

DATE: July 11, 2006

TO: Phillip L. Nelson, City Manager

FROM: Brian P. Murphy, Assistant City Manager/Services  
Mark F. Miller, Planning Director

SUBJECT: Agenda Item – Public Hearing – Zoning Ordinance Text Amendment (File Number: ZOTA 219) – Articles II and III, Conditional Rezoning

### **RECOMMENDATION**

The Planning Commission recommended approval of the text amendment at the June 13, 2006 Regular meeting. City Management concurs with the Planning Commission and recommends approval of ZOTA 219.

### **BACKGROUND**

Public Act 579 of 2004 (effective January 1, 2005) amended the City and Village Zoning Act, PA 207 of 1921. The amendment had the effect of permitting conditional rezoning in Michigan. The recently adopted HB 4398 Michigan Zoning Enabling Act (effective July 1, 2006) includes the conditional rezoning provisions. The intent of ZOTA 219 is to create a process for consideration and approval of conditional rezoning agreements in the City of Troy.

The process for reviewing and approving a conditional rezoning application is essentially the same as a standard rezoning. That is, the Planning Commission holds a public hearing on the rezoning prior to making a recommendation to City Council, and City Council holds a public hearing prior to making a determination on the rezoning. With a conditional rezoning application, the applicant voluntarily offers conditions to the rezoning in writing during the application process. These conditions are included on a site plan required as part of the conditional rezoning application.

The proposed text amendment describes the procedures for review and approval, including application requirements and standards for approval. Additionally, provisions are included addressing expiration of conditional rezoning applications and violations of the conditional rezoning agreement.

Reviewed as to Form and Legality:

\_\_\_\_\_  
Lori Grigg Bluhm  
City Attorney

\_\_\_\_\_  
Date

Attachments:

1. ZOTA 219 City Council Public Hearing Draft, dated June 26, 2006.

Prepared by RBS/MFM

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CITY OF TROY  
AN ORDINANCE TO AMEND  
CHAPTER 39 OF THE CODE  
OF THE CITY OF TROY  
CITY COUNCIL PUBLIC HEARING DRAFT

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 II and III of Chapter 39

Articles II and III of Chapter 39 of the Code of the City of Troy are amended to modify Article 02.10.02 to add recommendations on Conditional Rezoning applications as one of the powers and duties of the Planning Commission; and, to add a new section 03.24.00 establishing the procedure with respect to Conditional Rezoning to read as follows:

02.10.02     POWERS AND DUTIES

The City Planning Commission shall have the powers and duties vested in it by the laws of the State of Michigan and the Ordinance Code of the City of Troy and shall consider and make its recommendations to the City Council on any matters referred to it by the City Council relating to such duties including:

- (1) The making and adopting of a master plan for the physical development of the municipality. Such plan shall show among other things, the Commission's recommendations for the general location, character and extent of streets, boulevards, parkways, playgrounds, parks, location of public buildings, and utilities, and the change of use, extension, removal, relocation, widening, narrowing, vacating or abandoning of any of the foregoing.
- (2) Recommendations related to the adoption of a zoning ordinance plan for the control of the height, area, bulk, location and use of buildings and premises, and all changes and amendments thereto thereof, including conditional rezoning applications as per Article 03.24.00.
- (3) The recommendation of approval to City Council of all preliminary plats subdividing land, site condominium plans,

planned unit developments, some special use approval applications and any amendments or alterations thereof.

- (4) The recommendation to City Council on ordinance text amendments, street and alley vacations or extensions, and historic district designations.
- (5) Acting as the approval authority on site plans and most special use approval applications.

03.24.00      CONDITIONAL REZONING

03.24.01      AUTHORITY. City Council shall have the authority to place conditions (that have been voluntarily offered in writing by the applicant) on a rezoning related to the future use and development of a parcel, as long as the conditions are acceptable to the property owner, applicant, and the City. Prior to taking action on a Conditional Rezoning request, the Planning Commission shall hold a public hearing and make a recommendation pursuant to Public Act 579 of the Public Acts of 2004. Conditional Rezoning shall not authorize uses except as permitted in the new zoning district.

03.24.02      PROCEDURE. The procedure for approval of Conditional Rezoning request shall be the same as provided in Sections 03.21.00 through 03.23.02 for other rezoning requests and the requirements of said Sections shall be applicable to Conditional Rezoning in addition to the following:

A. APPLICATION. A Conditional Rezoning request shall be initiated by the submission of a proposed Conditional Rezoning Agreement. A Conditional Rezoning Agreement shall include the following:

- (1) A written statement prepared by the applicant that confirms the Conditional Rezoning Agreement was proposed by the applicant and entered into voluntarily.
- (2) A written statement prepared by the applicant that confirms that the property shall not be used or developed in a manner that is inconsistent with conditions placed on the rezoning.
- (3) A list of conditions proposed by the applicant.

- (4) A time frame for completing the proposed improvements.
  - (5) A legal description of the land.
  - (6) A complete Preliminary Site Plan application (and Special Use Approval application, if required). All proposed conditions of the rezoning shall be included on the site plan. City Council shall have the authority to grant Preliminary Site Plan Approval and Special Use Approval following a recommendation by the Planning Commission. If a developer presents a revised site plan to City Council, the site plan shall be remanded back to the Planning Commission for a recommendation to City Council.
- B. PUBLIC HEARING. The Notice of Public Hearing on a Conditional Rezoning request shall include a general description of the proposed agreement being considered. A review of the proposed agreement shall be conducted at the public hearing.
- C. STANDARDS FOR APPROVAL. A Conditional Rezoning may only be approved upon a finding and determination that all of the following are satisfied:
- (1) The conditions, proposed development, and/or proposed use of the land are designed or proposed for public health, safety, and welfare purposes.
  - (2) The conditions, proposed development and/or proposed use are not in material conflict with the Future Land Use Plan, or, if there is material conflict with the Future Land Use Plan, such conflict is due to one of the following:
    - (a) A change in City policy since the Future Land Use Plan was adopted;
    - (b) A change in conditions since the Future Land Use Plan was adopted;
    - (c) An error in the Future Land Use Plan.
  - (3) The conditions, proposed development and/or proposed use are in accordance with all terms and provisions of the zoning district to which the land is to

be rezoned, except as otherwise allowed in the Conditional Rezoning Agreement.

- (4) Public services and facilities affected by a proposed development will be capable of accommodating service and facility loads caused by use of the development.
- (5) The conditions, proposed development and/or proposed use shall insure compatibility with adjacent uses of land.

D. AMENDMENT TO ZONING MAP. Upon approval by City Council of a Conditional Rezoning request and a Conditional Rezoning Agreement, as provided by this Section, the Zoning Map shall be amended to reflect a new zoning classification along with a relevant designation that will provide reasonable notice of the Conditional Rezoning Agreement.

03.24.03 EXPIRATION. A Conditional Rezoning Approval shall expire following a period of two (2) years from the effective date of the rezoning unless approved bona fide development of the property in accordance with permits issued by the City, commences within such two (2) year period and proceeds in due course to completion.

A. In the event bona fide development has not commenced within two (2) years from the effective date of the conditional rezoning, the rezoning and the Conditional Rezoning Agreement shall be void and of no effect.

B. If the Conditional Rezoning becomes void, no development shall be undertaken and no permits for development shall be issued until such time as a new zoning district classification of the property has become effective as a result of one or both of the following actions that may be taken:

- (1) The property owner seeks a new rezoning classification for the property, and/or
- (2) The City initiates a new rezoning request for the property to a reasonable district classification, in accordance with the conventional rezoning procedure.

03.24.04 A Conditional Rezoning Approval shall not become effective until the Conditional Rezoning Agreement is recorded with the Oakland

County Register of Deeds and a certified copy of the Agreement is filed with the City Clerk.

03.24.05 If development and/or actions are undertaken on or with respect to the property in violation of the Conditional Rezoning Agreement, such development and/or actions shall constitute a violation of this ordinance and deemed a nuisance per se. In such case, the City may issue a stop work order relative to the property and seek any other lawful remedies. Until curative action is taken to bring the property into compliance with the Conditional Rezoning Agreement, the City may withhold, or, following notice and an opportunity to be heard, revoke permits and certificates, in addition to or in lieu of such other lawful action to achieve compliance.

### 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 \_\_\_\_\_, 2006.

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Louise Schilling, Mayor

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Tonni Bartholomew, City Clerk

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