

PLANNING AND DEVELOPMENT SERVICES STAFF REPORT

For Planning Commission Meeting of June 16, 2009

SUBJECT: Amendments to Chapter 55, Section 5:10.23, C3 Fringe Commercial District

PROPOSED CITY PLANNING COMMISSION MOTION

The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the amendments to Chapter 55, Section 5:10.23, to allow certain temporary outdoor sales and the display of goods and services as a special exception use in the C3 Fringe Commercial District.

STAFF RECOMMENDATION

Staff recommends that the proposed amendment to Chapter 55 of the City Code be **approved** to allow certain temporary outdoor sales and the display of goods and services as a special exception use in the C3 Fringe Commercial District, consistent with the intent of the C3 zoning district.

BACKGROUND

Increased interest in temporary outdoor sales has caused staff to carefully evaluate the use regulations of commercial zoning districts. Temporary outdoor sales are first addressed in the C1 Local Business District. In the C1 district, sales of goods that are sold on a regular basis from within the principal building on the sale lot can be sold outdoors temporarily, as well as temporary outdoor sales related to City Council-designated special events. The C1 district also contains a provision allowing other temporary outdoor sales situations by special exception use. Due to the pyramid style (commonly known as flip-back) structure of the Zoning Ordinance, the first two examples of temporary outdoor sales (goods sold on a regular basis within the principal building and good related to City Council-designated special events) allowed in the C1 district are also allowed in the C3 Fringe Commercial District, however, the Planning and Development Services staff determined that the provision allowing certain temporary outdoor sales and the display of goods and services as a special exception use in Section 5:10.15 (2)(g) (C1 Local Business District) is not contained in Section 5:10.23 (C3 Fringe Commercial District).

On May 20, 2009, the City Council passed a resolution (attached) requesting the City Planning Commission and City Administrator evaluate options for amending the C3 zoning district to include certain temporary outdoor sales and the display of goods and services as a special exception use.

The current language addressing temporary outdoor sales, per Chapter 55 Section 5:10.15 (C1 Local Business District), is as follows:

(f) Temporary outdoor sales or outdoor display of goods and services that are sold on a regular basis from within the principal building on the same lot, if the following standards are met:

- 1. The outdoor sales or outdoor display area shall not exceed 10% of the gross floor area of the principal building.*
- 2. The activity shall not be located in any required front, side or rear open space.*
- 3. The activity may be conducted for periods of up to 180 days in any 1 calendar year.*

8a

4. *Notwithstanding subsections 1. and 2. above:*
 - a. *Vending machines are permitted if within 10 feet of the principal building.*
 - b. *Sales of Christmas trees are permitted if not located in a required open space.*

(g) The temporary outdoor sales or display of goods and services not covered by subsection (h) below that cannot meet the standards of subsection (f) above, may be approved as a special exception use pursuant to section 5:104.

(h) The City Council may, by resolution, designate certain dates and locations as special events temporary outdoor sales areas. Said resolution shall include conditions and standards of conduct to be in force for outdoor sales and displays on private property. A property owner who wishes to conduct outdoor sales and displays on his or her private property, as provided for in the council resolution, shall first apply for and receive a Zoning Compliance Permit by the date designated in the resolution. The conditions and standards contained in the resolution shall be conditions of the Zoning Compliance Permit issued to a property owner. Failure to comply with the conditions set in the resolution shall be a violation of this ordinance section and shall be grounds to revoke all permits granted to the property owner for the duration of the special event identified in the resolution.

Using a dry cleaner located in a C3 zoning district wishing to have a temporary outdoor shoe sales as an example, the standards of subsection (f), temporary outdoor sales and the display of goods and services sold on a regular basis inside the principal business does not apply because the dry cleaner does not sell shoes inside on a regular basis. Nor has City Council-designated this activity as a special event (the two most well known City Council-designated special events are the Art Fairs and University of Michigan home football games). Subsection (g) would work for the dry cleaner if it was located in a C1 district, however, the language of C3 use section only allows 'flip-back' of **principal** permitted uses [subsection (f)] from the C1 district, not **special exception uses**. The only provision that would allow the temporary outdoor shoe sales for the example dry cleaner is listed as a **special exception use** in the C1 district, and as a result, is not applicable.

The proposed code change would add a provision similar to subsection (g) in the C1 district to the C3 district.

ANALYSIS

Permitted uses in any zoning district are divided into three categories:

1. Principal Uses – uses that are allowed anywhere in the district without further limitation (often referred to as “by right” uses).
2. Special Exception Uses – uses that require approval by the Planning Commission for the specific site. Approval is based on any specific conditions listed and the standards for special exception use approval.
3. Accessory Uses – uses that are allowed only in conjunction with a principal or special exception use but are not allowed on their own.

The C3 zoning district is the most inclusive of the zoning districts that permit commercial uses. As written, staff believes it is the intention of the C3 district to include all of the uses, including special exception uses that are permitted the zoning districts that precede it. However, there is no language for special exception uses in the C3 zoning section. Staff believes this was an

oversight and it is a logical assumption that outdoors sales permitted in a more restricted zoning district (C1) would be allowed under the most inclusive district (C3). The proposed change would affect all parcels within the C3 zoning district (map attached).

Through the special exception use process, a specific site can be evaluated against the adopted standards [Section 5:104 (Special Exception Use)] that include considering compatibility with the existing character of the area, traffic impacts, and effects on the environment. Staff would support approval of a petition if standards are met demonstrating that a specific site can accommodate a specific type of outdoor sales without unduly impacting the surrounding neighborhood – particularly a surrounding residential neighborhood – and without causing a traffic circulation hazard or unacceptable parking congestion. Each petition would be evaluated independently to determine compatibility with the special exception use standards. All temporary outdoor sales currently permitted under Chapter 55, Section 5:10.15 (f), would still be permitted by right and the only change to the C3 district would be the addition of language similar to Chapter 55, Section 5:10.15 (g), permitting sales that do not meet the standards of (f) as a special exception use.

PROPOSED AMENDMENTS

The following underlined paragraph is proposed to be added to the permitted uses in Section 5:10.23 (C3 Fringe Commercial District) of the Zoning Ordinance:

5:10.23. C3 Fringe Commercial District.

- (1) Intent. The design and regulations of this district are set up to provide for certain types of commercial activities which have characteristics in common. In this district the customer usually comes directly to the particular establishment by automobile, making a separate stop for each errand. Comparison shopping activity is less than in the Central Business District. Since there is little essential interdependence of activities, establishments can be disbursed over considerable areas with each establishment having its own automobile parking. Good automobile accessibility is essential to these districts. The uses permitted, because of their lack of intense pedestrian activity and their required contact with auto access, would be incompatible in the Central Business District.
- (2) Permitted principal uses.
 - (a) Any principal use permitted in the C2B Business Service District.
- (3) Special exception uses.
 - (a) The temporary outdoor sales or display of goods and services, not covered by Section 5:10.15 (h) that cannot meet the standards of Section 5:10.15 (f), may be approved as a special exception use pursuant to Section 5:104.
- (4) Permitted accessory uses.
 - (a) Those allowed in the R3 district.

STAFF COMMENTS

Planning staff presented this amendment proposal to the Ordinance Revisions Committee (ORC) in May 2009. The ORC supported the proposed amendment.

Staff supports the amendments as proposed because the changes are consistent with the intent of the C3 zoning district and will allow a use permitted in the more restrictive C1 zoning district. Under standards of a special exception use, each petition can be reviewed on its own merits with a final decision from the City Planning Commission.

Prepared by Matthew Kowalski
Reviewed by Connie Pulcifer and Mark Lloyd
jsj/6/10/09



c: City Attorney
Systems Planning

Attachments: City Council Resolution
C3 Zoning District Map