

PLANNING AND DEVELOPMENT SERVICES STAFF REPORT

For Planning Commission Meeting of December 18, 2012

**SUBJECT: Capital Investments Rezoning and Area Plan Waiver
(2271 South State Street)
File Nos. Z12-019**

PROPOSED CITY PLANNING COMMISSION MOTION

The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve Capital Investments rezoning from M1 (Limited Industrial District) to M1A (Limited Light Industrial District).

PROPOSED CITY PLANNING COMMISSION MOTION

The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council waive the Area Plan, as no additional floor area is proposed at this site.

STAFF RECOMMENDATION

Staff recommends that the zoning be **denied** because the proposed uses permitted under the M1A zoning district are not consistent with the recommendations of the Master Plan: Land Use Element and the Transportation Master Plan Update (2009).

Staff recommends the area plan waiver be **denied**, because while no new construction is proposed, the survey of the existing conditions that was provided by the petitioner does not reflect the current site configuration, and the required site improvements from an earlier approved site plan have not been installed.

LOCATION

The site is located on the east side of South State Street, north of East Eisenhower Boulevard (South Area, Malletts Creek Watershed).

DESCRIPTION OF PETITION

The petitioner proposes rezoning this 2.24 acre site from M1 (Limited Industrial District) to M1A (Limited Light Industrial District) to allow for automobile sales. The petitioner proposes renovating the existing 1,868-square foot building fronting South State Street as a sales office and using the rear, warehouse building as an auto repair shop. Repaired vehicles will be

stored and sold along the existing parking lot fronting S. State Street. This parking lot is accessed off an existing curb cut on South State Street and leads to the eastern, rear of the property.

The automobile dealership use requires a minimum total of 22 parking spaces based on the total amount of floor area on site. It is unclear from the submitted survey how many legal parking spaces exist on site, although from a previous site plan (started, but not completed) and from aerial photographs, it appears there are approximately 39 surface parking spaces on-site.

The petitioner held a neighborhood meeting on October 5, 2012 to present the rezoning proposal. A copy of the meeting minutes and neighbor concerns is attached.

The petitioner requests an Area Plan waiver for this site as no new construction is proposed on site and a survey has been submitted showing existing conditions.

SURROUNDING LAND USES AND ZONING

	LAND USE	ZONING
NORTH	Offices and Vacant Land	O & M1 (Office & Limited Industrial)
EAST	Bus Storage Yard	M1
SOUTH	Personal Services	O
WEST	UM Sports Complex	O

COMPARISON CHART

	EXISTING	PROPOSED	REQUIRED/PERMITTED
Zoning	M1 (Limited Industrial District)	M1A (Limited Light Industrial District)	M1 & M1A
Gross Lot Area	97,661 sq ft	97,661 sq ft	13,000 sq ft MIN
Maximum Gross Land Coverage of Structure	6,872 sq ft/ 7 % (approximate)	6,872 sq ft/ 7 % (approximate)	39,064 sq ft /40% MAX
Maximum Floor Area in Percent of Lot Area)	6,872 sq ft/ 7 % (approximate)	6,872 sq ft/ 7 % (approximate)	73,245 sq ft/ 75% MAX
Setback – Front	1 ft	1 feet	15 ft MIN
Setback – Side(s)	5 ft	5 feet	0 ft MIN
Setback – Rear	170 ft	170 ft	0 ft MIN
Height	25 ft (2 stories)	25 ft (2 stories)	35 ft MAX
Parking – Automobile	39 spaces	39 spaces	6 spaces – Manufacturing 22 spaces – Auto Sales
Parking – Bicycle	4 spaces – Class C	4 spaces – Class C	Class B – 1 spaces MIN Class C – 2 spaces MIN

HISTORY

The Ann Arbor Plastics site plan, approved for this site in 1989, allowed for the replacement of the fire damaged building on the east end of the site. A site plan for minor modifications was also required and approved at that time for the parcel to the south so that the shared driveway could be paved.

In 1996, the Koh Building revised site plan was approved for the proposed construction of a three-story, 12,000-square foot building and removal of the three small existing buildings on the west end of the site. In 1999, site plan for planning commission approval was approved to increase the square footage of the proposed building by 144-square feet and relocate the building slightly. This project was started and never completed.

PLANNING BACKGROUND

The City of Ann Arbor Master Plan: Land Use Element (2009) (South Area Future Land Use) recommends research and industrial uses for this site. The plan notes that commercial uses should be discouraged, except for the parcels adjacent to the Stimson and South Industrial commercial area. The site is currently zoned M1 which is consistent with this land use recommendation.

The Transportation Master Plan Update (2009) recommends signature transit along the South State Street corridor. Signature transit refers to high frequency transit service that includes improved transportation systems to better accommodate transit service. The plan indicates that increased land use densities will help support signature transit service.

In early 2012, the Connector Feasibility Study (2012) was completed which identified South State Street as a possible route of a major transportation corridor that would link Plymouth Road at US-23 with the University of Michigan's North Campus/Medical Campus/Main Campus, and downtown Ann Arbor to the major employment centers on the south side of Ann Arbor near I-94. Higher land use densities will better support this potential new service.

Over the past year, the Planning Commission and Planning and Development Services staff have been working on the South State Street Corridor Plan, an update to the land use recommendations for this portion of South State Street. The proposed draft land use recommendation for this site and properties north and south of the site is for office, residential and a mixture of office and residential uses. Such uses would help support transit along South State Street and be consistent with existing infrastructure along the corridor.

ZONING/REZONING JUSTIFICATION

Per Chapter 55 Section 5:107(1), the Zoning Ordinance and Zoning Map shall not be amended except "because of changed or changing conditions in a particular area or in the municipality generally, to rezone an area, extend the boundary of an existing Zoning District or to change the regulations and restrictions thereof."

The petitioner's Petition For Changes In Or Additions To The Zoning Chapter, a form provided by the Planning Department to assist petitioners in providing the required information per

Chapter 55 Section 5:108(2)(a)-(g), is reprinted below. The questions are not standards for approval, rather guides to providing sufficient evidence of changed or changing conditions.

Petitioner responses are in plain text; staff comments are in *italics*.

- **The extent to which the zoning/rezoning requested is necessary:**

M1 only allows limited sales space for products incidental to principal use whereas M1A allows general sales of automobiles. The area required for automobile sales exceeds what would be permitted under the M1 zoning.

- **This zoning/rezoning will affect the public welfare and property right of persons located in the vicinity in the following ways:**

It will enhance the public welfare by improving the site and making it more attractive, and adding additional business activity and overall vitality to this area. There will be virtually no disadvantages, although there may be more traffic to the site.

The petitioner has not proposed any improvements to the site, which currently is out of compliance and in deteriorated condition.

- **This zoning/rezoning will be advantageous to the City of Ann Arbor in the following ways:**

Create more business activity, improve the appearance of the site, provide more retail sales options for residents.

- **This particular location will meet the convenience and service requirements of potential users or occupants in the following ways:**

It is in an area appropriate for retail sales of automobiles and will have adequate space on site for customers.

- **Any changed or changing conditions in any particular area, or in the municipality generally which may have bearing on the proposed zoning/rezoning are:**

The area has both M1 and M1A zoning designations. The site is more appropriate now for the M1A designation due to the desire of the owner to sell automobiles on site. The M1 designation may not have been the most appropriate designation.

There are substantial areas of M1A zoning in the corridor currently, and no indication that additional auto sales are needed in the vicinity.

- **Other circumstances which will further justify the requested zoning/rezoning are:**

Rezoning to M1A will be consistent with the Master Plan, as as the "Site 5" specific land use study area.

Site 5 recommends light industrial uses be encouraged as these sites are annexed into the City. Commercial uses should be discouraged, except for the parcels adjacent to the Stimson and South Industrial commercial area.

STAFF COMMENTS

Forestry – This site does not currently meet the previously approved landscape plan. This site is required to be in conformance with this plan.

Planning – The petitioner submitted supplemental information to amend the zoning map after the rezoning application was received by the Planning Department and in response to the Planning Department’s comments. This supplemental information is attached to the staff report.

The Master Plan offers no clear support for an automobile dealership at this location. Recent master plan documents recommend higher density, mixed-use land uses that support transit investment along the S. State Street corridor. The proposed auto dealership is a type of use that will not support transit along this corridor. The parking lot lighting that will accompany the dealership is not consistent with future office and or residential uses in the immediate vicinity. For these reasons, staff does not support the proposed rezoning from M1 to M1A.

The petitioner’s application mentions the possibility of repairing and selling automobiles on site. The repair of automobiles is an allowable use in the M1 zoning district and this district allows for retail sales as a permitted accessory use for products customarily incidental to the principal use, provided the total amount of internal floor area of the structure devoted to sales and display does not exceed 10 percent of the floor area of the total establishment. This allows for an approximately 187-square foot sales office with automobiles repaired on site to be sold on site. A Re-Occupancy Permit will need to be submitted, reviewed and approved by the Building Department before this business opens.

Research conducted for this rezoning request revealed a number of site compliance issues, including lack of required landscaping, an unfinished building foundation, deteriorated driveways and storm water drainage concerns. Staff will follow up with the property owner to develop a timetable to resolve these issues.

Prepared by Christopher Cheng
Reviewed by Wendy Rampson
12/14/12

Attachments: Zoning/Parcel Maps
Aerial Photo
Petition to Amend Zoning Map
10/5/12 Citizens Participation Report
Area Plan Waiver Request
Site Survey
Supplement to Petition to Amend Zoning Map

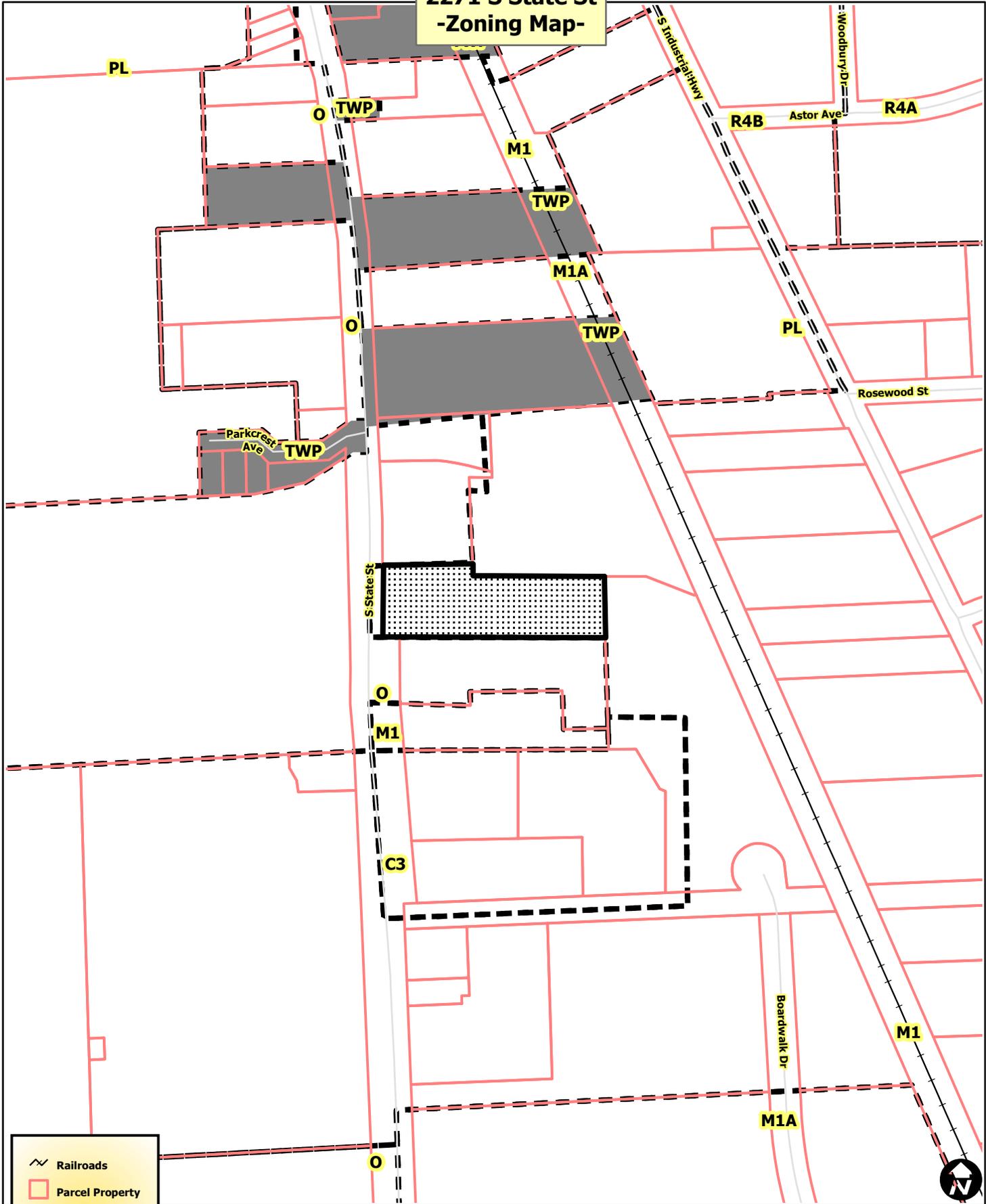
c: Petitioner: Capital Investment Company, LLC
3800 Packard Road, Suite 250
Ann Arbor, MI 48108

Petitioners Agent:

Scott E. Munzel
101 N. Main St., Suite 575
Ann Arbor, MI 48103

Systems Planning
File Nos. Z12-019

2271 S State St -Zoning Map-



Legend

- Railroads
- Parcel Property
- Zoning**
- Township
- Zoning



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 Map Created: 6/28/2012

2271 S State St -Aerial Map-



 Railroads

 Parcel Property



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Map Created: 6/28/2012



PETITION TO AMEND ZONING MAP

Capital Investment Company, LLC

Capital Investment Company, LLC, seeks to amend the Zoning Map for the property located at 2271 S. State Street (the Property), from M I to M I A. The M I designation allows for automobile repair, but the sales of such automobiles is limited to 1) “inside” sales and 2) only 10% of the floor area of the structure. M I A, however, allows for general sales activities “outside” and without the 10% restriction. Sales of large bulky items, such as automobiles, is not feasible without both “outside” sales and without the 10% limit. Therefore, Capital seeks an amendment to M I A in order to sell on-site the automobiles which it is repairing at this location.

I. Proposed Use

Capital seeks to renovate the existing warehouse structure on the Property and use it to conduct automobile repairs. This structure is located about 250 feet east of State Street, with no nearby buildings, such that the repair activity will not have any adverse impact on adjoining properties. Capital seeks to then sell in the existing parking lot located immediately adjacent to State Street the automobiles it has repaired. The lot will provide excellent visibility for the sales of the automobiles. Capital would also renovate the building next to State Street as a sales office. This proposed activity would not only return the Property to productive use, but would also enhance the visual appearance of the Property and the State Street corridor.

II. Background Information

The Property has had a variety of uses over the years. The most recent use was for a restaurant (Pilar’s Tamales) at the western portion of the site adjacent to S. State Street. The eastern portion, down the hill from State Street, has not been used in recent years. There are several buildings on the Property. The old restaurant structure is located very close to State Street. To the east and down the hill, along the north edge of the Property, is a garage structure. Just slightly to the east and in the middle of the Property is a larger “warehouse” styled structure. All three of these buildings are currently vacant.

The neighborhood generally contains a mix of commercial and industrial type uses. Just to the south is a beauty salon, a hot tub facility, and the Howard Cooper (now Germain Motors) automobile dealership. To the east, down a fairly significant slope, is the Ann Arbor School District bus storage facility, and on the other side of that, the railroad tracks. To the north is an office building, and farther to the north is a mix of industrial, commercial, and retail uses. Across the street to the west is the University of Michigan Tennis facility, as well as a large parking lot.

The Property is located on the east side of S. State Street, near the top of the hill whose low points are the railroad tracks (at S. State Street) and Eisenhower Boulevard. The Property has about 189 feet of frontage on S. State Street, and is about 553 feet deep. The Property slopes fairly significantly from State Street towards the east. There is an asphalt drive which connects from State Street all the way to the back, and there is also a fair amount of asphalt surfacing around the middle of the Property. Because the Property has not been actively used in some years, it is in a condition of “deferred maintenance.”

The Property is currently zoned M 1, as part of a large swath of M 1 zoning east of the Property and extending along the railroad tracks and farther to the east, along S. Industrial Highway. Immediately to the north of the Property is a parcel zoned O, then Ann Arbor Township land, then parcels zoned M 1 A, M 1, and Public Land. Immediately to the west is a large parcel zoned O, although it is owned by the University of Michigan and used for the tennis facility. To the southwest is more land zoned M 1. To the south is a parcel zoned O, then another zoned M 1, then C 3 and M 1 A. Thus, while there are several different zoning designations in the area, there already are several parcels zoned M 1 A.

III. Rationale for Amendment

While there are several nearby parcels with the M 1 A zoning designation, the Property was included within the very large M 1 zoned area in this portion of Ann Arbor. The site has been underutilized for some time now, with no activity taking place on its eastern portion, and only the restaurant use next to State Street. The M 1 designation, with its restriction of on-site sales, appears to be inhibiting the ability to use the Property. The nonuse has created a less attractive appearance of the Property.

Over the last 10 years or so, the area has become more commercialized. This change includes the construction of the office buildings at the Oakbrook intersection, additional small-scale commercial activity to the north, and the development of the U of M Tennis facility. More active uses, such as would be allowed under the M 1 A zoning designation, are now appropriate and consistent with the change in character of the area. In fact, the M 1 zoning designation, which places limits on the ability to sell products on-site, is less appropriate, and acts as a restriction on the productive use of the Property. Thus the conditions in the area have changed so that on-site sales of products would be completely acceptable for this location. Accordingly, the M 1 A zoning designation is now appropriate for the Property.

A change in M 1 to M 1 A zoning would also be consistent with the City’s adopted Master Plan. The Property is located within the South Area Future Land Use plan, which designates the entire area as appropriate for “research and industrial” uses. As zoned and as actually developed, there are a variety of uses in the area, including industrial, commercial, general retail, and notably, automobile sales. Therefore, all of these types of uses are allowed within the Master Plan designation, and the M 1 A designation would continue this situation.

The Property is located immediately south of “Study Area 5” within the Master Plan. The language for Study Area 5 encourages light industrial uses. While the Property is not technically within the Study Area, the M 1 A zoning designation would be consistent with allowing such light industrial uses. Therefore, the proposed re-zoning to M 1 A would be consistent with the goals of Study Area 5.

The State Street corridor handles a large volume of vehicular traffic. Because of this, it is well suited for retail sales. The Property is particularly well-suited to a use which would allow sales to occur adjacent to State Street, with its high visibility, while the light industrial activity occurs down the hill, away from State Street. As has already been noted, just to the south of the Property is the Howard Cooper (Germain) automobile dealership, with a large and active sales presence immediately adjacent to State Street. The Property will similar to that activity, just on a much smaller scale. The successful presence of Howard Cooper (Germain) demonstrates that the change to M 1 A, which would allow the outside sales, is appropriate.

In essence, it appears that the existing M 1 zoning designation is creating an artificial limitation on the use of the Property, a limitation which serves no useful purpose. Amending the zoning to M 1 A would allow more active uses of the Property, reflecting the change in character of the area, and generate a re-development of the Property. This would enhance the appearance of the Property, the adjoining area, and the State Street corridor, all with no apparent detrimental effects.

It is important to note that, at this time, only a re-zoning is being requested. Thus, no improvements to the Property are planned that would require a site plan or other approval from the City. The owners do hope, however, that as their activity increases, they will make further improvements to the Property that will in fact require site plan approval. At that time, the owners will apply to the City for all required approvals.

IV. Conclusion

Capital seeks to amend the existing zoning from M 1 to M 1 A so that it can renovate the Property and return it to active use. This activity will be consistent with the changed character of the area, and will only make the Property more attractive and useful to the City and its citizens.

Respectfully submitted,

Scott E. Munzel

October __, 2012

Attorney for Capital Investment Company, LLC

**Report on Citizens' Participation Meeting
Proposed Re-zoning of 2271 S. State Street from "M1" to M1A"**

The Citizens' Participation Meeting was held Friday, October 5, 2012 at 7:00 PM, in the Ann Arbor District Library- Main Branch, "AADL Free Space" Room, Third Floor. Prior to the meeting, signage was attached in several visible locations directing interested citizens upstairs to the AADL Free Space Room. The applicant sent out 108 notices of the meeting, using the mailing labels prepared and provided by the City of Ann Arbor Planning Department. The notices were sent during the week of September 17, 2012, more than 10 business days before the meeting. Fourteen of the notices came back as non-deliverable.

The only written material presented was an enlarged mortgage survey drawing (prepared by Kem Tec) which shows the site. This was used in the presentation to demonstrate where activities would occur. A reduced size copy of the mortgage survey is attached.

Only two citizens attended the meeting, Bill and Judy Stinedurf. Ms. Stinedurf owns the property immediately to the south, at 2295 S. State Street. A copy of the sign-in sheet is attached.

Ms. Stinedurf had no objection to the proposed re-zoning, and had no objection to the proposed use of the property; in fact she noted that she was glad to have some activity on the site. Her concern related to storm water drainage, how the site would be drained, and whether any storm water from the site would flow in to the detention basin apparently located on her property, at the east end of 2295 S. State Street. This was an issue about which the owner did not know, and so informed Ms. Stinedurf that the issue would be researched, and that she would be contacted after there was more information about that issue. It was also noted that the current proposal is for re-zoning only, with no proposed physical changes to the site at this time. The Stinedurfs left at about 7:10 PM. The owner and representatives waited until about 7:40 and concluded the meeting.

2271 S. State St.

if you so choose

Name

Address

Phone/email

Bice & Judy Strindberg

2295 S State St.

734-663-3339

Notice of Citizens' Meeting
Proposed Re-zoning of 2271 S. State Street from "M1" to M1A"
in order to allow outdoor sales of automobiles

Proposed Re-zoning

Capital Investment Company, LLC, owner of 2271 S. State Street, proposes to improve the site and add automobile sales to the area adjacent to S. State Street. Automobile sales are not allowed under the current "M1" zoning designation, but are allowed under the "M1A" zoning designation. Therefore, the owner intends to apply to the City to re-zone the site to "M1A," which application will include a written description of the proposed re-zoning as well as a conceptual sketch of the site. A map of the site showing the area to be used for automobiles sales, and the rest of the site, is attached.

Citizen Participation Meeting

The purpose of this Notice is to promote effective citizen participation in the re-zoning process, to mitigate potential impacts (whether real or perceived), and to facilitate ongoing communications between citizens and the owner. Written information about citizen participation and this Notice is being mailed to all property owners, addresses, and registered neighborhood groups within 1,000 feet of the site, as well as the City's Planning and Development Services Unit. At the meeting, citizens will be able to discuss the application with the owner and express any concerns, issues, questions, or problems regarding the re-zoning that they might have. A summary of this information will then be submitted by the owner to the City as part of the owner's petition for re-zoning.

Meeting Specifics

Date: October 5, 2012
Time: 7:00 PM
Location: Ann Arbor District Library- Main Branch, "AADL Free Space" Room,
Third Floor

Persons with disabilities are encouraged to participate in public meetings. Accommodations, including sign language interpreters, may be arranged by contacting owner's attorney, Scott E. Munzel (see below). Requests need to be received at least 24 hours in advance of the meeting.

Anticipated City Review Schedule

October 5, 2012:	Citizen participation meeting
October 22, 2012	Submission of re-zoning application to City
November, 2012-January, 2013	Planning Commission and City Council meetings

Contact Person: Scott E. Munzel (owner's attorney) T: 734 994 6610 Email:
sem@munzellow.com

Area Plan Waiver

To the Ann Arbor Township,

Capital Investment LLC would renovate the building next to State Street as a sales office. Capital seeks to then sell in the existing parking lot located immediately adjacent to State Street the automobiles it has repaired. Capital seeks to renovate the existing warehouse structure on the Property and use it to conduct automobile repairs. This structure is located about 250 feet east of State Street, with no nearby buildings, such that the repair activity will not have any adverse impact on adjoining properties.

At this time, only a re-zoning is being requested. Thus, no improvements to the Property are planned that would require a site plan or other approval from the City. The owners do hope, however, that as their activity increases, they will make further improvements to the Property that will in fact require site plan approval. At that time, the owners will apply to the City for all required approvals.

MORTGAGE SURVEY

Certified to: CAPITAL INVESTMENT COMPANY, LLC

Property Description:

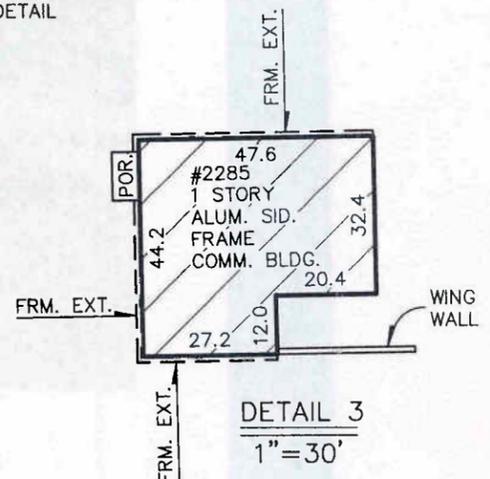
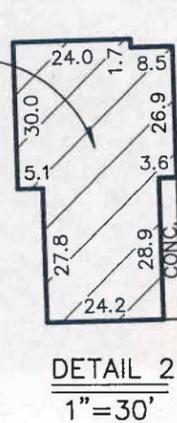
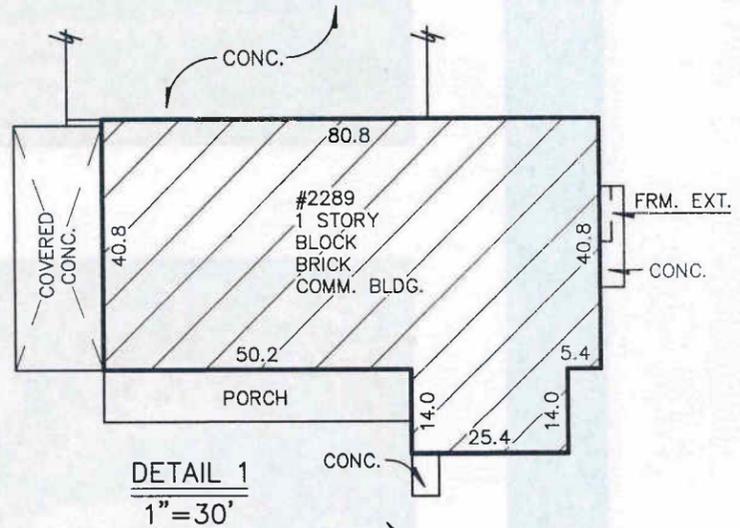
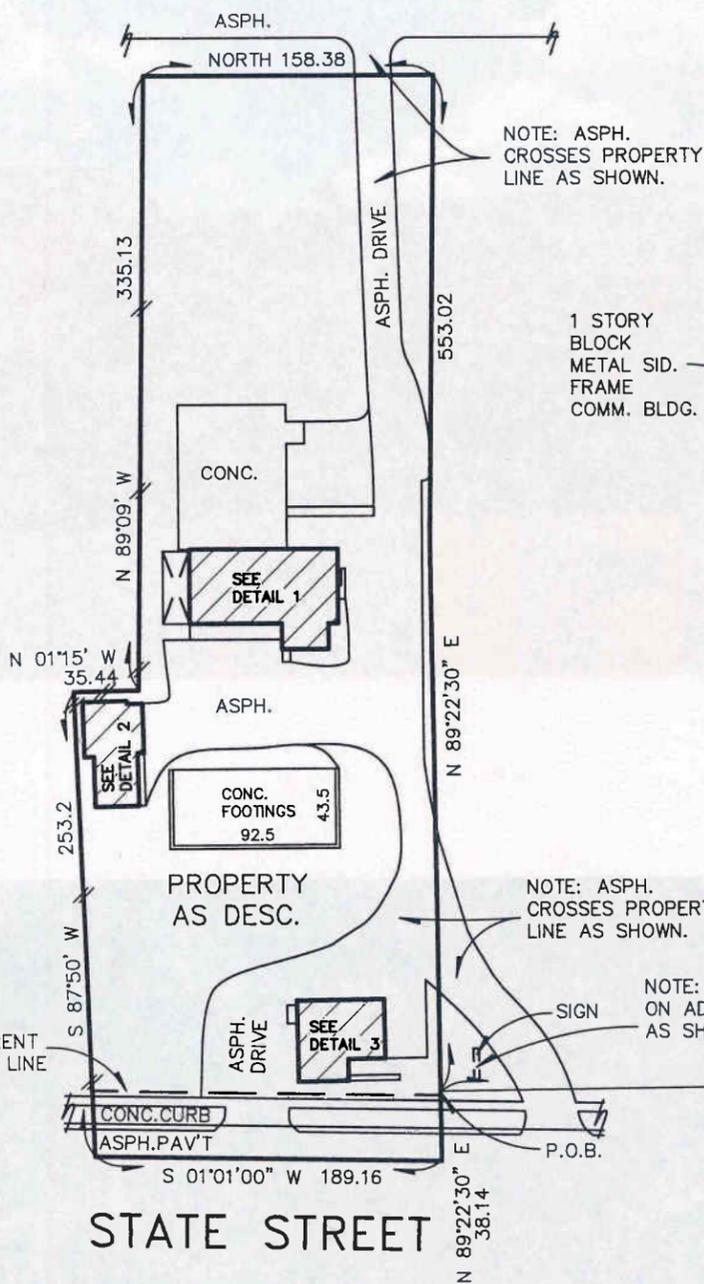
Land in the City of Ann Arbor, Washtenaw County, Michigan, described as:
 Part of the Northeast Fractional 1/4 of Section 5 and part of the Northwest Fractional 1/4 of Section 4, Town 3 South, Range 6 East, described as: Commencing at the West 1/4 post of Section 4; thence North 00 degrees 37 minutes 30 seconds West 698.51 feet for a point of beginning; thence North 89 degrees 22 minutes 30 seconds East 553.02 feet; thence North 158.38 feet; thence North 89 degrees 09 minutes West 335.13 feet; thence North 01 degree 15 minutes West 35.44 feet; thence South 87 degrees 50 minutes West 253.2 feet; thence South 01 degree 01 minutes West 189.16 feet; thence North 89 degrees 22 minutes 30 seconds East 38.14 feet to the point of beginning.

Note: The property description is as taken from Washtenaw County Tax Rolls.
 Subject to any part taken, used or deeded for street, road, or highway purposes.

NOTE: ALL BASEMENT, FOUNDATIONS AND/OR FOOTING DIMENSIONS ARE APPROXIMATE OUTSIDE DIMENSIONS AS SHOWN.

NOTE: A COMPLETE CURRENT TITLE POLICY HAS NOT BEEN FURNISHED, THEREFORE EASEMENTS OR OTHER ENCUMBRANCES MAY NOT BE SHOWN AT THIS TIME.

NOTE: A BOUNDARY SURVEY IS NEEDED TO DETERMINE EXACT SIZE AND/OR LOCATION OF PROPERTY LINES.



CERTIFICATE: We hereby certify that we have surveyed the above-described property in accordance with the description furnished for the purpose of a mortgage loan to be made by the forementioned applicants, mortgagor, and that the buildings located thereon do not encroach on the adjoining property, nor do the buildings on the adjoining property encroach upon the property heretofore described, except as shown. This survey is not to be used for the purpose of establishing property lines, nor for construction purposes, no stakes having been set at any of the boundary corners.



THIS SURVEY DRAWING IS VOID IF THE PROFESSIONAL SEAL IS NOT IN BLUE INK.

[Handwritten signature]

KEM-TEC Professional Engineers & Surveyors

Eastpointe (800) 295.7222	Detroit (313) 758.0677	Ann Arbor (734) 994.0888	Grand Blanc (888) 694.0001
FAX: (586) 772.4048	FAX: (586) 772.4048	FAX: (734) 994.0667	FAX: (810) 694.9955

www.kemtecsurvey.com

JOB NO: 12-01079 SCALE: 1"=100'
 DATE: 04/18/12 DR BY: J.P.

Supplement to Petition To Amend Zoning Map

Capital Investment Company, LLC

Capital Investment Company, LLC, seeks to amend the Zoning Map for the property located at 2271 S. State Street (the Property), from M I to M I A. The M I designation allows for automobile repair, but the sales of such automobiles is limited to 1) “inside” sales and 2) only 10% of the floor area of the structure. M I A, however, allows for general sales activities “outside” and without the 10% restriction. Sales of large bulky items, such as automobiles, is not feasible without both “outside” sales and without the 10% limit. Therefore, Capital seeks an amendment to M I A in order to sell on-site the automobiles which it intends to repair at this location. The purpose of this Supplement is to address the South State Street Corridor Study (the Study).

I. South State Street Corridor Study

As part of its ongoing efforts to improve the quality of life in Ann Arbor, the Planning Department has been working on an updated master plan for the area along South State Street. While the Master Plan in effect now calls for industrial and research uses in the area of the Property, it appears that the Study will eventually recommend a shift in land uses focused more on office and residential uses. For two reasons, this potential change in master plan uses should not necessarily prevent Capital’s current request for re-zoning.

First, several important steps must be completed before the Study’s recommendations become effective. Planning staff must complete the Study report, Planning Commission must review it and make recommendations to City Council, and Council must adopt it. It could be some time before the Study’s recommendations are implemented, if at all. And it is always possible that there will be some revising of the Study’s recommendations such that Capital’s proposal would be consistent with the updated master plan. Capital’s proposal, then, should be evaluated based on the existing Master Plan.

Second, and perhaps more importantly, over the long term, Capital’s proposed re-zoning is not inconsistent with the Study recommendations. Capital’s proposed re-zoning would allow it to sell automobiles along State Street. This type of use, however, which is of a fairly low intensity, creates a relatively low land value. At this point in the economic cycle, it is very doubtful that any type of office or residential uses could be constructed at this location. Thus, the recommended change may well be “ahead of its time.” In the future, however, as demand for office or residential uses in this location become evident, the greater potential return likely would result in the owner pursuing those types of uses.

Office uses are allowed within the M1A district, and if there was appropriate demand, the re-zoning to M1A would not preclude those uses. If residential demand was evident, a new re-zoning would be required no matter what, because residential uses are specifically prohibited in both M1 and M1A. But again, if there is demand for residential uses, the owners of the Property would likely request a re-zoning in order to pursue the greater potential income from that type of use.

In the interim, however, allowing Capital to activate the State Street frontage will be better for the City and the South State Street corridor. This Property is somewhat difficult to use, being long and narrow, and with unusual and steep grade changes. Thus, finding an appropriate user is challenging. But allowing Capital to re-zone the Property and sell autos on State Street will improve the appearance of the Property and create activity (in addition to creating real economic activity). In a small way, this may help the long term revitalization of the area. In essence, the proposed re-zoning will allow for a more attractive and active use of the Property, almost as a holding period, until demand for office or residential is evident, at which time a change in use of the Property would be likely.

Respectfully submitted,

Scott E. Munzel

December 13, 2012

Attorney for Capital Investment Company, LLC