

DATE: July 8, 2005

TO: John Szerlag, City Manager

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

SUBJECT: AGENDA ITEM – ANNOUNCEMENT OF PUBLIC HEARING (AUGUST 1, 2005) – 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)

RECOMMENDATION

The application does not comply with the Future Land Use Plan. 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. While the proposed zoning district may appear to be compatible with the retail development to the south, this development is also non-compliant with the Future Land Use Plan. This rezoning application would result in the enlargement of an undesirable commercial spot zone on the Rochester Road corridor that is planned for medium density use. Furthermore, it could open the door for further commercial rezoning applications along the Rochester Road corridor.

The Planning Commission recommended denial of the rezoning request at the June 14, 2005 Regular Meeting. City Management recommends denial of the rezoning application.

If the City Council makes a finding that the subject rezoning request is appropriate, City Management recommends an amendment to the Future Land Use Plan be initiated. A rezoning recommendation that is obviously contrary to the intent of the Future Land Use Plan is not strategy based upon accepted land use planning principles. The more appropriate strategy is to amend the Future Land Use Plan designation along the Rochester Road frontage based upon professional community planning advice and land use planning principals.

GENERAL INFORMATION

Name of Owner / Applicant:

The owner is Fred Flaim. The applicant is James Gerback.

Location of Subject Property:

The property is located on the northwest corner of Rochester and Marengo, in Section 3.

Size of Subject Parcel:

The parcel is approximately 39,000 square feet in area.

Current Use of Subject Property:

The subject property is currently vacant.

Current Zoning Classification:

R-1B One Family Residential District.

Proposed Zoning of Subject Parcel:

B-1 Local Business District.

Proposed Uses and Buildings on Subject Parcel:

The applicant proposes to construct a one-story, 8,600 square foot retail development on the property.

Current Use of Adjacent Parcels:

North: Single family residential.

South: Retail.

East: Woodside Bible Church and Northwyck PUD (PUD-1).

West: Single family residential.

Zoning Classification of Adjacent Parcels:

North: R-1B One Family Residential.

South: B-1 Local Business.

East: CR-1 One Family Residential Cluster and PUD-1.

West: R-1B One Family Residential.

ANALYSIS

Range of Uses Permitted in the Proposed B-1 Zoning District and Potential Build-out Scenario:

PRINCIPAL USES PERMITTED:

Local retail businesses which supply commodities on the premises, for persons residing in adjacent residential areas, such as but not limited to: Groceries, meats, dairy products, baked goods or other foods dispensed for consumption off the site, hardware, drugs and pharmaceuticals.

Specialty shops such as, but not limited to: Antique shops, craft shops, and shops for the sale of gifts and notions.

Personal service establishments which perform services on the premises, such as, but not limited to: repair shops (watches, radio, television, shoe, etc.) beauty parlors and barber shops, and self-service laundries.

Dry cleaning establishments, or pick-up stations, dealing directly with the consumer.

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

Professional services including the following: medical clinics, (out-patient only) and offices of doctors, dentists, osteopaths and similar or allied professions.

Post office and similar governmental office buildings, serving persons living in the adjacent residential area. Other uses similar to the above uses.

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

USES PERMITTED SUBJECT TO SPECIAL CONDITIONS:

City and School District buildings, public utility buildings, telephone exchange buildings, electric transformer stations and substations, gas regulator stations, and water and sewage pumping stations, without storage yards.

Nursery schools, day nurseries and child care centers (not including dormitories).

Incidental Customer Seating as an accessory to food sales establishments,

Vehicular and Non-motorized Access:

The parcel fronts on both Rochester and Marengo.

Potential Storm Water and Utility Issues:

The applicant will be required to provide on-site storm water detention.

Natural Features and Floodplains:

The Natural Features Map indicates there are no significant natural features located on the property.

Compliance with Future Land Use Plan:

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. The application does not comply with the Future Land Use Plan.

Compliance with Location Standards:

The B-1 Local Business Zoning District does not have Location Standards to apply to rezoning requests.

Attachments:

1. Maps.
2. Conceptual Site Plan.
3. Applicant Statement of Request
4. Minutes from the May 10, 2005 Planning Commission Regular Meeting.
5. Minutes from the May 24, 2005 Planning Commission Regular Meeting.
6. Minutes from the June 14, 2005 Planning Commission Regular Meeting.
7. Resident Communication.

cc: Applicant
File / Z- 180 B

Prepared by PPB/RBS/MFM

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CITY OF TROY

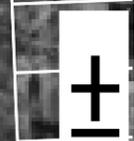


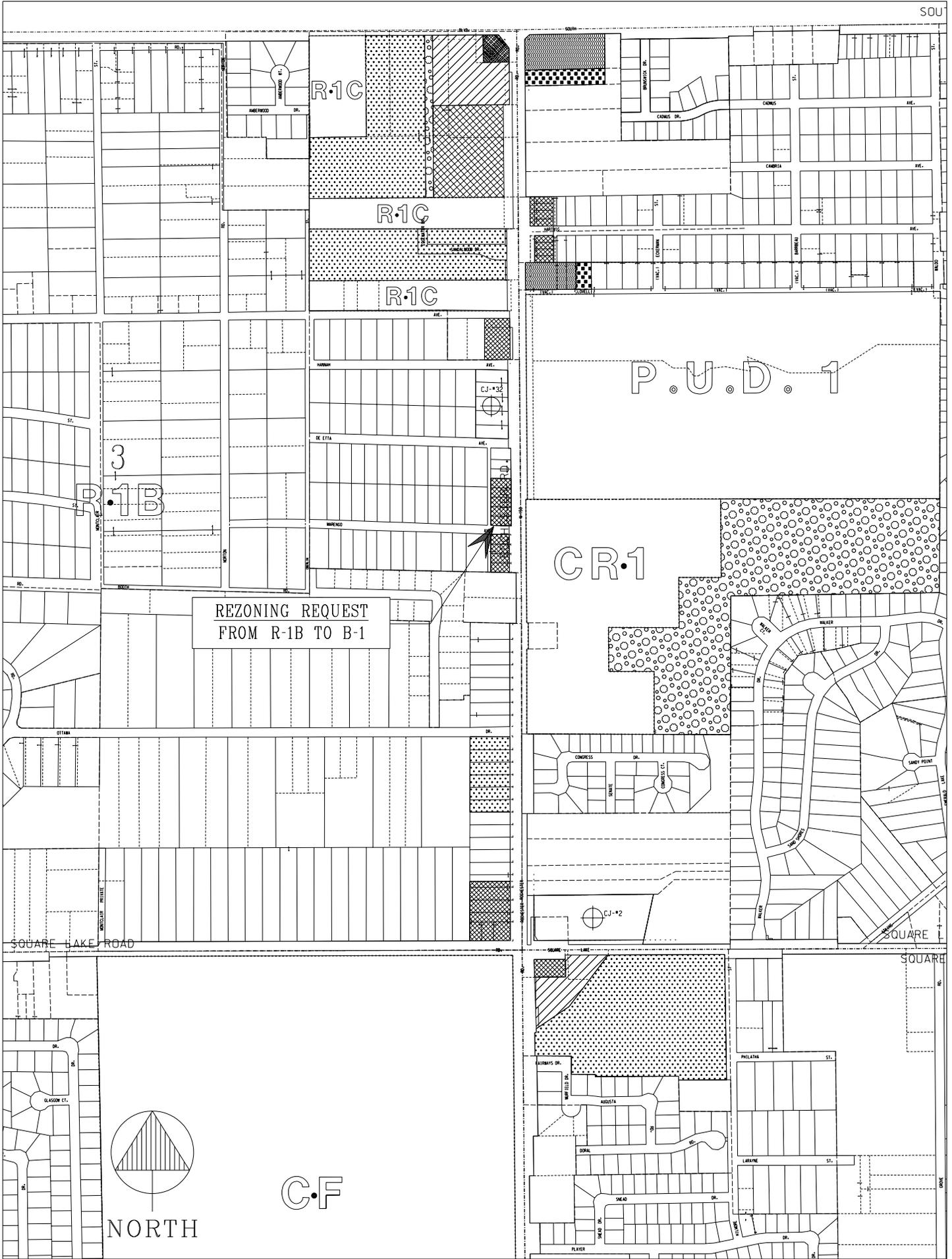
REZONING REQUEST
PROPOSED BINSON'S HOME HEALTH CARE CENTER
FROM R-1B TO B-1
NW CORNER ROCHESTER RD. & MARENGO
SEC. 3 (Z-180 B)



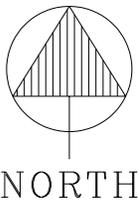
REZONING REQUEST
FROM R-1B TO B-1

0 100 200 400 600 Feet

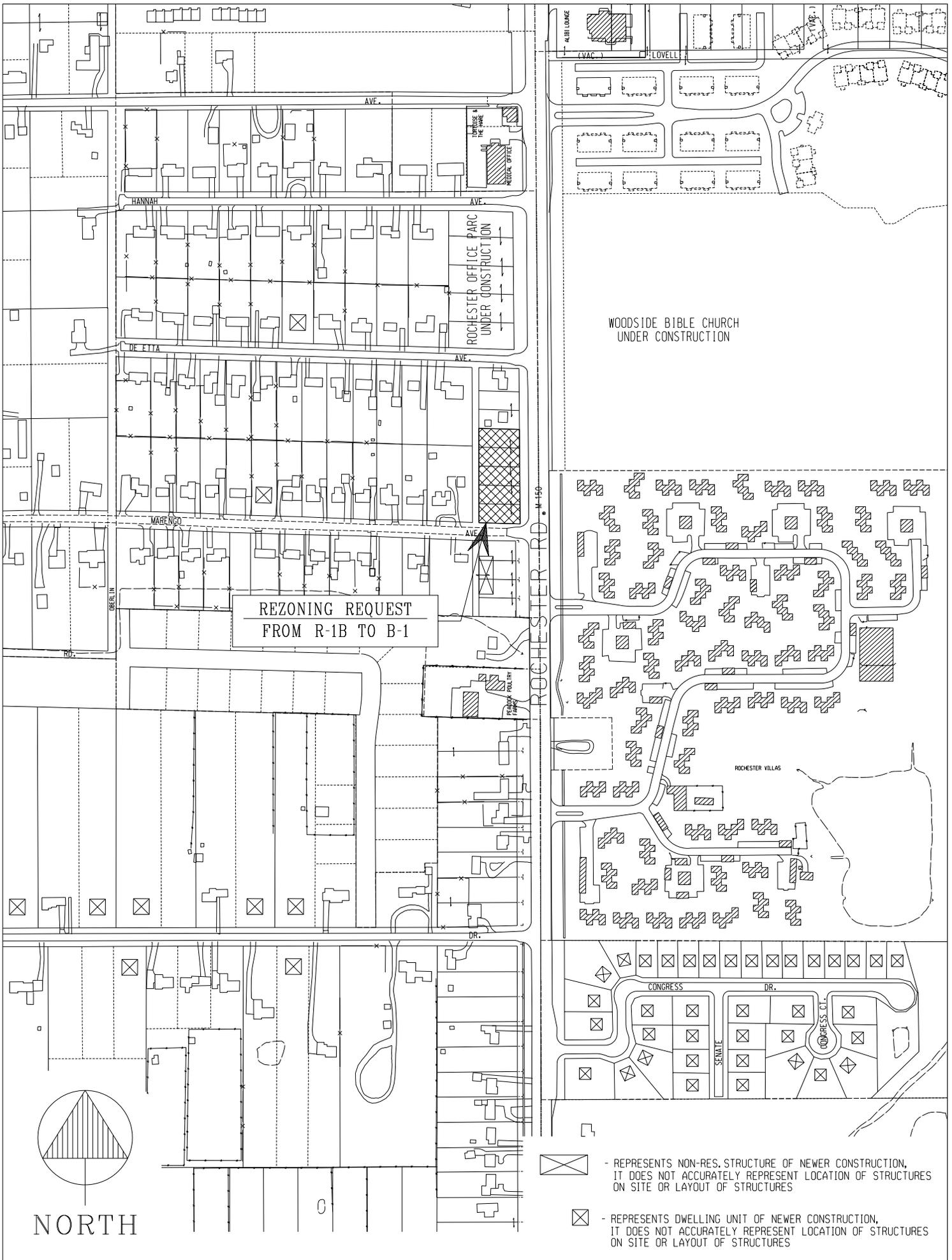




REZONING REQUEST
FROM R-1B TO B-1



CF

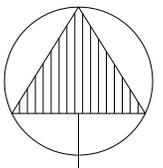


REZONING REQUEST
FROM R-1B TO B-1

ROCHESTER OFFICE PARC
UNDER CONSTRUCTION

WOODSIDE BIBLE CHURCH
UNDER CONSTRUCTION

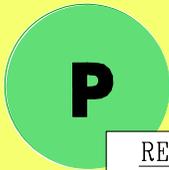
ROCHESTER VILLAS



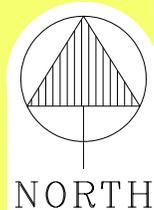
NORTH

- 
 - REPRESENTS NON-RES. STRUCTURE OF NEWER CONSTRUCTION, IT DOES NOT ACCURATELY REPRESENT LOCATION OF STRUCTURES ON SITE OR LAYOUT OF STRUCTURES
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 - REPRESENTS DWELLING UNIT OF NEWER CONSTRUCTION, IT DOES NOT ACCURATELY REPRESENT LOCATION OF STRUCTURES ON SITE OR LAYOUT OF STRUCTURES

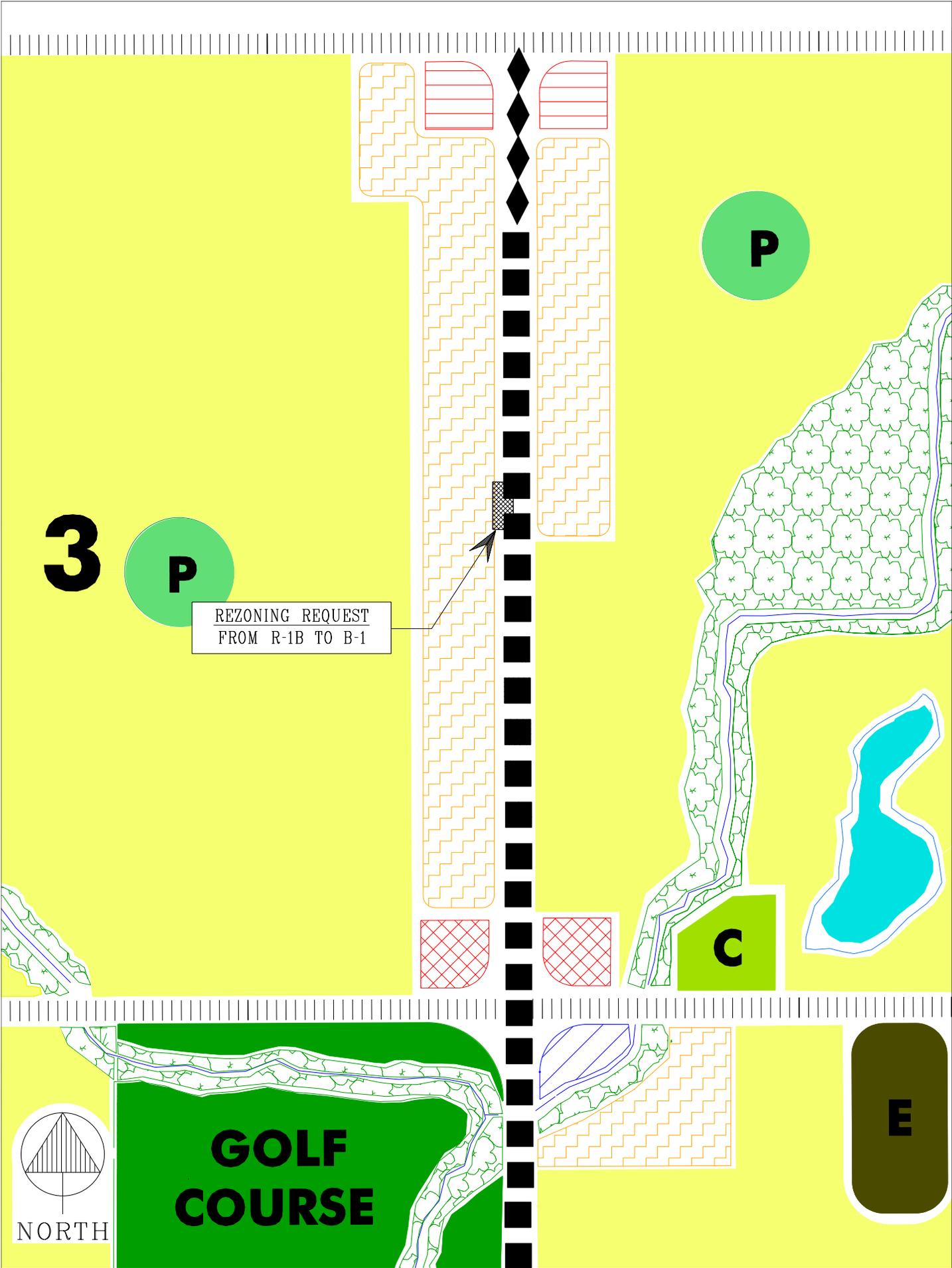
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REZONING REQUEST
FROM R-1B TO B-1



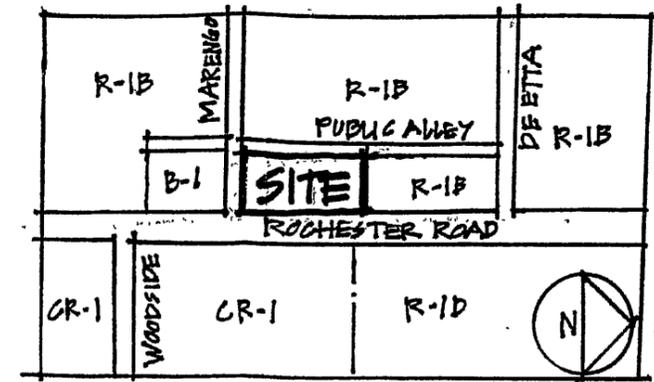
GOLF COURSE



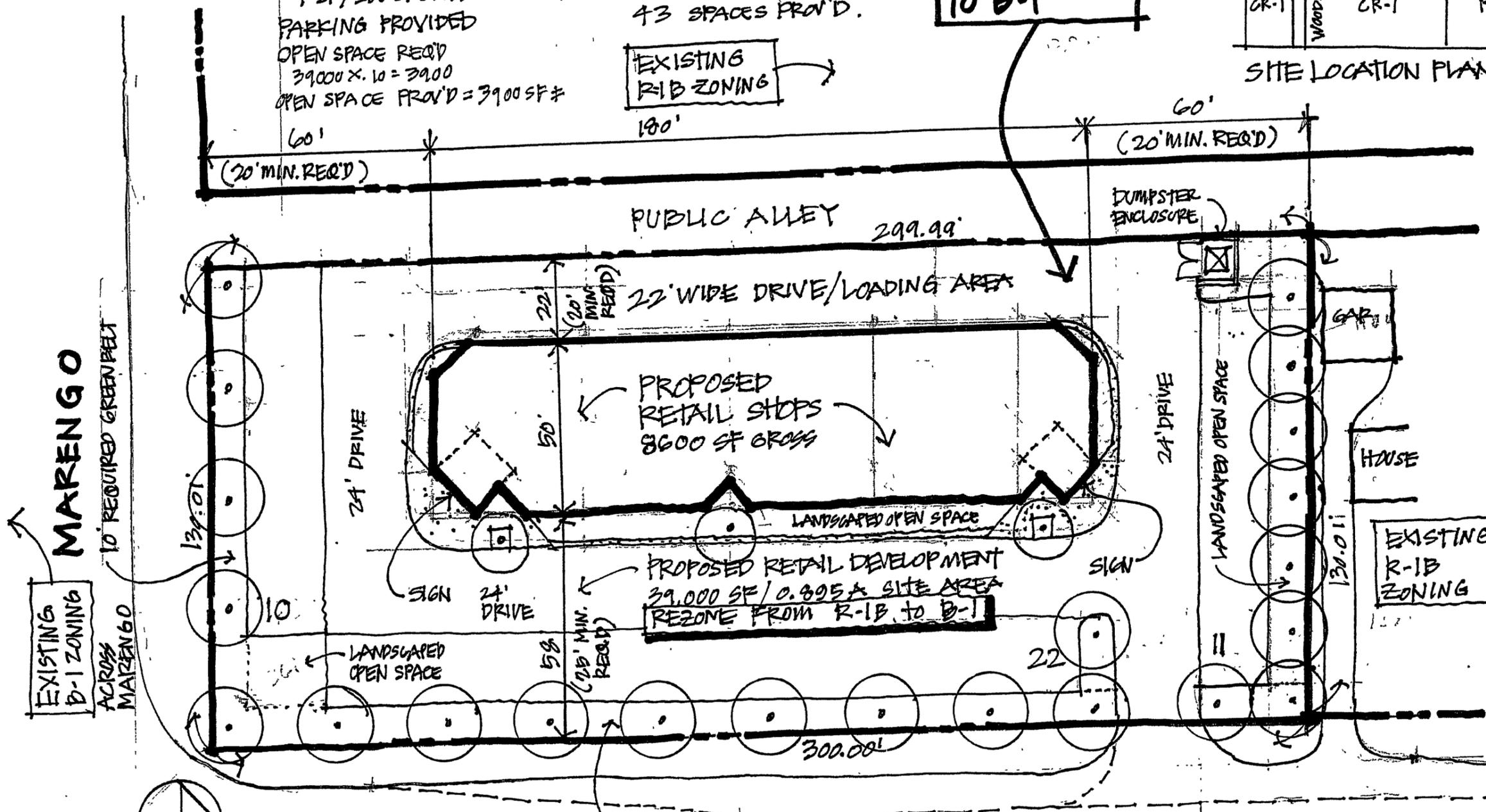
LAND-BUILDING DATA

SITE AREA 39,000 SF / 0.895A
 (REZONE FROM R-1B TO B-1)
 BUILDING AREA 8600 SF GROSS
 PARKING REQ'D
 1 SP/200 SF GROSS $8600 \div 200 = 43$ SPACES REQ'D
 43 SPACES PROV'D.
 PARKING PROVIDED
 OPEN SPACE REQ'D
 $39,000 \times .10 = 3,900$
 OPEN SPACE PROV'D = 3,900 SF#

**PROPOSED
 0.895 ACRE
 PARCEL TO
 BE REZONED
 FROM R-1B
 TO B-1**

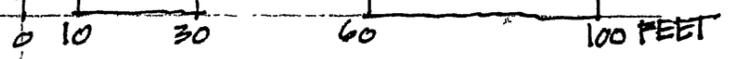


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**PROPOSED
 RETAIL
 DEVELOPMENT
 TROY,
 MICHIGAN
 2-25-05
 SKB
 REV. 3-22-05**

SITE STUDY A



**EXISTING
 CR-1
 ZONING
 ACROSS ROCHESTER RD.**

**EXISTING
 R-1D
 ZONING
 ACROSS ROCHESTER RD.**

City of Troy
Rezoning Request

Tax ID:20-03-278-032

Statement of Request

The property outlined above is on the northwest corner of Rochester Road and Marengo. The 300' frontage is along a very busy Rochester Road. The property directly south, on the southwest corner of Rochester and Marengo is a retail convenience store. The property directly east is a very large religious complex. The property to the north is a house being used as a lawyer's office and the property to the west is residential separated by a heavily vegetated alley buffer.

Due to the busy commercial surroundings and the high traffic volume on Rochester Road, this property is not suitable for residential use. The property therefore has no reasonable economic use for residential development. Since the majority of the adjacent parcels are already used as commercial or institutional, the business use requested for this property would not be detrimental to their use. On the contrary, a business use at this site would most likely be beneficial to the adjacent properties use and value.

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

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.

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.

Paula P Bratto

From: IRLlene@aol.com

Sent: Monday, May 09, 2005 11:29 PM

To: Paula P Bratto; Mark F Miller

Subject: Gerback rezone request regarding Lots 5,6,7,8,9 of Troy Little Farms Subdivision

I reside at 990 De Etta, directly behind the lot that is currently requesting a rezoning request scheduled for hearing on Tuesday, May 10 at 7:30 p.m. I am against the rezoning request as the lot is much too small to construct a building and offer parking for its patrons. We currently have the Woodside Church that has just been constructed directly across the street and also have the office park which consists of two office buildings at the corner of De Etta and Rochester roads. The traffic as you know on Rochester Road is heavy and now with the church traffic (which by the way does not occur on just Sundays, its Monday Wednesday Friday Saturday and Sunday!!!) trying to get out of our street some days is next to impossible!!!! We have not had the pleasure of the traffic with the office park project as it is still not completed. If you allow this rezoning request from residential to commercial then we will have another business and more business patrons to contend with in a small area. The lot is just too small for this business. Binsons is currently located at the corner of Square Lake Rd and Rochester, if that's not large enough for them then this location can't possibly be any better as the current location is a strip mall and has more than ample parking. The residents here are tired of being squished out by businesses!!!! It's time the planning commission said no to some of these rezoning requests and think about their residents!! Our property values are plummeting and will continue to do so with more business buildings why not a home? When they purchased this property they knew it was zoned residential, unfortunately for the city residents these business owners know that they can petition the planning commission and get their way!!! I think it will be very unfortunate if this request is granted. Please take in consideration the residents of this area.

Thank you for your time.
Eileen Carty.