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May 12, 2004

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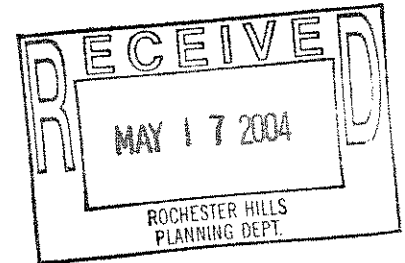
City Council
c/o Ms. Susan Galeczka
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, Michigan 48309-3033

Re: ***Finsilver/Friedman Venture I, LLC v City of Rochester Hills ZBA***
Case No. 04-058042-AA

Dear Mayor and City Council Members:

I advised you, last week, that an appeal has been filed in Oakland County Circuit Court from the Zoning Board of Appeals' February 23, 2004 decision denying a use variance requested by the owner of 1812 and 1814 Rochester Road, where the Mercy Care Clinic is located. I am enclosing a copy of the court papers filed by the appellant, Finsilver/Friedman Venture I, LLC. The court papers attach a copy of the ZBA's February 23, 2004 minutes concerning City File No. 03-015 (Item No. 7 in the Minutes).

I am also enclosing the Staff Report and a map of the subject site, which explain the facts and circumstances of the use variance request. In short, the appellant owns 2 parcels of property on the west side of Rochester Road. One parcel is zoned O-1 and is occupied by 2 medical office buildings, both of which are historic structures. The rear part of the site is a separate, one-family residential zoned parcel that is otherwise land locked. It appears the residential parcel was split off from the "bowling alley" residential parcel that fronts on Hamlin Road, behind the retail center located at the northwest corner of Hamlin and Rochester Roads. The appellant wants to use the residential parcel for additional parking to service appellant's 2 office buildings. After unsuccessfully requesting a rezone, the appellant applied for a use variance. At the ZBA meeting, a motion to approve the use variance was made and discussed at length. Then, a recess was



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called to allow ZBA members to refine the proposed motion to approve. However, after the recess and further discussion, the motion failed on a 3-4 vote. Thereafter, a motion to deny was adopted on a 4-3 vote. The minutes further reflect that 2 residents from Sandalwood appeared and spoke against the variance request, and a Sandalwood Court resident telephoned in an objection.

At the onset, the appellant would like to know whether there is any interest on the City's part in negotiating a settlement of this matter. The appellant's attorney expressed that the appellant is willing to put in whatever reasonable landscaping or buffering the City believes is necessary to protect neighboring properties.

This is a tough case, as is evidenced by the ZBA's split vote. On the one hand, the property is zoned residential, several neighbors objected, and the desired additional parking is not required by the City (the current parking facilities satisfy ordinance requirements.) There is concern about allowing a commercial use to creep into the residential area.

On the other hand, it is unclear (at this point) how, why or when the residential parcel was split off and attached to the office zoned parcels. Although physically possible, it is probably not feasible to implement a residential use on the residential parcel, with access provided through the office parcel. The residential parcel is otherwise landlocked. A use variance would have allowed the ZBA to craft conditions restricting the property to a specific, prescribed use (without changing the zoning) and requiring conditions designed to minimize the impact to neighbors. Otherwise, the residential parcel might not be usable unless it can be recombined with the residential parcel it appears to have originally been split off from. It is also possible that, much like in the recent Rainwater case, an additional challenge could be made to the validity of the zoning of the residential parcel, which could also include damage claims. The appellant has not threatened that, but I need to advise you that is a possibility.

Right now, we are in the process of gathering and assembling the file and record for filing with the Court. Thereafter, it will be necessary to file legal briefs with the Court. Before we get to that point, I request the opportunity to discuss this matter further with Mayor and City Council, in closed session, to request direction as to how the City would like to proceed in this matter.

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Meanwhile, I will welcome any questions or comments you may have.

Very truly yours,

BEIER HOWLETT, P.C.



John D. Staran

JDS/lh
Enclosures

cc: Mr. Edward Anzek, Planning Department (w/enc)
Mr. Scott Cope, Building Department (w/enc)
Ms. Beverly A. Jasinski, Clerk (w/enc)