

2. Rezoning Request – City File No. 04-008 (Public Hearing)

Project: An amendment to Chapter 138 of the Code of Ordinances to rezone a portion of one parcel of land totaling approximately .35 acre from R-3, One Family Residential, to B-3, Shopping Center Business District.

Location: South of Auburn, West of Rochester Road

Parcel: Part of 15-34-227-010

Applicant: Viviano Land Company
3050 S. Rochester Road
Rochester Hills, MI 48307

(Reference: Staff Report prepared by Deborah Millhouse, dated June 24, 2004 had been placed on file and by reference became part of the record thereof.)

Present for the applicant was Robert Davis, 12900 Hall Road, Sterling Heights, MI, Attorney for the applicant.

Ms. Millhouse stated that this request was to rezone from a one-family residential district to a shopping center business district. She noted that the portion of the parcel in question totaled .35 acre and was the rear of a one-acre parcel that had a single-family residence on Hickory Lawn.

Ms. Millhouse referred to the surrounding zoning and said there was B-2 (General Business) to the north, B-3 (Shopping Center Business) to the east, which was the existing Meadowbrook Dodge facility, and that the area around Hickory Lawn was zoned R-3. She expounded that on the corner of Rochester and Auburn there was B-5 (Automotive Service) zoning, a B-2 strip mall on the west side of Rochester Road south of Meadowbrook Dodge and a B-2 district in the northwest corner of the intersection. She advised that the Commission could not consider an intended use with this request, but that the applicant had provided that it would be for the storage of new vehicles for Meadowbrook Dodge. She emphasized that City Council and the Planning Commission had to review a rezoning request based upon all the uses that might be allowed with the existing and proposed districts. She referred to the Staff Report, which provided copies of the Zoning Ordinance that listed the permitted and conditional uses for each district. She stated that the Master Plan showed this area remaining as a single-family residential use.

Mr. Kaiser asked Ms. Millhouse to explain the buffer requirements for B-3 districts adjacent to residential zoning. Ms. Millhouse replied that it would be a Type C, which was a 50-foot buffer. Mr. Kaiser asked about the dimensions.

Mr. Kaltsounis said that the property line running north and south was 99 feet, and east and west it would be 147 feet. Mr. Kaiser pointed out that 50 feet of the 99 feet would be utilized for buffering and screening and the footage gained would be lost immediately. Ms. Millhouse replied that was basically correct. She noted that there would be no buffer requirement between the B-2 and B-3 zoning districts, but there would be a 50-foot buffer required between a B-3 and an R-3. Mr. Kaiser said that the western and southern-most lines that were drawn for the proposed rezoning piece would each be subject to a 50-foot buffer, and a 20-foot intermittent visual obstruction (IVO) and a six-foot opaque screening around the southern and western borders would be required. He added that it could be a wall, fence or berm.

Mr. Rosen clarified that the applicant would lose 50 feet on the southern border all the way across, as well as 50 feet on the western side. Mr. Kaiser clarified that they would not lose it - they would lose the use of it.

Ms. Millhouse said that would absolutely be the case, however, the Zoning Ordinance would also allow the applicant to request a Buffer Modification from the Planning Commission. Mr. Kaiser said that the provisions for waiving or modifying could hardly apply, since the applicant would be creating the situation. Ms. Millhouse replied it would be a Site Plan issue.

Mr. Davis stated that he received the Staff Report and he asked if the City had received any other written comments with respect to this request. Ms. Millhouse said that the applicant should have received everything. Mr. Davis noted there were no letters or comments with respect to this particular issue.

Mr. Davis referred to his drawing and pointed out a wall. He stated that the applicant wished to separate and level the property line and create a new property line consistent with those of the other residential properties. The .35-acre extends into the B-2 and B-3 uses and they wanted to move the wall and make use of the remaining property. In support for the rezoning request, he noted that the .35-acre was a part of a residential parcel already developed with a home. The owner of the home agreed with the request. The .35-acre extends into the car dealership area of use. They wish to square off that property, which really did not function as a residential use at this juncture. The rezoning request was to make that portion consistent with the use around it. He again noted that there were no objections to this request. He said he understood that the parcel was zoned and master planned R-3, but the larger box that currently surrounds two of its boundaries was used as commercial; therefore, it would be in a use box that fit B-2 and B-3. This request only sought to put this little box into the same use category as that which was already around it. They felt a compatible use for this "box" would be B-3 and he viewed the request as logical because two sides of it were already in that category. He stated that rezoning to B-3 would not create any new B-3 development, and he cited previous issues pointed out. There would be very little property left after screening, but it would be valuable property to Meadowbrook Dodge for purposes of inventory parking. He said that having this property "would help them immensely and would also help the property owner, would not result in a spot-zoning situation, would not put the R-3 zoning into a non-conforming use status, would be harmonious to surrounding uses, and have no additional impact on the City's services or traffic." He stated that there would be no environmental impact, and that the rezoning would result in only one side of the R-3 property abutting the B-2/B-3 uses. He advised that they would meet the screening requirements and said he would entertain any questions.

Mr. Kaiser asked him to compare his drawing with Ms. Millhouse's and said there seemed to be a difference of opinion as to where the property lines were. Mr. Davis said that Ms. Millhouse's drawing only showed the part being requested for rezoning. Mr. Kaiser said that Mr. Davis showed that Meadowbrook Dodge would have one big square if the piece were rezoned. Mr. Kaiser corrected that the request would not just square off the Meadowbrook Dodge property, it would create a nub to the west. He observed that it would put things more out of whack than they were. Mr. Davis replied that this parcel had the only part of all the long residential parcels that extended into and was surrounded by B-2/B-3 uses on two sides.

Mr. Kaiser opened the Public Hearing at 8:50 p.m.

Ricardo Ibanes, 3065 Hickory Lawn, Rochester Hills, MI Mr. Ibanes said he lived to the west of the subject parcel. He was concerned that his home would not be screened and if this parcel was rezoned that his home would be between a B-2 and B-3 area.

Mr. Kaiser closed the Public Hearing. He expounded on Mr. Ibanes' comment and said the applicant appeared to want to square off his property. He felt that rezoning this portion would visually dramatically change the other residences in the area because walls would have to be moved, lighting would have to be changed, the IVO would have to be moved and there would be a huge impact on the existing homes.

MOTION by Hooper, seconded by Hardenburg, in the matter of City File No. 04-008, the Planning Commission **recommends** to City Council **denial** of the request to rezone a portion of 15-34-227-010 (0.35± acres) from R-3, One Family Residential to B-3, Shopping Center Business.

Mr. Rosen commented that there might be a little more to the story, and another reason why Meadowbrook Dodge requested a rezoning. He said he reviewed the parcel-combination drawing and it showed that the existing Meadowbrook Dodge was 4.79

acres. They were using the parcel as B-3 zoning, but were non-conforming because they did not have five acres, and he felt that could be a big deal.

Ms. Millhouse advised that according to the City's Geographic Information System, the existing Meadowbrook Dodge, Parcel No. 15-34-227-037, was 4.409 acres in size, with 369 feet of frontage along Auburn and 267 feet of frontage along Rochester Road. Mr. Rosen pointed out that if the parcel were non-conforming, there could be problems with signage, expansion, or something else. He did not know how the parcel became B-3 without having five acres. Mr. Staran believed they received variances from the Zoning Board of Appeals six or eight years ago. Mr. Rosen said that was important, because if the parcel were conforming there would not be an issue. Ms. Millhouse said that even adding the .35-acre, it would not total five acres. Mr. Davis said it would not change the status. Mr. Rosen clarified that the City believed this was a conforming parcel.

Ms. Hardenburg advised that the packet listed the parcel at 4.79 acres, not 4.4. Ms. Millhouse said the difference might be from the right-of-way measurements. Mr. Kaiser indicated that the answer to Mr. Rosen's question would be changed by that difference because they could consider that the applicant would want to have over five acres. Ms. Millhouse acknowledged what was being suggested and explained that the 4.79 acres was a total of the subject portion and the applicant's parcel.

Roll call vote:

Ayes: Ruggiero, Brnabic, Hill, Kaltsounis, Rosen, Boswell, Hardenburg, Hooper, Kaiser
Nays: None
Absent: None

MOTION CARRIED

Mr. Kaiser advised that this matter would be sent to City Council. Mr. Davis said he did not consider the five-acre issue, but he did not want them to speculate about why he did not disclose anything about it. He indicated that it was a little offensive and that this was a straight rezoning request. He did not want the Commissioners to have an impression that he was trying to "sneak one in," because that was not correct. He said he wished he were smart enough to think of bringing the non-conformity up. Mr. Kaiser said Mr. Davis was being overly sensitive, and if he were intimating something about Mr. Davis, he would have done it directly. He stated that he specifically made reference to Meadowbrook Dodge. He suggested that when this request was presented to City Council, and so that no one was offended, Mr. Davis should present his drawing in a more accurate fashion and consistent with Ms. Millhouse's information.

3. Final Site Condominium Plan Recommendation – City File No. 97-004.2

Project: Country Club Village Phase II, 199 lots in last phase of 256-lot development on approximately 118 acres total
Request: Final Site Condominium Plan Recommendation
Location: South of Auburn, East of Rochester Road
Parcels: 15-35-202-0050, 15-35-203-001, 15-35-476-002 zoned R-3, One Family Residential
Applicant: East Course Limited Partnership
40900 Woodward Ave., Suite 130
Bloomfield Hills, MI 48304

(Reference: Staff Report prepared by Derek Delacourt, dated June 29, 2004 had been placed on file and by reference became part of the record thereof.)

Mr. Hooper advised that his employer had a contract with a sister company of the applicant. That contract was finished, but he felt that to maintain continuity and integrity, he was obligated to recuse himself from this matter.