

CITY OF MUSKEGON
CITY COMMISSION WORKSESSION

Monday, November 7, 2016
5:30 p.m.
City Commission Chambers

AGENDA

1. Muskegon County "Rec" Authority
2. Downtown Residential Zoning
3. Any Other Business
4. Adjournment

Minimum Lot Sizes

Under the current zoning requirements, a portion of Muskegon's urban neighborhoods are forced to be something they are not. The changes we are proposing are our attempt to align the zoning of these neighborhoods with the realities of the way in which they are built.

The areas that these changes would affect have historically been platted and built up using a 33' minimum lot width. Currently, the minimum required lot width in an R-1 Single-Family Residential zone is 50 feet with a 6,000sf minimum lot area. By increasing the minimum lot width to 50 feet, it was ensured that any house demolished on a lot smaller than 50 feet wide could not legally be rebuilt on its original lot.

Also to be taken into consideration are the future changes facing Muskegon's urban neighborhoods. An aging housing stock combined with ongoing blight fighting efforts will result in newly vacant land largely located in these older, urban neighborhoods. Because many of the blighted houses being demolished predate the current zoning ordinance, they leave unbuildable vacant lots in their place.

Vacant lots, aside from being unused land and largely non-tax generating, are a maintenance liability (mowing rotations paid for by the City, etc.). These lots will continue to play a detrimental role until they are either sold to adjacent property owners, combined with neighboring lots to meet the buildable threshold, or made legally buildable as they exist.

In order to reassign these lots to a buildable status, we propose a new zoning district that would serve as an urban alternative to the ubiquitous R-1 Single Family Residential zone. This rezoning would best be achieved through a new Context Sub-Area within Muskegon's Form Based Code (FBC). The proposed, expanded FBC boundaries brought about by these zoning changes have been determined by proximity to the downtown and major corridors, and focused around the concentration of existing small lots.

This new zone is not expected to drastically alter the character of the neighborhoods it affects, it is simply meant to allow homes to be built on underutilized lots currently deemed too small to be legally built on. Smaller homes should be more affordable and – combined with their central location – will reflect the walkable urban places the market desires at this time.

Missing Middle Housing

The City of Muskegon's Form Based Code emphasizes building types; among these are building types classified as Missing Middle Housing. "Missing Middle" was coined by Daniel Parolek of Opticos Design, Inc. in 2010 to define a range of multi-unit or clustered housing types compatible in scale with single-family homes that help meet the growing demand for walkable urban living.

These diverse housing types, while popular in the pre-WWII era of building, have all but vanished from the current selection of newly constructed housing. Most examples of Missing Middle Housing in the City of Muskegon date from before the 1940s. Over time, changes in policy and zoning have made these housing types illegal to build today.

Land-use zoning or density-based zoning often leave a gap in the allowable housing types that may be built within a city. The jump from single-family detached homes to medium-density, multifamily housing excludes Missing Middle Housing. Missing Middle building types have densities too high for single-family zones, yet building footprints and building heights too small to meet the requirements of multifamily zones.

Much of the multifamily residential development in Muskegon (RM-1, RM-2, RM-3) falls under the common trend of suburban garden apartments on combined lots. As an isolated multi-family zone, separated by density, most multi-family developments are not interspersed with other types of housing or well integrated into existing neighborhoods.

In established urban neighborhoods, Missing Middle Housing typically comes in the form of infill development utilizing smaller lot sizes. Its housing types are designed and scaled to fit well into their respective contexts while providing a blend of densities. This blend increases the overall density of an area, but maintains a low perceived density.

16 dwelling units per acre is seen as the density level at which a neighborhood can support local services and amenities within walking distance and existing/future public transit. Muskegon's current Single Family Residential zoning (R-1) restricts the maximum density of an area to 7 dwelling units per acre.

Missing Middle Housing will help to strengthen the livability of our neighborhoods by revitalizing underused land within the urban core, incrementally increasing density to a point where it can support existing/future transit and services/amenities within walking distance, and providing more affordable and varied living options.

2015 FBC Priorities – ranked by importance, as determined by the public

1. Facilitating higher density development/adding new residents to the downtown.
2. Fostering economic development/building the tax base for the city.
3. Balancing transportation modes/enhancing choices (ie. walk, bike, transit, vehicle).
4. Providing access to businesses, community attractions, and schools.
5. Supporting transit ridership through available parking (park n' ride).
6. Providing ample and affordable parking.

2006.06 BUILDING TYPE OVERVIEW

Building Types for the Muskegon Form Based Code are summarized as follows:



MIXED USE BUILDING TYPE

This Building Type is a medium- to large-sized typically attached structure. It is intended to provide a vertical mix of uses with ground floor retail or service uses and upper floor service or residential uses. This Type makes up the primary component of a main street and downtown, and is a Building Type that can provide street vibrancy and enhanced walkability.

FRONTAGE OPTIONS
STOREFRONT
BALCONY
TERRACE
FORECOURT
DRIVE-THROUGH

CONTEXT AREAS	
DT DOWNTOWN	MS MAINSTREET
MSW MAINSTREET WATERFRONT	NC NEIGHBORHOOD CORE
NE NEIGHBORHOOD EDGE	UR URBAN RESIDENTIAL



RETAIL BUILDING TYPE

This Building Type is a medium- to large-sized typically attached structure. It is intended to provide a single story building with ground floor retail or service uses. This Type makes up the secondary component of a main street and is a Building Type that can provide street vibrancy and enhanced walkability.

FRONTAGE OPTIONS
STOREFRONT
TERRACE
DRIVE-THROUGH

CONTEXT AREAS	
DT DOWNTOWN	MS MAINSTREET
MSW MAINSTREET WATERFRONT	NC NEIGHBORHOOD CORE
NE NEIGHBORHOOD EDGE	UR URBAN RESIDENTIAL



FLEX BUILDING TYPE

This Building Type is a medium- to large-sized attached or detached structure, typically built on a large lot. It can be used to provide a vertical mix of uses with ground floor industrial, service, retail, or residential uses; or it may be a single-use building. This Type is a primary component in a variety of urban context areas that provide a mix of Building Types.

FRONTAGE OPTIONS
STOREFRONT
TERRACE
FORECOURT
DOORYARD

CONTEXT AREAS	
DT DOWNTOWN	MS MAINSTREET
MSW MAINSTREET WATERFRONT	NC NEIGHBORHOOD CORE
NE NEIGHBORHOOD EDGE	UR URBAN RESIDENTIAL



COTTAGE RETAIL BUILDING TYPE

This Building Type is a small- to medium-sized detached structure. It is intended to provide retail or service uses at the ground floor. This Type will typically have a residential mass, scale, and composition that allows it to integrate into adjacent residential areas.

FRONTAGE OPTIONS
STOREFRONT
DOORYARD
STOOP

CONTEXT AREAS	
DT DOWNTOWN	MS MAINSTREET
MSW MAINSTREET WATERFRONT	NC NEIGHBORHOOD CORE
NE NEIGHBORHOOD EDGE	UR URBAN RESIDENTIAL



LIVE / WORK BUILDING TYPE

This Building Type is a small- to medium-sized attached structure that consists of one dwelling unit above and/or behind a flexible ground floor space that can be used for residential, service, or retail uses. Both the ground floor space and the dwelling unit are owned by one entity. This Type is especially appropriate for incubating retail and service uses and allowing neighborhood retail to expand as the market demands.

FRONTAGE OPTIONS
STOREFRONT
DOORYARD
LIGHTWELL
STOOP

CONTEXT AREAS	
DT DOWNTOWN	MS MAINSTREET
MSW MAINSTREET WATERFRONT	NC NEIGHBORHOOD CORE
NE NEIGHBORHOOD EDGE	UR URBAN RESIDENTIAL



LARGE MULTI-PLEX BUILDING TYPE

This Building Type is a medium- to large-sized structure that consists of 7 or more side-by-side and / or stacked dwelling units, typically with one shared entry. This Type is appropriately scaled to fit in medium-density neighborhoods and enables well-designed higher densities. It is an essential Building Type for providing a broad choice of housing types and promoting walkability.

FRONTAGE OPTIONS
FORECOURT
DOORYARD
STOOP
PROJECTING PORCH

CONTEXT AREAS	
DT DOWNTOWN	MS MAINSTREET
MSW MAINSTREET WATERFRONT	NC NEIGHBORHOOD CORE
NE NEIGHBORHOOD EDGE	UR URBAN RESIDENTIAL

Context Areas represented in black indicate that building is not allowed in that Context Area.

2006.06 BUILDING TYPE OVERVIEW (continued)

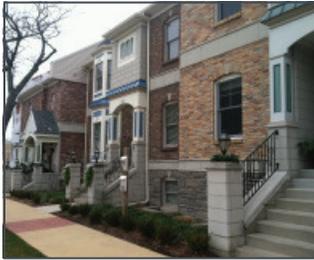
Building Types for the Muskegon Form Based Code are summarized as follows:



SMALL MULTI-PLEX BUILDING TYPE

This Building Type is a medium-sized structure that consists of 3 to 6 side-by-side and / or stacked dwelling units, typically with one shared entry or individual entries along the front. This Type has the appearance of a large single-family house and is appropriately scaled to fit in single family neighborhoods. This Type enables well-designed higher densities. It is an essential Building Type for providing a broad choice of housing types and promoting walkability.

FRONTAGE OPTIONS	CONTEXT AREAS	
STOOP PROJECTING PORCH ENGAGED PORCH	DT DOWNTOWN	MS MAINSTREET
	MSW MAINSTREET WATERFRONT	NC NEIGHBORHOOD CORE
	NE NEIGHBORHOOD EDGE	UR URBAN RESIDENTIAL



ROWHOUSE BUILDING TYPE

This Building Type is a small- to medium-sized attached structure that consists of 2 to 8 rowhouses placed side-by-side. This Type is typically located within medium-density neighborhoods or in a location that transitions from single-family to mixed-use. This Type enables well-designed higher densities. It is an essential Building Type for providing a broad choice of housing types and promoting walkability.

FRONTAGE OPTIONS	CONTEXT AREAS	
LIGHTWELL STOOP PROJECTING PORCH	DT DOWNTOWN	MS MAINSTREET
	MSW MAINSTREET WATERFRONT	NC NEIGHBORHOOD CORE
	NE NEIGHBORHOOD EDGE	UR URBAN RESIDENTIAL



DUPLEX BUILDING TYPE

This Building Type is a small- to medium-sized detached structure that consists of two side-by-side or stacked dwelling units, both facing the street and within a single building massing. This Type has the appearance of a medium-sized single-family house and is appropriately scaled to fit in single family neighborhoods. This Type enables well-designed higher densities. It is an essential Building Type for providing a broad choice of housing types.

FRONTAGE OPTIONS	CONTEXT AREAS	
STOOP PROJECTING PORCH ENGAGED PORCH	DT DOWNTOWN	MS MAINSTREET
	MSW MAINSTREET WATERFRONT	NC NEIGHBORHOOD CORE
	NE NEIGHBORHOOD EDGE	UR URBAN RESIDENTIAL



DETACHED HOUSE BUILDING TYPE

This Building Type is a small- to medium-sized detached structure that incorporates one dwelling unit. It is typically located within a primarily single-family neighborhood in a walkable urban setting. This Type enables well-designed higher densities. It is an essential Building Type for providing a broad choice of housing types.

FRONTAGE OPTIONS	CONTEXT AREAS	
STOOP PROJECTING PORCH ENGAGED PORCH	DT DOWNTOWN	MS MAINSTREET
	MSW MAINSTREET WATERFRONT	NC NEIGHBORHOOD CORE
	NE NEIGHBORHOOD EDGE	UR URBAN RESIDENTIAL



CARRIAGE HOUSE BUILDING TYPE

This Building Type is an accessory structure typically located at the rear of a lot. It typically provides either a small residential unit or home office space above the first floor garage. This Type is important for providing affordable housing choices that are integrated into diverse neighborhoods. This Type shall only be used in conjunction with the Detached House, Duplex, Rowhouse, or Live/Work Building Types.

FRONTAGE OPTIONS	CONTEXT AREAS	
Not applicable to this Building Type	DT DOWNTOWN	MS MAINSTREET
	MSW MAINSTREET WATERFRONT	NC NEIGHBORHOOD CORE
	NE NEIGHBORHOOD EDGE	UR URBAN RESIDENTIAL



CIVIC BUILDING TYPE

This Building Type is a small-, medium- or large-sized detached structure that incorporates uses of special public importance including, but not limited to municipal buildings, churches, libraries and schools. Civic Buildings typically have less form regulations than other Building Types because their prominence within the community requires more iconic and distinctive form.

FRONTAGE OPTIONS	CONTEXT AREAS	
Not applicable to this Building Type	DT DOWNTOWN	MS MAINSTREET
	MSW MAINSTREET WATERFRONT	NC NEIGHBORHOOD CORE
	NE NEIGHBORHOOD EDGE	UR URBAN RESIDENTIAL

Context Areas represented in black indicate that building is not allowed in that Context Area.

2005.04 SUMMARY OF BUILDING TYPES PERMITTED IN EACH CONTEXT AREA

BUILDING TYPE WITH FRONTAGE OPTION		CONTEXT AREAS					
		DT DOWNTOWN	MS MAINSTREET	MSW MAINSTREET WATERFRONT	NC NEIGHBORHOOD CORE	NE NEIGHBORHOOD EDGE	UR URBAN RESIDENTIAL
MIXED-USE BUILDING TYPE	with STOREFRONT	By Right	By Right	By Right	By Right	By Right	
	with BALCONY	By Right	By Right	By Right	By Right	By Right	
	with TERRACE	Conditional	Conditional	Conditional	Conditional	Conditional	
	with FORECOURT	By Right	By Right	By Right	By Right	By Right	
	with DRIVE-THROUGH				By Right	By Right	
RETAIL BUILDING TYPE	with STOREFRONT		By Right	By Right	By Right	By Right	
	with TERRACE		Conditional	Conditional	Conditional	Conditional	
	with DRIVE-THROUGH				By Right	By Right	
FLEX BUILDING TYPE	with STOREFRONT		By Right	By Right	By Right	By Right	
	with TERRACE		Conditional	Conditional	Conditional	Conditional	
	with FORECOURT		By Right	By Right	By Right	By Right	
	with DOORYARD		By Right	By Right	By Right	By Right	
COTTAGE RETAIL BUILDING	with STOREFRONT				By Right	By Right	
	with DOORYARD				By Right	By Right	
	with STOOP				By Right	By Right	
LIVE / WORK BUILDING TYPE	with STOREFRONT		By Right	By Right	By Right	By Right	
	with DOORYARD		By Right	By Right	By Right	By Right	At corner lots only
	with LIGHTWELL		By Right	By Right	By Right	By Right	
	with STOOP		By Right	By Right	By Right	By Right	At corner lots only
LARGE MULTI-PLEX BUILDING TYPE	with FORECOURT		By Right	By Right	By Right		
	with DOORYARD		By Right	By Right	By Right		
	with STOOP				By Right		
	with PROJECTING PORCH				By Right		
SMALL MULTI-PLEX BUILDING TYPE	with STOOP				By Right	By Right	
	with PROJECTING PORCH				By Right	By Right	
	with ENGAGED PORCH				By Right	By Right	
ROWHOUSE BUILDING TYPE	with LIGHTWELL		By Right	By Right	By Right		
	with STOOP		By Right	By Right	By Right	By Right	By Right
	with PROJECTING PORCH				By Right	By Right	By Right
DUPLEX BUILDING TYPE	with STOOP					By Right	By Right
	with PROJECTING PORCH					By Right	By Right
	with ENGAGED PORCH					By Right	By Right
DETACHED HOUSE BUILDING TYPE	with STOOP					By Right	By Right
	with PROJECTING PORCH					By Right	By Right
	with ENGAGED PORCH					By Right	By Right
CARRIAGE HOUSE BUILDING TYPE						By Right	By Right
CIVIC BUILDING TYPE		By Right	By Right	By Right	By Right	By Right	By Right

Shaded areas represent Building Types that are not permitted in specified Public Realm Context Area.

2005.04 SUMMARY OF BUILDING TYPES PERMITTED IN EACH CONTEXT AREA

BUILDING TYPE WITH FRONTAGE OPTION		CONTEXT AREAS						
		DT DOWNTOWN	MS MAINSTREET	MSW MAINSTREET WATERFRONT	NC NEIGHBORHOOD CORE	NE NEIGHBORHOOD EDGE	UR URBAN RESIDENTIAL	UR-TN TRADITIONAL NEIGHBORHOOD
MIXED-USE BUILDING TYPE	with STOREFRONT	By Right	By Right	By Right	By Right	By Right		
	with BALCONY	By Right	By Right	By Right	By Right	By Right		
	with TERRACE	Conditional	Conditional	Conditional	Conditional	Conditional		
	with FORECOURT	By Right	By Right	By Right	By Right	By Right		
	with DRIVE-THROUGH				By Right	By Right		
RETAIL BUILDING TYPE	with STOREFRONT		By Right	By Right	By Right	By Right		
	with TERRACE		Conditional	Conditional	Conditional	Conditional		
	with DRIVE-THROUGH				By Right	By Right		
FLEX BUILDING TYPE	with STOREFRONT		By Right	By Right	By Right	By Right		
	with TERRACE		Conditional	Conditional	Conditional	Conditional		
	with FORECOURT		By Right	By Right	By Right	By Right		
	with DOORYARD		By Right	By Right	By Right	By Right		
COTTAGE RETAIL BUILDING	with STOREFRONT				By Right	By Right		
	with DOORYARD				By Right	By Right		
	with STOOP				By Right	By Right		
LIVE / WORK BUILDING TYPE	with STOREFRONT		By Right	By Right	By Right	By Right		
	with DOORYARD		By Right	By Right	By Right	By Right	At corner lots only	
	with LIGHTWELL		By Right	By Right	By Right	By Right		
	with STOOP		By Right	By Right	By Right	By Right	At corner lots only	
LARGE MULTI-PLEX BUILDING TYPE	with FORECOURT		By Right	By Right	By Right			
	with DOORYARD		By Right	By Right	By Right			
	with STOOP				By Right			
	with PROJECTING PORCH				By Right			
SMALL MULTI-PLEX BUILDING TYPE	with STOOP				By Right	By Right	By Right*	By Right*
	with PROJECTING PORCH				By Right	By Right	By Right*	By Right*
	with ENGAGED PORCH				By Right	By Right	By Right*	By Right*
ROWHOUSE BUILDING TYPE	with LIGHTWELL		By Right	By Right	By Right			
	with STOOP		By Right	By Right	By Right	By Right	By Right	
	with PROJECTING PORCH				By Right	By Right	By Right	
DUPLEX BUILDING TYPE	with STOOP					By Right	By Right*	By Right*
	with PROJECTING PORCH					By Right	By Right*	By Right*
	with ENGAGED PORCH					By Right	By Right*	By Right*
DETACHED HOUSE BUILDING TYPE	with STOOP					By Right	By Right	By Right
	with PROJECTING PORCH					By Right	By Right	By Right
	with ENGAGED PORCH					By Right	By Right	By Right
CARRIAGE HOUSE BUILDING TYPE						By Right	By Right	
CIVIC BUILDING TYPE		By Right	By Right	By Right	By Right	By Right	By Right	By Right

Shaded areas represent Building Types that are not permitted in specified Public Realm Context Area.

*Existing single family homes may not be converted to duplex and small multiplex. Existing two-family and multi-family homes may add additional units (up to 6 TOTAL units) as long as they meet the minimum unit size defined in this section.



the Missing Middle

Singles, childless couples and empty nesters have two things in common: They are growing in numbers, and they want a unique type of home. Here's how to take advantage.

Over the past 60 years builders and developers have done a great job of building housing at opposite ends of a spectrum: Single-family homes on one end, and stacked flats or garden apartments on the other.

But today, demographics are shifting. Childless and single-person households—in the form of empty-nester baby boomers and 20-something millennials—are growing continuously, and in large numbers. In 1970, 55 percent of American households had no children and 14 percent of

all households were single-person households. By contrast, in 2000, 67 percent of households had no children and 31 percent were single-person households.

Many of these 20-something millennials and empty-nester baby boomers want walkable

Cottage Courts: This cottage court in the East Beach project, designed by Allison Ramsey Architects, integrates several small, detached cottages around a green space, creating a strong community oriented around the space.

ALLISON RAMSEY ARCHITECTS

By Daniel Parolek, AIA

Marketplace



urban living and a different type of home. Duplexes, fourplexes, mansion apartments, and bungalow courts often fit the bill. Because they have long been largely ignored, these types of multifamily homes are often called the “Missing Middle.”

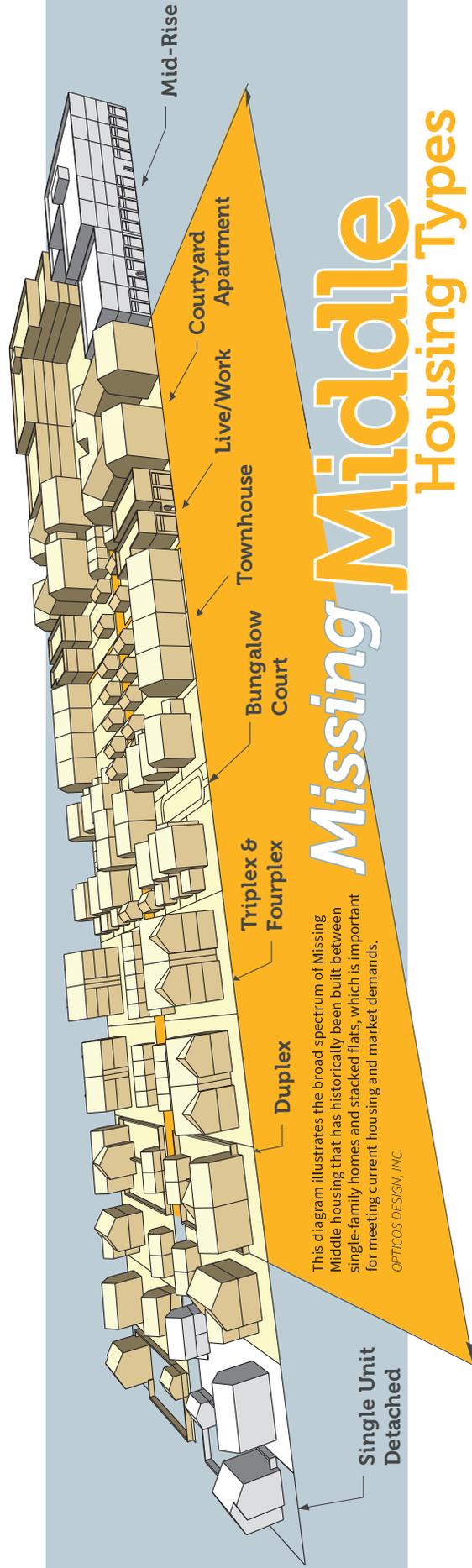
Missing Middle homes are intended for a different market segment than conventional multi-family products. These buyers prefer higher-quality, often smaller, multifamily options as an alternative to living in single-family homes. They are also willing to pay for quality. If done well, these housing types have little or no competition in their respective markets.

Live/Work Unit: This live/work building designed by Opticos Design in the recently developed South Main project in Buena Vista, CO, provides flex space on the ground floor with a separate entrance to the upper unit. The owner can use the space either to incubate their own business or rent it out to generate a monthly income.

JED SELBY, SOUTH MAIN.

Stacked Duplex: These two-unit buildings by Brown Design Studio in Habersham have one unit on the ground floor and a second unit above. Tall ceiling heights are an integral part of the design of these units.

HABERSHAM LAND COMPANY.



Marketplace

HOW TO FILL THE VOID

These buyers, with their smaller and often childless households, will snap up homes that use the right formula, which includes these four elements:



Cottage Court: The Cottage Company's homes feature room-sized covered front porches. Danielson Grove, Kirkland, WA.

THE COTTAGE COMPANY

Interior: An open living room and kitchen provide high-quality, well-designed small spaces. Danielson Grove, Kirkland, WA.

THE COTTAGE COMPANY

2

Smaller, well-designed units



1

A walkable context

Homes for this demographic work best in an existing or newly created walkable urban context. Buyers or renters of these housing types often choose to trade larger suburban homes for neighborhoods that fit their lifestyle. They will happily give up the space and privacy of suburbia for a shorter commute and proximity to amenities such as restaurants, bars, and markets. They love not having a yard to maintain. And they enjoy the sense of community provided by either the development itself or the larger neighborhood context. As Linda Pruitt, President of

the Cottage Company, which is building creative bungalow courts in the Seattle area, says, "The first thing potential customers ask is, 'What can I walk to?'" "Baby boomers are tired of mowing the lawn—they're looking for a more diverse environment," says Chris Leinberger, chairman of the Center for Real Estate and Urban Analysis at George Washington University School of Business. With this in mind, well-designed site plans are vital to the success of these housing types and must be carefully designed, not just engineered.

Architects and builders new to this market often try to force suburban-unit types and sizes into urban contexts. Instead they should think small—as small as 650 to 700 square feet. Though challenging to design, if small spaces are well laid out and

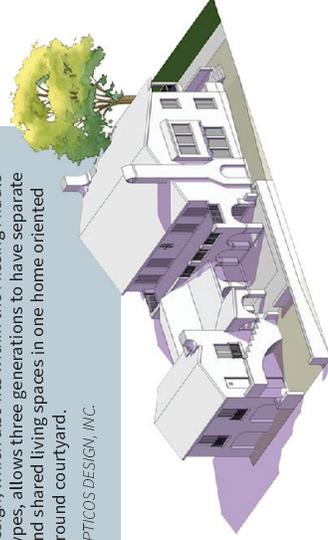
integrate features such as built-ins and tall floor-to-ceiling heights, they can be very comfortable and usable.

If unit sizes are too large, the developer will miss the market—based either on desired size, cost, or both. Smaller unit sizes enable developers to spend more per square foot to achieve a higher quality and hit a different niche market segment or to keep costs down, improving the pro forma performance of a project while making the homes appeal to a larger group of buyers or renters.

Three Generation House:

This multigenerational home designed by Opticos Design, which also fits within the Missing Middle types, allows three generations to have separate and shared living spaces in one home oriented around courtyard.

OPTICOS DESIGN, INC.



Marketplace



Mansion Apartment: This mansion apartment in the East Beach project in Norfolk, VA, by Brown Design Studio, looks like a large home and is seamlessly integrated onto a block with large single-family homes.

OPTICOS DESIGN, INC.

3

Fewer parking spaces

Because of their walkable urban location, Missing Middle homes don't need as much parking. They serve as an attractive alternative for households that choose to own only one car or use their cars less frequently—and they often are oriented on streets that offer supplemental parking. As a starting point, these homes should provide no more than one off-street parking space per unit. One good example: The recently built mansion apartments in the new

East Beach neighborhood of Norfolk, Virginia. These homes include one off-street parking space per unit with ample street parking nearby. By contrast, when builders include more than one off-street parking space, the site plans cannot produce sufficient yields, shifting densities to less than 16 units per acre. Sixteen homes per acre serves as the general rule to support small, neighborhood-serving commercial amenities and existing or future transit alternatives.

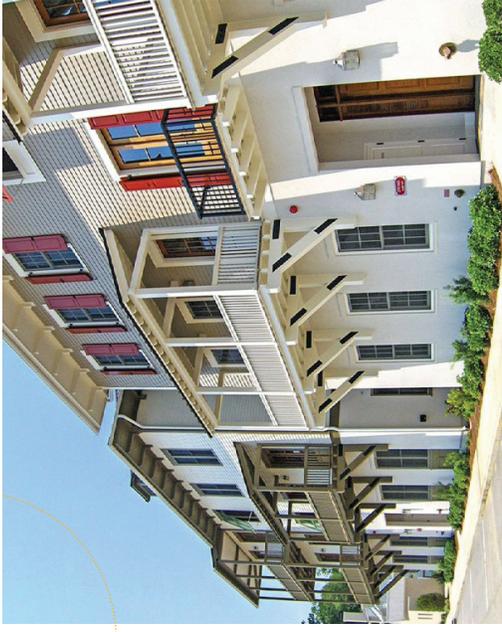
4

They Feel Like a Home

Most important, Missing Middle housing must provide a similar experience and curb appeal of single-family homes. In the best examples, they face onto a neighborhood-scale, tree-lined street, and the buildings are of a scale similar to single-family homes. In addition, owners enter their home directly from a front porch, stoop or small courtyard, rather than down a long corridor to their unit. Providing a high-quality living experience, very similar to a single-family home, allows prospective buyers and renters to more easily shift to these multifamily homes than they would to garden apartments or mid-rise condominiums.

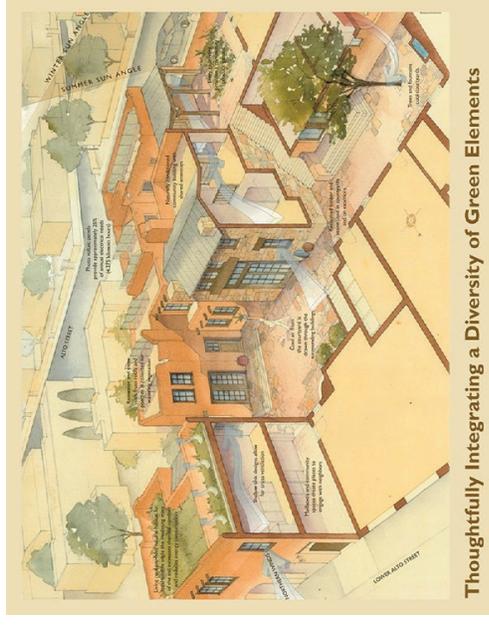
Missing Middle housing is an opportunity to think outside the box. Architects, builders, and developers can creatively address the mismatch between existing housing stock and today's market demands by designing and building these housing types. Those who do are creating vibrant, diverse, sustainable and walkable communities that buyers love. The market is waiting. Will you respond? ■

Daniel Parolek, AIA, is Principal for Opticos Design, Inc.



Village Flats: These six-plex buildings by Brown Design Studio in Habersham, a new community in Beaufort County, S.C., are located adjacent to a new mixed-use town center.

HABERSHAM LAND COMPANY



Thoughtfully Integrating a Diversity of Green Elements

Santa Fe Courtyard Housing: This courtyard housing project in Santa Fe, NM, by Opticos Design integrates six units on a quarter acre oriented around a series of small courtyards. It is intended to serve as a model for green building and affordability.

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

THIS **THIRD AMENDMENT TO DEVELOPMENT AGREEMENT** is made this ___ day of November, 2016 (the "**Third Amendment**"), by and between the **CITY OF MUSKEGON**, a Michigan municipal corporation (the "**City**"), whose address is 933 Terrace Street, Muskegon, Michigan 49441, and **PARKLAND MUSKEGON, LLC**, a Michigan limited liability company of 75 W. Walton Suite A, Muskegon, Michigan 49440, and **PARKLAND MUSKEGON, INC.**, a Michigan corporation whose address is 75 W. Walton Suite A, Muskegon, Michigan 49440 (collectively the "**Company**") (collectively the "**City**" and the "**Company**" may be referred to as the "**Parties**").

RECITALS

WHEREAS, the Company and the City are parties to a certain Development Agreement, dated as of September 4, 2007, as amended by a certain First Amendment to Development Agreement dated as of March 26, 2013 (collectively the "**Development Agreement**"). Unless otherwise defined herein, capitalized terms shall have the meaning given to them in the Development Agreement; and

WHEREAS, the Parties agreed on terms and the Muskegon City Commission approved a Second Amendment to Development Agreement ("**Second Amendment**"), which was contingent upon the Company receiving approval of amendment applications from the Michigan Economic Development Corporation ("**MEDC**") for previously approved incentives; and

WHEREAS, the aforementioned contingency has been met and the Parties desire to enter into this Third Amendment to Development Agreement ("**Third Amendment**") for the mutual benefit of the Parties, to cure any default of the Company under the Development Agreement and Second Amendment, provide for other obligations; and

WHEREAS, the Parties wish to further amend the Development Agreement and Second Amendment on the terms and conditions set forth in this Third Amendment (collectively the "**Development Agreement**", "**Second Amendment**", and "**Third Amendment**" are referred to as the "**Agreement**").

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **INCORPORATION OF RECITALS AND DEFINED TERMS.** The above recitals are hereby incorporated into this Third Amendment as if fully set forth herein.

2. **COMPANY AGREEMENT.** The following subsections in Paragraph 2 of the Development Agreement are amended to read as follows:

- 2.1 Redevelopment of the former Hackley Bank Building, at the corner of 1st Street and Western Ave. in downtown Muskegon, an 8 story structure constructed in 1916, to be renovated and adaptively reused as 47 market rate housing units on

floors 3 through 8, and commercial units on the 1st and 2nd level (and possibly the lower level) (the "**Project**").

2.2 Unless otherwise amended by this Third Amendment, the performance of all other undertakings set forth in this application.

3. **SALE TO THE CITY.** The Parties agree to initially use the City Parking Lot identified in Paragraph 3 of the Second Amendment as a single large lot. However, if the Company determines that its guest, residents, tenants and owners are leaving the Project due to parking inconveniences, the Company may, with two (2) months written notice, inform the City of its need for parking restrictions and the parking allocation procedure set forth in the Second Amendment shall be implemented. In addition, the Parties agree to execute a ninety-nine (99) year lease for one dollar (\$1.00) in lieu of the non-revocable, appurtenant, perpetual and exclusive easement identified in Paragraph 3 of the Second Amendment, however, such lease to provide the exact same benefits to the Company.

4. **GARAGES AND ENTRANCE.** Until the garages identified in Paragraph 4 of the Second Amendment are constructed, the City may construct surface parking lots in the garage easement area for use as described in the Second Amendment.

5. **CLOSING.** Subject to the other provisions of this Third Amendment, the "**Closing**" of the transaction contemplated in Paragraph 3 of the Second Amendment will be held at a date and time agreed to by the Parties, within thirty (30) days of execution of this Third Amendment or final approval of the Neighborhood Enterprise Zone application by the City (as described in Paragraph 9 of this Third Amendment), whichever occurs later. If the Parties are not able to agree on such a date and time, the Closing will be at 2:00 p.m. on the 30th day, or the next business day if the 30th day is a holiday or weekend. At Closing, Seller will deliver copies of the plans of the 24 units previously planned to be built on the Property that is being transferred to the City.

6. **CONSTRUCTION TIMELINE.** The construction timeline outlined in Paragraph 9 of the Second Amendment is amended as follows:

6.1 The Company shall begin pressure-washing or sand blasting the exterior of the Project by November 15, 2016, or within two (2) weeks of the final approval of the Neighborhood Enterprise Zone application by the City, whichever is later (weather permitting).

6.2 The Company shall apply for building and construction permits by December 15, 2016, or within six (6) weeks of the final approval of the Neighborhood Enterprise Zone application by the City, whichever is later.

6.3 The Company shall complete the exterior renovation of the Project by September 1, 2017, which will include replacing or repairing the exterior walls, windows, panels, doors and entry ways of the Project, as more particularly described in the attached **Exhibit A**, except for sections of the exterior that must remain open to

accommodate the interior renovations. Any exterior sections that are left unfinished to accommodate interior renovations and the new exterior fire escape shall be completed by June 30, 2018.

- 6.4 The Company shall complete the interior renovations of Floors 3 through 8 by June 30, 2018, which includes construction of 47 market rate housing units. The Company shall complete interior raw white box renovations of Floors 1 and 2 by December 31, 2018. For the purpose of this Agreement, "raw white box" shall include rough mechanical installation of rough fire suppression, rough HVAC, rough electrical and plumbing for the space, as well as filling the large holes in the first floor of the Project with concrete. It shall not include dry walling ceilings or walls, adding new interior walls, plugs and outlets, light fixtures, or painting.
- 6.5 The City and its departments shall ensure all building and construction permits and occupancy permits are issued in a timely manner and that no undue hardship is placed on the Company to receive these permits (honoring 11/16/2015 Plan Review attached as **Exhibit B**). The City shall also work with the Company to ensure that the Project can be built according to the specifications of the City and MEDC.

7. **SPECIAL ASSESSEMENT.** This paragraph replaces Paragraph 10 in the Second Amendment. In a manner that will not create interest expenses or penalties for the Company, a special assessment in the amount of four hundred thousand dollars (\$400,000.00) will be placed in escrow in November 2016 and applied to the December 2018 tax bill for the property located at 285 West Western Avenue ("**Special Assessment**"); however, if the Company meets the conditions outlined in Paragraph 4 of this Third Amendment, the City will not exercise its right to apply and collect the Special Assessment, and the Special Assessment will be discharged and deemed satisfied. The Special Assessment is in lieu of the previously described \$121,330 assessment identified in the Second Amendment. Nothing contained in this provision admits the Company's liability for the Special Assessment in the event this Third Amendment terminates due to the Contingency in Paragraph 9 of this Agreement not being satisfied.

8. **ESCROW DEPOSIT.** Upon execution of this Third Amendment, the Company shall deposit one hundred thousand dollars (\$100,000.00) with the City to be held in escrow ("**Deposit**"). The Deposit shall be released from escrow to the Company within ten (10) days after Company receives a Certificate of Substantial Completion or a Certificate of Occupancy on the 47 units. In the event the Company fails to meet the conditions outlined in Paragraph 4 of this Third Amendment, at no fault of the City, the Company shall forfeit and the City shall apply the Deposit against the balance of the Special Assessment outlined in Paragraph 5 of this Third Amendment.

9. **LISTING OF COMMERCIAL SPACE.** By February 1, 2017, the Company shall list the available commercial space in the Project with a licensed broker in the State of Michigan. The Parties acknowledge that the Company intends to either lease or sell the commercial space in the Project, and any sale of the commercial space shall not be deemed a default by the Company under the Agreement, or the Brownfield Development and Reimbursement Agreement dated August 27, 2012 (the

“**Reimbursement Agreement**”), as amended, nor shall such sale result in the loss of any interest to be paid to the Company under the Reimbursement Agreement.

10. **BROWNFIELD DEVELOPMENT AND REIMBURSEMENT AGREEMENT.** The Parties entered into the Reimbursement Agreement in which the Company is to receive reimbursement for certain eligible activities. Subject to the allowable sale of commercial units on the lower level and the first and second floors, outlined in Paragraph 9 above, in the event the Company sells the Project before the reimbursement of the eligible activities is completed under the Reimbursement Agreement and the net proceeds are in excess of six million six hundred fifty-eight thousand six hundred dollars (\$6,658,600.00), interest reimbursement to the Company shall automatically terminate. The Parties agree to seek approval of an amendment to the Reimbursement Agreement from the Brownfield Redevelopment Authority to increase the cap on eligible activities plus interest to \$1,000,000. The City shall retain the right to pay off the eligible activities early as is currently outlined in the Reimbursement Agreement.

11. **RESALE OF THE BUILDING AND CITY PROFIT SHARING.** Subject to the termination date below, the Parties agree that in the event the Project is sold, and the net proceeds to the Company exceed at closing (after selling commissions and closing costs) six million seven hundred thousand dollars (\$6,700,000.00), then ten percent (10%) of the net proceeds exceeding \$6,700,000.00 shall be paid to the City of Muskegon. If any portion of the Project is sold as a condominium unit, the net proceeds (after commissions and closing costs) shall not trigger the profit sharing defined herein, however, shall be included in the measuring when the \$6,700,000.00 threshold amount is reached. This provision in this agreement automatically terminates without cost to the Company one year after the expiration of the Neighborhood Enterprise Zone tax abatement.

12. **CONTINGENCY.** The obligations of the Company under the Agreement are contingent upon approval of a Neighborhood Enterprise Zone designation by the City and approval of a fifteen (15) year Neighborhood Enterprise Zone abatement application by the City and State of Michigan State Tax Commission. The City agrees to work with the Company to seek approval from all necessary taxing and governmental authorities.

13. **MISCELLANEOUS.**

13.1 Entire Agreement. This is the entire agreement between the Parties regarding the subject matter of this Third Amendment. It may not be modified or amended except in a written amendment executed by both Parties.

13.2 Construction. The terms of this Third Amendment amend and modify the Development Agreement and Second Amendment as if fully stated therein.

13.3 Ratification. All other provisions of the Development Agreement and Second Amendment not specifically modified by this Third Amendment are preserved, confirmed and shall remain in full force and effect.

13.4 Counterparts. This Third Amendment may be signed in counterparts and delivered electronically or by facsimile, and each such counterpart and delivery will be a binding and valid execution and delivery of this Third Amendment.

13.5 Binding Nature. This Third Amendment shall be binding upon the Parties and their subrogees, successors, and permitted assigns.

13.6 Non-Transferrable. The Parties may not sell, assign or transfer their obligations under this Third Amendment, except with written consent of the other. Construction must be completed by a construction company hired by Parkland Muskegon, Inc.

13.7 Legal Counsel. Each of the Parties had the advice of legal counsel (or an opportunity to obtain the same) before entering into this Third Amendment and it is to be interpreted as if it were mutually drafted.

13.8 Authority. Each of the undersigned who execute this document on behalf of an entity represent and warrant that they are authorized by the appropriate agents, members, managers, directors or stockholders of the entity for the purpose of binding the entity to the obligations of this Third Amendment.

THIS THIRD AMENDMENT IS HEREBY EXECUTED ON THE DATE IDENTIFIED ABOVE.

CITY OF MUSKEGON, a Michigan municipal corporation

By: _____

Its: _____

PARKLAND MUSKEGON, INC., a Michigan corporation

By: _____

Jonathan Rooks

Its: President