

DATE: January 18, 2006

TO: John Szerlag, City Manager

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

SUBJECT: AGENDA ITEM – PRELIMINARY SITE PLAN APPROVAL (SP 921) – Briggs Park Condominium, east side of Rochester, north side of Lamb, Section 14 – R-1T, E-P and R-1C

At the December 13, 2005 Regular meeting, the Planning Commission granted Preliminary Site Plan Approval to Briggs Park Condominium.

An appeal of the Planning Commission's administrative decision to grant Preliminary Site Plan Approval was filed with the Board of Zoning Appeals on January 3, 2006. According to the application, the applicant is a resident of the Shallowbrook Subdivision and is also a representative of the Shallowbrook Subdivision Homeowners Association.

Section 43.70.01 of the Zoning Ordinance provides the Board of Zoning Appeals with the authority "to hear, and decide appeals from any decision of the Director of Building and Zoning in the enforcement of this Chapter which falls within the jurisdiction of the Board of Zoning Appeals".

The item was considered by the Board of Zoning Appeals at the January 17, 2006, meeting. The Board of Zoning Appeals passed a resolution to take no further action on the appeal request as it was determined by the City Attorney's Office that they had no jurisdiction to act on the request.

Attachments:

1. Briggs Park Condominium Maps and Plans
2. Minutes from December 13, 2005 Planning Commission Regular meeting.
3. Application for Hearing Board of Zoning Appeals.
4. Letter from City Attorney, dated January 12, 2006.
5. Draft minutes (excerpt) from January 17, 2006 BZA meeting.

cc: Applicant
File/SP-921 Briggs Park Condominiums

CITY OF TROY



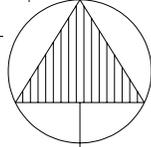
SITE PLAN REVIEW
PROPOSED BRIGGS PARK CONDOMINIUM
NORTHEAST CORNER OF ROCHESTER RD. & LAMB
SEC. 14 (SP-921)

SITE PLAN REVIEW
PROPOSED CONDOMINIUM DEVELOPMENT





SITE PLAN REVIEW
Prop. Condominium Development



NORTH

SITE PLAN REVIEW

7. **SITE PLAN REVIEW (SP 921)** – Proposed Briggs Park Condominium, North side of Lamb, East side of Rochester Road, Section 14 – R-1T, R-1C and E-P

Mr. Savidant presented a summary of the Planning Department report for the proposed Briggs Park Condominium, and reported that it is the recommendation of the Planning Department to approve the site plan as submitted with the condition that the 8-foot wide sidewalk on the east side of Rochester Road is concrete, as opposed to asphalt as shown on the site plan.

Mr. Savidant provided clarification on the setbacks.

The petitioner, Brad Byarski of Michigan Homes Builders, 13400 Canal, Sterling Heights, was present. Mr. Byarski provided a brief history of the site and addressed a previous submission of which the Planning Commission had concerns relating to density, sidewalks, guest parking, and an easement variance. Mr. Byarski reviewed the new site plan and presented drawings and elevations of the proposed development. He agreed to change the sidewalk on the east side of Rochester Road from asphalt to concrete.

[Mr. Kulesza arrived at 8:35 p.m.]

Discussion followed with respect to guest parking, on-street parking, snow removal, and storm water management.

Resolution # PC-2005-12-194

Moved by: Chamberlain

Seconded by: Khan

RESOLVED, That Preliminary Site Plan Approval, as requested for the proposed Briggs Park Condominium, located on the north side of Lamb, east of Rochester, located in Section 14, on approximately 12.13 acres, within the R-1T, E-P and R-1C zoning districts, is hereby granted, subject to the following conditions:

1. The 8-foot wide sidewalk on the east side of Rochester Road shall be concrete, as per City of Troy Engineering Standards.
2. That on-street parking is provided opposite the fire hydrants especially in the area on the north side of the island.
3. Provide bioswales.

Discussion.

Members of the audience asked to speak. Chair Strat said public comment on a site plan review is at the discretion of the Chair, and the floor would not be opened at this time.

Vote on the motion on the floor.

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

MOTION FAILED

Mr. Vleck abstained because he thought the public should have an opportunity to speak on the matter.

Mr. Wright indicated his no vote was for the same reason.

Chair Strat voted no because the petitioner did not adhere to the recommendations of the Environmental Specialist as relates to storm water management.

Resolution # PC-2005-12-195

Moved by: Littman
Seconded by: Vleck

RESOLVED, To reconsider the issue with public input, not limited to what the Chairman chooses.

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

MOTION CARRIED

Ms. Drake-Batts said the submission has been before this body three times, with no participation from the public yet. They have had three times to give their piece.

Chair Strat opened the floor for public comment.

Jim McCauley of 4435 Harold, Troy, was present. Mr. McCauley is President of the Shallowbrook Homeowners Association. He said they have been before this body at the time of the rezoning requests, but notices were not sent out on the proposed development and site plan review. Mr. McCauley provided a brief history of the previous rezoning requests, in which an agreement was worked out with the developer to provide a buffer for the single family homes in the area. Mr. McCauley distributed an informational handout to the members and addressed potential violations/conflicts with the Zoning Ordinance, specifically Article 12.50.05 as

relates to a required 60-foot right of way for property over 10 acres in size and Article 12.50.08 as relates to rear perimeter setbacks. Mr. McCauley said they are not against condominiums but they want an appropriate buffer zone provided between the medium density and single family homes, as originally negotiated.

John Moran of 1110 Robertson, Troy, was present. Mr. Moran expressed concern with the 8-foot retention pond, specifically the potential danger to children. He said there is not a market for condominiums and he would prefer to see site condominiums going in there.

The floor was closed.

Mr. Chamberlain asked for comment from the Assistant City Attorney on the setback concern addressed by the first speaker.

Mr. Motzny replied that he discussed the setback matter with the Planning Director, and Mr. Miller indicated that the setback provisions are being complied with.

Mr. Miller stated that a yard is measured from the structure to the property line, and noted that the definition of yard is in the definition section of the Zoning Ordinance. Mr. Miller said there is nothing in the ordinance that requires the subject property to be under all one zoning district. He said the proposed setback is equal to, or greater than, the single family setback requirement.

Ms. Drake-Batts questioned why residents were not notified of the meeting.

Mr. Miller replied that site plan approval does not require public notification.

Ms. Drake-Batts said she shares the concern of the 8-foot depth of the pond.

Mr. Miller said there are provisions for ponds as long as certain engineering standards are met. Mr. Miller said the depth of a pond is not a zoning issue but is regulated under the engineering development standards.

Chair Strat shared his concern with the pond's accessibility and potential vulnerability. Chair Strat said there are many areas of the site plan that could be improved upon.

It was noted that the site plan indicates a 1:6 slope on the pond and no fence would be required.

Mr. Khan stated that people pay premiums to purchase lots that back up to lakes and he has no problem with the pond.

Resolution # PC-2005-12-196

Moved by: Vleck
Seconded by: Chamberlain

RESOLVED, That Preliminary Site Plan Approval, as requested for the proposed Briggs Park Condominium, located on the north side of Lamb, east of Rochester, located in Section 14, on approximately 12.13 acres, within the R-1T, E-P and R-1C zoning districts, is hereby granted, subject to the following conditions:

1. The 8-foot wide sidewalk on the east side of Rochester Road shall be concrete, as per City of Troy Engineering Standards.
2. The water mains will be moved to the outside of the island area to provide for on-street parking within the island area.

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

MOTION CARRIED

Chair Strat voted no because none of the environmental standards requested by the Environmental Specialist are being implemented into the site plan.

SECTION 2. INTERPRETATION: Appellant respectfully requests an interpretation be made under the discretionary powers vested in the Board of Zoning Appeals - Section 43.75.00.

An appeal is made for an interpretation of the Zoning District as follows: See "Attachment One"

An interpretation is requested for the following reasons: See "Attachment One"

SECTION 3. ORDINANCE PROVISIONS - TEMPORARY PERMIT: Appellant respectfully requests that the following be approved pursuant to the power granted to the Board of Zoning Appeals under Section 43.80.00: _____

SECTION 4. EXPANSION OF NON-CONFORMING USE: Expansion of non-conforming uses or structure is prohibited by Ordinance. However, where literal enforcement causes unnecessary hardship, an expansion may be granted. See Section 43.70.00.

Appellant requests permission to expand a non-conforming use or structure because the following exceptional conditions exist: _____

Has there been any previous appeal involving this property? If Yes, provide date and particulars: _____

Has there ever been a Site Plan approval by the Planning Commission? Yes. If Yes, state date and attach a copy of the Site Plan that was approved and a copy of the Planning Commission minutes.

TEN (10) COPIES ON 8-1/2'X11' SHEETS ARE ATTACHED HERETO

STATE OF MICHIGAN
COUNTY OF Oakland

I, James McCauley HEREBY DEPOSE AND SAY THAT ALL THE ABOVE STATEMENTS AND STATEMENTS CONTAINED IN PAPERS SUBMITTED ARE TRUE AND CORRECT AND GIVE PERMISSION FOR THE BOARD MEMBERS TO CONDUCT A SITE VISIT TO ASCERTAIN PRESENT CONDITIONS.

Date: 1/3/06

[Signature]
Signature of Applicant

SIGNED AND SWORN TO BEFORE ME THIS 3rd DAY OF January 2006.

[Signature]
Notary Public

JOAN C. PANGRCIC
Notary Public, Oakland County, MI
My Commission Expires Oct. 2, 2008

My Commission Expires: 10-2-2008

Attachment One

Appeal of the grant of site plan approval by the Planning Commission on the grounds that the plan does not meet the following ordinance standards or requirements:

1. Allows the use of R-1C (One-Family Residential) zoned property which is not listed as a principal use permitted i.e.; open space, storm water retention and walking paths serving as required elements of a townhouse development within property zoned R-1T. (Sec 10.20.00 et seq)
2. Fails to meet the required 40 foot rear yard perimeter setback from the R-1C district. (Sec 12.50.08)
3. Fails to meet the 70% rear yard open space requirement within the R-1T district. (Sec 12.60.02)
4. Fails to provide the required public road access and circulation through the development. In addition the plan provides secondary access and circulation through the development, on which all of the residential buildings have their sole frontage provided by private street easements. This is contrary to the provisions of the ordinance which only allows for some units to have sole frontage provided by private street easements. (Sec 12.50.04)

RECEIVED

JAN 11 2006

BUILDING DEPT.



TO: Members of Troy Board of Zoning Appeals
FROM: Lori Grigg Bluhm, City Attorney *LB*
Susan M. Lancaster, Assistant City Attorney *JML*
DATE: January 12, 2006
SUBJECT: Item # 11- Appeal of Planning Commission Approval of Briggs Site Condominium

Jim McCauley, on behalf of the Shallowbrook Subdivision Homeowners Association, initiated this item (#11) by filing a petition with the Director of Building and Zoning just prior to the deadline for publication of the agenda. In order to accommodate Mr. McCauley, the item was quickly placed on the January BZA agenda, and the required notification was provided to the neighboring property owners. Subsequently, our office had the opportunity to review the matter, and discovered that the petition was an "appeal" of a Troy Planning Commission site plan approval.

After reviewing the applicable state statutes and Troy ordinance provisions, it is our opinion that the BZA does not have jurisdiction to entertain Mr. McCauley's petition. We recommend that the BZA immediately move to take no further action on the request, since the Board does not have jurisdiction in the matter.

Troy's ordinance, Section 43.30.00, states, in pertinent part:

APPEALS. An appeal may be made to the Board of Appeals by any person or entity affected by a decision of the Director of Building and Zoning.

Troy's ordinance is consistent with the City and Village Zoning Act, (MCL 125.585 (3)), which states as follows:

The board of appeals shall hear and decide appeals from and review any order, requirements, decision, or determination made by an administrative official or body charged with the enforcement of an ordinance adopted under this act. The board of appeals shall also hear and decide matters referred to the board or upon which the board is required to pass under an ordinance adopted under this act. (Emphasis added)

The Planning Commission is not a body "charged with the enforcement of an ordinance." Following this, since neither the state statute nor Troy's ordinance allow for an appeal of a Planning Commission's site plan approval, the BZA does not have jurisdiction over this matter.

If you have any questions, do not hesitate to contact us.

REC'D

JAN 18 2006

PLANNING DEPT.

ITEM #11 – (taken out of order) – INTERPRETATION REQUEST. JIM MCCAULEY, REPRESENTING THE SHALLOWBROOK SUBDIVISION HOMEOWNERS ASSOCIATION, REGARDING THE PROPOSED BRIGGS PARK CONDOMINIUMS, for an interpretation on the validity of a site plan approval for the Briggs Park Condominium Development granted by the Planning Commission under the R-1T (One-Family Attached Residential) provisions of the Troy Zoning Ordinance.

Mr. Fejes explained that the Board had received a memo from the City Attorney indicating that this Board did not have jurisdiction to act on this request.

Motion by Courtney
Supported by Hutson

MOVED, to take no action on the Interpretation Request, Jim McCauley, representing the Shallowbrook Subdivision Homeowners Association, regarding the proposed Briggs Park Condominiums, for an interpretation on the validity of a site plan approval for the Briggs Park Condominium Development granted by the Planning Commission under the R-1T (One-Family Attached Residential) provisions of the Troy Zoning Ordinance.

- City Attorney determined that this Board did not have jurisdiction to act on this request.

Yeas: All – 6

MOTION TO TAKE NO ACTION CARRIED

Mr. Fejes stated that if anyone at the meeting had questions, they could talk to the City Attorney.