

with PMS ratings of roads to page 24; add clarifying sentence to pages 55 and 56 for the Tienken and Rochester Road intersection projects (MR-40E, F and H) and;

BE IT FURTHER RESOLVED, that this Plan should be published and attested to according to law.

Voice Vote:

Ayes: All
Nays: None
Absent: Kaltsounis, Rosen

MOTION CARRIED

Mr. Anzek thanked the Commissioners and pointed out that this would allow Ms. Jenuwine and Staff to begin working on the budget in detail.

3. Rezoning Request -City File No. 86-745.2 (Public Hearing)

Project: Site upon which Salsa's Mexican Cantina Restaurant is located
Request: Rezoning to B-2, General Business
Location: Southeast Corner of Rochester and Barclay Circle
Parcel: 15-26-351-002, zoned B-3, Shopping Center Business
Applicant: Diversified Property Group, L.L.C.
6024 West Maple Rd., Suite 107
West Bloomfield, MI 48322

(Reference: Staff Report prepared by Deborah Millhouse, dated May 14, 2004 has been placed on file and by reference becomes part of the record hereof.)

Present for the applicant were Jon Klein, Ryan Rosett and Albert Ludwig, Diversified Property Group and Norman Heinrich, 2052 Reagan, Rochester Hills, MI, partner and property owner.

Mr. Kaiser advised that no Site Plans for specific projects would be discussed, explaining that was not the Commissioners' task for a rezoning request and that was not what City Council would need to review. The discussion would include permitted uses under the current zoning, and what uses the proposed zoning would allow.

Ms. Millhouse noted that the Staff Report summarized the request, which involved a 1.94-acre parcel at the corner of Rochester and Barclay. She advised that Staff had tried to research how it became zoned B-3, and found that when the newest Zoning Ordinance was adopted, it included a new zoning district, B-3, Shopping Center Business, and the subject parcel, which had just been created, was rezoned B-3 at that time. She advised that because the parcel was less than five acres in size, it was non-conforming. It was only 215 feet in width, and the minimum for B-3 is 400 feet. She advised that the differences between B-2 and B-3 were listed in the Staff Report and said that fundamentally, everything allowed in B-2 would be allowed in B-3, although there were differences in what would be permitted and conditionally allowed in the B-3 district. She advised that setback and height requirements were different. She said it was her understanding from the applicant that the reason for the request was to make a non-conforming lot conforming.

Mr. Klein thanked the Commissioners for the opportunity to speak about the rezoning request. He stated that they were very excited about the opportunity to develop the property and looked forward to building a unique and first class development on the site. He referred to his aerial drawing, and reiterated that the property was 215 feet in width and 1.95 acres. He stated that they wished to downzone the property in order to develop it. Their intent would be to develop it into a quality, multi-tenant retail property that the City could be proud of. He advised that under B-2, there was no minimum site size or width, and if this property were downzoned from B-3 to B-2, they would be limiting the potential uses for the property. The City would be able to control the future

uses of the property, for example, B-3 currently would allow car dealerships, bus stations, hotels, motels, residential inns and automotive centers. Those would not be allowed under B-2. He said he appreciated that they would not be discussing a Site Plan, but said he looked forward to showing their work in the future.

Mr. Klein indicated that they would be working with a small site, and a site with limited frontage. He said they reviewed the City's Zoning Ordinance, Master Plan and adjacent uses. He pointed out the surrounding zoning, which included office and retail. He concluded that he hoped the Commissioners would see the merit of the proposal and they were confident that their proposed development would be a substantial upgrade from the existing restaurant. He added that the property would be constructed with the highest quality of materials and be professionally designed with architectural integrity, for both the buildings and the landscaping.

Mr. Kaiser opened the Public Hearing at 8:23 p.m. Seeing no one come forward, he closed the Public Hearing.

Mr. Kaiser clarified that this parcel was not part of the big site adjacent to it. Ms. Millhouse replied that was correct and noted it was created by a land division in 1977. Ms. Millhouse said that the parcels were independent and a cross access would require the approval of both property owners. Mr. Kaiser questioned that if Salsa's were bulldozed, if a B-3 use could go on the site. Ms. Millhouse said that if this lot did not exist and someone came in requesting that it be created, the City could not do it because it would not be in compliance with B-3. The parcel existed prior to being zoned B-3 and the applicant could develop on this site as if it were five acres and 400 feet wide. The differences dealt primarily with setbacks.

Mr. Staran said that was the way the Ordinance had been interpreted, but the plain language of the Ordinance showed that to be absolutely true only for single-family dwellings. If there was an existing, sub-standard lot, one could rebuild a single-family dwelling on the property if it were destroyed by fire or storm. In applying non-residential uses to that language, he believed the exact opposite would be the result. If there were a non-conforming structure on a parcel that was destroyed, in order to be rebuilt, it would have to be reconstructed in conformity with the current zoning. He gave an example of a car dealership in the City that had the same situation. It was an existing B-3 parcel that was substandard. The property owner went before the Zoning Board of Appeals (ZBA) and obtained a variance for the area requirements. The applicant for the subject parcel could quite possibly have an unbuildable lot, because it would not meet the area requirements if something happened to the structure on it.

Mr. Kaiser said that answer actually would go to the benefit of the applicant; otherwise, the owners would be locked into having a Salsa's forever or have to go to the ZBA for variances.

Mr. Rosette said that they would be willing to go either route - use the underlying zoning and attempt to get a variance, or request the rezoning to B-2. They felt they could develop the same building with either zoning, but Staff recommended requesting a rezoning.

Mr. Kaiser said that the only thing that bothered him about changing it would be that they would have another zoning classification fitting in between the B-3 and O-1. Other than that, he felt it made sense.

Mr. Ludwig responded that this was a different parcel. The B-3 adjacent to it is a large, single-ownership parcel. He felt it made sense to have a different zoning classification on this parcel. Mr. Rosette remarked that it was a good transitional zoning.

Ms. Hill noted that she understood the concern about the parcel's non-conforming status, but she was not totally convinced that B-2 would be appropriate. She recalled that there was a lot of discussion regarding the northwest corner, which is now O-1. It began as O-1, was changed to B-2, and finally, after a struggle, it became O-1. It was a mess that went on for many years, and because of that, she did not believe it was ever

developed to its full potential with good traffic flow and other improvements. She said she would be cautious about rezoning this parcel, recognizing it was a separate parcel from the overall B-3, but she would question if rezoning to B-2 would be the most appropriate method for development or the most appropriate zoning.

Mr. Kaiser asked if she would rather the applicant go to the ZBA. Ms. Hill said she probably would. She would rather have them ask for a variance for a development because everything they could develop under B-2 they could develop under B-3, and everything they could develop under B-3 would probably not fit on the property. She was not fearful that the more intense uses would occur on that parcel, but she was not sure about some of the uses that could occur under B-2.

Mr. Heinrich stated that he was the owner of the non-conforming property. He would be a future partner in this development, and he wondered if they went to the ZBA and it was denied, if he would be left with a non-conforming, non-buildable property. He wondered what the future for that parcel would be. Currently, there was a 30-year old building that was difficult to maintain, difficult to maintain a profit with, and too large. The applicants showed him a proposal and he was interested, but if the ZBA denied the request, he would rather have asked for the rezoning, which would make the parcel conform to the Ordinance. He asked what his recourse would be in that instance.

Mr. Kaiser pointed out that he had just named several recourses – request a rezoning, continue to maintain the property and business as is; or request a variance.

MOTION by Hooper, seconded by Ruggiero, in the matter of City File No. 86-745.2, the Planning Commission **recommends** to City Council **approval** of the request to rezone Parcel No. 15-26-351-002 (1.945± acres) from B-3, Shopping Center Business to B-2, General Business.

Mr. Kaiser asked Ms. Millhouse what the timetable would be for the matter to come before City Council. She replied that the Council members liked to review the Minutes of the meeting so she suggested it could be within the month. Mr. Kaiser noted the recommendations they had received from consultants regarding new blocks of different zoning and said he would be a little bothered by changing the zoning. Another option for the applicants would be to sell the parcel to the owners of the adjacent B-3 property. He asked if the applicants could go to the ZBA before going to Council.

Mr. Anzek responded that he felt the difficulty in seeking a variance for this property would be identifying minimum relief. The applicants would have to go through a full Site Plan review to determine that, and it could be timely and expensive.

Mr. Staran said that the applicants would need to seek a dimensional variance, and he suspected that the ZBA would want to see something resembling a fairly detailed Site Plan to be able to make a determination. He felt it would take longer to get before the ZBA than City Council for that reason.

Mr. Kaiser agreed with Ms. Hill that most of the uses that would be allowed in B-3 but not in B-2 would probably not be practical for this property. He advised that there would be differences in setbacks, and if the requirements were the same, he suspected that there would be a right-of-way issue for Rochester Road.

Mr. Klein referred to Ms. Hill's comments about B-2 to B-3, and he believed the question would concern setbacks. He said that the property could be developed as a multi-tenant retail community center under either zoning. They did not see this as a question of O-1 versus any other zoning. He stated that this would be retail and that was what the market would dictate. With regard to setbacks, they had exhausted Site Plan designs, and he stated that it was not their intent to cram buildings to the front line. If he could show a Site Plan, he felt it would bring comfort to the decision makers about B-2 zoning. He noted that there would be simple limitations for this property. There was good depth, but not significant width, and they would have to plan a marketable center for the tenants and one that had good parking, good circulation and good access. That, by definition, would not allow them to push the property to the limits. He stated that they

were lucky enough to have an initial plan review with the City and got feedback from Ms. Millhouse, the Fire Department, the Engineering Department and regarding landscaping. They understand the future right-of-way and are planning for that. They see the B-2 zoning as nothing more than circumventing an extra layer to get to a successful development for them, as developers, for Mr. Heinrich, as the partner, and for the City of Rochester Hills. He said they had brought Site Plans which would show differences in the zoning classifications, and it would show the ease that B-2 would create for all parties involved. He added that they could show some of the hardships that they would go through with a variance request. Mr. Kaiser declined his offer to review a Site Plan.

Mr. Rosette said that based on their studies, the building would be the same distance off Rochester Road, regardless of the zoning. Even though the setback would be less with B-2 zoning, they do not intend to go that route.

Mr. Kaiser said that the building might have the same setbacks, but he questioned the parking. Mr. Klein said it would be in the same place under either zoning. He said that the reality was that there was an existing right-of-way and a proposed right-of-way. They want to work with the City and the neighbors and they have taken the right-of-way into account, which would take 24-29 feet off of the existing right-of-way. He felt that more parking was a negative and referred to the center behind Salsa's as a "sea of parking." He emphasized that they would create the necessary parking under the B-2 or B-3 requirements to sustain tenants.

Ms. Millhouse explained that there was a difference between the building envelope and the buildable envelope. The area in which the building could actually be located would be smaller in the B-3 because of the differences in the setbacks. The buildable area, which could include the building, parking and maneuvering lanes would be exactly the same, except under B-2, if there were no doors or windows on the interior side, the building could go up to the property line. She did not believe she had ever seen a retail center that had no openings on one side. She referenced the concern relative to spot zoning and read a quote from a former mentor which she described as a fundamental definition of spot zoning: "Spot zoning is a rezoning of a usually small parcel of land to a district substantially different from the classification of surrounding land." She explained that in other words, if this request were for residential or office rezoning, it would be different compared with rezoning from one business district to another. She continued, "The phrase is typically used when the usual classification is intended to benefit a particular property owner and when it is incompatible with the surrounding area. When this occurs and the zoning is in conflict with the community's long range plan, not for the purpose of furthering the comprehensive plan, then the spot zoning may be considered invalid." She pointed out that the City's Master Plan did not make a distinction between B-1, B-2, or B-3, but that they were all listed as comparison and convenience retail. Based upon those criteria, she hoped to ease any concerns relative to spot zoning.

Roll call vote:

Ayes: Boswell, Brnabic, Hardenburg, Hooper, Kaiser, Ruggiero
Nays: Hill
Absent: Kaltsounis, Rosen

MOTION CARRIED

Mr. Kaiser advised that City Council would hear the recommendation, and he cautioned that if the rezoning were approved, the applicants would have to be aware that this development would be scrutinized thoroughly and would have to look good on all four sides because of the visibility all around it.

4. Rezoning Request - City File No. 04-010 (Public Hearing)

Project: Site known as Anderson Sewing & Vacuum
Request: Rezoning to B-2, General Business
Location: Northwest Corner of Rochester Road and Childress Avenue
Parcel: 15-15-426-020 (.11 acres zoned B-5 Automotive Service Business District and .29 acres zoned R-4, One Family Residential, .5 acre total)