

BIRMINGHAM BOARD OF ZONING APPEALS AGENDA

Municipal Building Commission Room
151 Martin Street, Birmingham, Michigan
February 11, 2020
7:30 PM

1. CALL TO ORDER

2. ROLL CALL

3. APPROVAL OF THE MINUTES

1) January, 2020

4. APPEALS

	Address	Petitioner	Appeal	Type/Reason
1)	1616 CROFT	BALLEW DESIGNS	20-09	DIMENSIONAL
2)	770 S ADAMS	SHEKERJIAN	20-10	DIMENSIONAL
3)	932 CHESTNUT	IONESCU	20-11	DIMENSIONAL

5. CORRESPONDENCE

6. GENERAL BUSINESS

7. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

8. ADJOURNMENT

Title VI

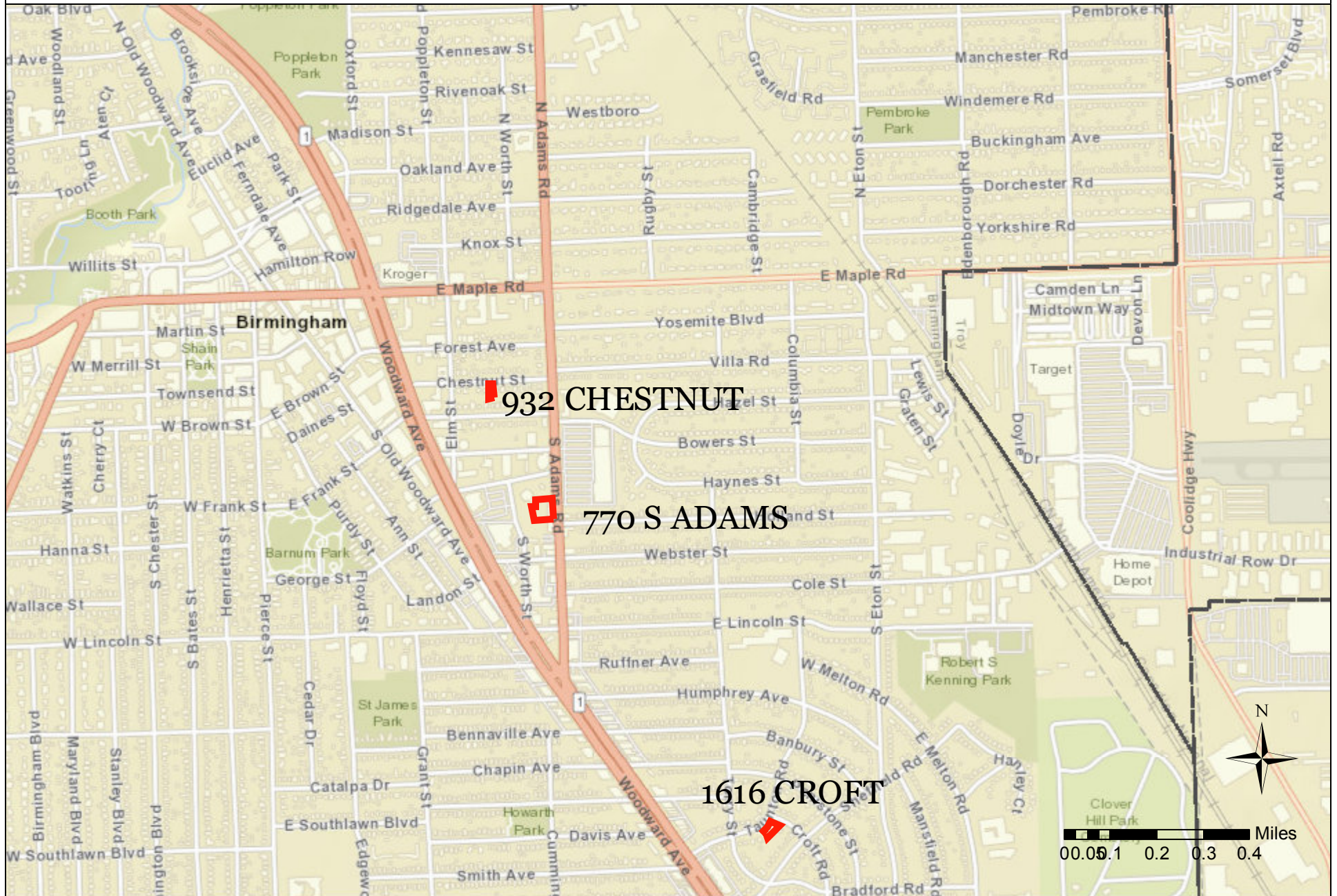
Persons with disabilities that may require assistance for effective participation in this public meeting should contact the City Clerk's Office at the number (248) 530-1880, or (248) 644-5115 (for the hearing impaired) at least one day before the meeting to request help in mobility, visual, hearing, or other assistance.

Las personas con incapacidad que requieren algún tipo de ayuda para la participación en esta sesión pública deben ponerse en contacto con la oficina del escribano de la ciudad en el número (248) 530-1800 o al (248) 644-5115 (para las personas con incapacidad auditiva) por lo menos un día antes de la reunión para solicitar ayuda a la movilidad, visual, auditiva, o de otras asistencias. (Title VI of the Civil Rights Act of 1964).

The public entrance during non-business hours is through the police department at the Pierce Street entrance only. Individuals requiring assistance entering the building should request aid via the intercom system at the parking lot entrance gate on Henrietta Street.

La entrada pública durante horas no hábiles es a través del Departamento de policía en la entrada de la calle Pierce solamente. Las personas que requieren asistencia entrando al edificio debe solicitar ayudan a través del sistema de intercomunicación en la puerta de entrada de estacionamiento en la calle de Henrietta.

FEBRUARY BZA MAP



**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, JANUARY 14, 2020
City Commission Room
151 Martin Street, Birmingham, Michigan**

1. CALL TO ORDER

Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, January 14, 2020. Vice-Chairman Erik Morganroth convened the meeting at 7:29 p.m.

2. ROLLCALL

Present: Board Members Jason Canvasser, Richard Lilley, John Miller, Erik Morganroth, Francis Rodriguez; Alternate Board Members Jerry Attia, Ron Reddy

Absent: Chairman Charles Lillie; Board Member Kevin Hart

Administration:

Bruce Johnson, Building Official
Mike Morad, Asst. Building Official
Jeff Zielke, Asst. Building Official
Laura Eichenhorn, Transcriptionist

Vice-Chairman Morganroth explained BZA procedure to the audience. He noted that the members of the Board of Zoning Appeals are appointed by the City Commission and are volunteers who serve staggered three-year terms. They are a quasi-judicial board and sit at the pleasure of the City Commission to hear appeals from petitioners who are seeking variances from the City's Zoning Ordinance. Under Michigan law, a dimensional variance requires four affirmative votes from this board, and the petitioner must show a practical difficulty. A land use variance requires five affirmative votes and the petitioner has to show a hardship. He pointed out that this board does not make up the criteria for practical difficulty or hardship. That has been established by statute and case law. Appeals are heard by the board as far as interpretations or rulings. In that type of appeal the appellant must show that the official or board demonstrated an abuse of discretion or acted in an arbitrary or capricious manner. Four affirmative votes are required to reverse an interpretation or ruling.

Vice-Chairman Morganroth took rollcall of the petitioners. All petitioners were present.

T# 01-01-20

3. APPROVAL OF THE MINUTES OF THE BZA MEETING OF DECEMBER 10, 2019

Motion by Mr. Lilley

Seconded by Mr. Canvasser to accept the Minutes of the BZA meeting of December 10, 2019 as submitted.

Motion carried, 7-0.

VOICE VOTE

Yeas: Lilley, Canvasser, Rodriguez, Attia, Reddy, Miller, Morganroth

Nays: None

T# 01-02-20

4. APPEALS

**1) 2282 W Lincoln
Appeal 19-41**

Assistant Building Official Zielke presented the item, explaining the owner of the property known as 2282 W. Lincoln requested the following variance to improve the existing driveway:

A. Chapter 126, Article 4, Section 4.31(A)1 of the Zoning Ordinance requires a minimum of 65% of the front open space in all single family districts shall be free of paved surfaces. The required open space is 1851.20 square feet (65%). The proposed is 1642.00 square feet (58.64%). Therefore, a 209.20 square feet (6.36%) variance is being requested.

Assistant Building Official Zielke noted the site is located near the high school. An impervious permit had been issued in 2005 to rework the existing driveway into a circular driveway. This case was in front of the Board of Zoning Appeals in December and was tabled. This property is zoned R1 – Single Family Residential.

Roger Marchetti, owner, was present on behalf of the appeal.

Motion by Mr. Canvasser

Seconded by Mr. Rodriguez with regard to Appeal 19-41, A. Chapter 126, Article 4, Section 4.31(A)1 of the Zoning Ordinance requires a minimum of 65% of the front open space in all single family districts shall be free of paved surfaces. The required open space is 1851.20 square feet (65%). The proposed is 1642.00 square feet (58.64%). Therefore, a 209.20 square feet (6.36%) variance is being requested.

Noting his statement during the December 2019 BZA meeting that he would be more likely to approve this appeal if it were resubmitted with mitigation, Mr. Canvasser motioned to approve Appeal 19-41. He added that the impervious surface within the yellow area highlighted on the submitted drawings must be removed in accordance with the City's permitting process and that the approval shall be tied to the plans as submitted. He noted the challenges of the site which include the lack of street parking, the high volume of traffic due to the proximity of the high school,

and the maple tree next to the driveway that obscures sightlines entering and exiting the driveway.

Mr. Canvasser said strict compliance with the ordinance in this case would be unnecessarily burdensome, that granting the variance would do substantial justice both to the appellant and the neighboring property owners, and that the problem was not self-created.

Vice-Chairman Morganroth voiced support for the motion given its ability to increase vehicular safety near Seaholm High School and due to the unique circumstances of the property.

Motion carried, 7-0.

VOICE VOTE

Yeas: Canvasser, Rodriguez, Lilley, Attia, Reddy, Miller, Morganroth

Nays: None

**2) 670 Benville
Appeal 20-01**

Assistant Building Official Morad presented the item, explaining the owner of the property known as 670 Benville requested the following variance to construct a new single family home with a detached garage:

A. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 14.00 feet. The proposed is 10.97 feet. Therefore, a 3.03 foot variance is being requested.

Assistant Building Official Morad noted the proposed single family home meets all setback ordinance regulations on the lot but would not meet the minimum distance between structures on the west side. This property is zoned R3 – Single Family Residential.

Richard Merlini, developer, was present on behalf of the appeal.

Mr. Attia noted that if the house moved .97 feet to the west it would increase the distance between the buildings to nearly 12 feet.

Mr. Merlini stated that parking an SUV in a 10-foot driveway is already challenging, and that reducing the driveway to nine feet would be even more prohibitive. He said 9.5 feet was the minimum width he would want to see for a driveway.

In reply to Vice-Chairman Morganroth, Mr. Merlini confirmed that he chose not to make the house a foot wider in order to mitigate the variance request.

In reply to Mr. Attia, Mr. Merlini said a 21 foot wide house on this lot would be unmarketable, and that any house on a similar lot has a width greater than 21 feet.

Vice-Chairman Morganroth stated that Mr. Merlini was correct in saying that not having nine feet on one side of the home and five feet on the other is a unique feature of this particular lot. He also said that homes in Birmingham are generally expected to be at least 25 feet in width.

Mr. Attia said he knew of a number of extant homes near this parcel with widths less than 24 feet. He noted that reducing the width of the house and moving the building a foot to the west could be a positive attempt at mitigation. He said having only 10.97 feet between two homes could negatively affect the neighbor to the west.

Katherine Rothstein, neighbor at 692 Bennaville, said it was unclear whether Mr. Merlini actually owned the lot or whether the sale was still pending since her former neighbor, Mary Martin, was listed as the owner on the appeal. Ms. Rothstein asked for clarification from the City. She said granting this variance would affect both the privacy of her home and the amount of sunlight that enters her son's bedroom window. She said that ordinances are made and enforced for the benefit of the community, and that granting this variance would negatively impact her and her family's ability to enjoy their home. She stated that Birmingham already requires less distance between homes than neighboring municipalities, and said she would not like to see it go lower than 14 feet.

Garrett Carr, neighbor at 644 Bennaville, said allowing this variance would be an inconvenience to him and would degrade both his and Ms. Rothstein's property values. Mr. Carr said that if a narrower home were built at 670 Bennaville he was confident most of his and Ms. Rothstein's concerns would be alleviated.

Mr. Attia said that the house at 644 Bennaville was narrower than the house Mr. Merlini was proposing to build at 670 Bennaville according to the drawings of both homes. Noting this, Mr. Attia asked Mr. Carr for confirmation that his home at 644 Bennaville was both advertised in the real estate market, and purchased by Mr. Carr.

Mr. Carr confirmed that he purchased 644 Bennaville as part of a real estate transaction.

Mr. Attia noted that Mr. Carr's purchase of 644 Bennaville proves that homes narrower than 25 feet are marketable in this neighborhood.

Motion by Mr. Attia

Seconded by Mr. Reddy with regard to Appeal 20-01, A. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 14.00 feet. The proposed is 10.97 feet. Therefore, a 3.03 foot variance is being requested.

Mr. Attia motioned to deny Appeal 20-01, stating that the home being proposed at 670 Bennaville is wider than necessary on this particular lot.

Mr. Attia explained that 644 Bennaville's width proves that strict compliance with the ordinance would not be unnecessarily burdensome for 670 Bennaville, that granting the variance would not do substantial justice to the neighboring property owners, that while there are unique issues with the lot there could still be a greater attempt at mitigation from the appellant, and that the problem is self-created since the home being proposed is wider than necessary.

Mr. Reddy concurred with Mr. Attia that this variance request should be further mitigated.

Mr. Canvasser said his decision would be helped by knowing the width of some of the neighboring homes. He explained that the BZA frequently runs into appeals of the 9-5 rule. He noted that the appellant did know the circumstances of the lot and its zoning requirements before purchase. Mr. Canvasser said he had not heard enough during the discussion to convince him that a nearly 25 foot wide house was necessary on the lot.

Vice-Chairman Morganroth said he would not support the motion to deny. He said shifting the home to the west by .97 feet could be included as a condition for approval should another motion on this matter be attempted. He said that most homes approved on narrow lots in the City are 24 feet in width or greater.

Mr. Miller said he could not support the motion to deny because it was not the petitioner's fault that his lot is squeezed by the layout of the adjacent parcels.

Motion failed, 3-4.

VOICE VOTE

Yeas: Attia, Reddy, Canvasser

Nays: Lilley, Miller, Morganroth, Rodriguez

Motion by Mr. Miller

Seconded by Mr. Lilley with regard to Appeal 20-01, A. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 14.00 feet. The proposed is 10.97 feet. Therefore, a 3.03 foot variance is being requested.

Mr. Miller motioned to approve Appeal 20-01 stating that strict compliance with the ordinance would cause the petitioner unreasonable burden. He said that the problem is a unique circumstance of the property and was not self-created, that there was evidence of mitigation since the home could have gone larger according to ordinance. He said he would tie approval to the plans as submitted on the condition that the variance be reduced from 3.03 feet to 2.53 feet.

Mr. Attia stated that:

- **There are driveways in the neighborhood of 670 Bennaville that are less than 9.5 feet in width.**
- **There are homes in the neighborhood of 670 Bennaville that are less than 24.3 feet in width.**
- **The neighbors on both sides of 670 Bennaville shared concerns that this variance could negatively impact their ability to enjoy their homes.**

Given these facts, he stated the Board should consider voting against this motion because the variance for this site could be further mitigated without imposing undue burden on the appellant.

Motion carried, 4-3.

VOICE VOTE

Yeas: Miller, Lilley, Morganroth, Rodriguez

Nays: Attia, Reddy, Canvasser

**3) 512 Wallace
Appeal 20-02**

Assistant Building Official Morad presented the item, explaining the owner of the property known as 512 Wallace requested the following variance to construct a new single family home with an attached garage:

A. Chapter 126, Article 4, Section 4.61(A)(1) of the Zoning Ordinance requires that a corner lot which has on its side street an abutting interior residential lot shall have a minimum setback from the side street equal to the minimum front setback of the average of the homes within 200.00 feet in each direction. The required front yard setback is 18.16 feet. The proposed is 12.50 feet. Therefore a variance of 5.66 feet is being requested.

Assistant Building Official Morad noted the applicant is proposing to demolish an existing nonconforming home constructed in 1926 that is too close to the street side property line and then build a new home the same distance from the side property line. This property is zoned R2 – Single Family Residential.

David Foster, owner, was present on behalf of the appeal.

Brad Balkwill, architect, stated the possibility of building a narrower home with a master suite on the first floor was explored. He said the proportion and size of the rooms that would result from narrowing the home were substandard.

In reply to Mr. Attia, Mr. Balkwill stated narrowing the house and locating the master suite in the back of the house was also explored and found unsatisfactory because it would have negatively affected the kitchen and living room proportions. Mr. Balkwill said he had done other

homes in the neighborhood narrower than this home, but that those all had master suites on the second level.

Motion by Mr. Miller

Seconded by Mr. Rodriguez with regard to Appeal 20-02, A. Chapter 126, Article 4, Section 4.61(A)(1) of the Zoning Ordinance requires that a corner lot which has on its side street an abutting interior residential lot shall have a minimum setback from the side street equal to the minimum front setback of the average of the homes within 200.00 feet in each direction. The required front yard setback is 18.16 feet. The proposed is 12.50 feet. Therefore a variance of 5.66 feet is being requested.

Mr. Miller motioned to approve Appeal 20-02 and tied it to the plans as submitted, stating that the issue before the Board is due to the unique configuration of the corner lot at 512 Wallace. He noted that the proposed home would mitigate the non-conformity on the west side of the house, would maintain the distance the current home and its neighbor currently have between them on the east side of the house, and would maintain the 12.6 feet between the face of the home on Stanley and the street. He said these demonstrate attempts at mitigation of the need for a variance. He said conformity with the ordinance would be burdensome, and that the proposed home would do substantial justice to the neighborhood.

Vice-Chairman Morganroth stated he would support the motion because of the uniqueness of the property and because he would not otherwise be able to build a home of the same width that his neighbors could. If the home behind 512 Wallace were not perpendicular to 512 Wallace, Mr. Foster would be permitted a 10 foot front yard setback.

Motion carried, 6-1.

VOICE VOTE

Yeas: Miller, Lilley, Morganroth, Rodriguez, Reddy, Canvasser

Nays: Attia

**4) 995 Henley
Appeal 20-04**

Assistant Building Official Zielke presented the item, explaining the owner of the property known as 995 Henley requested the following variance to construct an attached garage to an existing non-conforming home:

A. Chapter 126, Article 4, Section 4.61 (A)(1) of the Zoning Ordinance requires that a corner lot which has on its side street an abutting interior residential lot shall have a minimum setback from the side street equal to the minimum front setback of the average of the homes within 200.00 feet in each direction. The required front yard setback is 35.33 feet. The proposed is 11.04 feet. Therefore a variance of 24.29 feet is being requested.

Assistant Building Official Zielke noted the property owner was in for a variance for a similar request back in September 2019, and was denied (minutes attached). The applicant has revised the plans and is submitting another variance request. This property is zoned R1 – Single Family Residential.

Taft Parsons, owner, was present on behalf of the appeal.

Mike Clement spoke as the owner of 895 Tottenham, an adjacent property with a detached garage. Mr. Clement said he possessed one of the only other detached garages in the neighborhood, and that they pose a significant safety issue in inclement weather. He said he would like to see Mr. Parson's appeal approved for the safety of the residents of 995 Henley.

Motion by Mr. Rodriguez

Seconded by Mr. Reddy with regard to Appeal 20-04, A. Chapter 126, Article 4, Section 4.61 (A)(1) of the Zoning Ordinance requires that a corner lot which has on its side street an abutting interior residential lot shall have a minimum setback from the side street equal to the minimum front setback of the average of the homes within 200.00 feet in each direction. The required front yard setback is 35.33 feet. The proposed is 11.04 feet. Therefore a variance of 24.29 feet is being requested.

Mr. Rodriguez motioned to approve Appeal 20-04 and tied it to the plans as submitted, including tearing down the existing detached garage. Mr. Rodriguez stated a practical difficulty had been established due to the unique shape of the corner lot. There was evidence that this would be the minimum necessary variance given that a prior requested variance was mitigated with a redesign. Mr. Rodriguez stated that granting the variance would not adversely affect the adjacent properties.

Mr. Reddy agreed that this appeal showed significant mitigation from his original appeal heard by the Board in September 2019.

Mr. Miller said a variance of 24.29 feet is reasonable due to the extremely irregular lot and because taking the garage down would do substantial justice to the neighborhood.

Motion carried, 7-0.

VOICE VOTE

Yeas: Rodriguez, Reddy, Miller, Attia, Lilley, Morganroth, Canvasser

Nays: None

**5) 675 Park
Appeal 20-06**

Assistant Building Official Morad presented the item, explaining the owner of the property known as 675 Park requested the following variances to construct a single family home:

A. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires a maximum roof height of the house for an R-2 zoning district of 30.00 feet for this property. The proposed roof height is 38.38 feet; therefore a variance of 8.38 feet is requested.

B. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires a maximum eave height for the building for an R-2 zoning district of 24.00 feet for this property. The proposed eave height is 32.56 feet; therefore a variance of 8.56 feet is requested.

C. Chapter 126, Article 4, Section 4.03(A) of the Zoning Ordinance requires that no accessory structures shall be erected in the required front open space. A retaining wall is proposed to be constructed in the required front open space; therefore a variance to permit the retaining wall is requested.

Assistant Building Official Morad noted the applicant proposes to excavate a portion of the front open space and install retaining walls. This property is zoned R2 – Single Family Residential.

Brian Neeper, architect, was present on behalf of the appeal.

In reply to Mr. Neeper's claim that without the requested variances a two-story home could not be built on the lot, Vice-Chairman Morganroth observed that a two-story home, very similar to the one being proposed, could be built on the lot and could satisfy zoning requirements as long as a walkout was not included.

Mr. Neeper conceded that to be the case.

In reply to Mr. Attia, Mr. Neeper said he had explored constructing the home without the walkout. Mr. Neeper continued that:

- His design aimed to create more of a social connection between the front yard and Park Street whereas other homes on the street tend to have retaining walls or trees on their Park Street side.
- The home will have the same massing and height whether or not it has a walkout, and would be a similar height to other homes on the street.

Mr. Miller said he saw that the walkout as an attempt to make an otherwise unusable space, given the grade of the slope present, usable for the future residents of the home.

Motion by Mr. Reddy

Seconded by Mr. Attia with regard to Appeal 20-06, A. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires a maximum roof height of the house for an R-2 zoning district of 30.00 feet for this property. The proposed roof height is 38.38 feet; therefore a variance of 8.38 feet is requested. B. Chapter 126, Article 2,

Section 2.08 of the Zoning Ordinance requires a maximum eave height for the building for an R-2 zoning district of 24.00 feet for this property. The proposed eave height is 32.56 feet; therefore a variance of 8.56 feet is requested. C. Chapter 126, Article 4, Section 4.03(A) of the Zoning Ordinance requires that no accessory structures shall be erected in the required front open space. A retaining wall is proposed to be constructed in the required front open space; therefore a variance to permit the retaining wall is requested.

Mr. Reddy made a motion to deny Appeal 20-06 with all three requested variances because he asserted strict compliance would not unreasonably prevent the petitioner from using the property to either build a new home or renovate the current home on the lot and that the problems are self-created.

Mr. Miller said he could not support the motion because about 25 homes in the immediate neighborhood of 675 Park have retaining walls, and so building a new home there with a retaining wall would be reasonable. He added that the zoning ordinance generally assumes a flat lot, whereas the lot in question has a significant slope. Mr. Miller said the plans attempt to deal with that topography in a reasonable way, fits in with the neighborhood, and attempts to make usable backyard space.

Vice-Chairman Morganroth said he would support the motion because the plans would otherwise create a three-story home from the vantage point of the street and would exceed the height allowances for the home, both of which no other home on the street has done. Vice-Chairman Morganroth stated there was nothing unique about this lot versus the nearby ones that would necessitate those particular features of the plan.

Motion carried, 4-3.

VOICE VOTE

Yeas: Rodriguez, Reddy, Attia, Morganroth

Nays: Miller, Canvasser, Lilley

**6) 482 Park
Appeal 20-07**

Assistant Building Official Zielke presented the item, explaining the owner of the property known as 482 Park, requests the following variances to construct a new single family home with a detached garage:

A. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 14.00 feet. The proposed is 11.90 feet. Therefore, a 2.10 foot variance is being requested on the North side.

B. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 14.00 feet. The proposed is 11.90 feet. Therefore, a 2.10 foot variance is being requested on the South side.

Assistant Building Official Zielke noted the lot was granted a similar variance in 2015 to construct a new single family home with the same requests for the distance between structures for both adjacent lots. That home was never constructed. This property is zoned R2 – Single Family Residential.

Richard Kilgman, developer, was present on behalf of the appeal.

Motion by Mr. Canvasser

Seconded by Mr. Lilley with regard to Appeal 20-07, A. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 14.00 feet. The proposed is 11.90 feet. Therefore, a 2.10 foot variance is being requested on the North side. B. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 14.00 feet. The proposed is 11.90 feet. Therefore, a 2.10 foot variance is being requested on the South side.

Mr. Canvasser moved to approve Appeal 20-07, both variances, and tied to the plans as submitted. He noted the need for the variances was the result of the unique circumstances of the property, was not self-created, and that the appellant attempted to mitigate the need for the variances. Mr. Canvasser stated that the variances would due substantial justice to the property owner and the neighborhood and that strict compliance would be unnecessarily burdensome.

Motion carried, 7-0.

VOICE VOTE

Yeas: Canvasser, Lilley, Attia, Reddy, Miller, Morganroth, Rodriguez

Nays: None

T#01-03-20

5. CORRESPONDENCE (included in agenda)

T# 01-04-20

6. GENERAL BUSINESS

Vice-Chairman Morganroth notified the Board that the City would be willing to pay for a Zoning Appeals training for any Board member who would like to attend. The training was scheduled for January 29, 2020 from 6 p.m. to 9 p.m.

T# 01-05-20

7. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

No members of the public wished to comment.

T# 01-06-20

8. ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 9:29 p.m.

Bruce R. Johnson, Building Official

CASE DESCRIPTION

1616 Croft (20-09)

Hearing date: February 11, 2020

Appeal No. 20-09: The owner of the property known as 1616 Croft, requests the following variance to construct a second floor addition on top of an existing non-conforming home along with an addition to the first floor at the rear of the home:

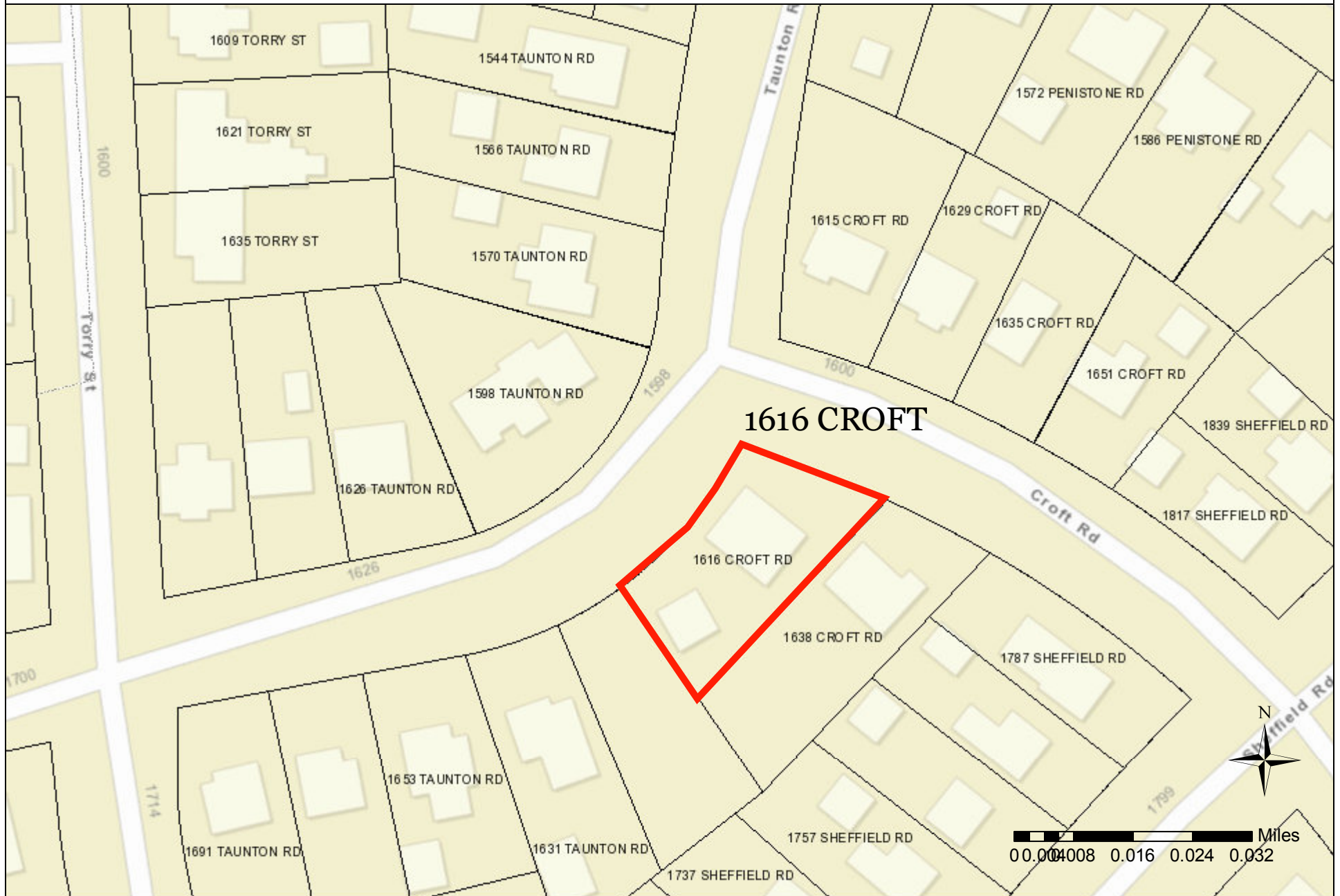
A. Chapter 126, Article 4, Section 4.61(A)(1) of the Zoning Ordinance requires that a corner lot which has on its side street an abutting interior residential lot shall have a minimum setback from the side street equal to the minimum front setback of the average of the homes within 200.00 feet in each direction. The required front yard setback is 35.90 feet. The proposed is 15.10 feet. Therefore a variance of 20.80 feet is being requested.

Staff Notes: The applicant is requesting a variance to construct a second floor addition on top of an existing non-conforming home along with an addition to the first floor at the rear of the home that was constructed in 1949.

This property is zoned R2 – Single Family Residential.

Jeff Zielke, LEED AP
Assistant Building Official

1616 CROFT



CITY OF BIRMINGHAM
Community Development - Building Department
151 Martin Street, Birmingham, MI 48009
Community Development: 248-530-1850
Fax: 248-530-1290 / www.bhamgov.org

APPLICATION FOR THE BOARD OF ZONING APPEALS

Application Date: 1-13-20
 Received By: BM

Hearing Date: 2-11-20
 Appeal #: 20-09

Type of Variance:	<input type="checkbox"/> Interpretation	<input checked="" type="checkbox"/> Dimensional	<input type="checkbox"/> Land Use	<input type="checkbox"/> Sign	<input type="checkbox"/> Admin Review
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I. PROPERTY INFORMATION:

Address: 1616 Croft St. Lot Number: Lot 197/196 Sidwell Number: _____

II. OWNER INFORMATION:

Name: John Felice

Address: 20170 Village Dr. City: Beverly Hills State: MI Zip code: 48025

Email: _____ Phone: _____

III. PETITIONER INFORMATION:

Name: Robin Ballew Firm/Company Name: Ballew Designs LLC

Address: 6523 Tamarack Dr. City: Troy State: MI Zip code: 48098

Email: ballewdesigns@gmail.com Phone: 248-854-0545

IV. GENERAL INFORMATION:

The Board of Zoning Appeals typically meets the second Tuesday of each month. Applications along with supporting documents must be submitted on or before the 12th day of the month preceding the next regular meeting. Please note that incomplete applications will not be accepted.

To insure complete applications are provided, appellants must schedule a pre-application meeting with the Building Official, Assistant Building Official and/or City Planner for a preliminary discussion of their request and the documents that will be required to be submitted. Staff will explain how all requested variances must be highlighted on the survey, site plan and construction plans. Each variance request must be clearly shown on the survey and plans including a table as shown in the example below. All dimensions to be shown in feet measured to the second decimal point.

The 82A application fee is **\$360.00** for single family residential; **\$560.00** for all others. This amount includes a fee for a public notice sign which must be posted at the property at least 15-days prior to the scheduled hearing date.

Requested Variances	Required	Existing	Proposed	Variance Amount
Variance A, Front Setback	25.00 Feet	23.50 Feet	23.50 Feet	1.50 Feet
Variance B, Height	30.00 Feet	30.25 Feet	30.25 Feet	0.25 Feet

V. REQUIRED INFORMATION CHECKLIST:

- ✓ One original and nine copies of the signed application
- ✓ One original and nine copies of the signed letter of practical difficulty and/or hardship
- ✓ One original and nine copies of the certified survey
- ✓ 10 folded copies of site plan and building plans including existing and proposed floor plans and elevations
- If appealing a board decision, 10 copies of the minutes from any previous Planning, HDC, or DRB board meeting

VI. APPLICANT SIGNATURE

By signing this application, I agree to conform to all applicable laws of the City of Birmingham. All information submitted on this application is accurate to the best of my knowledge. Changes to the plans are not allowed without approval from the Building Official or City Planner.

Signature of Owner: [Signature] Date: 1-12-2020

Signature of Petitioner: [Signature] Date: 1/10/2020

CITY OF BIRMINGHAM
 Date 01/13/2020 3:57:34 PM
 Ref 00165886
 Receipt # 520913
 Amount \$360.00



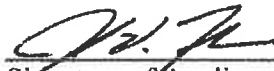
Has Boards.

ARTICLE III - Rehearings

A. No rehearing of any decision of the Board shall be considered unless new evidence is submitted which could not reasonably have been presented at the previous hearing or unless there has been a material change of facts or law.

B. Application or rehearing of a case shall be in writing and subject to the same rules as an original hearing, clearly stating the new evidence to be presented as the basis of an appeal for rehearing.

I certify that I have read and understand the above rules of procedure for the City of Birmingham Board of Zoning Appeals.

 1.12.2020

Signature of Applicant

City of Birmingham BZA, letter of hardship or practical difficulty.

**Property located at
1616 Croft St.**

Variance request is based on a practical difficulty because the existing home is non-conforming with current setback requirement.

This is a corner plot with two front yard setbacks. Croft St. front has 20.30 average and Taunton Rd. has a 35.91 average. The existing side setback is 9.6 to the East and the rear setback is 52.71 to the South. These setbacks leave a buildable width of 23.84. The existing encroachment into the Taunton Rd. setback is 17.71.

Proposed second floor addition will cover the entire first floor and will overhang the rear of the existing house 2'. Existing covered porches will be enclosed and a new front porch will be added on the Croft St. front.

SETBACKS				
	FRONT YARD SETBACK	FRONT YARD SETBACK	SIDE YARD SETBACK	REAR YARD SETBACK
1_REQUIRED	20.30	35.91	5.00	35.00
2_PROPOSED	20.30	15.10	9.60	52.71
3_EXISTING	20.30	15.10	9.60	52.71
4_CHANGE	0.00	0.00	0.00	0.00
5_VARIANCE	2.58	20.81	0.00	0.00

**Robin Ballew
Ballew Designs LLC.
6523 Tamarack Dr.
Troy, MI 48098**

CASE DESCRIPTION

770 S. ADAMS (20-10)

Hearing date: February 11, 2020

Appeal No. 20-10: The owner of the property known as 770 S. Adams, requests the following interpretation OR variance regarding side yard setback in the Triangle District:

A. Chapter 126, Article 3, Section 3.08(B) of the Zoning Ordinance Triangle District Overlay requires a minimum side yard setback of 10 feet for walls that contain windows. Meanwhile, **Chapter 126, Article 3, Section 3.16(C)(1)** of the Zoning Ordinance Via Activation Overlay states that side setbacks shall not be required where side lot lines adjoin a via. The subject property resides within the Triangle Overlay District and is adjacent to a public alley, therefore the property is subject to both the Triangle District Overlay standards and the Via Activation Overlay standards.

Chapter 126, Article 3, Section 3.06(C) states that the provisions of the Triangle Overlay District, when in conflict with other articles of the Zoning Ordinance, shall take precedence. However, **Chapter 126, Article 3, Section 3.15(C)** states the provisions of the Via Activation Overlay District, when in conflict with other articles of the Zoning Ordinance, shall take precedence. The applicant has requested an interpretation as to which overlay standard takes precedence in regards to side setbacks along an alley within the Triangle Overlay District and Via Overlay District.

B. Chapter 126, Article 3, Section 3.08(B) of the Triangle District Overlay standards in the Zoning Ordinance requires a minimum side yard setback of 10 feet for walls that contain windows. The applicant has proposed a windowed side wall on the southern elevation that is setback 3'4" from the property line on the first floor, and a windowed side wall that is 2 feet from the property line on floors two through six. Therefore, a dimensional variance of 6'8" for the first floor on the southern elevation and 8 feet for floors two through six on the southern elevation has been requested.

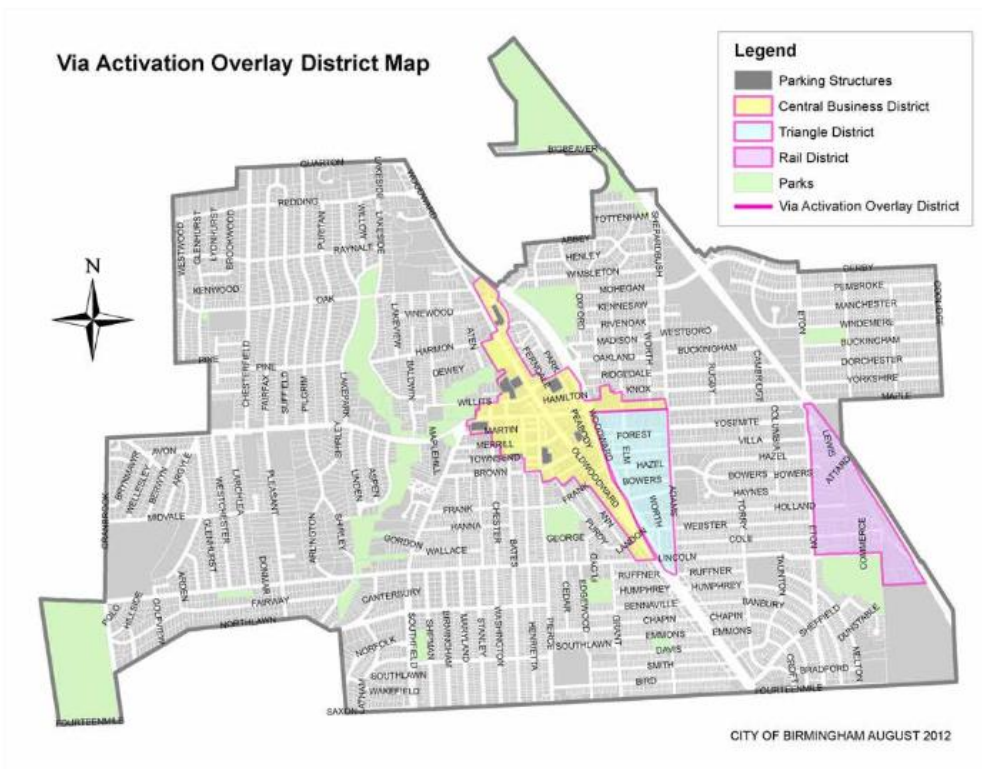
Staff Notes:

The subject property is zoned B2 General Business, as well as MU-3 and MU-5 in the Triangle District Overlay. The proposed project was brought before the Planning Board on January 8th, 2020. The report presented by the Planning Division called out the side setback requirement on the southern elevation of 10 feet for walls with windows as per the Triangle Overlay District standards. The Preliminary Site Plan report considered the subject property to be adjacent to an alley and subject to the Via Activation Overlay standards as it recommends that the Planning Board consider design enhancements along the alley. It is of note that the report did not mention the setback requirements for the Via Activation Overlay District standards at the time.

The Triangle Overlay District standards were approved in 2007 while the Via Activation Overlay District standards were approved in 2012.

3.14 Applicability

A. The Via Activation Overlay District shall be an overlay district that applies to all existing and future vias in all zoning districts within the areas identified below:



770 S. ADAMS



CITY OF BIRMINGHAM
Community Development - Building Department
151 Martin Street, Birmingham, MI 48009
Community Development: 248-530-1850
Fax: 248-530-1290 / www.bhamgov.org

APPLICATION FOR THE BOARD OF ZONING APPEALS

Application Date: _____

Hearing Date: _____

Received By: _____

Appeal #: _____

Type of Variance:	<input checked="" type="checkbox"/> Interpretation	<input checked="" type="checkbox"/> Dimensional	<input type="checkbox"/> Land Use	<input type="checkbox"/> Sign	<input type="checkbox"/> Admin Review
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I. PROPERTY INFORMATION:

Address: 770 S. ADAMS BIRMINGHAM 48009	Lot Number: LOT 15, 16, 17	Sidwell Number: 19-36-283-016
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II. OWNER INFORMATION:

Name: 770 S. ADAMS LLC			
Address: 36400 WOODWARD AVE SUITE 109	City: BLOOMFIELD HILLS	State: MI	Zip code: 48304
Email: johns@johnrichards.com		Phone: 248-885-1153	

III. PETITIONER INFORMATION:

Name: JOHN SHEKERJIAN	Firm/Company Name: 770 S. ADAMS LLC		
Address: 36400 WOODWARD AVE SUITE 109	City: BLOOMFIELD HILLS	State: MI	Zip code: 48304
Email: johns@johnrichards.com		Phone: 248-885-1153	

IV. GENERAL INFORMATION:

The Board of Zoning Appeals typically meets the second Tuesday of each month. Applications along with supporting documents must be submitted on or before the 12th day of the month preceding the next regular meeting. Please note that incomplete applications will not be accepted.

To insure complete applications are provided, appellants must schedule a pre-application meeting with the Building Official, Assistant Building Official and/or City Planner for a preliminary discussion of their request and the documents that will be required to be submitted. Staff will explain how all requested variances must be highlighted on the survey, site plan and construction plans. Each variance request must be clearly shown on the survey and plans including a table as shown in the example below. All dimensions to be shown in feet measured to the second decimal point.

The BZA application fee is **\$360.00** for single family residential; **\$560.00** for all others. This amount includes a fee for a public notice sign which must be posted at the property at least 15-days prior to the scheduled hearing date.

Variance Chart Example				
Requested Variances	Required	Existing	Proposed	Variance Amount
Variance A, Front Setback	25.00 Feet	23.50 Feet	23.50 Feet	1.50 Feet
Variance B, Height	30.00 Feet	30.25 Feet	30.25 Feet	0.25 Feet

V. REQUIRED INFORMATION CHECKLIST:

- ☐ One original and nine copies of the signed application
- ☐ One original and nine copies of the signed letter of practical difficulty and/or hardship
- ☐ One original and nine copies of the certified survey
- ☐ 10 folded copies of site plan and building plans including existing and proposed floor plans and elevations
- ☐ If appealing a board decision, 10 copies of the minutes from any previous Planning, HDC, or DRB board meeting

VI. APPLICANT SIGNATURE

By signing this application, I agree to conform to all applicable laws of the City of Birmingham. All information submitted on this application is accurate to the best of my knowledge. Changes to the plans are not allowed without approval from the Building Official or City Planner.

Signature of Owner: _____

Date: 1/13/2020

Signature of Petitioner: _____

Date: 1/13/2020



Williams Williams Rattner & Plunkett, P.C.
Attorneys and Counselors

380 North Old Woodward Avenue
Suite 300

Birmingham, Michigan 48009

Tel: (248) 642-0333

Fax: (248) 642-0856

Richard D. Rattner
rdr@wwrplaw.com

January 28, 2020

City of Birmingham
Board of Zoning Appeals
151 Martin Street
Birmingham, MI 48009

Re: 770 S. Adams, Birmingham condominium development ("Property")

Dear Members of the Board of Zoning Appeals:

Please accept this letter as a supplement to the letter submitted on January 13, 2020 on behalf of the Petitioner regarding the proposed mixed-use condominium Property at 770 S. Adams. The Property sits within the boundaries of the MU-3 and MU-5 Districts of the Triangle Overlay and within the boundaries of the Via Activation Overlay District. The underlying zoning district is B-2.

The Petitioner presented its preliminary site plan for review and approval by the Planning Board on January 8, 2020, and draft of the January 8, 2020 Planning Board minutes are enclosed ("Minutes").

The Planning Board opined that the Property is subject to the side-yard setback requirements of the MU-3/MU-5 development standards of the Zoning Ordinance ("Ordinance"). The Triangle Overlay District MU-3/MU-5 side-yard setback requirements provide for a zero-side setback with walls facing the side lot line that do not contain windows, and a 10-foot side-yard setback for buildings that contain windows. See Zoning Ordinance Sec. 3.08B. The Petitioner's proposed building design is for a mixed-use building with windows on three sides.

The Petitioner requests the Board of Zoning Appeals to provide guidance to the Planning Board regarding proper interpretation of the side-yard setback requirement for this Property, given that it is subject to both the Triangle Overlay and the Via Activation Overlay Districts which have contradictory side setbacks. Another proper interpretation is that the proposed building is situated on a corner and the zero-minimum front-yard setback of MU-3/MU-5 should apply on two sides.

In the event this Board determines that the MU-3/MU-5 requirements control such that the site plan is not in compliance with the Ordinance, then in the alternative, the Petitioner

requests a variance for the Property, as set forth below.

MU-3/MU-5 District Standards Conflict with Via Activation Overlay

In this case, the Planning Board has interpreted the MU-3/MU-5 Ordinance as it relates to this Property as having a front yard on Adams and a side yard on the abutting alley that connects Adams to Worth Street. The MU-3 and MU-5 standard is for a zero-side lot line if the building *has no windows on the side yard*, or a 10-foot side yard if the building has windows. Hence, the interpretation of the Building Department, as adopted by the Planning Board, requires a 10-foot side setback for the Property since the proposed building is designed for mixed-uses with windows on the alley.

However, this Property also is subject to the Via Activation Overlay (see map at Ordinance Sec. 3.14A). There is no question that the alley abutting the Property is a via. An "Active Via" is defined as "an alley with a mix of uses . . ." See Ordinance Sec. 3.14D.

The standards of the Via Activation Overlay directly contradict the MU-3/MU-5 standards as applied here. The development standards of the Via Activation Overlay provide that *"side setbacks shall not be required where side lot lines adjoin a via."* Ordinance Sec. 3.16C. Thus, according to the Via Activation Overlay standards, a side setback from the alley is not required for the Property.

Further, both the Triangle Overlay District Ordinance and the Via Activation Overlay Ordinance contain language mandating that each takes precedence over any other sections of the Ordinance. Section 3.06C of the Triangle Overlay says, "The provisions of the Triangle Overlay District, when in conflict with other articles of the Zoning Ordinance, shall take precedence." Similarly, Section 3.15C of the Via Activation Overlay states, "The provisions of the Via Activation Overlay District, when in conflict with other articles of the Zoning Ordinance, shall take precedence."

The Via Activation Overlay also contains more specific language regarding setbacks and conflicts with underlying zoning standards. Section 3.15D of the Via Activation Overlay states, "The provisions of the Via Activation Overlay District shall specifically supersede all standards for the underlying zoning district with regards to . . . side and rear setbacks . . . for all portions of buildings and sites directly adjoining a via."

Given the specific setback language of the Via Activation Overlay and the clearly settled spirit and intent of the Ordinance, we ask the BZA to confirm that the Via Activation Ordinance takes precedence over other standards of the Ordinance, including the Triangle Overlay standards. To interpret the Ordinance otherwise is contrary to the mission of the Via Activation Overlay to activate alleys and passages for more lively urban spaces. This result is one that was recognized by the Planning Board in its determination and discussion. A zero setback was not objected to by the Planning Board. During the January 8, 2020 meeting, Planning Board Chairman Clein had no objections to a zero-setback interpretation of the Ordinance and opined:

“in this particular case, I have no concerns with regard to the layout of the setback; it is an example of fine urban planning . . . I would be pleased to see the project move forward . . .” Minutes, p. 2.

If the Triangle Overlay standards are given primacy in the interpretation, the Via Activation Ordinance is meaningless in the Triangle District, and zero setbacks will be permitted only when the sides of buildings adjacent to alleys have no windows. This result is the opposite to the spirit and intent of the goal of activation of alleys and instead results in commercially dead alleys that are pedestrian hostile places. The Petitioner accordingly requests the Board of Zoning Appeals to opine that in this case the Via Activation Overlay standards take precedence and no side-yard setback is required for this Property, as the side yard abuts an alley with a mix of uses.

Another legitimate interpretation of the Ordinance that requires the same conclusion is that the Property has two front yards, a front-facing front yard on which the Property is addressed (Adams) and a side-facing front yard on the alley. The building department interprets the Ordinance in such a manner that the alley is not a street and, therefore, the intersection of the alley and Adams does not create a corner lot. Article 9 of the Ordinance defines street as “*a dedicated and accepted public thoroughfare* or a permanent, unobstructed private easement of access having a width of more than 25 feet which affords the principal means of vehicular access to abutting property; provided such private easement existed prior to December 12, 1966 (see Alley)” (emphasis added). The Article 9 definition of “Alley” is: “an urban way that affords a secondary means of vehicular access to abutting property.” In this case, the alley adjacent to 770 S. Adams is a thoroughfare connecting Adams and Worth Street. It is more than an alley as it provides more than secondary access to abutting property. The alley is a dedicated and accepted thoroughfare, used by the public to travel from Adams to Worth. As such, the Property constitutes a corner lot and the zero-minimum front setback of MU-3/MU-5 should apply to both the front-facing front yard on Adams and the side-facing front yard on alley.

Alternative Dimensional Variance from MU-3/MU-5 Side Setback Requirement

In the event the Board of Zoning Appeals determines that the side setbacks of the MU-3/MU-5 zone apply without regard to the Via Activation Overlay, the Petitioner requests the alternative relief of a dimensional variance from the MU-3/MU-5 side-yard setback requirement. Assuming Section 3.16C of the Via Activation Overlay, allowing no side-yard setbacks, does not apply, the MU-3/MU-5 standards for side yard setbacks require a 10-foot setback for a building with windows facing the alley. See Sec. 3.08B. The Petitioner requests a variance in order to have a mixed-use building with windows and *a zero-side setback on the alley*, consistent with the Via Activation Overlay, but inconsistent with the development standards of the MU-3/MU-5.

The Petitioner’s position is that the setback is measured from the center of the alley. In the B-2 zone, front setbacks are measured from the center of the public right-of-way adjoining the front lot line. See Ordinance Sec. 4.63 SB-04. The Petitioner believes the Property has two front yards because it faces Adams on the east and the alley on the south. The alley is a thoroughfare because it adjoins Adams and Worth streets. As such, it fits within the definition of

“Street “at Section 9: “a dedicated and accepted thoroughfare . . .” The Planning Board confirmed that measuring from the middle of the alley is “a pretty standard way” of measuring setbacks on alleys. See Minutes, p. 3. Measured from the center of the 16-foot alley, the Petitioner is requesting a two-foot variance for the Property setback on the alley, as depicted in the below chart:

Side Setback Requirement MU-3/MU-5	Requested Variance (as measured from lot line)
Minimum side-yard setback of 10’ for walls that contain windows (as measured from the center of the alley this requires 2’ off the side lot line).	Variance of 5’ at ground level for zero side setback. Variance of 8’ for floors 2-6 for zero side setback.
	No Variance Required (as measured from centerline of the alley)
	No variance required if measuring from center of alley as the ground floor will be 13’ from the center of the alley, beyond the 10’ required by MU-3/MU-5. No variance required if measuring from the center of the alley as floors 2-6 will be 10’ off the center of the alley, meeting the 10’ required by MU-3

The dimensional variance is requested as a result of the unique size, shape, physical characteristics and location of this Property as it relates to other neighboring and nearby properties, coupled with the requirements in the Triangle Overlay District, and the Via Activation Overlay District principles of design.

ARTICLE 8.03(F)(3)(a)(i) - BECAUSE OF SPECIAL CONDITIONS APPLICABLE TO THE PROPERTY IN QUESTION THE PROVISIONS OF THE ZONING ORDINANCE, IF STRICTLY APPLIED, UNREASONABLY PREVENT THE PROPERTY OWNER FROM USING THE PROPERTY FOR A PERMITTED PURPOSE.

There are exceptional and extraordinary circumstances and conditions applicable to the subject Property because of the placement of the Property, the size and location of the Property and its zoning along Adams and the thoroughfare running from Adams to Worth streets. These unusual circumstances cause a practical difficulty and unnecessary hardship for the Property Owner and prevent the Property Owner from using the Property in the same manner as other property owners within the same zoning district, i.e., the MU-3/MU-5 Zone. Other owners in the MU-3/MU-5 Zone may freely build a new building and all elements of the building, including setbacks, height, use, and all other requirements pursuant to the regulations set forth in the Triangle Overlay District. The unusual application of one element of the MU-3/MU-5 zoning district to this Property has a damaging effect on the use of the Property along the alley for permitted purposes. A strict application of the Zoning Ordinance in this unique circumstance causes this building to be subject to the 10-foot side-yard setback requirements simply because it has windows on the side facing the alley, although it essentially has two front yards – facing Adams and the alley, rather than the setback requirements for a corner lot. The City’s application of the Zoning Ordinance to this Property completely negates the goals and objectives of the Via

Activation Overlay.

ARTICLE 8.01(F)(3)(A)(ii) - LITERAL ENFORCEMENT OF THE CHAPTER WILL RESULT IN UNNECESSARY HARDSHIP.

The literal enforcement of the side-yard setback requirements of the MU-3/MU-5 zoning district as it applies to a building facing an alley will result in a practical difficulty and an unnecessary hardship to the Petitioner. Although the building is designed to be built in all respects as intended by the Zoning Ordinance, that is, with the standards of the Triangle Overlay Zone, it is clear that the application of the "side-yard setback" found in the MU-3/MU-5 zoning district, if applied to this particular property in this unique situation, will not only cause the Petitioner a practical difficulty and an unnecessary hardship, but also causes a conflict between the standards of the Triangle Overlay Zone and the Via Activation Overlay district standards. First, unlike other MU-3/MU-5 districts in the City, the Property sits on the corner of a public street and a public alley running between Adams and Worth streets. The MU-3/MU-5 side-yard setbacks are intended to provide necessary spacing between commercial buildings. The spirit and intent of the Triangle Overlay and Via Activation Overlay is to create mixed-use buildings with an activated urban streetscape. The hardship caused is that this MU-3/MU-5 zoning district standard does not satisfactorily accommodate either the location of the Property, or the Triangle Plan and the Via Activation Overlay building design goals and requirements. The result is that application of the side-yard setback to this Property has the unintended result of limiting the activation of the alley-side of the building and even requires that no windows be placed on that side. This literal enforcement of the side-yard setback requirement has no purpose in this unique circumstance. The hardship is caused because of the unique siting of this Property and the requirements of the Zoning Ordinance that the building be built under the MU-3/MU-5 regulations.

ARTICLE 8.01(F)(3)(a)(iii) – THE GRANTING OF THE VARIANCE WILL NOT BE CONTRARY TO THE SPIRIT AND PURPOSE OF THE ZONING ORDINANCE NOR CONTRARY TO PUBLIC HEALTH, SAFETY AND WELFARE.

The granting of the variance requested by Petitioner will not be contrary to the spirit and purpose of the Zoning Ordinance nor will it be detrimental to the public health, safety and welfare. In fact, Petitioner maintains that the construction of the proposed building in its entirety in accordance with the Via Activation Overlay District requirements, and not with the MU-3/MU-5 zoning district requirements, is squarely within the purpose and intent of the Zoning Ordinance. All other elements of this building must be built in accordance with the Triangle Overlay District. The building must be moved to the frontage line, the height is pursuant to the Overlay District Ordinance, the placement of other elements of the building are in accordance with the Overlay District Ordinance. The size and location of the building are in accordance with elements of the Triangle Overlay District, and, importantly, the adjacent alley regulates spacing between the Property and the building across the alley. The 10-foot side-yard setback of the MU-3/MU-5 zoning district does not reasonably apply to property which sits of the corner of a street and an alley within the Via Activation Overlay.

On the other hand, the purpose, spirit and intent of the Triangle Overlay District is clearly set forth in Section 3.05. It encourages the development in the Triangle District in Section 3.05(A) of "a fully integrated, mixed-use, pedestrian-oriented environment with buildings containing commercial, residential and office uses, similar to the downtown character west of Woodward Avenue." It is notable that the Downtown Overlay which governs the downtown west of Woodward Avenue does not require side setbacks (see Section 3.04(B)(3)). Further, the purpose of the Triangle Overlay District encourages a synergy of uses "to support economic development and redevelopment in accordance with the recommendations of the Triangle District Urban Design Plan." Section 3.05(D). The express goals of the Triangle Plan are to (i) "improve the visual appearance of the area, its streets, alleys, public spaces, and buildings," (ii) "better utilize property through more compact, mixed-use development," and (iii) "create an inviting, walkable, pedestrian neighborhood." (See Triangle Plan, p. 3, Goals and Objectives.)

The purpose of the Triangle Overlay District goes on further to state at Section 3.05(C) that the intent of the ordinance is to "...promote compact, mixed-use, pedestrian-friendly district..." and "create a definable sense of place . . . with a traditional urban form . . ." (Section 3.05(E)). The spirit and purpose of Triangle Overlay ordinance is clearly accomplished by the project proposed. More importantly, an application of the MU-3/MU-5 side setback requirements to this Property is contrary to the Triangle Overlay spirit and intent which abhors commercially dead blank walls. The MU-3/MU-5 requirements restrict the activated use of the building on the alley-side, a use encouraged by the purpose of the Triangle Overlay.

The purpose of the Via Activation Overlay District is to "enhance the amenity and character of vias, to enhance the visual interest and encourage surveillance of urban spaces, active uses should be provided at the ground floor level along the majority of edges of buildings located adjacent to vias." Section 3.16(A). In 2012, the City has adopted the plan titled, "Activating Urban Space: A Strategy for Alleys & Passages" ("Activation Plan"). This Activation Plan calls for design that "encourages activity to spill out from adjacent buildings into alleys . . ." See Activation Plan, p. 6. A strict application of the side setback to this Property on the alley side directly contradicts to goals of the Via Activation Overlay and the Activation Plan by requiring inactive uses along the alley of either a significant setback or a windowless, dead blank wall. The granting of the variance requested will achieve all of the objectives of the Triangle Overlay MU-3/MU-5 zone and the Via Activation Overlay.

The location of this building and the unusual siting of the Property on the corner of Adams and the alley, do not fit the normal MU-3/MU-5 paradigm. The spirit and intent of the mixed-use district of the Triangle Overlay is not enhanced or in any way accomplished by applying the side setbacks at the alley. Also, across Woodward Avenue is the Downtown Overlay District with no side setbacks. The Triangle Plan aspires to maintain the consistency of design features which are set forth in the Downtown Overlay District. The spirit, purpose and intent of the Zoning Ordinance would be served by granting a variance that would allow an activated building with no side setback on the alley.

ARTICLE 8.01(F)(3)(a)(iv) – THE GRANTING OF THE VARIANCE WILL RESULT IN SUBSTANTIAL JUSTICE TO THE PROPERTY OWNERS, THE OWNERS OF THE PROPERTY IN THE AREA AND THE GENERAL PUBLIC.

The granting of the variance will result in substantial justice to the owner of the Property and the neighboring owners of the Property and the general public. The purposes of the Triangle Overlay District and the Via Activation District are set forth above. The fulfillment of these requirements and the purpose of both overlay districts have been determined by the Planning Commission and the City Commission as being a benefit to the health, safety and welfare of the community. The purpose and planning goals of both overlay districts encourage new, compact development with a traditional urban form, in order to create an area of Birmingham that is as vibrant as the downtown to benefit the entire community. It would be inconsistent if this Property is singled-out for application of a side setback while it is on an alley subject to the Via Activation Overlay. The unique location of this Property has caused the Petitioner to request that the Property be treated as a corner lot and have two front setbacks applied on Adams and on the alley in order to satisfy the goals of both the Triangle Overlay and the Via Activation Overlay.

The granting of the variance will remove the presumed conflict between the Triangle Overlay District and the Via Activation Overlay District in this unique circumstance. The nearby property owners are all within the Triangle Overlay District as well as the Via Activation Overlay District and therefore to develop this building pursuant to the same rules as these nearby properties would be a benefit to those property owners. Lastly, as a result of this building being built in accordance with the goals of both the Triangle Plan and Activation Plan, the granting of this variance will be of benefit to the general public and will result in substantial justice to all of the citizens of the City of Birmingham.

THE PRACTICAL DIFFICULTY AND HARDSHIP IS NOT SELF-CREATED.

The practical difficulty and hardship experienced by this Petitioner is not self-created but exists because of the size, shape, location and natural features of the Property and pre-existing alley. This Property is a rectangular shape situated on the corner of Adams Street and the alley which serves as a thoroughfare between Adams and Worth streets. Its current use is an office building and parking lot. The proposed building is designed as a mixed-use commercial and residential structure under the MU-3/MU-5 and is made possible as a result of the requirements the Triangle Overlay District. The reasons for this variance and the current development plan is to benefit the City of Birmingham with a building and development that is complimentary to, and consistent with the Triangle Overlay and the Via Activation Overlay, as well as the ordinances of the City of Birmingham.

The application of the side setback of the MU-3/MU-5 to this Property is inconsistent with the accepted planning and zoning goals of the City, as it restricts the urban use of the Property on the alley side and instead requires either a windowless wall or a 10-foot setback further contradicting compact urban design and alley activation. The location of this Property on

the alley is not the same as others in the MU-3/MU-5 zoning district in the City. Petitioner respectfully requests that the Board of Zoning Appeals grants a variance from the application of the MU-3/MU-5 side setback for this Property.

The granting of this dimensional variance in this circumstance given the unique location and special circumstances of this Property is a result of the unique physical characteristics of the Property and the alley which create a practical difficulty and hardship that prevent the Petitioner from the use of the Property in the same manner as enjoyed by other property owners in the area not situated on an alley. These unique characteristics were not created by the Petitioner but are a result of physical characteristics of an unusually located property bordered by a public street and public thoroughfare and subject to both the Triangle Overlay and the Via Activation Overlay.

Conclusion

The variance requested is necessary to preserve the enjoyment and substantial property rights possessed by other property owners in the same Triangle Overlay District. Further, with the granting of this variance provides the following relief: (i) the Property Owner will not be unreasonably prevented from the use of the Property for a permitted purpose by a literal interpretation of the Zoning Ordinance that serves no purpose in this circumstance; (ii) the literal enforcement of the Zoning Ordinance will result in unfair and unnecessary hardship to the Petitioner; (iii) the granting of the variance will not be contrary to the spirit and purpose of the Zoning Ordinance nor contrary to the public health safety and welfare; and (iv) the granting of the variance will result in substantial justice to the Property Owner, the owners of property and the general public. Finally, the practical difficulty and unnecessary hardships experienced by the Petitioner are not caused by the Petitioner. The granting of this variance will produce a situation where the development of this Property and building in the Triangle Overlay District, in all ways, comply with the purposes and objectives of both the Triangle Plan and the Activation Plan.

Accordingly, Petitioner requests that the Board of Zoning Appeals favorably consider this Application and provide guidance on interpretation of the Ordinance such that Petitioner's design can meet the goals of both the Triangle Overlay District and the Via Activation Overlay District. Alternatively, Petitioner requests the Board of Zoning Appeals to grant the dimensional variance as submitted herein.

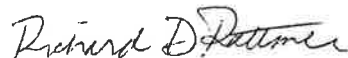
Please contact the undersigned with any questions or requests for additional information.

Board of Zoning Appeals
January 28, 2020
Page 9

W|W|R|P

Sincerely,

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.

A handwritten signature in cursive script, appearing to read "Richard D. Rattner".

Richard D. Rattner

CC: John Shekerjian, 770 S. Adams, LLC
Ross Hoekstra, McIntosh Poris Associates

REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JANUARY 8, 2020
7:30 PM
151 MARTIN STREET, CITY COMMISSION ROOM, BIRMINGHAM, MI

- A. Roll Call
- B. Review and Approval of the Minutes of the regular meeting of **December 11, 2019**
- C. Chairpersons' Comments
- D. Review of the Agenda
- E. Preliminary Site Plan Reviews
 - 1. **770 S. Adams** (existing office building) – Request for Preliminary Site Plan approval for construction of a new five story mixed use building in the MU3/MU5 zone of the Triangle District (**Postponed from December 11, 2019**).
- F. Study Session Items

Rules of Procedure for Study Sessions: Site Plan and Design Review, Special Land Use Permit Review and other review decisions will not be made during study sessions; Each person (member of the public) will be allowed to speak at the end of the study session; Each person will be allowed to speak only once; The length of time for each person to speak will be decided by the Chairman at the beginning of the meeting; Board members may seek information from the public at any time during the meeting.

 - 1. **2019 Administrative Approval Report**
 - 2. **Master Plan Review Process Update**
 - 3. **Solar Panel Review Process**
 - 4. **Glazing Standards**
- G. Miscellaneous Business and Communications:
 - a. Communications
 - b. **Administrative Approval** Correspondence
 - c. Draft Agenda for the next Regular Planning Board Meeting (**January 22, 2020**)
 - d. Other Business – **Discuss amending Rules of Procedure for January 22, 2020 meeting**
- H. Planning Division Action Items
 - a. Staff Report on Previous Requests
 - b. Additional Items from tonight's meeting
- I. Adjournment

Notice: Due to Building Security, public entrance during non-business hours is through the Police Department—Pierce St. Entrance only.
Individuals with disabilities requiring assistance to enter the building should request aid via the intercom system at the parking lot entrance gate on Henrietta St.

Persons with disabilities that may require assistance for effective participation in this public meeting should contact the City Clerk's Office at the number (248) 530-1880, or (248) 644-5115 (for the hearing impaired) at least one day before the meeting to request help in mobility, visual, hearing, or other assistance.

Las personas con incapacidad que requieren algún tipo de ayuda para la participación en esta sesión pública deben ponerse en contacto con la oficina del escribano de la ciudad en el número (248) 530-1880 o al (248) 644-5115 (para las personas con incapacidad auditiva) por lo menos un día antes de la reunión para solicitar ayuda a la movilidad, visual, auditiva, o de otras asistencias.
(Title VI of the Civil Rights Act of 1964).

Chairman Clein explained standard Planning Board meeting procedures including an explanation of when the public would have an opportunity to comment.

12-173-19

D. Approval Of The Agenda

There were no changes to the agenda.

12-174-19

E. Public Hearings

1. An ordinance to amend Chapter 126, Zoning, of the Code of the City of Birmingham: To amend **Article 3, Overlay Districts, Section 3.04(A)**, to consider amending the building height standards in the D5 zone of the Downtown Birmingham Overlay District;

AND

To amend **Article 9, Section 9.02, Definitions**, to add a definition for abutting.

Chairman Clein opened the public hearing at 7:33 p.m.

Planning Director Ecker presented the item.

Seeing no comments from the Board, Chairman Clein invited public comment.

Duraid Markus said he would like to see it specified that height refers to the highest point of an entire building, as opposed to the highest point of a setback or the highest point of the nearest part of a building.

Planning Director Ecker confirmed for Chairman Clein that the Zoning Ordinance already defines height as the highest point of a building. She said this can vary for single family homes and mixed-use properties.

Motion by Mr. Share

Seconded by Mr. Williams to recommend approval to the City Commission for the amendment of the following sections of the Birmingham Zoning Ordinance: 1. Article 3, Overlay Districts, section 3.04(A) to amend the building height standards in the D5 zone of the Downtown Birmingham Overlay District; and 2. Article 9, Definitions, section 9.02 to add a definition for the term abutting.

Motion carried, 7-0.

VOICE VOTE

Yeas: Share, Williams, Boyle, Clein, Jeffares, Whipple-Boyce, Koseck

Nays: None

Ms. Whipple-Boyce said she was not enthused about the eastern elevation, the proposed changes, or a brick change. She suggested that there might be some more creative way to create visual interest on the eastern elevation, including art or vegetation. She also exhorted the developer to follow through on any agreement the Board and developer reach regarding the design of the eastern elevation, stating that many times developers make commitments to the Board and do not follow through.

Mr. Shekerjian said he met with the neighbor whose property is at the lot line next to the eastern elevation, and that they had agreed to grow vines both up the side of 412-420 E. Frank's eastern elevation and up the west elevation of the neighbor's building. The neighbor will provide 412-420 E. Frank with six inches of his land in which to plant the vines. Mr. Shekerjian added they are considering adding vines along the south elevation as well.

In reply to Mr. Share, Mr. Shekerjian said the vines along the south elevation would be maintained by 412-420 E. Frank's association. He said it was not yet clear who would maintain the vines along the east elevation, since they would be planted in the neighbor's property and growing along 412-420 E. Frank's wall. He said he would propose to the neighbor that 412-420 E. Frank's association maintain the east elevation's vines as well.

Chairman Clein and Ms. Whipple-Boyce said they liked the idea of vines along the east elevation. Ms. Whipple-Boyce reiterated that the developer must follow through on the commitment, and suggested the Board make it a condition of approval.

Mr. Koseck said that if these and similar project details are important to the Board, the Board should ask developers to come back and demonstrate that all agreed-upon details have been implemented.

Seeing no further Board comment, Chairman Clein invited public comment.

Planning Director Ecker told Eric Wolf there were no further proposed changes to the west elevation as of the present meeting.

Mr. Wolf asserted the Board should compel Mr. Shekerjian to take down the wall and rebuild it to reflect the original proposal. He said the Building Department should not have granted the building permit given Mr. Shekerjian's non-adherence to the plans for the eastern elevation, and that the Planning Department should not have made administrative approvals to the plans that, in Mr. Wolf's opinion, will make the building unsightly. Mr. Wolf expressed disappointment in the Board for what he saw as the non-enforcement of previous commitments made by this developer.

Jay Safeman spoke as a lawyer who helped develop this project and as the co-owner of Unit 202 with his wife. Mr. Safeman said all five individuals in 412-420 E. Frank's association want vines on the exterior walls, and that they will be planting them. He asked that the Board approve the plans in light of the association's commitment to having vines grown along their building.

Motion by Mr. Koseck

Ms. Kroll said the traffic impact study provided had 40 ingress and 40 egress just by the site in the alley, which concerned her because the alley is narrow and was not designed to accommodate that volume of traffic during peak periods. She said the applicant also indicated they had count data for the number of cars entering and exiting the alley to access the property to the south, but the numbers from the count data were not provided to Ms. Kroll.

Chairman Clein and Mr. Williams noted the alley was one way. Mr. Williams said it would be necessary to have the count data for the property to the south.

Ms. Kroll confirmed that to be the case, and confirmed that the traffic impact study did have ingress and egress in the alley. She said eight spaces were proposed for the coffee shop, including one ADA space and one electric vehicle space. She said that leaves six available spaces for the 100 vehicles the developer anticipates will visit the coffee shop.

Chairman Clein said he was comfortable that the 40 cars using the alley to access the south property's parking lot and the 57 cars that use the garage underneath could be addressed, it was just that the applicant had not yet addressed them.

In reply to Mr. Boyle, Ms. Kroll explained that the ITE manual for parking calculations and the ITE trip generation manual were both used to determine the difference in parking needs and trip generation for a retail shop versus a coffee shop.

Mr. Boyle asserted that if all trip generation and parking calculations are derived from car-centric manuals, Birmingham will never be a more walkable City. He said the Board should accept that this coffee shop would be mostly accessed by people who do not drive to it, and compared it to Cannelle Patisserie, a successful coffee and pastry shop in Birmingham with only four parking spots.

Chairman Clein noted that Ms. Kroll was not herself advocating for increases in parking, but was merely going on the information available to her. He stated the responsibility was on the applicant to explain that there would be urban internal capture, that there would be walking trips, and that the ITE manuals, which are industry standard, should not apply to this project.

Mr. Boyle said he does not fault the consultants for using industry standard materials, and said the ITE manuals are the problem. He noted ITE manuals have a direct impact on what the City does or does not approve. He pointed out that reliance on conventional industry thinking will result in continued conventional car-centric development, even though the City has been trying to increase walking and cycling on its streets for at least a decade. He said his main concern is that the industry standard directs Birmingham away from its own plan for the Triangle District.

Chairman Clein said that while it might be worthwhile to discuss a possible change in ordinances stemming from Mr. Boyle's critiques, the Board cannot simply alter the standards it is required to use in the middle of a review. He said if the applicant came to the Board with a traffic study describing urban internal capture and walking trips, then the Board would have legitimacy in not requiring the ITE-recommended number of parking spaces.

Michael Poris, architect, noted that the lot is odd-shaped which meant the western side seemed like the best place to put a ramp to the lower parking level. He said that in order to get additional parking the access to upper parking is off of Adams. Mr. Poris added that lighting would be added to the alley and that the trash and transformers would be hidden so he could see potential pedestrian use of the alley in the future.

In reply to Mr. Koseck, Mr. Poris explained the building does not adhere to the ordinance-required ten feet setback because the building was designed to be setback ten feet from the center line of the alley. He also said that according to ordinance definition the alley would be more accurately described as a right-of-way, which means it would be counted as a front setback and the applicant would be permitted to build up to the property line. The City's interpretation of the right-of-way as more of a side setback came as a surprise to the applicant.

Planning Director Ecker said that the Building Official had been consistent in his interpretation of similar situations as side yards. She was not sure whether any applicant had taken the question to the Board of Zoning Appeals.

Mr. Koseck said he would like to see some designated pedestrian space in this alley.

Mr. Poris said that from an urban design perspective having to step the building back ten feet from the alley would be a poor choice. He suggested that this zoning issue should be re-evaluated by the City.

Chairman Clein said proposing to have someone in an accessible parking space enter the alley and then round the building's corner in order to reach the building's entrance caused him some concern.

Mr. Boyle said there was so much parking around the building that the City should not focus on increasing the alley's vehicular traffic. He said it would be sufficient in his view to move the accessible parking space to the front of the building, and to refinish the alley's surface to allow it to better accommodate the vehicular traffic that already uses it.

Ms. Whipple-Boyce recommended the applicant reach out to Citizens Bank at 1000 Haynes about the possibility of a shared parking agreement. She said the bank's parking lot is usually sparsely occupied.

Mr. Shekerjian stated that the applicant team has reached out to Citizens Bank and is in the process of discussing the possibility of shared parking.

In reply to Mr. Shekerjian, Planning Director Ecker explained that the Building Official has ruled in the past that there are conflicting definitions of a 'side setback', and that the written definition supercedes the image used to illustrate it. She clarified that the applicant could choose to seek a variance, could appeal the ruling to the Board of Zoning Appeals, or both, should they choose.

Mr. Shekerjian echoed Mr. Poris' previous comments that it would be detrimental to require that the building be stepped back 10 feet from the alley, not only aesthetically but because it would cause a substantial loss of square footage within the building. He asked whether the Board would

To alleviate the timing issue, Ms. Whipple-Boyce recommended that the Board vote to approve the preliminary site plan while including language in the resolution that specifically outlines the Board's expectations regarding parking. She asked whether other Board members thought that would be a sufficient solution.

Mr. Share commented that he had not heard any specific commitments from the applicant regarding parking.

Mr. Shekerjian expressed that it would not behoove the applicant team to take the Board's concerns lightly since the development would not move forward without Board approval of the final site plan. Given that, he said all comments from the Board would be addressed to the extent the applicant is able.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Williams to approve the Preliminary Site Plan Review for 770 S. Adams pending the following: 1. Revisions to the south side setbacks of the building of the site or removal of windows within 10' of the property line, or obtain a variance from the Board of Zoning Appeals; 2. Provision of balcony projection dimensions, and if over 2', the review and approval of the City Commission will be a required condition of any approval granted; 3. Provision of a roof plan showing the location of all rooftop mechanical equipment and associated screening; 4. Corrections of all site, landscape, streetscape and engineering plans showing consistency on all, and demonstrating that all zoning requirements have been met, including 12' sidewalk width; 5. The addition/clarification of 43 bike racks on site; 6. A photometric plan will be required at Final Site Plan and Design Review; 7. All material samples and specifications will be required at Final Site Plan and Design Review; 8. Compliance with the requirements of all departments; 9. Public parking to be located in the first floor of the parking area adjacent to the retail space in a manner acceptable to the Planning Board to be granted or withheld at the final site plan review; and, 10. Parking spaces along the southern line of the building abutting the alley to be reduced or relocated the the west of Adams in a manner acceptable to the Planning Board to be granted or withheld at the final site plan review.

Mr. Share provided suggestions for the wording of conditions nine and ten. Ms. Whipple-Boyce and Mr. Williams accepted Mr. Share's suggested wording.

Mr. Boyle ventured that condition ten of the motion could be "The parking spaces on the current plan to be enclosed within the envelope of the building."

Mr. Share said that might not be cost effective or fair to the applicant.

Mr. Boyle said he was aiming to make the condition as simple as possible.

Mr. Koseck noted that if the other side of the alley were developed into a building in the future, it would cause a 20 foot wide, 250 foot long straightaway with balconies encroaching into the space and no specified area for pedestrians. He said the alley should be treated as a road, with all the conditions that come with that designation according to ordinance. Secondly, Mr. Koseck

material samples and specifications will be required at Final Site Plan and Design Review; 8. Compliance with the requirements of all departments; and 9. Amendment of the parking situation.

Planning Director Ecker told Mr. Poris that there is no Birmingham ordinance against perpendicular parking on an alley.

Mr. Poris noted that parking layouts usually require 18-20 feet behind a car to pull out and turn, which is the same amount of space the alley provides. He continued that parking lots frequently have conditions where two cars opposite each other may back out into the same space at the same time while also navigating possible cross-traffic. Mr. Poris added that cars back out into traffic on Woodward Ave, a street much busier than the alley being discussed. Since people usually navigate these circumstances with little trouble, and there is no ordinance against it, Mr. Poris suggested the Board's concern regarding the eight spaces in the alley was perhaps in excess. He said being required to redesign would cause the applicant team a number of difficulties, and asked the Board to consider those points.

Chairman Clein replied to Mr. Poris that if the applicant team can prove to Ms. Kroll that the sight distance triangles of the eight spaces do not cause an undue safety hazard for vehicles given the unique condition of the intersection, then Chairman Clein might consider whether he would personally support easing off on some of the requested parking changes.

Motion carried, 6-1.

VOICE VOTE

Yeas: Boyle, Koseck, Williams, Clein, Share, Whipple-Boyce

Nays: Jeffares

2. 2101 E. 14 Mile Road (vacant parking lot) – Request for Preliminary Site Plan approval for construction of a new one story medical office building in the O1 Office zoning district.

City Planner Cowan presented the item.

Robert Cliff with MGA Architects and Dr. Maureen Kuhta of Michigan Smile Design Family Orthodontics represented the application.

Mr. Cliff explained that as soon as he and Dr. Kuhta received the Fire Marshall's comments regarding the sprinkler, Dr. Kuhta decided to forego the plans for a sleep center and to proceed in a different direction with that portion of the building. The plans will likely be reworked to expand the staff room and to provide storage space for the orthodontic practice. It would be Dr. Kuhta's preference to maximize available parking by keeping the 28 parking spaces the plans currently represent and by not adding landscaping to the parking lot.

In reply to Mr. Koseck, Mr. Cliff explained that the front setback for this property was calculated based on the average of the front setbacks of the properties within 200 feet, as required by ordinance.

Dr. Kuhta said that parking lot design was the result of trying to accommodate the sleep center as a tenant and would be redesigned now that the whole building will be occupied by her orthodontic practice.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Boyle to approve the Preliminary Site Plan for 2101 E. 14 Mile subject to the following conditions: 1. Applicant submit an updated landscape plan satisfying all landscape requirements at Final Site Plan review; and 2. The applicant provide specification sheets and material samples for all lighting, mechanical equipment, and building materials, as well as and signage details at Final Site Plan review.

Motion carried, 7-0.

VOICE VOTE

Yeas: Whipple-Boyce, Boyle, Koseck, Jeffares, Williams, Clein, Share

Nays: None

12-178-19

I. Miscellaneous Business and Communications:

a. Communications – Long Range Planning Meeting January 25, 2020

b. Administrative Approval Correspondence

Planning Director Ecker presented two requests.

For 191 N. Chester, the Board concurred with the Engineering Department's recommendation to agree to a change in the building's frontage and to add two on street parking spaces as proposed in the applicant's submission.

For 525 Merrill, the Board agreed they would like to review the application in person in order to make sure the neighbors would not be negatively impacted by 525 Merrill's proposed carport.

c. Draft Agenda for the next Regular Planning Board Meeting (January 8, 2020)

- Preliminary Site Plan Review for 770 S. Adams
- Potentially draft Master Plan discussion

Planning Director Ecker explained that the Commission was still mulling how it would like the Planning Board to schedule its master plan draft review, and that she would likely have a better sense of that after the Commission's December 16, 2019 meeting.

Chairman Clein commented that nothing on the Planning Board's action list, short of the glazing issue, seemed necessary to advance before the master plan is completed unless the Commission wanted to reorganize or add to the Board's action list. He respectfully recommended that the



MEMORANDUM

Planning Division

DATE: January 3, 2020

TO: Planning Board members

FROM: Jana Ecker, Planning Director

SUBJECT: 770 S. Adams – CIS & Preliminary Site Plan Review
(All Changes Shown in Blue Type)

I. INTRODUCTION

The subject site, 770 S. Adams is currently a 2 story office building. The parcel is 28,750 square feet in size and is located on the west side of S. Adams between Haynes and Webster Streets. The applicant is proposing to demolish the existing building to construct a 6 story mixed use, retail and residential development occupying the entire lot. The proposed building consists of 61 residential units and 1,950 square feet of retail space.

The applicant is required to prepare a Community Impact Study ("CIS") in accordance with Article 7, section 7.27(E) of the Zoning Ordinance as they are proposing a new building containing more than 20,000 square feet of gross floor area.

On November 11, 2019, the Planning Board reviewed the CIS submitted by the applicant for 770 S. Adams. After some discussion, the Planning Board voted unanimously to postpone the CIS review to December 11, 2019 to allow the applicant to provide the following information:

- (1) Drainage plan;
- (2) Noise study;
- (3) Phase 1 Environmental Assessment;
- (4) Details on the location of transformers and providers of all utilities;
- (5) Traffic data requested by Fleis & VandenBrink;
- (6) Information on all life safety issues and Fire Dept. approval; and
- (7) Information on the proposed security system for approval by the Police Department.

The Planning Board also postponed the Preliminary Site Plan Review to December 11, 2019 to allow all CIS issues to be discussed and resolved prior to the site plan review.

For the December 11, 2019 meeting, the applicant provided the required drainage and utility information, a noise study, the Phase 1 Assessment for the site, and clarified and/or provided additional traffic information. The applicant submitted a revised CIS that provides most of the requested information. The only outstanding information was with regards to fire safety and security system details. However, these are typically issues that are resolved and approved at Final Site Plan Review.

properties. The CIS acts as a foundation for discussion between the Planning Board and the applicant, beyond the normal scope of information addressed in the preliminary site plan review application. The Planning Board "accepts" the CIS prior to taking action on a Preliminary Site Plan.

A. Planning & Zoning

Issues: Use

The site is currently zoned B-2 General Business and falls within the MU5 and MU3 zones of the Triangle Overlay District. The proposed residential units, retail space and parking facility are permitted principal and/or accessory uses in the Triangle Overlay District in accordance with Article 3, section 3.07 of the Zoning Ordinance.

Master Plan Compliance: Triangle District Urban Design Plan

The Triangle District Urban Design Plan ("Triangle Plan") and form based code was approved on August 20, 2007. The purpose of the Triangle Plan is to:

- Improve the visual appearance of the area, its streets, alleys, public spaces, and buildings by establishing guidelines for design and implementation of public and private projects;
- Improve the economic and social vitality by encouraging diversity of use and opportunities for a variety of experiences;
- Better utilize property through more compact, mixed-use development;
- Link with Downtown across Woodward's high traffic barrier;
- Improve the comfort, convenience, safety, and enjoyment of the pedestrian environment by create an inviting, walkable, pedestrian neighborhood and setting aside public plazas;
- Organize the parking and street system to facilitate efficient access, circulation, and parking to balance vehicular and pedestrian needs;
- Encourage sustainable development; and to
- Protect the integrity of established residential neighborhoods.

The Triangle Plan encourages proper building mass and scale to create an environment that is more comfortable to pedestrians and helps bridge the gap to Downtown across Woodward Avenue. The proposed development will help improve the visual appearance of the area, by creating a denser, more compact mixed-use development. A retail store frontage will encourage pedestrians, and the addition of street furniture, street trees and pedestrian scaled lighting will increase their comfort. The proposed building contains primarily residential units on the upper levels and the majority of the first floor is parking. However, the applicant also proposes a large retail space and residential lobby along the street frontage on S. Adams.

In addition, the Triangle Plan encourages pedestrian-scale features which should be incorporated on the first floor of buildings and at entrances to help relate buildings to the streetscape. The plan for the proposed building includes a metal canopy along the S. Adams elevation, as well as pedestrian scale lighting, and glazing along the S. Adams façade.

Streetscape components are an integral part of the Triangle Plan. As discussed above, the applicant is proposing pedestrian scale street lighting, replanting street

(4) LEED building design, accredited based upon the rating system of the United States Green Building Council.

B. Land Development Issues:

The applicant has provided a survey of existing site conditions, including existing drainage. The proposed development does not occur on a steep slope. The applicant has now submitted a utility plan which includes drainage information.

The Zoning Ordinance requires that soil conditions be provided as a part of the CIS review. The applicant states that a soil report will be furnished for final site plan submittal. The applicant has now submitted a full soil report as an appendix to the Phase 1 Environmental Site Assessment provided (see below). The CIS notes that the site will be excavated to accommodate for one level of parking below grade. The CIS does not state how much soil is going to be removed and no haul routes or maps have been included. The applicant has now updated their CIS to state that 10,200 cubic yards of soil will be removed from the site to accommodate the underground parking level. The applicant has also now provided a map with the proposed haul routes, which include both routes going north on S. Adams to Maple, and going south on S. Adams to Woodward.

The applicant has now submitted a Phase 1 Environmental Site Assessment for the property dated November 19, 2018. The Phase 1 report found no evidence of Recognized Environmental Conditions or contamination connected with the property.

C. Utilities, Noise and Air Issues:

In accordance with the Triangle Plan, all utilities on the site should be buried to visually enhance the site. Thus, the applicant will be required to bury all utilities on the site. The applicant has indicated that electrical and gas services are proposed to come from Adams Street. Telephone and cable services are proposed to come from existing poles on Adams Street. Proposed providers of utility services have now been provided which include DTE, Consumers Energy, Comcast and AT&T. The exact location of the service lines and if any utility easements are needed will be determined later in the site plan process. The applicant also did not provide the location of the transformer. The revised plans now show the transformer located within the utility room on the main floor of the building in the SW corner along the alley.

The applicant has now submitted a Noise Study by Kolano and Saha Engineers, Inc. dated September 26, 201. The study states that the proposed development is not anticipated to produce any excessive noise and will be within the Noise Ordinance limits. However, they did note that while ambient noise will be within normally acceptable range, traffic noise from S. Adams Road may create adverse noise impact to future residents of the building. Thus, Kolano and Saha suggests providing additional noise isolating construction elements on facades of building that have direct exposure to traffic noise on S. Adams.

The applicant has stated in the CIS that this site is located in the Southeast Michigan Air Quality District, with monitoring stations in the Pontiac, Rochester, Oak Park and Allen Park, as well as others in the district. This district has attained and surpassed the National Ambient Air Quality Standards for Carbon Monoxide,

F. Public Safety:

The applicant has stated that the proposed development provides adequate access for police, fire and emergency vehicles from S. Adams and the alley way to the south. In addition, the CIS states that the elevators in the building will accommodate a medical cart, stretchers and emergency equipment.

The Police Department has not expressed any concerns. The applicant has advised that the building will conform to all applicable Fire Codes for layout, access, hydrant coverage and water connections. **The Fire Department will require further information to ensure that all life safety issues have been addressed, including details on the fire suppression system, fire access and the Knox Box location. This was not provided in the CIS and will be required at the time of Final Site Plan review.** The CIS states that the building will be designed with security features. The main lobby door will be locked via an intercom system potentially connected to the apartments. A security gate will be installed for both parking levels. **The Police Department has not granted approval of the proposed security system at this time. The applicant will need to submit this information for approval after final design is complete.**

G. Transportation Issues:

The CIS states that on site parking will be sufficient to support the proposed development. The applicant is also proposing on site covered bicycle storage, which will encourage mode shift by residents for local trips. In addition, bus service is currently available along both S. Adams and Woodward, and the Amtrak station is located 0.5 miles to the east.

The applicant has provided a transportation study prepared by ROWE Professional Services Company, dated October 9, 2019. The transportation report concluded that the proposed development is not anticipated to have a negative impact on the operation of the adjacent roadway system.

The City's transportation consultants have provided their comments which are attached to this report. Fleis & VandenBrink found inconsistencies with the information provided on the Transportation Study Questionnaire Form A and the preliminary site plan information regarding: square footage, parking spaces, number of units and retail square footage. In addition, the CIS states that Form B is attached. It is not attached or required for the submittal. **The applicant must provide all required information for review and approval by Fleis & VandenBrink.** The applicant submitted a revised transportation report, dated November 20, 2019.

H. Parking Issues:

The applicant indicates that a total of 113 parking spaces are proposed, with 56 spaces located in the parking lot on the ground level and 57 spaces on the lower level. A total of only 79 parking spaces are required (1 space/two (2) or less room unit, 1.25 spaces/3 or more room unit and 1/300 sq ft of commercial space.)

- features.
3. Fire alarm occupant notification shall be provided for all occupiable exterior balconies or terraces located above ground level.
 4. Fire pump for the building will be required to have an alternative power source.
 4. Police Department – The Police Department has no concerns with this project.
 5. Building Division – The Building Division has provided their standard comments, and has the following additional comments:
 1. Applicant must verify the location of accessible parking spaces are in accordance with Section 1106.6 of the Michigan Building Code.
 2. A number of accessible units will need to be provided in accordance with Section 1107.6.2 of the Michigan Building Code.
 3. The single exit provided from the sixth floor does not appear to be in compliance with Section 1006 of the Michigan Building Code. Another exit stair may be required.

K. Summary of CIS:

A majority of all issues identified previously with regards to the CIS have been resolve. The Planning Division recommends acceptance of the CIS with the following conditions:

- (1) The applicant submit information on all life safety issues for Fire Dept. approval at Final Site Plan and Design Review; and
- (2) The applicant submit information on the proposed security system for approval by the Police Department at Final Site Plan and Design Review.

L. Suggested Action:

1. To ACCEPT the Community Impact Study for the proposed development at 770 S. Adams, with the following conditions:
 - (1) The applicant submit information on all life safety issues for Fire Dept. approval at Final Site Plan and Design Review; and
 - (2) The applicant submit information on the proposed security system for approval by the Police Department at Final Site Plan and Design Review.
- OR
3. To decline or postpone the Community Impact Study as provided by the applicant for the proposed development at 770 S. Adams for the following reasons:
 - a. _____
 - b. _____
 - c. _____

of 2' off of the alley. This is only permitted in the MU3 and MU5 district for walls that do not contain windows. The northern wall meets this requirement and does not contain windows. However, the southern wall does not and contains both windows and balconies. Thus, the applicant will be required to obtain a variance for less than a 10' setback on a wall with windows. In addition, the balconies along the southern portion of the building project into the public alley way. **The applicant has now altered the plans or the south elevation of the building to provide what appears to be a 4' setback on the first floor. Elevations provided show the upper floors projecting slightly, but the property lines are not provided on the elevations to clearly determine the new setback. The applicant should add the property lines to all elevations and the site plan and clearly mark the setbacks at grade and above. The revised plans continue to show windows on the south elevation, and thus the applicant will be required to obtain a variance for the side setback along the southern elevation as 10' has not been provided.**

Article 4 Section 4.74 (D.4cii): Permanent architectural features such as windows, balconies, overhangs and other architectural features that encroach into the right of way above 8' may be approved by the Planning Board, Design Review Board and/or the Historic District Commission provided that they do not extend 2' or more into the right of way or create an obstruction and that the encroachment complies with the design review standards set forth in Article 07 of the Birmingham Zoning Ordinance. Encroachments that extend more than 2' into the right of way will also require the approval of the City Commission through a lease agreement.

The applicant will need to provide specifications about the balconies' encroachment into the public right of way. The renderings appear to show a 5' projection, which would require the approval of the City Commission. Now that the south elevation is showing a 2' setback, it appears that the balconies project 3' into the public alley. The revised plans submitted continue to show the balconies projecting over the property line on the south elevation. While the elevations do not show the location of the property lines, it appears that the balconies may only project 1' over the property line and into the alley, assuming that the upper floors are only setback 3'. As mentioned above, the applicant should add the property lines to all elevations to clearly show any encroachments, and the extent of the encroachment over the property line should be marked on the plans. The floor plans for the second and third floors appear to show the southern property line, and show the balconies projecting 2' past the property line above the alley to the south. This appears to be inconsistent with the dimensions on the elevation plans.

The applicant is proposing to construct a portion of the MU3 section of the building up to five (5) stories and MU5 section of the building up to six (6) stories. This is permitted by the Triangle Overlay if they are 100' or more from residential and meet the requirements of section 3.08 (E), which requires that they meet two (2) or more of the conditions listed. As currently proposed, the building is greater than 100' from residential zoning, and the plan meets provision three (3) by providing over 50% of the floor area as residential and provision four (4) LEED building design, accredited based upon the rating system of the United States Green Building Council.

The applicant has now revised both the site plan and the civil plans to include 5 pedestrian scale light fixtures, in the approved design for the Triangle District. However, the site plan and the civil plans are not consistent with the placement of these fixtures, and neither plan shows the required consistent 40' spacing between fixtures that is required along Adams Road. The civil plans also show two benches, two trash receptacles and two loop bike racks along Adams Road.

Parking Lot Landscaping – Not applicable as all parking is located in or under the proposed building.

4.0 Streetscape

The following streetscape requirements are outlined within the Triangle Overlay District:

- Sidewalks: Must be a minimum of 12' wide; which the applicant is providing along S. Adams St. No streetscape plan has been submitted to determine pedestrian flow and whether the path is clear. **The landscape plan now submitted shows a 9.5' wide sidewalk with this width unobstructed. However, sidewalks in the Triangle District are required to be 12' in width. The applicant will be required to provide the required 12' of width or obtain a variance from the Board of Zoning Appeals. The plans now show a 16.5' wide sidewalk along S. Adams, with a 12' clear unobstructed walking path with broom finish concrete scored in 2' by 2' squares, if the proposed tree grates are ADA compliant and can be included as part of the walking path. The applicant should confirm that the grates are in fact ADA compliant. The furnishing zone along the curb is now proposed to be exposed aggregate. The revised plans now also show a 4' wide sidewalk wrapping around the south side of the building along the edge of the alley. It appears that this sidewalk continues along the entire south elevation along the northern edge of the public alley. The applicant must confirm that this is the case, and that the broom finish concrete with a 2' by 2' scoring pattern will also continue along the entire south elevation. Finally, the revised plans now also show new sidewalk connections from the public sidewalk on S. Adams along both sides of the vehicular entrance drive into the main floor parking lot.**
- Street Trees: One canopy street tree planted within tree grates in the sidewalk is required for every 40' of street frontage. The frontage on S. Adams Street is 172 ft. **The applicant appears to be proposing 5 street trees, but a landscape plan detailing this must be submitted. As noted above, the applicant has now submitted revised plans and a landscape plan. However, the architectural site plan and the landscape plan are not consistent. The site plan shows 5 trees with square tree grates and 3 street lights. The landscape plan shows 5 street trees**

bike racks (128,522 sq. ft. / 3,000 = 42.84). The plans show an onsite enclosed biking storage area for the building users, but does not list how many spots are provided. The application also states a public bike rack will be included per the streetscape design guidelines, but does not indicate where. The revised plans now show the location of two loop bike racks along S. Adams, however, these are only shown on the civil plans and not on the site plan. Further, the revised first floor plan has relocated the bicycle storage room to the southeast corner of the building, and shown storage racks inside. However, the applicant has not clearly marked the capacity of the bicycle storage room. Roughly 20 bikes appear to be able to be stored on the rack at any given time, which does not meet the minimum number of bike parking places. The applicant will have to clarify on the plans the number of bike parking spaces to show 43 spaces, or obtain a variance from the Board of Zoning Appeals.

5.0 Parking, Loading and Circulation

- 5.1 Parking – In accordance with Article 4, section 4.45 (PK) of the Zoning Ordinance, 79 spaces are required for the mixed use, office and residential building. The Zoning Ordinance requires 1 parking spot per residential unit of 2 rooms or less, 1.25 parking spots per residential unit of 3 rooms or more, and 1 parking spot per 300 square feet of office space. The applicant is proposing 14 residential units of 2 rooms or less, 47 units of 3 rooms or more, and 1,784 square feet of retail space.

14 residential units*1 spaces=14 parking spaces
47 units *1.25 spaces = 59 parking spaces
1,784 sq. ft. retail space/300 sq. ft.= 6 parking spaces
Total required = 79 parking spaces

The applicant is proposing 113 spaces on site with interior ground level and lower level parking. The revised plans now show the removal of 3 on site parking spaces to accommodate the footprint changes proposed to the building. The applicant is now providing 110 on site parking spaces, which exceeds the 79 parking spaces required. The revised plans continue to show perpendicular parking spaces along the public alley to the south of the building. While there is no ordinance prohibiting these types of spaces discharging directly into the alley, the Planning Board did ask the applicant to amend this layout. An ADA space was also added to the parking area at grade under the building to provide closer access to the proposed retail space.

Article 3.08(G.4): Where a parking structure is provided or parking is located on the ground level below the building, usable building space to a depth of at least 20 feet shall be provided in front of the parking for the minimum required building length.

standards and what has been previously done in the Triangle District (i.e. both sides of Haynes, just east of Woodward);

2. A part of the City's Standard Streetscape includes new street lights in the right-of-way. The street lights shall be installed by DTE Energy to add to the City's system in this area, to be funded by the developer. Once the site plan is finalized, a proposal will be requested from DTE Energy for this work.
3. The alley which abuts the proposed development to the south shall be clearly labeled as One-way Public Alley (i.e. traffic flows from east to west);
4. A public alley is typically used for loading and service activities as such any overhang shall have a minimum of 14' clearance. This does not appear to be the case, based on the submitted plans;
5. It is anticipated that the City alley will be damaged during the construction of this project. The owner will be asked to replace the existing pavement with new concrete as a part of the project as well as agree to a future Special Assessment District (SAD) to upgrade the northern 8' of the alley the length of the property (i.e. broom finished concrete and exposed aggregate);
6. Provisions for drainage from the parking entrance off of the alley will be required on the final plans;
7. It should be noted that there are existing utility poles and power lines along the west side of Adams Road.

Permits from our office will include:

1. Right-of-way Permit (for excavations in the right-of-way).
 2. Sidewalk/Drive Approach Permit.
-
2. Department of Public Services – No comments have been received from the DPS.
 3. Fire Department –
 1. This building shall comply with all high rise provisions required by the Michigan Building Code, and the International Fire Code. This is to include the mandatory Fire Command Center.
 2. This building will be required to have full fire suppression coverage, including covered parking areas, and any exterior balcony or terrace, with an overhead projection greater than 2 feet, with combustible materials located on the balcony or terrace, and with an ignition source present such as bbq's, fire tables, heating devices, or any other fire features.
 3. Fire alarm occupant notification shall be provided for all occupiable exterior balconies or terraces located above ground level.
 4. Fire pump for the building will be required to have an alternative power source.
 6. Police Department – The Police Department has no concerns with this project.
 7. Building Division – The Building Division has provided their standard comments, and has the following additional comments:

Via Activation Overlay

The current design adjacent to the via on the south side of the building includes an opening in masonry wall for a row of covered public parking with 8 parking spaces. **The plans have now been revised to show only 7 parking spaces perpendicular to the alley. The easternmost parking space has been removed, and a small plaza has now been create to gain entry to the retail space, and to the bicycle storage room.**

In addition, it also provides the access to the 57 interior parking spaces on the lower level. **The Planning Board may wish to recommend design amenities that will enhance the character, visual interest, and surveillance of the building facing the via.** The current function of the space facing the via is to provide access for parking. If the function of the space facing the via is ever to change, designs and amenities should be able to accommodate different uses permitted in the Triangle and Via Activation Overlay Districts. **As noted previously, it appears that the applicant has now added a 4' wide pedestrian sidewalk along the northern edge of the public alley, to be constructed of broom finish concrete with a 2' by 2' scoring pattern to match the public sidewalk along S. Adams. This sidewalk should be clearly marked and detailed on the site plan.**

In accordance with Article 3.16(E.1.a) of the Zoning Ordinance, for publicly owned vias, the applicant must provide broom finish concrete with exposed aggregate for visual interest in all vias. **No details have been provided on alley improvements at this time and will be required at Final Site Plan review. The revised civil engineering plans now show the northern 8' of the alley being reconstructed with broom finish and exposed aggregate concrete. The pattern to be created by these finishes is not provided.**

Via lighting must be provided by adjoining property owners where needed to ensure the safety of pedestrians as per article 3.16(G.1) of the Zoning Ordinance. **The Planning Board may wish to recommend surface lighting luminaires with scale, color, and materials that will architecturally enhance the building features, and activate the via space.**

Article 3.16(H) of the Zoning Ordinance states that all portions of buildings and sites directly adjoining a via must maintain a human scale and a fine grain building rhythm that provides architectural interest for pedestrians and other users, and provide windows and doors overlooking the via to provide solar access, visual interaction, and surveillance of the via. **The Planning Board may wish to recommend windows and architectural features customarily found on the front façade of a building, such as awnings, cornice work, edge detailing or decorative finish material to improve the aesthetic experience of the via.**

9.0 Approval Criteria

In accordance with Article 7, section 7.27 of the Zoning Ordinance, the proposed plans for development must meet the following conditions:

- (1) The location, size and height of the building, walls and fences shall be such that there is adequate landscaped open space so as to provide light, air and access to the persons occupying the structure.

OR

Motion to POSTPONE the Preliminary Site Plan Review for 770 S. Adams with the following conditions:

1. _____
2. _____
3. _____

OR

Motion to DENY the Final Site Plan and Design for 770 S. Adams.

VOICE VOTE

Yeas: Share, Williams, Whipple-Boyce, Boyle, Clein, Jeffares, Koseck

Nays: None

Motion by Mr. Williams

Seconded by Mr. Share to postpone the Preliminary Site Plan Review to December 11, 2019 for the proposed development at 770 S. Adams.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Share, Whipple-Boyce, Boyle, Clein, Jeffares, Koseck

Nays: None

Chairman Clein said he was comfortable that the 40 cars using the alley to access the south property's parking lot and the 57 cars that use the garage underneath could be addressed, it was just that the applicant had not yet addressed them.

In reply to Mr. Boyle, Ms. Kroll explained that the ITE manual for parking calculations and the ITE trip generation manual were both used to determine the difference in parking needs and trip generation for a retail shop versus a coffee shop.

Mr. Boyle asserted that if all trip generation and parking calculations are derived from car-centric manuals, Birmingham will never be a more walkable City. He said the Board should accept that this coffee shop would be mostly accessed by people who do not drive to it, and compared it to Cannelle Patisserie, a successful coffee and pastry shop in Birmingham with only four parking spots.

Chairman Clein noted that Ms. Kroll was not herself advocating for increases in parking, but was merely going on the information available to her. He stated the responsibility was on the applicant to explain that there would be urban internal capture, that there would be walking trips, and that the ITE manuals, which are industry standard, should not apply to this project.

Mr. Boyle said he does not fault the consultants for using industry standard materials, and said the ITE manuals are the problem. He noted ITE manuals have a direct impact on what the City does or does not approve. He pointed out that reliance on conventional industry thinking will result in continued conventional car-centric development, even though the City has been trying to increase walking and cycling on its streets for at least a decade. He said his main concern is that the industry standard directs Birmingham away from its own plan for the Triangle District.

Chairman Clein said that while it might be worthwhile to discuss a possible change in ordinances stemming from Mr. Boyle's critiques, the Board cannot simply alter the standards it is required to use in the middle of a review. He said if the applicant came to the Board with a traffic study describing urban internal capture and walking trips, then the Board would have legitimacy in not requiring the ITE-recommended number of parking spaces.

Ms. Kroll said she saw no excessive queues resulting from the provided data, and agreed with Chairman Clein that this data may even be an overestimation of the likely vehicular traffic accessing the area since many of the trips will more likely be pedestrian or cyclist.

Motion by Mr. Boyle

Seconded by Ms. Whipple-Boyce to accept the Community Impact Study for the proposed development at 770 S. Adams, with the following conditions: (1) The applicant submit information on all life safety issues for Fire Dept. approval at Final Site Plan and Design Review; (2) The applicant submit information on the proposed security system for approval by the Police Department at Final Site Plan and Design Review; and, (3) The applicant submit a traffic study to allow the City's traffic consultant to provide an opinion on the traffic impact of the proposed plan.

Motion carried, 6-1.

VOICE VOTE

Yeas: Boyle, Whipple-Boyce, Share, Clein, Jeffares, Koseck

Chairman Clein said proposing to have someone in an accessible parking space enter the alley and then round the building's corner in order to reach the building's entrance caused him some concern.

Mr. Boyle said there was so much parking around the building that the City should not focus on increasing the alley's vehicular traffic. He said it would be sufficient in his view to move the accessible parking space to the front of the building, and to refinish the alley's surface to allow it to better accommodate the vehicular traffic that already uses it.

Ms. Whipple-Boyce recommended the applicant reach out to Citizens Bank at 1000 Haynes about the possibility of a shared parking agreement. She said the bank's parking lot is usually sparsely occupied.

Mr. Shekerjian stated that the applicant team has reached out to Citizens Bank and is in the process of discussing the possibility of shared parking.

In reply to Mr. Shekerjian, Planning Director Ecker explained that the Building Official has ruled in the past that there are conflicting definitions of a 'side setback', and that the written definition supercedes the image used to illustrate it. She clarified that the applicant could choose to seek a variance, could appeal the ruling to the Board of Zoning Appeals, or both, should they choose.

Mr. Shekerjian echoed Mr. Poris' previous comments that it would be detrimental to require that the building be stepped back 10 feet from the alley, not only aesthetically but because it would cause a substantial loss of square footage within the building. He asked whether the Board would consider supporting a potential future variance appeal or overturn request from the applicant to the BZA on the issue.

Chairman Clein said that would be one of the matters the Board would have to discuss. He emphasized the Board is only in a position to provide its perspective to the BZA, and that the BZA ultimately makes the decision.

Mr. Jeffares described the area surrounding 770 S. Adams as having an abundance of parking, and said focusing specifically on how to park cars near 770 S. Adams when there is so much other parking in the immediate area may be an unnecessary exercise. He suggested the Board may want to consider some leniency towards a developer willing to develop in the Triangle District, since the City historically has had a difficult time attracting development to the area.

Chairman Clein said he was immensely supportive of this project, and that his concerns about turning movements have been somewhat allayed by Ms. Kroll's previous comments. He also acknowledged that the applicant would be submitting updated sight distance triangles and other traffic information, which would be helpful. He said he had no concerns about the alley conditions in general, and was only concerned about the location of the accessible parking space and the parking spaces backing up into the alley. Chairman Clein added that in his work in other cities he has often seen a portion of a right-of-way used as part of a setback calculation and said he agreed with the applicant that should be done in this case as well. He posited that not requiring a ten foot setback from the alley would not create a planning issue in this case.

A number of Board members also shared concerns about vehicles in the eight parking spaces having to back up into the alley.

site plan review; and, 10. Parking spaces along the southern line of the building abutting the alley to be reduced or relocated the the west of Adams in a manner acceptable to the Planning Board to be granted or withheld at the final site plan review.

Mr. Share provided suggestions for the wording of conditions nine and ten. Ms. Whipple-Boyce and Mr. Williams accepted Mr. Share's suggested wording.

Mr. Boyle ventured that condition ten of the motion could be "The parking spaces on the current plan to be enclosed within the envelope of the building."

Mr. Share said that might not be cost effective or fair to the applicant.

Mr. Boyle said he was aiming to make the condition as simple as possible.

Mr. Koseck noted that if the other side of the alley were developed into a building in the future, it would cause a 20 foot wide, 250 foot long straightaway with balconies encroaching into the space and no specified area for pedestrians. He said the alley should be treated as a road, with all the conditions that come with that designation according to ordinance. Secondly, Mr. Koseck stated that he could not think of another condition in Birmingham where vehicles back up into an alley while other vehicles regularly traverse the alley. He noted that asking the applicant to remove those spaces would result in a changed floorplan and would affect other aspects of the plan which the Board should then review. Mr. Koseck reminded the Board that earlier in the evening they again had to review the east elevation of 412-420 E. Frank, a situation in which the Board did not fully vet that its expectations had been met and therefore had to troubleshoot unsatisfactory results. Mr. Koseck recommended the Board could avoid a similar outcome here by postponing the preliminary site plan so that the Board would have a chance to make sure all of its concerns had been resolved before moving on. He said he was very sympathetic to the desire to move the project forward, but that in his view too many issues were unresolved.

Mr. Boyle said he was unenthused about the wording for condition ten because it did not prohibit a turning movement from a parking space into the alley. He said he would prefer a condition that completely prohibits turning movements into the alley from the parking lot.

Mr. Jeffares echoed Mr. Koseck's view that the Board has sometimes given developers excess leeway, and that the Board must make sure its expectations are met precisely with this and other projects. He said if the Board's expectations for this project are not met at the next review, he would have no compunction about waiting to move the project forward until all Board concerns are resolved. He said he was confident the Board's expectations for this project could be met by the applicant.

Mr. Koseck said he preferred Mr. Boyle's suggestion for condition ten because it clarified what the Board would like to see happen.

Chairman Clein said he would not be supporting the motion for the same reasons Mr. Boyle described. He also said he was persuaded by Mr. Koseck's comment that the Board should shy away from advancing a project in which a number of issues remain unresolved.

Motion failed, 2-5.

VOICE VOTE

Yeas: Whipple-Boyce, Jeffares

CASE DESCRIPTION

932 CHESTNUT (20-11)

Hearing date: February 11, 2020

Appeal No. 20-11: The owner of the property known as 932 Chestnut, requests the following variance to construct a window well in the required front open space:

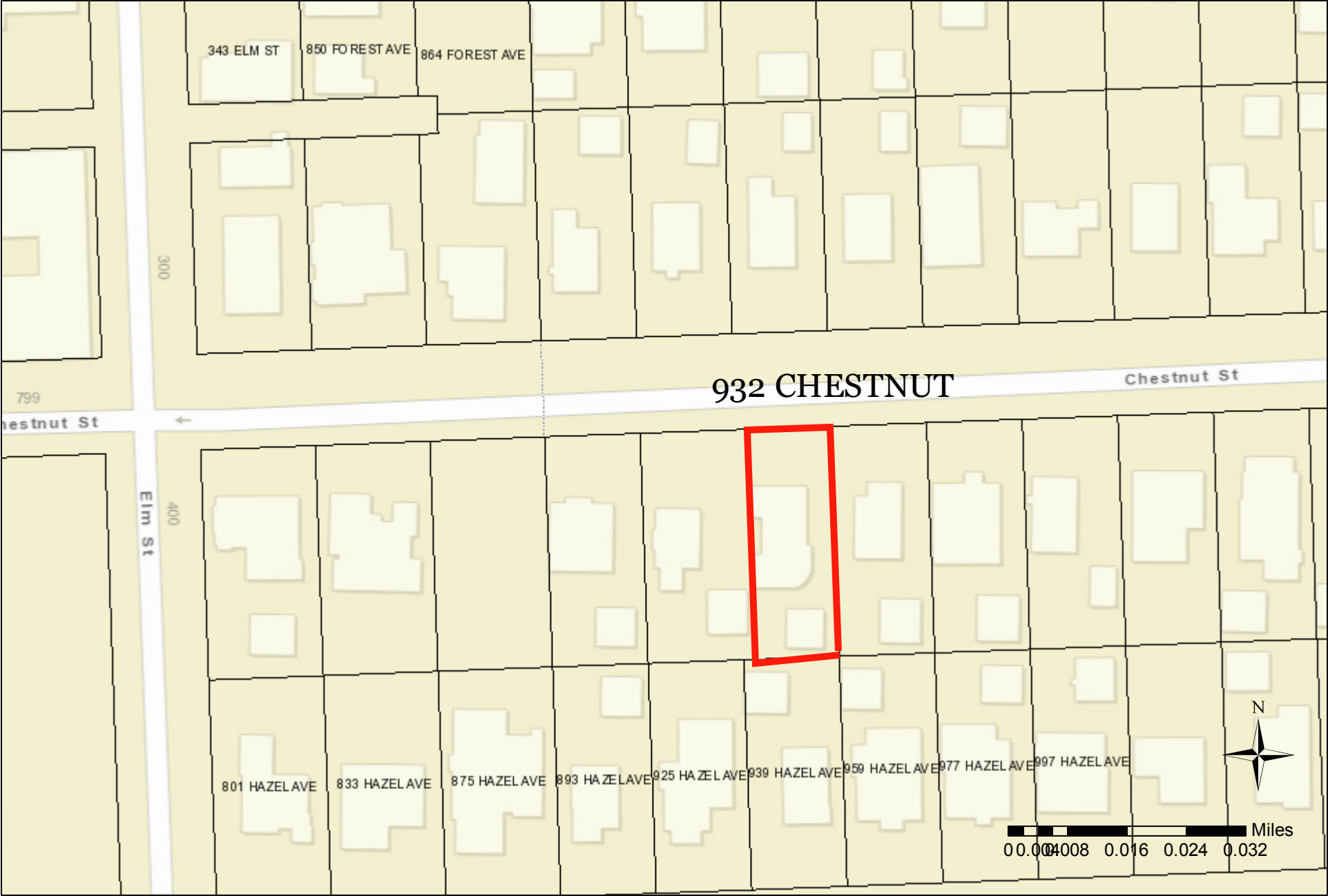
A. Chapter 126, Article 4, Section 4.30(C) 4 of the Zoning Ordinance prohibits window wells to be erected in the required front open space. A window well is proposed to be constructed in the required front open space; therefore a variance to permit the window well is requested.

Staff Notes: The applicant proposes to construct a window well around an existing basement window on the front of the home. The existing home was constructed in 1976.

This property is zoned R2 – Single Family Residential.

Jeff Zielke, LEED AP
Assistant Building Official

932 CHESTNUT



CITY OF BIRMINGHAM
Community Development - Building Department
151 Martin Street, Birmingham, MI 48009
Community Development: 248-530-1850
Fax: 248-530-1290 / www.bhamgov.org
APPLICATION FOR THE BOARD OF ZONING APPEALS

Application Date: 1-13-20
 Received By: BM

Hearing Date: 2-11-20
 Appeal #: 20-11

Type of Variance:	<input type="checkbox"/> Interpretation	<input type="checkbox"/> Dimensional	<input type="checkbox"/> Land Use	<input type="checkbox"/> Sign	<input type="checkbox"/> Admin Review
-------------------	---	--------------------------------------	-----------------------------------	-------------------------------	---------------------------------------

I. PROPERTY INFORMATION:

Address: <u>932 Chestnut St</u>	Lot Number:	Sidwell Number:
---------------------------------	-------------	-----------------

II. OWNER INFORMATION:

Name: <u>Don Ionescu</u>			
Address: <u>932 Chestnut St</u>	City: <u>Birmingham</u>	State: <u>MI</u>	Zip code: <u>48009</u>
Email: <u>msm211@hotmail.com</u>		Phone: <u>517-256-2919</u>	

III. PETITIONER INFORMATION:

Name:	Firm/Company Name:
Address:	City:
	State:
	Zip code:
Email:	Phone:

IV. GENERAL INFORMATION:

The Board of Zoning Appeals typically meets the second Tuesday of each month. Applications along with supporting documents must be submitted on or before the 12th day of the month preceding the next regular meeting. Please note that incomplete applications will not be accepted.

To insure complete applications are provided, appellants must schedule a pre-application meeting with the Building Official, Assistant Building Official and/or City Planner for a preliminary discussion of their request and the documents that will be required to be submitted. Staff will explain how all requested variances must be highlighted on the survey, site plan and construction plans. Each variance request must be clearly shown on the survey and plans including a table as shown in the example below. All dimensions to be shown in feet measured to the second decimal point.

The BZA application fee is **\$360.00** for single family residential; **\$560.00** for all others. This amount includes a fee for a public notice sign which must be posted at the property at least 15-days prior to the scheduled hearing date.

Variance Chart Example				
Requested Variances	Required	Existing	Proposed	Variance Amount
Variance A, Front Setback	25.00 Feet	23.50 Feet	23.50 Feet	1.50 Feet
Variance B, Height	30.00 Feet	30.25 Feet	30.25 Feet	0.25 Feet

V. REQUIRED INFORMATION CHECKLIST:

- ☐ One original and nine copies of the signed application
- ☐ One original and nine copies of the signed letter of practical difficulty and/or hardship
- ☐ One original and nine copies of the certified survey
- ☐ 10 folded copies of site plan and building plans including existing and proposed floor plans and elevations
- ☐ If appealing a board decision, 10 copies of the minutes from any previous Planning, HDC, or DRB board meeting

VI. APPLICANT SIGNATURE

By signing this application, I agree to conform to all applicable laws of the City of Birmingham. All information submitted on this application is accurate to the best of my knowledge. Changes to the plans are not allowed without approval from the Building Official or City Planner.

Signature of Owner: <u>[Signature]</u>	Date: <u>12-25-2019</u>
Signature of Petitioner: <u>[Signature]</u>	Date: <u>1-13-19</u>

CITY OF BIRMINGHAM
 Date 01/13/2020 4:15:08 PM
 Ref 00165894
 Receipt # 520917
 Amount \$360.00



Bringing in Boards.

To whom it may concern,

My current home at 932 Chestnut had a sloping, downgrade front yard that not only made it impossible to easily be cared for, landscaped or be visually appealing but most importantly caused water damage and infiltration into the basement and foundation. In the 5 years I have owned the house I noticed each year the soil kept eroding more and the grade kept increasing. I have hired ZLM to rectify the situation.

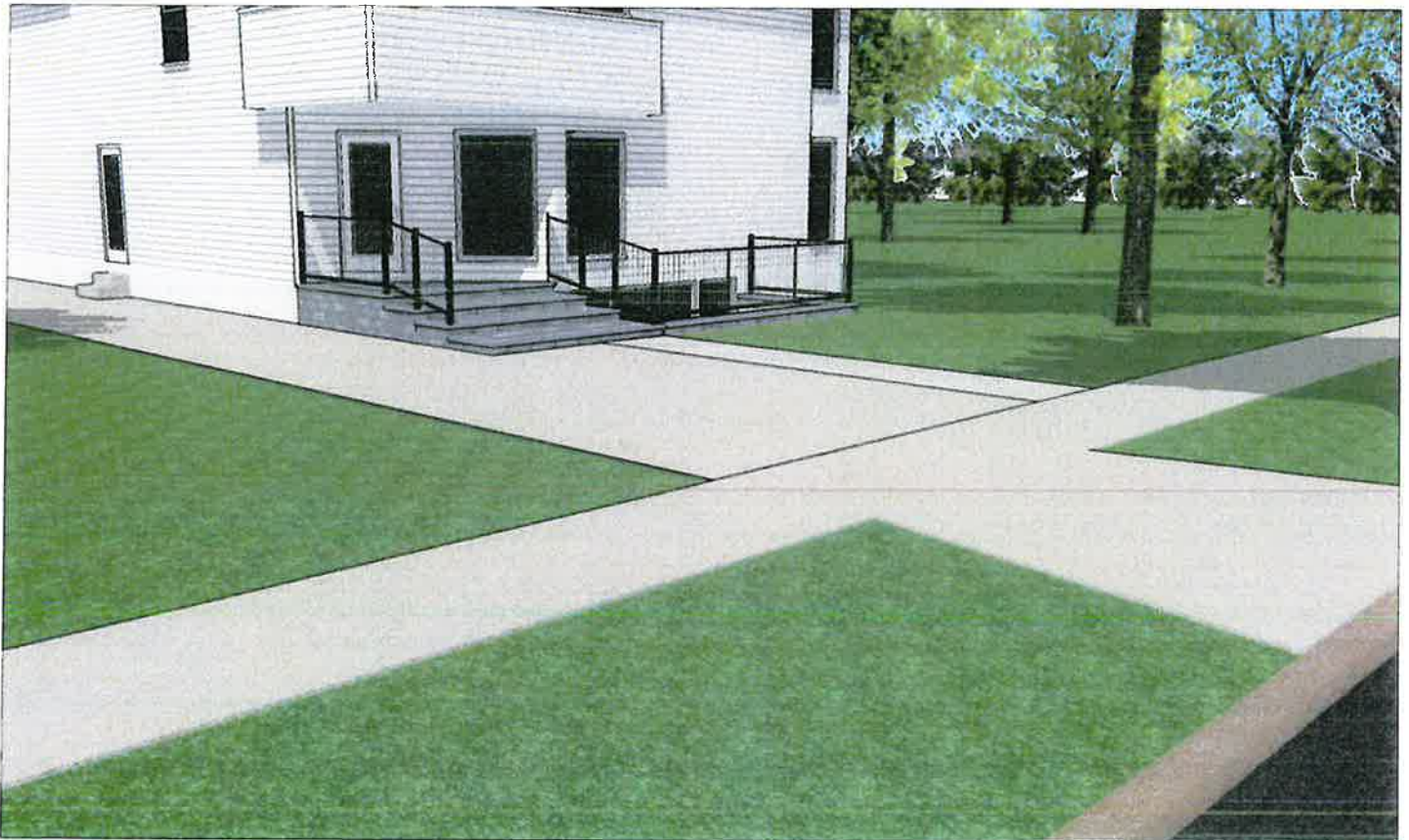
There was a existing drain already in place that was constantly collecting debris. It was my understanding that a 10 ft porch was allowed in the front of the house. Since my set back is almost 2 ft closer to the street than the average, the porch is 8ft instead of 10ft. I also realize that the egress distance from the house is allowed at 3ft. The problem with this is the fact that the existing drain is farther away from the house than this. If I were to bring the wall within 3 ft of the house then major underground would be necessary. I did not want to mess with the drain or make any unnecessary alterations to it. Additionally, I felt that the smaller the inside of the wall, and the closer you put the wall to the house the more likely a heavy rain could not drain fast enough to keep it from flooding my basement. If a floor was put on this front porch there would be a safety concern with the windows. So then even with the conformity of the front porch, the existing windows continue to be a outside of the zoning parameters. My suggestion is to simply rail off the entire porch making it a not functional porch. This would eliminate the window from being egress, allow the porch size and also make the property safe.

The existing drain was not able to be moved any closer to the house and is now working properly with the retaining wall.

I do not see another way to solve the problem for this structure. I am asking for this to be a acceptable solution as a railed off non functioning porch.

Thank you for your consideration.

Respectfully submitted,
Dan Ionescu



ZLM
SERVICES, LLC

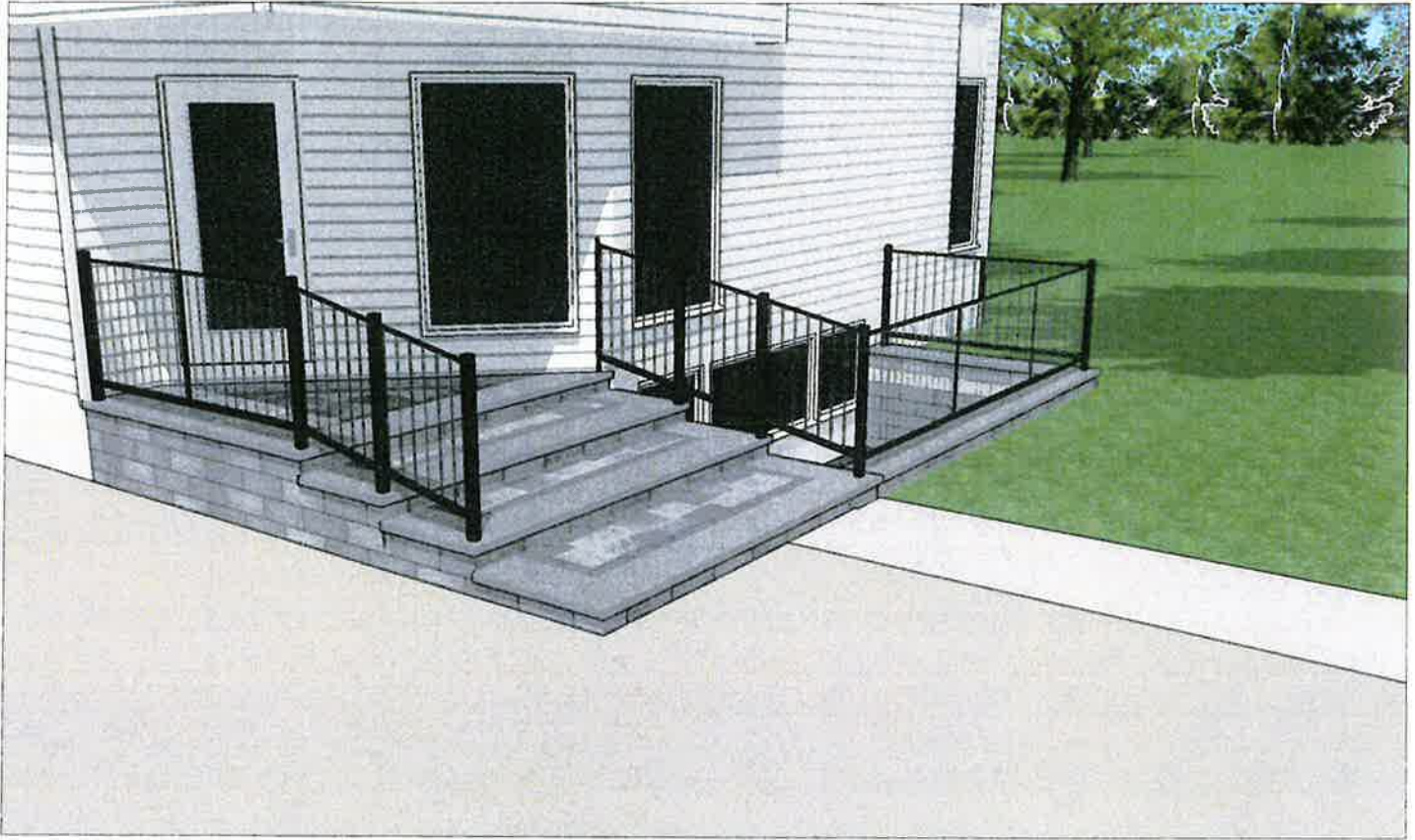
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932 Chestnut

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03



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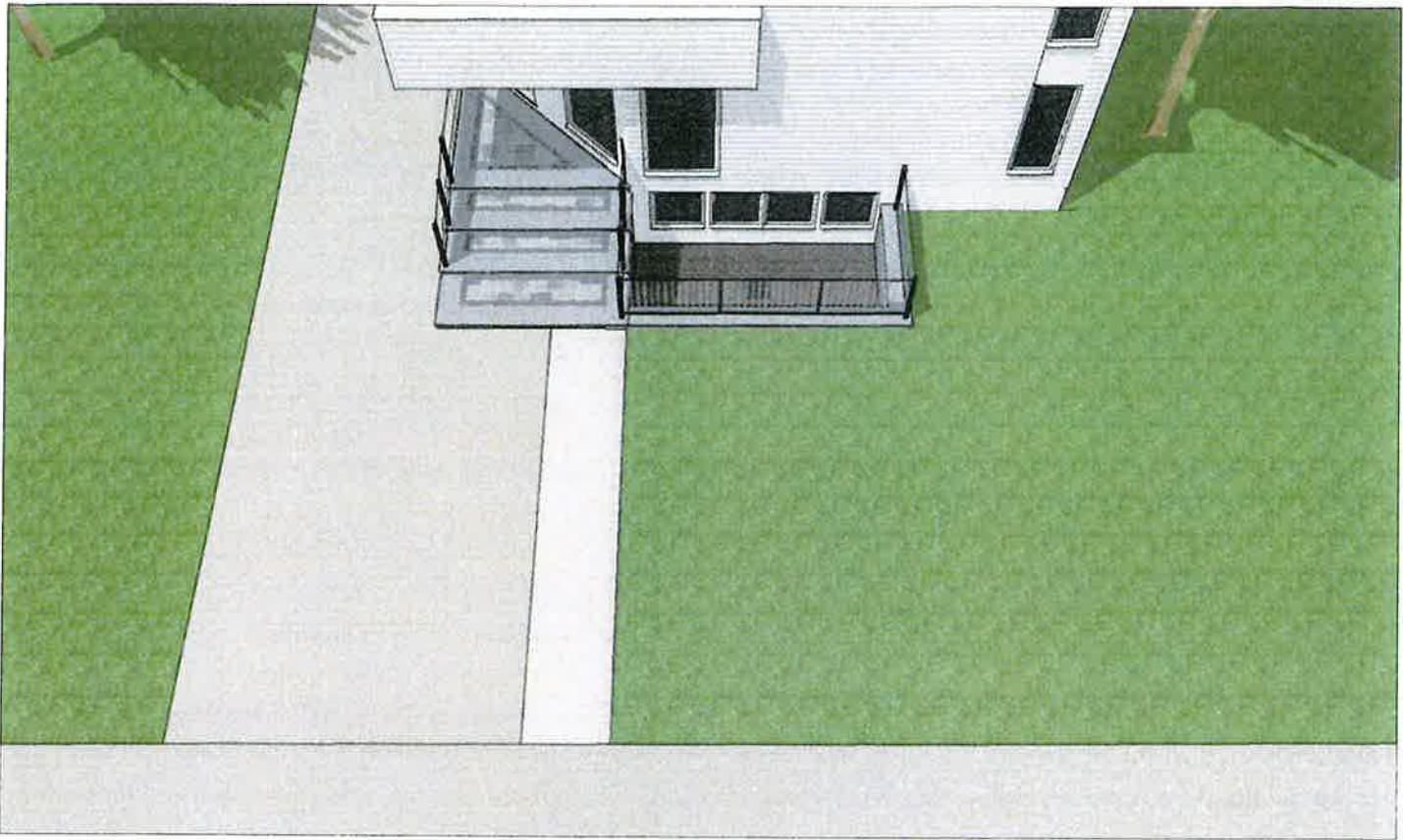
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02

932 Chestnut

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1 UNIT/2016-2017
932 Chestnut

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page no.

01









Jeff Zielke <jzielke@bhamgov.org>

Zoning Appeal 932 Chestnut Street

1 message

Sharon <sharon.kelln@yahoo.com>

Wed, Feb 5, 2020 at 7:29 AM

To: jzielke@bhamgov.org, lee@zlmsservices.net

Cc: Sharon Kelln <sharon.kelln@yahoo.com>

Dear Mr. Zielke

I am writing in response to the notice of a public hearing regarding an appeal to the Birmingham Board of Zoning Appeals for the property located at 932 Chestnut Street. I am in full support of whatever variances are required to enable the homeowner to continue improving the appearance of the property.

I have lived in Birmingham for most of my adult life. I moved into the property at 939 Hazel Street in June of 2019. My home is immediately behind 932 Chestnut Street. My home is a new build. One of the reasons I chose this home is the appeal of the triangle district. I love how each of the homes is unique in its design. I love the quaintness of the streets. All of the neighbors are very friendly. Everyone takes time to take good care of their homes. All of these aspects are important as we strive to maintain the condition of our neighborhood and associated property values. Maintaining higher property values helps our city maintain its tax base. And a strong tax base enables Birmingham to continue to be the beautiful and safe downtown that we all appreciate.

Ever since I have moved into my home, I have observed how the owner at 932 Chestnut Street has been working to improve his home. My path to walk my dogs is around the block and past 932 Chestnut. Since June, I have seen a tremendous amount of work to improve the appearance of the property. The curb appeal has already improved tremendously. When I first moved in, everything was overgrown with ivy and in disrepair. The house needed some TLC. It is clear to me that the homeowner is making significant efforts to do just that and he is making visible progress in improving the curb appeal of the home. All of the time and money being spent on this home will help the entire street and neighborhood from a home value perspective.

For these reasons, I encourage the Board to accelerate any required variances and do whatever is needed to allow the homeowner to finish the property improvement.

Thank you for your consideration.

Please do not hesitate to contact me with any questions.

Sincerely,

Sharon Kelln
939 Hazel Street
Birmingham, Michigan 48009
248-514-7177



Jeff Zielke <jzielke@bhamgov.org>

932 Chestnut

1 message

Greg Penn <krannertgrad@hotmail.com>

Sun, Jan 26, 2020 at 10:33 AM

To: "jzielke@bhamgov.org" <jzielke@bhamgov.org>

Hi Jeff- I'm writing in regards to 932 Chestnut and the request for deviation. I find it so cumbersome for the resident to have to unnecessarily jump through such hoops. He is just trying to beautify his property and it already looks much nicer. Prior to his actions, it was a bed of weeds and ivy that looked out of place for a property in Birmingham. This project I'm sure isn't cheap for him, and this just adds to the bureaucracy and muck, given what he trying to accomplish. Accordingly, it discourages other homeowners from beautifying their properties as well. I get that there are processes in place to ensure we protect the community and the homeowner, but there should be a good balance between ease of project execution and obtaining government clearances to move forward. You should grant the deviation to the 932 Chestnut ASAP and without further delay. Thank you for your attention in this.

Greg Penn

927 Chestnut