November 14, 2005

TO: John Szerlag, City Manager

FROM: Douglas J. Smith, Director of Real Estate and Development
Mark F. Miller, Planning Director

SUBJECT: AGENDA ITEM – PUBLIC HEARING – ZONING ORDINANCE TEXT AMENDMENT (ZOTA 214-B) – Article IV and X, Approval of Group Child Care Homes on a Temporary Basis in the R-1A through R-1E Districts

RECOMMENDATION

On October 3, 2005, City Council adopted a resolution requesting that the Planning Commission set a public hearing to consider a proposed amendment that would allow for Group Child Care Homes in the R-1A through R-1E districts on a temporary basis. This would permit Group Child Care Homes on a temporary basis, until after the City Council conducts a public hearing on proposed ordinance revisions. This temporary text amendment would be rescinded at the same time that the new provisions related to Group Child Care Homes are adopted.

The Planning Commission held a public hearing on this item at the October 25, 2005 Special/Study meeting and recommended approval of the proposed amendment. City Management concurs with the Planning Commission recommendation.

BACKGROUND

The Department of Human Services Office of Children and Adult Licensing adopted revisions to Admincode R 400.1801, which are the official licensing rules for state-licensed child care facilities, on September 13, 2005. Effective January 1, 2006, Group Day Care Homes and Family Day Care Homes shall be known as Group Child Care Homes and Family Child Care Homes, respectively.

There are approximately 20 Group Child Care Homes currently operating in the City of Troy. While all of these Group Child Care Homes have valid State licenses, they are not permitted uses in the City of Troy and therefore are operating illegally. The Planning Commission is currently considering ZOTA 214, a proposed Zoning Ordinance amendment to permit Group Child Care Homes in the R-1A through R-1E districts. City Management had suspended enforcement of the 20 zoning violations as the Planning Commission considered the amendment, but cannot do so indefinitely. The City Charter charges the City Manager with the responsibility of enforcing the laws of the

City of Troy, including the Zoning Ordinance. The proposed text amendment (ZOTA 214-B) permits Group Child Care Homes on a temporary basis and eliminates the City Manager's obligation to cite the 20 Group Child Care Homes with violations.

Note that ZOTA 214-B proposes that the definition for Family Child Care Homes be updated and a new definition for Group Child Care Homes be added.

The Planning Commission intends to hold a Public Hearing on ZOTA 214 at the December 13, 2005 Regular Meeting.

Prepared by RBS, MFM

Attachments:

1. ZOTA 214-B, Temporary Approval of Group Child Care Homes.
2. City Council Resolution from October 3, 2005.
3. Planning Commission minutes from the October 25, 2005 Special/Study meeting (draft).
4. Planning Commission Actions on ZOTA 214.

G:\ZOTAs\ZOTA 214 Group Day Care Homes\CC Public Hearing ZOTA 214-B 11 21 05.doc

CITY OF TROY
AN ORDINANCE TO AMEND
CHAPTER 39 OF THE CODE
OF THE CITY OF TROY
City Council Public Hearing Draft
ZOTA 214-B: Temporary Approval of Group Child Care Homes

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 Articles IV and X of Chapter 39

Article IV Definitions is amended to provide definitions for family child care homes and group child care homes. Article X of Chapter 39 of the Code of the City of Troy is amended to permit group child care homes on a temporary basis by special conditions in the R-1A through R-1E One Family Residential Districts.

(Underlining, except for major section titles, denotes changes.)

04.20.60 FAMILY ~~DAY~~ CHILD CARE HOME: ~~A private residence in which one (1) to six (6) children under the age of eighteen (18) are received for care and supervision from other than a parent or legal guardian for periods of less than twenty-four (24) hours a day, in addition to children related to an adult member of the family by blood, marriage or adoption. Family Day Care Home includes a home that gives care to such unrelated children for more than a total of thirty (30) days during a calendar year.~~ A private residence that the child care provider lives in and cares for up to six unrelated children for more than 4 weeks in a year when the children's parents/guardians are not immediately available.

04.20.68~~9~~ GRADE: the term "grade" shall mean a ground elevation established for the purpose of regulating the number of stories and the height of the building. The building grade shall be the level of the ground adjacent to the walls of the building if the finished grade is level. If the ground is not entirely level, the grade shall be determined by averaging the elevation of the ground for each face of the building.

04.20.69 GROUP ~~DAY~~ CHILD CARE HOME: A private residence that the child care provider lives in and cares for up to 12 unrelated children for more than 4 weeks in a year when the children's parents/guardians are not immediately available.

10.25.05 Group Child Care Homes, as defined in Section 04.20.69, licensed by the State of Michigan and in operation as of [Date of Approval of ZOTA 214-B by City Council], shall be permitted to continue on a temporary basis not to exceed 30 days after the Troy City Council has had the opportunity to conduct a public hearing and take final action on any proposed revisions to Chapter 39, Article X, related to the regulation of Group Child Care Homes, as set forth in ZOTA 214.

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 _____, 2005.

_____
Louise Schilling, Mayor

_____
Tonni Bartholomew, City Clerk

G:\ZOTAs\ZOTA 214 Group Day Care Homes\ZOTA 214-B CC Public Hearing Draft 11 21.doc

F-5 Update and Recommendation Regarding Child Group Day Care Homes in the R-1A through R-1E Zoning Districts

Resolution #2005-10-466
Moved by Beltramini
Seconded by Schilling

WHEREAS, City Council adopted Resolution #CC-2005-09-432, which advised the Planning Commission to advance, at their September 27, 2005 meeting, a recommendation to City Council regarding child group day care homes;

WHEREAS, The Planning Commission conducted a public hearing at the September 27, 2005 Special/Study Meeting, and adopted Resolution #PC-2005-09-152, which tabled action on ZOTA 214 to the December 13, 2005 Regular Meeting, and also to expedite necessary actions to study this item at the next Planning Commission meeting in October.

NOW, THEREFORE, BE IT RESOLVED, That the Troy City Council hereby **REQUESTS** the Planning Commission to set a public hearing to consider a proposed amendment to Chapter 39, Article 10.00 that would temporarily allow for child group day care homes, which are State licensed child group day care homes with 7 to 12 children, to be located in the R-1A through R-1E Zoning Districts until 15 days after the Troy City Council has had the opportunity to conduct a public hearing on any proposed revisions to Chapter 39, Article 10.00.

Yes: All-7

ZONING ORDINANCE TEXT AMENDMENT

9. PUBLIC HEARING – ZONING ORDINANCE TEXT AMENDMENT (ZOTA 214-B) – Articles 04.20.00 and 10.30.00, Group Day Care Homes in the R-1A through R-1E Districts on a Temporary Basis

Mr. Miller reviewed the Resolution adopted by City Council on October 3, 2005 that requested the Planning Commission to set a Public Hearing on a proposed zoning ordinance text amendment that would allow group day care homes in the R-1A through R-1E districts on a temporary basis. He said the amendment would essentially legalize the approximate 20 group day care homes currently licensed and existing at the time the amendment is adopted by City Council.

Discussed at length were the following two conditions of the proposed amendment:

- The date of final action by City Council that would affect the existing group day care homes.
- The timeframe the temporary basis would be in affect after City Council takes final action.

Mr. Motzny said consideration and approval of the proposed amendment should be based on whether the members believe a public purpose would be served.

PUBLIC HEARING OPENED

John Bjelobrk of 5581 Mandale, Troy, was present. Mr. Bjelobrk asked how many members of the Planning Commission live next door to or within 300 feet of a family or group day care home. He also asked if any member of the Planning Commission has a friend or relative who operates a day care center. Mr. Bjelobrk said he would be willing to swap houses with Chair Strat so he would have the opportunity to experience living next to a group day care home. He voiced concern with the City procedure to notify only those residents living within 300 feet of existing group day care homes, and said the issue should be placed on a city-wide ballot. Mr. Bjelobrk voiced concern that a fire in a group day care home would jeopardize his family's safety and affect the cost of his insurance coverage. He asked that group day care homes not be grandfathered. Mr. Bjelobrk addressed traffic, noise, and parking concerns, and encouraged parents to raise their own children.

Curtis Childs of 1931 Atlas Court, Troy, was present. Mr. Childs said approximately 800 homes have been receiving the Public Hearing notices and very few negative responses have come forward.

PUBLIC HEARING CLOSED

Resolution # PC-2005-10-
Moved by: Drake-Batts
Seconded by: Littman

RESOLVED, That the Planning Commission hereby recommends to the City Council that Articles IV and X, pertaining to Group Day Care Homes in the R-1A through R-1E Zoning Districts on a Temporary Basis, be amended as follows:

1. To remove "[Date of Final Action by City Council]" and replace and substitute it with "[The Approval of ZOTA 214-B by City Council]".

Discussion on the motion on the floor.

Mr. Waller asked that the Resolution be amended to change all entries of 10 days to 100 days, with reference to the timeframe of the temporary basis after the Troy City Council has had the opportunity to conduct a Public Hearing and take final action.

A brief discussion followed on the wording of the zoning ordinance text amendment.

Mr. Motzny suggested a recess to prepare the appropriate wording of the Resolution.

Chair Strat requested a recess at 8:50 p.m.

The meeting reconvened at 9:02 p.m.

Ms. Drake-Batts withdrew the motion on the floor. Mr. Littman was in agreement with the withdrawal.

Resolution # PC-2005-10-171
Moved by: Drake-Batts
Seconded by: Littman

RESOLVED, That group day care homes as defined in Section 04.20.69, licensed by the State of Michigan and in operation as of the date of approval of ZOTA 214-B by City Council, shall be permitted to continue on a temporary basis not to exceed thirty (30) days after the Troy City Council has had the opportunity to conduct a Public Hearing and take final action on any proposed revisions to Charter 39, Article X, related to the regulation of group day care homes as set forth in ZOTA 214.

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

MOTION CARRIED

Mr. Wright said the Planning Department has received several letters from neighbors who are opposed to group day care homes because of traffic, parking, and noise. Mr. Wright said he personally thinks a group day care home is a commercial enterprise that should not exist in a residential zone.

Planning Commission Actions on ZOTA 214 Group Daycare Homes in the R-1 Residential Zoning Districts

MEETING DATE	TYPE OF MEETING	ACTION
April 27, 2004	Study Meeting	Potential Ordinance Revision Discussion and Presentation by Ms. Schafer
May 4, 2004	Study Meeting	Potential Ordinance Revision Discussion followed by Resolution #PC-2004-05-052 - Request for written confirmation that the Building Dept. violation at 5593 Mandale be held in abeyance while PC attempts to move forward with ZOTA, MOTION APPROVED
July 27, 2004	Study Meeting	Potential Ordinance Revision Discussion
Sept. 28, 2004	Study Meeting	Potential Ordinance Revision Discussion
March 1, 2005	Study Meeting	Brief Discussion after Planning & Zoning Report
June 7, 2005	Study Meeting	Zoning Ordinance Text Amendment Discussion followed by Resolution #PC-2005-06-094, directing the Planning Dept. not to extend any more effort on ZOTA 214, and to look into applicability of the State Building Code for family daycare homes to see if anything should be done in the City Ordinances to clear up potential legalities, MOTION FAILED
June 28, 2005	Study Meeting	Zoning Ordinance Text Amendment Discussion followed by Resolution #PC-2005-06-108, that a Public Hearing on ZOTA 214 be scheduled for August 9, 2005 and notices be sent to residents within 300 ft. of the existing 19 group daycare homes and that City Management provide a memo outlining pros and cons on the matter and that additional Special Use criteria be developed, MOTION APPROVED
July 12, 2005	Regular Meeting	During Good of the Order comments, Mr. Motzney provided an explanation to his memo addressing the Public Hearing for ZOTA 214
August 2, 2005	Study Meeting	Discussion of House Bill 4398 including Sec. 206 (4) the requirement to permit conditionally group day care homes in residential districts
August 9, 2005	Regular Meeting	Public Hearing, followed by Resolution #PC-2005-08-131, Planning Commission shall take no further action related to group day care homes until State Legislature and Governor have taken final action on House Bill 4398, MOTION APPROVED

Planning Commission Actions on ZOTA 214 Group Daycare Homes in the R-1 Residential Zoning Districts

August 23, 2005	Study Meeting	During Good of the Order comments, Chair Strat notified members that City Manager notified him that the State legislature is not going forward with modifications regarding group day care homes in House Bill 4398 and that Mr. Szerlag requested they resume action on ZOTA 214
September 13, 2005	Regular Meeting	During Good of the Order comments, Mr. Miller notified members that City Council adopted a resolution requesting the Planning Commission take action on ZOTA 214 at the September 27, 2005 Public Hearing
September 27, 2005	Study Meeting	Resolution #PC-2005-09-150 rescinding resolution PC-2005-08-131, MOTION APPROVED. Planning Commission then held a Public Hearing followed by Resolution #PC-2005-09-152 that the Planning Commission hold a Public Hearing for ZOTA 214 at the Planning Commission Regular Meeting in December, MOTION APPROVED.
October 4, 2005	Study Meeting	Mr. Miller notified members that City Council adopted a resolution requesting the Planning Commission have a public hearing to consider an amendment that would **temporarily** allow for child group day care homes, which are State licensed, to be located in the R-1 Zoning Districts until 15 days after the Troy City Council has had the opportunity to conduct a public hearing on ZOTA 214. Discussion of ZOTA 214 B (Group Daycare Homes on a Temporary Basis) followed by Resolution #PC-2005-10-158, that a Public Hearing for ZOTA 214 B (Group Daycare Homes on a Temporary Basis) be held at the Planning Commission Study Meeting of October 25, 2005, MOTION APPROVED. Discussion of ZOTA 214, no resolution passed.
October 11, 2005	Regular Meeting	Discussion of ZOTA 214, no resolution passed.
October 25, 2005	Study Meeting	Public Hearing on ZOTA 214 B (Group Daycare Homes on a Temporary Basis) followed by Resolution #PC-2005-10-171, recommending approval of ZOTA 214 B - Group Daycare Homes on a Temporary Basis, MOTION APPROVED. Discussion of ZOTA 214, no resolution passed.
November 1, 2005	Study Meeting	Discussion of ZOTA 214, no resolution passed.