

October 19, 2005

TO: John Szerlag, City Manager

FROM: Brian P. Murphy, Assistant City Manager/Services
Douglas J. Smith, Director of Real Estate and Development
Mark F. Miller, Planning Director

SUBJECT: AGENDA ITEM – TABLED ITEM – ZONING ORDINANCE TEXT AMENDMENT (ZOTA 216) – Additional Retail Along Major Thoroughfares in the M-1 (Light Industrial) Zoning District

RECOMMENDATION

Two versions have been prepared for your consideration, the Planning Commission Version (Version A) and the City Management Version (Version B). Both versions require a functional relationship with the attached industrial use. The Planning Commission Version does not require common ownership. The City Management Version requires that the retail uses must sell only products that are manufactured, fabricated or stored in the industrial portion of the building. In addition, the retail and industrial uses must have common ownership. These issues were brought up after the Planning Commission made a recommendation to City Council.

In addition, City Council has an active motion that was postponed from the October 17, 2005 Regular Meeting.

The Planning Commission held a public hearing on this item on July 12, 2005 and recommended approval of Version A. City Management recommends approval of Version B. The salient difference between the two versions is Version B (City Management Version) requires that there be a clearly defined functional relationship and common ownership between the industrial and retail uses; Version A (Planning Commission Version) does not include this requirement.

BACKGROUND

The concept of permitting limited retail uses in the M-1 Light Industrial Zoning District initiated from three directions. City Management was charged by the City Manager, with the task of attacking blight and improving the economic sustainability of the industrial sector of the City. At the same time the Planning Commission identified the City's industrial sector is in need of reinvigoration and revitalization. Finally, there are industrial land owners, such as Arie Leibovitz of Ari-El Enterprises, Inc., who approached City Management and the Planning Commission looking for alternatives for M-1 property located on Maple Road. The subject property had interest from a sporting goods store, who wanted to locate a warehouse, corporate office and retail store in one location. The building in question was typical of the Maple Road properties. That is, there is a building with two distinct physical layouts, an office portion located on Maple Road and the industrial portion, behind the office.

City Management and Planning Commission studied the issue and investigated the situation, and it became apparent that the Maple Road properties have a presence from a marketing standpoint. There is logical basis for the desirability to locate retail uses on Maple Road. However, this is an experiment. City Management suggests that limited retail uses be permitted on major thoroughfares and then studied for at least 12 months to determine if it should be expanded.

The intent of the proposed ZOTA is to permit up to 25% of the gross floor area of industrial buildings in the M-1 district to be used for retail purposes. This will provide more opportunities for reuse of vacant industrial buildings along major thoroughfares, with minimal negative impacts. The most significant issue associated with retail and industrial uses sharing buildings will be the availability of adequate parking. City Management and the Planning Commission recognize that industrial properties will have challenges in achieving the retail parking requirements. These issues will be resolved on an individual property basis with the site plan approval process.

There is concern over expanding retail uses to the entire M-1 district. Rental rates for property in the M-1 District are significantly lower than in retail districts. According to City records, industrial buildings lease for approximately \$4 per square foot. This is significantly lower than lease rates for strip retail plaza space (\$12 to \$14 per square foot) and the Somerset Collection (\$40 to \$100 per square foot). This discrepancy creates an unfair advantage for M-1 property owners over established retail properties, which much pay significantly higher rent. Furthermore, it would encourage random retail uses of a low quality throughout the M-1 District. This could have a detrimental effect on established retail and industrial properties.

There are approximately 659 acres of property in the City zoned B-1, B-2, B-3 or H-S. While, there are 1961 acres of M-1 property in the City. If you eliminate four large properties totaling approximately 167 acres that are used for non-industrial purposes (Cambridge Crossing, Homewood Suites Hotel, Midtown Square and Oakland Executive Airport), the total area of M-1 property is 1793 acres. There is approximately three times more area zoned M-1 than B-1, B-2, B-3 and H-S in the City. The potential impacts of permitting uncontrolled retail uses in M-1 on the established business districts could be devastating. The following table summarizes the pros and cons of permitting retail uses throughout the M-1 Light Industrial Zoning District:

| Pros and Cons Permitting Retail Uses Throughout the Entire M-1 District | |
|--|--|
| Pros | Cons |
| Re-use of vacant buildings throughout the entire City. | Unfair competition because of lower rental rates, compared to commercial properties. |
| | Increased traffic above and beyond industrial levels. |
| | Creation of commercial nodes competing with established commercial centers. |
| | Promotes random retail uses in second-class locations. |
| | Potential elimination of M-1 property. |

The total area of M-1 property on major thoroughfares is 757 acres. If you eliminate the 64 acres used by the Oakland Executive Airport, the total area of M-1 property on major thoroughfares is 693 acres. This is only slightly more area than all of the property in the City zoned B-1, B-2, B-3 or H-S. It seems logical to permit retail on major thoroughfares initially and have an opportunity to study the impacts before permitting retail in all M-1 districts. The following table summarizes the pros and cons of requiring that M-1 properties with 25% retail uses must be located on a major thoroughfare:

| Pros and Cons Requiring 25% Retail in M-1 on Major Thoroughfares Only | |
|---|--|
| Pros | Cons |
| Keeps increased traffic to major thoroughfares, which are designed for significant traffic volumes. | Retail would not be permitted on internal streets. |
| The Sign Ordinance (Chapter 85) permits additional signs on major thoroughfares. | Potential elimination of industrial sites. |
| Limits the scope of retail uses in M-1. | |
| Provides exposure on major thoroughfares for retail uses in M-1. | |

City Management recommends that a functional relationship be defined as retail uses selling only those products, or products directly accessory, that are manufactured, fabricated or stored in the industrial portion of the building. This will ensure a clear relationship between the two uses. Without a clear definition, there could be questionable claims of a functional relationship between retail and industrial uses. For example, the industrial portion of the building could be used to manufacture flooring. The retail portion could be a shoe store, with the workers walking on the installed flooring as they sold shoes.

This definition would not eliminate the potential for selling accessory items related to the primary item being sold. For example, if a tile manufacturer sold tiles that were manufactured in the back of the building, the manufacturer could sell glue, grout and trowels. If accessory sales are permitted, they should be limited to products clearly accessory to the product that is manufactured, fabricated or stored in the industrial portion of the building.

It should be noted that there are ongoing projects that will have the effect of assisting with internal M-1 vacancies. There is a City Council Public Hearing scheduled for November 14, 2005 for ZOTA-201. If approved, this text amendment would permit commercial indoor recreation uses throughout the M-1 Light Industrial Zoning District. In addition it is anticipated that the ongoing Maple Road Corridor Study will identify opportunities for vacant industrial properties.

Attachments:

1. Draft ZOTA 216 Planning Commission Version (Version A).
2. Draft ZOTA 216 City Management Version (Version B).
3. Minutes from July 12, 2005 Planning Commission meeting.

Prepared by RBS, MFM

cc: File/ ZOTA 216

G:\ZOTAs\ZOTA 216 Commercial Uses in M-1\CC Public Hearing Memo 10 24 05.doc

CITY OF TROY
AN ORDINANCE TO AMEND
CHAPTER 39 OF THE CODE
OF THE CITY OF TROY
CITY COUNCIL PUBLIC HEARING DRAFT
Version A - Planning Commission Version

The City of Troy ordains:

Section 1. Short Title

This Ordinance shall be known and may be cited as an amendment to Chapter 39 of the Code of the City of Troy.

Section 2 – Amendment to Article III of Chapter 39

Article XXVIII of Chapter 39 of the Code of the City of Troy is amended to add a new section 28.30.09 permitting retail uses subject to Special Use Approval in the M-1 Light Industrial District, to read as follows:

28.30.09 Retail uses, subject to the following:

- A. The retail use occupies no more than twenty-five percent (25%) of the gross floor area of a building that is otherwise used for industrial purposes.
- B. There shall be a functional relationship between the retail use and the industrial use.
- C. The building shall front on a major thoroughfare as classified on the City of Troy Transportation Plan.

28.30.109 Other uses of a similar character to those permitted above, and which will not be injurious or have an adverse effect on adjacent areas, and may therefore be permitted subject to such conditions, restrictions and safeguards as may be deemed necessary in the interest of public health, safety and welfare.

Section 3. Savings

All proceedings pending, and all rights and liabilities existing, acquired or incurred, at the time this Ordinance takes effect, are hereby saved. Such proceedings may be consummated under and according to the ordinance in force at the time such proceedings were commenced. This ordinance shall not be construed to alter, affect, or abate any pending prosecution, or prevent prosecution hereafter instituted under any ordinance specifically or impliedly repealed or amended by this ordinance adopting this penal regulation, for offenses committed prior to the effective date of this ordinance; and new prosecutions may be instituted and all prosecutions pending at the effective date of this ordinance may be continued, for offenses committed prior to the effective date of this ordinance, under and in accordance with the provisions of any ordinance in force at the time of the commission of such offense.

Section 4. Severability Clause

Should any word, phrase, sentence, paragraph or section of this Ordinance be held invalid or unconstitutional, the remaining provision of this ordinance shall remain in full force and effect.

Section 5. Effective Date

This Ordinance shall become effective ten (10) days from the date hereof or upon publication, whichever shall later occur.

This Ordinance is enacted by the Council of the City of Troy, Oakland County, Michigan, at a regular meeting of the City Council held at City Hall, 500 W. Big Beaver, Troy, MI, on the _____ day of _____, _____.

Louise Schilling, Mayor

Tonni Bartholomew, City Clerk

CITY OF TROY
AN ORDINANCE TO AMEND
CHAPTER 39 OF THE CODE
OF THE CITY OF TROY
CITY COUNCIL PUBLIC HEARING DRAFT
Version B – City Management Version

The City of Troy ordains:

Section 1. Short Title

This Ordinance shall be known and may be cited as an amendment to Chapter 39 of the Code of the City of Troy.

Section 2 – Amendment to Article III of Chapter 39

Article XXVIII of Chapter 39 of the Code of the City of Troy is amended to add a new section 28.30.09 permitting retail uses subject to Special Use Approval in the M-1 Light Industrial District, to read as follows:

28.30.09 Retail uses, subject to the following:

- A. The retail use shall not exceed twenty-five percent (25%) of the gross floor area of a building that is used for industrial purposes.
- B. There shall be a functional relationship between the retail use and the industrial use, as determined by one of the following:
 - i. The retail use sells only products, or products directly accessory thereto, that are manufactured or fabricated in the industrial portion of the building.
 - ii. The retail use sells only products, or products directly accessory thereto, that are stored in the industrial portion of the building.
- C. The industrial and retail uses shall have common ownership.
- D. The building shall front on a major thoroughfare as classified on the City of Troy Transportation Plan.

28.30.109 Other uses of a similar character to those permitted above, and which will not be injurious or have an adverse effect on adjacent areas, and may therefore be permitted subject to such conditions, restrictions and safeguards as may be deemed necessary in the interest of public health, safety and welfare.

Section 3. Savings

All proceedings pending, and all rights and liabilities existing, acquired or incurred, at the time this Ordinance takes effect, are hereby saved. Such proceedings may be consummated under and according to the ordinance in force at the time such proceedings were commenced. This ordinance shall not be construed to alter, affect, or abate any pending prosecution, or prevent prosecution hereafter instituted under any ordinance specifically or impliedly repealed or amended by this ordinance adopting this penal regulation, for offenses committed prior to the effective date of this ordinance; and new prosecutions may be instituted and all prosecutions pending at the effective date of this ordinance may be continued, for offenses committed prior to the effective date of this ordinance, under and in accordance with the provisions of any ordinance in force at the time of the commission of such offense.

Section 4. Severability Clause

Should any word, phrase, sentence, paragraph or section of this Ordinance be held invalid or unconstitutional, the remaining provision of this ordinance shall remain in full force and effect.

Section 5. Effective Date

This Ordinance shall become effective ten (10) days from the date hereof or upon publication, whichever shall later occur.

This Ordinance is enacted by the Council of the City of Troy, Oakland County, Michigan, at a regular meeting of the City Council held at City Hall, 500 W. Big Beaver, Troy, MI, on the _____ day of _____, ____.

Louise Schilling, Mayor

Tonni Bartholomew, City Clerk

G:\ZOTAs\ZOTA 216 Commercial Uses in M-1\ZOTA 216 CC Public Hearing Draft City Mgt
Version 10 17 05.doc

13. PUBLIC HEARING – ZONING ORDINANCE TEXT AMENDMENT (ZOTA 216) – Article 28.00.00 Additional Retail Along Major Thoroughfares in the M-1 (Light Industrial) Zoning District

Mr. Miller presented a summary of the proposed zoning ordinance text amendment relating to additional retail along major thoroughfares in the M-1 zoning district. Mr. Miller reported that City Management recommends approval of ZOTA 216 as printed on the draft ZOTA dated June 27, 2005.

Mr. Wright pointed out a typographical error in Section 28.30.09 (A). The word “is” should be deleted.

PUBLIC HEARING OPENED

Arie Leibovitz of Ari-El Enterprises, 29548 Southfield Road, Southfield, was present. Mr. Leibovitz identified himself as the interested party who brought the matter to the attention of the City as a desire and need to accommodate flexibility in properties along the major arteries. Mr. Leibovitz, owner of numerous buildings along the Maple Road corridor, encouraged the members to support the text amendment that would revitalize some of the buildings that are becoming dysfunctional for the industrial use along the corridor.

PUBLIC HEARING CLOSED

Resolution # PC-2005-07-122

Moved by: Schultz
Seconded by: Wright

RESOLVED, That the Planning Commission hereby recommends to the City Council that Article 28.30.09, pertaining to additional retail uses along major thoroughfares in the M-1 Light Industrial Zoning District, be amended as printed on the Proposed Planning Commission Public Hearing Draft Zoning Ordinance Text Amendment, subject to the correction of one typographical error in item A of the proposed text.

Yes: Chamberlain, Khan, Littman, Schultz, Strat, Wright
No: Drake-Batts
Absent: Vleck, Waller

MOTION CARRIED

Ms. Drake-Batts said the proposed amendment is too restrictive and should not be limited to major thoroughfares.