



CITY COUNCIL ACTION REPORT

October 10, 2006

TO: Phillip L. Nelson, City Manager

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

SUBJECT: Postponed Item – Rezoning Application – Proposed Binson’s Home Health Care Center, Northwest corner of Rochester and Marengo, Section 3 – R-1B to B-1 (Z 180-B)

Background:

- The Planning Commission recommended denial of the rezoning request at the June 14, 2005 Regular meeting. On August 1, 2005, City Council postponed the item to the first Regular City Council meeting in March 2006. On March 6, 2006, City Council postponed the item to the first Regular City Council meeting in August 2006. On August 14, 2006, City Council postponed the item to the first Regular City Council meeting in October 2006.
- The Future Land Use Plan classifies the Rochester Road frontage in this area as Medium Density Residential. The Medium Density Residential classification correlates with the R-1T Zoning District in the Plan.

Financial Considerations:

- There are no financial considerations for this item.

Legal Considerations:

- The application is not consistent with the Future Land Use Plan.

Policy Considerations:

- Denial of the rezoning request would be consistent with City Council Goal VI, Protect Life and Property.

Options:

- City Council can adopt the rezoning request, deny the rezoning request or postpone the item to a future meeting.
- City Management recommends denial of the rezoning application.

Approved as to Form and Legality:

Lori Grigg Bluhm, City Attorney

Attachments:

1. Maps.

cc: Applicant
File / Z 180-B

Prepared by RBS/MFM

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CITY OF TROY



REZONING REQUEST
PROPOSED BINSON'S HOME HEALTH CARE CENTER
FROM R-1B TO B-1
NW CORNER OF ROCHESTER RD & MARENGO
SEC. 3 (Z-180 B)



SUBJECT PARCEL

REZONING REQUEST
PROPOSED BINSON'S HOME HEALTH CARE CENTER
FROM R-1B TO B-1
NW CORNER OF ROCHESTER RD & MARENGO
SEC. 3 (Z-180 B)

CJ-32

(PUD)

DEETTA

SUBJECT PARCEL

ROCHESTER

MARENGO

(B-1)

WOODSIDE

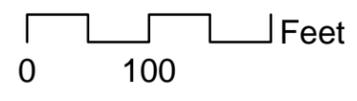
(CR-1)

(R-1B)

VILLA PARK

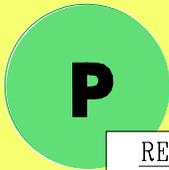
(E-1)

QUILL CREEK



3

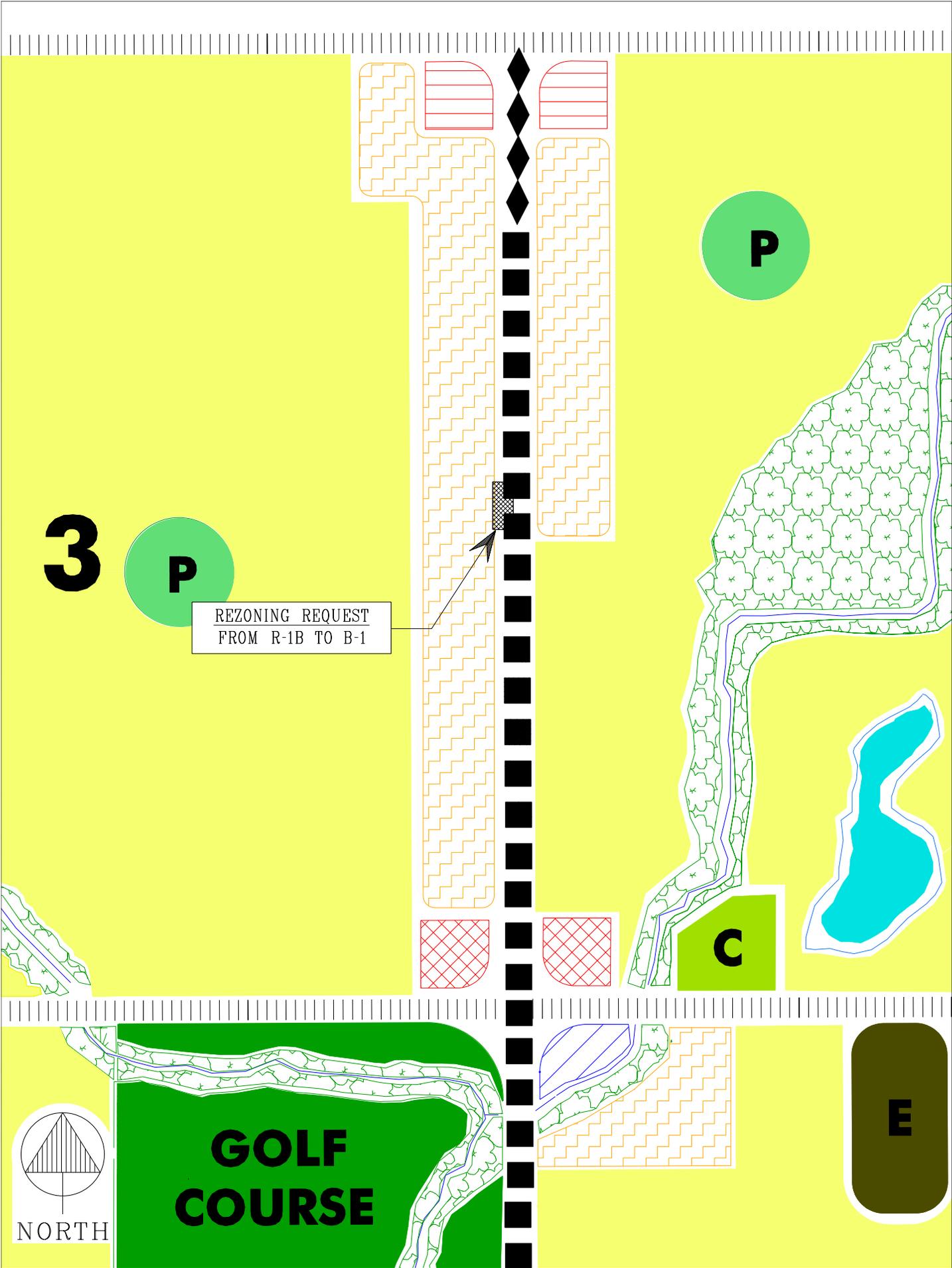
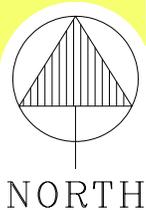
3



REZONING REQUEST
FROM R-1B TO B-1



GOLF COURSE



5. PUBLIC HEARING – PROPOSED REZONING (Z 180-B) – Proposed Binson’s Home Health Care, Northwest corner of Rochester and Marengo, Section 3 – From R-1B to B-1

Mr. Miller presented a summary of the Planning Department report for the proposed rezoning. Mr. Miller said appropriate planning and zoning uses in the location should be determined and an amendment to the Future Land Use Plan would be recommended, should the rezoning request go forward. Mr. Miller reported that it is the recommendation of City Management to deny the rezoning application because it does not comply with the Future Land Use Plan.

Mr. Vleck asked for information on nearby properties with respect to Consent Judgments.

Mr. Miller said a Consent Judgment on the property one block north (commonly known as the Rabbani property) allows office use on the subject property. He reported that, in general, the area has had a number of land uses, and noted more recently residential development; i.e., PUD 1 Northwyck Condominiums, Sandalwood North and South condominiums, and a proposed PUD for a mixed-use development on the northeast corner of Rochester Road and South Boulevard.

Ms. Lancaster said the Rabbani Consent Judgment is the only one in the area of which she is aware. She said both zoning plans and future land use plans are important factors in litigation cases. Ms. Lancaster said the Judge in the Rabbani case was concerned about the number of non-conforming uses in the area at that time.

John Gaber of 380 N. Old Woodward, Birmingham, attorney, was present to represent the petitioner. Mr. Gaber said the proposed use is consistent with the character of the neighborhood. He reviewed the site characteristics with respect to residential development. Mr. Gaber said the lease for the existing Binson’s located on Rochester and Square Lake Roads expires in a few months and they would like to relocate in the near future. He asked that the rezoning request not be held up in the process should the Planning Commission opt to amend the Future Land Use Plan. Mr. Gaber said there was an opinion and a judgment by the Court, prior to the Rabbani Consent Judgment, finding that the uses and zoning in the area had changed significantly, and that the site would not be compatible for what it was zoned and master planned. Mr. Gaber said the McKenna report provided to the members support the changing uses and zoning. Mr. Gaber requested a favorable recommendation to the City Council.

PUBLIC HEARING OPENED

No one was present to speak.

PUBLIC HEARING CLOSED

Mr. Vleck believes the requested B-1 zoning classification is appropriate for the location, and a revision in the zoning classification would be considered in the future when the City undertakes its study of the Future Land Use Plan.

Mr. Khan said a main road is not suitable for residential use. He agreed with Mr. Vleck's comments.

Resolution # PC-2005-06-097

Moved by: Khan
Seconded by: Waller

RESOLVED, That the Planning Commission hereby recommends to the City Council that the R-1B to B-1 rezoning request, located on the northwest corner of Rochester and Marengo, within Section 3, being approximately 0.89 acres in size, be granted, for the following reasons:

1. That the property is too narrow to put residential use.
2. B-1 is the best use for this property.

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

MOTION DENIED**Resolution # PC-2005-06-098**

Moved by: Chamberlain
Seconded by: Schultz

RESOLVED, That the Planning Commission hereby recommends to the City Council that the R-1B to B-1 rezoning request, located on the northwest corner of Rochester and Marengo, within Section 3, being approximately 0.89 acres in size, be denied, for the following reasons:

1. The application does not comply with the Future Land Use Plan.
2. Making a recommendation that is contrary to the Future Land Use Plan would weaken the validity of the Plan and make it more difficult to defend future zoning decisions.
3. Rezoning this parcel to B-1 would result in the enlargement of an undesirable commercial "spot zone" along an area along the Rochester Road corridor that is planned for medium density use.

4. Approval of the rezoning request could open the door for further commercial rezoning applications along the Rochester Road corridor.

Yes: Chamberlain, Littman, Schultz, Strat, Wright

No: Drake-Batts, Khan, Vleck, Waller

MOTION CARRIED

Ms. Drake-Batts believes the zoning should be commercial. She said denial of the request would result in a court matter.

Mr. Khan said residential zoning is improper on a main road. He agreed the matter would end up in court.

Messrs. Waller and Vleck agreed with the comments of Ms. Drake-Batts and Mr. Khan.

8. PUBLIC HEARING – PROPOSED REZONING (Z 180-B) – Proposed Binson's Home Health Care, Northwest corner of Rochester and Marengo, Section 3 – From R-1B to B-1

Mr. Miller presented a summary of the Planning Department report for the proposed rezoning that was tabled at the May 10, 2005 Regular Meeting for further study. Mr. Miller said the property is designated on the Future Land Use Plan as Medium Density Residential (corresponds with the R-1T, R-M and R-2 zoning districts). He briefly reviewed aerials and photographs of the subject location, the site plan drawing submitted by the petitioner, and three drawings prepared by the Planning Department with respect to R-1T and B-1 zoning districts. Mr. Miller stated that there are a variety of uses along Rochester Road, as well as the occurrence of very strong trends. Mr. Miller reported that should the members determine that the B-1 zoning classification is appropriate for the subject property, the correct action would be consideration of an amendment to the Future Land Use Plan.

PUBLIC HEARING OPENED

John Gaber of 380 N. Old Woodward, Birmingham, attorney, was present to represent the petitioner. Mr. Gaber identified key issues for consideration of the proposed rezoning: (1) Proposed use is consistent with the character of the neighborhood; (2) Whether or not the current zoning of single family is appropriate or inappropriate due to the Rochester Road corridor, the depth of the property and the site characteristics; (3) The Consent Judgment on the Rabanni property located one block north wherein the judgment of the Court was that O-1 zoning is consistent with the commercial character of the area and single family residential zoning is inappropriate due to the traffic and proximity to Rochester Road.

Mr. Gaber said it is believed that residential is not feasible for the site. He indicated that the property owner has received no offers to purchase for residential use. Mr. Gaber noted that placing 4 or 5 residential units on the subject site would result in a bunker-type of layout for backyards that would face Rochester Road and home fronts that would face an alley. Mr. Gaber referenced the home of Eileen Carty, 990 DeEtta, who spoke at the May 10, 2005 Regular Meeting. He said the home would be kiddy-korner, not directly behind, from the proposed site. Mr. Gaber noted that Ms. Carty has a privacy fence along her back property line. Mr. Gaber said the petitioner would be required to put up a screening wall of some type at the time of site plan approval that would address any concerns of the neighbors. Mr. Gaber asked the members' consideration to forward a favorable recommendation to the City Council for the proposed rezoning.

Mr. Gaber confirmed the existing Binson's on Rochester and Square Lake Roads would move its operation to the proposed location. He indicated that the petitioner intends to use the entire building with consideration given to any site constraints. Mr. Gaber noted that the specifics of the site plan have not been determined at this time.

Chair Strat stated that the proposed site plan should not be a consideration in the approval process of the rezoning request.

There was a brief discussion on the residential home located at 990 DeEtta. It was determined that the home does abut the property of the proposed rezoning along the western edge, and one of the concerns of the homeowner was the location of the dumpster on the business site in relation to her home.

Jim Lawrence of 3553 Lakewood Shores, Howell, project architect, was present. Mr. Lawrence addressed the schematic drawing that was originally provided and distributed to the members a more detailed drawing. He indicated that they are comfortable with the open space requirements being met, and noted that the square footage of the building would most likely be reduced to accommodate Zoning Ordinance requirements.

Mr. Lawrence indicated a typical house at this location would sell for \$250,000, and the land itself would be worth \$150,000 (\$30,000 per unit) should a developer build it for residential use. Mr. Lawrence said the current sale price is almost 3 times that amount, and there is a concern about the cost of the property and the actual ability to use it. Mr. Lawrence addressed the design factors of the site should it be built for residential use and said a residential development would not be economically viable.

Mr. Wright said the building size would be reduced by over 15% to meet the requirements of the City's building department. He asked if the site would be big enough for the proposed Binson's facility, and if the petitioner would be requesting variances from the Board of Zoning Appeals.

Mr. Lawrence said the sketch is not drawn to scale and detail, and a more detailed analysis would determine the square footage of the building. He indicated that it is not the petitioner's intent to request variances.

The petitioner, James Gerback of 300 Park Street, Birmingham, CFO of Binson's, was present. Mr. Gerback said the building size of the existing location on Rochester and Square Lake Roads is approximately 4,800 square feet. He indicated a building size of 1,000 additional square feet would be sufficient for another 20 years.

PUBLIC HEARING CLOSED

There was discussion on the following:

- Vacation of the alley.
- Allowable uses in the B-1 zoning district.
- Desired and appropriate uses for the subject location.
- Conditional approval based upon specific use and design conditions, as provided by State law.

The item is scheduled for a Public Hearing at the Regular Meeting of June 14, 2005.

15. PUBLIC HEARING – PROPOSED REZONING (Z 180-B) – Proposed Binson's Home Health Care, Northwest corner of Rochester and Marengo, Section 3 – From R-1B to B-1

Mr. Savidant presented a summary of the Planning Department report for the proposed rezoning request. Mr. Savidant reported that it is the recommendation of the Planning Department to deny the rezoning application.

A brief discussion followed with respect to the spot zoning of the property located south of the subject rezoning. It was understood that it was a commercial site that was approved for rezoning by City Council approximately 25 years ago.

Chair Strat asked what would be the highest and best use of the property.

Mr. Miller said an appraiser or assessor might appropriately determine the highest and best use of the property. Planners provide information with respect to what is consistent or conforming with the Future Land Use Plan and compatible land uses.

John Gaber of 380 N. Old Woodward, Birmingham, attorney, was present to represent the applicant and owner. Mr. Gaber provided a brief review of the proposed use and site dimensions. He said Binson's has been in Troy since 1992 and would like to stay in Troy. Mr. Gaber clarified that the use immediately to the north is a residence that is currently being used as a law office. He said the property on the corner immediately to the north of the residence/law office is currently being used as a rental house. Mr. Gaber said the owner made several unsuccessful attempts to rezone the property to commercial. He noted the owner receives interest calls on the property only for commercial and office uses, not residential. Mr. Gaber cited reasons that merit the proposed rezoning to commercial: (1) The heavy traffic volume on Rochester Road is not conducive to residential; (2) The shallow lot does not allow much for buffering; (3) It appears residential is not feasible given the history of the site and the owner's experience in marketing the site. Mr. Gaber noted that the Rochester Road corridor has experienced many zoning and land use changes. He referenced and read the Judge's opinion given on a court action for the rezoning of property on Rochester Road, north of DeEtta, from residential to medical/office use. Mr. Gaber indicated that it has been some time since the City revisited its Master Land Use Plan. Mr. Gaber asked the members for their support of the rezoning request and a recommendation of approval to the City Council.

Amy Neary of McKenna Associates, Inc., Land Use Consultant for the project, was present and distributed material related to the presentation. Ms. Neary pointed out the existing land use in the area, indicated that the subject location is not desirable for residential use, and noted that the B-1 zoning is a reasonable use for the area.

Mr. Schultz said it is interesting that two condominium projects (Sandalwood and Northwyck) located within the subject area were not included in the report of McKenna Associates. He said it appears that both condominium projects have been successful.

PUBLIC HEARING OPENED

Eileen Carty of 990 DeEtta, Troy, was present. Ms. Carty said she would welcome condominiums, site or otherwise, near her home; she would welcome anything but business. Ms. Carty said there are residential homes all around her and never thought commercial would come to the area. She referenced the site directly north of her home that was rezoned commercial as a result of a consent judgment. Ms. Carty understood that the use was to be medical/office, and questioned the existing use of the building. Ms. Carty addressed her concern that should the subject property be rezoned to commercial, there would be no guarantee in the future as to what might go in. Ms. Carty said her front picture window view is of a waste receptacle. She said that should the proposed rezoning be approved, she would have a view of another waste receptacle. Ms. Carty said it would be economically disastrous for her should any commercial go in that location.

PUBLIC HEARING CLOSED

A brief discussion followed with respect to potential residential development on the site.

Resolution # PC-2005-05-084

Moved by: Khan
Seconded by: Schultz

RESOLVED, That the Planning Commission hereby recommends to the City Council that the R-1B to B-1 rezoning request, located on the northwest corner of Rochester and Marengo, within Section 3, being approximately 39,000 square feet in size, be tabled to a future study session meeting.

Yes: All present (6)
No: None
Absent: Chamberlain, Vleck, Waller

MOTION CARRIED