



## **PLANNING COMMISSION MEETING STAFF REPORT**

**DATE OF MEETING:** December 14, 2021  
**NAME OF APPLICANT:** Midway City  
**AGENDA ITEM:** Code Text Amendment of Section 16.18

### **ITEM: 6**

Midway City is proposing an amendment to Section 16.18: Rural Preservation Subdivision of the Midway City Municipal Code. The proposed amendment would not allow some sensitive lands, including sloped areas, to count towards allowed density for Rural Preservation Subdivisions.

### **BACKGROUND:**

Section 16.18 of the land use code allows certain parcels in residential zoning districts to be developed as Rural Preservation Subdivisions. Planning staff is proposing amendments to a few subsections of section 16.18 in order to clarify and enhance requirements for developing property.

### **Proposed Amendment #1: Section 16.8.5 - Density and Lot Size**

The current rural preservation development code does not reduce the developable acreage based on sensitive lands or any other factors. The proposed amendment would require all slopes of 25% or greater to be deducted from the developable acreage when determining the overall density of the development but would still allow all other sensitive lands to count towards the developable acreage. The property proposed for development would still be subject to all of the requirements and limitations found in the sensitive lands code and would still be contained within the developed parcels.

There are several larger parcels in Midway City that have significant slopes and could benefit from being developed as a rural preservation subdivision. Some of these parcels may be difficult to develop through one of the other subdivision codes (standard, small, density reduction) but could be developed using the rural preservation code. As a planning staff we believe that limiting what counts towards developable acreage is supported by the General Plan.

The Community Vision element of the Midway City General Plan supports limiting density in the city through zoning.

- **Midway will retain a rural atmosphere through open space preservation**
  - Through effective zoning, Midway will plan for density closer to its core reinforcing more open space and less density as the City grows to its limits.

The Land Use Element of the General Plan also lends support to the proposed adjustment.

- **GOAL 2:** Encourage open space to preserve a high quality of life and to preserve Midway's rural atmosphere.
  - **Guideline 1:** Consider reviewing the Municipal Code to possibly reduce density where appropriate.

The Environment and Sensitive Lands Section of the General Plan encourages protecting steep slopes.

- **GOAL 1:** Environmental resources of the City should be protected including water quality, air quality, wildlife habitat, scenic quality, hillsides, ridge lines, prime agriculture land, open space, soils, vegetation, wetlands, riparian corridors and flood plains.
  - **Objective 1:** Protect all of the environmental and natural resources of the City by requiring development to occur in a manner and location which respects sensitive environmental lands: wetlands, flood plains and natural drainage patterns, steep slopes, productive agricultural lands, geologically unstable areas, critical wildlife areas, vegetation and important scenic features such as ridge lines, hillsides and view corridors.

Limiting development in areas with steep slopes may be an appropriate way of accomplishing these goals and objectives.

Below is the current code with the proposed adjustment in *red*:

### **16.8.5 Density and Lot Size**

A maximum density of one dwelling unit per five (5) acres of the original development parcel is allowed. *When calculating the allowable density, the*

*developable acreage shall only consist of all areas within the development parcel with a slope less than 25%.* Each lot is permitted one (1) dwelling unit. Clustering of lots is permitted if each lot complies with the minimum lot acreage for the zone in which it is located.

### **Proposed Amendment #2 - 16.18.17 Permitted Uses**

Currently, section 16.18.17 prohibits living space in accessory buildings. Earlier this year the city council approved adjustments to section 16.13.6 of the land use code, creating an opportunity, in some situations, for property owners to add certain types of living space within an accessory structure. Under no circumstances would the living area in accessory structures constitute a second dwelling. Our proposal is that the current prohibition on living space in accessory structures is removed from section 16.18.17 and replaced with language that allows for living space as outlined in 16.13.6. Below is the current code with the proposed adjustments in *red*:

#### **16.18.17 Permitted Uses**

The principal use permitted in the Rural Preservation subdivision is one residential living unit. *Living area in accessory structures is allowed as outlined in this title. No living space (kitchen, bedrooms, and full bathrooms) is allowed in any accessory structures.* Other uses are permitted as allowed by the zoning regulations governing the zone in which the lot is located

### **Proposed Amendment #3: Sections 16.18.18.D - Standards and Requirements and 16.18.16 Setbacks**

We would propose that section 16.18.18.D is amended to include some setback requirements that do not currently exist in this section and was likely inadvertently left out when this code was adopted. The proposed requirement would be a 50' structure setback from certain roads in Midway, like what is required in the Small Subdivision code.

Below are some examples from the General plan that promote extending the setbacks from City streets:

#### *Elements of the Community Vision*

- *Midway will retain a rural atmosphere through open space preservation*
  - *Through effective zoning, Midway will plan for density closer to its core reinforcing more open space and less density as the City grows to its limits.*
  - *All developments will incorporate various kinds of open space into their projects.*

- *Open spaces will be accessible, visible, appropriately landscaped (depending on the open space purpose and use) and will be aesthetically pleasing.*
  - *Development and City entryways will be landscaped, aesthetically pleasing and, where appropriate, will reinforce a Swiss/ European theme.*
  - *Effective planning through clustering, **setbacks**, Transfer Development Rights and animal/agriculture ordinances will help Midway to preserve its view corridors, maintain open spaces and reinforce a country/rural feeling.*
  - *Animal rights will be protected and promoted to help preserve the rural atmosphere and preserve open space.*
- *High-quality, well-planned residential areas with open spaces that support and complement the unique rural quality and character of the City;*
  - *Goal 2: Encourage open space to preserve a high quality of life and to preserve Midway's rural atmosphere.*
  - *Objective 1: Protect all of the environmental and natural resources of the City by requiring development to occur in a manner and location which respects sensitive environmental lands: wetlands, flood plains and natural drainage patterns, steep slopes, productive agricultural lands, geologically unstable areas, critical wildlife areas, vegetation and important scenic features such as ridge lines hillsides and **view corridors**.*

We are also proposing an amendment to section 16.18.16 to clarify that in addition to zone-specific setbacks, all structures must comply with the 50' setback from certain roads that we are proposing to add to section 16.16.18.D.

The two sections that we are proposing to amend are noted below. The proposed changes are shown below in *red*.

### **16.18.18 Standard and Requirements**

D. Dwellings and permitted structures shall be located to best comply with the intent of this Ordinance and shall meet the following standards:

**1. The following streets shall require a minimum 50-foot setback for all structures, and should be noted on the plat:**

- i. Burgi Lane;**
- ii. River Road;**
- iii. Pine Canyon Road;**
- iv. Homestead Drive;**
- v. Michie Lane, east of Center;**
- vi. Center Street, south of Main Street (SR 113);**

- vii. Tate Lane;
- viii. Stringtown Road;
- ix. 200 North, west of 200 West.
- x. Cari Lane
- xi. 500 South
- xii 600 North

### 16.18.16 Setbacks

Setbacks for all structures must comply with the requirements for the zone in which the lot is located **and the setbacks noted in 16.18.18.D.**

### **Proposed Amendment #4: 16.18.7**

When the rural preservation subdivision code was originally adopted it included an open space section. The requirements of this section were removed in 2018 because they were deemed unnecessary, but the section was maintained. We would propose that section 16.18.7 is amended to address remnant parcels. Our proposed code language would prohibit the creation of non-conforming remnant parcels as a by-product of developing a rural preservation subdivision. We have encountered the issue of remnant parcels recently when a developer was proposing to develop an existing parcel as a one lot rural preservation subdivision, but the proposal resulted in the creation of a one-acre non-conforming remnant parcel. In working with the applicant, we were able to identify a path forward that allowed them to create a one-acre legal buildable lot, but we feel that it would be good to clarify in the code that non-conforming remnant parcels cannot be created as a by-product of a rural preservation subdivision. We would propose that the following code language (in *red*), be added to section 16.18.7:

#### ***16.18.7 ~~Open-Space Remnant Parcels~~***

*No remnant parcels shall be created because of an application for a Rural Preservation Subdivision. All portions of an existing parent parcel must be included in the Rural Preservation Subdivision plat, unless it qualifies for one of the following exceptions:*

- 1. If the excess property meets the zoning requirements and can be developed through a separate subdivision process, then it does not need to be included in the Rural Preservation Subdivision plat. The request for both subdivision proposals must proceed through the approval process together and the plats must be recorded in succession so that a new remnant parcel is not created.*
- 2. The excess property may be legally attached to an adjacent parcel. Proof of the new property description may be requested to demonstrate the transfer of the property.*

**POSSIBLE FINDINGS:**

- The proposed adjustment would preclude slopes of 25% or greater being counted towards the developable acreage of a property
- Reducing density is supported by the General Plan
- The proposed adjustments would ensure that accessory structure requirements are consistent with other sections of the land use code
- The proposed adjustments would require a 50’ structure setback from certain roads, which is supported by the general plan
- The proposed adjustments would clarify that creating a rural preservation subdivision should not result in the creation of a non-conforming parcel

**ALTERNATIVE ACTIONS:**

1. Recommendation of Approval. This action can be taken if the Planning Commission finds that the proposed language is an acceptable amendment to the City’s Municipal Code.
  - a. Accept staff report
  - b. List accepted findings
  
2. Continuance. This action can be taken if the Planning Commission would like to continue exploring potential options for the amendment.
  - a. Accept staff report
  - b. List accepted findings
  - c. Reasons for continuance
    - i. Unresolved issues that must be addressed
  - d. Date when the item will be heard again
  
3. Recommendation of Denial. This action can be taken if the Planning Commission finds that the proposed amendment is not an acceptable revision to the City’s Municipal Code.
  - a. Accept staff report
  - b. List accepted findings
  - c. Reasons for denial