

PUBLIC HEARING

2022-0109 Flex Business (FB) Overlay District Moratorium

(Staff Report dated March 9, 2022, draft Amendment, letter to property owners, public hearing notice and public comments received had been placed on file and by reference became a part of the record thereof).

Chairperson Brnabic introduced the proposed moratorium to pause development under the Flex Business Overlay provisions.

Ms. Roediger said that at the Joint Planning Commission and City Council meeting in January, the topic of the Flex Business Overlay district came up as part of a discussion of proposed ordinance amendments. She said that the FB district has been part of the ordinance for about 13 years. She explained that during that time the City has reviewed and approved about a dozen projects under that ordinance, and there have been some mixed emotions about how some of those projects have turned out. She commented that it is a good time to take a pause on the FB Overlay option and evaluate the criteria and the designs required under the FB provisions, including street types, building design, and more importantly, the uses and the density, and where the overlay is located across the City.

Ms. Roediger explained that the FB overlay is a second optional zoning on top of the main underlying zoning. The moratorium will mean a pause in developing properties under the FB overlay provision and the City will not process any new applications for development; however, the underlying zoning provisions may still be used for development. She said this is a six month moratorium, which would allow staff and the City's consultants to work with the Planning Commission to hold meetings and make recommendations to Council on modifications to the ordinance that are appropriate. She said this evening staff is asking the Planning Commission to make a recommendation to City Council for the moratorium to allow time to study and develop revisions to the ordinance. City Council will have a first and second reading for the moratorium ordinance if the Planning Commission recommends approval.

Chairperson Brnabic opened the public hearing at 7:05 p.m. and said three emails were received with regard to this item. She said the emails would become a part of the records and she said she would summarize them as follows:

Thomas and Cornelia Rose, 3081 S. Livernois, Rochester Hills, MI - *With the changes in the area they believe that their property is ideal to be developed as a business, because of the location and 200 ft. frontage. They think the FB review is necessary but don't support totally removing the overlay. They are zoned R4 and they have a business adjacent to the north of their property.*

Jeff Gabrielson, 201 Cloverport Ave., Rochester Hills, MI - *included a letter signed by residents of 19 addresses on Cloverport. He thanked the City for its work and efforts to review the FB overlays in the City, especially in residential*

areas. They realize that sometimes that what was intended as a helpful tool can have unintended consequences. They look for meaningful action and change with regard to the FB overlays.

Jeremy Olstyn, 152 Cloverport Ave., Rochester Hills, MI - He is also representing residents on Cloverport. They wrote to thank the City for the thoughtful consideration regarding the FB Overlay district and the problems and concerns the district creates. They are encouraged by the discussion of the district and the impact on the City moving forward. The overlay was extended to one of the residential lots on Cloverport Ave., potentially causing major issues if there is development of an adjoining parcel to the south of their subdivision. They favor removing the FB Overlay district entirely, but if the City does not do that they offer five suggestions for amendments to the ordinance.

The following public comments were received at the meeting:

Jeff Gabrielson, 201 Cloverport Ave., Rochester Hills, MI - Mr. Gabrielson said after the joint meeting it was heartwarming as a citizen to have so many board members come up to him and be open to discussion. He is in attendance on behalf of the neighborhood and speaking for them, they are grateful that the City is taking the time to look at what is working and what is not. Their optimal wish would be for the FB overlay to be removed from the property adjoining their street. He understands that there were good intentions when the FB overlay ordinance was written, however in hindsight in needs to be reviewed, and they are grateful the City is doing this.

Douglas Armitage, 1081 W. Auburn Rd., Rochester Hills - Overall looking at the map, he is pleased at some of the areas the City is looking to protect. He said he lives in the Albert Terry historical home, at the corner of Livernois and Auburn. He said he purchased the house 10 yrs. ago, and has used it as a residence but it had the FB overlay designation at that time. It has a good potential for a business application. He said the land to the south and east of him is selling for \$640,000 an acre, if his designation was changed to just residential it would dramatically affect his property value, and he would have businesses to either side of him. It said it would be tantamount to inverse condemnation. He would like to keep his property's status with the FB Overlay.

Linda Ball, 321 E. Hamlin Rd., Rochester Hills, MI - She said they have a large semi-historic home, they have had problems with the historic district trying to designate it as historic. She said they have the unique position of the home being adjacent to a cultural center to the east, Bordine's to the west, and to the south is the Hampton complex. They are not technically a residential type location, so they would prefer not to have the FB designation removed from her property. They would like to keep it so they have the ability to do something with this 7,500 sq. ft. home that doesn't really lend itself to the zoning that it is right now. She agrees with Mr. Armitage's comments. She also noted they have an offer to purchase that they could lose if they lose the FB district designation.

Chairperson Brnabic closed the public hearing at 7:14 pm.

Mr. Gaber said that he has been on the Planning Commission for a few years

and has seen the overlay in action and sometimes it works well. He said the Eddington area was the perfect area for it and the implementation in that area worked out well. He said in other areas, such as a small site on the north side of Tienken Road, Tienken Trail Lofts, they took advantage of the overlay but it was not the intent of the FB ordinance when it was passed. He was one of the first people on the commission to say that the ordinance needs to be looked at and revised so that it can work more effectively throughout the community. However he said he cannot support the six month moratorium to not accept any new applications under the FB ordinances for a few reasons. He said that even though this is permissible legally, at a fundamental fairness level there are two issues. It can be a takings issue, right now they have a reasonable expectation they can develop their property under that overlay. The second reason is because we look at zoning districts all the time, and we make amendments all the time without a moratorium. So while he favors making revisions he can't support the moratorium.

Dr. Bowyer stated she hears what the residents are saying and said that people who want to keep it they should be able to keep it, and if people don't want it then it should be removed. She had initially thought the overlay should be removed altogether instead of having a moratorium; however, there have been so many people speaking of the good effects it has had also that maybe it needs to be kept. It needs to be reviewed, Mr. Gaber said that three years ago, and in the meantime nothing has been done. Hopefully the moratorium will only take three months instead of six. She said she fears if the City does not have the moratorium and put a stop to the high density developments in areas that are not wanted, then it won't get done. She fully supports the moratorium but hopes it doesn't take 6 months. She said if a resident has a residential property with the overlay and they want to keep it then we don't want to take it away from them.

Mr. Hooper stated when that when the FB ordinance was enacted a lot of thought was put into it at the time back in 2005-2007. He pointed out that it has been 12-13 years and it hasn't been used a whole lot, but with some of the recent issues that have come up he supports the moratorium. He said when he was on City Council they did moratoriums a couple of times to address various issues, and made appropriate changes to the ordinance as appropriate.

Mr. Hooper made the motion in the packet to establish the temporary moratorium on the Flex Business Overlay districts for a period of six months, and was supported by Kaltsounis.

Chairperson Brnabic noted that other commissioners would like to speak.

Mr. Struzik stated that the moratorium would be appropriate. Properties would revert back to what the property rights were ten years ago, and that will give the City some time to examine things and to perhaps be a bit more surgical and look for areas where there's not much or any transition from a high intensity use to existing single family residential.

Mr. Dettloff stated that he agrees that the ordinance needs some tweaking; however, generally speaking moratoriums can send a negative message to

developers. He acknowledged that the ordinance does need some work. He asked if the moratorium could be done in three months instead of six.

Ms. Roediger responded that logistically, even getting through the adoption process once there is draft language ready to recommend, there is a 15 day noticing required to go to Council; and it is almost two months to adopt it even when the draft language is prepared. She explained that it will take multiple meetings, so she feels much more comfortable with six months. She said she is committed to working as diligently as possible, she can hope for four or five months.

Mr. Dettloff said he doesn't think everybody is looking to eliminate this overlay, and they want to see it done on a timely basis.

Chairperson Brnabic stated that she supports the temporary moratorium, so the FB districts can be reviewed, and then we can move forward with confidence.

Mr. Gaber stated that it has been six weeks since the joint meeting, and this time could have been spent on revising the ordinance and not on the moratorium ordinance. He stated that time must be allocated wisely to move this forward quickly.

Chairperson Brnabic read the full motion made by Mr. Hooper, a roll call vote was taken, and the motion passed 8-1.

Ms. Roediger commented that staff is moving this as fast as possible, and mentioned that this is on Monday's City Council agenda. She explained that by the time that staff got the direction to put this on the agenda, there was not enough time to provide adequate notice and get this on the February agenda. She pointed out that staff sent out 600 letters to property owners in the FB overlay district. She stressed that staff are committed to move this forward as fast as possible, but it does take some time for the process.

A motion was made by Hooper, seconded by Kaltsounis, that this matter be Recommended for Approval to the City Council Regular Meeting. The motion carried by the following vote:

Aye 8 - Brnabic, Dettloff, Hooper, Kaltsounis, Bowyer, Weaver, Neubauer and Struzik

Nay 1 - Gaber

Resolved, that the Rochester Hills Planning Commission hereby recommends to City Council approval of an ordinance to add Section 138-8.800, a Temporary Moratorium to Chapter 138, Zoning, of the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan, to establish a temporary moratorium suspending the City's processing and acceptance of applications and plans for development, improvement, or alteration of land under Article 8 Flex Business Overlay Districts (FB-1., FB-2, and FB-3) of the Zoning Ordinance, to prescribe a penalty for violations, and to repeal inconsistent or conflicting ordinances.