



CITY COUNCIL REPORT

DATE: March 29, 2010

TO: John Szerlag, City Manager

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

SUBJECT: Announcement of Public Hearing – Zoning Ordinance Text Amendment (File Number ZOTA 242) – Agricultural Uses in R-1A through R-1E (One Family Residential) Districts

The Planning Commission considered this item at the March 9, 2010 Regular meeting and recommended approval of the proposed amendment.

Agricultural uses are permitted by right in Troy in the R-1A through R-1E districts, on parcels that are greater than 5 acres in size and not located within a platted subdivision.

In the recent case of Papadelis v. City of Troy, the Michigan Court of Appeals held that the City's residential zoning regulations for accessory buildings did not apply to buildings used for agricultural purposes. Although this is an unpublished decision, the case did highlight some areas of our accessory building ordinance provisions that could be improved. The proposed amendment clarifies the types and sizes of agricultural accessory buildings that can be constructed on residential property. In addition, the proposed amendment also makes it clear that all accessory buildings, including agricultural accessory buildings, are subject to site plan approval. The proposed amendment also makes it clear that agricultural uses are permitted only when there are five contiguous acres of property on a single parcel. Without this amendment, any person who owned more than five acres of property in the City on separate parcels could use each individual parcel for agricultural purposes, even if the parcels were too small to support agricultural use.

The minutes reflect that there were two dissenting votes at the Planning Commission meeting. These individuals were concerned about total preclusion of farms in the City of Troy. However, this proposed amendment would allow for a large agricultural building that is proportional to the size of the property. Furthermore, applicants can seek relief from any Zoning Ordinance provision by requesting a variance from the Board of Zoning Appeals.

A public hearing for this item is scheduled for the April 19, 2010 City Council meeting.

Approved as to form and legality:

Lori Grigg Bluhm, City Attorney

Attachments:

1. ZOTA 242
2. March 9, 2010 Planning Commission minutes

Prepared by RBS

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, Zoning Ordinance, of the Code of the City of Troy.

Section 2. Amendment

Chapter 39 of the Code of the City of Troy is amended as follows

Amend Section 04.20.05 and add section 04.20.06 to read as follows:

04.20.00 DEFINITIONS

04.20.05 AGRICULTURE: Farms and general farming, including horticulture, floriculture, dairying, livestock, and poultry raising, farm forestry, and other similar enterprises or uses. ~~but no~~ No farms shall be operated as piggeries, or for the disposal of garbage, sewage, rubbish, offal or rendering plants, or for the slaughtering of animals except such animals as have been raised on the premises or have been maintained on the premises for at least a period of one year immediately prior thereto and for the use and consumption of the person residing on the premises.

04.20.06 ~~AGRICULTURAL BUILDING~~ : Any structure used for agriculture as defined by this ordinance, whether the principal use of the property is residential, agriculture or some other use.

Amend Section 10.20.02 to read as follows:

10.20.00 PRINCIPAL USES PERMITTED

In a One-Family Residential District (R-1A through R-1E) no building or land shall be used and no building shall be erected except for one or more of the following specified uses, unless otherwise provided in this Chapter.

10.20.02 Agriculture on ~~these parcels~~ a single parcel of land separately owned and outside the boundaries of either a proprietary or supervisor's plat, which has having-an area of at least not less than five (5) acres.; ~~all~~ subject to the

~~health and sanitation provisions of the Code of the City of Troy. Compliance with the health and sanitation provisions of the Code of the City of Troy and the Generally Accepted Agricultural and Management Practices (“GAAMPS”) as established by the Michigan Commission of Agriculture in accordance with the Michigan Right to Farm Act, MCL 286.471 et seq., as set forth in, is required for all agricultural uses.~~

Add Section 10.20.03 to read as follows and renumber subsequent Section 10.20.03 through 10.20.09

10.20.03 Agricultural Buildings, subject to site plan approval and to the controls of Sections 40.55.00 – 40.56.04.

10.20.034 Publicly owned and operated libraries, parks, parkways and recreational facilities.

10.20.045 Cemeteries which lawfully occupied land at the time of adoption of Ordinance 23.

10.20.056 Temporary buildings and uses for construction purposes for a period not to exceed one (1) year.

10.20.067 Accessory buildings, subject to the controls of Section 40.55.00.

10.20.078 Commercial Kennels as established before January 1, 2000, and set forth in the records of the Building Department.

~~(Rev. 02-05-01)~~

10.20.089 The Open Space Preservation Option may be utilized in the R-1A and R-1B districts, to comply with MCL 125.3506, as amended, subject to the requirements of Section 34.60.00.

Add Section 40.55.01 to read as follows:

40.55.00 Accessory Buildings, Accessory Supplemental Buildings and Accessory Structures:

In addition to the applicable requirements of Sections 40.56.00 and 40.58.00, all accessory buildings, accessory supplemental buildings and accessory structures shall comply with the following provisions:

A. By their definition and nature they shall be supplemental or subordinate to the principal building on a parcel of land.

- B. They shall be on the same parcel of land as the principal building they serve.
- C. Their construction, erection, installation or placement shall be in accordance with the requirements of the Building Code and the Electrical Code. Permits shall be required for buildings greater than thirty-six (36) square feet in area and/or greater than four (4) feet in height. Permits shall be required for all ground-mounted antennas, and for roof-mounted antennas greater than four (4) feet in height. Electrical service for ground-mounted antennas shall be provided only through underground lines.
- D. Detached buildings and structures may be prefabricated or built on the site, and shall have ratwalls or other acceptable foundations not less than twenty four (24) inches in depth, or be built so that the floor and walls are located a minimum of six (6) inches above the underlying ground. Trailer-mounted buildings and structures are prohibited.
- E. They shall not be located within a dedicated easement or right-of-way.

(Rev. 07-11-05)

40.55.01 Agricultural Buildings:

The provisions of Sections 40.55.00 (C), (D) and (E) shall be applicable to all agricultural buildings, regardless of whether such buildings are classified as principal or accessory buildings.

Add Section 40.56.02 to read as follows and renumber subsequent Section 40.56.03 through 40.56.04

40.56.01 Attached Accessory Buildings

- A. Where the accessory building or structure is structurally attached to a main building, it shall be subject to, and must conform to, all regulations of this chapter applicable to a main building in addition to the requirements of this Section.
- B. The area of attached accessory buildings shall not exceed seventy-five percent (75%) of the ground floor footprint of the living area of the

dwelling or six hundred (600) square feet whichever is greater. This requirement shall apply only to attached accessory buildings that have not been granted a valid building permit from the City of Troy Building Department prior to July 21, 2005.

(Rev. 05-08-06)

- C. The size of any door to an attached accessory building shall not exceed ten (10) feet in height. This requirement shall apply only to attached accessory buildings that have not been granted a valid building permit from the City of Troy Building Department prior to July 21, 2005.

(Rev. 05-08-06)

40.56.02 Attached Agricultural Buildings

Where an Agricultural Building is structurally attached to a residence or any other non-agricultural building in an R-1A through R-1E, R-2, or CR zoning district, the provisions of Sections 40.56.01(A) – (C) shall be applicable to such buildings.

40.56.0~~2~~³ Detached Accessory Buildings

- A. Detached accessory buildings shall not be erected in any yard, except a rear yard.
- B. Detached accessory buildings and detached accessory supplemental buildings shall occupy not more than twenty-five percent (25%) of a required rear yard.
- C. The combined ground floor area of all detached accessory buildings shall not exceed four hundred fifty (450) square feet plus two percent (2%) of the total lot area. However, in no instance shall the combined floor area of all detached accessory buildings and detached accessory supplemental buildings exceed the ground floor footprint of the living area of the dwelling or six hundred (600) square feet whichever is greater.
- D. No detached accessory building shall be located closer than ten (10) feet to any main building, nor closer than six (6) feet to any side or rear lot line.
- E. A detached accessory building shall not exceed one (1) story or

fourteen (14) feet in height.

- F. An accessory building defined as a barn shall be subject to the approval of the Board of Zoning Appeals.

(07-11-05)

40.56.034 Accessory Supplemental Buildings

- A. The total floor area of all detached accessory supplemental buildings on a parcel of land shall not exceed two hundred (200) square feet.
- B. An accessory supplemental building shall not be located in any front yard.
- C. No detached accessory supplemental building shall be located closer than six (6) feet to any side or rear lot line.
- D. A detached accessory supplemental building shall not exceed one (1) story or fourteen (14) feet in height.

(07-11-05)

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 _____, 2010.

Louise E. Schilling, Mayor

Tonni Bartholomew, City Clerk

PUBLIC HEARING5. **ZONING ORDINANCE TEXT AMENDMENT (File Number ZOTA 242) – Agricultural Uses in R-1A through R-1E (One Family Residential) Districts**

Mr. Savidant briefly reviewed the intent of the proposed Zoning Ordinance Text Amendment relating to agricultural uses in residential districts.

Mr. Ullmann asked how the proposed restrictions would affect a person who owns an existing farm. He expressed concern that the proposed regulations would hinder and potentially eliminate farming business.

Mr. Forsyth addressed the following:

- Michigan Right to Farm Act.
- Michigan Generally Accepted Agricultural & Management Practices (GAAMPs).
- Papadelis (Telly's Nursery) vs City of Troy lawsuit.
- Intent of proposed ZOTA.
 - Provide regulations, not prohibit farms.
 - Farmers could seek relief through Board of Zoning Appeals (BZA) process.
- Telly's Nursery.
 - Continue as legal, non-conforming use.
 - Existing structures remain in place.
 - Business to continue as usual.
 - Future expansion(s) would require compliance with new regulations.

Mr. Strat said adoption of the proposed ZOTA is not reasonable, and making a farmer expend money and time to go before the BZA for relief does not make sense.

PUBLIC HEARING OPENED

No one was present to speak.

PUBLIC HEARING CLOSED

Mr. Ullmann voiced concern that the proposed language might result in potential lawsuits against the City in the future. He asked which governmental entities would be under the proposed restrictions.

Mr. Savidant said the proposed amendment would affect only new construction of agriculture structures in the City within the R-1A through R-1E zoning districts. He indicated the applicability of the proposed ZOTA is limited; noting the number of farm sites within the City is few. Mr. Savidant addressed accessory structures with respect to the proposed ZOTA, and noted there would be no negative effects on existing structures until such time that damage might occur beyond a certain percentage and reconstruction of the buildings is considered.

Mr. Ullmann said the proposed ZOTA is unduly restrictive, and broadly restricts buildings on acreage property.

Mr. Savidant addressed the legal requirements for publication of Public Hearing notices.

Resolution # PC-2010-03-017

Moved by: Sanzica

Seconded by: Schultz

RESOLVED, That the Planning Commission hereby recommends to the City Council that Articles 4, 10, and 40 of Chapter 39 of the Code of the City of Troy, pertaining to the regulation of agricultural uses in One Family Residential Zoning Districts, be amended as printed on the proposed Zoning Ordinance Text Amendment.

Yes: Edmunds, Hutson, Maxwell, Sanzica, Schultz, Tagle

No: Strat, Ullmann

Absent: Vleck

MOTION CARRIED

Mr. Ullmann said the proposed ZOTA is unduly restrictive. Mr. Ullmann said small buildings on large pieces of property would be unduly restrictive and the few residents in the agricultural business could lose structural buildings, potentially putting them out of business.

Mr. Strat agreed the proposed ZOTA is overly restrictive and unreasonable.