



Onyx Plaza Project Update

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Last week, the Planning Commission approved Preliminary Site Plan, Woodland Permit and Storm water Management Plan as this is allowable in B-3 zoning. Since that time, City administration has responded to numerous questioning the process. We thought it best to compile a list of the questions with answers in one easy to understand document.

If, after reading the educational information below, you still have questions about the process, our Community Development Department is located on the first floor of the Novi Civic Center and staff is available from 8a to 5p, Monday through Friday. I, too, am available to answer any questions you might have about the project and can be reached via email at pauger@cityofnovi.org or by calling 248.347.0445.

What project was before the Planning Commission in September 2018? Last September, the applicant/developer proposed a retail and theater project involving two parcels with different zoning classifications, OS-1 (Office Service) and B-3 (General Business). The applicant wanted to build the project across both parcels. The developer requested to change the zoning of the OS-1 parcel to B-2 (Community Business), which would allow for retail, restaurants and a movie theater.

Under the Michigan Zoning Enabling Act (MZEA) and City of Novi Ordinances, a rezoning request requires a Public Hearing before the Planning Commission. The Planning Commission can provide a positive or negative recommendation to City Council for the request. The final decision on rezoning is the responsibility of City Council.

Based on their evaluation of the site, including public input in September, the Planning Commission gave a negative recommendation to the City Council. The applicant/developer chose not to move forward with the proposed design without a positive recommendation and the project never went before the City Council.

What was different with the proposed development this time? The proposal presented to the Planning Commission in April 2019 is reconfigured from the previous plan, placing the retail and theater uses solely on the parcel already zoned B-3. City staff, assisted by the City Attorney's office, reviewed the request and determined a movie theater use is permitted on a B-3 parcel under the Zoning Ordinance, and no rezoning request was required. Since the use is permitted under the established Zoning Ordinance, approvals were only required from the Planning Commission for the Site Plan, Woodland Plan, and Storm water Management Plan. These plans are reviewed and approved ONLY by the Planning Commission; a Public Hearing was only required for the Woodland Plan.

Why was this new version of the project approved? Unlike a rezoning request, which requires a legislative act by City Council, and is very discretionary, a site plan review is generally considered to be non-discretionary—which means ***if the site plan meets ordinance requirements, it only has to be approved by the Planning Commission***. The MZEA, the state law that gives the right to have a zoning ordinance, states very clearly: "A site plan shall be approved if it contains the information required by the zoning ordinance and is in compliance with the conditions imposed under the zoning ordinance...". What this means is the Planning Commission was not being asked if it thought the project is a good use (unlike the proposed rezoning request in 2018); it was just being asked if the proposed plan met all the specific, listed standards and criteria of the ordinance. And except for a few items that are going to the Zoning Board of Appeals (ZBA), it did.

These standards and criteria include, but are not limited to, site layout, landscaping, parking, engineering and utilities. Staff and consultant evaluations were provided comparing the proposal to the standards and criteria. The few deviations from the ordinance standards were spelled out for specific attention by the Planning Commission members, who found that the project complied with the ordinance standards, subject to the ZBA items (addressed below).

Why did the City determine that the B-3 District allows theaters? Couldn't the City have said that it wasn't permitted? When the applicant/developer proposed the Onyx Plaza on the B-3 parcel, the City staff reviewed the ordinance to see if those uses were permitted within the B-3 District. Staff determined that under Section 3.1.2 of the Zoning Ordinance, subsection b, "Principal Permitted Uses," movie theaters were

incorporated into the permitted uses under subsection vi, entitled “Retail Businesses or Retail Business Service Establishments.” That subsection contains a hyperlink to Section 4.27 of the Zoning Ordinance, which is entitled “Retail Business or Service Establishments.” That language states in relevant part:

In the B-2, TC and TC-1 Districts, all retail businesses or service establishments are permitted as follows:

* * *

- D. Theaters, assembly halls, concert halls, museums or other places of assembly when conducted completely within enclosed buildings.

* * *

Even though the introductory language does not specifically refer to “B-3” as well as “B-2,” when the language is reviewed in the context of all of the language in the ordinance, and the historically permitted uses in the B-3 District, the theater use is clearly permitted. This is not even the first time the City has made the determination that the link to Section 4.27 incorporates all those listed uses into the B-3 District. That same hyperlink is how other uses like restaurants are incorporated into the B-3 District as permitted uses.

This City’s interpretation is also consistent with the general concept of how business uses are constructed in the City’s Zoning Ordinance: the B-1 District is local commercial (least intense), the B-2 District is community commercial (more intense), and the B-3 District is general commercial (most intense). The entire list of uses from Section 4.27, including restaurants, has been included in the B-3 District for dozens of years before the Clearzoning website reformatting/change in navigation.

Don’t we have enough theaters in and around Novi? This is not a decision the City of Novi staff nor the City’s appointed boards (Planning Commission/ZBA) and elected bodies (City Council) are able to make in the context of a Site Plan review for a permitted use. Again, the Planning Commission’s task was to determine if the plan complied with ordinance standards — not whether the Onyz Plaza was a good thing or a bad thing. Property owners have a right to develop property in accordance with the zoning ordinance and building code requirements. Certainly, it is in the interest of the community that buildings within the city are occupied and well-maintained, with the hope that they will be providing jobs, commerce and flourishing businesses. Ultimately, decisions regarding the use of a property is mostly up to the owners and investors.

The proposed project includes two parcels. Can a project have multiple zoning designations? Parcels within a development are not precluded from having different zoning classifications for different portions of the site. These “split zoning” situations occur throughout the city. The allowable uses are simply limited to the appropriate portion of a site or parcel.

Why was the Ordinance Text Amendment put forward at the same Planning Commission meeting? When staff becomes aware of opportunities to improve the written document, the amendments are brought forward at the earliest opportunity. As discussed above, while the City concluded that the movie theater use was permitted already, it recommended a clarification to that effect.

Will this proposal go before the City Council for consideration? As currently proposed, the project will NOT require consideration or approval by the City Council. There are minor deviations regarding placement of the dumpster enclosure and utility equipment that will require consideration and approval by the ZBA. The proposed deviations would actually place these structures further from homes to the west and will be evaluated by the ZBA in accordance with the specific criteria in the MZEA and the Zoning Ordinance upon application by the developer.

What are the next steps? The next steps for the applicant/developer will be to make application for and secure approval from the ZBA for the location of the dumpster enclosure and utility equipment referenced above.

Following this step, the Final Site Plan documents would be submitted and reviewed for conformance with the Planning Commission’s approval and other ordinance standards. Any corrections would need to be made and a final record “Stamping” set of drawings would be prepared, submitted, reviewed and, if compliant, approved administratively by City staff. At that point, the developer would secure required permits from the Building Department and other agencies and schedule a pre-construction meeting to move forward with construction.