



CITY COUNCIL ACTION REPORT

DATE: September 28, 2009

TO: John Szerlag, City Manager

FROM: Mark F. Miller, Acting Assistant City Manager/Economic Development Services
R. Brent Savidant, Acting Planning Director

SUBJECT: Public Hearing – Zoning Ordinance Text Amendment (File Number: ZOTA 240) –
Article 43 – BZA Provisions

The Planning Commission held a public hearing for this item at the August 25, 2009 Special/Study meeting and recommends approval of ZOTA 240.

The Zoning Ordinance does not mandate that applications to the Board of Zoning Appeals (BZA) first seek Site Plan Approval from the Planning Commission, prior to being considered by the BZA. Applications are considered by the BZA before the Planning Commission has an opportunity to review and provide input into site layout and design. This process allows the BZA to grant variances before a site plan is reviewed inter-departmentally and by the Planning Commission. The attached draft Zoning Ordinance Text Amendment (ZOTA) is intended to eliminate this flawed process.

The proposed ZOTA requires that applications to the BZA that also require review and approval by the Planning Commission go first to the Planning Commission for comment. The Planning Commission can take action on the item but shall not grant Preliminary Site Plan Approval nor make a recommendation on the variance. The Planning Commission then transmits their findings to the BZA, which decides upon the application. The BZA then returns its decision to the Planning Commission for action on the site plan.

City Management recommends approval of ZOTA 240.

Approved as to form and legality:

Lori Grigg Bluhm, City Attorney

Attachments:

1. ZOTA 240 City Council Public Hearing Draft.
2. Minutes from August 25, 2009 Planning Commission Special/Study meeting.

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
ZOTA 240

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 Article XL of Chapter 39

Article XL of Chapter 39 of the Code of the City of Troy is amended to add a provision requiring Planning Commission review of applications to the Board of Zoning Appeals, when applications require site plan approval, to read as follows:

SECTION 43.86.00 PLANNING COMMISSION REVIEW OF SITE PLAN

If an application to the Board of Zoning Appeals requires site plan approval by the Planning Commission pursuant to the provisions of Section 03.40.03, the applicant shall first apply for site plan approval as set forth in Article 03.41.00. The Planning Commission shall review the site plan including site layout and other design features, but shall not grant Preliminary Site Plan Approval nor make a recommendation on the variance. The Planning Commission shall then transmit the site plan and the minutes related to said site plan to the Board of Zoning Appeals. The Board of Zoning Appeals shall transmit its decision related to the application to the Planning Commission. The Planning Commission shall then take action on the site plan.

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 6. 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 _____, 2009.

Louise E. Schilling, Mayor

Tonni L. Bartholomew, MMC
City Clerk

ZONING ORDINANCE TEXT AMENDMENT

6. PUBLIC HEARING – ZONING ORDINANCE TEXT AMENDMENT (File Number ZOTA 240) – Amendment to Article 43, Board of Zoning Appeals Provisions

Mr. Savidant reviewed the proposed Zoning Ordinance Text Amendment relating to the Board of Zoning Appeals (BZA) provisions. The draft text states that the Planning Commission shall not grant Preliminary Site Plan Approval nor make a recommendation on the variance.

Mr. Forsyth gave a brief explanation on the separate and distinct powers of the Planning Commission and Board of Zoning Appeals. He indicated the intent of the proposed language is to avoid the Planning Commission telling the Board of Zoning Appeals what to do. Mr. Forsyth discussed the role of the Planning Commission member as a representative on the Board of Zoning Appeals in relation to consideration by both entities of a particular item.

There was further discussion on individual opinions expressed by Planning Commission members and the transmittal of those opinions to the BZA through prepared meeting minutes.

PUBLIC HEARING OPENED

No one was present to speak.

PUBLIC HEARING CLOSED

Resolution # PC-2009-08-073

Moved by: Ullmann
Seconded by: Edmunds

RESOLVED, That the Planning Commission hereby recommends to the City Council that Article 43, BOARD OF ZONING APPEALS, pertaining to the requirement of Planning Commission review for items that require site plan approval and a variance(s), prior to being considered by the Board of Zoning Appeals, be amended as printed on the proposed Zoning Ordinance Text Amendment.

Yes: All present (8)
Absent: Vleck

MOTION CARRIED