DATE: November 7, 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 – ANNOUNCEMENT OF PUBLIC HEARING (NOVEMBER 21, 2005) - REZONING APPLICATION – Northeast corner of Rochester Road and Wattles Road, Section 14 – B-1 to B-2 (Z 710)

RECOMMENDATION

The Future Land Use Plan calls for Low Rise Office at this location. Planning Department records indicate that the northern quadrants of the Rochester/Wattles intersection were given this designation in 1982 in an effort to indicate an end point for the extension of strip commercial development to the north along Rochester Road. Prior to 1982, the property was classified as Neighborhood Service. This rezoning will not extend commercial zoning any further to the north or east; rather, it will permit an expanded list of commercial uses in an existing commercially viable retail strip center.

The parcel is located at the intersection of Wattles and Rochester Road, one of the busiest major thoroughfares in Troy. The existing B-1 zoning is compatible with abutting uses and zoning districts, as is the proposed B-2 zoning. The commercial zoning is bordered by O-1 to the north and P-1 to the east, both districts serving to buffer the corner from residential zoning districts. The potential uses that would be permitted under B-2 zoning would be appropriate in this location, including a music store.

Most of the parcel has been zoned B-1 since 1954, as shown on the earliest available version of the City of Troy Zoning District Map. It has been used for commercial purposes since that time. The eastern portion of the parcel was zoned from O-1 and R-1C to B-1 and P-1 in 1985.

The Planning Commission recommended approval of the rezoning request at the October 25, 2005 Special/Study meeting. City Management recommends approval of the rezoning request.

BACKGROUND

At the October 11, 2005 Regular meeting, the Planning Commission suggested that the applicant apply to the Board of Zoning Appeals for an interpretation of the Zoning Ordinance, as related to whether a music store is considered a permitted use in the B-1

Local Business District. The applicant submitted an application for a rezoning and a BZA interpretation. The applicant may, at their request, withdraw either application or continue both applications. The interpretation request will be considered at the November 15, 2005 Board of Zoning Appeals meeting.

GENERAL INFORMATION

Name of Owner / Applicant:
The owner and applicant is Matthew Jonna of JLJ Investments, LLC.

Location of Subject Property:
The property is located on the northeast corner of Rochester Road and Wattles Road in Section 14.

Size of Subject Parcel:
The parcel is approximately 2.7 acres in area.

Current Use of Subject Property:
The property is presently used as a retail center. Tenants include Blockbuster, Papa Romano's, Ridley's Bakery and Cafe, Fedex Kinko's and Accent Florist.

Current Zoning Classification:
B-1 Local Business District.

Proposed Zoning of Subject Parcel:
B-2 Community Business District.

Proposed Uses and Buildings on Subject Parcel:
The applicant wishes to rezone the parcel to B-2 so that he can lease vacant tenant space to Marshall Music. The Director of Building and Zoning determined that music stores are not permitted uses in the B-1 District and are permitted in the B-2 District.

Current Use of Adjacent Parcels:
North: Office and condominium.
South: Service station and daycare center.
East: Single family residential.
West: Bank.

Zoning Classification of Adjacent Parcels:
North: O-1 Office Building.
South: B-1 Local Business.
East: P-1 Vehicular Parking.
West: O-1 Office Building.

ANALYSIS

Range of Uses Permitted in the Proposed B-2 Zoning District and Potential Build-out Scenario:

PRINCIPAL USES PERMITTED:

Any retail business or service establishment permitted in B-1 Districts as Principal Uses Permitted and Uses Permitted Subject to Special Conditions, except as otherwise provided in the Article, subject to the regulations applicable in the following sections of this Article.

Any retail business whose principal activity is the sale of merchandise in an enclosed building, except for those limited to or first permitted in the B-3 General Business District.

Any service establishment of a showroom or workshop nature, of an electrician, decorator, dressmaker, tailor, baker, painter, upholsterer; or an establishment doing radio or home appliance repair, photographic studios and reproduction and similar service establishments that require a retail adjunct.

Business establishments which perform services on the premises, such as but not limited to: banks, credit unions, savings and loan associations, loan companies, insurance offices, travel services, and real estate offices.

Private clubs, fraternal organization, and lodge halls.

Restaurants, or other places serving food or beverage, except those having the character of a drive-in or open front store.

Theaters, assembly halls, concert halls or similar places of assembly, when conducted completely within enclosed buildings.

Business schools and colleges or private schools operated for profit, not including nursery schools.

Other uses similar to the above uses.

Accessory structures and uses customarily incident to the above permitted uses.

USES PERMITTED SUBJECT TO SPECIAL CONDITIONS:

Drive-up windows or service facilities, as accessory to principal uses within B-2 districts, apart from restaurants,

Outside seating areas, of twenty (20) seats or less, for restaurants or other food service establishments,

USES PERMITTED SUBJECT TO SPECIAL USE APPROVAL

Drive-up windows or service facilities, as an accessory to restaurants permitted within this district

Bowling alley, billiard hall, indoor archery range, indoor skating, rinks, indoor tennis courts, athletic or health clubs, or similar forms of indoor commercial recreation, when the subject uses are located at least 100 feet from any Residential District.

Open air business uses when developed as uses subordinate to primary uses and structures within the B-2 District as follows:

A. Retail sales of plant material not grown on the site, and sales of lawn furniture, playground equipment and garden supplies.

B. Recreational space providing shuffle board, miniature golf, tennis, or similar outdoor recreation, when part of a planned development.

C. Outdoor driver training and testing areas on or abutting the site of a driving school.

Outside seating areas, in excess of twenty (20) seats, for restaurants, or other food service establishments

Facilities within a retail establishment for installation, in vehicles, of items sold at retail at that location.

Vehicular and Non-motorized Access:
Access to the parcel is provided on both Rochester and Wattles.

Potential Storm Water and Utility Issues:
The applicant is proposing to use an existing vacant building. No construction is proposed.

Natural Features and Floodplains:
The Natural Features Map does not indicate any significant natural features located on the property.

Compliance with Future Land Use Plan:
Neither the existing zoning nor the proposed zoning complies with the Future Land Use Plan. The property is classified on the Future Land Use Plan as Low Rise Office, which correlates with the O-1 Office Building District. According to Planning Department records, the parcel was classified on the Master Plan as Low Rise Office since the Commercial Area Plan Amendment in 1982, in an effort to indicate an end point for the extension of strip commercial development to the north along Rochester Road. Prior to being amended in 1982 the plan classified the parcel as Neighborhood Service Center, which is a commercial designation.

Compliance with Location Standards:
There are no location standards for the B-2 Community Business District.

Attachments:
1. Maps.
2. Minutes from the October 11, 2005 Planning Commission Regular meeting.
3. Minutes from the October 25, 2005 Planning Commission Special/Study meeting.
4. Letter from applicant, received by Planning Department on September 12, 2005.

Prepared by RBS, MFM

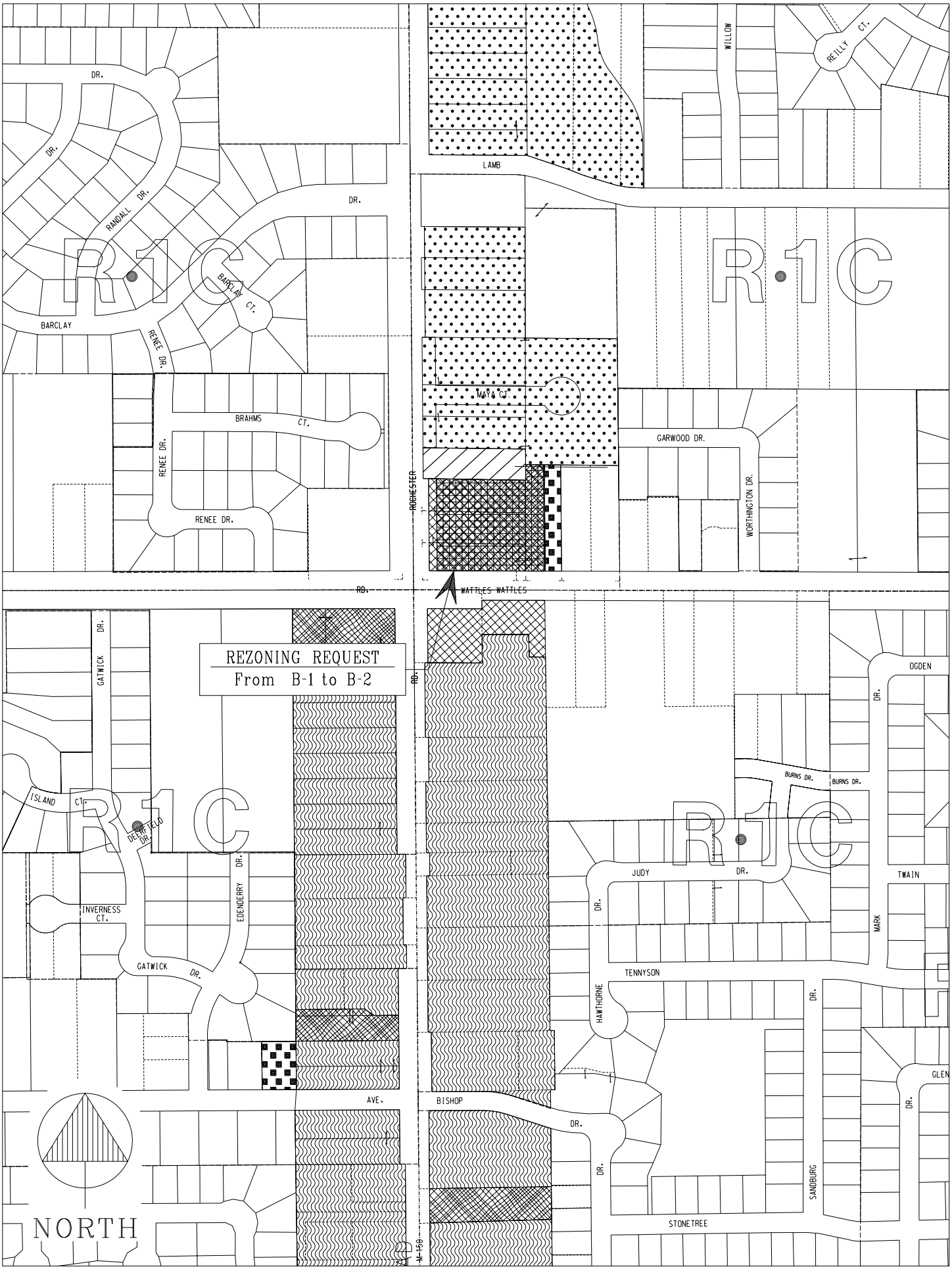
cc: Applicant
File (Z 710)

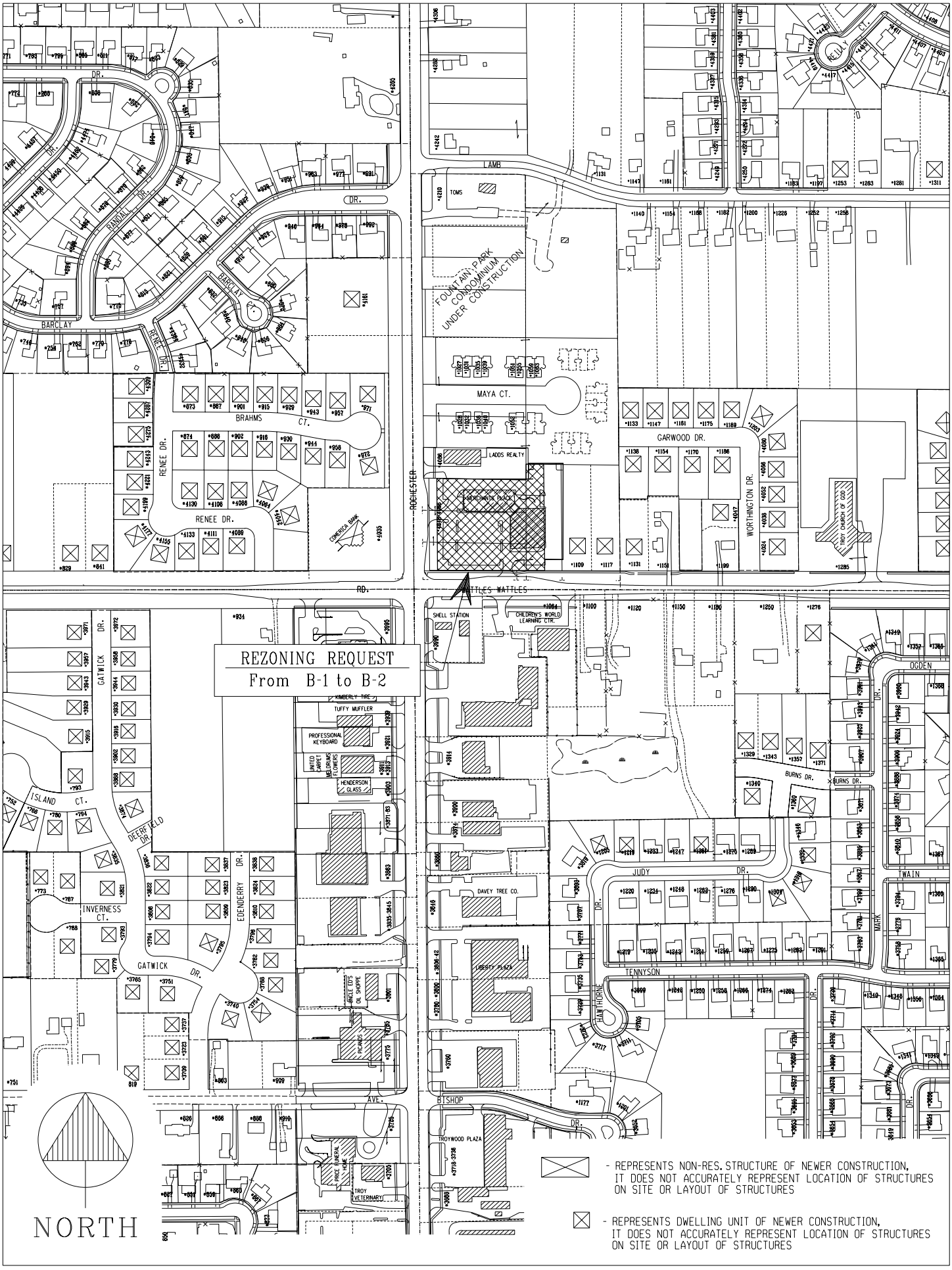
G:\REZONING REQUESTS\Z-710 Rochester Rd Retail Center Sec 14\Announcement of CC Public Hearing ZOTA 710 11 21 05.doc

CITY OF TROY

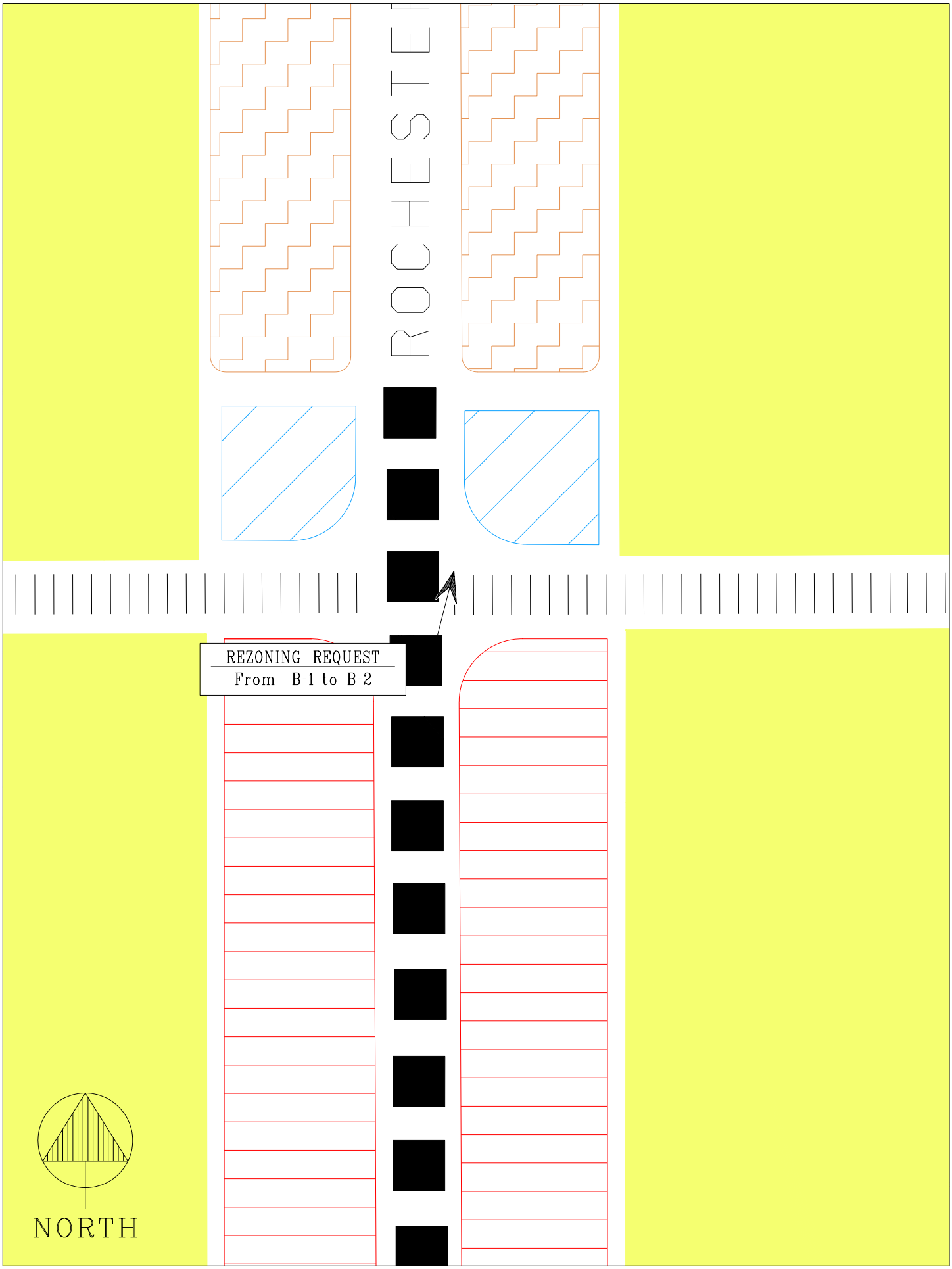
PREPARED BY CITY OF TROY PLANNING DEPT.

REZONING REQEUST
FROM B-1 TO B-2
EX. 4048-4060 ROCHESTER RD RETAIL CENTER
PROPOSED MARSHALLS MUSIC
NE CORNER WATTLES & ROCHESTER RD
SEC. 14 (Z-710)
REZONING REQEUST
FROM B-1 TO B-2
0 100 200
Feet


REZONING REQUEST
From B-1 to B-2
R-1C
R-1C
R-1C
R-1C
DR.
DR.
RANDALL DR.
DR.
BARCLAY CT.
BARCLAY
RENEE DR.
BRAHMS CT.
RENEE DR.
RENEE DR.
LAMB
WILLOW
REILLY CT.
MAYA CT.
GARWOOD DR.
WORTHINGTON DR.
ROCHESTER
RD.
WATTLES WATTLES
GATWICK DR.
ISLAND CT.
DEERFIELD DR.
INVERNESS CT.
EDENDERRY DR.
GATWICK DR.
AVE.
BISHOP
DR.
DR.
JUDY DR.
BURNS DR.
BURNS DR.
OGDEN DR.
TWAIN
MARK
TENNYSON
HAWTHORNE
DR.
DR.
GLEN
DR.
SANDBURG
STONETREE
NORTH
W 150



Z-710 / SEC. 14 / 09-22-05


ROCHESTER
REZONING REQUEST
From B-1 to B-2
NORTH

REZONING REQUEST

6. PUBLIC HEARING – PROPOSED REZONING (Z 710) – Existing Shopping Center (to include proposed Marshall's Music store), Northeast corner of Rochester Road and Wattles Road (4048-4060 Rochester Road), Section 14 – From B-1 (Local Business) to B-2 (Community Business)

Mr. Savidant presented a summary of the Planning Department report for the proposed rezoning. He referenced communication from the Director of Building and Zoning that provides an interpretation of the Zoning Ordinance as relates to B-1 and B-2 zoning. Mr. Savidant reported that it is the recommendation of City Management to approve the rezoning request.

Marc Swoish of Purtan & Swoish, P.C., 4198 Orchard Lake Road, West Bloomfield, was present to represent the petitioner. Mr. Swoish said the rezoning change would have no dramatic affect on anyone in the City. He said the rezoning would allow Marshall's Music to move from its existing location in Troy, resulting in a long-time vacant space being leased and a viable tenant remaining in the City.

PUBLIC HEARING OPENED

No one was present to speak.

Mr. Schultz asked what zoning district the existing Marshall's Music store is in.

Mr. Miller said he did not know off-hand but would look it up.

Mr. Schultz referenced the interpretation of the Director of Building and Zoning, specifically his comment that Section 20.10.00 states that B-1 zoning was established for "day-to-day convenience, shopping and service needs of persons residing in adjacent residential areas." Mr. Schultz questioned how Marshall's Music, a local business, would not be appropriate when there are two national chain stores currently existing in the retail center. He said rezoning from B-1 to B-2 would further the inconsistency of the Future Land Use Plan, and he believes that Marshall's Music is equally consistent in the local business zone as is Kinko's, Blockbuster Video and the florist shop. Mr. Schultz suggested the petitioner apply to the Board of Zoning Appeals (BZA) for an interpretation of the Zoning Ordinance, and the Planning Commission hold the rezoning request in an open state until the end of the month.

Mr. Wright agreed that the existing stores at that location are not local businesses but city-wide businesses, and said Marshall's Music should fall under the same classification. Mr. Wright said he lives on the other side of Troy and frequents the various stores in the shopping center.

Chair Strat agreed. He also frequents Kinko's and lives on the opposite side of the city.

Mr. Littman noted people from afar and wide frequented a very well known wine shop previously located in the retail center. Mr. Littman cited an unattended consequence from the proposed rezoning would be that the entire shopping center is bought and developed into something undesirable by the City. He said he would support Marshall's Music going in the location by a means other than rezoning.

Mr. Swoish said discussions with the City led him to believe that the rezoning process would be the most expeditious process to take as well as provide more consistent zoning for the entire retail center. Mr. Swoish said he respectfully disagrees with the original ruling that Marshall's Music is not a B-1 use.

Discussion followed on the scheduling of the rezoning request through the approval process of City Council, and the time frame to obtain an interpretation from the Board of Zoning Appeals.

Mr. Waller said consideration should be given to the reasonableness of having a consistent zoning classification for the whole corner.

Mr. Miller reviewed the allowable uses and required setbacks in B-2 zoning.

Resolution # PC-2005-10-164
Moved by: Schultz
Seconded by: Wright

RESOLVED, That the Planning Commission disagrees with the Building and Zoning Department's interpretation of the City of Troy Zoning Ordinance related to musical instrument sales, rental, service and/or musical instruction. These uses fall within the category of specialty shops (Section 20.20.02) and personal service establishments (Section 20.20.03), which are both uses permitted by right in the B-1 Local Business Zoning District. The Planning Commission requests that the applicant seek an interpretation from the Board of Zoning Appeals.

BE IT FURTHER RESOLVED, That the Future Land Use Plan classifies the parcel as Low Rise Office. Neither the existing B-1 zoning district nor the proposed B-2 zoning district is consistent with the Future Land Use Plan. Prior to considering a rezoning request that is inconsistent with the Future Land Use Plan, the Planning Commission prefers that the applicant attempt to solve this use issue without rezoning the property. The Planning Commission would respectfully request that the Board of Zoning Appeals review this subject during its meeting scheduled for October 18, 2005.

BE IT FINALLY RESOLVED, That the B-1 to B-2 rezoning request located on the northeast corner of Rochester and Wattles, within Section 14, being approximately 2.7 acres in size, be tabled to the October 25, 2005 Special/Study Meeting.

Discussion on the motion on the floor.

Mr. Littman said he would prefer to have the item go to the Board of Zoning Appeals for an interpretation.

Chair Strat suggested that the request to be placed on the BZA agenda come directly from Marshall's Music.

Mr. Miller noted the original communication to/from the Director of Building and Zoning was with the President of Marshall's Music Company; the second communication was with the representing attorney.

Vote on the motion on the floor.

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

MOTION CARRIED

Chair Strat announced the Public Hearing would remain open.

Mr. Littman said there is a slim chance for the request to get on the October BZA meeting agenda. He would prefer that the request be handled through the BZA.

Mr. Schultz said nothing in the motion precludes the BZA from acting on the matter at its November meeting should it not make the October agenda. Mr. Schultz said the timing still provides the Planning Commission to take action at its October 25 Special/Study Meeting should it be necessary.

Chair Strat asked what would happen if the Planning Commission took action on the rezoning request at the same time the petitioner seeks an interpretation from the BZA.

Mr. Motzny said the petitioner would have time to withdraw the rezoning request before City Council action, should the BZA overrule the Building Department decision.

Ms. Drake-Batts said she has no problem rezoning the property to B-2.

Mr. Vleck said he has no problem rezoning the property to B-2, but would like to get the BZA's interpretation of the Zoning Ordinance.

Mr. Kulesza said he is familiar with the reason that Marshall's Music wants to move the store location. He questioned the impact any delay in the rezoning process or BZA action would have on the music class schedule.

TABLED ITEM

8. PUBLIC HEARING – PROPOSED REZONING (Z 710) – Existing Shopping Center (to include proposed Marshall's Music store), Northeast corner of Rochester Road and Wattles Road (4048-4060 Rochester Road), Section 14 – From B-1 (Local Business) to B-2 (Community Business)

Mr. Miller presented a summary of the rezoning request that was tabled at the October 11, 2005 Regular Meeting. The applicant's request for interpretation of the Zoning Ordinance is on the November 15, 2005 Board of Zoning Appeals (BZA) agenda. Mr. Miller reported that it is the recommendation of the City Management to approve the rezoning request.

The petitioner was not present.

PUBLIC HEARING OPENED

No one was present to speak.

PUBLIC HEARING CLOSED

Resolution # PC-2005-10-169
Moved by: Wright
Seconded by: Littman

RESOLVED, To table the item to the November 29, 2005 Regular Meeting to allow the Board of Zoning Appeals to address the issue.

Discussion on the motion on the floor.

Mr. Wright said he sees no need to rezone the property, and said Marshal's Music store is no more out of place in the B-1 zoning district than Kinko's, Blockbuster, or some of the other businesses in the shopping center.

There was a lengthy discussion and comments from around the table with respect to going forward with the rezoning request to City Council, obtaining an interpretation from the BZA independently or simultaneously with the rezoning request, the intent of the petitioner to remain in the City, and the review of all B-1 zoning districts.

Vote on the motion on the floor.

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

MOTION FAILED

Mr. Wright said he would support either action that would get Marshall's Music in the shopping center. He personally feels an interpretation from the BZA would be appropriate and the most expeditious action to take.

Members Schultz, Vleck and Drake-Batts agreed that going forward concurrently on both the BZA interpretation and the rezoning request is in the best interest of the City and most expeditious.

Resolution # PC-2005-10-170
Moved by: Schultz
Seconded by: Waller

WHEREAS, The Planning Commission feels that it is of the utmost importance to the economic viability of the City of Troy to encourage desirable businesses to remain and/or locate in the City. Furthermore, the City Management should do everything within its powers to simplify and expedite the processes businesses must follow to establish and/or relocate their operations in our City;

WHEREAS, The Planning Commission disagrees with the Building Department's decision that Marshall's Music does not meet the criteria for locating within the B-1 (Community Business) zoning district, while the same department has ruled that Blockbuster Video and FedEx/Kinko's meet those criteria. While the Planning Commission has recommended and requested that the Board of Zoning Appeals provide an interpretation of the B-1 zoning district as it applies to Marshall's Music, that interpretation will not take place until Tuesday, November 15, 2005;

WHEREAS, it is in the best interest of the citizens of Troy to expedite the ability of Marshall's Music to relocate their business to a new facility within the City. Furthermore, because the most expeditious means of accomplishing same is to recommend the rezoning of the parcel in question from B-1 to B-2 and rezoning that parcel does not create a non-conformity with relation to the new zoning distract;

THEREFORE BE IT RESOLVED, That the Planning Commission hereby recommends to the City Council that the B-1 to B-2 rezoning request, located on the northeast corner of Rochester and Wattles, within Section 14, being approximately 2.7 acres in size, be granted.

Yes: All present (7)
No: None
Absent: Chamberlain, Khan

MOTION CARRIED

MJMGROUP LLC
REAL ESTATE DEVELOPMENT & MANAGEMENT

To Whom It May Concern:

I am the owner, manager and operator of JLJ Investments, L.L.C. ("JLJ"), a Michigan limited liability company that was established to manage the property described in the aforementioned rezoning request. As the Planning Commission and City Council are probably aware, a large portion of the property has been vacant for almost three years, in spite of JLJ's diligent efforts to lease the property. In that time period, JLJ has only received one serious letter of intent to lease the vacant space. That letter of intent was provided by Marshall Music, a large-scale music store that sells musical instruments and provides classes, lessons and instructions on musical instruments.

As the Planning Commission and City Council are probably aware, the property is currently zoned as a B-1 Local Business District. According to the Zoning Department for the City of Troy, Marshall Music's proposed use is not permitted in B-1 Zoning Districts. With that said, however, Marshall Music's proposed use is permitted in B-2 or B-3 Zoning Districts. As such, JLJ has requested that the Planning Commission and City Council rezone the property in question to a B-2 Zoning District so that Marshall Music can operate from the property. Given the fact that the space is currently vacant, the fact that JLJ has been unable to procure a viable tenant for the property in the last three years, and the fact that rezoning the property to a B-2 Zoning District will not negatively impact the surrounding area, the City of Troy and the surrounding community will benefit significantly if the Planning Commission and City Council rezone the property to a B-2 Zoning District.

Rezoning the property will allow JLJ to revitalize the vacant property, and to use the property in a manner consistent with the needs and desires of the citizens of the surrounding area. More importantly, rezoning the property will bring a new business to the area, and new opportunities and conveniences to the inhabitants of the City of Troy. The new use of the property will also make the area a more desirable location for other businesses to relocate to or to establish a presence in the City of Troy.

For the above reasons, JLJ respectfully requests that the Planning Commission and City Council approve the aforementioned rezoning request, and allow it to use the vacant property for a more beneficial use to the community.

Sincerely,

Matthew Jonna

REC'D
SEP 12 2005
PLANNING DEPT.

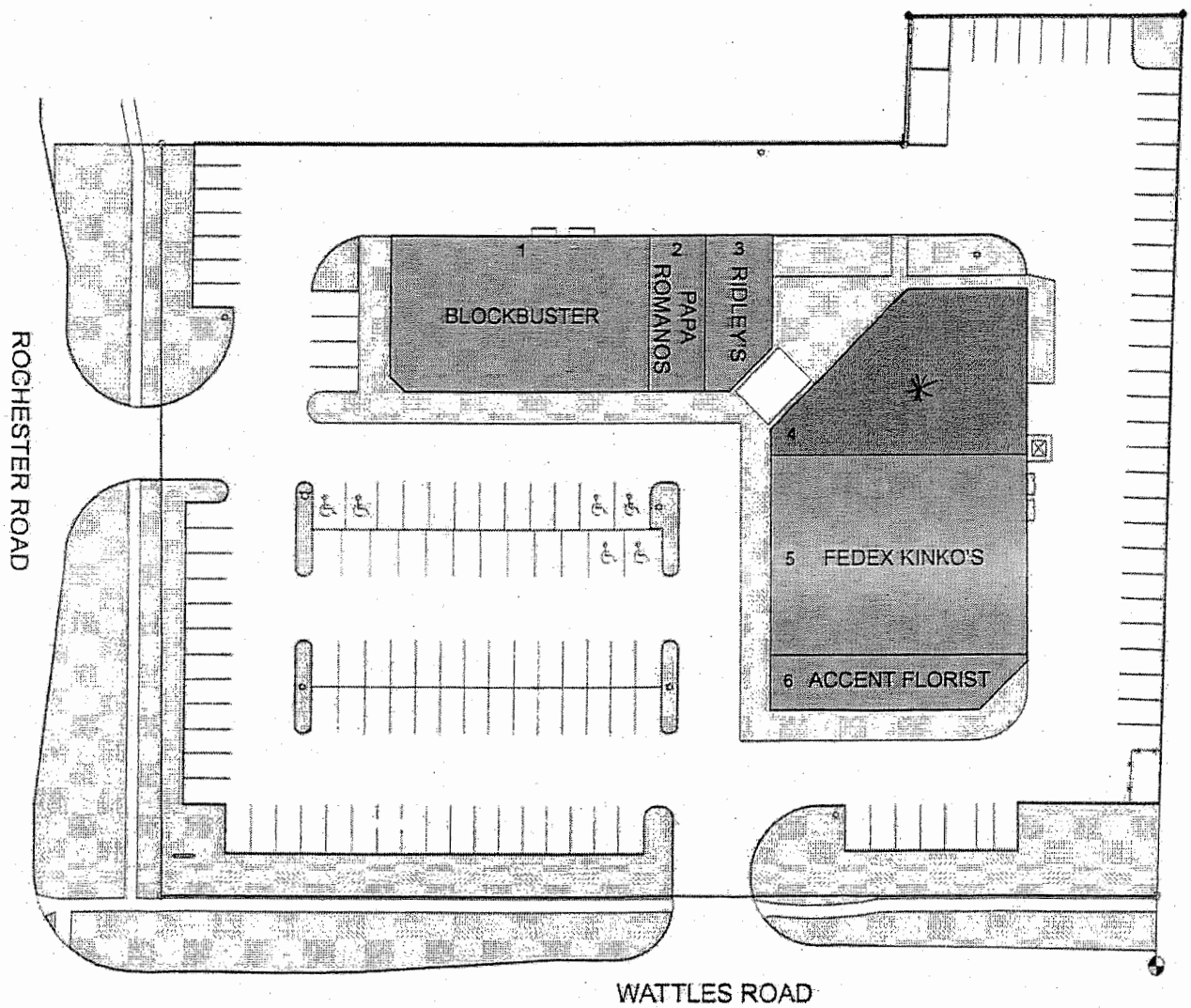
4198 ORCHARD LAKE ROAD / SUITE 250 / ORCHARD LAKE / MICHIGAN 48323
TEL 248.681.5400 FAX 248.681.8434 WEB MJMGROUPLLC.COM

Member of International Council of Shopping Centers

TROY RETAIL CENTER

MJMGROUP LLC

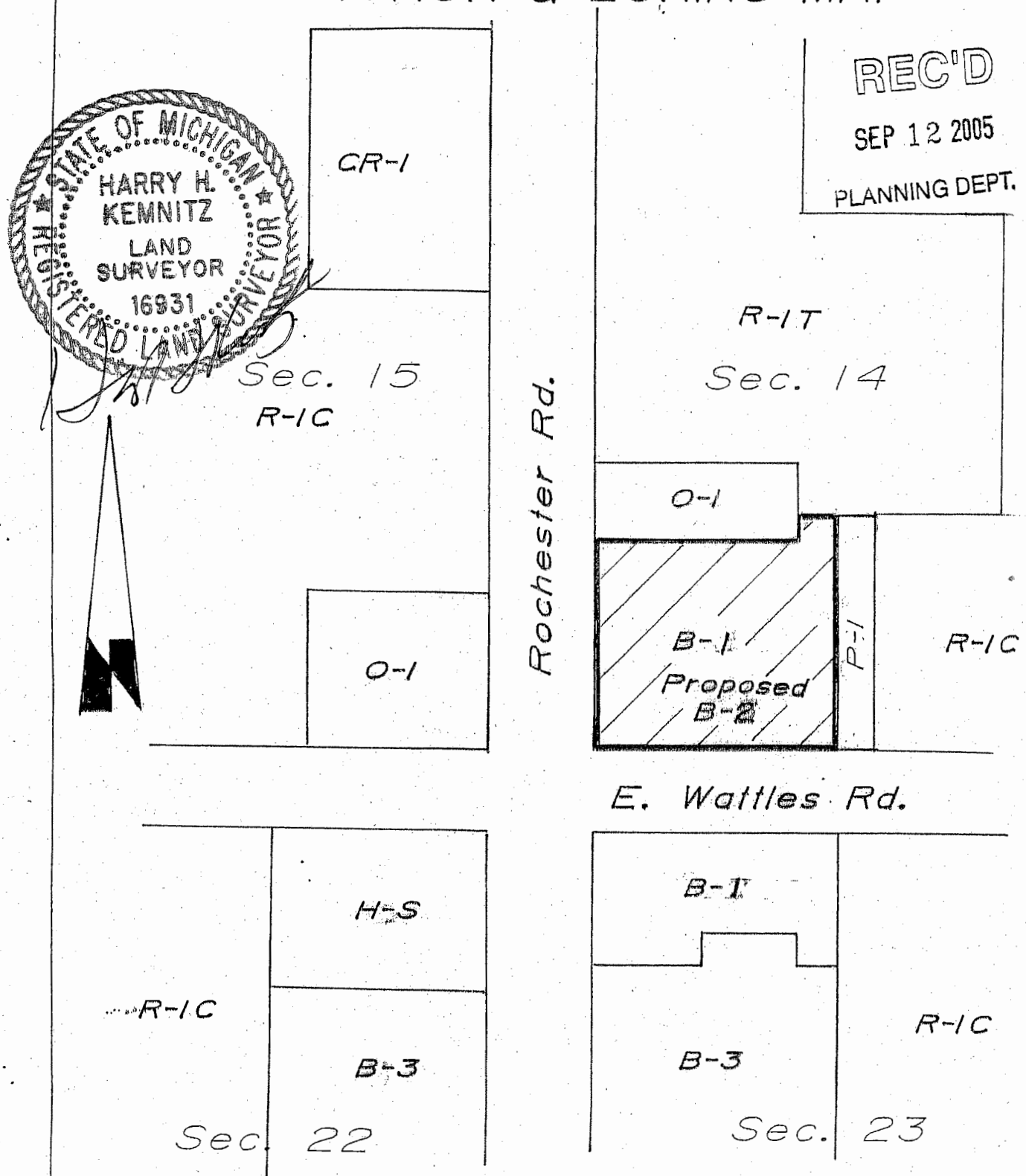
www.mjmgroupllc.com
248.681.5400



NO.	TENANT	SF
1	BLOCKBUSTER	6,000
2	PAPA ROMANOS	1,200
3	RIDLEY'S	1,672
4	AVAILABLE	5,156
5	FEDEX KINKO'S	7,500
6	ACCENT FLORIST	1,820

REC'D
SEP 12 2005
PLANNING DEPT.

SITE LOCATION & ZONING MAP



JOB NO. 8561 SCALE 1" = 200'

DATE 9-07-05

DEL-TEC
Surveying & Engineering
5800 Twelve Mile Rd.
Warren, MI 48092
(586) 573-8288 • Fax (586) 573-8965