
STAFF PRESENT: Mike Coy, John Wallace, & city attorney Michael Homier

**APPROVAL OF MEETING AGENDA**

Motion by Ault, supported by Paveglio, to approve the November 17, 2016 meeting agenda. The motion was unanimously approved on a roll call vote.

**APPROVAL OF MEETING MINUTES**

Motion by Bontrager, supported by Genzink, to approve the October 20, 2016 meeting minutes as presented to the board. The motion was unanimously approved on a roll call vote.

**PUBLIC COMMENTS FOR NON-HEARING ITEMS**

None

**PUBLIC HEARINGS**

Application for an Administrative Appeal filed by Michael Figliomeni on behalf of Meyering Company, LLC relative to an administrative decision made by the Community Development Director regarding a Special Land Use Application for a crematorium as contained in a letter dated September 15, 2016 from John Wallace to Michael Figliomeni.

**APPLICANT**

Meyering Company, LLC  
205 East Cass St.  
Cadillac, MI 49601

In attendance for the applicant is attorney Michael Figliomeni, Ross Meyering, and Meghan Meyering-Brinks.

Chairman Nichols opened the case and he then referred the matter to staff for comment.

Mike Coy, Community Development Analyst started by explaining that this hearing is unlike the normal Variance Applications the Zoning Board of Appeals reviews. This is an administrative

appeal. He then said “at the end of this public hearing you will be asked to determine if the Community Development Director was correct in holding the application and not scheduling a public hearing on the application until such time as the Planning Commission has had time to determine where crematoriums should be allowed as either a Permitted Use or as a Special Land Use (SLU) and in which zoned districts.”

Nichols opened the meeting for presentation by the applicant and Mr. Figliomeni spoke first. He started by mentioning he included for the Zoning Board of Appeals a copy of the letter from Mr. Wallace dated September 15<sup>th</sup> and a three page argument he wrote responding to the issues in Mr. Wallace’s letter. He added that the reason for this appeal is because the property owners were not given an opportunity to present their case for a land use application to the Planning Commission as a result of Mr. Wallace’s actions.

Figliomeni added that they’re asking the Zoning Board of Appeals (ZBA) to direct city staff to schedule a public hearing on the application for a Special Land Use before the Planning Commission as is supported by law. The Michigan Zoning Enabling Act gives the ZBA this authorization.

Figliomeni added the zoning act authorizes cities like Cadillac to have zoning in their community. It also authorizes the Zoning Board of Appeals and the Planning Commission with the authority to regulate land use in the city. The Planning Commission is required to hold a hearing on a Special Land Use application. It didn’t happen. The reason given by Mr. Wallace in his September 15<sup>th</sup> letter reads; “Until such time that the Planning Commission and the City Council determine where this use is best suited, it would be inappropriate to consider a proposed use in a zoning district where it is plainly not permitted by right or by special land use.”

Figliomeni added “this statement is where Mr. Wallace is mistaken.” Mr. Wallace does not have this authority. It lies with the Planning Commission. We disagree with the city’s position. At a Planning Commission public hearing the city can present their case just like the applicant should be able to present our case. Let the Planning Commission decide. We are being denied our due process.

I am asking this body to direct Mr. Wallace to schedule a public hearing on the application.

Figliomeni concluded by asking the record be clear that an application submitted on October 30, 2016 was withdrawn.

Wallace spoke next and described his role as Zoning Administrator and Community Development Director. He added that he has no issues with the business (crematorium) or it becoming a valid business in the city. He added that he has communicated with Mr. Figliomeni both by phone and in person along with the correspondence.

Wallace then talked about the steps in the process of reviewing the application and its purpose. Mr. Wallace explained that when he receives an application his role is to review it and determine whether it is incomplete or defective. Mr. Wallace felt it was defective because the current City of Cadillac Ordinance does not list crematoriums as a use “By Right or Special Land Use in any

district.” Secondly he said the current city ordinance is silent on the issue of crematoriums. His position is not to deny the process but delay a public hearing on the application until after the Planning Commission can review information on crematoriums and make a recommendation to City Council regarding where they may be appropriately located. Crematoriums are not even defined in the definitions section (46-4) of the ordinance. The Planning Commission is the first step to determine the appropriate district/districts for land uses when none currently exist.

Another issue with the application is that a crematorium is not similar in nature to any allowed use or SLU for the (OS-2) district. The use also could not be considered an accessory use because the site is not on the same parcel as the primary use. The physical parameters do not qualify. Another reason it would not be considered an accessory use is that the owners of the crematorium and the mortuary would not be the same owner. They are two distinct separate businesses as defined by Michigan statute.

Wallace then added at the present time a public hearing is scheduled before the Planning Commission for November 28<sup>th</sup> to review a draft ordinance that would allow for an amendment to the city ordinance on crematoriums for both humans and pets.

Lastly, Mr. Wallace added that the ordinance does not require a time frame for a Special Land Use public hearing. The framework is not in place to allow for a public hearing on the land use at this time. He concluded by saying the applicant (Meyering Company, LLC) has provided extensive information on crematoriums that has been provided to the Planning Commission. The applicant has been invited to participate in the process and is invited to the November 28<sup>th</sup> meeting.

Mr. Figliomeni asked to speak and said he does not disagree with Mr. Wallace’s statement that he needs to review the application for completeness but they have received no correspondence from Mr. Wallace that the application for a SLU was incomplete. Mr. Wallace made legal arguments. These are to be heard by the Planning Commission. They are not administrative decisions. “It’s as simple as that.”

Figliomeni said the applicants have been waiting months for their application to be heard. “All we are asking for is a hearing.” It is not the ZBA’s job to review the application but if you do you would see that we would not have filed the application if we did not feel we had a case to be heard. He added that we are asking for a determination from this body that the application be heard within a reasonable amount of time. It is November and the application was filed in July. This is “unreasonable”.

Nichols opened the meeting for public comments.

No members of the public made comment.

Genzink asked, “why has this taken so long?” Wallace answered that the applicant proposed a complicated SLU and that it required a fair amount of research to be gathered. Solid reasons need to be provided to develop regulations. The research was then forwarded to the sub-committee on crematoriums and the Planning Commission.

Genzink asked what the time frame would be. Wallace answered that depending on the Planning Commission a recommendation could be forwarded to City Council to review within two to three weeks.

Genzink then asked what is the expected time frame? City attorney Homier spoke and said that if the Planning Commission reaches consensus at its November 28<sup>th</sup> meeting and makes a recommendation to the City Council on a proposed amendment, then the City Council could take up the proposed amendment at the December 5<sup>th</sup> City Council meeting. The City Council is required to schedule a public hearing of their own and that could be on December 19<sup>th</sup>. Following that public hearing City Council may adopt the proposed ordinance with or without any additional amendments.

Figliomeni said he very recently received a copy of the proposed zoning amendment and has not had a chance to thoroughly read it. He added the provided proposed ordinance does not make a recommendation for the use in my client's zoned district (OS-2). My client's application is ready to be reviewed by the Planning Commission with or without the recommendation on the proposed ordinance.

Homier said he disagreed with Figliomeni's position and added that the current zoning ordinance does not permit the use in any zoned district at this time. When you have a land use that is not specified in any district, and there are a myriad of examples, one being medical marihuana, it does not become a race to file an application. This is not how land use and zoning works. The Zoning Administrator acts as a gate-keeper. When there is a use not allowed by right or by special use then the Planning Commission has the right to initiate an amendment to decide where the use should be allowed, whether it be in residential, OS-2, or industrial for example.

Homier added the Planning Commission has already said the use is not sufficiently defined in the zoning ordinance and as such appointed a sub-committee to gather information on crematoriums. The applicant was invited to participate in the process and in the public hearing and to submit information that a crematorium would be an appropriate use in the OS-2 district. Nothing precludes the Zoning Administrator from waiting to process the application on that basis.

Homier then added that the Michigan Zoning Enabling Act does require the City to provide for lawful uses where there is a demonstrated need. The city then needs to determine where it should be located and what regulations should be applied. The Planning Commission will need to make a recommendation to the City Council who may then make a decision on the proposed amendment, with or without further amendment, which may very well include crematoriums in an OS-2 district. He added that in his view this is a timing issue for the applicant.

Mr. Figliomeni said that Mr. Homier is arguing the law and Figliomeni feels he needs to respond. Section 46-745 from the Code of Ordinances allows for relief to be allowed in this case. This is not a city staff decision to make but the Planning Commission's.

Wallace commented that to take Mr. Figliomeni's argument further. Does this mean any use not specified in the ordinance can be considered for approval by the Planning Commission? Could

any land use be allowed anywhere? He feels this would weaken the existing ordinance. He believes this could be harmful to the community.

Homier added he did not wish to argue the law. He then said there is nothing in the ordinance or nothing in the law that requires you to process the application in a definitive amount of time, especially when the proposed use is not a permitted use anywhere in the city. He feels the applicant believes that by filing an application they are entitled to a hearing.

Chairman Nichols closed the public comments.

He said he understands this will take time. He added that in the end there will be people happy and people unhappy. The citizens of the city need to be considered and the Planning Commission needs to do their job in reviewing this issue.

Paveglio said he understands the frustration for the applicant, but with the public hearing scheduled for November 28<sup>th</sup>, this application is running parallel to the process for amending the ordinance.

Genzink asked staff if they could guarantee a January Planning Commission hearing on the application from Meyering Co.?

Homier answered it cannot be guaranteed. The Planning Commission will decide the timing. The Planning Commission has the right to make a recommendation and to postpone until they have more information. He cannot guarantee the timing. He added that with reference to amendments to ordinances in general this has not taken an inordinate amount of time.

Wallace added that the current city ordinance is outdated. There are other land uses that people wish to have allowed and they too are being required to wait until the ordinance is updated. One example he gave that the city is being asked to add homeless shelters in the ordinance.

Genzink asked if the applicant would be able to have their application heard soon. Homier responded that it would be up to the Planning Commission and the progress they make.

Genzink said he would like to see a time limit included in the motion. Nichols added he didn't think they could stipulate one.

Nichols again closed the meeting to public comments.

Paviglio made a motion to "uphold the decision of the Zoning Administrator as discussed on the record," thus denying at this time the applicant's request for the ZBA to direct staff to schedule a public hearing for a Special Land Use before the Planning Commission. A public hearing should wait until after the Planning Commission makes a recommendation to City Council and City Council amends the Zoning Ordinance to allow for crematoriums. Support by Allen. On a roll call vote the motion was unanimously approved.

Coy said a letter would be sent to the applicant on the appeal heard today.

Coy invited the Zoning Board of Appeals members and the applicant to the November 28<sup>th</sup> Planning Commission meeting.

**NEW BUSINESS** - None

**Public Comments, other business, board member comments** –

Coy informed the Zoning Board of Appeals that they will meet at their scheduled December 15<sup>th</sup> meeting. An application was received for the presentation of a new site plan at 2013 Sunnyside Drive.

**ADJOURN**

Chairperson Nichols adjourned the meeting at 6:20p.m.