City of Birmingham MEETING OF THE BOARD OF ZONING APPEALS TUESDAY, DECEMEBER 13, 2022 7:30 PM

Should you have any statement regarding any appeals, you are invited to attend the meeting in person or virtually through ZOOM:

https://zoom.us/j/963 4319 8370 or dial: 877-853-5247 Toll-Free,

Meeting Code: 963 4319 8370

You may also provide a written statement to the Board of Zoning Appeals, City of Birmingham, 151 Martin Street, P.O. Box 3001, Birmingham MI, 48012-3001 prior to the hearing

December 13, 2022 7:30 PM

1. CALL TO ORDER

2. ROLL CALL

3. ANNOUNCEMENTS

a) The City recommends members of the public wear a mask if they have been exposed to COVID-19 or have a respiratory illness. City staff, City Commission and all board and committee members must wear a mask if they have been exposed to COVID-19 or actively have a respiratory illness. The City continues to provide KN-95 respirators and triple layered masks for attendees.

4. APPROVAL OF THE MINUTES

a) November 8, 2022

5. APPEALS

	Address	Petitioner	Appeal	Type/Reason
1)	555 STANLEY	KASLE	22-33	DIMENSIONAL
2)	34901 WOODWARD STE 200	ALLIED SIGNS	22-51	DIMENSIONAL
3)	1626 TAUNTON	CLARK	22-52	DIMENSIONAL
4)	585 WELLESLY	MAIN STREET DESIGN BUILD	22-53	DIMENSIONAL
5)	924 LAKESIDE	ZAREMBA & CO	22-54	DIMENSIONAL
6)	600 FAIRFAX	HRH DESIGN	22-56	DIMENSIONAL
7)	34745 WOODWARD	JAX KARWASH	22-55	DIMENSIONAL

6. CORRESPONDENCE

7. GENERAL BUSINESS

OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

ADJOURNMENT

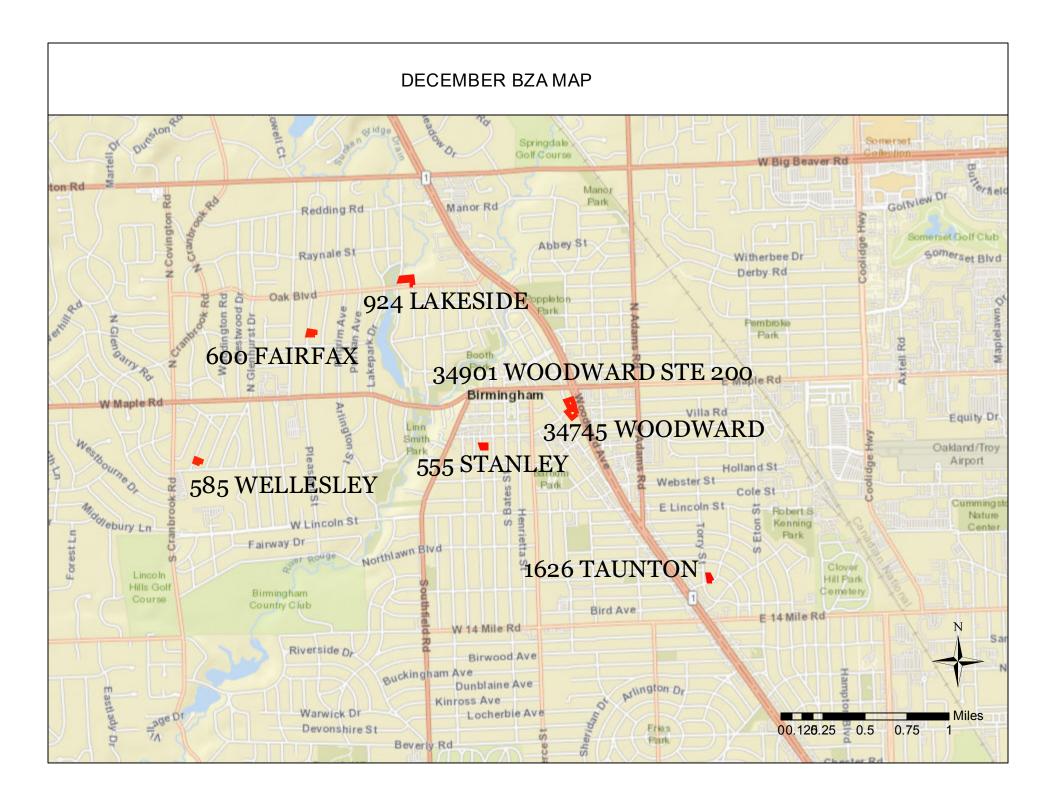
Title VI

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 dia 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.



Birmingham Board Of Zoning Appeals Proceedings Tuesday, November 8, 2022 City Commission Room 151 Martin Street, Birmingham, Michigan

1. Call To Order

Minutes of the special meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, November 8, 2022. Chair Erik Morganroth convened the meeting at 7:30 p.m.

2. Rollcall

Present: Chair Erik Morganroth, Vice-Chair Jason Canvasser; Board Members Kevin Hart, Richard Lilley, John Miller, Ron Reddy, Pierre Yaldo

Absent: Alternate Board Member Carl Kona

Staff: Building Official Johnson; Planning Director Dupuis, City Transcriptionist Eichenhorn, Assistant Building Official Morad, Assistant Building Official Zielke

Chair Morganroth welcomed those present and reviewed the meeting's procedures. 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.

Chair Morganroth took rollcall of the petitioners. All petitioners were present.

3. Announcements

The City continues to recommend the public wear masks while attending City meetings per CDC guidelines. The cases of COVID-19 are increasing in the area. All City employees, commissioners, and board members must wear a mask while indoors when 6-feet of social distancing cannot be maintained. This is to ensure the continuity of government is not affected by an exposure to COVID-19 that can be prevented by wearing a mask. The City continues to provide KN-95 respirators and triple-layered masks for all in-person meeting attendees.

4. Approval Of The Minutes Of The BZA Meetings Of October 11, 2022

T# 11-72-22

Motion by Mr. Reddy

Seconded by Mr. Lilley to accept the Minutes of the BZA meeting of October 11, 2022 as amended.

Motion carried, 7-0.

VOICE VOTE

Yeas: Morganroth, Canvasser, Hart, Miller, Reddy, Yaldo, Lilley

Nays: None

5. Appeals

T# 11-73-22

1) 1511 E. Maple Appeal 22-50

ABO Zielke presented the item, explaining that the owner of the property known as 1511 E. Maple was requesting the following variance to construct a rear addition to the existing non-conforming house:

A. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires that the minimum distance between principal residential buildings on adjacent lots of 14.00 feet or 25% of total lot width, whichever is larger. The required is 20.00 feet on the east side. The proposed is 17.20 feet. Therefore, a variance of 2.80 feet is being requested.

Staff answered informational questions from the Board.

It was noted that the appellant was granted an incorrect variance in June 2022 due to a clerical error, and was before the BZA presently to request that the variance be changed from .80 feet to 2.80 feet.

In reply to the Chair, Jason Hurst, co-owner, explained that mitigating the requested variance would have introduced issues with the gutters and the foundation.

Motion by Mr. Reddy

Seconded by Mr. Yaldo with regard to Appeal 22-50, A. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires that the minimum distance between principal residential buildings on adjacent lots of 14.00 feet or 25% of total lot width, whichever is larger. The required is 20.00 feet on the east side. The proposed is 17.20 feet. Therefore, a variance of 2.80 feet is being requested.

Mr. Reddy moved to approve the requested variance, stating that the request was largely similar to the variance granted by the BZA in June 2022, and that it did not

appear to be the appellant's fault that the correct variance amount was noted at the June 2022 meeting. He tied approval to the plans as submitted.

Mr. Yaldo seconded the motion because granting the variance did substantial justice to the owner and neighboring properties, the issue was not self-created, and it was not contrary to the spirit or intent of the ordinance.

The Chair noted he would support the motion because the property was existing non-conforming, and the variance did not add to the non-conformity. He agreed with Mr. Yaldo that the variance would do substantial justice since it did not expand the non-conformity.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Morganroth, Canvasser, Hart, Reddy, Yaldo, Lilley, Miller

Nays: None

T# 11-74-22

2) 220 Lake Park Appeal 22-48

ABO Zielke presented the item, explaining that the owner of the property known as 220 Lake Park was requesting the following variance to construct a front addition to the existing house:

A. Chapter 126, Article 4, Section 4.75(A)(1) of the Zoning Ordinance requires that private, attached, single-family residential garages must be setback a minimum of 5.00 feet from the portion of the front façade on the first floor of the principal building that is furthest setback from the front property line. The proposed is the garage is 95.00 feet in front of the furthest façade. Therefore, a variance of 100.00 feet is being requested.

Staff answered informational questions from the Board.

Gayle McGregor, attorney for the appellant, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

The Chair noted that while the stated issue was replacing a non-functional garage, the request went beyond what would be needed to create a functional garage.

Mr. Reddy noted that a 100-foot variance request was particularly large. He said there was likely opportunity to at least partially mitigate the variance request.

Mr. Yaldo concurred with his colleagues' comments, asking whether the requested variance was the minimum required to add a functional garage.

Mr. Hart said he visited the property and that the addition would not be visible from the street as proposed. He said that given the floodplain and the drop from the front of the property to the rear, the appellant would have to seek approval from the Michigan Department of Natural Resources to add a garage in the rear of the home.

BO Johnson noted that a detached accessory structure could be built without a variance.

In reply to Board comment, Ms. McGregor stated:

- The ordinance would allow an addition of the same size and height if it were not a garage. For that reason, the appellant should be able to create a garage as part of the addition;
- While the variance requested was significant, the addition would still allow for the required distances between structures and would not enter into the required setbacks. Consequently, granting the variance would not cause the property to be inconsistent with the neighborhood or the neighboring properties;
- The norm in the neighborhood is three-vehicle attached garages;
- One of the mitigating factors was that the home cannot be viewed from the street. The addition would be in-line with the size of the home and the size of the lot;
- Granting the variance would be substantially just because none of the neighbors would be able to view the addition from the street;
- The concept drawing was not meant to be a to-scale rendering; and,
- Putting the garage in the rear of the property would change the character of the lakefront for the neighbors.

VC Canvasser said he lived in the same neighborhood as the appellants and was unsure if three-vehicle attached garages were the norm.

Motion by Mr. Miller

Seconded by Mr. Hart with regard to Appeal 22-48, A. Chapter 126, Article 4, Section 4.75(A)(1) of the Zoning Ordinance requires that private, attached, single-family residential garages must be setback a minimum of 5.00 feet from the portion of the front façade on the first floor of the principal building that is furthest setback from the front property line. The proposed is the garage is 95.00 feet in front of the furthest façade. Therefore, a variance of 100.00 feet is being requested.

Mr. Miller moved to approve the requested variance, stating the variance was necessary due to the unique circumstances of the property. He said the need for the variance was not self-created and said the ordinance in this matter was not applicable in any really practical sense. He said strict compliance with the ordinance would be unreasonable. He tied approval to the plans as submitted.

VC Canvasser said he would not support the motion. He stated that strict compliance with the ordinance would not be unnecessarily burdensome, since the structure could be built as long as it was detached from the home. He explained there had also been an insufficient showing of attempts to mitigate the variance request.

Mr. Yaldo noted that only 50% of the requested variance would be used as a garage, and that the non-garage space would be above the garage. He noted that the variance was not being expanded by adding non-garage space. He added that it was important that the concept drawing did not show the proposal to scale.

The Chair said he would support the motion. He said that the addition could be built without a variance, but that it would look substantially similar to the present proposal. He said it would not do substantial justice to the appellant to force them to walk to a detached structure that would otherwise largely look the same as the present proposal. He stated that the ordinance did not contemplate a lot of this size and shape where the proposed garage would be invisible from the street. He noted that the topography of the lot was also prohibitive for building a garage in the rear. He said that while he had some concern about providing a 100-foot variance, the lot was unique enough to merit his support of the motion.

Motion carried, 5-2.

ROLL CALL VOTE

Yeas: Morganroth, Hart, Yaldo, Lilley, Miller

Nays: Reddy, Canvasser

T# 11-75-22

3) 839 Ridgedale Appeal 22-49

ABO Zielke presented the item, explaining that the owner of the property known as 839 Ridgedale was requesting the following variance to construct a second floor addition to an existing non-conforming home:

A. Chapter 126, Article 2.08.2 of the Zoning Ordinance requires that a minimum front yard setback is the average of homes within 200 feet each way. The required is 32.70 feet. The existing and proposed is 28.30 feet. Therefore a variance of 4.40 feet is being requested.

Staff answered informational questions from the Board.

Art Lang, architect, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

Mr. Miller noted that he had moved to approve the February 2022 variance request for this property because the proposed remodeling would mitigate an existing non-conformity.

The Chair noted that the main bedroom had a number of closets, one of which would be in the expanded dormer. While the Chair praised the aesthetics of the design, he said he did not see the practical difficulty that necessitated the expanded dormer.

In reply to Board comment, Mr. Lang stated:

- The proposed shed roof dormer would be equally as appropriate as a gable dormer for the home's overall bungalow style;
- If he did not expand the dormer, he could not provide all of the features the homeowners requested; and,
- The appellant considered every option for mitigating the variance request.

In reply to the Chair, Mike Treash, co-owner, said it would not presently be financially feasible to reopen the porch as a partial mitigation of the variance request.

Motion by Mr. Miller

Seconded by Mr. Reddy with regard to Appeal 22-49, A. Chapter 126, Article 2.08.2 of the Zoning Ordinance requires that a minimum front yard setback is the average of homes within 200 feet each way. The required is 32.70 feet. The existing and proposed is 28.30 feet. Therefore a variance of 4.40 feet is being requested.

Mr. Miller moved to approve the requested variance, stating the need for the variance stems from an older, non-conforming house that sits too far forward on the lot. While acknowledging some concerns about the removal of the mitigation, Mr. Miller explained that the request was reasonable in the context of the home. He said the basic need for the variance was not self-created. He noted that the present dormer was being expanded, rather than a new dormer being added. He said granting the variance would not do any harm and would enhance the neighborhood. He tied the approval to the plans as submitted.

Mr. Reddy concurred, saying that the lot provided enough unique circumstances that he was comfortable seconding the motion.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Morganroth, Hart, Yaldo, Lilley, Miller, Reddy, Canvasser

Nays: None

T# 11-76-22

4) 479 S Old Woodward Appeal 22-47

PD Dupuis presented the item, explaining that the owner of the property known as 479 S Old Woodward was requesting the following appeal and the following variance:

A. The applicant is requesting an appeal of the Planning Board's decision on September 28th, 2022 to deny the revised Final Site Plan and Design Review application for 479 S. Old Woodward.

AND

B. Chapter 126, Article 4, Section 4.46(A) Table A requires the off-street parking total for a site to be based on the land uses. Furthermore, Chapter 126, Article 4, Section 4.50(D) enables parking requirement reductions for a property in the B3 Zone when there is combined within a single building an office use, a residential use, and a restaurant use. The applicant is required to provide 113 parking spaces on-site. The amended site plan provides 39 parking spaces on-site. Therefore, a variance of 74 parking spaces is being requested.

Staff answered informational questions from the Board.

Stephen Estey, attorney for the appellant, reviewed the letter describing why this appeal and variance were being sought. The letter was included in the evening's agenda packet.

The Chair said he could not determine the intent or purpose of an appeal in this matter.

In reply to Board comment, Mr. Estey stated:

- The appellant would withdraw the request for the appeal, leaving only the variance to be considered;
- The appellant believed at the time of purchase of the property that there was a compelling reason and precedent for being allowed into the expired Parking Assessment District (PAD). It was only after purchase that it became clear that the appellant would not be able to follow the precedent for being admitted to the PAD;
- The appellant chose to file with the BZA before coming before the City Commission for this matter because of timing rules for filing with the BZA;
- It was uncertain why this property was excluded from the PAD when all other D4 zoned properties were included;
- The appellant would be willing to pay the requisite fees for admission to the PAD if given the opportunity;
- The request could be partially mitigated without the mezzanines or the higher intensity use of the whiskey bar;
- Any commercial use of the first floor would still require a significant variance for parking because the property was not in the PAD;
- There would be sufficient capacity in the structures to accommodate the requested parking variance; and,
- The possibility of a parking agreement was explored, but was deemed not possible with the neighbors within the required distance.

In reply to an inquiry from the Chair, PD Dupuis said that a regular commercial use of the first floor would still require a variance of approximately 62 parking spaces, though he noted that certain combinations of uses could allow for a lower number.

Public Comment

Lee Steinberg, neighboring business owner, said that while he supported development of the property, increasing the parking demand in the area via this variance was inappropriate given the recent removal of a number of street parking spaces on S. Old Woodward. He said he was supportive of the previously approved plans for the site.

Seeing no further public comment, the Chair returned the conversation to the Board.

Mr. Miller said he believed he liked the project, but said it was very difficult for the Board to determine the appropriateness of the project within the context of the City. He said that given the variables, the Board would need additional study, information, and expertise to make a determination on this variance request.

Motion by VC Canvasser

Seconded by Mr. Miller with regard to Appeal 22-47, B. Chapter 126, Article 4, Section 4.46(A) Table A requires the off-street parking total for a site to be based on the land uses. Furthermore, Chapter 126, Article 4, Section 4.50(D) enables parking requirement reductions for a property in the B3 Zone when there is combined within a single building an office use, a residential use, and a restaurant use. The applicant is required to provide 113 parking spaces on-site. The amended site plan provides 39 parking spaces on-site. Therefore, a variance of 74 parking spaces is being requested.

VC Canvasser moved to deny the requested variance, noting that the request for an appeal was withdrawn by the appellant. He said that while the property needed redevelopment, the difficulty was the size of the variance. He said it was not clear that 74 parking spaces was the minimum number required to allow this property to be redeveloped. He said that strict compliance with the ordinance would not prevent the appellant from using the property for a permitted purpose, even if it would not allow the appellant to use the property to the extent they hope to use it. VC Canvasser acknowledged that there were some difficulties complying with the ordinance. He noted that it was unclear that granting the variance would do substantial justice to other property owners in the area, noting an alleged parking issue in the area.

Mr. Miller noted he supported the previous variance request for the site because he wanted to see the site developed. He said the issue here was the enormity of the variance request. He said he was also unclear that 74 parking spaces was the minimum number required to allow the property to be developed.

Mr. Reddy said he felt the Board had sufficient evidence for him to vote in support of the motion.

Mr. Hart said a project like this would be a great enhancement to the City. He noted the difficulties of doing extensive construction adjacent to aging buildings. He said he would not support the motion because this property needed to be developed.

The Chair said he was also unclear whether 74 parking spaces was the minimum number required to appropriately develop the property. He said voting for a variance

for that number of spaces in a City with a perceived parking issue would be irresponsible without more information. He noted that the City Commission may be able to resolve the issue via Special Land Use Permit or other options. He said he would support the motion.

Motion carried, 6-1.

ROLL CALL VOTE

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

Nays: Hart

6. Correspondence

7. Open To The Public For Matters Not On The Agenda

8. Adjournment

No further business being evident, the Board motioned to adjourn at 9:52 p.m.

Bruce R. Johnson, Building Official

Laura Eichenhorn

City Transcriptionist

CASE DESCRIPTION

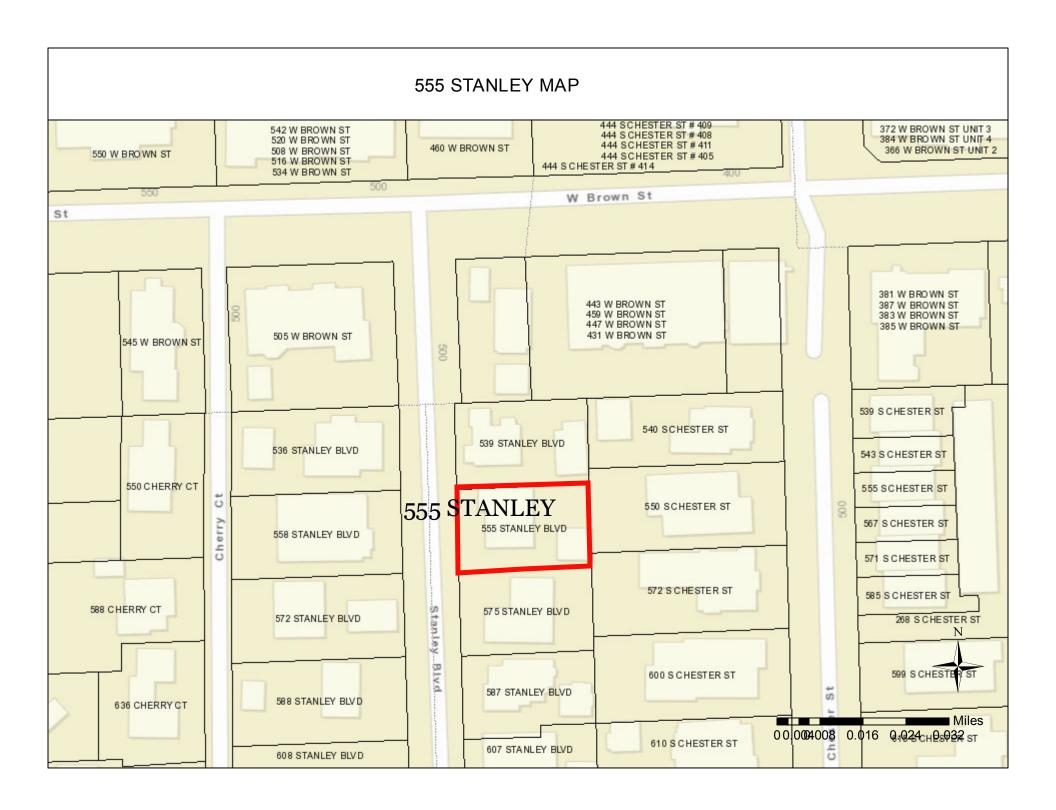
555 Stanley (22-33)

Hearing date: December 13, 2022

- **Appeal 22-33:** The owner of the property known **555 Stanley**, requests the following variances to construct an addition to an existing non-conforming home:
- A. Chapter 126, Article 2, Section 2.10.1 of the Zoning Ordinance states that the maximum lot coverage is 30% for any lot. The maximum for this property is 1728.00 SF (30%). The existing is 2544.00 SF (44.17%). The proposed is 2580.00 SF (44.79%). Therefore, a variance of 852.00 SF (14.79%) is being requested.
- B. Chapter 126, Article 2, Section 2.10.2 of the Zoning Ordinance requires that a minimum rear yard setback of 30.00 feet. The proposed is 22.17 feet. Therefore, a variance of 7.83 feet is being requested.
- C. Chapter 126, Article 2, Section 2.10.2 of the Zoning Ordinance requires that a minimum combined front and rear yard setback of 55.00 feet. The proposed is 34.50 feet. Therefore, a variance of 20.50 feet is being requested.
- D. Chapter 126, Article 2, Section 2.10.2 of the Zoning Ordinance requires that no side yard shall be less than 5.00 feet. The existing and proposed is 3.50 feet. Therefore, a variance of 1.50 feet is being requested.

Staff Notes: The applicant is looking to construct an addition to the existing non-conforming home.

This property is zoned R3 – Single family residential.



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: 6.9.22

Hearing Date: 8.9.22

Received By: 422:33								
	rpretation Di	imensional	Land Use	Sign	Admin Review			
I. PROPERTY INFORMATION:								
	BLVD	Lot Number:	19-36-176-024	Sidwell Number:				
II. OWNER INFORMATION:								
Name: ROGER KASLE								
Address: 555 STANLEY E			MINGHAM	State: M1	Zip code: 48009			
Email:* RKASLE HOME	@ COMCAST	NET		Phone: 248-921-7779				
III. PETITIONER INFORMATION:				1				
Name: R. Paul Samulak, NC	CARB	Firm/Compar	ny Name: ARK Ar	chitects, PLC				
Address: 114 N. Main St. St	uite 9	City: Chelse	еа	State: MI Zip code: 48118				
Email: paul@arkarch.com				Phone: 734-8	327-4499			
IV. GENERAL INFORMATION:		1 1- 5						
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.								
Requested Variances Required		Variance Cha		Proposed	Variance Amount			
Variance A, Front Setback	25.00 Feet	23.50		23.50 Feet	1.50 Feet			
Variance B, Height	30.00 Feet	30.25	Feet	30.25 Feet	0.25 Feet			
V. REQUIRED INFORMATION CHECK	LIST:							
 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								
Owner hereby authorizes the petitioner designated below to act on behalf of the owner. 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. *By providing your email to the City, you agree to receive news and notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time: Signature of Owner: Date: Date:								

CITY OF BIRMINGHAM BOARD OF ZONING APPEALS RULES OF PROCEDURE

ARTICLE I - Appeals

- A. Appeals may be filed under the following conditions:
 - 1. A property owner may appeal for variance, modification or adjustment of the requirements of the Zoning Ordinance.
 - 2. A property owner may appeal for variance, modification or adjustment of the requirements of the Sign Ordinance.
 - 3. Any aggrieved party may appeal the decision of the Planning Board and/or the Building Official in accordance with the City of Birmingham Zoning Ordinance, Article Eight, Section 8.01 (D) Appeals. If an appellant requests a review of any determination of the Building Official, a complete statement setting forth the facts and reasons for the disagreement with the Building Official's determination shall include the principal point, or points on the decision, order or section of the ordinance appealed from, on which the appeal is based.
- B. Procedures of the Board of Zoning Appeals (BZA) are as follows:
 - 1. Regular BZA meetings, which are open to the public, shall be held on the second Tuesday of the month at 7:30 P.M. provided there are pending appeals. There will be a maximum of seven appeals heard at the regular meeting which are taken in the order received. If an appeal is received on time after the initial seven appeals have been scheduled, it will be scheduled to the next regular meeting.
 - 2. All applications for appeal shall be submitted to the Community Development Department on or before the 12th day of the month preceding the next regular meeting. If the 12th falls on a Saturday, Sunday, or legal holiday, the next working day shall be considered the last day of acceptance.
 - 3. All property owners and occupants within 300 feet of the subject property will be given written notice of a hearing by the City of Birmingham.
 - 4. See the application form for specific requirements. If the application is incomplete, the BZA may refuse to hear the appeal. The Building Official or City Planner may require the applicant to provide additional information as is deemed essential to fully advise the Board in reference to the appeal. Refusal or failure to comply shall be grounds for dismissal of the appeal at the discretion of the Board.
 - 5. In variance requests, applicants must provide a statement that clearly sets forth all special conditions that may have contributed to a practical difficulty that is preventing a reasonable use of the property.

- 6. Where the Birmingham Zoning Ordinance requires site plan approval of a project by the City Planning Board before the issuance of a building permit, applicants must obtain preliminary site plan approval by the Planning Board before appeal to the BZA for a variance request. If such appeal is granted by the BZA, the applicant must seek final site plan and design review approval from the Planning Board before applying for a building permit.
- 7. An aggrieved party may appeal a Planning Board decision. Such appeal must be made within 30 days of the date of the decision. The BZA, in its discretion, may grant additional time in exceptional circumstances.
- 8. Appeals from a decision of the Building Official shall be made within 30 days of the date of the order, denial of permit, or requirement or determination contested. The BZA, in its discretion, may grant additional time in exceptional circumstances.
- 9. An appeal stays all proceedings in accordance with Act #110, Public Acts of 2006, Article VI, Section 125.3604 (3).

C. The order of hearings shall be:

- 1. Presentation of official records of the case by the Building Official or City Planner as presented on the application form.
- 2. Applicant's presentation of his/her case—the applicant or his/her representative must be present at the appeal hearing.
- 3. Interested parties' comments and view on the appeal.
- 4. Rebuttal by applicant.
- 5. The BZA may make a decision on the matter or request additional information.

D. Motions and Voting

- 1. A motion is made to either grant or deny a petitioner's request
 - a) For a motion to grant or deny a non-use variance request, the motion must receive four (4) affirmative votes to be approved.
 - b) For a motion to grant or deny a use variance request, the motion must receive five (5) affirmative votes to be approved.
 - c) For a motion to grant or deny an appeal of a decision or order by an administrative official or board, the motion must receive four (4) affirmative votes to be approved.
- 2. When a motion made is to approve or deny a petitioner's request and if there is a tie vote, then the vote results in no action by the board and the petitioner shall be given an opportunity to have his or her request heard the next regularly scheduled meeting when all the members are present.

- 3. When there are less than seven (7) members of the board present for a meeting, then a petitioner requesting a use variance shall be given an opportunity at the beginning of the meeting to elect to have it heard at the next regularly scheduled meeting.
- 4. When there are less than six (6) members present for a meeting, then all petitioners shall be given an opportunity at the beginning of the meeting to elect to have the request heard at the next regularly scheduled meeting.

ARTICLE II - Results of an Appeal

- A. The Board may reverse, affirm, vary or modify any order, requirement, decision or determination as in its opinion should be made, and to that end, shall have all the powers of the officer from whom the appeal has been taken.
- B. The decisions of the Board shall not become final until the expiration of five (5) days from the date of entry of such orders or unless the Board shall find that giving the order immediate effect is necessary for the preservation of property and/or personal rights and shall so certify on the record.
- C. Whenever any variation or modification of the Zoning Ordinance is authorized by resolution of the BZA, a <u>Certificate of Survey</u> must be submitted to the Community Development Department with the building permit application. A building permit must be <u>obtained</u> within one year of the approval date.
- D. Failure of the appellant, or his representative, to appear for his appeal hearing will result in the appeal being adjourned to the next regular meeting. If, after notice, the appellant fails to appear for the second time, it will result in an automatic withdrawal of the appeal. The appellant may reapply to the BZA.
- E. Any applicant may, with the consent of the Board, withdraw his application at any time before final action.
- F. Any decision of the Board favorable to the applicant is tied to the plans submitted, including any modifications approved by the Board at the hearing and agreed to by the applicant, and shall remain valid only as long as the information or data provided by the applicant is found to be correct and the conditions upon which the resolution was based are maintained.

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.

Signature of Applicant

When I first got married, my wife and I moved to Stanley Blvd and started our lives together in Birmingham. As our family grew, we moved to Metamora.

When the kids went off to college, I moved back to Birmingham in 2002.

We love the city and truly enjoy it here.

On my next birthday, I will be 80 years old. Because of my knees, I'm able to follow the Mayo Clinic's physical therapy protocols in my home. At this time, it's important for me to begin planning for barrier and stair-free living with a first-floor suite.

I love my house, I love my street, and I enjoy Birmingham and would like to stay in Birmingham. It's a wonderful city and we want to be able to continue to support it.

Thank you very much for your consideration.

Roger Kasle

Overview: Purpose and Intent of Variance

We are seeking the variances as described below for the purpose of constructing a 1st Floor Master Suite. Due to age and ease of accessibility, any potential 2nd story renovation was not a feasible option for us. As a result, the limitations of our lot and existing position of the home on the lot have created a situation in which any proposed accessible design would require multiple variance requests. Our goal in working with our architect throughout the design process was to design something that would provide the accessibility we need, while minimizing the footprint as much as possible.

The surrounding neighborhood has a fairly high density, consisting of predominantly 2-story homes, many of which exceed coverage or setback restrictions. Given this context, we believe our proposed project treads minimally on the community. Its relatively small size, height, volume and discrete rear-yard location would have very little, if any, impact on our neighbors.



Variance 1: Lot Coverage (See Exhibit A)

In comparison to surrounding lots our lot size is 22% smaller than the average size of the sampled adjacent lots. All of these lots have the same maximum required lot coverage of 30%. Therefore our lot is at a slight disadvantage with respect to the total allowed ground floor area. Despite this limitation, the lot currently has 188 SF less than the average Ground Floor Area, and 835 SF less than the average Total Floor Area constructed on each lot. With the proposed addition, the Total Floor Area would still be less than the average of these adjacent lots shown. Our existing Floor Area Ratio also falls under the average. With the proposed addition, Floor Area Ratio exceeds the average, yet would not be the largest of these lots.

In support of our goal stated above of minimizing footprint and neighborhood impact, we have off-set our addition area by removal of deck area. The result is that the net increase in total building lot coverage is minimal and approximately the same as the current existing conditions.

EXHIBIT A: NEIGHBORHOOD DENSITY AND CONTEXT

	GRD. F.A.	TOTAL F.A.	LOT SIZE	F.A.R.
LOT A	2,324	3,974	7,320	54.29%
LOT B	2,788	5,013	7,350	68.20%
LOTC	2,271	3,519	7,440	47.30%
LOTD	1,217	2,281	5,760	39.60%
LOTE	1,614	3,214	5,760	55.80%
LOTF	1,976	3,750	8,478	44.23%
LOT G	2,279	3,911	8,478	46.13%
LOTH	2,429	4,429	8,478	52.24%
AVERAGE NEIGHBORING LOTS	2,112	3,761	7,383	50.95%
SUBJECT LOT EXISTING	1,924	2,926	5,760	50.80%
SUBJECT LOT PROPOSED	2,488	3,755	5,760	65.19%

GRD. F.A. = Ground Floor Area - Approximated based on Oakland County GIS Mappig data

Note: No uncovered deck areas included in subject or neighboring lots for comparison

TOTAL F.A. = Total Floor Area of all buildings on lot - Approximated from Grd. FA based on estimated ratio of 2nd floor area to Grd. FA

LOT SIZE = Based on Oakland County GIS Mappig data

LOT COV. = Lot Coverage as defined in Zoning Ordinace

F.A.R. = Floor Area Ratio as defined in Zoning Ordinance



Variance 2: 7.83 ft. Rear Yard Setback Variance

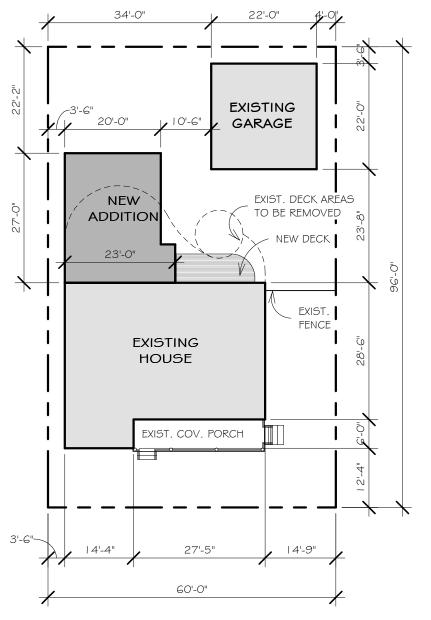
With the 30 foot setback, the allowable buildable length of this addition would be approximately 19 ft. Given the location of the existing garage and the requirement to maintain a 10 ft separation from this structure, as well as the existing driveway and vehicle egress, we were limited in the location and width of our addition. As a result, the northeast corner of the home remains the only feasible location for any type of accessible addition.

Variance 3: 20.50 ft. Combined Front and Rear Setback Variance

This requirement is of course connected to Variance 2, and is a result of the current size and house position on our lot relative to the street.

Variance 4: 2.50 ft. North Side Yard Setback Variance

This is a continuation of nonconforming house position relative to the north property line.



PROPOSED NEW ADDITION FOR KASLE RESIDENCE

555 STANLEY BLVD. BIRMINGHAM, MI 48009 PARCEL #19-36-176-024

ZONING DATA

ZONING DISTRICT: R3 - CITY OF BIRMINGHAM, MI

MIN. LOT AREA: 4,500 SF ACTUAL LOT AREA: 5,760 SF

MAX. LOT COVERAGE: 30%

EXISTING LOT COVERAGE:

EXISTING HOUSE = 1,275 SFEXISTING COVERED PORCH 165 SF EXISTING DECK AREAS 620 SF EXISTING DETACHED GARAGE 484 SF TOTAL BUILDING AREA ON LOT = 2,544 SFTOTAL LOT COVERAGE (2,544 / 5,760) = 44.17%

PROPOSED NEW LOT COVERAGE:

EXISTING BUILDING AREA ON LOT = 2.544 SF= (-620 SF)REMOVED DECK AREAS NEW DECK AREAS 92 SF NEW ADDITION 564 SF NEW TOTAL BUILDING AREA ON LOT = 2,580 SF TOTAL LOT COVERAGE (2,580 / 5,760) = 44.79%

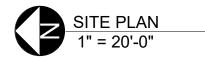
SETBACKS:

= 25'-0" FRONT

MIN. SIDE = 6'-0" (10% OF LOT WIDTH) TOTAL SIDE = 15'-0" (25% OF LOT WIDTH)

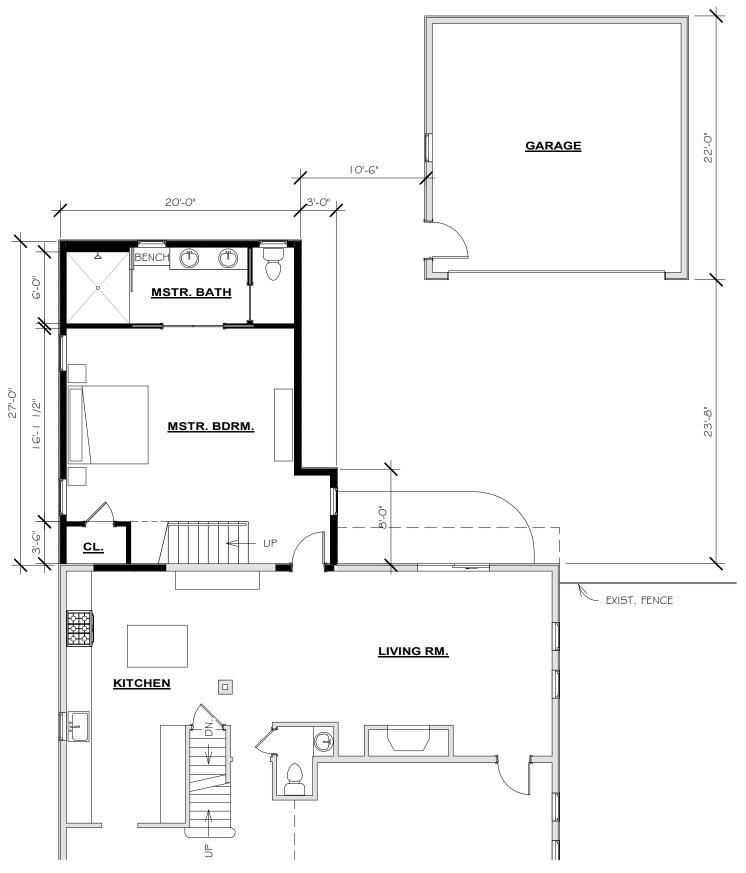
= 30'-0" REAR COMBINED F/ R = 55'-0"

VARIANCES REQUESTED:



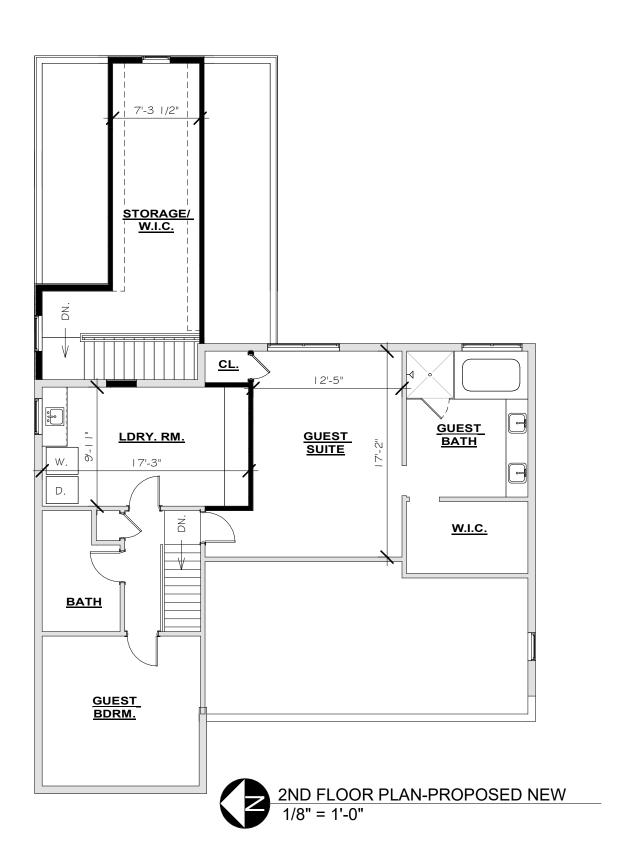
	EXISTING	PROPOOSED	VARIANCE
I) LOT COVERAGE	44.17%	44.79%	14.79%
2) REAR YARD	49.17'	22.17'	7.83'
3) FRONT/ REAR YARD	61.50'	34.50'	20.50'
4) NORTH SIDE YARD	3.50'	3.50'	2.50'















S. ELEVATION 1/8" = 1'-0"





E. ELEVATION 1/8" = 1'-0"



N. ELEVATION 1/8" = 1'-0"







Historic District Commission Minutes Of October 19, 2022

151 Martin Street, City Commission Room 205, Birmingham, MI

Minutes of the regular meeting of the Historic District Commission ("HDC") held Wednesday, October 19, 2022. Chair Henke called the meeting to order at 7:00 p.m.

1) Rollcall

Present: Chair John Henke; Board Members Gigi Debbrecht, Keith Deyer, Natalia Dukas,

Dustin Kolo, Patricia Lang; Alternate Board Member Steven Lemberg; Student

Representatives Meghan Murray, Charlie Vercellone

Absent: Board Member Michael Willoughby

Staff: Planning Director Dupuis; City Planner Blizinski, City Transcriptionist Eichenhorn

2) Approval of the HDC Minutes of September 7, 2022 and September 21, 2022

10-59-22

Motion by Ms. Debbrecht

Seconded by Ms. Lang to approve the HDC Minutes of September 7, 2022 and September 21, 2022 as submitted.

Motion carried, 7-0.

VOICE VOTE

Yeas: Henke, Debbrecht, Deyer, Lang, Kolo, Lemberg, Dukas

Nays: None

3) Courtesy Review

4) Historic Design Review

A. 135-139 S. Old Woodward – Briggs Building/Stifel

PD Dupuis presented the item and answered brief informational questions from the HDC.

Ms. Dukas said it seemed visually strange to have a storefront without a door.

Chair Henke noted a few examples of businesses in the City that have similar storefronts without doors.

PD Dupuis noted that the HDC recently asked a different project to add a door to its proposed storefront. He said the HDC could make a motion to allow him to ask the applicant to consider adding a door.

Ms. Lang and Mr. Dever said they supported PD Dupuis' recommendation.

Historic District Commission Minutes of October 19, 2022

Chair Henke said it did not matter to him whether or not there was a door as part of the storefront.

10-60-22

Motion by Ms. Lang

Seconded by Mr. Deyer to allow for an administrative approval of a door to be added to the storefront should the applicant choose to do so, and to approve the Historic Design Review application and issue a Certificate of Appropriateness for 135-139 S. Old Woodward – Briggs Building/Stifel. The proposed façade renovation will meet the Secretary of the Interior's Standards for Rehabilitation standard numbers 1- 5, and 9.

Motion carried, 6-1.

VOICE VOTE

Yeas: Henke, Debbrecht, Deyer, Lang, Kolo, Lemberg

Nays: Dukas

B. 555 Stanley – Hood House

PD Dupuis presented the item and answered brief informational questions from the HDC.

Paul Samulak, architect, spoke on behalf of the project. He explained:

- The goal was to match the siding exposure with the lap siding and to repaint the home; and,
- The owner would be open to creating a visual differentiation between the old and new parts of the exterior.

10-61-22

Motion by Ms. Lang

Seconded by Mr. Dukas to approve the Historic Design Review application and issue a Certificate of Appropriateness for 555 Stanley – Hood House. The proposed addition will meet the Secretary of the Interior's Standards for Rehabilitation standard numbers 1-3, 9 and 10 upon the fulfillment of the following conditions:

- 1. The applicant resolve all zoning issues with the Board of Zoning Appeals; and,
- 2. The applicant submit revised plans for review by City Staff demonstrating an addition that is differentiated from the historic structure.

Motion carried, 7-0.

VOICE VOTE

Yeas: Dukas, Henke, Debbrecht, Deyer, Lang, Kolo, Lemberg

Nays: None

5) Sign Review

- 6) Study Session
 - A. Historic Design Guidelines Update

PD Dupuis encouraged the HDC and public to take the Historic Design Guidelines Survey, and said the HD would likely be seeing a draft of the Design Guidelines in December 2022.

7) Miscellaneous Business and Communication

- A. Pre-Application Discussions
- B. Draft Agenda
- C. Staff Reports
 - 1. Administrative Sign Approvals
 - 2. Administrative Approvals
 - 3. Demolitions
 - 4. Action List 2022

8) Adjournment

No further business being evident, the HDC motioned to adjourn at 7:29 p.m.

Nicholas Dupuis Planning Director

Laura Eichenhorn City Transcriptionist

CASE DESCRIPTION

34901 Woodward, Suite 200 (22-51)

Hearing date: December 13, 2022

Appeal No. 22-51: The owner of the property known **34901 Woodward, Suite 200** requests the following variances:

A. Chapter 86, Article 1, Section 1.05 Table B of the Sign Ordinance requires Wall Signs to be located within the Sign Band, which for this building is defined as a horizontal band extending the full width of the building facade and located between the highest first floor windows and the bottom of the second floor windows. The proposed sign is located in between the highest second floor windows and the bottom of the third floor windows. Therefore, a dimensional variance of 11.00 feet is requested.

B. Chapter 86, Article 1, Section 1.05 Table B of the Sign Ordinance permits buildings with more than 100 linear feet of building frontage to contain no more than 100 square feet of signage area placed on walls other than the principal frontage. The proposed signs increase the signage area on walls other than the principal frontage to 114.00 square feet. Therefore, a dimensional variance of 14.00 square feet is requested.

Staff Notes: The applicant is proposing 3 new signs to replace 3 existing signs of similar size in similar locations. The signs will display new branding and log styles for the existing tenant. On October 19th, 2022, the applicant appeared before the Design Review Board (see attached minutes). The board voted to approve the proposed new signs with the condition that the applicant must obtain the required variances from the Board of Zoning appeals.

Leah Blizinski Planner



ORIGINAL

Hearing Date: 12 · 13 · 22

Zip code:

48035

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

Appeal #: Received By: Land Use Sign Admin Review Interpretation Dimensional Type of Variance: I. PROPERTY INFORMATION: Sidwell Number: Lot Number: Address: 08-19-36-207-010 CIBC, 34901 Woodward, Ste: 200 II. OWNER INFORMATION: Name: Woodward Brown Associates Zip code: 48073 ^{City:} Royal Oak State: MI Address:

Phone:

hweiss@samonaweiss.com III. PETITIONER INFORMATION:

Email:*

Application Date: 10.77-77

32820 Woodward

Firm/Company Name: Allied Signs, Inc. Name: Kim Allard State: MI City: Clinton Twp. Address: 33650 Giftos

Phone: Email: 586-791-7900 Kim@alliedsignsinc.com

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

Owner hereby authorizes the petitioner designated below to act on behalf of the owner.

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.

*By providing your email to the City, you agree to receive news and notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.

See attached Signature of Owner:

Date: Date: _10/25/22 Signature of Petitioner:

Revised 10.11.21



8959 Tyler Boulevard Mentor, OH 44060 888 . 503 . 1569 stratusunlimited.com

***** FOR LANDLORD APPROVAL *****

RE: CIBC

34901 Woodward Ave Ste 200 Birmingham, MI, 48009

The attached is our design for the signage we are proposing for the above location. If this meets your approval, please sign the drawings, this form and return all to my attention. If anything does not meet with your approval, please note the changes that are required prior to returning. Please feel free to call me if you have any questions or concerns.

Sincerely, Bill DeStefano Project Manager Stratus 224-532-1056

KI

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Bill.destefano@stratusunlimited.com

PLEASE READ	Š.	21	GN	В	Ł	LC	W	۷	:
								_	_

I agree to the signage proposed by Stratus for the location address listed above.

I understand that the signage will not be installed until after city permits have been applied for and approved. Unless otherwise stated in the lease, Spectrum is responsible for the cost of the signage and all related expenses. All PINITIONS FIOM FINT SIGN MUST BY FILLED AND REPAIRS BY CONTINGEN USING MASONLY MANUFACTURER KIFAIR KIT

I do not agree to the signage as proposed. GINGLAL SHALE-ONG LOCAL DISTRIBUTOR (134) (15-1800)

Please make the following changes and resubmit for approval. (INFO I HANG UN FILE)

Print Name

Company Name

Address

City/State/Zip

Phone

Date 7-11-22

HARVY Wiss

WOODWARD BROWN ASOC

Address

Address

Address

City/State/Zip

Phone

(248) 549-3600 417. 14

Email



October 25, 2022

City of Birmingham Attn: Members of the BZA 151 Martin P.O. Box 3001 Birmingham, MI 48009

RE: CIBC, 34901 Woodward, Ste: 200

Dear Members of the BZA,

CIBC would like to replace their existing signs with new signs. The current ordinance dictates that signs can only be installed on the first floor sign band and no more than 100 square feet of signs can be on an elevation that is not the principal building frontage. The West elevation has 113 square feet of signs on it as there are multiple tenants in this building. The signs on the East and South elevations are above the first floor sign band.

The hardship is, CIBC cannot replace their existing signs because of the strict compliance with the sign ordinance. There is no other location on the building other than their existing locations. If they cannot replace their signs, then there will be a lack of identification for them and they will no longer be branded for the public.

Thank you for your consideration.

Sincerely,

Kim Allard

CITY OF BIRMINGHAM BOARD OF ZONING APPEALS RULES OF PROCEDURE

ARTICLE I - Appeals

- A. Appeals may be filed under the following conditions:
 - 1. A property owner may appeal for variance, modification or adjustment of the requirements of the Zoning Ordinance.
 - 2. A property owner may appeal for variance, modification or adjustment of the requirements of the Sign Ordinance.
 - 3. Any aggrieved party may appeal the decision of the Planning Board and/or the Building Official in accordance with the City of Birmingham Zoning Ordinance, Article Eight, Section 8.01 (D) Appeals. If an appellant requests a review of any determination of the Building Official, a complete statement setting forth the facts and reasons for the disagreement with the Building Official's determination shall include the principal point, or points on the decision, order or section of the ordinance appealed from, on which the appeal is based.
- B. Procedures of the Board of Zoning Appeals (BZA) are as follows:
 - 1. Regular BZA meetings, which are open to the public, shall be held on the second Tuesday of the month at 7:30 P.M. provided there are pending appeals. There will be a maximum of seven appeals heard at the regular meeting which are taken in the order received. If an appeal is received on time after the initial seven appeals have been scheduled, it will be scheduled to the next regular meeting.
 - 2. All applications for appeal shall be submitted to the Community Development Department on or before the 12th day of the month preceding the next regular meeting. If the 12th falls on a Saturday, Sunday, or legal holiday, the next working day shall be considered the last day of acceptance.
 - 3. All property owners and occupants within 300 feet of the subject property will be given written notice of a hearing by the City of Birmingham.
 - 4. See the application form for specific requirements. If the application is incomplete, the BZA may refuse to hear the appeal. The Building Official or City Planner may require the applicant to provide additional information as is deemed essential to fully advise the Board in reference to the appeal. Refusal or failure to comply shall be grounds for dismissal of the appeal at the discretion of the Board.
 - 5. In variance requests, applicants must provide a statement that clearly sets forth all special conditions that may have contributed to a practical difficulty that is preventing a reasonable use of the property.

Revised 10.11.21

- 6. Where the Birmingham Zoning Ordinance requires site plan approval of a project by the City Planning Board before the issuance of a building permit, applicants must obtain preliminary site plan approval by the Planning Board before appeal to the BZA for a variance request. If such appeal is granted by the BZA, the applicant must seek final site plan and design review approval from the Planning Board before applying for a building permit.
- 7. An aggrieved party may appeal a Planning Board decision. Such appeal must be made within 30 days of the date of the decision. The BZA, in its discretion, may grant additional time in exceptional circumstances.
- 8. Appeals from a decision of the Building Official shall be made within 30 days of the date of the order, denial of permit, or requirement or determination contested. The BZA, in its discretion, may grant additional time in exceptional circumstances.
- 9. An appeal stays all proceedings in accordance with Act #110, Public Acts of 2006, Article VI, Section 125.3604 (3).

C. The order of hearings shall be:

- 1. Presentation of official records of the case by the Building Official or City Planner as presented on the application form.
- 2. Applicant's presentation of his/her case—the applicant or his/her representative must be present at the appeal hearing.
- 3. Interested parties' comments and view on the appeal.
- 4. Rebuttal by applicant.
- 5. The BZA may make a decision on the matter or request additional information.

D. Motions and Voting

- 1. A motion is made to either grant or deny a petitioner's request
 - a) For a motion to grant or deny a non-use variance request, the motion must receive four (4) affirmative votes to be approved.
 - b) For a motion to grant or deny a use variance request, the motion must receive five (5) affirmative votes to be approved.
 - c) For a motion to grant or deny an appeal of a decision or order by an administrative official or board, the motion must receive four (4) affirmative votes to be approved.
- 2. When a motion made is to approve or deny a petitioner's request and if there is a tie vote, then the vote results in no action by the board and the petitioner shall be given an opportunity to have his or her request heard the next regularly scheduled meeting when all the members are present.

- 3. When there are less than seven (7) members of the board present for a meeting, then a petitioner requesting a use variance shall be given an opportunity at the beginning of the meeting to elect to have it heard at the next regularly scheduled meeting.
- 4. When there are less than six (6) members present for a meeting, then all petitioners shall be given an opportunity at the beginning of the meeting to elect to have the request heard at the next regularly scheduled meeting.

ARTICLE II - Results of an Appeal

- A. The Board may reverse, affirm, vary or modify any order, requirement, decision or determination as in its opinion should be made, and to that end, shall have all the powers of the officer from whom the appeal has been taken.
- B. The decisions of the Board shall not become final until the expiration of five (5) days from the date of entry of such orders or unless the Board shall find that giving the order immediate effect is necessary for the preservation of property and/or personal rights and shall so certify on the record.
- C. Whenever any variation or modification of the Zoning Ordinance is authorized by resolution of the BZA, a <u>Certificate of Survey</u> must be submitted to the Community Development Department with the building permit application. A building permit must be <u>obtained</u> within one year of the approval date.
- D. Failure of the appellant, or his representative, to appear for his appeal hearing will result in the appeal being adjourned to the next regular meeting. If, after notice, the appellant fails to appear for the second time, it will result in an automatic withdrawal of the appeal. The appellant may reapply to the BZA.
- E. Any applicant may, with the consent of the Board, withdraw his application at any time before final action.
- F. Any decision of the Board favorable to the applicant is tied to the plans submitted, including any modifications approved by the Board at the hearing and agreed to by the applicant, and shall remain valid only as long as the information or data provided by the applicant is found to be correct and the conditions upon which the resolution was based are maintained.

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.

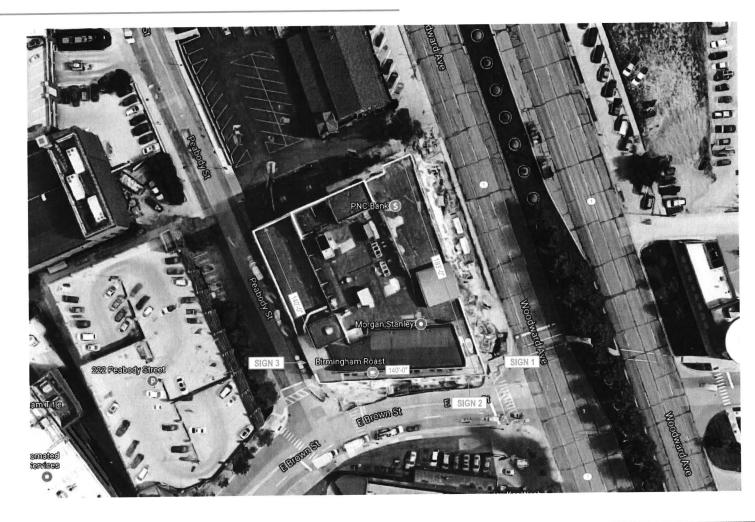
B. Application or rehearing of a case shall be in writing and subject to the same rules as an original hearing, clearly stating the new evidence to be presented as the basis of an appeal for rehearing.

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

Signature of Applicant

SITE PLAN

Scale: NTS







stratusunlimited.com 8959 Tyler Boulevard Mentor, Ohio 44060 888.503.1569 CIBC

ADDRESS: PAGE

34901 Woodward Ave, Ste. 200 Birmingham, MI 48009-0923
 ORDER NUMBER:
 PROJECT NUMBER:

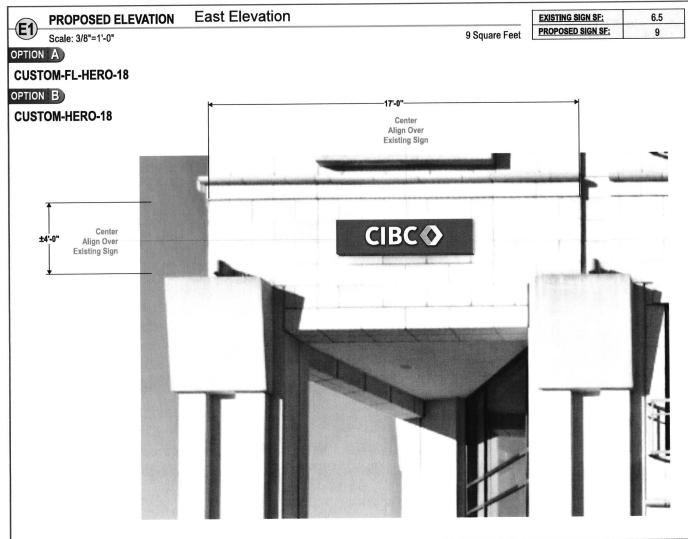
 1164640
 4769

 SITE NUMBER:
 PROJECT MANAGER:

334 BILL DESTEFANO

ELECTRONIC FILE NAME:
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334_Birmingham/334_Birmingham R2.cdr

Rev#	Req#	Date/Artist	Description	Rev#	Req#	Date/Artist	Description
Original	370589	02/28/22 CR					
Rev 1	379898	04/26/22 TC					
Rev 2	384068	05/24/22 TC					1000
-							



EXISTING CONDITIONS





Existing 1'-6"h x 4'-4-1/16"w sign to be removed.
Wall patched and painted as required



stratusunlimited.com 8959 Tyler Boulevard Mentor, Ohio 44060 888.503.1569 CIBC •

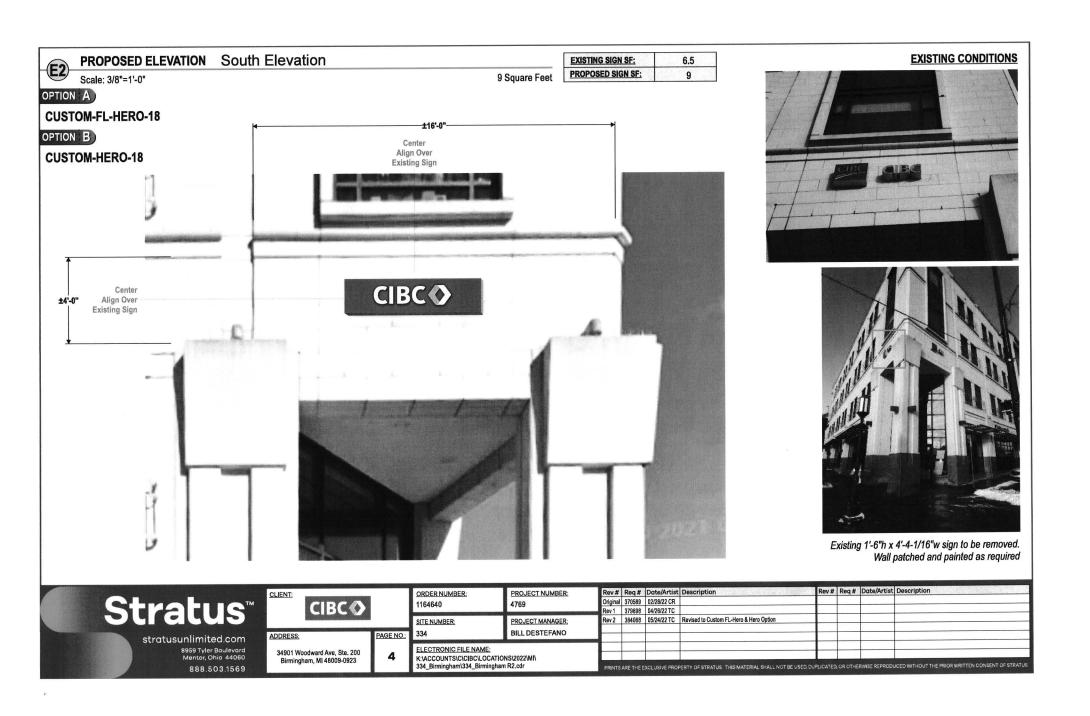
34901 Woodward Ave, Ste. 200 Birmingham, MI 48009-0923 ORDER NUMBER: 1164640

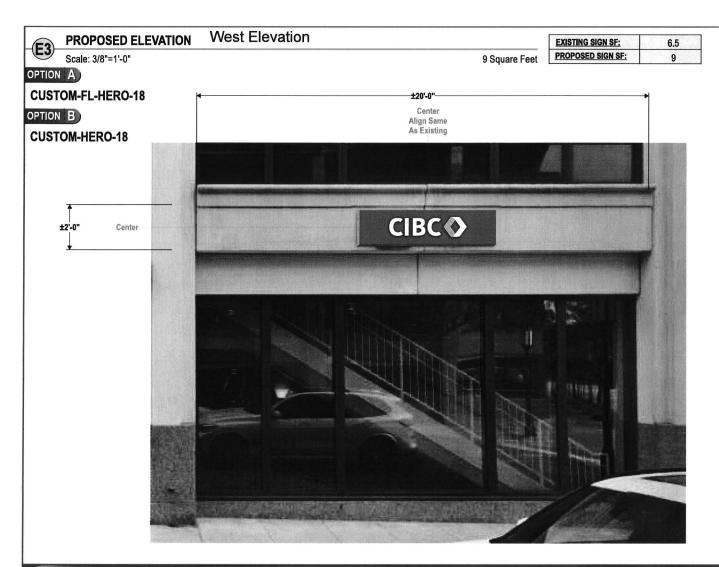
SITE NUMBER: PROJECT MANAGER: 334 BILL DESTEFANO

PROJECT NUMBER:

ELECTRONIC FILE NAME:
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334_Birmingham\334_Birmingham R2.cdr

Rev#	Req#	Date/Artist	Description	Rev#	Req#	Date/Artist	Description
Original	370589	02/28/22 CR					
Rev 1	379898	04/26/22 TC					
Rev 2	384068	05/24/22 TC	Revised to Custom FL-Hero & Hero Option				
						L	





EXISTING CONDITIONS



Existing 1'-6"h x 4'-4-1/16"w sign to be removed.
Wall patched and painted as required



stratusunlimited.com 8959 Tyler Boulevard Mentor, Ohio 44060 888.503.1569 CIBC

ADDRESS: PA

34901 Woodward Ave, Ste. 200
Birmingham, MI 48009-0923

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 ORDER NUMBER:
 PROJECT NUMBER:

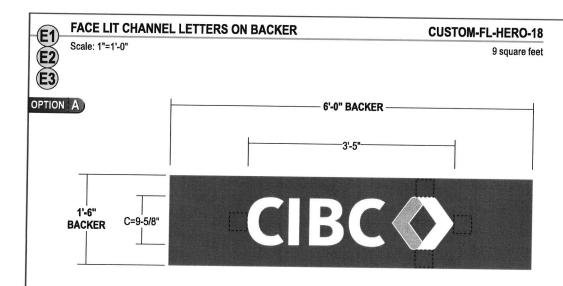
 1164640
 4769

 SITE NUMBER:
 PROJECT MANAGER:

 334
 BILL DESTEFANO

ELECTRONIC FILE NAME: K:\ACCOUNTS\C\CIBC\LOCATIONS\2022\MI\ 334_Birmingham\334_Birmingham R2.cdr

	Rev#	Req#	Date/Artist	Description	Rev#	Req#	Date/Artist	Description
	Original	370589	02/28/22 CR					
-	Rev 1	379898	04/26/22 TC					
	Rev 2	384068	05/24/22 TC	Revised to Custom FL-Hero & Hero Option				
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_								
	PRINTS	ARE THE E	XCLUSIVE PROP	ERTY OF STRATUS. THIS MATERIAL SHALL NOT BE USED, DU	PLICATED	OR OTHE	RWISE REPRODU	ICED WITHOUT THE PRIOR WRITTEN CONSENT OF STRATUS



Simulated night time view





PROJECT NUMBER:



FACES:

TRIMCAP:

RETURNS:

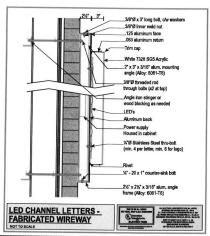
ILLUMINATION:

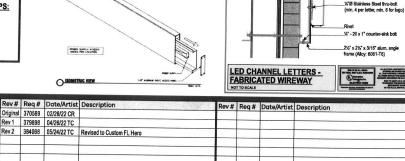
WALL MATERIAL:

BACKER CABINET:

BACKS:

INSTALL:





.187" #7328 white acrylic w/ first surface grey vinyl

.063 alum. backs - insides pre-finished white

Illuminate w/ white LEDs, Power supplies housed in

Fabricated alum, backers with 2-1/2" alum angle frame & .125 pan formed alum. Faces to secure to frame thru

Grind and smooth face seams to create seamless

returns; total depth of 2-3/4"; All exposed surfaces painted red. Seams will be required in all panels over 10' lengths.

Letters thru bolted flush to face of backer cabinet. Backer cabinet secured flush to wall thru internal alum, angle using min 3/8" all thread fasteners; blocking as required.

3" deep .063 alum. painted red, interior pre-finished white

overlay for logo as shown

1" jewelite painted red

backer on slide out tray.

appearance when required.

No visible fasteners.

(3) THREE Required Total

TO BE PROVIDED

Stratus[™]

stratusunlimited.com 8959 Tyler Boulevard Mentor, Ohio 44060 888.503.1569 CIBC

PAGE NO. 34901 Woodward Ave. Ste. 200

ORDER NUMBER: 1164640 SITE NUMBER:

4769 PROJECT MANAGER: BILL DESTEFANO

ELECTRONIC FILE NAME: 334_Birmingham\334_Birmingham R2.cdr

K:\ACCOUNTS\C\CIBC\LOCATIONS\2022\MI\

Birmingham, MI 48009-0923

PRINTS ARE THE EXCLUSIVE PROPERTY OF STRATUS. THIS MATERIAL SHALL NOT BE USED, DUPLICATED, OR OTHERWISE REPRODUCED WITHOUT THE PRIOR WRITTEN CONSENT OF STRATUS

CASE DESCRIPTION

1626 Taunton (22-52)

Hearing date: December 13, 2022

- **Appeal No. 22-52:** The owner of the property known **1626 Taunton**, requests the following variance to construct a second floor addition to an existing non-conforming home:
- A. Chapter 126, Article 4.74(C) of the Zoning Ordinance requires that the minimum distance between principal residential buildings on adjacent lots of 14.00 feet or 25% of the total lot width whichever is larger. The required is 14.00 feet. The proposed is 13.33 feet. Therefore; a variance of 0.67 feet is being requested.

Staff Notes: This applicant is looking to construct a second floor addition to this 1940 home on an irregular site.

This property is zoned R2 – Single family residential.

Jeff Zielke, NCIDQ, LEED AP
Assistant Building Official



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 Date: 1722

APPLICATION FOR THE BOARD OF ZONING APPEALS

Hearing Date: 1515

Type of Variance:	Interpretation	Dime	ensional	☐Land Use	Sign	Admin Review			
I. PROPERTY INFORMA				Li cond osc	3,811	Manual Review			
Address: 1626 T			Lot Number:	7.1	Sidwell Number:	2 - 21 222			
				79	Janes Hamber.	20-31-377-012			
II. OWNER INFORMATIO									
Walle Dran Clark									
Name: Brian Clark Address: 1626 Tawnton City: Birmingham State: M1 Zip code: 48009 Email: BEClark 658 amail.com Phone: 248 7660332									
Email: BEClar	K65@ gmai	1.000	n	U	Phone: 248	17660332			
III. PETITIONER INFORM	III. PETITIONER INFORMATION:								
Name: Bran			Firm/Compan	y Name:					
Address: 1626	Taunton		City: Birn	ing hom	State: M (Zip code: 48009			
Email: BEClark	65@ gmailie	con	•	,	Phone: 248				
IV. GENERAL INFORMA									
Assistant Building Off to be submitted. Staff Each variance request dimensions to be sho The BZA application for sign which must be po	oplications are provided, icial and/or City Planner f will explain how all requit must be clearly shown own in feet measured to the is \$360.00 for single factoring at the property at the pro	for a pruested von the seconatily realized	reliminary discivariances must survey and platond decimal poesidential; \$566 s-days prior to Variance Cha	ussion of their reque to highlighted on the including a table a sint. 2.00 for all others. The the scheduled hearing the texample	st and the docur ne survey, site pl is shown in the e nis amount including date.	ments that will be required an and construction plans. example below. All des a fee for a public notice			
Requested Variance A, Front Setba			23.50		Proposed 23.50 Feet	Variance Amount 1.50 Feet			
Variance B, Height	30.00 Fee		30.25		30.25 Feet	0.25 Feet			
V. REQUIRED INFORMA	TION 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 SIGNATU	RE								
Signature of Owner	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: 11/7/71/								
Signature of Petitione	gnature of Petitioner: Date: 11/7/20								

Brian Clark

1626 Taunton Birmingham, MI 48009 (248) 677-0332 beclark65@gmail.com

7th November 2022

Re: 1626 Taunton Rd, Birmingham, MI 48009

Dear Birmingham Board of Zoning Members,

I, Brian Clark, am the owner of the property better known as 1626 Taunton Rd. I am in the process of working towards adding a second story to the existing structure and building a new detached garage. The existing home was built in 1940 and does not conform to the rule that the distance between buildings must be a minimum of 14 ft or 25% of the front lot line. This is per chapter 126, article 4: Section C.

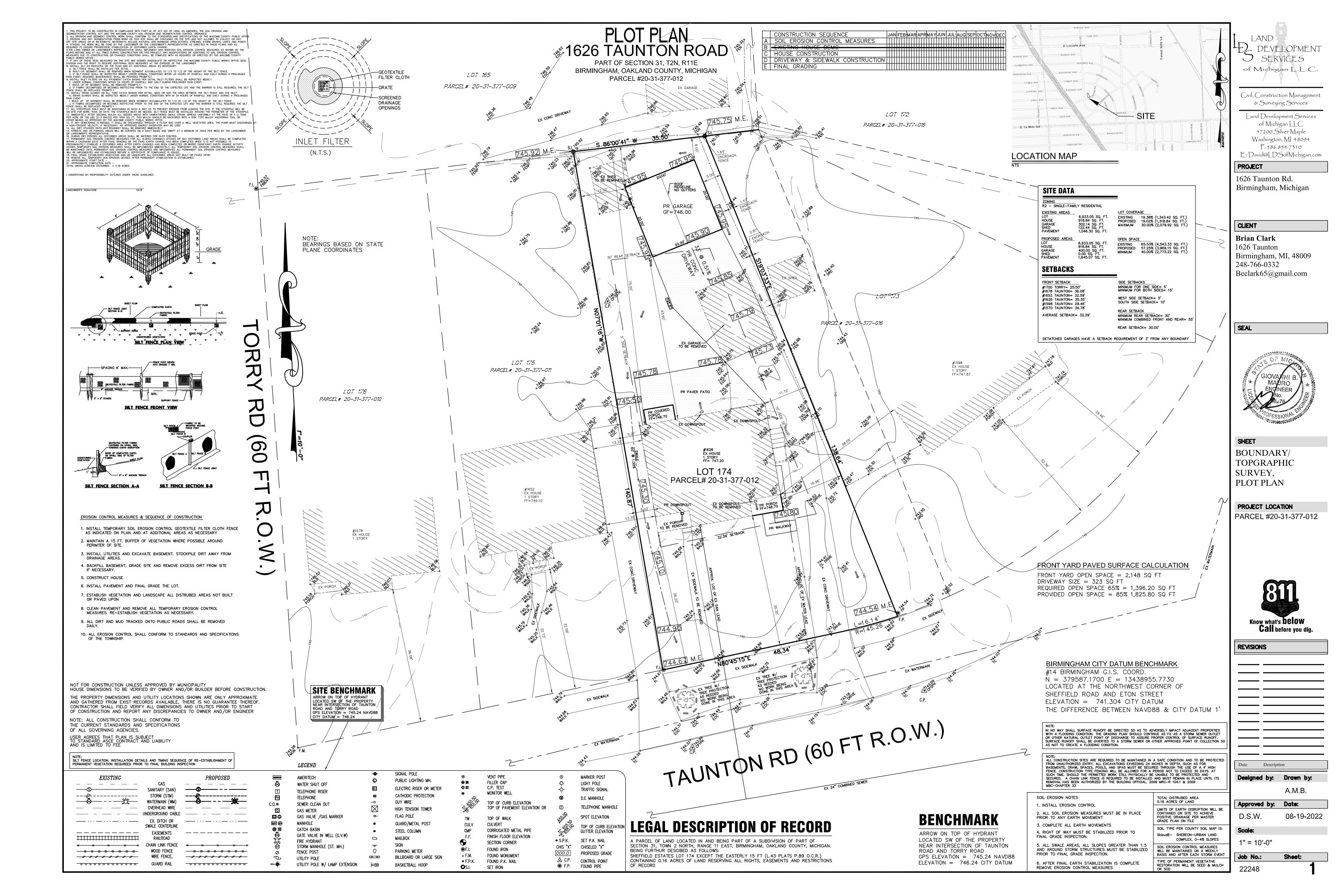
I request a variance of .67 ft to add my second story directly onto the existing house. The residence to my west, 1652 Tunton Rd, is currently 13.33 ft apart. The required distance we require is the minimum 14ft. My plan is to simply add the second story on the existing house. In doing so, we are not making the non-conforming any worse than what is existing on the house, nor do we affect any homes in the area. This also keeps the architectural integrity of the house and the house remains to fit within the neighborhood.

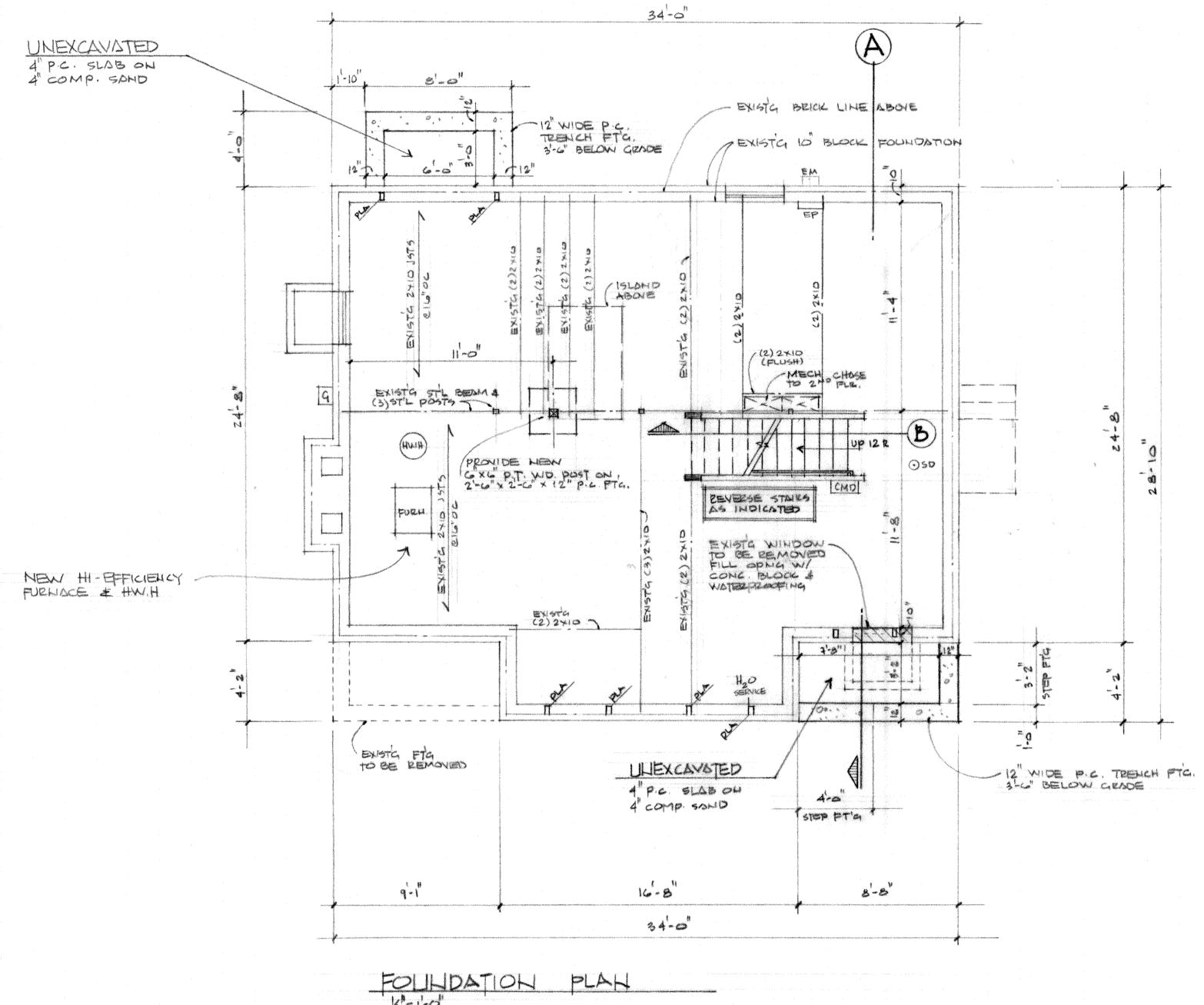
When I found that my home was non-conforming I discussed the options with my architect and the city reviewers. I was informed that if I did not ask for the variance the second story renovation would have to be made conforming. The architect pointed out that my second story addition would be not architecturally pleasing, nor fit within the neighborhood being shifted over .67 ft. Additionally it makes it difficult to seal up the building envelope. Water can infiltrate between the two stories and start destroying the brick, wood, and potentially start growing mold. Additionally the architect explained to me that there would be additional structural requirements to support the second story and take away from the open floor concept I have currently designed.

Requested Variances	Required	Existing	Proposed	Variance Amount
Variance C, Distance	14.00 ft.	13.33 ft.	13.33 ft.	.67 ft

Thank you for your time and consideration

Brian Clark

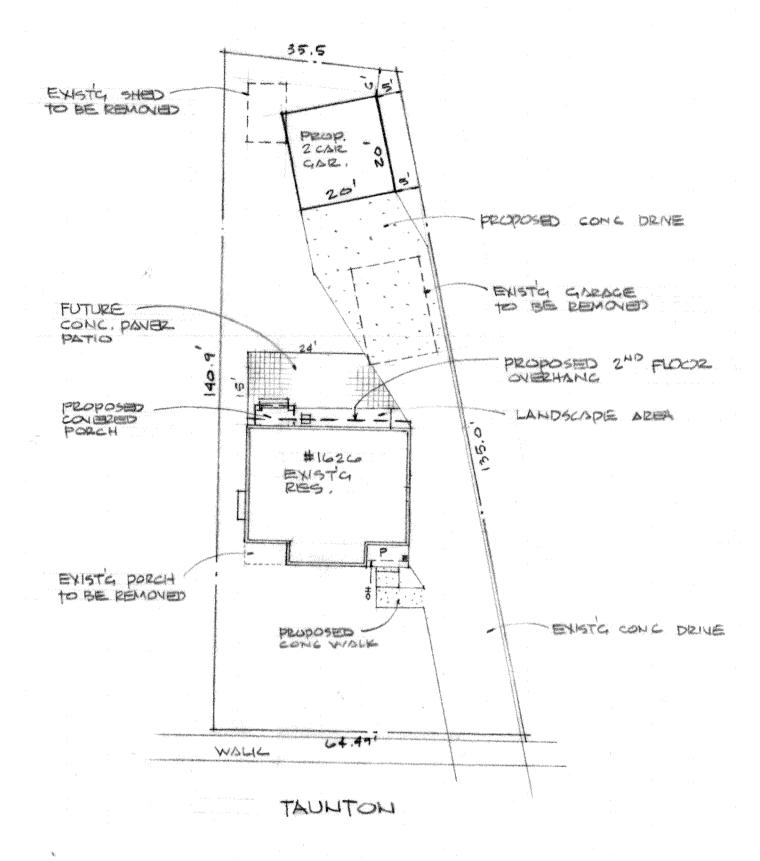


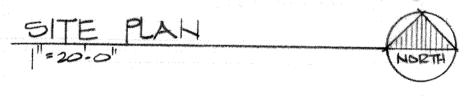


" - POINT LOAD FROM ABOVE

OSD - SMOKE DIETEKTORS TO BE INTERCONNECTED W/ BATTERY BACKUP.

CMD CAISIBON MONDYIDE DETECTOR





SITE PLAN IS FOR DESIGN PURPOSES ONLY

PROJECT SUMMARY

LOT SIZE = 7840 S.F LOT CONBEAGE ALLOWED = 30% (2352 5.F) LOT COVERNE PROPOSED = 17.8% (1395 S.F.) HOUSE 963.0 SF BACK PORCH 32.0 SF GARAGE 400.0 SF TOTAL 1395.0 SF

Use figured dimensions only. Do not scale the drawings.

Project Title:

PROPOSED ADDITION # REMODEL FOR,

1626 TALINTOH BIRMINGHAM MI. 48009

Sheet Title: SITE PLAN

FOUNDATION PLAN

Project Number: 2021 -Drawn By: 1011 10100Pi

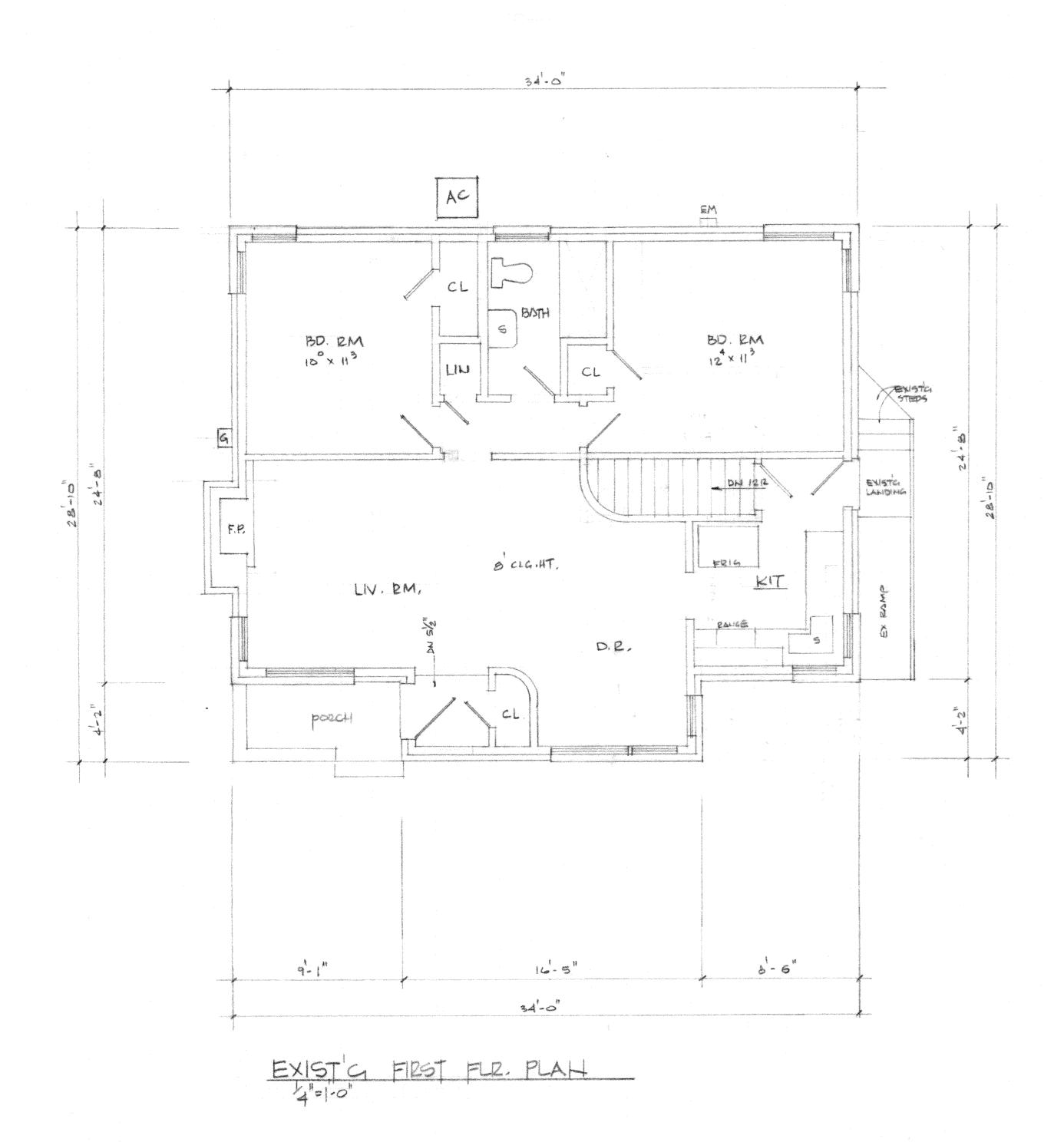
2.8.22 3.1.22

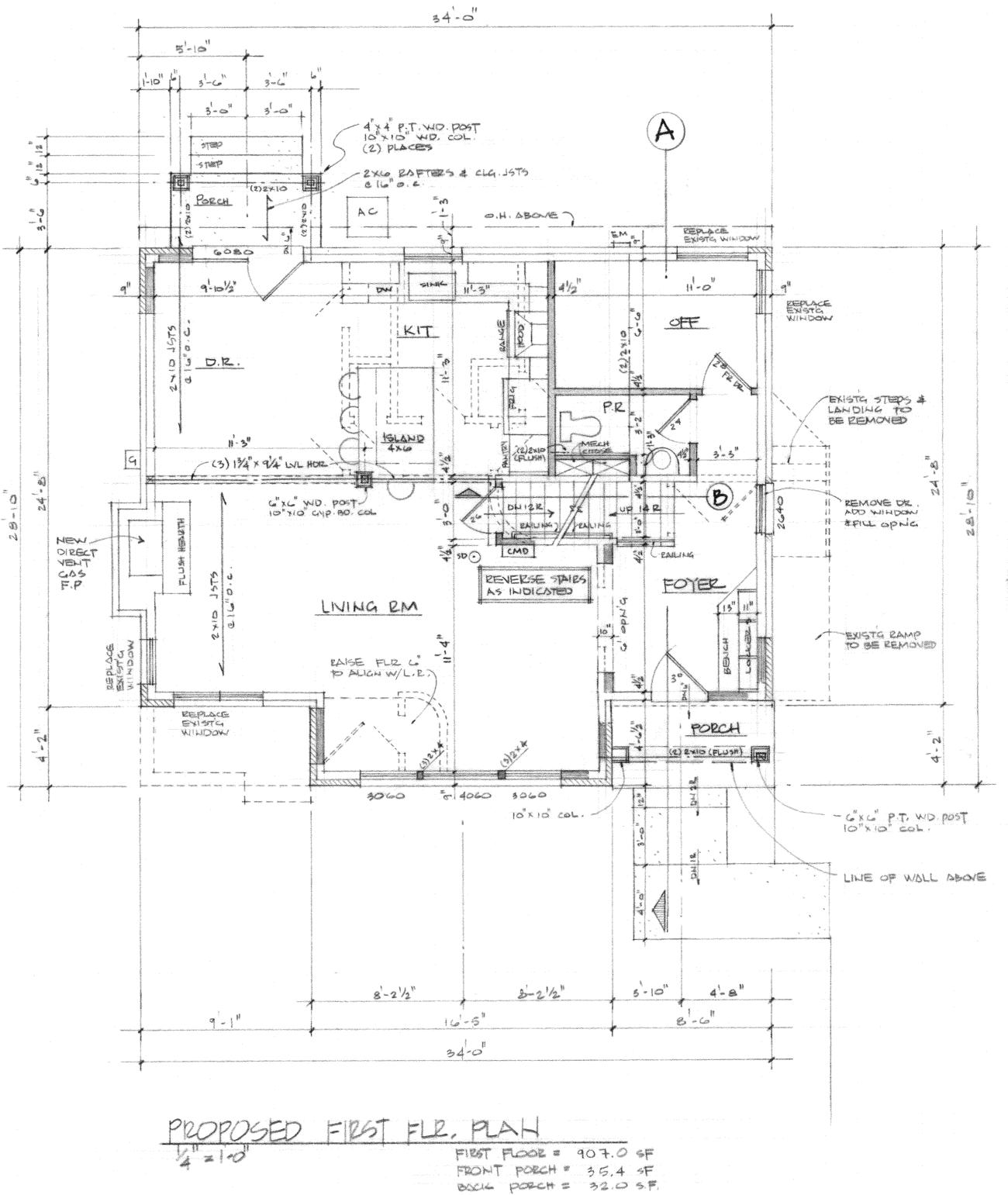
Sheet Number:

46

REVIEW

FINAL





NOTE TO ALL CONTRACTORS :

ALL CONTRACTORS SHALL VERIFY & COORDINATE ALL DIMENSIONS ON DRAWINGS, AS WELL AS REVIEW & COORDINATE PLANS W/ EXTERIOR BLDG. ELEVATIONS. SECTIONS, & DETAILS BEFORE COMMENCING WITH THE MORK, IF DIMENSIONAL ERRORS OR CONFLICTS OCCUR
BETWEEN PLANS, BLDG. ELEVATIONS, SECTIONS & DETAILS
IT SHALL BE BROUGHT TO THE ATTENTION OF THE ARCHITECT BEFORE PROCEEDING WITH THE WORK. CONTRACTORS WHO FAIL TO VERIFY, REVIEW, & COORDINATE THE WORK, & CONTRACTORS WHO SCALE DRAWINGS TO DETERMINE PLACEMENT OF PART(S) OF THE WORK, SHALL TAKE FULL RESPONSIBILITY SHOULD THAT PORTION OF THE WORK BE IMPROPERLY LOCATED OR CONSTRUCTED.

LEGEND EXISTIC CONSTRUCTION TO REMAIN ELLE ENERGY CONSTRUCTION TO BE REMOVED PROPOSED CONSTRUCTION

NOTES:

EXTERIOR WALL DIMENSIONS ARE TO BRICK

INTERIOR WALLS ARE 2X4 STUDS.

SEE GENERAL MOTES, SHT. #3 PX HENDER SIZES UNLESS NOTED ON FLOOR PLANS.

WINDOW LABBLES ARE IN POOT/INCHES. (ie: 2860 = 2-8"x c-0")

WINDOW MANUFACTURED BY BUILDED.

M - SOUD BENEING

050 - SMOKE DETECTORS TO BE INTERCONNECTED W/ BATTERY BACK . UP.

ICMO - CARBON MONOXIDE DETECTOR

BUILDER TO PROVIDE ENERGY COMPLIANCE REPORT POR COMPREHENSNE INSULATION VALUES.

Use figured dimensions only. Do not scale the drawings.

Project Title:

PROPOSED ADDITION REMODEL FOR,

1626 TAUNTON BIRMINGHAM MI. 48009

Sheet Title:

FIRST FLOOR PLAN

Project Number: 2021 - 074 Drawn By: 1044 Jakupi 734 765-9427

2.8.22 3. 1.22

PEVEN FINAL

Sheet Number:

2 46

GENERAL NOTES & SPECIFICATIONS

CODES ORDINANCES PERMITS 4 TESTS

i, All construction shall comply with the Michigan Residential Gods, the Michigan Uniform Energy Code, and local ordinaces & respirements. REPORTED CODE - MONGAN RESIDENTIAL CODE -: 2015 2. Obtain and pay for all required penulis, inspections, and tests.

CONCRETE

All concrete mork and placement shall conform to the labout recommendations of AGL.

2. Minimum concrete etrength to be 5000 pei at 26 days, WON; concrete for garage litters, entertar elabs, parches 4 carports, etc., shall be 5500 PSE windows with 66 still entrated atr. This etream coment content of concrete endance for entertar parches, carport elabs and steps shall be 520 peinas of coment meeting AGTH C 150 ar C 545 per, citilizated of concrete.

5. All reinforcing bars, deposit, and the shall contare to ASTM. AGO Grade 60. Reinforcing steet shall be tabricated and placed in accordance with ACL-36 fatest edition. Reinforcing steet shall be cartimose and shall have minimum 35 bar champter top.

4. All continuous multi-factings to be minimum of 10" thick and project ("Infiltum") each side of right unless otherwise noted.

5. Melded who fabric: AS.T.M. A-105, size as specified on plans. Do not deviate except with writion consent by the Architect.

6. State rethout resided who fatoric crack resistorcement shall be constructed with central joints having a depth of at least V4 of the slab thickness and joints shall be spaced at latervals not more than 50 feet in each direction and slabs not rectangular in shape shall have control joints across the slab at points of offset, if offect is in encose of 10".

7. Provide stapped footings and ledges as required, Confirm tocalions and elitents with General Contractor.

8. All enclosed concrete floor state shall be provided no approved to the local Building Official, based on local conditions.

MAGCHEYL

I. All manarry work is to be in accordance with the latest building code requirements for manarry structures (ACI 350/ASCE 5) and specifications for manarry structures (ACI 350/ASCE 6) and NCHA. and BLA. specifications. Flavoury told in temperatures of the autoide at below 40 degrees F. shall be protected in accordance with the provisions of ACI 350/ASCE 5. From materials shall not be used. nor shall from a managing the built upon.

2. All triegic shall conform to ASTH C40 and/or CH5, Type i, strade N (1500 PSL).

5. Mortor shall be Type "5" (1800 PSU for all CMULand type "N" (150 PSU) for face birtck above grade; conforming to ABIM C-210.

4. Provide HDA. (min. cooling = 1.5 oz./eq.ft. per ASTH AISS for enterior work) horizontal size type reinforcing with 4 gauge side and erose members in every second course (6° CC.), in all single rathe masonry reals. Malls with vertical reinforcing shall have "ladder" type reinforcing.

5. All reinforcing bors, dansis and ties shall conform to A6TH A6Es, Grade 60.

A Grout shall be 2000 P.S.L. e 25 days conforming to A.S.T.M. C-476; no time shall be used.

BRAL PRAMIS

i. Rough wood framing to be according to American Forest 4 Paper Association (American Mond Gouncil) Hanual For Mond Frame Construction. Store all timber aff the ground and protect from the

2. Identify all framing fumber and physical as to grades with appropriate agencies stamp, and store all grades expansionly from other grades.

5. the entreme care in the off-toading of hinter to prevent damage, splitting, and breaking of materials.

4. All wood shealthing shall be APA approved, exposure I physical complying with DOC PSI, or oriented strand board (OSD) complying w/APA PRP 108 or DOC PS 2, and shall be lastened in accordance w/ the labest APA recommendations and code requirements for the specific item being installed, (most stringent)

5. Subfloors shall be noticed and glined (1/4" diameter min. continuous bead) to supports in strict accordance with the latest APA recommendations and code requirements (most stringent). Shapling of subfloor to supports is got acceptable or allowed, situe shall conform to APA lipes APS-OI. If nonveneer panels with medical surfaces and edges are to be used, use only solvent-based glues; check m/ panel manufacturer. Follow the specific application recommendations of the glue manufacturer.

6. Anchor still plate an moteture resistant stil seater to foundation wall with V2" dia. A. S. 6 6-0" e.c. max, or approved metal still strape installed in accordance with manifecturer's specifications spaced as required to provide equivalent anchorage to 15° dia anchor bolls, unless otherwise noted on the drawings. Provide minimum (2) anchors per board, lacated a maximum of 12" and a minimum of 7 bolk diameters from board ends - hypical. Imbed

1. All mood framing and mood shoulting which roots on exterior-foundation malls and are less than 8" from exposed earth shall be of approved naturally-directive or presents treated mood.

& Steepers and alle on a concrete or masonry slot which is in direct contact with earth shall be of approved naturally-chrobie or pressure treated wood.

4. All structural hinter, joiets and headers are to meet the minimum properties of Hem-Pir 42 for design purposes as fisted below, unou-

BASE VALLES

To = 850 for single members E . 1500,000

Pc = 405 (perpendicular to grain) Pc = 1250 (parallel to grain)

Douglas-Pt-Larch #2 may be yeard as an acceptable alternate.

10. All interior stude are to be 'stud' grade or better and are to meet the estima properties of Spruce-Pine-Pir, tuted below, who.

BASE VALUESCHUCK & 4x4 post) Por 675 for single members

E = 1200,000

Pc= 425 (perpendicular to grain) I-c= 615 (parallel to grain)

BASE YALLES (Sub post 4 longer)

Pipe 6'75 E = 1200000 Pice \$25 (parallel to-grain) (Southern Pine 425R timbers or equal)

Believior wall stude, in 4"-0" high mails shall be 2nd SPF stud grade & 6" o/c, or 2n4 SPF 81/82 grade stude & 16" o/c as indicated an

plane.
Substrior 2nd mail studie over 4"-0" high shall be doubled.
Substrior 2nd mail studie over 10"-3" high shall be trippled.
Zue mail studie over 4"-0" high shall be structural lumber as listed for jotets and headers in them 14 above.

All exterior real stude, and interior bearing mail stude shall be continuous from top of floor to underside of floor, or roof frame, above including sloped ceiling and gable end mail conditions a studio trusses. (Balloon Frame)

it. Laminated Veneer Lumber (LVL), unless otherwise specified on plane shall have the following min properties: Pb = 2,600 pei, E = 1,400,000, Fc perp = 750, Fc = 2510, Laminated veneer tumber shall be designed, tataricated, and identified in accordance with applicable APA standards. Top loaded multiple LVL members shall be properly fastened per the manufacturers specifications but not less than tagether (2) rows lidd nate = 12" o/c for members 12" deep 4 less, (5) rows for 14" \$ 16" deep members and (4) rows for larger members. Side loaded multiple LVL members shall be fastened tagether as per the manufacturers specifications for the specific loading condition.

Size-Lam timbers shall have the following minimum properties and shall be produced in accordance IV AUTC requirements. Fb=2600pel E=1,900,000 Fv perp=140 Fv=200

Parallel Strand Lumber (PSL), unless otherwise specified on plans, shall have the following min. properties (N/O pressure treatment). Pos 2900psi E=2000000 Fc perp=150 Fc (i=2900psi). PSL shall be designed, fabricated, it identified in accordance with policable APA standards. Provide members that are pressure treated for decay where members are exposed to the elements Multiple PSL members shall be connected in accordance with the manifacturers recommendations based on the loading condition flop or side loaded).

12. All flush framing connections to be with "Strong-Tie" or equal post caps, joist and beam hangers, framing anchors and rafter anchors. Pill <u>Ail</u>, not hales w appropriate nails per manufacturers specifications/recommendations.

15. Provide solid bearing under all beans and headers (full ridlin). Frovide (2) 2x bearing jamb stude at openings 6'-0" and greater unless otherwise noted.

14. Headers over eiderior openings shall conform to the following table unless otherwise noted on Architectural Plans.

(2) $2 \times 6 \times \text{up to 4}^{\text{L}}\text{-0}^{\text{up}}$ opening width (2) $2 \times 8 \times \text{up to 3}^{\text{L}}\text{-6}^{\text{up}}$ opening width (2) $2 \times 10 \times \text{up to 1}^{\text{L}}\text{-0}^{\text{up}}$ opening width (2) $2 \times 12 \times \text{up to 8}^{\text{L}}\text{-0}^{\text{up}}$ opening width

15. Provide approved metal send bracing or structural shealthing at all corners. 16. Verity tub/shower rough-in dimensions my manufacturer and 6.C.,

MOOD TRUSCES 4 DRAFTSTOPPING.

prior to rough-in.

i. Trues design, installation and bracing per T.P.I., NFOPA, 4 trues manufacturers shop drawings and/or requirements. Trues supplier to provide documentation of design, in-plant inspection chring fabrication, laguet. E. spection to minicipality 4 obtain approval prior to exection of trueses. Documentation shall be sealed by an lingheer licensed in the State where the project is to be constructed. Verify trues framing with trues manufacturer's cleatin layout. Should grains bear over a header where not shown, notify the exchitect for evaluation of header size.

2. Provide H Series true clips for all trues to plate connections. Schools trueses, where specified, shall be anchored using Type TC scissors trues connector as manufactured by Simpson Strong Tie or equal, install per manufacturers specifications.

5. installation and construction (temporary) bracing shall be in accordance with the engineered design, in the ablience of specific bracing requirements, trience shall be braced per "Commentary to Handling, installing & Bracing metal plate connected wood trusies" (latest edition) as published by T.P.J., HJ.B. (TPI EMI)

DESIGN LIVE LOADS

NOTE: Coordinate dead load criteria (le. hard tile, slate shingles, etc.) with owner/ general contractor.

Roof Truse: Top Chord 30 psf Bot Chord 20 psf (roof slope > 3:12) 10 psf (roof slope 1 3:12)

Maximum Total Load distinction of L/240

Ploor Loads: 40 per (all except bedroom) 30 per (bedroom)

Modernii Live Load deflection of L/480. Balconies:

Docks 4. Provide all firestopping/draftstopping per the local code. A. Draftstopping (502.12). Draftstopping shall be provided in all floor/ceiling assemblies under the following circumstances when there is used to epace above and below the concealed space of a floor/ceiling assembly.

1. Getting is suspended under the floor framing or

Floor framing is constructed of trues-type or open-meb perforated members.
 The assembly is enclosed by a floor membrane above and a ceiling membrane below.

In Floor/ceiling assemblies the space between the membranes and floor shall be installed such that the area of concealed space is no area than 1,000 sq. ft.

Draftstopping shall be provided parallel to the main froming members unless afternise approved by the beliating official. Draftstapping materials shall be not less than is "gypeuin board, is made structural panel, %" type 2-14-14 particle board, or other approved materials adequately supported. The integrity of all draftstops shall be maintained.

I. Steel design, fabrication and erection to be in accordance with the latest ALS.C. specifications.

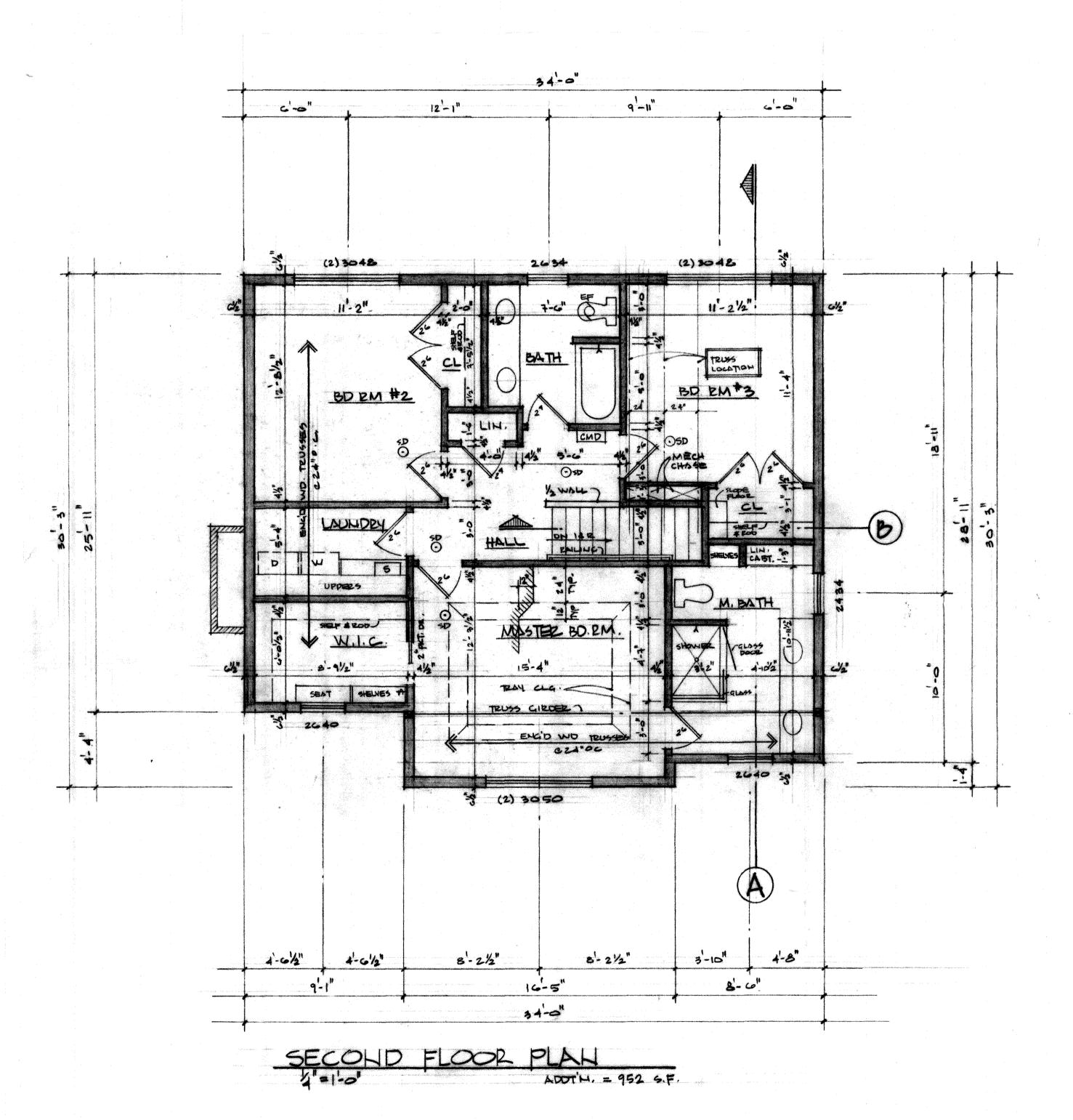
2. All structural steel shall conform to the latest ASTM, serial designation ASS, steel tubing to be A.S.T.M. A-SOI, steel pipe AS.T.M. A-SS, Grade B.

5. Lintels over exterior openings (where required) shall conform TO the following table wises otherwise specified:

(I) 5-1/2 x 5-1/2 x 5/16 - 4'-0" opening width (or tees) (I) 4 x 5-1/2 x 5/16 - 6'-0" opening width (I) 5 x 4 x 5/16 - 5'-0" opening width (I) 6 x 4 x 5/16 - 10'-0" opening width

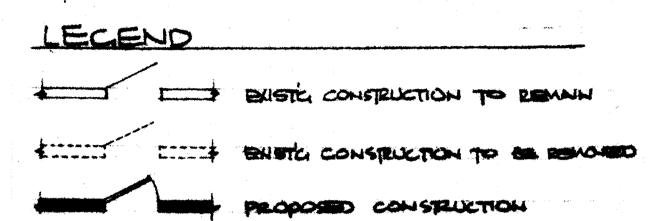
NOTE: FOR LINTELS GREATER THAN 6'-O" PROVIDE 1/2" 4 LAS OR THROUGH BOLTS @ 24" OC. IN % × 112" VERTICAL SLOTTED HOLES TO MOOD PRAME OR NEADER.

4. Steel pipe columns to be provided with minimum $1/2^{\circ} \times 6^{\circ} \times 6^{\circ}$ base place and top cap plate U.O.N. 5. All field connections to be made with 3/4" clameter H.S. bolts or equivalent veids. Melded connection shall be in accordance milities latest AMS Code ETOXX electrodes, performed by qualified



NOTE TO ALL CONTRACTORS :

ALL CONTRACTORS SHALL VERIFY & COORDINATE ALL DIMENSIONS ON DRAMINGS, AS MELL AS REVIEW & COORDINATE PLANS NY EXTERIOR SLOS, ELEVATIONS A COORDINATE PLANS W EXTERIOR SLDS. BLEVATIONS, SECTIONS, A DETAILS SEPORE COMPENCING MITH THE MORK IF DIMENSIONAL EXECUSE OR COMPLICTS OCCUR SETMEN PLANS, SLDS. BLEVATIONS, SECTIONS & DETAILS IT SHALL SE SEQUENT TO THE ATTENTION OF THE ARCHITECT SEPORE PROCESSIONS WITH THE MORK, CONTRACTORS MHO PAIL TO VERSITY, REVIEW & GOORDINATE THE MORK, & CONTRACTORS MHO SCALE DRAWINGS TO DETERMINE PLACEMENT OF PARTIES OF THE MORK, SHALL TAKE PULL SESTONS SELECTED OR CONSTRUCTED.



NOTES:

EXTERIOR WALL DIMENSIONS ARE TO SHEATHING SIDING, TRIM & STONE HOT INCLUDED IN WILL THER MES

INTERIOR WALLS ARE 2X4 STUDS, U.H.O.

SEE GENERAL MOTES, SHT. #3 POR HENDER SIZES UNLESS NOTED ON FLOOR PLANS!

WINDOW LABELS ARE IN POOT/INCHES (ie: 2860 = 2-8"x c-0")

WINDOW MANUFACTURES BY BUILDER

M - SOLID BENEING

050 - SMOKE DETECTORS TO BE INTERCONNECTED W/ BATTERY BACK - UP

- CARBON MONOXIDE DETECTOR

BUILDER TO PROVIDE ENERCY COMPLIANCE REPORT POR COMPREHENSIVE INSULATION VALUES.

Use figured dimensions only. Do not scale the drawings.

Project Title: PROPOSED ADDITION \$

REMODEL FOR, 1626 TAUNTON

BIRMINGHAM' MI. 48009

SECOND FLOOR PLAN

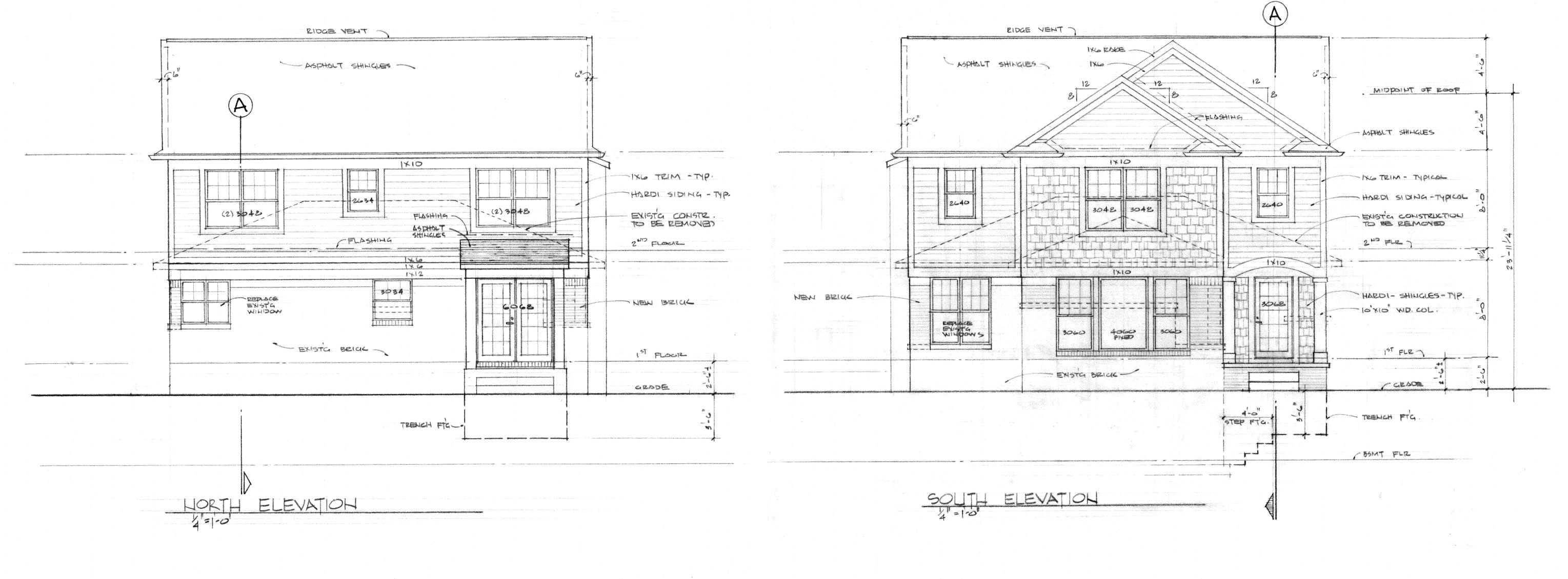
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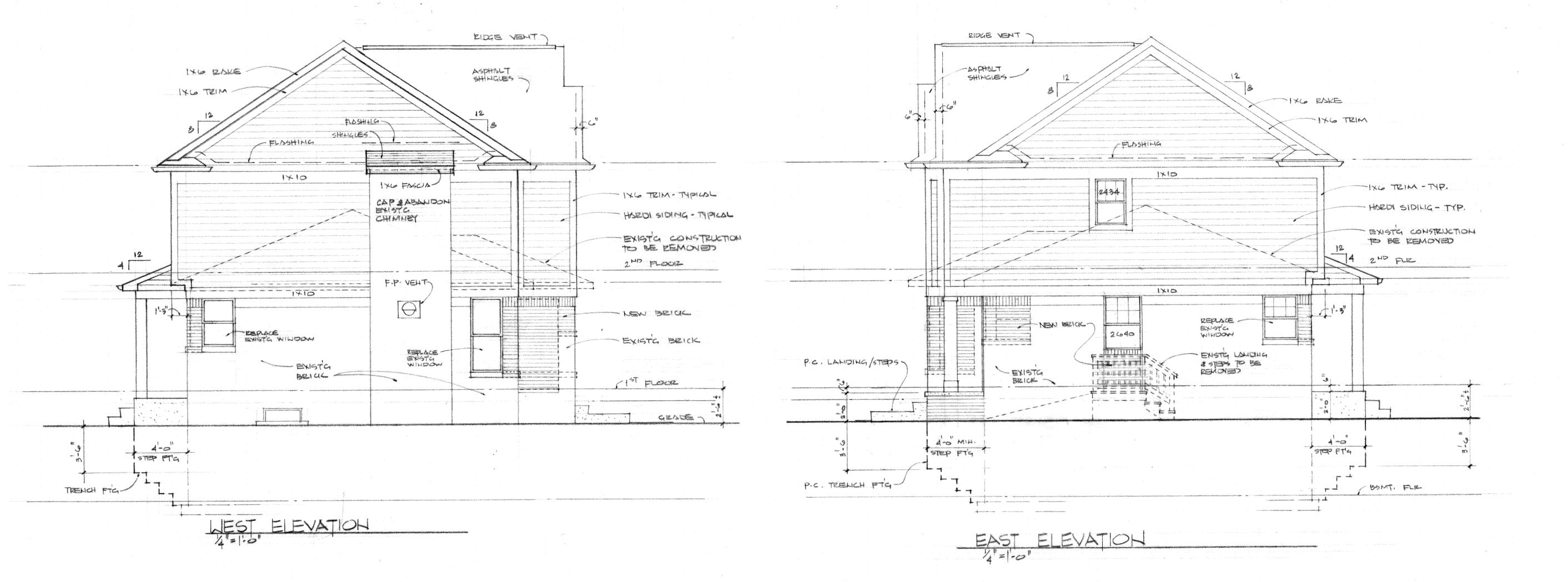
GENERAL NOTES.

Project Number: 2021 - 074 Drawn By: LOHH LAKUPI 734 765-9427

2.8.22 3.1, 22

REVIEW FINAL





WILLDOW/DOOR LABELS ARE IN FOOT/INCHES (ie/3060 = 3'-0" x 6'-0")

Use figured dimensions only. Do not scale the drawings.

Project Title:

PROPOSED ADDITION \$

REMODEL FOR;

BIRMINGHAM MI. 48009

ELEVATIONS

Sheet Title:

Project Number: 2021 - 074

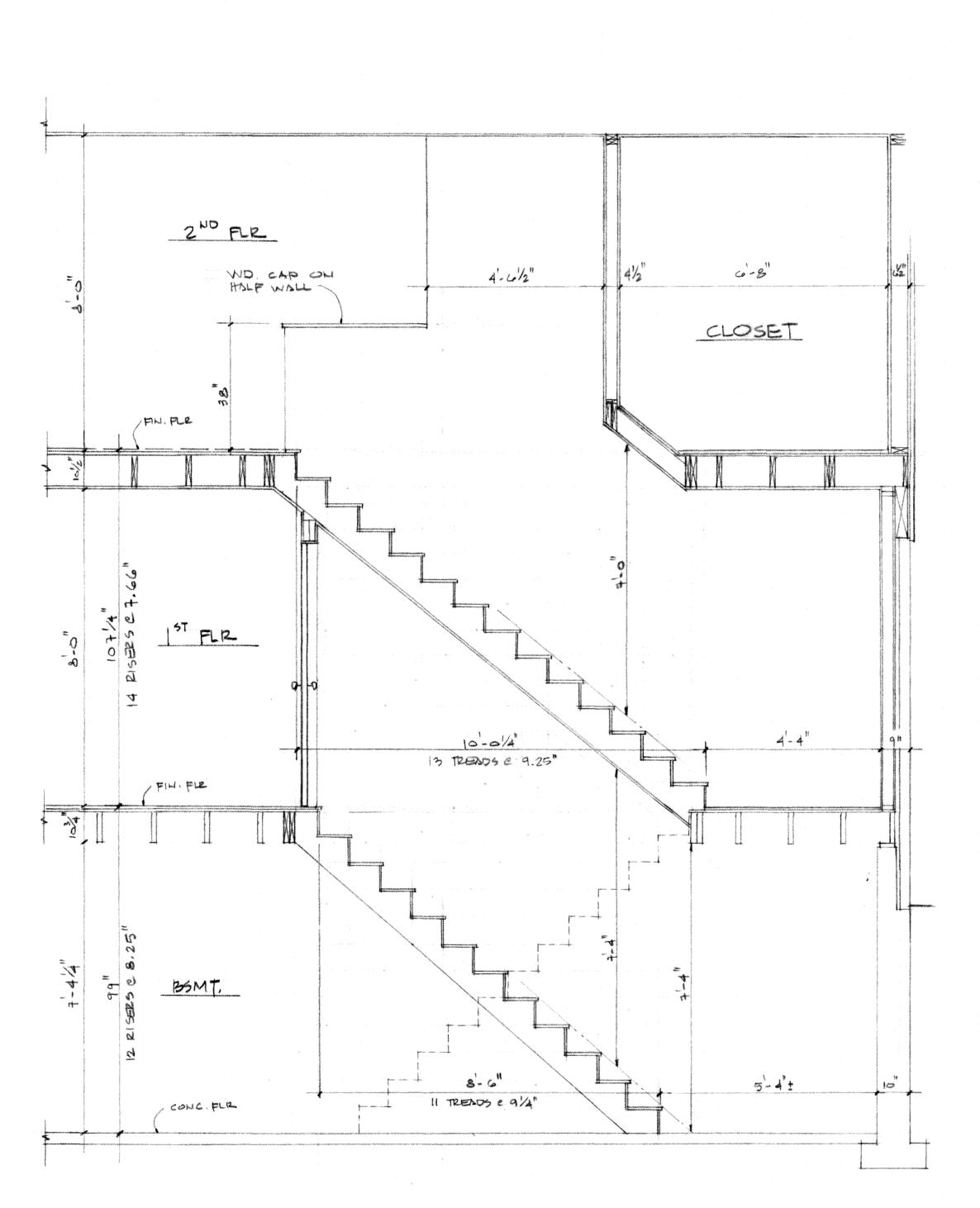
Drawn By: 10HH 10KUPi

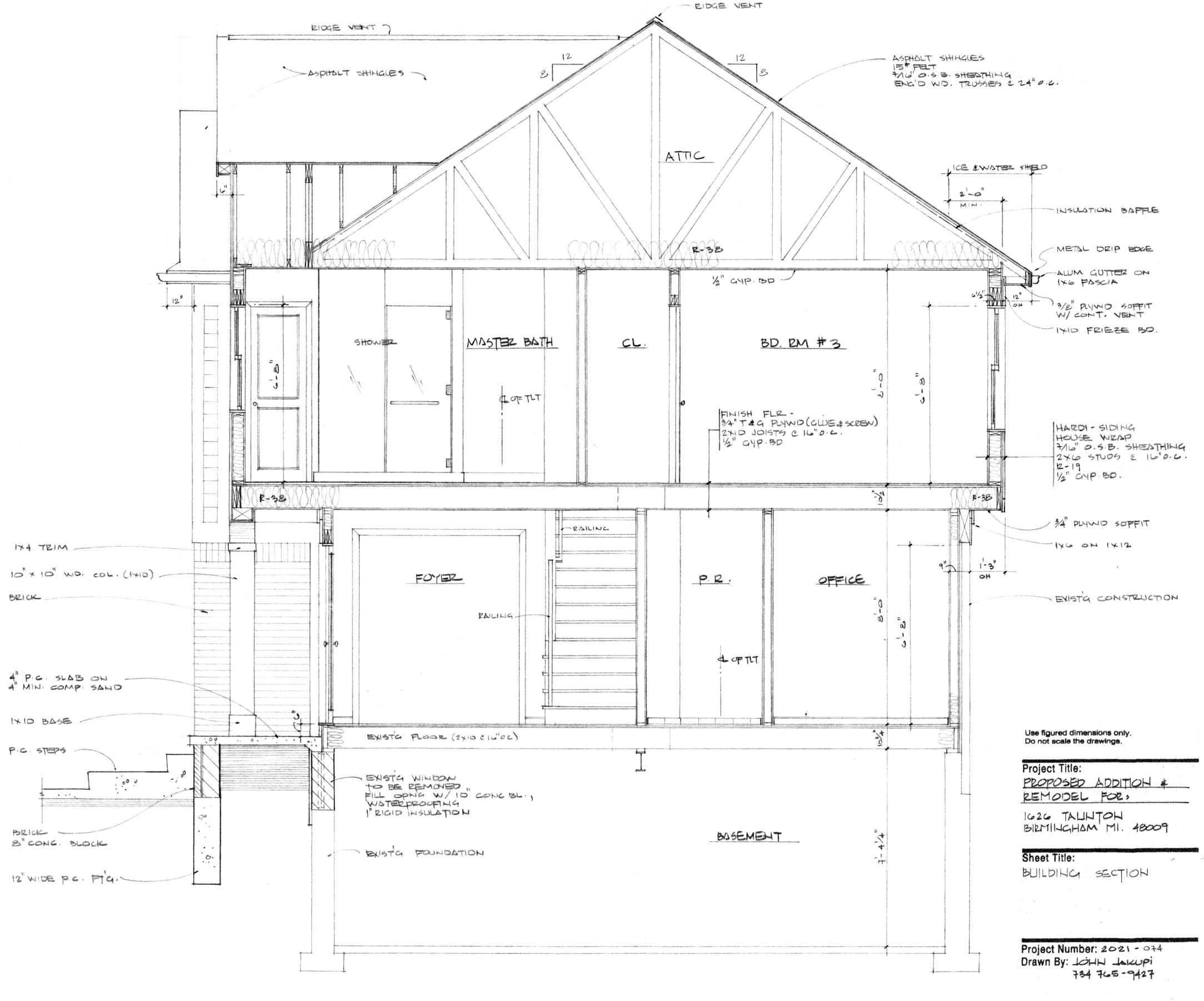
734 765-9427

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B SECTION THRU STAIRS

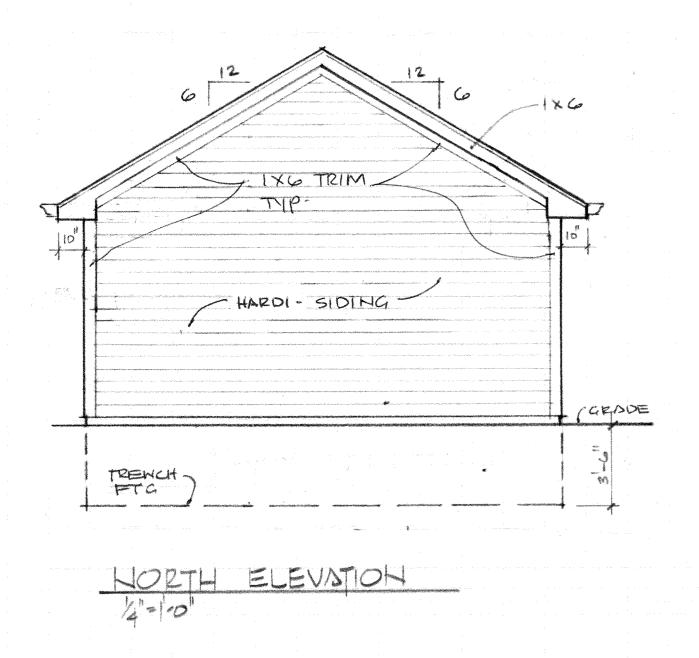
A BUILDING SECTION

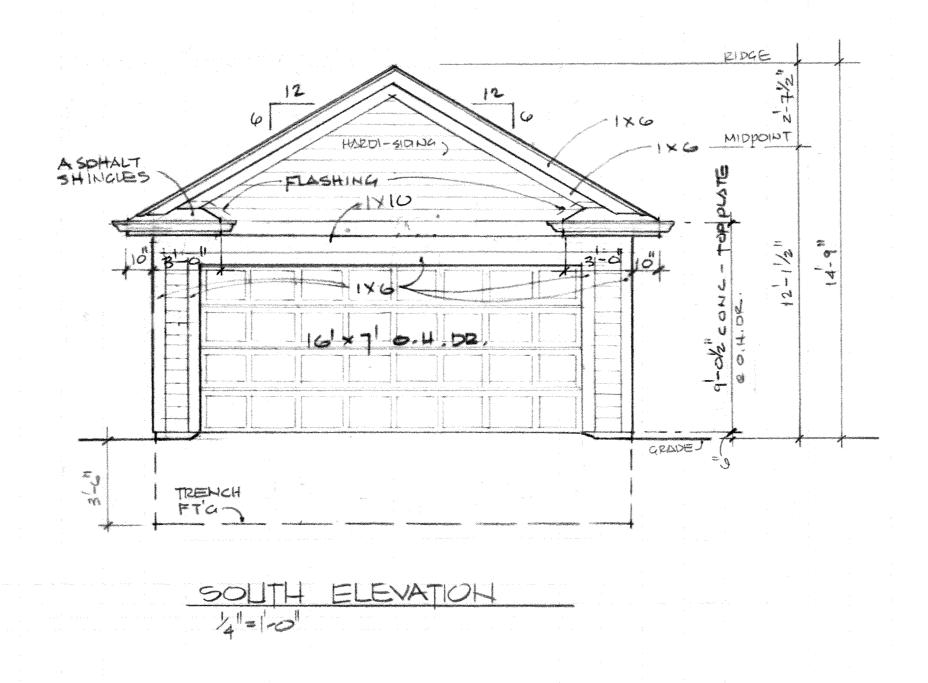
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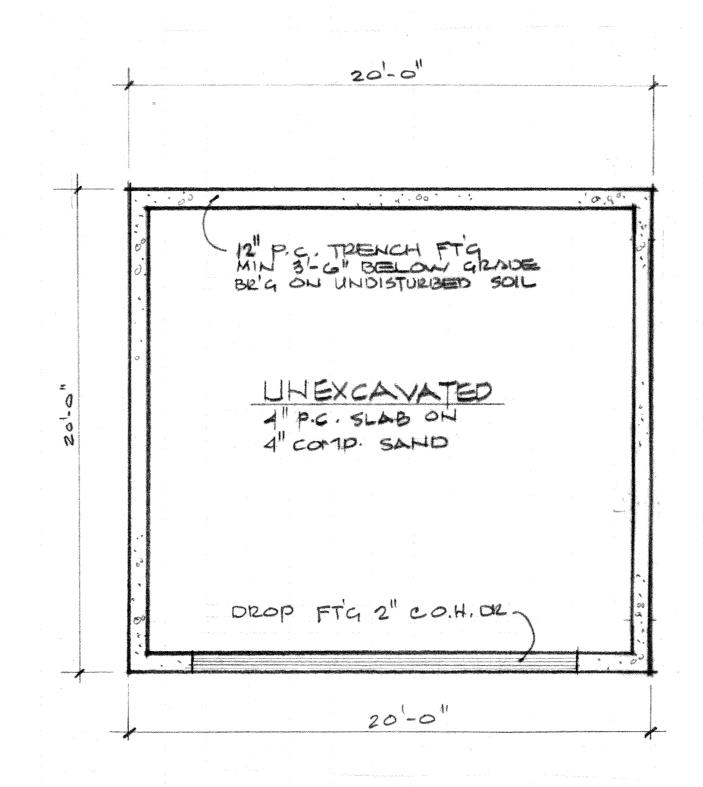
22 PEVIEW 122 FIHAL

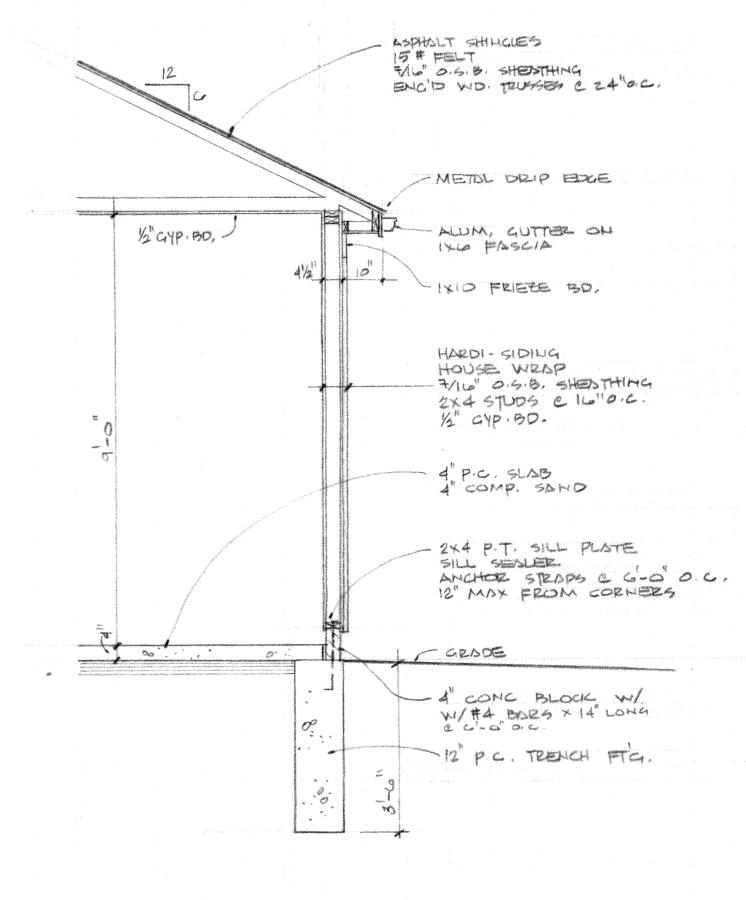
Sheet Number:

596

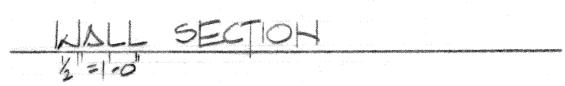


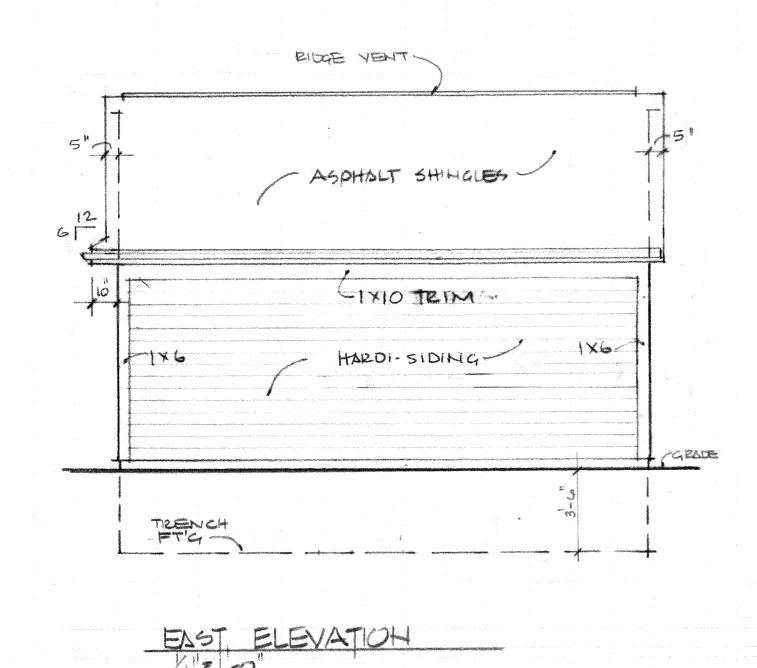


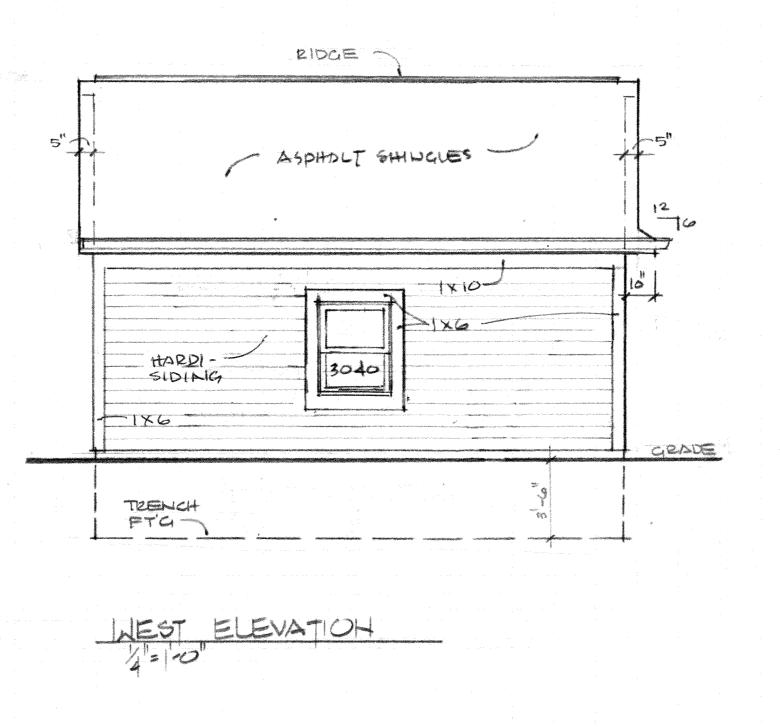


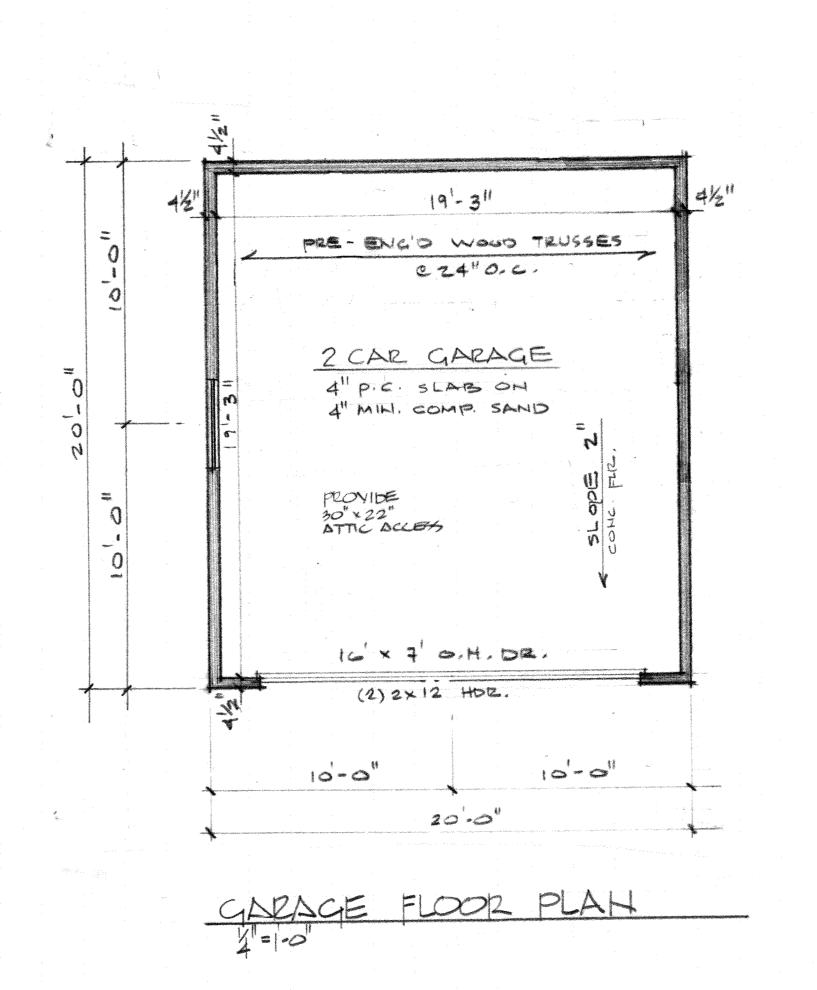


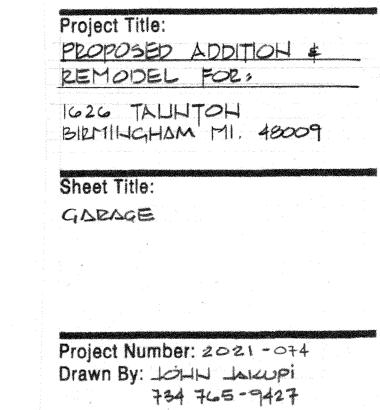
GARAGE FOUNDATION PLAN











Use figured dimensions only. Do not scale the drawings.

2.	8,	22	 PEVIEW	
3,	7.1	22	FINAL	

646

CASE DESCRIPTION

585 WELLESLEY (22-53)

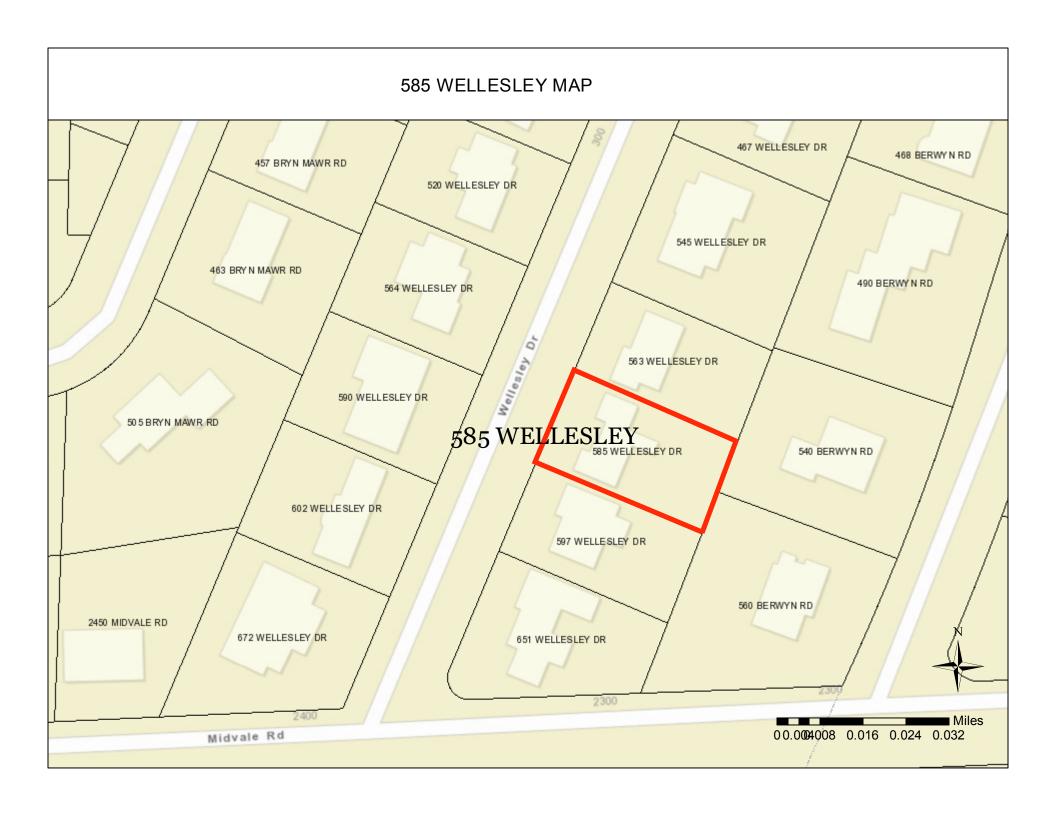
Hearing date: December 13, 2022

- **Appeal No. 22-53:** The owner of the property known **585 Wellesley**, requests the following variance to construct a second floor addition above the garage of an existing non-conforming home:
- A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that the minimum total side yard setback are 14.00 feet or 25% of the total lot width whichever is larger. The required is 17.50 feet. The existing and proposed is 14.66 feet. Therefore, a variance of 2.84 feet is being requested.
- B. Chapter 126, Article 4.74(C) of the Zoning Ordinance requires that the minimum distance between principal residential buildings on adjacent lots of 14.00 feet or 25% of the total lot width whichever is larger. The required is 17.50 feet. The proposed is 13.04 feet. Therefore, a variance of 4.46 feet is being requested.

Staff Notes: This applicant is looking to construct an addition over the existing attached garage. The existing house, constructed in 1952 is non-conforming regarding the total setback and the distance to neighbors.

This property is zoned R1 – Single family residential.

Jeff Zielke, NCIDQ, LEED AP
Assistant Building Official



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: 1822 APPLICATION FOR THE BOARD OF ZONING APPEALS Hearing Date: 2.13.22								
Received By:					22.53			
	erpretation [[Dimensional	Land Use	Sign	ppeal #: Admin Review			
I. PROPERTY INFORMATION:					The state of the s			
Address: 5851/F1/F6/F	YST.	Lot Number:		Sidwell Number:				
II. OWNER INFORMATION:	3		39, 103					
Name: KYIF & FMI	Name: KYIE & EMILY ROllins							
Address: 585 VIEUE	SIFY ST	City: BIRMIL	1/_HAM	State: MT	Zip code: $\sqrt{8}$			
Email: KYLE ROLL	NSCGM	DINAILE ALLACOA	1 1	Phone: 2 US	(No-92/0)			
III. PETITIONER INFORMATION:	500/1	HIC * CO,		710	aco i ico			
Name: BRYAN ROW	HALL	Firm/Company N	ame: MAil	STOGET DE	SILAL BULLD			
Address: 555 OID War	DILIARD	City: B. P. Mix	KHAM	State: MT	Zip code: (18009			
Email: BRYALLEMAI	NSTREET DE	SIGNIBULD	COM	Phone: 248	941)-1979			
IV. GENERAL INFORMATION:		NO TO TO	20,5					
on or before the 12 th day of the mo To insure complete applications are Official and/or City Planner for a pre how all requested variances must be survey and plans including a table as The BZA application fee is \$360.00 f be posted at the property at least 1	provided, appellants meliminary discussion of the highlighted on the sures shown in the example or single family resident	nust schedule a pre-agheir request and the vey, site plan and college, below. All dimension tial; \$560.00 for all o	oplication meeting documents that w nstruction plans. E is to be shown in f thers. This amount	with the Building Of ill be required to be ach variance request eet measured to the	fficial, Assistant Building submitted. Staff will explain t must be clearly shown on the second decimal point.			
Requested Variances	Required	Existing	umpic	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 CHECK								
 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		TO THE REAL PROPERTY.	The state of the					
Owner hereby authorizes the petitioner designated below to act on behalf of the owner. 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. *By providing your email to the City, you agree to receive news and notifications from the City. If you do not wish to receive these messages, you may insubscribe at any time. Date: 1132022								
Grasare of Legitiones	- Colon	MAINTIKE	ELVENCH	Lugre: _// _	JULL			



November 1st, 2022

Zoning Board of Appeals City of Birmingham

To whom it may concern:

With respect to the city codes, we are asking for a variance to add atop the existing 2-car garage that will require an additional 3'-11 1/2" from the lot line to the structure. An existing side setback of 6'-11 1/2", totaling 13'-8" both sides with an existing structure setback of 13'-0 ½" is being requested for the following residence:

Kyle & Emily Rollins 585 Wellesley St. Birmingham, MI. 48009

Mr. & Mrs. Rollins currently have a non-conforming attached garage on a lot that has a restricted side setback due to the neighboring residence and previous codes being closer to the property line than city planning proposes now. The existing neighbor is setback +/-13'-1" on the left side instead of the 17ft allowed by code for the area. The only option to add onto the left side of the residence with a reasonable attractive façade, would be this variance.

As you will see in the attached prints, the proposed 2nd story addition is completely within the existing garage footprint. Attention has been made to the 2-story addition proposed behind the existing garage so that the total side yard setback is greater than the required distance by city code. The variance would be for the 3'-11 1/2" closer to the neighboring structure & property line. This 2-story addition will allow the Rollins family the opportunity to care for family members staying with them and have a feel for their own space and privacy.

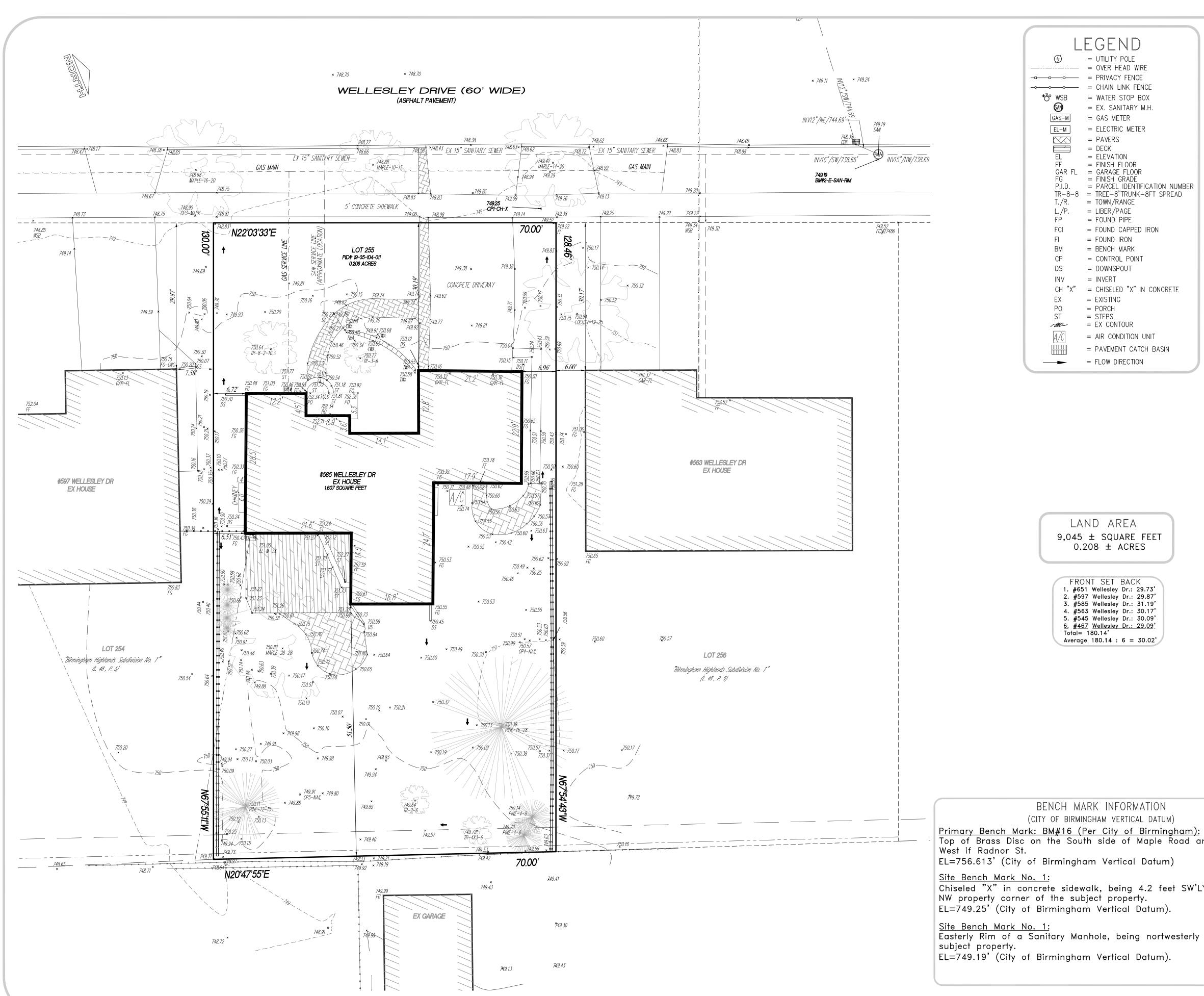
Additionally, by having this 2nd story addition over the garage, The focus of the house would than be the front entry and not the non-conforming garage. They want their addition to be more than just space, it is a living space for family members in need. It will become a healthy environment for everyone involved in the home.

Thank you for your consideration.

Steven A Ramaekers, CR President

Enclosures: property photos

TOPOGRAPHIC SURVEY



LEGEND = UTILITY POLE → - CHAIN LINK FENC = WATER STOP BOX = EX. SANITARY M.H. = GAS METER = ELECTRIC METER = PAVERS = DECK = ELEVATION = FINISH FLOOR = GARAGE FLOOR = FINISH GRADE = TREE-8"TRUNK-8FT SPREAD = TOWN/RANGE = LIBER/PAGE = FOUND PIPE = FOUND CAPPED IRON = FOUND IRON = BENCH MARK = CONTROL POINT = DOWNSPOUT = INVERT = CHISELED "X" IN CONCRETE = EXISTING = PORCH = STEPS = EX CONTOUR = AIR CONDITION UNIT = PAVEMENT CATCH BASIN = FLOW DIRECTION

> LAND AREA 9,045 ± SQUARE FEET $0.208 \pm ACRES$

FRONT SET BACK
1. #651 Wellesley Dr.: 29.73 2. #597 Wellesley Dr.: 29.87' 3. #585 Wellesley Dr.: 31.19' 4. #563 Wellesley Dr.: 30.17' 5. #545 Wellesley Dr.: 30.09' 6. #467 Wellesley Dr.: 29.09' Total= 180.14' Average 180.14 : 6 = 30.02'

BENCH MARK INFORMATION

(CITY OF BIRMINGHAM VERTICAL DATUM)

Top of Brass Disc on the South side of Maple Road and 100 feet West if Radnor St.

EL=756.613' (City of Birmingham Vertical Datum)

Site Bench Mark No. 1:

Chiseled "X" in concrete sidewalk, being 4.2 feet SW'LY from the NW property corner of the subject property. EL=749.25' (City of Birmingham Vertical Datum).

Site Bench Mark No. 1:

Easterly Rim of a Sanitary Manhole, being nortwesterly from the subject property.

EL=749.19' (City of Birmingham Vertical Datum).

W Lincoln Avag W 14 Mile Rd

GENERAL NOTES

- -Utility information as shown herein are compilation of field observation and City's records, therefore no guarantee could be given as to their exact location and depth. An excavation might be needed in order to determine utility position.
- -All measurements as shown herein are existing.
- -All symbols as shown herein are not to scale.
- -Client/contractor shell obtain all pertinent permits when connecting to public utilities and comply to City's requirements.
- -All measured elevations are expressed in North American Vertical Datum as of 1988. (NAVD88)
- -AB-SB Land Survey, P.C retains the sole ownership of this document as an instrument of service and it can not be reused nor reproduced without written permission and additional compensation.
- Copyright © 2022 AB-SB Land Survey, P.C.

restrictions of record or otherwise.

LEGAL DESCRIPTION

#585 Wellesley Drive, Birmingham, MI, 48009 Part of the NW 1/4 of Section 35, Town 2 North, Range 10 East, City of Birmingham, Macomb County, Michigan, being more particularly described as follows:

Lot 255 of "Birmingham Highland Subdivision No. 1", as being recorded in Liber 48 of Plats, on Page 5, Oakland County

Containing: 9,045 Square Feet——0.208 Acres, more or less. Parcel Identification Number:# 19-35-104-011. Subject to the rights of a public and any easements and/or

Note: Since our survey DOES NOT include a Title Search there could be easements and/or encumbrances upon the subject property that are not shown at this time.



Mende Bezanovski, P.S.#4001049430 State of Michigan



www.ab-sb-landsurvey.com

	0' 5' 10' 20'
SCALE: 1" = 10'	PAGE: 1 OF 1
JOB NUMBER: 2022-10-15-28	1-MSDB DRAWN: MB
FIELD: MB	CHECKED: MB
REVISIONS:	DATE: 10-31-2022
CLIENT: Mr. Kyle Ro	llins
ADDRESS: 585 Wellesley Drive	TEL:

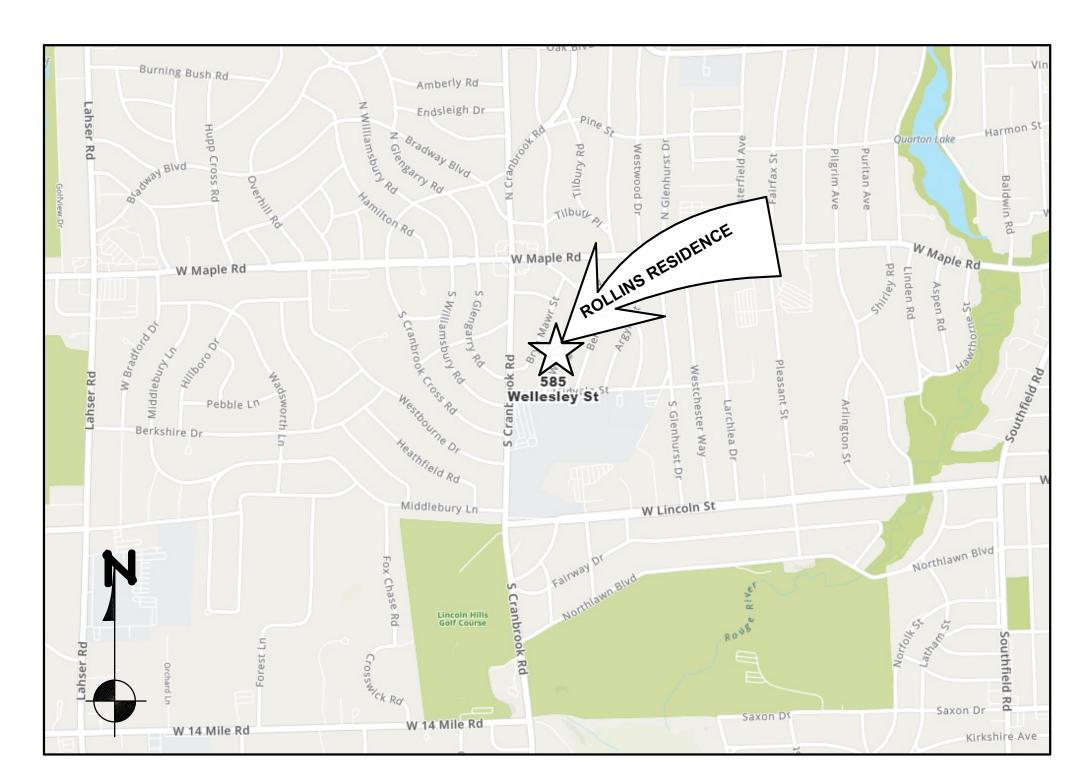
Birmingham, MI, 48009

FAX:

Rollins Residence

585 Wellesley St, Birmingham, MI. 48009





YICINITY MAP **CITY OF BIRMINGHAM**

ZONE: R-1

GENERAL NOTES 1. WHEN INTERPRETING THE DRAWINGS, PREFERENCE SHALL BE GIVEN IN ALL CASES TO DIMENSIONS OVER MEASUREMENTS BY SCALE, AND TO DETAIL DRAWINGS OVER THOSE DRAWINGS OF A SMALLER SCALE.

- 2. DETAIL DRAWINGS AND SCHEDULES DESCRIBE CONSTRUCTION AT GIVEN AREAS. THE GENERAL CONTRACTOR AND ALL SUBCONTRACTORS SHALL UTILIZE EQUIVALENT CONSTRUCTION METHODS IN ALL AREAS NOT DETAILED.
- 3. ALL NOTES ON THE DRAWINGS SHALL BE ASSUMED AS TYPICAL UNLESS OTHERWISE SHOWN OR NOTED ON THE DRAWING OR SPECIFICATIONS.
- 4. ALL FINISHED DIMENSIONS, UNLESS NOTED OTHERWISE, ARE TO FACE OF STUD, SHEATHING, FACE OF MASONRY, FACE OF CONCRETE, OR CENTERLINE OF STRUCTURE, BEAMS, OR WINDOWS.

SCOPE OF WORK

NEW REAR 2-STORY ADDITION BEHIND EXISTING ATTACHED GARAGE NEW 2ND FLOOR ADDITION ATOP EXISTING GARAGE

A-2	EXISTING DEMO & NEW BSMT LAYOUT W/ SITE PLAN
A-3	EXISTING DEMO & NEW 1ST FLR. LAYOUT
A-4	EXISTING DEMO & NEW 2ND FLR. LAYOUT
4-5 A	FRONT & LEFT SIDE EXTERIOR ELEVATIONS
A-6	REAR & RIGHT SIDE EXTERIOR ELEVATIONS
A-7	BASEMENT & 1ST FLR. ELECT./MECH/PLUMB'G LAYOUT

SYMBOL LEGEND **ABBREVIATIONS**

SHT'G. SHEATHING

Ш						
	VALUE LABOR dans Commela al	○ Downspout & Run	A.F.F.	ABOVE FINISHED FLOOR	F.O.B.	FACE OF BRICK
	W# Window Symbol	Off	BM.	BEAM	F.O.M.	FACE OF MASONRY
	D# Door Symbol	Direction	BLD'G	BUILDING	F.O.S.	FACE OF SHEATHING
	(D#) Door Symbol	_	BR'G	BEARING	HT.	HEIGHT
	$\langle \# angle$ Cabinet Tag	A# Appliance I.D.	CAB.	CABINET	INSUL.	INSULATION
	T Sabilict rag	The Appliance 1.D.	CL'G	CEILING	LYL / ML.	LAMINATED VENEER LUMBER
	Construction	(P#) Plumbing I.D.	CONC.	CONCRETE	MAX.	MAXIMUM
	# Keynote	Triumbing I.D.	C.M.U.	CONCRETE MASONRY UNIT	MIN.	MINIMUM
	<u> </u>		DIM.	DIMENSION	0.0.	ON CENTER
	Detail/ Page No.		DN	DOWN	REQ'D	REQUIRED
			ELECT.	ELECTRICAL	R.O.	ROUGH OPENING
	Revision Area		ELEY.	ELEVATION	SQFT.	SQUARE FOOT
			EX./EXT'G	EXISTING	T.M.E.	TO MATCH EXISTING
	Grade Datum Point		FIN.	FINISHED	TYP.	TYPICAL

FLR. JST. FLOOR JOIST

ZONING AND BUILDING CODE INFORMATION

SQUA	ARE FOOTAGE:	TOTAL LOT COVERAGE:	60%	30.6%	34.73%				
		BLD'G LOT COVERAGE:	30%	17.75%	21.8%				
ENERGY CODE:	2015 Mich. Uniform Code	STRUCTURE HEIGHT: 30'-0"	2-STORY	NA	NA				
FUEL CODE:	2015 Mich. Res. Code	TOT. SIDEYARD SETBACK:	17'-0"	NA	NA				
ELECTRICAL CODE:	2015 Mich. Res. Code	MIN. SIDEYARD SETBACK:	5'-0"	NA	NA				
PLUMBING CODE:	2015 Mich. Res. Code	REAR YARD SETBACK:	30'-0"	NA	NA				
MECHANICAL CODE:	2015 Mich. Res. Code	FRONT YARD SETBACK:	AVG.	NA	NA				
BUILDING CODE:	2015 Mich. Res. Code	LOT AREA:		10,190 SQFT					
ZONE:	R-1		REQ'D:	EXISTING:	PROPOSED:				

SQUARE	FOOTAG	万	1017/12/2010012/14/102.	00 70	30.070	
SASTINE	1001710		CERTIFICA	TION ST	TATEME	NT
SQUARE FOOTAGE	EXISTING	PROPOSED	I HEREBY CERTIFY THAT THESE DRAW		-	

FIRST FLOOR: 1162 SF SECOND FLOOR: 918 SF ATTACHED GARAGE: 453

BUILDERS LICENSE: 2102104372, EXP. 05/31/2023

SHEET LEGEND

SHT:	DESCRIPTION: PAGE TITLES
A-1	COVER SHEET & SITE INFORMATION
A-2	EXISTING DEMO & NEW BSMT LAYOUT W/ SITE PLAN
A-3	EXISTING DEMO & NEW 1ST FLR. LAYOUT
A-4	EXISTING DEMO & NEW 2ND FLR. LAYOUT
A-5	FRONT & LEFT SIDE EXTERIOR ELEVATIONS
A-6	REAR & RIGHT SIDE EXTERIOR ELEVATIONS
A-7	BASEMENT & 1ST FLR. ELECT./MECH/PLUMB'G LAYOUT
A-8	2ND FLR. ELECT/MECH/PLUMB'G & BUILDING SECTIONS
A-9	WALL SECTIONS & DETAILS
A 10	NEW INTERIOR ELEVATIONS

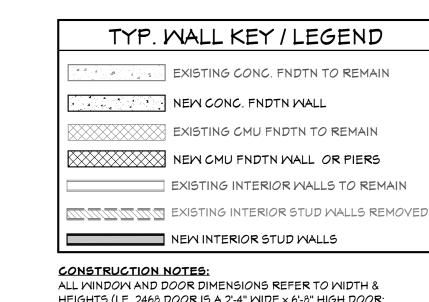
A-10 NEW INTERIOR ELEVATIONS
A-11 NEW INTERIOR ELEVATIONS

VARIANCE PHASE 11/1/2022

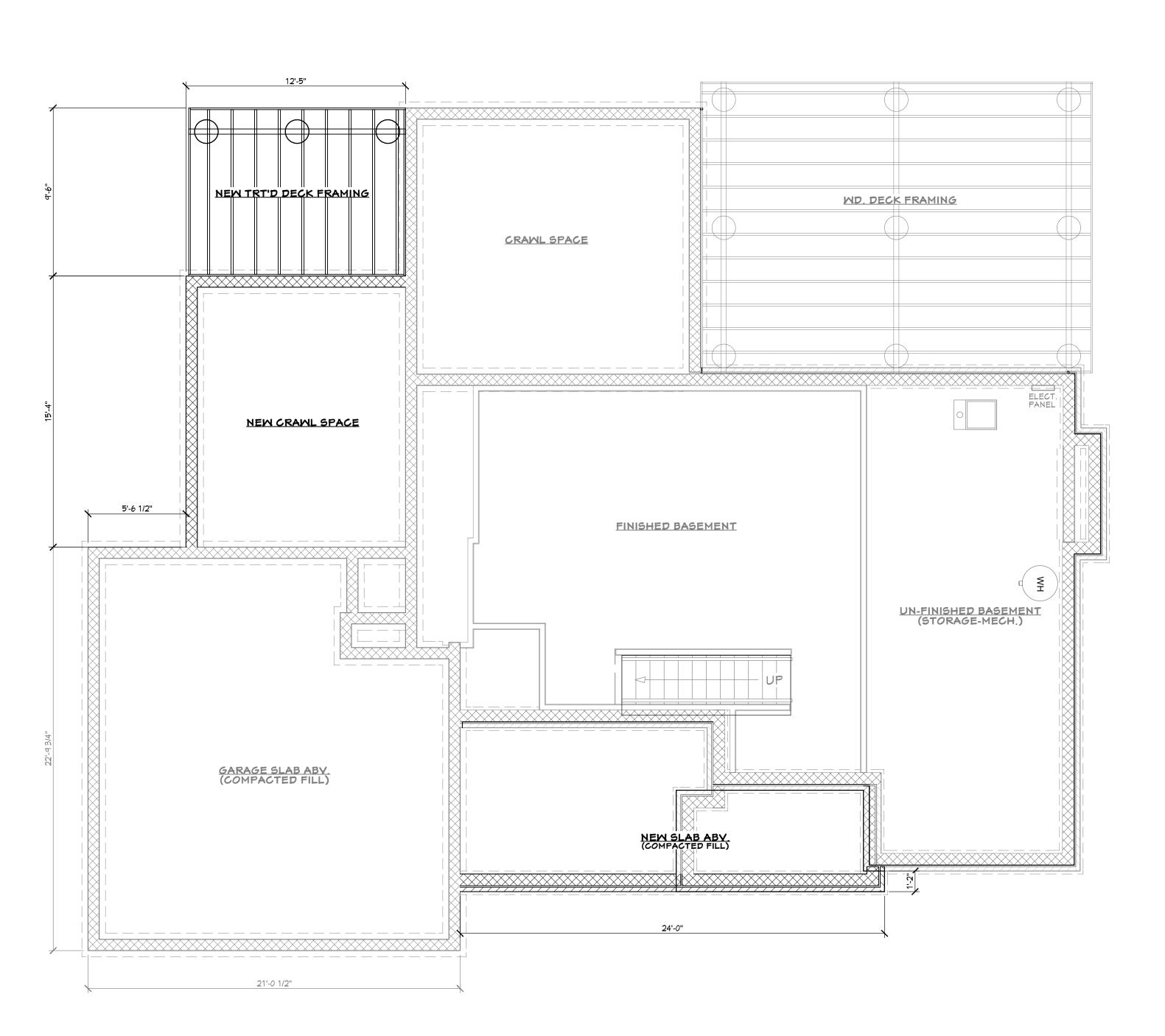


JOB NO.

4926 DP1 PRESENTATION



ALL WINDOW AND DOOR DIMENSIONS REFER TO WIDTH & HEIGHTS (I.E. 2468 DOOR IS A 2'-4" WIDE × 6'-8" HIGH DOOR; 2859 WINDOW IS A 2'-8" WIDE × 5'-9" HIGH WINDOW. DOUBLE HUNG WINDOW SIZES REFER TO SASH SIZE. CASEMENT AND AWNING WINDOW SIZES REFER TO FRAME SIZE. (COORDINATE ROUGH OPEN SIZE WITH WINDOW MANUFACTURER USED)



AVERAGE STREET FRONT SETBACK						
ADDRESS	SETBACK					
467	28.95'					
545	30.03'					
563	30.36'					
585	30.19'					
597	29.53'					
651	29.44'					
TOTAL AVG.	29.66'					

PROPOSED ADDRESS NOT IN CALCULATIONS

NEW BASEMENT/FNDTN FLOOR PLAN SCALE: 1/4" = 1'-0"

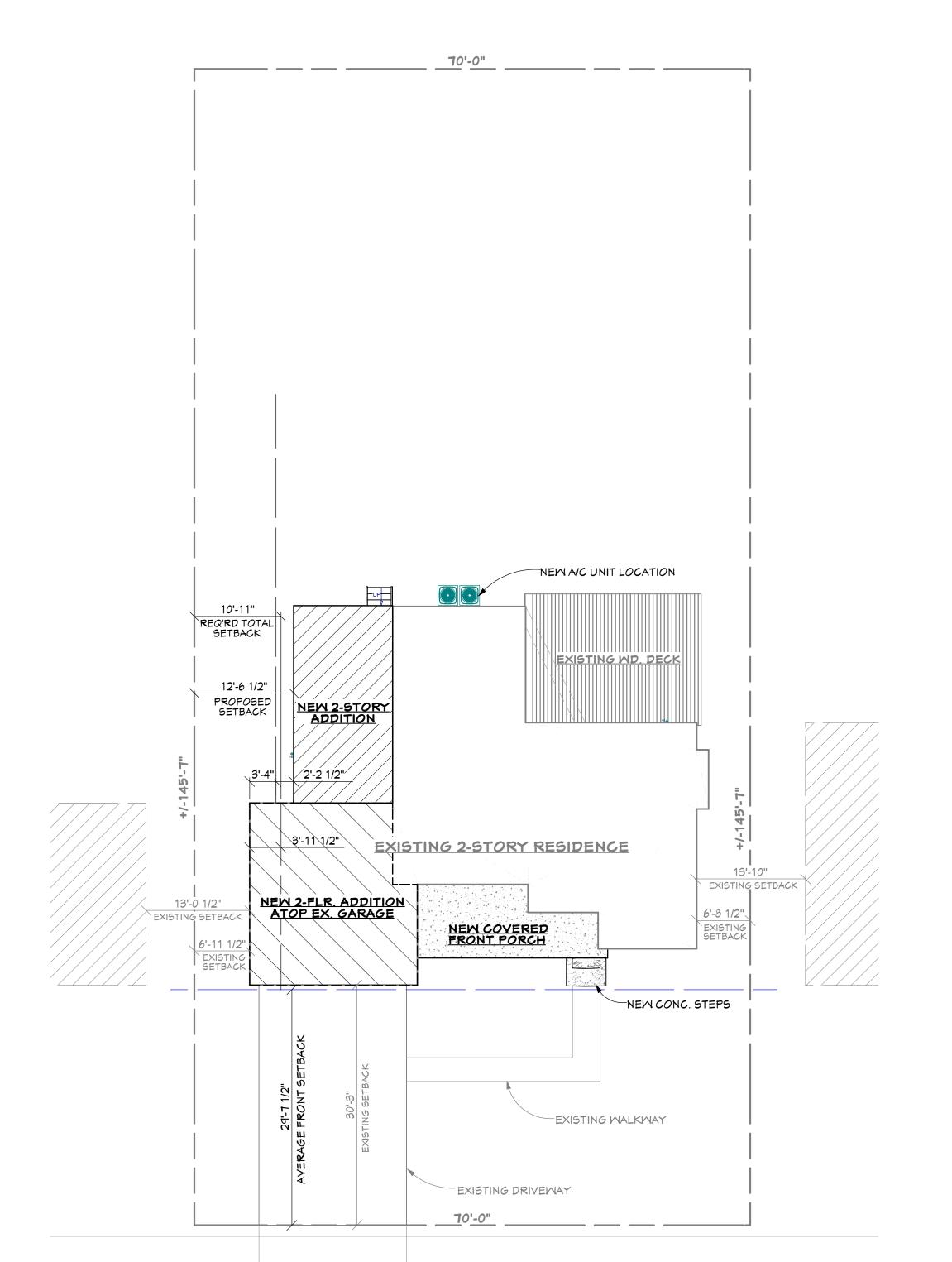
VARIANCE PHASE 11/1/2022

A-2

JOB NO.

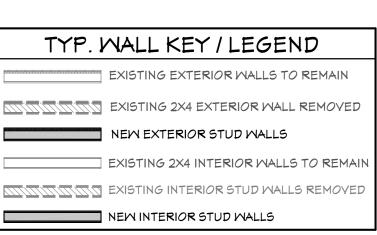
4926

DP1 PRESENTATION



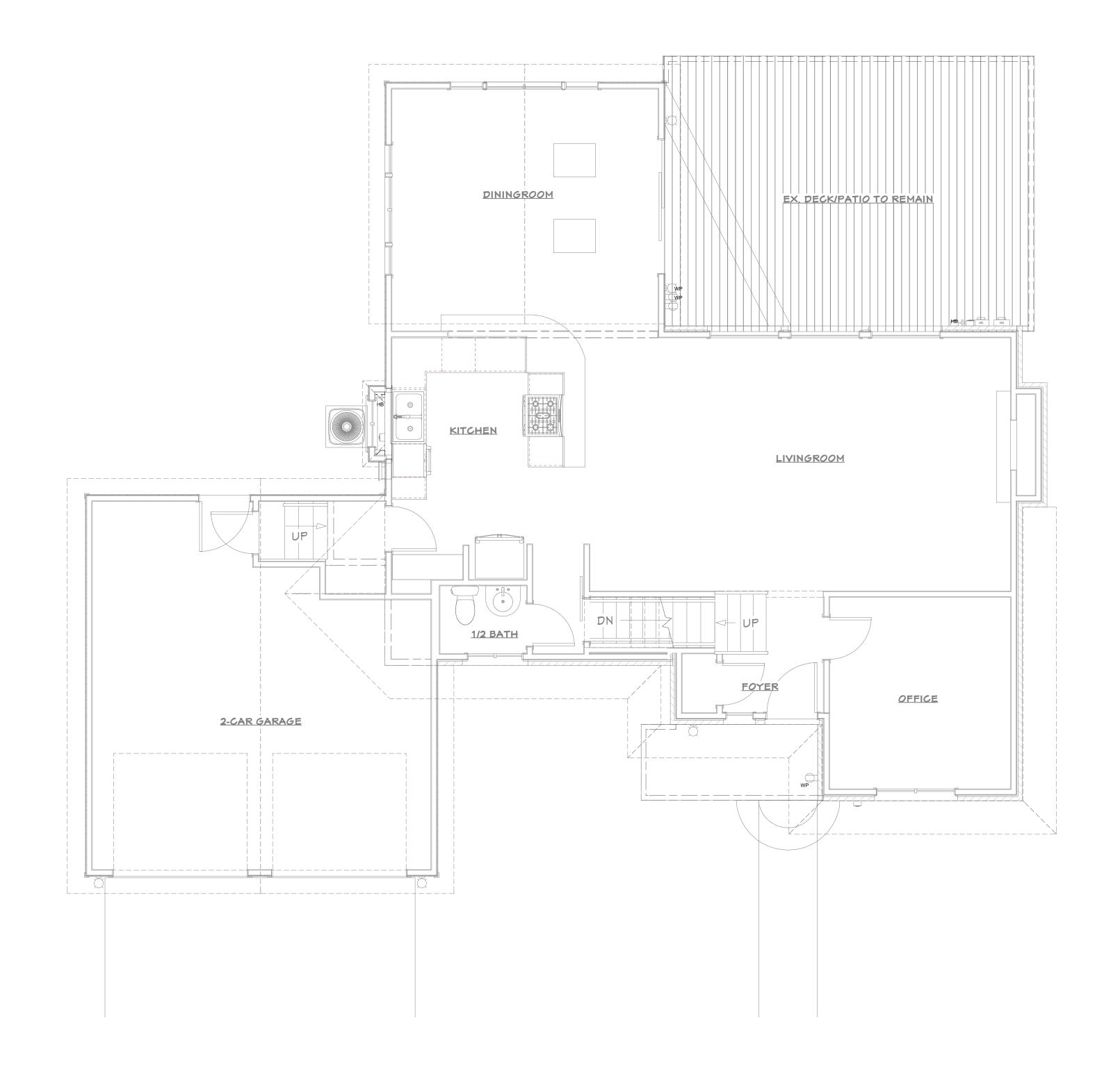
SITE PLAN LAYOUT SCALE: 1" = 10'-0"

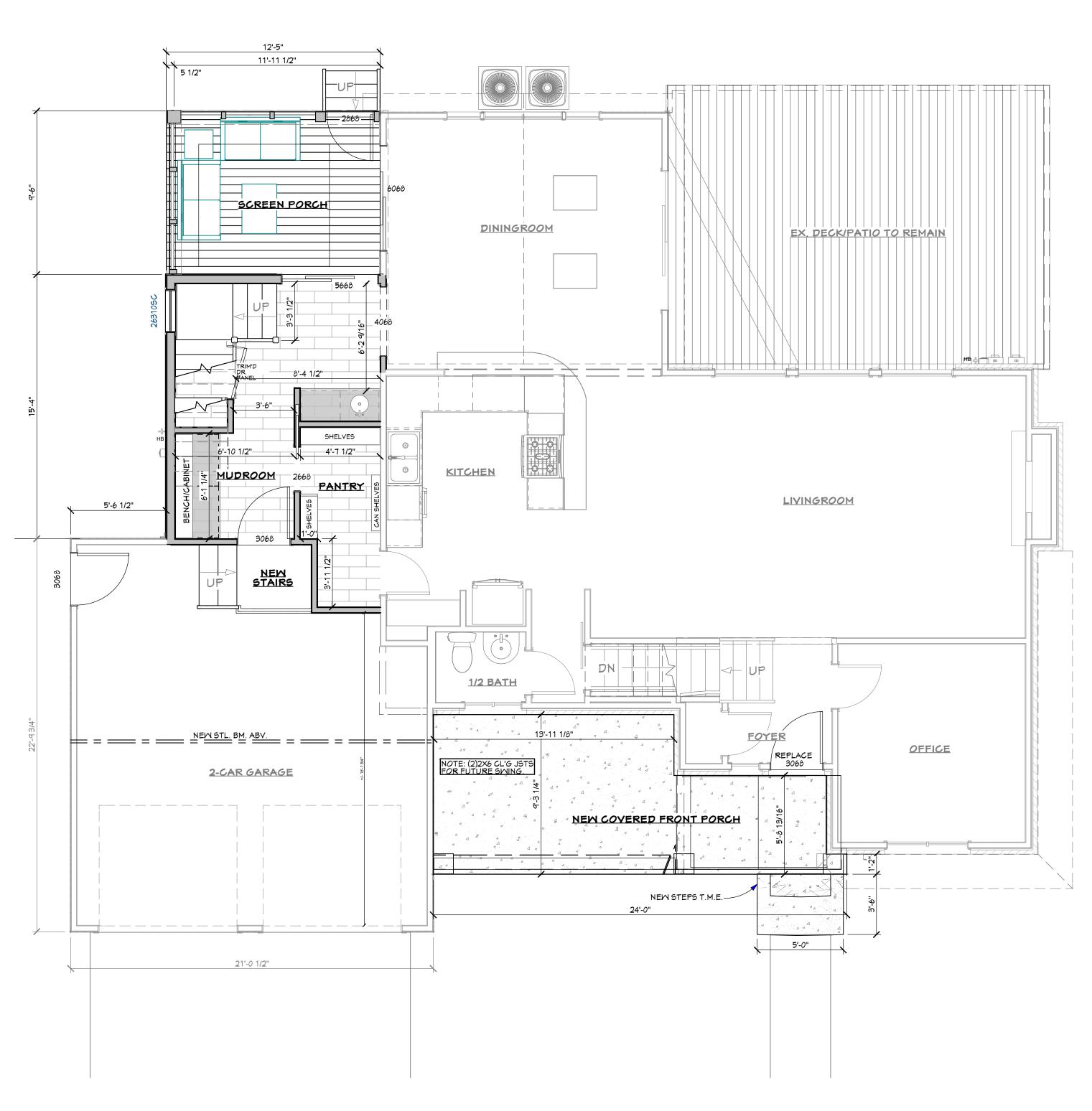
WELLESLEY DR.



CONSTRUCTION NOTES:
ALL WINDOW AND DOOR DIMEN

ALL WINDOW AND DOOR DIMENSIONS REFER TO WIDTH & HEIGHTS (I.E. 2468 DOOR IS A 2'-4" WIDE × 6'-8" HIGH DOOR; 2859 WINDOW IS A 2'-8" WIDE × 5'-9" HIGH WINDOW. DOUBLE HUNG WINDOW SIZES REFER TO SASH SIZE. CASEMENT AND AWNING WINDOW SIZES REFER TO FRAME SIZE. (COORDINATE ROUGH OPEN SIZE WITH WINDOW MANUFACTURER USED)





EXISTING 1ST FLOOR DEMO PLAN SCALE: 1/4" = 1'-0"

NEW 1ST FLOOR PLAN SCALE: 1/4" = 1'-0"

VARIANCE PHASE 11/1/2022



ROLLINS RESIDENCI 585 WELLESLEY ST, BIRMINGHAM, MI. 48009

> RESIDENTIAL 2-STORY ADDITIC

JOB NO.
4926

te: Issued For:

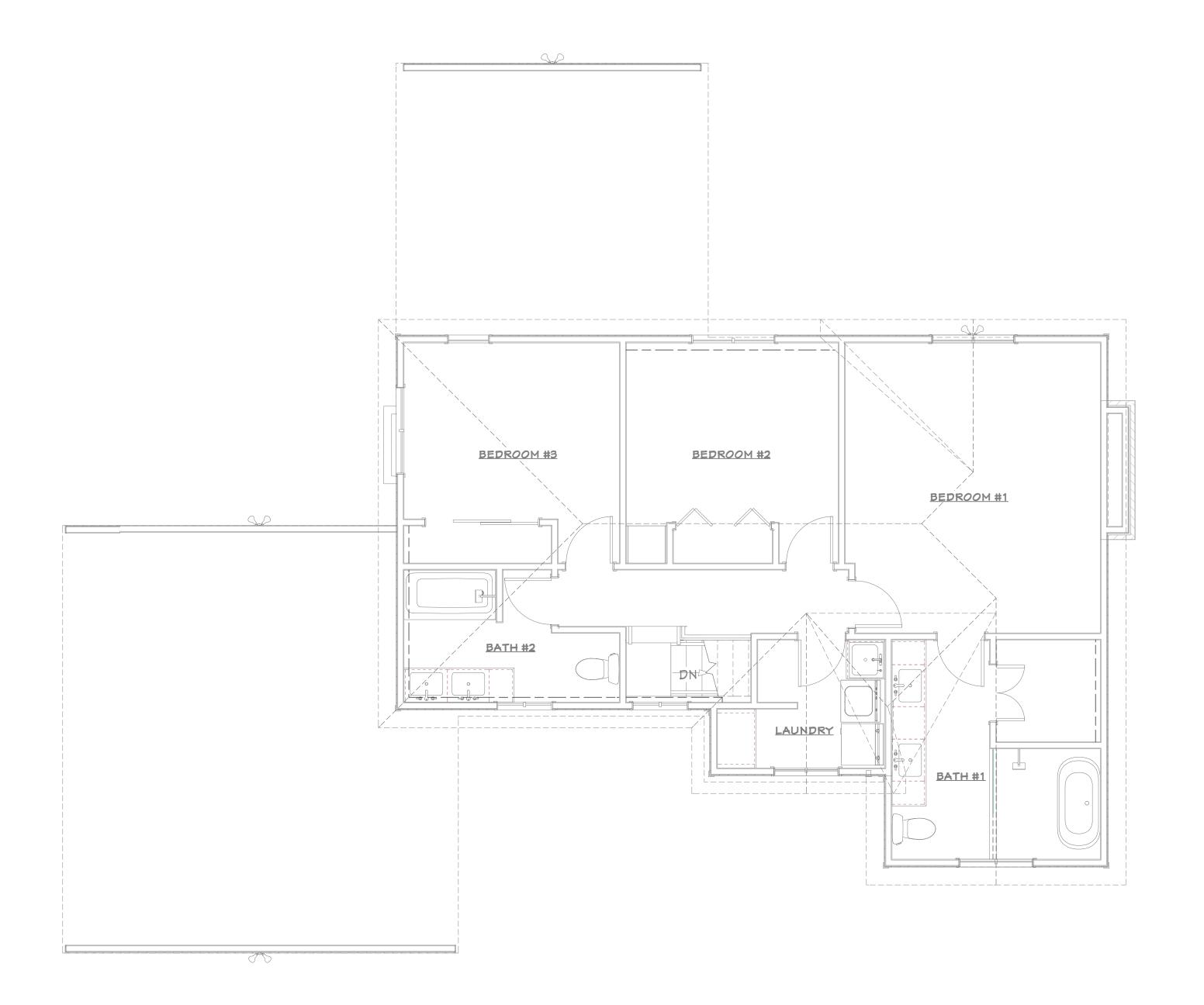
DP1 PRESENTATION

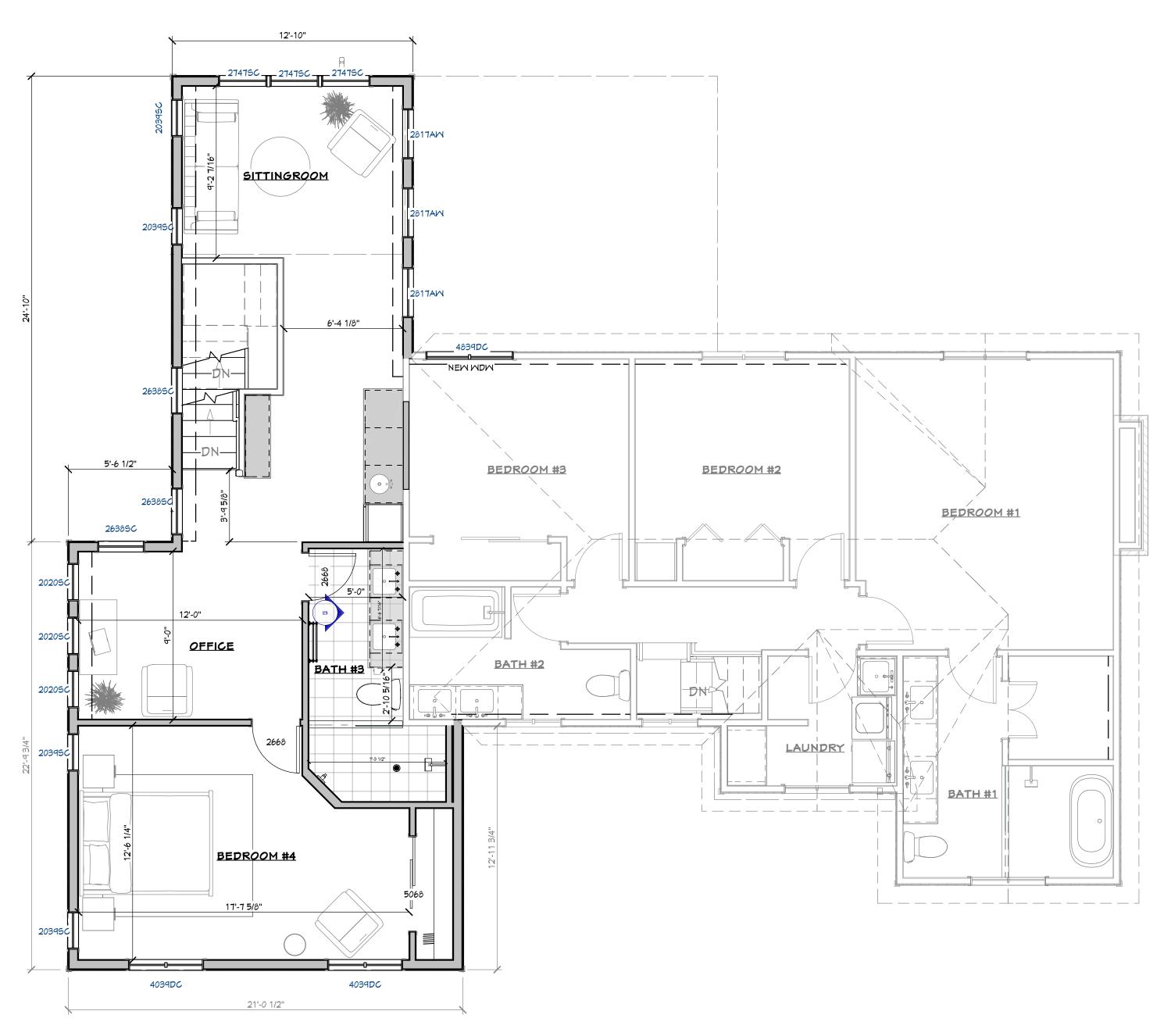
M/DD/19 DP1 PRESENTAT

SHEET NO.

CONSTRUCTION NOTES:

ALL WINDOW AND DOOR DIMENSIONS REFER TO WIDTH & HEIGHTS (I.E. 2468 DOOR IS A 2'-4" WIDE × 6'-8" HIGH DOOR; 2859 WINDOW IS A 2'-8" WIDE × 5'-9" HIGH WINDOW. DOUBLE HUNG WINDOW SIZES REFER TO SASH SIZE. CASEMENT AND AWNING WINDOW SIZES REFER TO FRAME SIZE. (COORDINATE ROUGH OPEN SIZE WITH WINDOW MANUFACTURER USED)





EXISTING 2ND FLOOR DEMO PLAN SCALE: 1/4" = 1'-0"

NEW 2ND FLOOR PLAN SCALE: 1/4" = 1'-0" 4926 DP1 PRESENTATION

A-4





NEW LEFT SIDE ELEVATION SCALE: 1/4" = 1'-0"



EXISTING LEFT SIDE DEMO ELEVATION SCALE: 1/4" = 1'-0"

NEW FRONT ELEVATION SCALE: 1/4" = 1'-0"



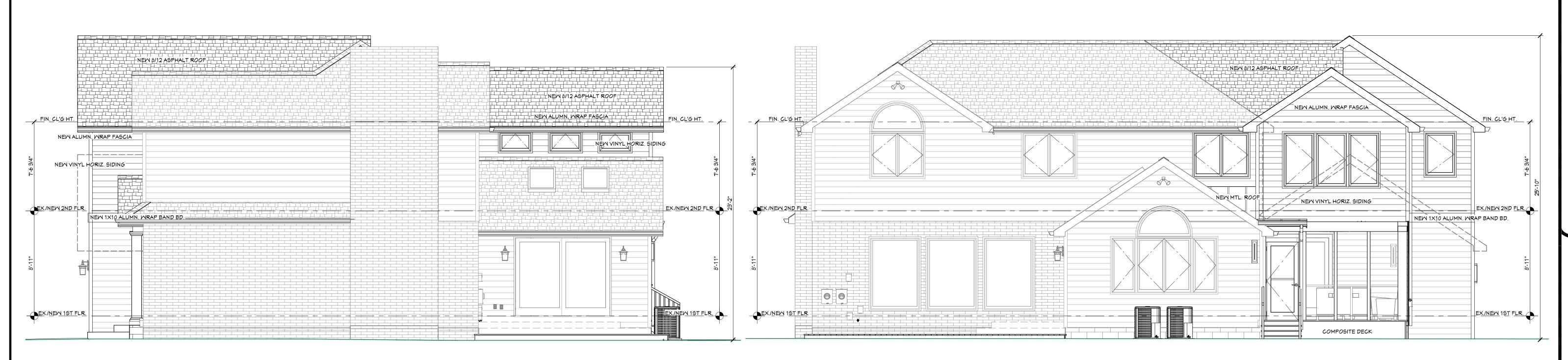
EXISTING FRONT DEMO ELEVATION SCALE: 1/4" = 1'-0"

VARIANCE PHASE 11/1/2022

Street

RESIDENTIAL 2-STORY ADDITION

4926



NEW RIGHT SIDE ELEVATION SCALE: 1/4" = 1'-0" NEW REAR ELEVATION SCALE: 1/4" = 1'-0"



EXISTING RIGHT SIDE DEMO ELEVATION SCALE: 1/4" = 1'-0"



EXISTING REAR DEMO ELEVATION SCALE: 1/4" = 1'-0" Main Street

DESIGN BUILD —

555 5. OLD WOODWARD AVE. BIRMINGHAM, MI 42009
PHONE: (248) 644-6330 FAX: (248) 644-2865

OLLINS RESIDENCE 585 WELLESLEY ST, SIRMINGHAM, MI. 48009

> RESIDENTIAL 2-STORY ADDITION

J*O*В N*O*. **4926**

Date: Issued For:

DP1 PRESENTATION

SHEET NO.

A-6



EXISTING SPACE BETWEEN NEIGHBORING STRUCTURE

CASE DESCRIPTION

924 LAKEPARK (22-54)

Hearing date: December 13, 2022

- **Appeal No. 22-54:** The owner of the property known **924 Lakeside**, requests the following variance to construct an uncovered porch in the required front open space:
- A. Chapter 126, Article 4.30(C)(1) of the Zoning Ordinance permits an unenclosed, covered or uncovered, concrete, masonry or wooden porch, deck and/or steps may project into a front open space for a maximum distance of 10.00 feet. The proposed is 13.66 feet. Therefore, a variance of 3.66 feet is being requested.

Staff Notes: This applicant is constructing a new home with an attached garage on a lot that slopes toward the street. The front porch constructed is further than the allowable amount projection of 10.00 feet.

This property is zoned R1 – Single family residential.

Jeff Zielke, NCIDQ, LEED AP
Assistant Building Official



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: 11/2/22

Hearing Date: 12.13.22

Received By: +\T Appeal #: 22: 1									
Type of Variance: Inte	rpretation 🔲 🖸	Dimensional X	Land Use	Sign	Admin Review				
I. PROPERTY INFORMATION:		C SALL O							
Address: 924 Lakeside Dr., Birmingha	Lot Number: 72		Sidwell Number:	Sidwell Number: 19-26-279-025					
II. OWNER INFORMATION:	15 25 275 525								
Name: Diego and Tammy Herr	nandez								
Address: 924 Lakeside Dr.	City: Birmingham		State: MI	Zip code: 48009					
Email:* birminghamtam@gmail.co	m dvascular@	-	DI		533-6654				
III. PETITIONER INFORMATION:									
Name: Patrick Zaremba	Name: Patrick Zaremba Firm/Company Name: Zaremba & Company								
Address: 5799 S. Main #695	City: Clarkston		State: MI	Zip code: 48347					
Email: patrick@zarembaandco.cor	m			Phone: 248-9					
IV. GENERAL INFORMATION:			William Town						
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 Ch							
Requested Variances	Required	Exis	ting	Proposed	Variance Amount				
Variance A, Front Setback	25.00 Feet	23.50		23.50 Feet	1.50 Feet				
Variance B, Height V. REQUIRED INFORMATION CHECK	30.00 Feet	30.25	Feet	30.25 Feet	0.25 Feet				
 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									
Owner hereby authorizes the petition By signing this application, I agree to accurate to the best of my knowledge *By providing your email to the City, younsubscribe at any time. Signature of Owner 1995 April	conform to all applica e. Changes to the plar ou agree to receive new	ble laws of the C as are not allowe	ity of Birmingham. A d without approval fr	om the Building Offi do not wish to receiv Date:	cial or City Planner. re these messages, you may				



November 10, 2022

RE: Hardship/Practical Difficulty Letter:

Dear Board of Zoning Appeals Members,

Luxe Homes Design Build is currently building the Hernandez Residence located at 924 Lakeside Drive, Birmingham, MI 48009.

The home's unique architecture and the grade elevation changes presented unique opportunities to stitch the architecture to the garden. The landscape design was developed by Zaremba & Company after the home was substantially under construction. The landscape design was then provided to the engineering team, Fenn & Associates, to update and amend the site plan. Luxe formally submitted the plan to the city to amend their existing building permit. Luxe was in the process of obtaining a revised building site plan permit when a new landscape element was identified as a structure due to the proximity of the front porch.

Chapter 126-Zoning, Article 9.02 defines a structure as: Anything constructed or erected which requires location on the ground or attachment to something having location on the ground, including swimming pools. The term "structure" shall not include walls, fences, ornamental landscape features, driveways, and sidewalks. The design team has always viewed this planter as an ornamental landscape element and not a part of the primary structure, or porch since it is a freestanding landscape wall that is planted and part of the landscape design.

When reviewing the built planter box on site, the building department interpreted this landscape element to be a structure because it was connected to the front walkway. There is a flight of steps between the house and the planter box that leads to the garage 5' below the front walkway. An alternative solution was then presented to the building department to disconnect the planter by creating a 6" planting buffer around the entire perimeter of the planter box. The building department officials did not agree that this disconnected the planter from the porch.

Therefore, we are respectfully requesting a 4'variance for the planter box. The variance is from section 4.30(C)(1) regarding the projections into the required front yard which allows 10 feet from the building envelope. The face of the planter box is 14' at the farthest point, thus resulting in a 4' variance request. The material of the ornamental planter box will have a stucco finish to match the house. Visually connecting the architecture to the garden is an important design element for the project. This design principle is common within the beautiful homes and gardens found throughout the Birmingham community. Our intent is to enhance and complement the home with this proposed garden design. We have included a rendering for the design for reference.

Thank you for your consideration,

Patrick Zaremba

aremba & Company

Office: 248 922 3300

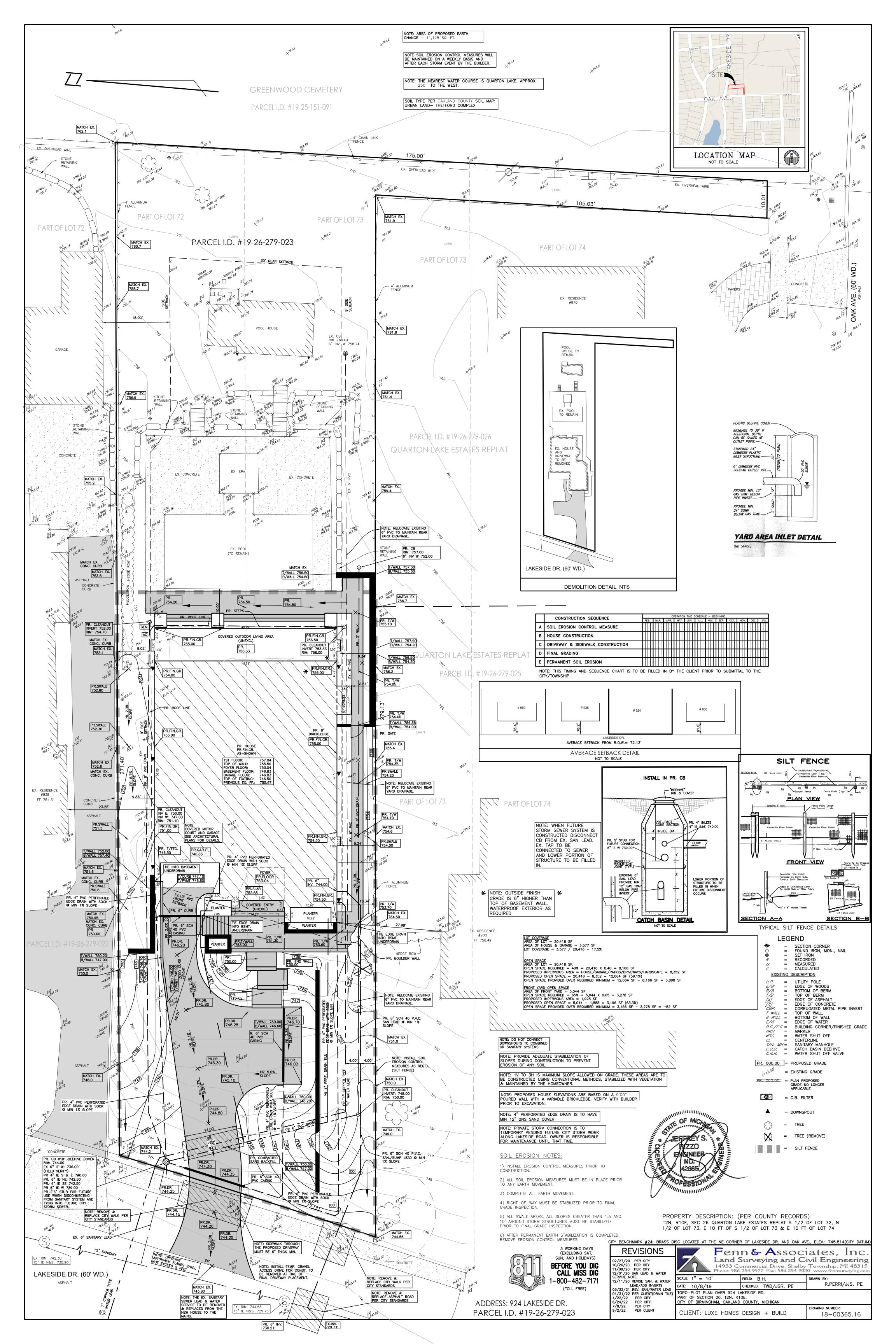
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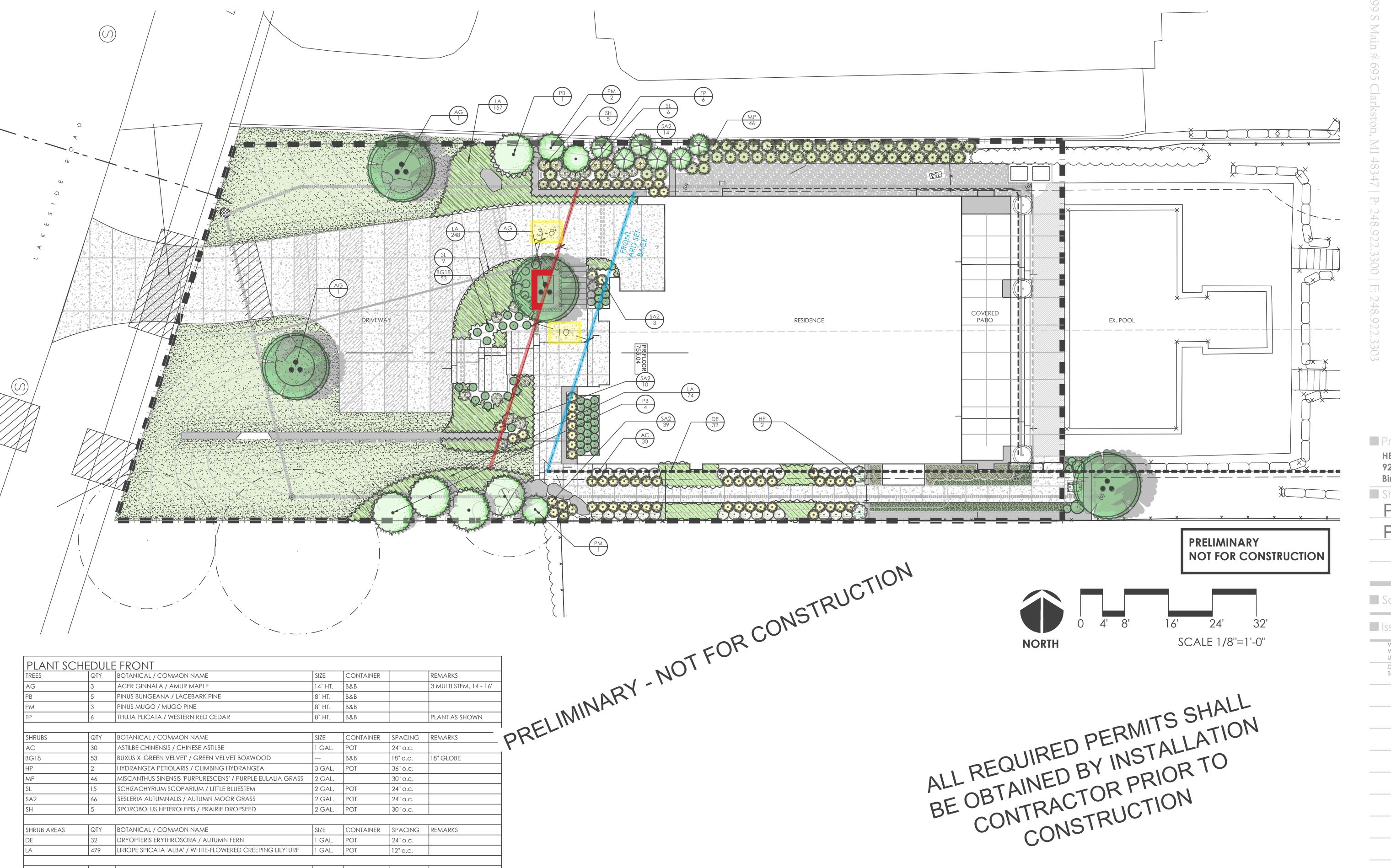
www.zarembaandco.com











GROUND COVERS QTY BOTANICAL / COMMON NAME

SESLERIA AUTUMNALIS / AUTUMN MOOR GRASS

2,381 TURF SOD / DROUGHT TOLERANT FESCUE BLEND

SIZE

1 GAL.

SOD

CONTAINER SPACING REMARKS

18" o.c.

12" o.c.

ZARIN 48347 I P: 248.922.3300 | F: 248.922.3303

Project Title:
HERNANDEZ RESIDENCE
924 Lakeside Drive

Birmingham, Mi 48009

Sheet little:

PLANTING PLAN

Scale: (AS SHOWN)

Issued For: Date:

WALL LAYOUT REV. 09.09.2022
WALL LAYOUT REV. 09.15.2022
UPDATED DRAWING SET 10.07.2022
DRAWING SET-REV WALK 11.01.2022
BZA SUBMITTAL 11.11.2022

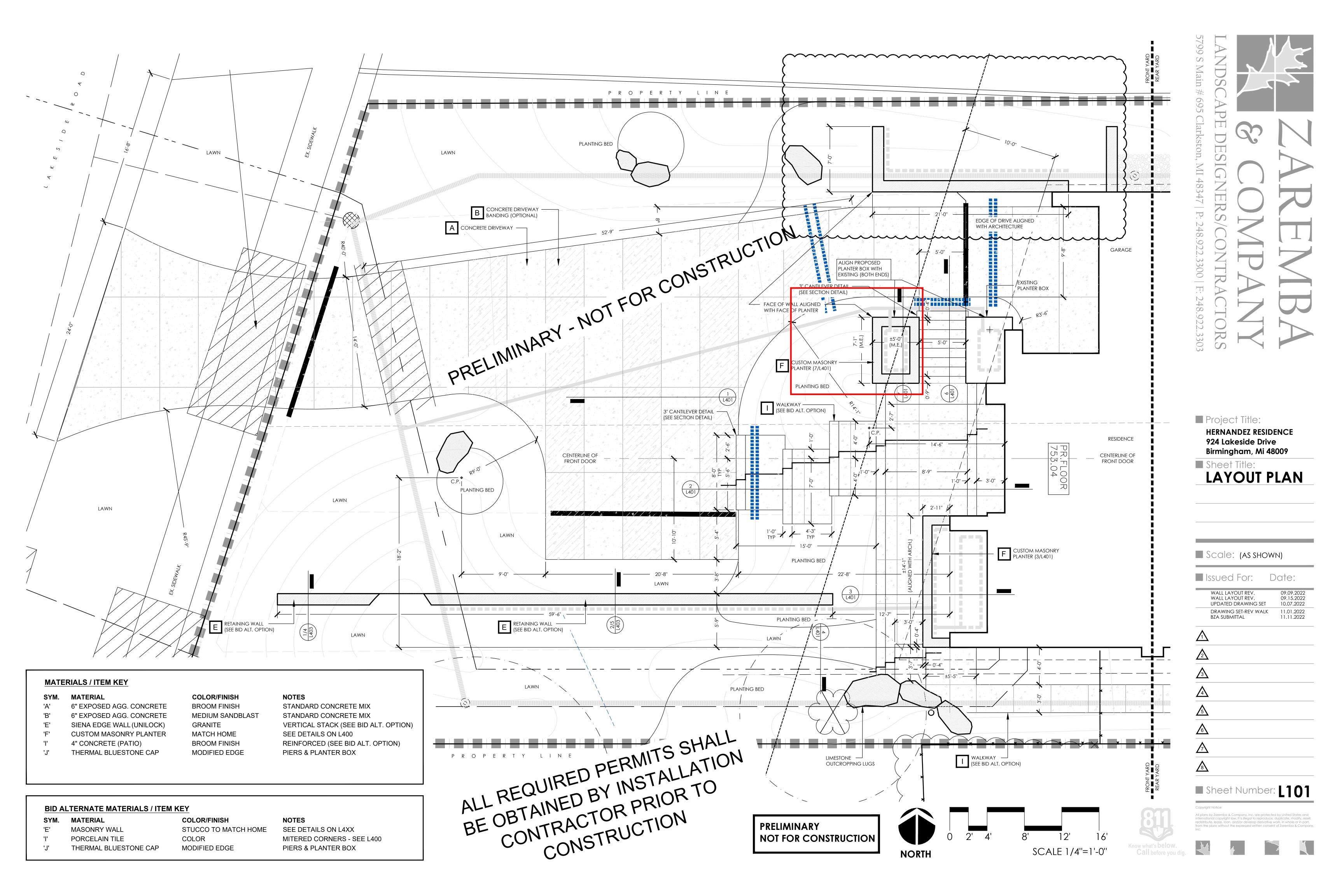
■ Sheet Number: L200

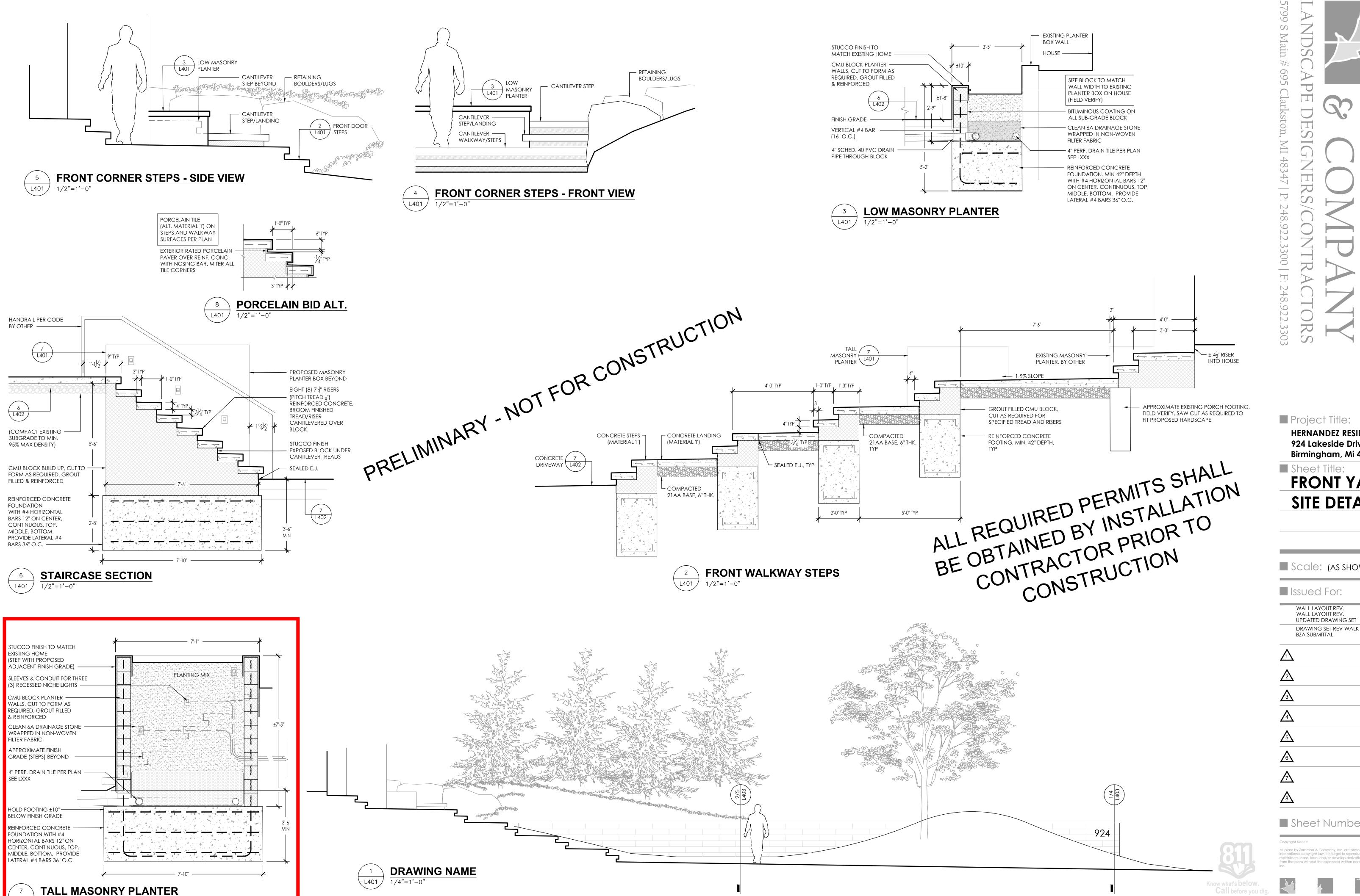
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S RS

■ Project Title:

HERNANDEZ RESIDENCE 924 Lakeside Drive Birmingham, Mi 48009

FRONT YARD SITE DETAILS

Scale: (AS SHOWN)

Date:

WALL LAYOUT REV. WALL LAYOUT REV. 09.09.2022 09.15.2022

UPDATED DRAWING SET

10.07.2022

11.01.2022 11.11.2022

DRAWING SET-REV WALK BZA SUBMITTAL

■ Sheet Number: **L401**







CASE DESCRIPTION

600 FAIRFAX (22-56)

Hearing date: December 13, 2022

- **Appeal No. 22-56:** The owner of the property known **600 Fairfax**, requests the following variance to construct an attached garage of an existing non-conforming home:
- A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that the minimum total side yard setback are 14.00 feet or 25% of the total lot width whichever is larger. The required is 20.00 feet. The proposed is 16.80 feet. Therefore, a variance of 3.20 feet is being requested.

Staff Notes: This applicant is proposing to reconstruct the garage to be attached which will reduce the required distance between structures. The existing garage is attached with a covered breezeway which is existing non-conforming, and the proposal of this appeal will reduce existing non-conforming by approx. 2.00 feet. The existing house was constructed in 1954.

This property is zoned R1 – Single family residential.

Jeff Zielke, NCIDQ, LEED AP
Assistant Building Official



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 Date: V. 2

APPLICATION FOR THE BOARD OF ZONING APPEALS

Hearing Date: 12 · 13 · 22
Appeal #: 22 · 560

Address: COO FAIR FAX AVE Lot Number of Sidwell Numbers - 9-26-402 IL OWNER INFORMATION: Name: JACON AND MELISSA HOVE Address: 300 WOODBINE City HEY CHASE State 10. Zip code 20815 Email: Nover e perske autorvotive.com Phone: 248-260-380 IL PETITIONER INFORMATION: Name: TON WHEEKER Firm/Company Name: SIGN GROUP INC. Address: PO BOY 1006 SELOWERD HILL State 1 Zip code 48300	Type of Variance:	☐ Interpretation	Dimensional	Land Use	Sign	■ Admin Review					
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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.	II appealing	a board decision, 10 i	copies of the minutes	from any previous f	Planning, HDC, or DRB	board meeting					
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Signature of Owner: Date: 11/12/22	accurate to the best of	my knowledge. Change	s to the plans are not all	owed without approv	al from the Building Offic	cial or City Planner.					
X + 60. 1.11	Signature of Own	ner:	ille.		Date: 11/1	2/22					
Signature of Petitioner:		77	fo. 10/11	7	1	21/2 0-0-					

City of Birmingham Zoning Board of Appeals 151 Martin Street Birmingham Mi. 48009

November 12, 2022

T page

Dear Board Members,

We are here on behalf of Melissa and Jason Hoover who purchased 600 Fairfax in September. We have completed renovation plans for the existing home They would prefer to renovate rather than teardown.

We are here to request a dimensional south side yard setback variance. The variance will reduce an existing non-conforming side yard setback condition of 4.6' to 2.7'.

The home at was built in 1954 with a detached garage. Part of the garage extended in front of the rear of the house and part extended behind the house creating an odd, angled condition at the northwest side of the garage. Between 1980 and 1990 a Family Room was added to the rear of the house the south wall of of which was built within less than 5 ft from the north wall of the garage. In 2006 a partial roof was added connecting the Family Room and garage connecting the two previously unconnected structures. We believe the garage is a non-conforming attached garage which is 6.6 ft. from the southern lot line, encroaching 4.6' into a required south side yard setback.

We are requesting a south side yard dimensional variance of 2.7' which would allow us to build a new attached garage as shown on the attached plans. To minimize the variance needed we would remove brick on the south side of the house to reduce our request by 5". We also reduced the width of the new garage by 1.6' to further reduce our variance request. We would reduce the existing non-conforming condition by 1.9'.

We believe granting the variance will not harm any neighbors or conflict with the spirit of the zoning ordinance. It will allow the new homeowners while renovating the home to eliminate some original unusual conditions, improve the aesthetics of the exterior and create a home with more natural sunlight and airflow.

Our detailed discussion is below.

Donald J. Wheeker Owner: HRH Design Group Inc.

HRH Design Group Inc.

PO Box 7026, Bloomfield Twp. Mi. 48302 * djwhomedesigner@hotmail.com * 248-494-1544

- Special or unique conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not generally applicable to other lands, structures, or buildings in the same district.
 - "600 Fairfax was built in 1954 with a detached garage. The front of the garage extended in front of the rear of the house (westerly) creating an odd, angled condition of part of the northwest side of the where it extended in front of the rear of the house. Between 1980 and 1990 a Family Room was added to the rear of the house, the south wall of which was 5 ft from the north wall of the garage. Then in 2006 a section of roof was added between the Family Room and Garage which connected the two heretofore unconnected structures. The result was an odd condition, unsightly condition which includes a zig zag walk path from the front of the garage to the rear yard with structure that completely blocks southern sunlight from coming into the family room. In its current condition we believe the garage is a non-conforming attached garage which is 6.6 ft. from the southern lot line, encroaching 4.6' into a required side yard setback."
- 2. Literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance; and that the variance is the minimum necessary.
 - "Attached, front facing garages are allowed and common in our zoning district. If the Board chooses to approve the requested dimensional variance the new homeowners of this property would be afforded the same rights enjoyed by other properties in the same zoning district."
- 3. The special conditions and circumstances do not result from the actions of the applicant. "The new owners of 600 Fairfax did not create the existing conditions. They purchased the property in September 2022. To their credit they prefer to renovate the existing home rather than demolish it and build a new home."
- 4. The granting of the variance will be in harmony with the general purpose and intent of this ordinance.
 - "The granting of this variance would be consistent with the general purpose of the current zoning variance. It would also reduce the existing non-conform condition from 4.6' to 2.7'. While possibly not of interest to the Zoning Board, it would dramatically improve the flow of air and exposure to natural sunlight in the most used living space of this home."
- 5. The variance will not be injurious to the neighborhood or otherwise detrimental to the general welfare.
 - "We do not believe the variance, if granted would be detrimental to the general welfare of the nearby properties. The most impacted home is 586 Fairfax our neighbor immediately to the south. The proposed new garage would move forward about 9', but also move about 2' further from 586 Fairfax as we reduce the nonconforming condition. It would not block any direct sunlight as we are on the northerly side of 586 Fairfax. Additionally, there is a row of very tall cedars on the northern side of 586 Fairfax the length of which are parallel to the new location of the garage."

HRH Design Group Inc.

PO Box 7026, Bloomfield Twp. Mi. 48302 * djwhomedesigner@hotmail.com * 248-494-1544

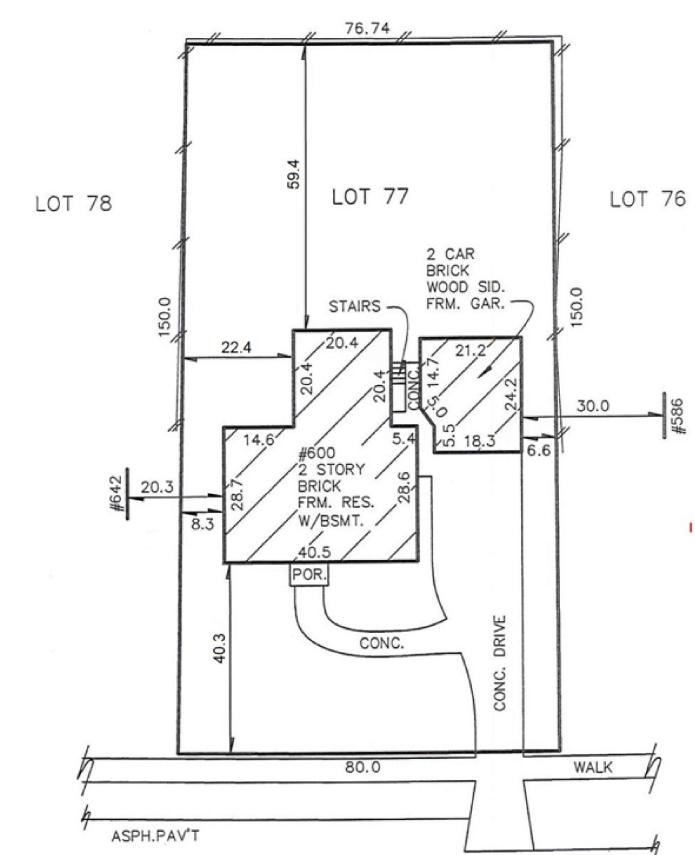
Applicant: JASON HOOVER

Property Description:

Lot 77; SUBDIVISION OF LOTS 1 TO 184 INCLUSIVE OF QUARTON LAKE ESTATES SUBDIVISION, Village of Birmingham (now City of Birmingham), Oakland County, Michigan, as recorded in Liber 32 of Plats, Page 40 of Oakland County Records.

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





FAIRFAX AVE. 60' WD.

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

PROFESSIONAL SEAL IS NOT IN BLUE INK.

JOB NO: 22-02877 DR BY: AJR 09/20/22

 Eastpointe
 Detroit
 Ann Arbor
 Grand Blanc

 (800) 295.7222
 (313) 758.0677
 (734) 994.0888
 (888) 694.0001

 FAX: (586) 772.4048
 FAX: (586) 772.4048
 FAX: (734) 994.0667
 FAX: (810) 694.9955
 www.kemtecagroupofcompanies.com

THIS SURVEY DRAWING IS VOID IF THE

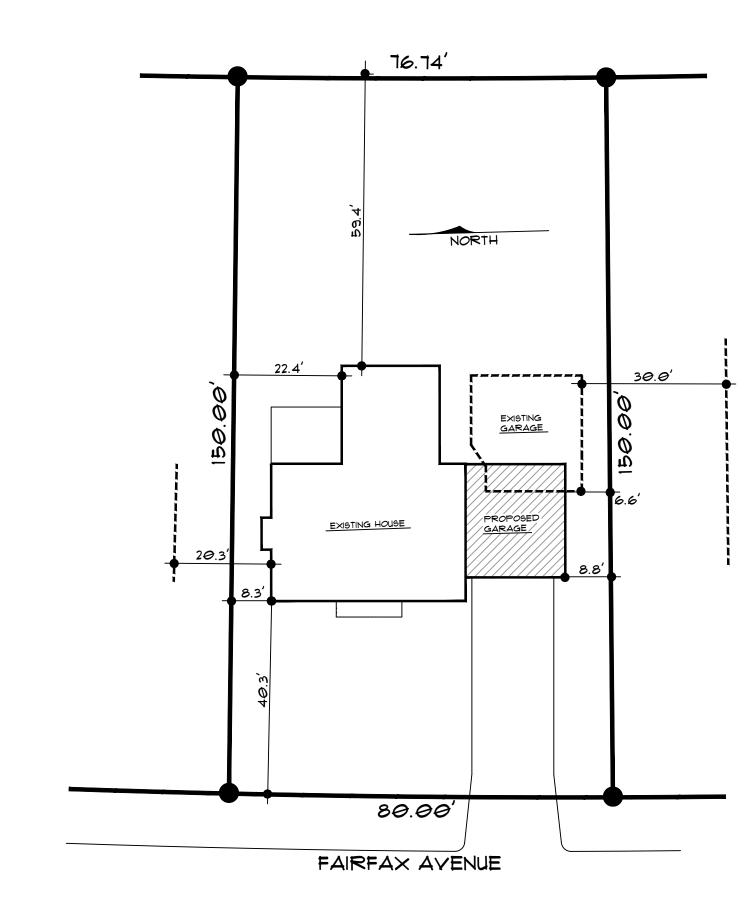
SYCKO, JR PROFESSIONAL

SURVEYOR No. 4001047976

MORTGAGE SURVEY

SCALE: 1"= 20'-0"

- * REQ. MIN. REAR SETBACK: 30.0'
- * REQUIRED COMBINED SIDE SETBACKS: 20.0'
- * EXISTING NON-CONFORMING ENCROACHMENT: 5.1'
- * PROPOSED COMBINED SIDE SETBACKS: 17.1



PROPOSED SITE PLAN

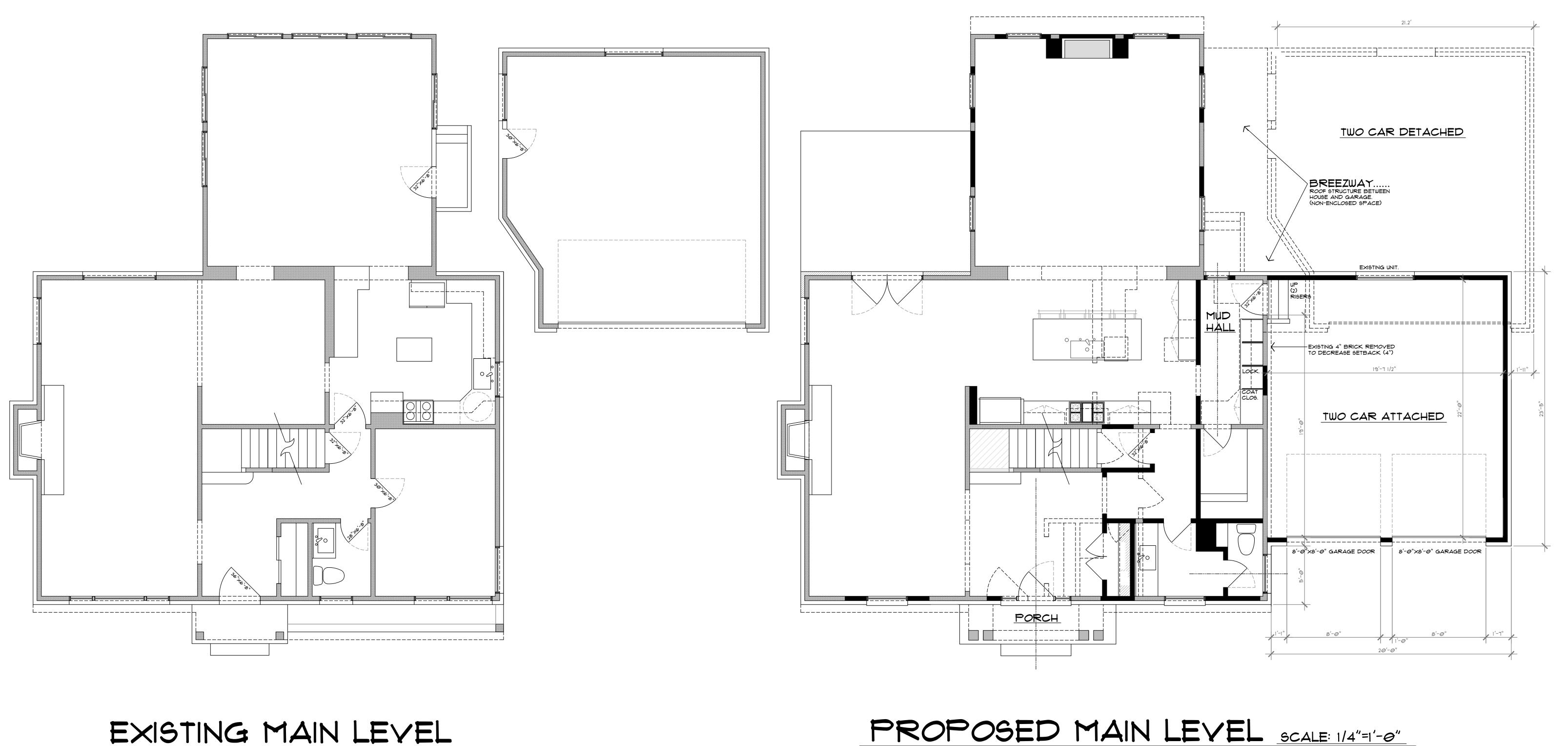
SCALE: 1"= 20'-0"

NOV. 12, 2022 22-0908 PAGE NUMBER: VARIANCE

Design (

SITE CRITERIA

- * ADDRESS: 600 FAIRFAX AVENUE * PARCEL ID: 19-26-402-011
- * ZONING: R-1
- * AVERAGE FRONT SETBACK: 38.8'
- * EXISTING COMBINED SIDE SETBACKS: 14.9'
- * REDUCTION OF NON-CONFORMING CONDITION: 2.2'
- VARIANCE REQUESTED: 2.9'



SCALE: 1/4"=1'-0"

SRIPTION:

VIRTAX AVENUE

MI. 48009

SED GARGE

DATE: PERMIT-BUILD DESCRIPTION:

II-12-2022 VARIANCE PROPOSAL SIDE YARD VARIANCE PROPOSAL SIDE

JOB NUMBER: 22-0908

PAGE NUMBER:

VARIANCE





EXISTING SOUTH ELEVATION

SCALE: 1/4"=1'-0"

EXISTING WEST ELEVATION

SCALE: 1/4"=1'-0"



PROPOSED SOUTH ELEVATION SCALE: 1/4"=1'-0"



PROPOSED WEST ELEVATION

SCALE: 1/4"=1'-0"

600 FAIRFAX BIRMINGHAM, MI. 48003 SHEET TITLE:

DATE OF PLAN:
NOV. 12, 2022

JOB NUMBER:
22-0908

PAGE NUMBER:
VARIANCE

4-2

CASE DESCRIPTION

34745 Woodward (22-55)

Hearing date: December 13, 2022

Appeal No. 22-55: The owner of the property known as 34745 Woodward requests the following appeal of the Planning Board's determination on October 13th, 2021 in order to renovate the property and update the operations of a car wash known as Jax Kar Wash:

A. Chapter 126, Article 4, Section 4.54(C)(3) of the Zoning Ordinance requires a screen wall to be placed along the front or side of any parking facility that abuts a street, alley, passage, or mixed passage. On October 13th, 2021, the Planning Board approved the applicant's site plan application with the condition that the applicant submit revised plans with sufficient screening that meets the screening requirements of Article 4, Section 4.54 of the Zoning Ordinance. The applicant is requesting an appeal of the Planning Board's decision with the condition that the applicant satisfy all screening requirements of Article 4, Section 4.54.

On December 14th, 2021, the applicant appealed the decision of the Planning Board to to the Board of Zoning Appeals. The applicant claimed that the area on the north side of the property where patrons park their vehicles to vacuum their cars and receive servicing does not count as a "parking facility" and therefore is not subject to screening requirements. A motion to approve the applicant's appeal was made, citing that the Planning Board had erred as a matter of law in their interpretation of "parking facility". The motion was denied by a vote of 4-3. Thus, the Board of Zoning Appeals determined that the Planning Board had not acted in an arbitrary or capricious manner and that there was no abuse of discretion.

The applicant appealed the decision of the Board of Zoning Appeals to the Oakland County Circuit Court. The Circuit Court rendered an opinion remanding the matter back to the Board of Zoning Appeals for a new hearing. The Court ordered that the Board of Zoning Appeals must conduct a "de novo" review of the Planning Board's decision and explain its own interpretation of Chapter 126, Article 4, Section 4.54(C)(3) of the Zoning Ordinance and specifically the interpretation of the term "parking facility" and explain if and why that provision of the ordinance applies to the Jax proposed site plan.

Therefore, the Board of Zoning Appeals is required to conduct a new hearing without giving any deference to the Planning Board's previous decision or rationale and make an independent ruling as to the interpretation of Section 4.54(C)(3) of the Zoning Ordinance. In this regard, the Board of Zoning Appeals is effectively retrying the issue that the Planning Board had previously decided. In conducting a "de novo" review, the BZA must start from the beginning or anew, and shall take any and all evidence, testimony, or arguments necessary to make a final decision on the issue presented.

Staff Notes:

The applicant is proposing updates to their car wash operations with changes to the vehicular access and circulation of the site, therefore subjecting the proposed changes to final site plan review. The site plan proposes a new car wash exit on the northeast corner of the building where vehicles may make a left turn movement out of the car wash near the pedestrian sidewalk along Woodward Avenue. Vehicles turning left out of the car wash may then continue in the drive aisle to a parking area on the north side of the building and may continue to an egress point on Brown Street to exit the site.

In regards to providing a safety barrier between public sidewalks and parking lots or driveway spaces for motor vehicles, the City of Birmingham's Municipal Code Chapter 98, Section 98-69, *Adjacent parking lots and driveways* requires the following:

No person shall construct or maintain any <u>parking lot</u> or <u>driveway</u> or <u>space</u> <u>for the driving or parking of motor vehicles</u> <u>adjacent to and within four feet</u> of any public sidewalk without first providing guardrails, blocking devices or other installations approved by the city engineer adequately protecting the adjacent sidewalk from encroachment, obstruction or danger resulting from the <u>parking lots</u>. Driveways may be provided across sidewalks with the approval of the city engineer. The city commission may, by resolution, waive any requirement set forth in this section in those instances where the commission determines that the enforcement of such requirements might endanger public safety or render undue hardship on the property owner.

The City of Birmingham's Zoning Ordinance (Chapter 126 of the Municipal Code) has a section dedicated to screening requirements of parking areas for the required barriers. In regards to the purpose of screening standards, Article 4, Section 4.54(A) of the Zoning Ordinance states:

The purpose of this section is to require a <u>barrier</u>, capable of containing noise, vehicular lights, visual disarray, debris and other factors detrimental to the health, safety and welfare of the community between an <u>open parking station</u>, outdoor storage, dumpsters and adjacent properties. Flexibility in the materials, size, height and placement of walls permitted in order to allow architectural harmony and usable open space and to accomplish a unified design.

In regards to the Zoning Ordinance screenwall requirements related to the applicant's proposed site plan, Article 4, Section 4.54(B)(2) and 4.54(B)(3) states the following for required materials and dimensions of the screenwall:

- 2. When required, a screenwall of capped masonry.
- 3. Screenwalls shall be so constructed that the lower 32 inches in height, as measured from the finished <u>parking lot</u> surface, or ground surface on the outside of the screenwall, whichever is higher, shall be solid. Openings above 32 inches may be permitted provided the intent of the Zoning Ordinance is maintained and further provided the openings are not larger than 64 square inches and do not exceed 33% of the surface of the screenwall.

As previously mentioned, Article 4, Section 4.54(C)(3) determines the required location of a screenwall by stating:

Screening shall be placed as follows:

3. Along the front or side of any <u>parking facility</u> that abuts a street, alley, passage or mixed passage.

Furthermore, Article 4, Section 4.54(D)(2) requires driveways to be considered as part of the parking area, stating:

Any driveway furnishing access to a <u>parking facility</u> shall be considered as part of the <u>parking facility</u> for the purposes of the Zoning Ordinance.

In regards to the definition of parking, parking area total, and parking lot interior, Article 9: Definitions of the Zoning Ordinance states the following:

Parking: An area used for the parking of motor vehicles

Parking Area, Total: The actual parking area and the area of the access drives.

Parking Lot Interior: All areas within the perimeter of a parking lot, including planting islands, curbed areas, corner lots, parking spaces, and interior driveways and aisles except those with no parking spaces located on either side.

The applicant appeared before the Planning Board July 2019, August 2019, September 2019, October 2019, July 2020, September 2021, and October 2021. Relevant minutes are attached. Concern regarding a proposed contraflow use of the access drive for exiting the car wash facing Woodward Ave, turning left on the access drive, and then continuing into the northern portion of the site was one of the main issues. The applicant addressed this concern by proposing a new exit door from the car wash on the northern elevation of the building. The proposed door would allow cars to turn left out of the carwash and turn into the northern portion of the property without using the Woodward service drive. The northern portion of the property is proposed to be an area where customers may park their car and receive services such as vacuuming.

The Planning Division considers the area on the north side of the car wash where patrons may park their car and receive services such as vacuuming to be open parking stations which are therefore required to be screened by a 32 inch masonry capped screenwall, or other materials as approved by the Planning Board. This area is also used as a driveway that connects from the car wash to the vacuum stations and the egress point on Brown Street, therefore also requiring a screenwall along Woodward Avenue.

Furthermore, the left turn action of vehicles out of the car wash towards the vacuum stations and Brown Street egress point is within 4 feet of the Woodward Avenue sidewalk, therefore a barrier along Woodward Avenue is required to adequately protect the adjacent sidewalk from encroachment, obstruction or danger resulting from the <u>parking lot</u> or <u>driveway</u> or <u>space for the driving or parking of motor vehicles</u> as per the requirements of Birmingham's Municipal Code Chapter 98, Section 98-69. The screening requirements of the Zoning Ordinance Article 4, Section 4.54 are meant to provide more detail as to the location, size, and material of such a barrier.

The applicant has provided a proposed site plan with proper screening along Brown Street, however they have not indicated the required screening along Woodward Avenue. The applicant has indicated a concern that a screenwall along Woodward will impede proper turn radius of cars exiting the newly proposed car wash exit.

On October 13th, 2021, the Planning Board discussed their concerns regarding the lack of a screenwall along Woodward Avenue. The relevant memo to the Planning Board on this date is attached. Issues regarding visual aesthetics and pedestrian safety without a screenwall were the

main concerns discussed. The City's Planning Division, Engineering Department, traffic consultant Fleis & Vandebrink, and the Planning Board have all stated they do not want automobiles from Jax Kar Wash to be able to drive across the sidewalk along Woodward Ave for safety reasons. The Planning Board approved the proposed changes by a vote of 4-3 with the condition that a screenwall be installed along Woodward Ave. If the applicant wishes to use landscaping such as arborvitae or evergreens instead of a masonry screenwall, the proposed plans would also have to be approved by the Planning Board.

The term "parking facility" is listed as a permitted accessory use for every zone in the Zoning Ordinance. It is of note that the Zoning Ordinance does not have a definition for "parking lot" or "parking facility". The terms are used interchangeably throughout the Zoning Ordinance where City staff and the Planning Board have interpreted the terms to refer to the same use which the Zoning Ordinance's Chapter 9 Definitions of parking, parking lot area, and parking lot interior refer to.

A basic search for the term "parking facility" returns the following examples:

Parking Facility means a parking area or structure having

Parking Facility means a structure or an area providing for the parking of motor vehicles;

Parking Facility. - means the area set aside for the storage and parking of vehicles and includes parking stalls, loading spaces, aisles, entrances and exits to the area, and traffic islands where they are part of the parking facility;

Parking Facility means any property used for vehicle parking.

(Law Insider, https://www.lawinsider.com/dictionary/parking-facility, 12.08.2022)

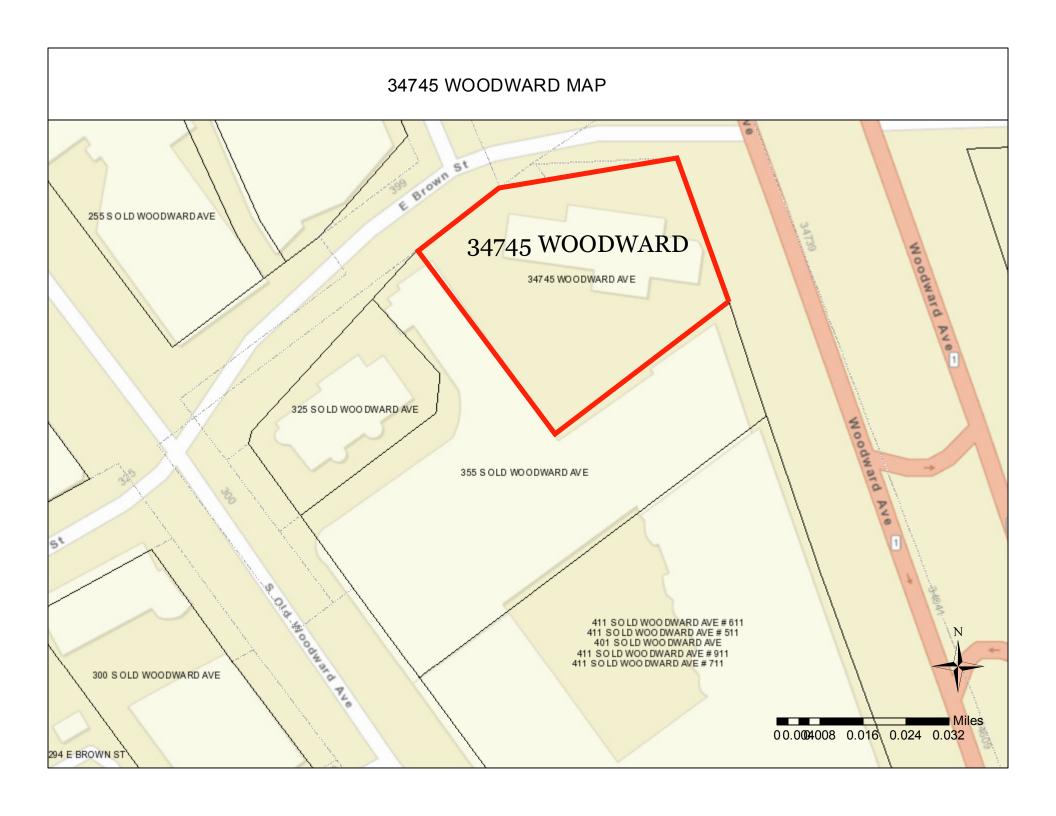
As an example of the Zoning Ordinance using "parking facility" and "parking lot" interchangeably, Article 4, Section 4.54(B)(3) refers to a "parking lot" for the dimensional requirements of the screenwall while Article 4, Section 4.54(C)(3) refers to a "parking facility" for the screenwall location. Both terms are used in the Article 4, Section 4.54 of Zoning Ordinance for screening requirements, and it is interpreted by City staff and the Planning Board that both terms are referring to the same parking use. Another example of both terms being used in the same section of the Zoning Ordinance is in Article 3, Section 3.08(G) (Parking for the Triangle District. The term "parking lot" is used in Section 3.08(G), 3.08(G)(1), 3.08(G)(1)(a), and 3.08(G)(2) while the term "parking facility" is used in 3.08(G)(7)(b). This example is meant to further demonstrate how both terms refer to the same parking use being regulated throughout the Zoning Ordinance.

Given the requirements of the Municipal Code for Chapter 98, Section 98-69, and the screening requirements of Article 4, Section 4.54 of the Zoning Ordinance coupled with the fact that the applicant is proposing a site plan allowing motor vehicles to make a turning motion and drive within four feet of the pedestrian sidewalk along Woodward Avenue, that the vehicles may park on the north side of the building, and that the northern portion of the property serves as a driveway to access the egress point on Brown Street, the Planning Division requires that a screen wall be placed between the parking facility and Woodward Avenue on the northeast portion of the lot.

For further information regarding the Opinion and Order of the Circuit Court, as well as the Appellant's and Appellee's brief on the appeal to the Oakland County Circuit Court, the Board of Zoning Appeals may wish to reference the attached documents.

This property is zoned B2 & D4 Overlay.

Brooks Cowan
Senior City Planner



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 D)ate:		
						Annoal #s			
Received By:	Interpretation	arrhent \$	imensional	Land Use	∫ Sign	Appeal #:	Admin Review		
I. PROPERTY INFORMA	TION:	1			A		****		
Address: 34745 Woodwa:	Address: 34745 Woodward Avenue			Lot Number:		Sidwell Number: 08-19-36-208-004			
H. OWNER INFORMATIO	N:								
Name: BMW Kar	Wash LLC								
Address: 34745 W	oodward Avenue		City: Birmingham		State: MI	Zip code: 48009			
Email:* Tagon@ T	axKarWash.net				Phone: 248	Phone: 248-905-1218			
III. PETITIONER INFORM		=				,,,,			
Name: BMW Kar	Wash LLC		Firm/Company Name:						
Address: 34745 Woodward Avenue			City: Birmingham		State: MI	Zip code: 48009			
Email:	1				Phone: 248	Phone: 248-905-1218			
Jason@JaxKarWash.net 248-903-1218									
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 proper	ty at least 15-days prior t	o the sch		date. hart Example					
Requested Varia	nces Regula	red		sting	Proposed		Variance Amount		
Variance A, Front Setb				0 Feet	23.50 Feet		1.50 Feet		
Variance B, Height	30.00 F	eet	30.2	5 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 SIGNATU		F.00 0. 1			<u> </u>				
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. *By providing your email to the City, you agree to receive news and notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time. Date: 1/-12-2/ Date: 1/-12-2/									
Signature of Petition	ar /h	K	1		Date:	1-14	-61		



2000 TOWN CENTER, SUITE 1500, SOUTHFIELD, MICHIGAN 48075-1148

TELEPHONE (248) 353-7620 FACSIMILE (248) 353-3727

BRADLEY F. SCOBEL (248) 351-3569 bscobel@seyburn.com

November 12, 2021

Members of the Birmingham Board of Zoning Appeals

Re: Letter of Explanation and of Practical Difficulty

Variance Requests for: 34745 Woodward Avenue Sidwell No. 08-19-36-208-004

Dear Board Members:

This firm represents BMW Kar Wash, L.L.C., a Michigan limited liability company (commonly known as Jax Kar Wash) ("Jax"), the owner of 34745 Woodward Avenue (the "Property"). Jax respectfully requests that the Board of Zoning Appeals to: 1) grant relief from the Planning Commissions interpretation of Section 4.54 of the City's zoning ordinance (the "Zoning Ordinance") and/or clarify the application of the Planning Commission's October 13, 2021 approval, or, in the alternative; 2) grant a variance from the strict application of Section 4.54 of the Zoning Ordinance due to the practical difficulty the same would otherwise impose on Jax.

Background:

Jax Kar Wash has been an institution in the City of Birmingham since the 1950s. The Property is located at the corner of Woodward Avenue and Brown Street, and has not seen any major cosmetic rehabilitation for over five (5) decades. The Property itself was originally designed to operate as a car wash, but a 1950s car wash. Since that time, the industry, equipment, automobiles, as well as the customers, have all dramatically changed. In order to meet the expectations of its modern customers, Jax desires to improve and redevelop the Property's outdated design and layout.

In light of the foregoing, in an effort to modernize the Property, operate more efficiently, increase safety, improve customer service and reduce wait times (including the stacking of automobiles on Brown Street which routinely occurs during peak hours), Jax submitted a proposed site plan to the Planning Commission approximately 2 years ago. During the past two (2) years, Jax and the Planning Commission have been working on the proposed site plan, culminating in the Planning Commission's approval, subject to various conditions, granted at the Planning Commission's October 13, 2021 meeting. A copy of the Planning Commission's minutes are attached hereto as Exhibit A.



The most important improvement Jax has proposed is a revised traffic pattern. The revised traffic pattern will permit the customer's use of automated kiosks to purchase their washes. It will further permit customers to stay in their vehicles through the wash, will provide faster access to the wash, which, in turn, will reduce stacking on Brown Street during peak hours. In addition, a few of the more notable improvements which have been discussed and agreed to, are as follows: a) removal of the legal, but non-conforming pylon sign, removal of the legal, but non-conforming vinyl awning at the entrance of the car wash, installation of various cosmetic improvements to the building, updated signage, the installation of a brick screening wall all along Brown Street, the installation of new landscaping and the installation of a large garage door on the side of the building allowing customers to exit the building without repeatedly crossing the sidewalk. These proposed improvement will collectively permit Jax to operate in accordance with most modern car wash standards.

At the October 13, 2021 Planning Commission meeting, Jax' proposed site plan was approved subject to various conditions. One of those conditions is that "The applicant must submit revised plans with sufficient screening that meets Article 4, Section 4.54 of the Zoning While the applicant has no issues with the condition itself, the applicant and the Planning Commission disagree as to whether Section 4.54 requires a screenwall to be constructed on the Woodward Avenue side of the Property under the current circumstances. The applicant believes that a screenwall on Woodward Avenue is not required by Section 4.54 of the Zoning Ordinance, while the Planning Commission believes that it is. It is important to note that Jax has agreed to install a brick screenwall along the portion of the Property adjacent to Brown Although it could be argued that even the screenwall along Brown Street is not technically required by the Zoning Ordinance, the same is not an issue that needs to be considered as part of this petition, as Jax has agreed to install the same. In fact, whether required or not, Jax believes that screenwall along Brown Street will serve to improve the appearance of the Property and since the construction of the same will have no material adverse effect on the operations of the Property, Jax is happy to install the screenwall along Brown Street. That said, a screenwall on the Woodward Avenue side of the Property will create a number of operational and potential safety issues. Such a screenwall would impede Jax ability to efficiently operate its business, to such an extent that if a screenwall wall is required on Woodward Avenue, Jax will have no other option but to leave its operations as they currently exist, rather than moving forward with the project.

Issues Presented:

1) Does Section 4.54 of the City of Birmingham's Zoning Ordinance require construction of a screen wall on the Woodward Avenue side of the Property under the current circumstances? Jax answers "no".



2) In the event it is found that Section 4.54 of the City of Birmingham's Zoning Ordinance does require the installation of a screenwall on the Woodward Avenue side of the Property, should the Zoning Board of Appeals grant Jax a variance from this requirement due to the practical difficulty strict application of Section 4.54 of Zoning Ordinances would impose on Jax under these particular circumstances? Jax answers "Yes".

Discussion

A) Does Section 4.54 of the City of Birmingham's Zoning Ordinance require construction of a screenwall on the Woodward Avenue side of the Property under the current circumstances?

Section 4.54(C)(3)(d) of the City of Birmingham's Zoning Ordinances provides, in pertinent part;

- "C. Screening Requirements: Screening shall be placed as follows:
 - 3. Along the front or side of any **parking facility** that abuts a street, alley, passage or mixed passage.
 - d. When the property being utilized for a parking facility is zoned to a business or industrial district, and abuts business or industrial district, the screenwall shall be placed along the setback line; however, upon review of the Site Plan, the Planning Board may approve an alternate location for the screenwall in order to maximize the screening effect of the parking facility, or may modify the screenwall requirement by approving an evergreen screen in its place." [Emphasis Added].

Generally speaking, Section 4.54 requires screening of a "parking facility". We are, however, not dealing with a "parking facility" in this case. The area in question is more akin to a service lane or a drive isle than it is to a parking facility. Interestingly, under the existing site plan, this area may indeed be considered a "parking facility" as it is currently used for parking, but under the new site plan with the revised traffic flow pattern, all the parking on this side of the Property has been eliminated. Thus, as there is no parking on this side of the Property, Jax does not believe that Section 4.54 requires a screenwall along Woodward Avenue.

Although the term "parking facility" is not specifically defined in the Zoning Ordinance, this does not mean that the Zoning Ordinance is not of assistance in determination what a



"parking facility" may be. Article 9 of the Zoning Ordinance is all about parking and has at least one definition that is illustrative. The definition of "Parking Lot Interior" states:

"All areas within the perimeter of a parking lot, including planting islands, curbed areas, corner lots, parking spaces, and all interior driveways and aisles except those with no parking spaces on either side." [Emphasis Added]

The above tells us that a "parking lot" also includes planting islands, curbed areas and most importantly, driveways and aisles "except those with no parking spaces on either side". As proposed site plan does not have parking on either side of this area, the area in question falls outside the definition of what is considered a parking lot (or parking facility) in this case.

In light of the above, there is little doubt that Section 4.54 of the Zoning Ordinance requires screening of a "parking facility". Under the current circumstances, however, the area in question is a drive isle or service lane, and not a "parking facility". As such, Section 4.54 of the Zoning Ordinance does not require a screenwall to be constructed along the Woodward side of the Property.

B) If it is found that Section 4.54 of the City of Birmingham's zoning ordinance does require the installation of a screen wall on the Woodward side of this site, Jax respectfully requests that the Zoning Board of Appeals grant a variance from this requirement due to the practical difficulty the strict application of Section 4.54 of Zoning Ordinances would impose.

In the event the Board determines that this area is a "parking facility" as intended by the Zoning Ordinance or otherwise believes that Section 4.54 requires the construction of a screenwall on the Woodward Avenue side of the Property, there are numerous factors which support the granting of a variance under the instant circumstances. These factors are discussed below:

1) Special Conditions Applicable to the Property will unreasonably prevent the property owner from using the Property for its intended purpose.

As briefly discussed above, the Property was originally developed over seventy (70) years ago. At that time the car wash industry, as well as world itself, was very different than it is today. Car washes were operating differently, cars themselves were different and even the City of Birmingham was different. As such, this irregularly shaped parcel was developed to permit a car wash to operate with the needs of a 1950s customers operation in mind. The Building was oddly situated on the Property, leaving irregularly shaped areas which are difficult to use effectively. However, as the car wash industry has



evolved, the Property has not. Customers now expect quick and efficient automated car washes and, in this location in particular, full service washes where the interiors of the automobiles are cleaned as well. If Section 4.54 of the Zoning Ordinance under its strict interpretation requires a screenwall along Woodward Avenue, this would prevent the car wash from operating in an efficient manner and would likely completely prevent its operation at certain times during the year.

As Jax has agreed to install a brick screenwall along Brown Street, if a Woodward Avenue screenwall is also required, it will create an enclosed area which would not permit the free movement of vehicles. Additionally, it would prevent Jax from removing snow accumulation, as snow plows would have little to no space to operate or even a viable route to move the snow. Additionally, as a screenwall is an unforegiving barrier, it is more than likely to be routinely damaged by customers, as well causing significant damage to the customer's vehicles. Moreover, creating an enclosed area such as what would be created if a Woodward Avenue screenwall is required, has the potential to trap dangerous vehicle emissions and not permit them to dissipate as would happen if no enclosed space was created. Please note that this area will be a high traffic area. After running through the wash, all full service vehicles will enter this area for approximately 2-4 minutes where they will be vacuumed and their interiors wiped down. As vehicles are completed, others will be waiting to take their place. Even though this is an outdoor area, carbon monoxide is heavier than air and on non-windy days, would likely well up in this enclosed area. This would present a dangerous condition not only to Jax customers, but to Jax employees required to work in this area. As a result of all the above, Jax would not be able to successfully conduct its operations if Section 4.54 was strictly applied.

2) Would the literal enforcement of the Section 4.54 result in unnecessary hardship?

Although the hardships that will be created by requiring a screenwall along Woodward Avenue were discussed above, it was not discussed whether these hardships are unnecessary. Jax believes that they are. The intent of the Zoning Ordinance is to screen parking lots and certain other areas from the view of pedestrians and passing traffic. As discussed above, Jax has agreed to install a screenwall all along Brown Street, as this is where most, if not all, viewing will take place. Woodward Avenue is completely different story. Jax has only a small amount of frontage on Woodward Avenue where a screenwall could be constructed. As traffic on Woodward is typically moving between 40-55 mph, it is actually quite easy to overlook Jax entirely when driving on Woodward in a moving automobile. As a result of the rate of travel, combined with the small area of available frontage on Woodward Avenue, a screenwall in this location will serve little purpose as it would go mostly unnoticed to Woodward traffic.



Moreover, the proposed site plan includes a new landscaped area at the corner of Brown Street and Woodward Avenue. This landscaped area will already serve as screening from southbound Woodward traffic. Therefore, a screenwall in this location has as little to no benefit to offer, and as such, all the hardships its causes with respect to the operation of the Property, are unnecessary.

3) The granting of the requested variance will not be contrary to the spirt and purpose of the Zoning Ordinance nor contrary to public health, safety and welfare.

As explained above, the granting of the requested variance will not be contrary to either the spirit or the purpose of the Zoning Ordinance. The screenable area along Woodward is small and already partially screened by the landscaping at the corner of Brown Street and Woodward Avenue. In addition, due to the rate of travel along Woodward Avenue, a screenwall in this location is unnecessary and unlikely to have any beneficial effect. Again, we need to contrast the Woodward Avenue screenwall with the screenwall that would be installed along Brown Street. Brown Street is a slow moving street with cars routinely waiting to turn on Woodward. This is the situation the screenwall ordinance was intended to address, as it is from this view, where the area is most visible and where drivers have the time and ability to effectively look into this area. As a result, the proposed site plan adequately addresses the Zoning Ordinance in spirit.

Additionally, granting this variance would not be contrary to the health, safety and welfare of the general public. As discussed above, it is more likely that NOT granting the variance would be contrary to the health, safety and welfare of Jax' customers and employees. Some members of the Planning Commission did assert that they believed installing the screenwall along Woodward Avenue would increase safety for pedestrians walking on the sidewalk, however, this argument is misguided for two (2) main reasons.

First, the granting of the variance will have no effect on the safety of pedestrians using the sidewalk, but the opposite may be true. If the variance is not granted, the Property will simply remain as it currently exists. If the Property remains as it currently exists, the safety of pedestrians using the sidewalk remains unchanged, just the same as it would if the variance is was granted. However, not granting the variance, will mean that all the other safety and efficiency improvements of the proposed site plan will not be made. Thus, from an overall perspective, the granting of the variance will serve to increase safety, while not granting the variance simply maintains the status quo.

Secondly, there is no evidence whatsoever to support that belief that the installation of a screenwall on along Woodward Avenue would have any effect (positive



or negative) on safety of pedestrians using the sidewalk. Although the argument initially sounds compelling, the reality is that in all the years that Jax has been in operation, there has never been any notable incident with respect to any pedestrian utilizing the sidewalk. As we are talking about decades of operating, this is strong evidence that the safety of pedestrian using the sidewalk is simply not something that needs to be corrected. Conversely, there have been a number of safety incidents involving customers walking the building, as under the current operation, customers are required to exit their automobiles before entering the wash. This is a safety risk which is addressed by proposed site plan allowing customers to remain safely in their automobiles.

4) The granting of the variance will result in the substantial justice to the property owner, the owners of property in the area and the general public.

The granting of the requested variance will result in a more modern, up to date and efficient car wash operation. This is a benefit not only to the property owner but to the general public as well. Moreover, as stacking on Brown Street will be reduced, it will likely have the effect of easing at least some of the existing traffic congestion in the area. Also, with the removal of the vinyl enclosure, the re-working of the signage, the installation of new landscaping and the construction of the screenwall along Brown Street, the Property will undoubtedly be more attractive to neighboring property owners as well as the surrounding community as a whole. As such, the granting of the variance provides far more benefits to the general public that denying the same would provide.

Conclusion:

In conclusion, the spirit and intent of the Section 4.54 of the Zoning Ordinance is to provide screening from "parking facilities". As the area in question is not a "parking facility", Section 4.54 of the Zoning Ordinance does not require the installation of a screenwall along Woodward Avenue.

In the alternative, in the event it is determined that Section 4.54 of the Zoning Ordinance does require a screenwall along Woodward Avenue, Jax meets all the required criteria for a variance from its application.

Therefore, Jax Kar Wash respectfully requests the Board of Zoning Appeals to grant relief from the Planning Commissions interpretation of Section 4.54 of the City's zoning ordinance and/or to clarify the application of the Planning Commission's October 13, 2021 approval, or, in the alternative; to grant a variance from the application of Section 4.54 of the Zoning Ordinance as it relates to the construction of a screenwall along Woodward Avenue.



Respectfully submitted,

SEYBURN KAHN

Bradley F. Scobel

Enclosures

cc:

Mr. Jason Milen



Exhibit A

Minutes of October 12, 2021 Planning Commission Meeting

City Of Birmingham Regular Meeting Of The Planning Board Wednesday, October 13, 2021

City Commission Room 151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on October 13, 2021. Chair Clein convened the meeting at 7:30 p.m.

A. Roll Call

Present:

Chair Scott Clein (left at 8:52 p.m.); Board Members Robin Boyle, Stuart Jeffares,

Bert Koseck, Daniel Share, Janelle Whipple-Boyce, Bryan Williams; Alternate Board

Member Nasseem Ramin; Student Representative Daniel Murphy

Absent:

Alternate Board Member Jason Emerine; Student Representative Jane Wineman

Administration:

Nick Dupuis, Planning Director (PD) Jana Ecker, Assistant City Manager (ACM) Laura Eichenhorn, City Transcriptionist Melissa Fairbairn, Assistant to the City Manager

Master Planning Team:

Matt Lambert, DPZ

10-151-21

B. Approval Of The Minutes Of The Regular Planning Board Meeting of September 23, 2021

Mr. Share noted that on page four the second motion was in regards to the Special Land Use Permit. He said that should be corrected, and recommended that conditions one through four from the Final Site Plan and Design Review motion be re-listed for the Special Land Use Permit Motion.

Motion by Mr. Share

Seconded by Mr. Williams to approve the minutes of the Regular Planning Board Meeting of September 23, 2021 as amended.

Motion carried, 5-0.

VOICE VOTE

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

Nays: None

Abstain: Clein, Koseck

10-152-21

C. Chair's Comments

Chair Clein welcomed everyone to the meeting and reviewed the meeting's procedures.

10-153-21

D. Review Of The Agenda

10-154-21

E. Unfinished Business

1. 34745 Woodward – Jax Kar Wash – Request for Final Site Plan and Design Review for circulation, layout and minor building changes to the existing site.

PD Dupuis presented the item.

Jason Milen, owner, and Bradley Scobel, attorney, spoke on behalf of the application.

Mr. Scobel stated that the north side of the site should be considered a drive lane, which would not necessitate a screening wall. He said having a wall there would make the site inefficient and would make it too difficult to clear the site of snow.

Mr. Milen said he would be willing to change the colors of the stanchions if requested.

In reply to Mr. Koseck, Mr. Milen said he would also clean up the conduits once the awning is removed and would clean up the conduits on the north elevation. He said he would also be removing a conduit on the north side.

Messrs. Koseck and Jeffares said choosing a subtler color for the stanchions would be appropriate.

Noting that there are three Jax signs visible on the north elevation, Mr. Jeffares opined that the on-site signage would be more appropriately calculated based on Woodward being the frontage. Consequently, he said extra signage afforded by using Brown as the frontage was probably not necessary.

Ms. Whipple-Boyce concurred.

Mr. Share noted the applicant's contention that the extra signage afforded by using Brown would be used for directional signage only that would not be visible from Brown or Woodward. He said he was comfortable using Brown to calculate the signage for that reason. He noted the applicant would also be getting rid of the pylon sign which he counted as positive.

Chair Clein concurred.

Chair Clein said the mechanical equipment need not be screened but that it should be painted to blend in with the building. He said the applicant should also should show Auto Turn on the site plans and be required to receive an administrative approval for it.

Ms. Whipple-Boyce said 'Kar Wash' could be removed from both sides of the frontage without impact the success of the business. She said it would be more aesthetically pleasing.

Messrs. Share, Williams, Jeffares, Koseck, Ms. Whipple-Boyce and Chair Clein said there was no flexibility in regards to screening wall requirement on the north side of the building at the east property line along Woodward. A number of Board members also noted that the screening wall would also increase pedestrian safety.

Chair Clein said he would not vote to approve the project without the screening wall. While he noted the applicant would be legally within their rights to pursue a variance, the Chair emphatically stated it would be counter to the successful interaction of pedestrians and vehicles and to the preservation of health, safety and welfare on-site.

Mr. Boyle noted this project would be unlikely to move forward without a screening wall along Woodward at the east side of the property north of the building and recommended the Board and the applicant reach a compromise.

Mr. Koseck reiterated his strong support for a 32-inch masonry screening wall on the north side of the building along the east property line of the site along Woodward. He said he could think of no legitimate reason to not have a screening wall there.

Mr. Boyle recalled the applicant claimed that vehicles would have problems making a necessary turn if the screening wall was there. He stated that requiring a masonry wall on the north side of the building along Woodward would require the applicants to change their building.

Mr. Koseck said that if that was the case then a change to the building was necessary.

Mr. Share suggested the Board require a 32-inch masonry screening wall, or some other permanent visual barrier that meets the requirements of the ordinance and would be approved by the Planning Board.

Chair Clein concurred. He said the screening wall should be required and the applicant should be allowed to make minor modifications to the materials that could be approved by the Board at the end of a future meeting should the applicant take that route.

PD Dupuis noted that masonry or evergreens are the two most commonly used options for a screening wall.

Mr. Milen said he was unable to do a screening wall on the north side of the site and would abandon the project if required to install one.

Motion by Mr. Share

Seconded by Mr. Williams to approve the Final Site Plan & Design Review for 34745 Woodward – Jax Kar Wash – with the following conditions: 1. The applicant must submit revised plans with sufficient screening that meets Article 4, Section 4.54 of the Zoning Ordinance; 2. The Board designates Brown Street as the frontage for the purposes of signage; 3. That the applicant change the stanchions to a neutral color subject to administrative approval; 4. The applicant must comply with the requests of all City Departments including the City's traffic engineer; and, 5. That there not be a curb cut at the required break in the screening wall on the north side.

Mr. Jeffares said he was worried about an unapproved drive lane on the north side of the site along Brown St. He suggested that it be specified that the break in the wall on the north side of the site not be used for routine operation.

Mr. Share said the minutes should reflect the Board's understanding that it is a break in the wall and not a drive lane.

Mr. Jeffares noted there was a curb cut.

ACM Ecker noted the break in the wall should be for pedestrians and should also be screened with a two-foot offset wall so vehicles cannot get through.

PD Dupuis noted Mr. Milen had said he was willing to remove the curb cut.

Messrs. Share and Williams agreed to add the fifth condition in response to the discussion.

Motion carried, 4-3.

ROLL CALL VOTE

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

10-155-21

F. Rezoning Applications

None.

10-156-21

G. Community Impact Studies

None.

10-157-21

H. Special Land Use Permits

None.

10-158-21

I. Site Plan & Design Reviews

None.

10-159-21

J. Study Session

1. The Birmingham Plan 2040 – 2nd Draft Receipt and Review Process

PD Dupuis introduced the item.

Chair Clein clarified that the Board would be reviewing and revising the second draft, and that no body in the City has offered finalized approval of the current draft.

Mr. Williams echoed a comment from the October 11, 2021 joint Commission-Planning Board meeting that the maps need to have street names added. He listed pages eight, nine, 12, 43, 46, 61, and 76 as having maps that require street names. He said there may be other maps not included in his list that also require street names. He said by November 10, 2021 he wanted those pages replaced with maps that are bigger and decipherable by street names.

In reply to Mr. Williams, PD Dupuis said those pages would be replaced and made available to the public before November 10, 2021.

Mr. Share said the color-coding for low-, medium-, and high-intensity seams was difficult to decipher as well. He asked that the colors be replaced with higher-contrast options. He also noted that the October 11, 2021 joint Commission-Planning Board meeting was a public meeting that remains available to the public for viewing.

PD Dupuis noted Mr. Share's comment. PD Dupuis continued that the upcoming Master Plan draft review meetings would be November 10, 2021; December 8, 2021; January 12, 2022; and, February 9, 2022.

In reply to Mr. Share, Chair Clein concurred that page four of the Master Plan draft should be referenced at the beginning of each chapter discussion instead of at the first review meeting in order to keep a broad view of the intentions of each chapter.

Mr. Jeffares noted that three new Commissioners would be joining the Commission in November. He asked if their feedback on the Master Plan draft was going to be specifically solicited.

PD Dupuis said there was no plan to do so at this time.

Mr. Williams noted that the Board would be meeting with the Commission at the end of the review process. He observed that the Commission could always choose to schedule an additional meeting for further discussion if they saw fit.

Chair Clein concurred.

In reply to Mr. Jeffares' inquiry about using Engage Birmingham to solicit feedback on the Master Plan draft, ACM Ecker stated that the use of Engage Birmingham was considered but it was ultimately decided that maintaining the present communication options would be best. She noted that web surveys were used to solicit feedback during the process and that direct feedback could still be provided to the Master Plan team either via thebirminghamplan.com or via submitting feedback to City Staff.

Chair Clein encouraged members of the public to attend the upcoming review meetings. He thanked PD Dupuis for his work on the item.

10-160-21

K. Miscellaneous Business and Communications

- a. Communications
- **b.** Administrative Approval Correspondence

Chair Clein recused himself at 8:52 p.m. from a conversation regarding RH citing a potential conflict-of-interest stemming from his business. Chair Clein departed the meeting at 8:52 p.m.

Vice-Chair Williams assumed facilitation of the meeting at 8:52 p.m.

Victor Saroki, architect, was present on behalf of RH. He described a requested change to the location of the interior stairwells and to make the center entry windows more vertical than horizontal in appearance.

The Board concurred that the requested changes could proceed subject to administrative approval.

c. Draft Agenda for next meeting

d. Other Business

Ms. Whipple-Boyce stated that there was a new home being built on Clark Street that was sitting five feet closer to the street than the other homes on the block. She said she believed that because the new home was closer to a corner property that also sits closer to Clark Street, it caused the average of setbacks of homes within 200 feet to be skewed. She said she wanted the Board to review the issue.

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Chair Clein asked PD Dupuis to speak with BO Johnson, CM Markus and ACM Ecker to see whether it would be appropriate for the Board to review the matter.

10-161-21

- L. Planning Division Action Items
 - a. Staff Report on Previous Requests
 - b. Additional Items from tonight's meeting

10-162-21

M. Adjournment

No further business being evident, the Vice-Chair adjourned the meeting at 9:07 p.m.

Nick Dupuis

Planning Director



1. NAME & ADDRESS OF APPLICANT AND PROOF OF OWNERSHIP: JASON MILEN

JAX KAR WASH

34745 WOODWARD AVENUE, BIRMINGHAM, MI 48009

2. NAME OF DEVELOPMENT

34745 WOODWARD AVENUE

3. ADDRESS OF SITE AND LEGAL DESCRIPTION OF THE REAL ESTATE:

JAX KAR WASH

LAND IN THE CITY OF BIRMINGHAM, COUNTY OF OAKLAND, STATE OF MICHIGAN DESCRIBED AS: THE EASTERLY PART OF LOT 4 MEASURING 12.4 FEET ON THE NORTH LINE AND 18.23 FEET ON THE SOUTH LINE, ALL OF LOTS 5 THROUGH 7 EXCEPT THAT PART TAKEN FOR ROAD PURPOSES, "WILLIAM HART SUBDIVISION," AS RECORDED IN LIBER 8 OF PLATS, PAGE 9 OF THE OAKLAND COUNTY RECORDS: BEING MORE PARTICULARLY DESCRIBED AS BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 7: THENCE S54d 24' 24"W 154.83 FEET; THENCE N33d 26' 35"W 166.95 FEET, TO A POINT ON THE SOUTHERLY LINE OF BROWN STREET (FORMERLY FOREST AVENUE); THENCE ALONG SAID SOUTHERLY LINE OF BROWN STREET (FORMERLY FOREST AVENUE), N54d 40'00"E 57.34 FEET AND 79.81 FEET ALONG THE ARC OF CURVE TO THE RIGHT RADIUS 129.52 FEET, CENTRAL ANGLE 35d 18' 14" CHORD BEAR N76d 48' 13"E 78.85 FEET AND N88d 34'36"E 60.31 FEET TO A POINT ON THE WESTERLY LINE OF WOODWARD AVENUE (FORMERLY HUNTER BOULEVARD); THENCE ALONG SAID LINE S18d 39' 22"E 107.43 FEET TO THE POINT OF

4. LEGEND AND NOTES, INCLUDING A GRAPHIC SCALE, NORTH POINT AND DATE: REFER TO ELEVATIONS & SITE PLANS INCLUDING THE ABOVE ELEMENTS.

5. A SEPARATE LOCATION MAP: REFER TO LOCATION MAP, BELOW

6. A LIST OF ALL REQUESTED ELEMENTS / CHANGES TO THE SITE PLAN. LIST APPLIES TO SHEETS AS100 & AS101

1 RELOCTION OF AN EXISTING ATTENDANT BOOTH, SOUTH SIDE OF BUILDING.

2 DEMOLITION OF OVERHEAD VACUUM TUBES, STEEL STRUCTURE, VACUUMS, EQUIPMENT AND ASSOCIATED SIGNS, SOUTH SIDE OF BUILDING.

3 DEMOLITION OF (1) EXISTING XPT AND CANOPY ON A RAISED CONCRETE ISLAND, SOUTH SIDE OF BUILDING, VERIFY CONDITION OF EQUIPMENT FOR POTENTIAL RE-USE.

4 DEMOLITION OF EXISTING PYLON SIGN IN IT'S ENTIRETY.

 $\lceil 5 \rceil$ DEMOLITION OF A PORTION OF THE EAST WALL OF EXIST. LOBBY FOR PROPOSED NEW ENTRY.

[6] PROPOSED RELOCATION OF (10) PARKING SPACES FROM THE NORTH TO SOUTH SIDE OF

[7] PROPOSED RELOCATION OF VACUUM SPACES TO NORTH SIDE OF BUILDING.

[8] PROPOSING (3) XPTS AND CANOPIES ON 6" RAISED CONCRETE ISLANDS, SOUTH SIDE OF

9 PROPOSING (8) VACUUM STANCHIONS FOR VACUUMING ON NORTH SIDE OF BUILDING.

10) DEMOLITION OF A PORTION OF EXISTING WALL FOR PROPOSED 16'-0" x 10'-0" OVERHEAD DOOR, COLOR TO MATCH EXISTING OVERHEAD DOORS, REFER TO COLOR SAMPLES SHEET A201. PROVIDES ACCESS TO VACUUMS, MAINTAINS CLEAR 5'-0" PEDESTRIAN PATH.

[11] PROPOSED CURB CUTS FROM THE PROPERTY ONTO BROWN STREET.

[12] PROPOSED 36" ACCESSIBLE PATH W/ ACCESSIBLE DOOR W/ SIDE LIGHT FOR ENTRY TO EXIST LOBBY.

[13] PROPOSING NEW WALL MOUNTED SIGNS ON BROWN STREET AND WOODWARD AVENUE

[14] PARTIALLY CLOSING OF EXISTING CURB CUT AT THE NORTHEAST CORNER OF SITE. 10'-0" ESCAPE LANE FROM THE PROPERTY ONTO BROWN STREET.

[15] PROPOSED LANDSCAPE AREAS, REFER TO LANDSCAPE ARCHITECTURE SHEETS.

[16] PROPOSED 32" HIGH MASONRY SCREEN WALL WITH BRICK VENEER.

[17] DEMOLITION OF EXISTING DOOR AND WINDOW TO BE REPLACED WITH NEW WINDOW.

[18] DEMOLITION OF A PORTION OF THE SOUTH WALL FOR PROPOSED NEW EGRESS DOOR.

[19] DEMOLITION OF EXISTING AWNING AT THE WEST END OF THE BUILDING IN IT'S ENTIRETY, CLEAN AND REPAIR AS NEEDED.

7. ANY CHANGES REQUESTED MARKED IN COLOR:

ALL CHANGES IDENTIFIED AND KEYED TO THE LIST ABOVE.

8. GENERAL DESCRIPTION, LOCATION AND TYPES OF STRUCTURES ON THE SITE: EXISTING 1 STORY BLOCK BUILDING, 6,583 SQUARE FEET EXISTING WOOD PICKET UTILITY/ DUMPSTER ENCLOSURE, APPROX. 316 SQUARE FEET EXISTING SNOW MELT STRUCTURE, APPROX. 112 SQUARE FEET EXISTING ATTENDANT BOOTH, APPROX. 66 SQUARE FEET

9. DETAILS OF EXISTING OR PROPOSED LIGHTING, SIGNAGE, AND OTHER PERTINENT DEVELOPMENT FEATURES

EXISTING WALL MOUNTED SITE LIGHTS, TO REMAIN.

IDENTIFIES ELEVATIONS, REFER TO

SHEETS A200 & A201

PLAN NORTH

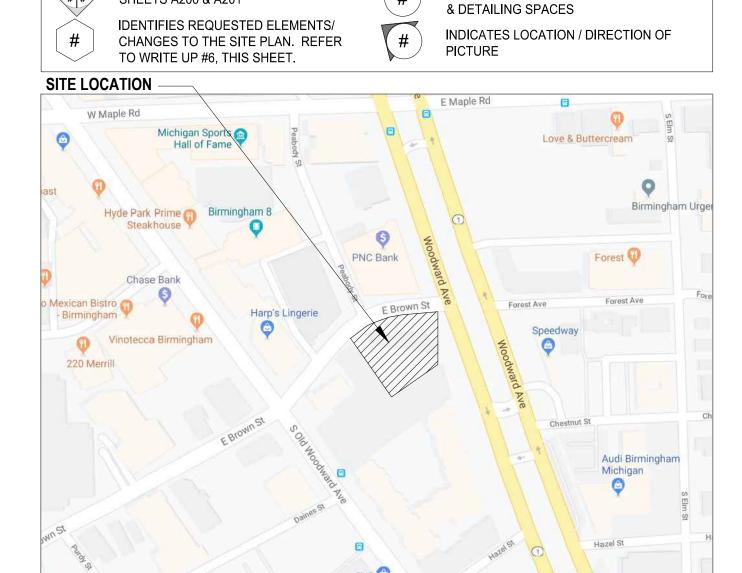
SIGNS BY OTHERS, REFER TO EXTERIOR ELEVATIONS A200 10. A LANDSCAPE PLAN SHOWING ALL EXISTING AND PROPOSED PLANTING AND SCREENING MATERIALS, INCLUDING THE NUMBER, SIZE AND TYPE OF PLANTINGS PROPOSED

LIMITED EXISTING LANDSCAPING, SHRUBS ON NORTH SIDE NEAR LOBBY ENTRY. PROPOSED

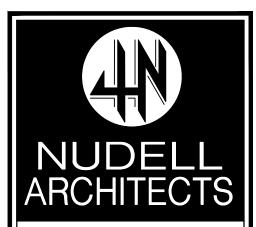
LANDSCAPING AT 396 SF CIRCULAR BED. REFER TO LANDSCAPE DRAWINGS.

11. ANY OTHER INFORMATION REQUESTED IN WRITING BY THE PLANNING DIVISION, THE DRB OR THE BUILDING OFFICIAL DEEMED IMPORTANT TO THE DEVELOPMENT SYMBOL LEGEND

IDENTIFIES NUMBER OF PARKING







MICHIGAN 31690 W. Twelve Mile Road Farmington Hills, Michigan 48334 t 248 324 8800 f 248 324 0661

> FLORIDA 1807 Edgewater Drive Orlando, Florida 32804 t 407 930 2526

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project title

PREVIOUS APPROVALS CHART BOARD/ COMMISSION

34745 WOODWARD AVE., CITY OF BIRMINGHAM, MI 48009

sheet title

EXISTING ARCHITECTURAL SITE PLAN

DO NOT SCALE DRAWINGS USE FIGURED DIMENSIONS ONLY

project number

2020-012

BDL BDL checked JHN

<u>approved</u>

issued for 6/7/19 OWNER REVIEW SPA - PRELIMINARY 7/3/19 SPA - SECOND SUBMIT 8/28/19 SPA - PRELIM SUBMIT 5/27/20 SPA - THIRD SUBMIT 6/04/20 **SPA - REVISIONS CITY MEETINGS** SPA - FOURTH SUBMIT 5/05/21 SPA - FOUR RESUBMIT 7/09/21 SPA - FIVE RESUBMIT 9/17/21

SPA - SIX RESUBMIT 10/8/21

sheet

AS100

 NAME & ADDRESS OF APPLICANT AND PROOF OF OWNERSHIP: JASON MILEN

JAX KAR WASH

34745 WOODWARD AVENUE, BIRMINGHAM, MI 48009

2. NAME OF DEVELOPMENT JAX KAR WASH

3. ADDRESS OF SITE AND LEGAL DESCRIPTION OF THE REAL ESTATE: 34745 WOODWARD AVENUE

LAND IN THE CITY OF BIRMINGHAM, COUNTY OF OAKLAND, STATE OF MICHIGAN DESCRIBED AS: THE EASTERLY PART OF LOT 4 MEASURING 12.4 FEET ON THE NORTH LINE AND 18.23 FEET ON THE SOUTH LINE, ALL OF LOTS 5 THROUGH 7 EXCEPT THAT PART TAKEN FOR ROAD PURPOSES. "WILLIAM HART SUBDIVISION," AS RECORDED IN LIBER 8 OF PLATS, PAGE 9 OF THE OAKLAND COUNTY RECORDS: BEING MORE PARTICULARLY DESCRIBED AS BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 7: THENCE S54d 24' 24"W 154.83 FEET; THENCE N33d 26' 35"W 166.95 FEET, TO A POINT ON THE SOUTHERLY LINE OF BROWN STREET (FORMERLY FOREST AVENUE); THENCE ALONG SAID SOUTHERLY LINE OF BROWN STREET (FORMERLY FOREST AVENUE), N54d 40'00"E 57.34 FEET AND 79.81 FEET ALONG THE ARC OF CURVE TO THE RIGHT RADIUS 129.52 FEET, CENTRAL ANGLE 35d 18' 14" CHORD BEAR N76d 48' 13"E 78.85 FEET AND N88d 34'36"E 60.31 FEET TO A POINT ON THE WESTERLY LINE OF WOODWARD AVENUE (FORMERLY HUNTER BOULEVARD); THENCE ALONG SAID LINE S18d 39' 22"E 107.43 FEET TO THE POINT OF

- 4. LEGEND AND NOTES, INCLUDING A GRAPHIC SCALE, NORTH POINT AND DATE:
- REFER TO ELEVATIONS & SITE PLANS INCLUDING THE ABOVE ELEMENTS.
- 5. A SEPARATE LOCATION MAP: REFER TO LOCATION MAP, BELOW
- 6. A LIST OF ALL REQUESTED ELEMENTS / CHANGES TO THE SITE PLAN. LIST APPLIES TO SHEETS AS100 & AS101

1 RELOCTION OF AN EXISTING ATTENDANT BOOTH, SOUTH SIDE OF BUILDING.

- 2 DEMOLITION OF OVERHEAD VACUUM TUBES, STEEL STRUCTURE, VACUUMS, EQUIPMENT AND ASSOCIATED SIGNS, SOUTH SIDE OF BUILDING.
- 3 DEMOLITION OF (1) EXISTING XPT AND CANOPY ON A RAISED CONCRETE ISLAND, SOUTH SIDE OF BUILDING, VERIFY CONDITION OF EQUIPMENT FOR POTENTIAL RE-USE.
- 4 DEMOLITION OF EXISTING PYLON SIGN IN IT'S ENTIRETY.
- [5] DEMOLITION OF A PORTION OF THE EAST WALL OF EXIST. LOBBY FOR PROPOSED NEW ENTRY.
- 6 PROPOSED RELOCATION OF (10) PARKING SPACES FROM THE NORTH TO SOUTH SIDE OF
- [7] PROPOSED RELOCATION OF VACUUM SPACES TO NORTH SIDE OF BUILDING.
- (8) PROPOSING (3) XPTS AND CANOPIES ON 6" RAISED CONCRETE ISLANDS, SOUTH SIDE OF
- 9 PROPOSING (8) VACUUM STANCHIONS FOR VACUMMING ON NORTH SIDE OF BUILDING.
- REFER TO DTL 4/A200. 10) DEMOLITION OF A PORTION OF EXISTING WALL FOR PROPOSING 16'-0" x 10'-0" OVERHEAD DOOR, COLOR TO MATCH EXISTING OVERHEAD DOORS (SW 2836 / QUATERSAWN OAK), REFER TO COLOR
- SAMPLES SHEET A201 PROVIDES ACCESS TO VACUUMS, MAINTAINS CLEAR 5'-0" PEDESTRIAN PATH [11] PROPOSED CURB CUTS FROM THE PROPERTY ONTO BROWN STREET.
- 12) PROPOSED 36" ACCESSIBLE PATH W/ ACCESSIBLE DOOR W/ SIDE LIGHT FOR ENTRY TO EXIST LOBBY
- [13] PROPOSING NEW WALL MOUNTED SIGNS ON BROWN STREET AND WOODWARD AVENUE ELEVATIONS.
- [14] PARTIALLY CLOSING OF EXISTING CURB CUT AT THE NORTHEAST CORNER OF SITE. 10'-0" ESCAPE LANE FROM THE PROPERTY ONTO BROWN STREET.
- [15] PROPOSED LANDSCAPE AREAS, REFER TO LANDSCAPE ARCHITECTURE SHEETS.
- [16] PROPOSED 32" HIGH MASONRY SCREEN WALL WITH BRICK VENEER.
- [17] DEMOLITION OF EXISTING DOOR AND WINDOW TO BE REPLACED WITH NEW WINDOW.
- [18] DEMOLITION OF A PORTION OF THE SOUTH WALL FOR PROPOSED NEW EGRESS DOOR.
- [19] DEMOLITION OF EXISTING AWNING AT THE WEST END OF THE BUILDING IN IT'S ENTIRETY, CLEAN AND REPAIR AS NEEDED.
- 7. ANY CHANGES REQUESTED MARKED IN COLOR:
- ALL CHANGES IDENTIFIED AND KEYED TO THE LIST ABOVE.

8. GENERAL DESCRIPTION, LOCATION AND TYPES OF STRUCTURES ON THE SITE: EXISTING 1 STORY BLOCK BUILDING, 6,583 SQUARE FEET EXISTING WOOD PICKET UTILITY/ DUMPSTER ENCLOSURE, APPROX. 316 SQUARE FEET EXISTING SNOW MELT STRUCTURE, APPROX. 112 SQUARE FEET EXISTING ATTENDANT BOOTH, APPROX. 66 SQUARE FEET

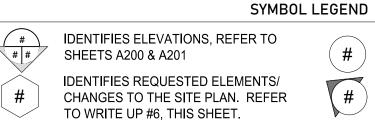
9. DETAILS OF EXISTING OR PROPOSED LIGHTING, SIGNAGE, AND OTHER PERTINENT DEVELOPMENT FEATURES

EXISTING WALL MOUNTED SITE LIGHTS, TO REMAIN.

SIGNS BY OTHERS, REFER TO EXTERIOR ELEVATIONS A200 10. A LANDSCAPE PLAN SHOWING ALL EXISTING AND PROPOSED PLANTING AND SCREENING MATERIALS, INCLUDING THE NUMBER, SIZE AND TYPE OF PLANTINGS PROPOSED LIMITED EXISTING LANDSCAPING, SHRUBS ON NORTH SIDE NEAR LOBBY ENTRY. PROPOSED

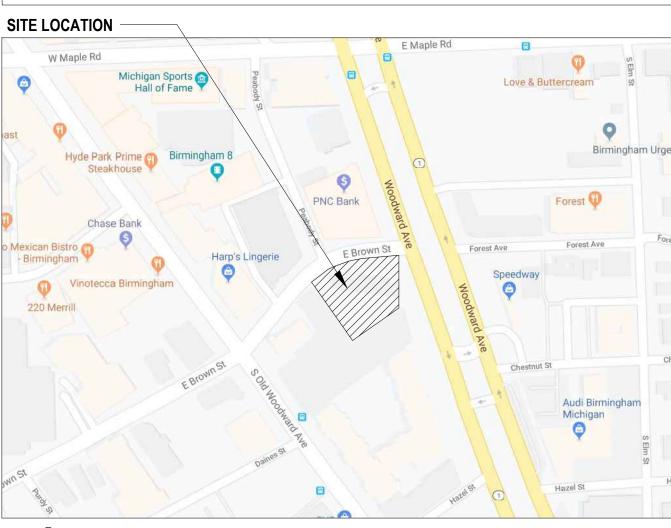
LANDSCAPING AT 396 SF CIRCULAR BED. REFER TO LANDSCAPE DRAWINGS.

11. ANY OTHER INFORMATION REQUESTED IN WRITING BY THE PLANNING DIVISION, THE DRB OR THE BUILDING OFFICIAL DEEMED IMPORTANT TO THE DEVELOPMENT

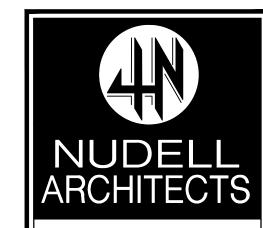




PICTURE



LOCATION MAP SCALE:



MICHIGAN 31690 W. Twelve Mile Road Farmington Hills, Michigan 48334 t 248 324 8800 f 248 324 0661

FLORIDA 1807 Edgewater Drive Orlando, Florida 32804 t 407 930 2526

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project title

JAX KAR WASH

PREVIOUS APPROVALS CHART BOARD/ COMMISSION

34745 WOODWARD AVE., CITY OF BIRMINGHAM, MI 48009

sheet title

PROPOSED SITE PLAN

DO NOT SCALE DRAWINGS USE FIGURED DIMENSIONS ONLY

project number

2020-012

BDL BDL checked JHN

<u>approved</u>

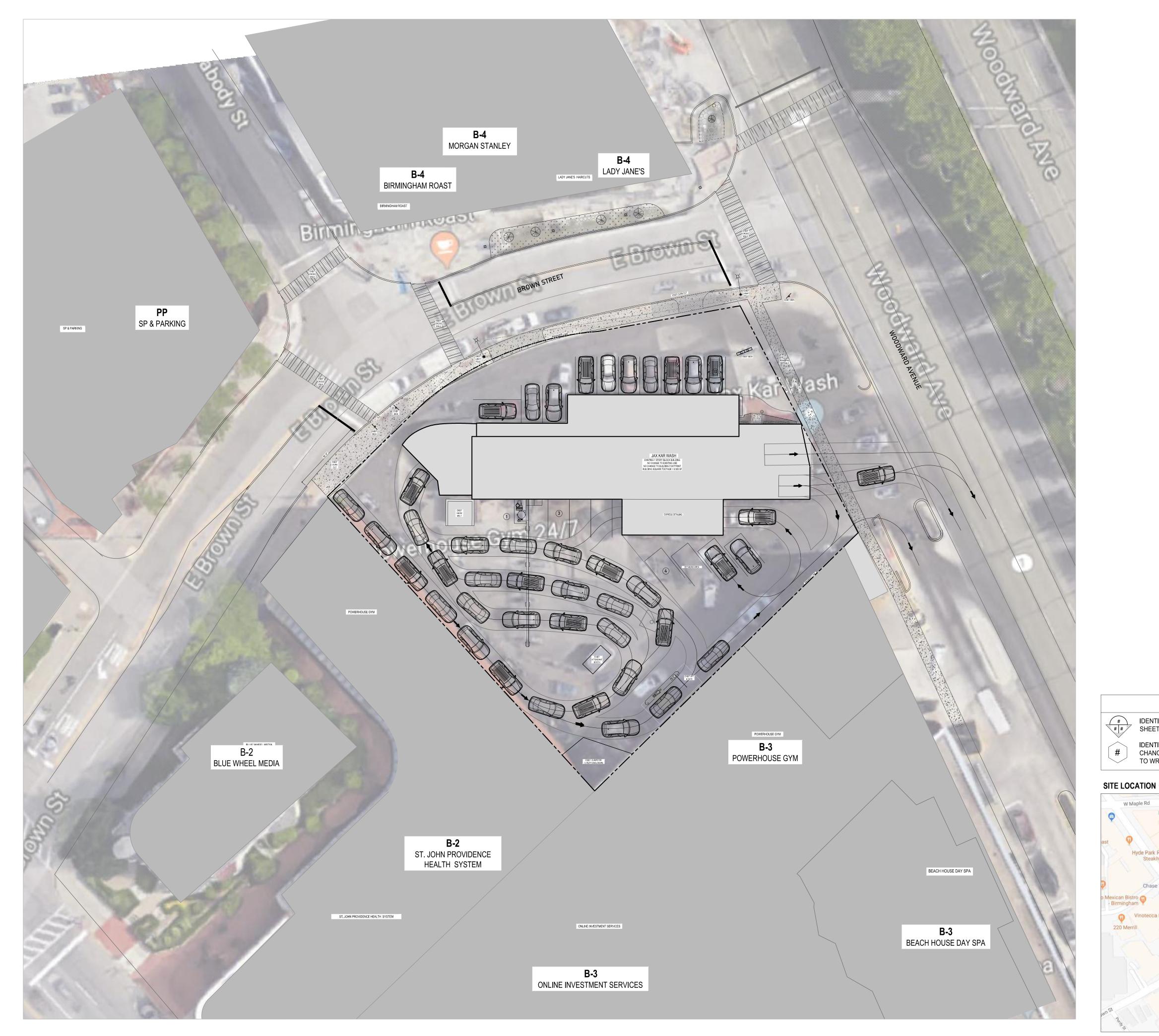
issued for 6/7/19 OWNER REVIEW SPA - PRELIMINARY SPA - SECOND SUBMIT 8/28/19 SPA - PRELIM SUBMIT 5/27/20 SPA - THIRD SUBMIT 6/04/20 7/09/20 SPA - REVISIONS CITY MEETINGS 10/6/20 SPA - FOURTH SUBMIT 5/05/21 SPA - FOUR RESUBMIT 7/09/21 SPA - FIVE RESUBMIT 9/17/21

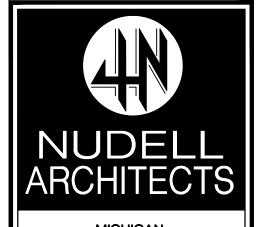
sheet

NTS

AS101

SPA - SIX RESUBMIT 10/8/21





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project title

JAX KAR WASH

PREVIOUS APPROVALS CHART **BOARD/COMMISSION**

34745 WOODWARD AVE, CITY OF BIRMINGHAM, MI 48009

sheet title

AERIAL ARCHITECTURAL SITE PLAN

DO NOT SCALE DRAWINGS USE FIGURED DIMENSIONS ONLY

project number

2020-012

BDL <u>checked</u> JHN <u>approved</u>

issued for **OWNER REVIEW** SPA - PRELIMINARY 7/3/19 SPA - SECOND SUBMIT 8/28/19 SPA - PRELIM SUBMIT 5/27/20 SPA - THIRD SUBMIT 6/04/20 SPA - REVISIONS CITY MEETINGS SPA - FOURTH SUBMIT 5/05/21 SPA-FOUR RESUBMIT 7/09/21

SPA - FIVE RESUBMIT 9/17/21

SPA - SIX RESUBMIT 10/8/21

sheet

AS102

Love & Buttercream Birmingham Urger Hyde Park Prime Birmingham 8
Steakhouse PNC Bank

SYMBOL LEGEND

IDENTIFIES NUMBER OF PARKING & DETAILING SPACES

INDICATES LOCATION / DIRECTION OF PICTURE

IDENTIFIES ELEVATIONS, REFER TO SHEETS A200 & A201

IDENTIFIES REQUESTED ELEMENTS/ CHANGES TO THE SITE PLAN. REFER TO WRITE UP #6, THIS SHEET.



PLAN NORTH

TRUE NORTH

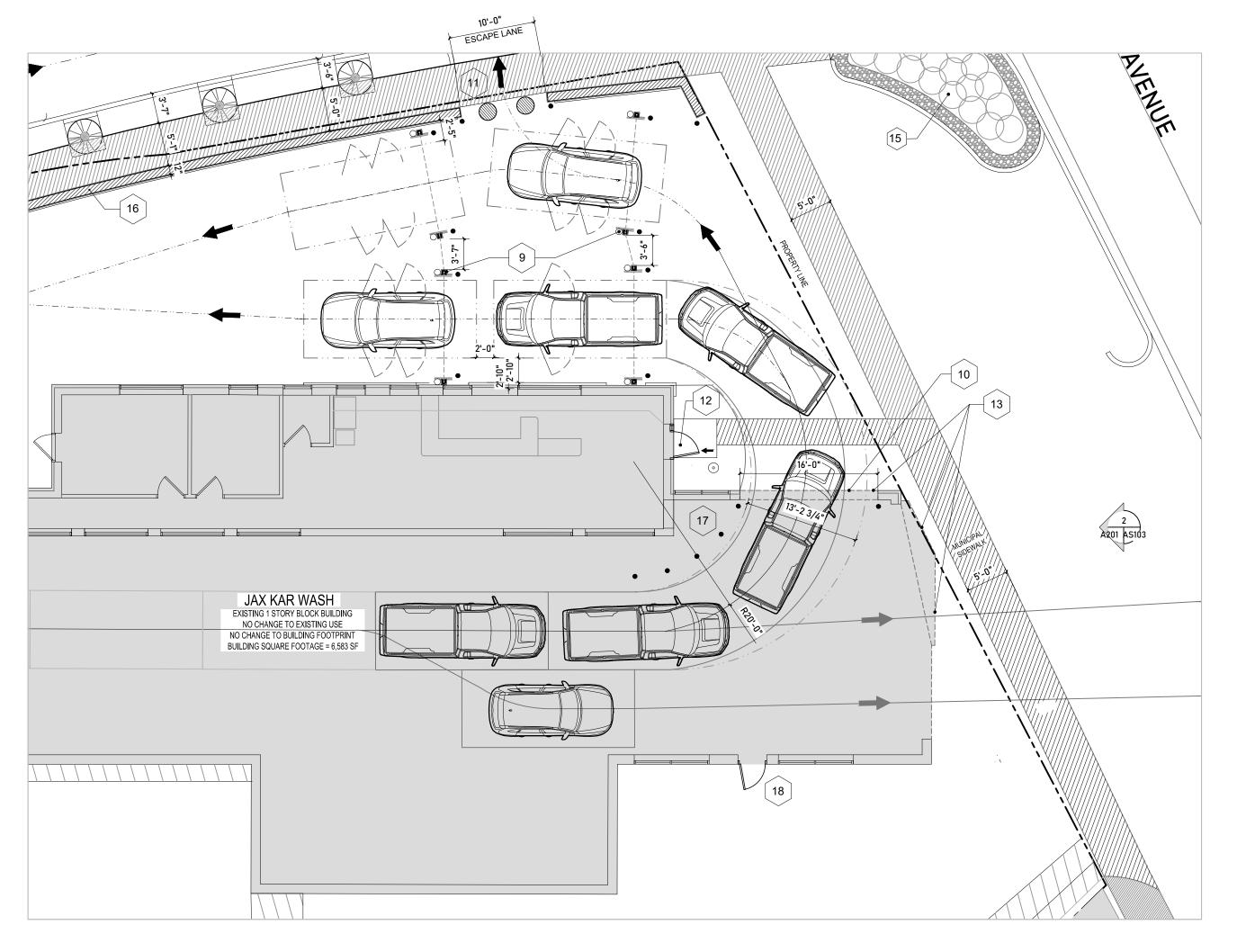
AS102 0' 10' 20' 40'

AERIAL PHOTGRAPH OF SITE & ADJACENT PROPERTIES

SCALE: 1"=20'-0"

PLAN NORTH

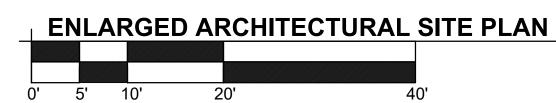
LOCATION MAP SCALE: NTS











SCALE: 1"=10'-0"

1. NAME & ADDRESS OF APPLICANT AND PROOF OF OWNERSHIP: JASON MILEN

3. ADDRESS OF SITE AND LEGAL DESCRIPTION OF THE REAL ESTATE:

JAX KAR WASH

34745 WOODWARD AVENUE. BIRMINGHAM, MI 48009

2. NAME OF DEVELOPMENT

34745 WOODWARD AVENUE

JAX KAR WASH

LEGAL DESCRIPTION: LAND IN THE CITY OF BIRMINGHAM, COUNTY OF OAKLAND, STATE OF MICHIGAN DESCRIBED AS: THE EASTERLY PART OF LOT 4 MEASURING 12.4 FEET ON THE NORTH LINE AND 18.23 FEET ON THE SOUTH LINE, ALL OF LOTS 5 THROUGH 7 EXCEPT THAT PART TAKEN FOR ROAD PURPOSES, "WILLIAM HART SUBDIVISION," AS RECORDED IN LIBER 8 OF PLATS, PAGE 9 OF THE OAKLAND COUNTY RECORDS: BEING MORE PARTICULARLY DESCRIBED AS BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 7: THENCE S54d 24' 24"W 154.83 FEET; THENCE N33d 26' 35"W 166.95 FEET, TO A POINT ON THE SOUTHERLY LINE OF BROWN STREET (FORMERLY FOREST AVENUE); THENCE ALONG SAID SOUTHERLY LINE OF BROWN STREET (FORMERLY FOREST AVENUE), N54d 40'00"E 57.34 FEET AND 79.81 FEET ALONG THE ARC OF CURVE TO THE RIGHT RADIUS 129.52 FEET, CENTRAL ANGLE 35d 18' 14" CHORD BEAR N76d 48' 13"E 78.85 FEET AND N88d 34'36"E 60.31 FEET TO A POINT ON THE WESTERLY LINE OF WOODWARD AVENUE (FORMERLY HUNTER BOULEVARD); THENCE ALONG SAID LINE S18d 39' 22"E 107.43 FEET TO THE POINT OF

4. LEGEND AND NOTES, INCLUDING A GRAPHIC SCALE, NORTH POINT AND DATE: REFER TO ELEVATIONS & SITE PLANS INCLUDING THE ABOVE ELEMENTS.

5. A SEPARATE LOCATION MAP:

REFER TO LOCATION MAP, BELOW

6. A LIST OF ALL REQUESTED ELEMENTS / CHANGES TO THE SITE PLAN. LIST APPLIES TO SHEETS AS100 & AS101

1 RELOCTION OF AN EXISTING ATTENDANT BOOTH, SOUTH SIDE OF BUILDING.

2 DEMOLITION OF OVERHEAD VACUUM TUBES, STEEL STRUCTURE, VACUUMS, EQUIPMENT AND ASSOCIATED SIGNS, SOUTH SIDE OF BUILDING.

3 DEMOLITION OF (1) EXISTING XPT AND CANOPY ON A RAISED CONCRETE ISLAND, SOUTH SIDE OF BUILDING, VERIFY CONDITION OF EQUIPMENT FOR POTENTIAL RE-USE.

4 DEMOLITION OF EXISTING PYLON SIGN IN IT'S ENTIRETY.

(5) DEMOLITION OF A PORTION OF THE EAST WALL OF EXIST. LOBBY FOR PROPOSED NEW ENTRY.

6 PROPOSED RELOCATION OF (10) PARKING SPACES FROM THE NORTH TO SOUTH SIDE OF

7 PROPOSED RELOCATION OF VACUUM SPACES TO NORTH SIDE OF BUILDING.

(8) PROPOSING (3) XPTS AND CANOPIES ON 6" RAISED CONCRETE ISLANDS, SOUTH SIDE OF BUILDING.

9 PROPOSING (8) VACUUM STANCHIONS FOR VACUMMING ON NORTH SIDE OF BUILDING. REFER TO DTL 4/A200.

[10] DEMOLITION OF A PORTION OF EXISTING WALL FOR PROPOSING 16'-0" x 10'-0" OVERHEAD DOOR, COLOR TO MATCH EXISTING OVERHEAD DOORS (SW 2836 / QUATERSAWN OAK), REFER TO COLOR SAMPLES SHEET A201 PROVIDES ACCESS TO VACUUMS, MAINTAINS CLEAR 5'-0" PEDESTRIAN PATH

[11] PROPOSED CURB CUTS FROM THE PROPERTY ONTO BROWN STREET.

[12] PROPOSED 36" ACCESSIBLE PATH W/ ACCESSIBLE DOOR W/ SIDE LIGHT FOR ENTRY TO EXIST LOBBY.

[13] PROPOSING NEW WALL MOUNTED SIGNS ON BROWN STREET AND WOODWARD AVENUE ELEVATIONS.

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[15] PROPOSED LANDSCAPE AREAS, REFER TO LANDSCAPE ARCHITECTURE SHEETS.

[16] PROPOSED 32" HIGH MASONRY SCREEN WALL WITH BRICK VENEER.

[17] DEMOLITION OF EXISTING DOOR AND WINDOW TO BE REPLACED WITH NEW WINDOW.

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9. DETAILS OF EXISTING OR PROPOSED LIGHTING, SIGNAGE, AND OTHER PERTINENT

DEVELOPMENT FEATURES EXISTING WALL MOUNTED SITE LIGHTS, TO REMAIN.

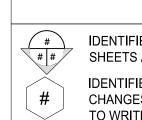
SIGNS BY OTHERS, REFER TO EXTERIOR ELEVATIONS A200

10. A LANDSCAPE PLAN SHOWING ALL EXISTING AND PROPOSED PLANTING AND SCREENING MATERIALS, INCLUDING THE NUMBER, SIZE AND TYPE OF PLANTINGS PROPOSED LIMITED EXISTING LANDSCAPING, SHRUBS ON NORTH SIDE NEAR LOBBY ENTRY. PROPOSED

LANDSCAPING AT 396 SF CIRCULAR BED. REFER TO LANDSCAPE DRAWINGS. 11. ANY OTHER INFORMATION REQUESTED IN WRITING BY THE PLANNING DIVISION, THE DRB OR

THE BUILDING OFFICIAL DEEMED IMPORTANT TO THE DEVELOPMENT

SYMBOL LEGEND



IDENTIFIES ELEVATIONS, REFER TO SHEETS A200 & A201

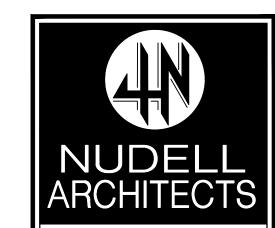
IDENTIFIES REQUESTED ELEMENTS/ CHANGES TO THE SITE PLAN. REFER TO WRITE UP #6, THIS SHEET.



INDICATES LOCATION / DIRECTION OF PICTURE

W Maple Rd	E Maple F	
	Peabody St	Love & Buttercream
t Q		Q Birmingham
Hyde Park Prime Birmingham 8 Steakhouse	(a)	
	PNC Bank PNC Bank E Brown St	Forest 🕡
Chase Bank	yard I	
lexican Bistro Birmingham Vinotecca Birmingham 220 Merrill	E Brown St	Forest Ave Speedway Speedway
E Brown St	SOA	Chestnut St
	S OIL WOODWARD PARE	Audi Birmingham Michigan
54	Daines St. 6	
A. I.	0	Hazel St





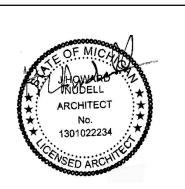
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project title

JAX KAR WASH

PREVIOUS APPROVALS CHART

BOARD/ COMMISSION	DATE

34745 WOODWARD AVE., CITY OF BIRMINGHAM, MI 48009

sheet title

ENLARGED ARCHITECTURAL SITE PLAN

DO NOT SCALE DRAWINGS USE FIGURED DIMENSIONS ONLY

|--|

2020-012

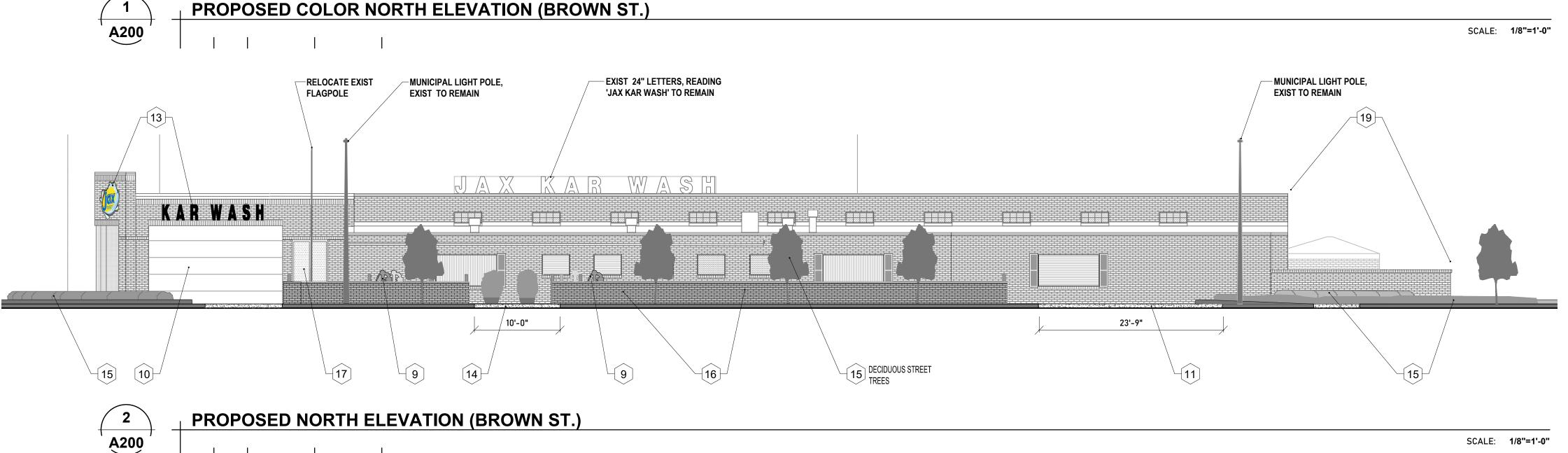
BDL BDL checked JHN <u>approved</u>

issued for SPA - SIX RESUBMIT 10/8/21

sheet

AS103





SIGN CALCULATIONS (BROWN ST. FACADE / NORTH ELEVATION)

(1.5) x LINEAL FEET OF FRONTAGE = $134'-11\frac{1}{4}$ " = **202.4 SF** (AVAILABLE)

24" ROOFTOP LETTERS READING 'JAX KAR WASH' = **63 SF** (EXISTING)

24" REVERSE HALO LIT CHANNEL LETTERS READING 'KAR WASH' = **24.3 SF** (PROPOSED)

TOTAL SQUARE FOOTAGE OF EXISTING AND PROPOSED SIGNAGE = 87.3 SF (TOTAL)

12'-2"

REVERSE HALO LIT CHANNEL LETTERS

SCALE: N.T.S.

36" BLE

COLOR: SW 6811 / HONORABLE BLUE, REFER TO PAINT SAMPLES BELOW.

VACUUM STANCHION SCALE:

12. COLOR ELEVATION DRAWINGS SHOWING THE PROPOSED DESIGN FOR EACH FACADE OF THE REFER TO ELEVATIONS ON SHEETS A200 & A201 FOR PROPOSED DESIGN CHANGES

13. LIST OF ALL MATERIALS TO BE USED FOR THE BUILDING, MARKED ON THE ELEVATION DRAWIINGS: REFER TO ELEVATION TAGS AND ITEMS IN #15, REQUESTED DESIGN CHANGES

14. DETAILS OF EXISTING OR PROPOSED LIGHTING, SIGNAGE AND OTHER PERTINENT DEVELOPMENT

EXISTING WALL MOUNTED SITE LIGHTS, TO REMAIN. SIGNS BY OTHERS, REFER TO EXTERIOR ELEVATIONS A200 & A201

15. A LIST OF ANY REQUESTED DESIGN CHANGES;

9 PROPOSING (8) VACUUM STANCHIONS FOR VACUUMING ON NORTH SIDE OF BUILDING.

REFER TO DTL 4/A200

[10] PROPOSING 16'-0" x 10'-0" OVERHEAD DOOR, COLOR TO MATCH EXISTING OVERHEAD DOORS (SW 2836 / QUATERSAWN OAK), REFER TO COLOR SAMPLES SHEET A201 PROVIDES ACCESS TO VACUUMS, MAINTAINS CLEAR 5'-0" PEDESTRIAN PATH.

[11] PROPOSED CURB CUT FROM THE PROPERTY ONTO BROWN STREET.

[12] PROPOSING NEW DOOR W/ SIDE LIGHT FOR ENTRY INTO EXISTING LOBBY.

[13] PROPOSING NEW WALL MOUNTED SIGNS ON BROWN STREET AND WOODWARD AVENUE

[14] PARTIALLY CLOSING OF EXISTING CURB CUT AT THE NORTHEAST CORNER OF SITE. 10'-0" ESCAPE LANE FROM THE PROPERTY ONTO BROWN STREET.

[15] PROPOSED LANDSCAPING - SCREENING. REFER TO LANDSCAPE PLAN FOR MORE INFORMATION.

[16] PROPOSED 32" HIGH MASONRY SCREEN WALL WITH BRICK VENEER.

[17] PROPOSING TO DEMO EXISTING DOOR AND REPLACE WITH WINDOW.

[18] DEMOLITION OF A PORTION OF THE SOUTH WALL FOR PROPOSED NEW EGRESS DOOR.

[19] DEMOLITION OF EXISTING AWNING AT THE WEST END OF THE BUILDING IN IT'S ENTIRETY, CLEAN

16. ITEMIZED LIST OF ALL MATERIALS TO BE USED, INCLUDING EXACT SIZE SPECIFICATIONS, COLOR, STYLE AND THE NAME OF THE MANUFACTURER:

LIMITED MATERIALS PROPOSED ON THE WOODWARD AVE. & BROWN ST. FACADES. - SIGNAGE, BY OTHERS, REFER TO SHEET A200 & A201 FOR MORE INFORMATION. - METAL STANCHION AND VACUUM HOSES, COLOR BLUE

- XPT AND JAX EQUIPMENT ON 6" RAISED CONCRETE ISLAND, REFER TO SHEET AS101 FOR MORE 17. LOCATION OF ALL EXTERIOR LIGHTING FIXTURES, EXACT SIZE SPECIFICATIONS, COLOR, STYLE AND THE NAME OF THE MANUFACTURER OF ALL FIXTURES AND A PHOTOMETRIC ANALYSIS OF ALL

18. ANY OTHER INFORMATION REQUESTED IN WRITING BY THE PLANNING DIVISION, THE DRB OR THE BUILDING OFFICIAL DEEMED IMPORTANT TO THE DEVELOPMENT

EXTERIOR LIGHTING FIXTURES SHOWING LIGHT LEVELS TO ALL PROPERTY LINES



BRAND PAINT COLOR FOR SIGNAGE, VACUUM STANCHIONS AND XPTS

SW 6910 / DAISY

BRAND PAINT COLOR FOR SIGNAGE ACCENT AND XPTS SOUTH OF

SW 2836 / QUATERSAWN OAK

PROPOSED PAINT FOR NEW OHD, COLOR TO MATCH EXISTING OHDS

SOUTH OF BUILDING

PAINT SAMPLES

SCALE: N.T.S.

MICHIGAN 31690 W. Twelve Mile Road Farmington Hills, Michigan 48334 t 248 324 8800 f 248 324 0661

> FLORIDA 1807 Edgewater Drive Orlando, Florida 32804 t 407 930 2526

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project title

JAX KAR WASH

34745 WOODWARD AVE.,

CITY OF BIRMINGHAM, MI 48009

sheet title

PROPOSED EXTERIOR ELEVATIONS

DO NOT SCALE DRAWINGS USE FIGURED DIMENSIONS ONLY

project number

2020-012

BDL BDL checked JHN <u>approved</u>

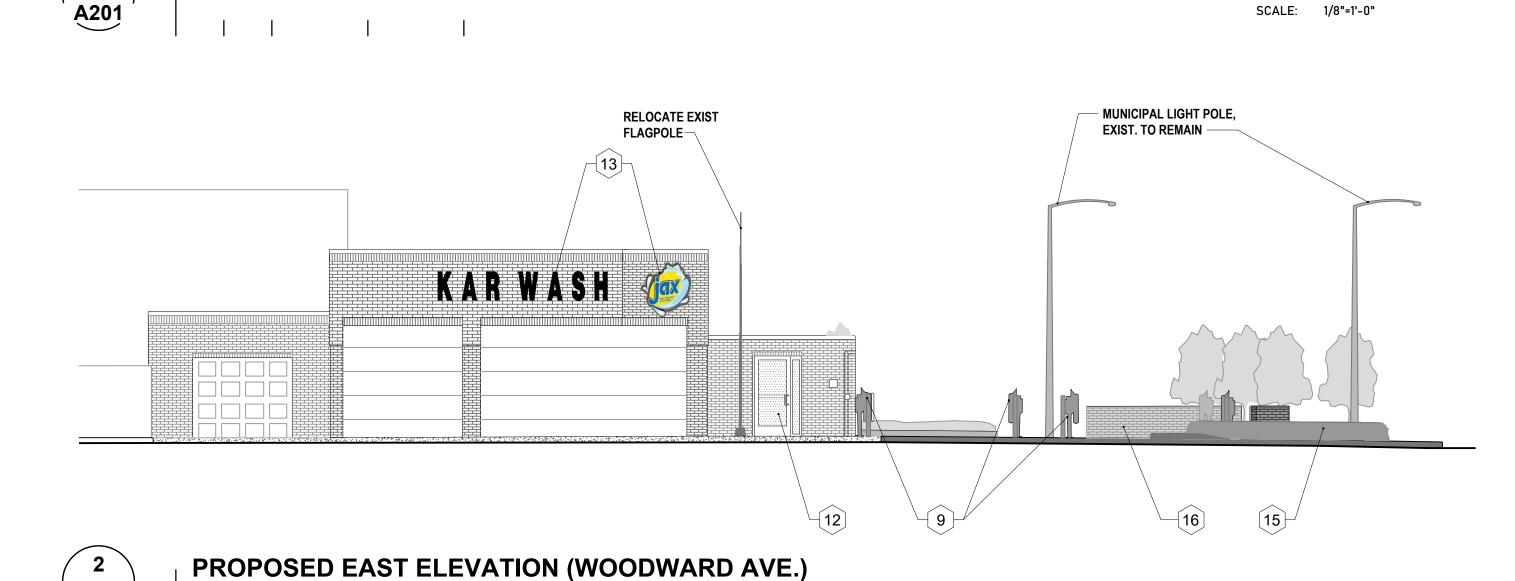
issued for <u>date</u> 6/7/19 **OWNER REVIEW** SPA - PRELIMINARY 7/3/19 SPA - SECOND SUBMIT 8/28/19 SPA - PRELIM SUBMIT 5/27/20 SPA - THIRD SUBMIT 6/04/20 7/09/20 **SPA - REVISIONS CITY MEETINGS** 10/6/20 SPA - FOURTH SUBMIT 5/05/21 SPA - FOUR RESUBMIT 7/09/21 SPA - FIVE RESUBMIT 9/17/21

SPA - SIX RESUBMIT 10/8/21

sheet

A200





PROPOSED EAST ELEVATION (WOODWARD AVE.)



A201



SIGN CALCULATIONS (WOODWARD AVE. FACADE / EAST ELEVATION) 28" REVERSE HALO LIT CHANNEL LETTERS READING 'KAR WASH' = **33 SF** (PROPOSED) (1) REVERSE HALO LIT SIGN = 27.1 SF (PROPOSED) TOTAL SQUARE FOOTAGE OF PROPOSED SIGNAGE = **60.1 SF** (TOTAL)

SCALE: 1/8"=1'-0"

REFER TO ELEVATIONS ON SHEETS A200 & A201 FOR PROPOSED DESIGN CHANGES

13. LIST OF ALL MATERIALS TO BE USED FOR THE BUILDING, MARKED ON THE ELEVATION DRAWIINGS: REFER TO ELEVATION TAGS AND ITEMS IN #15, REQUESTED DESIGN CHANGES

12.. COLOR ELEVATION DRAWINGS SHOWING THE PROPOSED DESIGN FOR EACH FACADE OF THE

14. DETAILS OF EXISTING OR PROPOSED LIGHTING, SIGNAGE AND OTHER PERTINENT DEVELOPMENT FEATURES

EXISTING WALL MOUNTED SITE LIGHTS, TO REMAIN. SIGNS BY OTHERS, REFER TO EXTERIOR ELEVATIONS A200 & A201

15. A LIST OF ANY REQUESTED DESIGN CHANGES;

- 9 PROPOSING (8) VACUUM STANCHIONS FOR DETAILING ON NORTH SIDE OF BUILDING. REFER TO DTL 4/A200
- [10] PROPOSING 16'-0" x 10'-0" OVERHEAD DOOR, COLOR TO MATCH EXISTING OVERHEAD DOORS (SW 2836 / QUATERSAWN OAK), REFER TO COLOR SAMPLES SHEET A201 PROVIDES ACCESS TO VACUUMS, MAINTAINS CLEAR 5'-0" PEDESTRIAN PATH
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- [17] PROPOSING TO DEMO EXISTING DOOR AND REPLACE WITH WINDOW.
- [18] DEMOLITION OF A PORTION OF THE SOUTH WALL FOR PROPOSED NEW EGRESS DOOR.
- [19] DEMOLITION OF EXISTING AWNING AT THE WEST END OF THE BUILDING IN IT'S ENTIRETY, CLEAN AND REPAIR AS NEEDED.
- 16. ITEMIZED LIST OF ALL MATERIALS TO BE USED, INCLUDING EXACT SIZE SPECIFICATIONS, COLOR, STYLE AND THE NAME OF THE MANUFACTURER:
- LIMITED MATERIALS PROPOSED ON THE WOODWARD AVE. & BROWN ST. FACADES.
- SIGNAGE, BY OTHERS, REFER TO SHEET A200 & A201 FOR MORE INFORMATION. - METAL STANCHION AND VACUUM HOSES, COLOR BLUE
- XPT AND JAX EQUIPMENT ON 6" RAISED CONCRETE ISLAND, REFER TO SHEET AS101 FOR MORE 17. LOCATION OF ALL EXTERIOR LIGHTING FIXTURES, EXACT SIZE SPECIFICATIONS, COLOR, STYLE AND
- THE NAME OF THE MANUFACTURER OF ALL FIXTURES AND A PHOTOMETRIC ANALYSIS OF ALL EXTERIOR LIGHTING FIXTURES SHOWING LIGHT LEVELS TO ALL PROPERTY LINES
- 18. ANY OTHER INFORMATION REQUESTED IN WRITING BY THE PLANNING DIVISION, THE DRB OR THE BUILDING OFFICIAL DEEMED IMPORTANT TO THE DEVELOPMENT



BRAND PAINT COLOR FOR SIGNAGE, VACUUM STANCHIONS AND XPTS SOUTH OF BUILDING



BRAND PAINT COLOR FOR SIGNAGE ACCENT AND XPTS SOUTH OF

SW 2836 / QUATERSAWN OAK PROPOSED PAINT FOR NEW OHD,

COLOR TO MATCH EXISTING OHDS

PAINT SAMPLES

SCALE: N.T.S.

MICHIGAN 31690 W. Twelve Mile Road Farmington Hills, Michigan 48334 t 248 324 8800 f 248 324 0661

> FLORIDA 1807 Edgewater Drive Orlando, Florida 32804 t 407 930 2526

NOTICE THIS ARCHITECTURAL AND/OR ENGINEERING DRAWING IS GIVEN IN CONFIDENCE . NO USE

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project title

JAX KAR WASH

34745 WOODWARD AVE.,

CITY OF BIRMINGHAM, MI 48009

sheet title

PROPOSED EXTERIOR ELEVATIONS

DO NOT SCALE DRAWINGS USE FIGURED DIMENSIONS ONLY

project number

2020-012

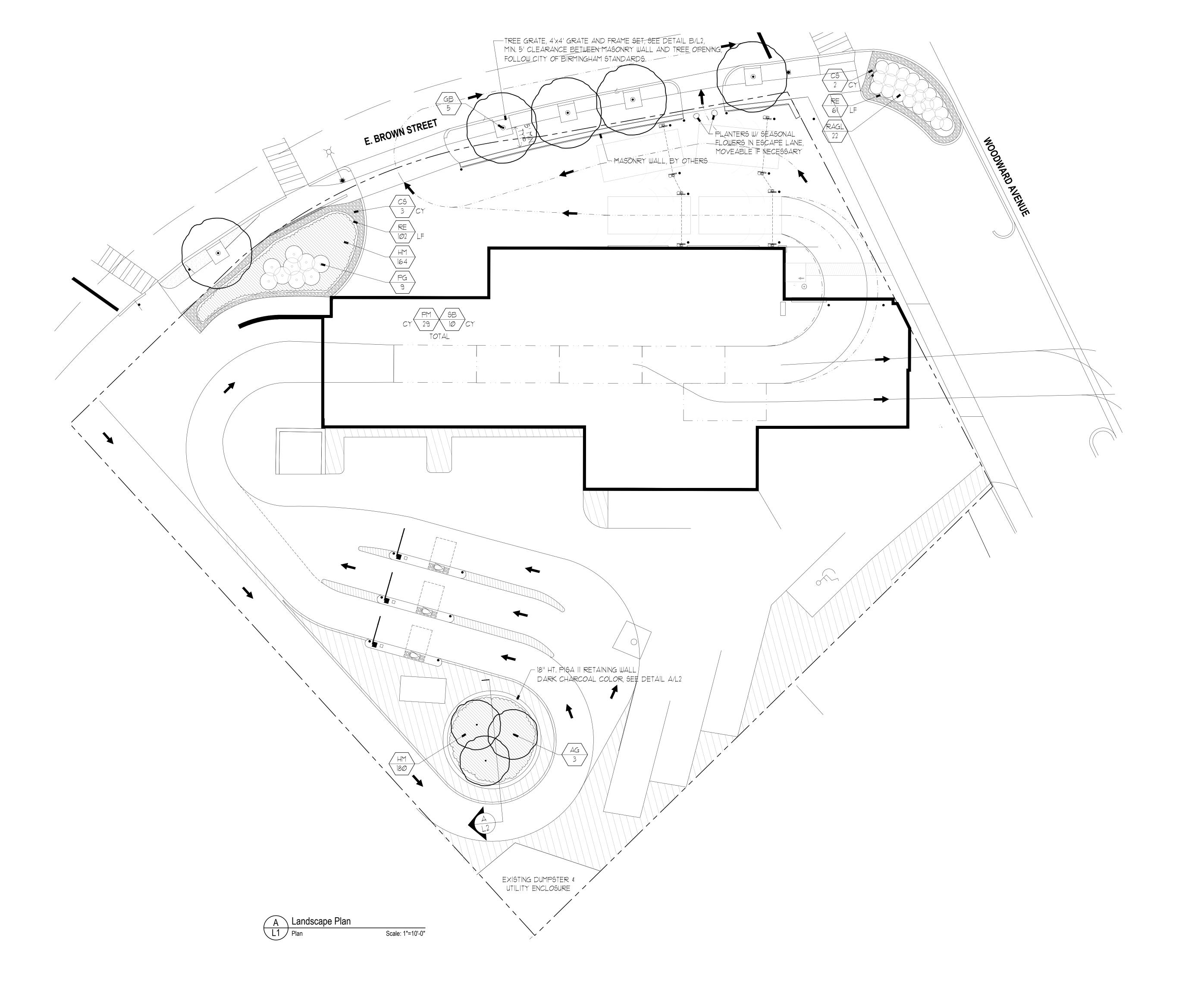
<u>drawn</u>	BDL
<u>checked</u>	BDL
<u>approved</u>	JHN

issued for	<u>date</u>
OWNER REVIEW	<u>6/7/1</u> 9
SPA - PRELIMINARY	<u>7/3/1</u> 9
SPA - SECOND SUBMIT	8/28/19
SPA - PRELIM SUBMIT	5/27/20
SPA - THIRD SUBMIT	6/04/20
SPA - REVISIONS	7/09/20
CITY MEETINGS	10/6/20
SPA - FOURTH SUBMIT	5/05/21
SPA - FOUR RESUBMIT	7/09/21
SPA - FIVE RESUBMIT	9/17/21

SPA - FIVE RESUBINIT 9/1/1/2 SPA - SIX RESUBMIT 10/8/21

sheet

A201



LANDSCAPE ARCHITECTURE

MICHAEL J. DUL & ASSOCIATES, INC

212 DAINES STREET

P 248 644 3410

MICHIGAN 48009

BIRMINGHAM

F 248 644 0819

www.mjdul.com

Jax Kar Wash & Auto Detailing
34745 Woodward Ave

Birmingham, MI 48009

PROJECT

Landscape Development
Landscape Plan

SHEET TITLE



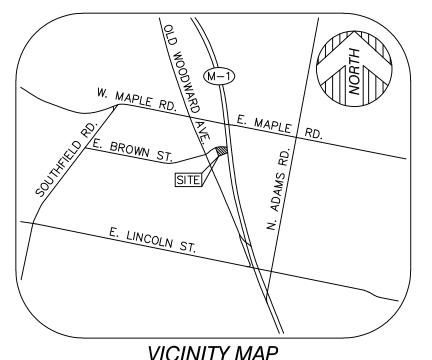
1"=10'-0"

SCALE

PROJECT NUMBER:
DRAWN:
CHECKED:
DATE:

M. Dul
October 6, 2020
October 14, 2020 REVIEW
May 5, 2021 SPA-FOUR SUBMITTAL
September 17, 2021 SPA-FIVE SUBMITTAL
October 8, 2021 SPA-SIX SUBMITTAL

L1



VICINITY MAP (NOT TO SCALE)

PARKING

HANDICAP PARKING = 0 STALLS STANDARD PARKING = 12 STALLS

PARCEL AREA

 $25,778\pm$ SQUARE FEET = 0.592± ACRES

BASIS OF BEARING

NORTH 18'50'31" WEST, BEING THE WESTERLY RIGHT OF WAY LINE OF WOODWARD AVENUE, AS DESCRIBED.

BENCHMARKS

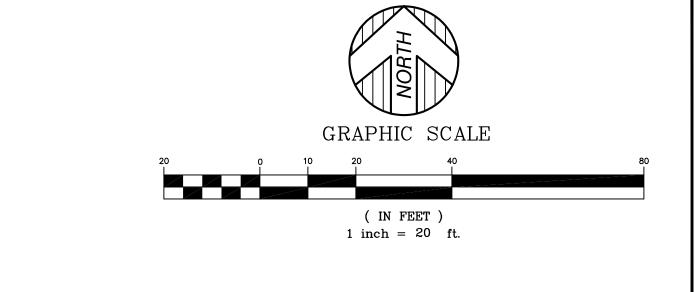
CITY OF BIRMINGHAM REFERENCE BENCHMARK #1
SOUTHWEST CORNER OF THE INTERSECTION OF PIERCE STREET AND MARTIN STREET, WITH G.I.S. COORDINATES OF NORTHING=383240.263 AND EASTING=13433664.196. (NOT DEPICTED ON SURVEY) ELEVATION = 781.53' (BIRMINGHAM CITY DATUM)

SITE BENCHMARK
NORTHWEST BOLT ON TOP FLANGE OF FIRE HYDRANT, LOCATED APPROXIMATELY 10'± EAST OF THE SOUTHEAST CORNER OF SUBJECT PROPERTY. ELEVATION = 771.67' (BIRMINGHAM CITY DATUM)

SURVEYOR'S NOTE

THE UNDERGROUND UTILITIES SHOWN HAVE BEEN LOCATED FROM FIELD SURVEY INFORMATION AND EXISTING DRAWINGS. THE SURVEYOR MAKES NO GUARANTEES THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA, EITHER IN SERVICE OR ABANDONED. THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED ALTHOUGH HE DOES CERTIFY THAT THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM INFORMATION AVAILABLE. THE SURVEYOR HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITIES OTHER THAN THE STRUCTURE INVENTORY SHOWN HEREON.

LEGEND	
•	SET 1/2" REBAR WITH CAP P.S. 47976
(R&M)	RECORD AND MEASURED DIMENSION
(R)	RECORD DIMENSION
(M)	MEASURED DIMENSION
×0.00	GROUND ELEVATION
$$ \triangle	TRANSFORMER
0	UTILITY POLE
	GAS METER
GV	GAS VALVE
	CABLE TV BOX
_	CLEANOUT
8	
<u> </u>	SEWER MANHOLE
⊕	ROUND CATCH BASIN
=	SQUARE CATCH BASIN
0	STORM DRAIN MANHOLE
₩ ₩ ×	FIRE HYDRANT
₩	WATER GATE MANHOLE
\bowtie	WATER VALVE
igorphi	MONITOR WELL
•	BOLLARD
0	FLAGPOLE
	SINGLE POST SIGN
	PARCEL BOUNDARY LINE
	PLATTED LOT LINE
	ADJOINER PARCEL LINE
	RIGHT-OF-WAY
	BUILDING
	BUILDING OVERHANG
	CONCRETE CURB
	PARKING
	EDGE OF ASPUALT (ASPU.)
	EDGE OF ASPHALT (ASPH.)
	EDGE OF BRICK
X	FENCE (AS NOTED)
	WALL (AS NOTED)
	3 12 11 12 13 3 HELL 1 2 HE
G	GAS LINE
s	
w	WATER LINE
	MINOR CONTOUR LINE
	MAJOR CONTOUR LINE
	BUILDING AREA
	ACDUALT
	ASPHALT



PROPERTY DESCRIPTION

INV. 12"/NW=767.12' INV 12" NE=765.17'

INV. 12" S=765.82'

INV. 12" NW=757.57

INV. 12" SE=757.37'

STORM CATCH BASIN

RIM=770.92'

T/PIPE=768.47'

-DETECTABLE

SURFACE

CONCRETE '

TRENCH 4 DRAIN

SOUTHEAST CORNER OF

BUILDING_

±ON-LINE

BUILDING CORNER

±ON-LINE

WESTERLY LINE OF

WOODWARD AVENUE

BENCHMARK

__WALL AROUND UTILITY ENCLOSURE

EXCEPTED

PORTIONS

OF LOTS
FOR ROAD

PURPOSES

L=79.81'(R&M)

SOUTHERLY LINE OF BROWN STREET

(FORMERLY KNOWN

PARCEL ID: 19-36-208-004 OWNER OF RECORD:

BMW KAR WASH LLC

APPROXIMATE

-LOCATION OF GAS LEAD

19-36-208-004

CONCRETE

RAISED

PARCEL ID: 9-36-208-016

OWNER OF RECORD: FULLER CENTRAL

PARK PROPERTIES

#355 1-STORY

COMMERCIAL

BUILDING

AS FOREST AVENUE)

SEWER MANHOLE

INV. 12" W±765.01

STORM CATCH BASIN

INV. 3" NE=770.44'

LOT₁5

ASPHALT

/ INV. 6" S=767.70'\

INV. 3" SW=770.05'

DETECTABLE

OVERHANG

DUMPSTER-HY

SURFACE

SEWER MANHOLE

INV. 12" NW=766.42'

INV. 12" N=767.72'

INV. 12" E=764.42'

INV. 12" E=760.52'

INV. 12" SE=765.97'

INV. 18" NE=760.02'

INV. 18" SW=759.77'

RIM=772.32'

DETECTABLE

SURFAC

R=129.52 (R&M)

ChL=78.55'(R&M)

× ChB=N76'48'13"E(R&M)

E. BROWN ST.

VARIABLE WIDTH RUBLIC RIGHT OF WAY

CONCRETE

STORM CAJCH BASIN

/INV. 4" S±770.50'

N88'34'36"E(R&M)

60.31'(R&M)

LOT 7

STORM CATCH BASIN RIM=770.88'

INV. 4" N=767.58'

CAR WASH

LAND SITUATED IN THE CITY OF BIRMINGHAM, COUNTY OF OAKLAND, STATE OF

THE EASTERLY PART OF LOT(S) 4 MEASURING 12.4 FEET ON THE NORTH LINE AND 18.23 FEET ON THE SOUTH LINE, ALL OF LOTS 5 THRU 7 EXCEPT THAT PART TAKEN FOR ROAD PURPOSES OF WILLIAM HART SUBDIVISION VILLAGE (NOW CITY) OF BIRMINGHAM ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 8 OF PLATS. PAGE 9 OF OAKLAND COUNTY RECORDS: BEING MORE LOT 7; THENCE SOUTH 54 DEGREES 24 MINUTES 24 SECONDS WEST 154.83 FEET; THENCE NORTH 33 DEGREES 26 MINUTES 35 SECONDS WEST 166.95 FEET, TO A POINT ON THE SOUTHERLY LINE OF FOREST AVENUE; THENCE 78.55 FEET, AND NORTH 88 DEGREES 34 MINUTES 36 SECONDS EAST 60.31 WOODWARD AVENUE), THENCE ALONG SAID LINE SOUTH 18 DEGREES 39

MICHIGAN, DESCRIBED AS:

PARTICULARLY DESCRIBED AS BEGINNING AT THE SOUTHEAST CORNER OF SAID ALONG SAID SOUTHERLY LINE OF FOREST AVE. NORTH 54 DEGREES 40 MINUTES OO SECOND EAST 57.34 FEET, AND 79.81 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, RADIUS 129.52 FEET, CENTRAL ANGLE 35 DEGREES 18 MINUTES 14 SECONDS, CHORD BEAR NORTH 76 DEGREES 48 MINUTES 13 SECONDS EAST FEET TO A POINT ON THE WESTERLY LINE OF HUNTER BLVD (NOW KNOWN AS MINUTES 22 SECONDS EAST 107.43 FEET TO THE POINT OF BEGINNING.

TITLE REPORT NOTE

ONLY THOSE EXCEPTIONS CONTAINED WITHIN FIRST AMERICAN TITLE INSURANCE COMPANY COMMITMENT No. 895046, DATED JUNE 26, 2020, AND RELISTED BELOW WERE CONSIDERED FOR THIS SURVEY. NO OTHER RECORDS RESEARCH WAS PERFORMED BY THE CERTIFYING SURVEYOR.

9. UNDERGROUND EASEMENT IN FAVOR OF THE DETROIT EDISON COMPANY AND MICHIGAN BELL TELEPHONE COMPANY AND THE COVENANTS, CONDITIONS AND RESTRICTIONS CONTAINED IN INSTRUMENT RECORDED IN LIBER 9412, PAGE 613. (DOCUMENT REFERS TO AN "APPENDIX A". SAID DOCUMENT WAS NOT FURNISHED BY CLIENT AT TIME OF SURVEY)

SURVEYOR'S CERTIFICATION

TO BMW KAR WASH LLC, A MICHIGAN LIMITED LIABILITY COMPANY; BANK ONE, MICHIGAN, ITS SUCCESSOR'S AND/OR ASSIGNS; FIDELITY TITLE COMPANY; AND STEWART TITLE GUARANTY COMPANY:

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2016 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDED ITEMS 2, 4, 7A, 8, AND 9 OF TABLE A, THEREOF. THE FIELD WORK WAS COMPLETED ON JULY 28, 2020.

DATE OF PLAT OR MAP: JULY 28, 2020

ANTHONY T. SYCKO, JR., P.S. PROFESSIONAL SURVEYOR MICHIGAN LICENSE NO. 47976 22556 GRATIOT AVE., EASTPOINTE, MI 48021 TSycko@kemtec-survey.com

	DRAWN BY:	NO	06/86/70				
		N O	01/20/20				
	снескер вт	: ATS	07/28/20				
_							
	DATE						
		JULY 28, 2020	0:				
	PROJECT NO;		SCALE:	-	08-19-20	٧٢	RECEIVED UPDATED TITLE
		19-02583	1" = 20'	REVISION DATE	DATE	ВУ	DESCRIPTION
Ī							

1 OF 1 SHEETS

SURVE VASH I, MICHIGAN,

36, 36,

MSPS L

74



STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

BMW KAR WASH, LLC,

Appellant,

Case No. 22-192582-AA

-vs-

Hon. Kwamé Rowe

CITY OF BIRMINGHAM.

Appellee.

OPINION AND ORDER RE: CLAIM OF APPEAL

At a session of said Court held in the Courthouse, City of Pontiac, Oakland County, Michigan, on October 20, 2022.

PRESENT: THE HONORABLE KWAMÉ ROWE, CIRCUIT COURT JUDGE

This matter is before the Court on Appellant BMW Kar Wash LLC d/b/a Jax Kar Wash's ("Jax") Claim of Appeal of the City of Birmingham's ("the City") Board of Zoning Appeals' ("BZA") application of Chapter 126, Article 4, Section 4.54(C)(3) of the City's ordinances to Jax's proposed site plan. The Court has reviewed Jax's Brief on Appeal, the City's Brief on Appeal, and Jax's Reply Brief. The Court conducted oral argument on October 20, 2022 and finds as follows.

Jax raises two issues on appeal, the first of which is that the BZA improperly used an "abuse of discretion" standard in reviewing the City's Planning Commission's decision that Jax's car vacuuming/drying area was a "parking facility" pursuant to Section 4.54 of the City's Ordinances, and therefore required a screening wall to be erected between the "parking facility" and the road. Jax argues that the proper standard is actually that "[t]he zoning board of appeals

may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination and may issue or direct the issuance of a permit." MCL 125.3604(6). Furthermore, Jax cites the City's own zoning ordinance Chapter 126, Article 8, Section 8.01(F)(1)(b), which states that the BZA may "reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made in the situation, and to that end shall have all the powers of the officer from whom the appeal is taken." The plain language of this statute and this ordinance make clear that the BZA may make whatever determination "in its opinion" should be made, and that it has "all the powers" of the Planning Commission in this situation.

Furthermore, the City does not defend the "abuse of discretion" standard that was employed. The City claims the aforementioned statute and ordinance do not create a de novo review, but they clearly do. The City claims the BZA follows secondary sources such as municipal handbooks, but these are not legal authority and will not be considered by this Court. Therefore, the Court finds that Jax is correct that the BZA can and must conduct a de novo review of the Planning Commission's decision, pursuant to statute and City ordinance. On that ground alone, the Court finds that reversal of the BZA's decision, along with a remand to the BZA for a new decision, is warranted.

Because of the Court's decision, the Court will not reach the merits of the underlying dispute concerning the definition and application of "parking facility." This is because "[t]he courts do not sit to function as a super zoning board." *Cook v Bandeen*, 356 Mich 328, 333; 96 NW2d 743 (1959). This Court must, first and foremost, ensure that the BZA is employing the proper standard of review, and therefore the Court hereby reverses the BZA's decision and remands this matter to the BZA for a new decision, which must be issued within the next sixty

days. The BZA's new decision must conduct a de novo review of the Planning Commission's interpretation of Chapter 126, Article 4, Section 4.54(C)(3), including an explanation of why

"parking facility" applies, or does not apply, to the site plan in the instant matter.

WHEREFORE, IT IS HEREBY ORDERED that the City of Birmingham's Board of

Zoning Appeals' application and interpretation of Chapter 126, Article 4, Section 4.54(C)(3) in

this matter is **REVERSED**;

IT IS FURTHER ORDERED that this matter is **REMANDED** to the City of Birmingham

Board of Zoning Appeals to conduct a de novo review of the Planning Commission's decision,

and to issue a new decision within sixty (60) days of the date of this Opinion and Order, which

explains its interpretation of Chapter 126, Article 4, Section 4.54(C)(3) of the City's ordinances,

and specifically its interpretation of the term "parking facility", and which explains if and why that

provision of the ordinance applies to Appellant's proposed site plan.

IT IS SO ORDERED.

THIS IS A FINAL ORDER THAT RESOLVES THE LAST PENDING CLAIM OR

OTHERWISE CLOSES THE CASE.

Dated: October 20, 2022

Kwame Rowe, Circuit Judge

3

Proof of Service

I certify that a copy of the above instrument was served upon the attorneys of record or the parties not represented by counsel in the above case by **EFILING** it to their addresses as disclosed by the pleadings of record on the 20th day of October, 2022.

/s/ James Boufides

Document Submitted for Filing to MI Oakland County 6th Circuit Court.

STATE OF MICHIGAN IN THE 6^{TH} CIRCUIT COURT FOR THE COUNTY OF OAKLAND

BMW KAR WASH LLC,

Appellant,

Hon. Nanci J. Grant Case No. 2022–192582–AA

v.

CITY OF BIRMINGHAM.

Appellee.

APPELLANT'S REPLY BRIEF

ORAL ARGUMENT REQUESTED

SEYBURN KAHN P.C.

Nicolas Camargo (P66385) Attorneys for Appellant BMW Kar Wash LLC 2000 Town Center Drive, Suite 1500 Southfield, Michigan 48075

Phone: (248) 353-7620 ncamargo@seyburn.com

BEIER HOWLETT PC

Niccolas J. Grochowski (P63188) Mary M. Kucharek (P46870) City Attorney for Birmingham 3001 W. Big Beaver Rd, Suite 200 Troy, Michigan 48084 Phone (248) 645-9400

mgrochowski@bhlaw.us.com

APPELLANT'S REPLY BRIEF

ORAL ARGUMENT REQUESTED

Respectfully submitted:

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Southfield, Michigan 48075

(248) 353-7620

ncamargo@seyburn.com

Dated: June 9, 2022

{01747677.DOCX }

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Exhibit A – City of Birmingham Ordinances

Exhibit B – Michigan Municipal League Zoning Board of Appeals Handbook – Relevant pages

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INTRODUCTION

This appeal involves interpretation of a City of Birmingham zoning ordinance, and, more specifically, the interpretation of the term "parking facility" as contained within the ordinance. It also involves the roles of the Planning Board ("Planning Board") and the Board of Zoning Appeals ("ZBA") in enforcing zoning ordinances and interpreting zoning ordinance language, and the ZBA's review of a Planning Board decision related to site or design reviews. To better understand how each of the pieces fit together, some context is required.

City of Birmingham Ordinances ("Birmingham Ordinances") define the creation and duties of the Planning Board. Birmingham Ordinance Ch. 82, §§26-35. The Planning Board has "the responsibility for site plan and design review for nonhistoric properties." Birmingham Ordinance Ch. 82, §34. Birmingham Zoning Ordinances ("BZO" or "Zoning Ordinances") specifically set forth the process and purpose behind both the design review process and the site review process. BZO, Ch. 126, Art. 7, §§7.06 – 7.14; 7.24-7.32. Decisions of the Planning Board may be appealed to the ZBA. Notably, nothing in the Birmingham Ordinances or the Zoning Ordinances provides the Planning Board the authority to interpret ordinances.

The ZBA is established in accordance with Michigan law. The ZBA is afforded all powers and duties set forth under Michigan law as well as certain specific powers and duties. This includes the power to interpret ordinances and hear appeals. MCL 125.3604(5); Sun Communities v Leroy Twp, 241 Mich App 665, 670; 617 NW2d 42 (2000) (citation omitted) (reviewing the predecessor statute to the Michigan Zoning Enabling Act ("MZEA"). See also

¹ The Zoning Ordinance references Section 5 of Act No. 207 of the Public Acts of Michigan of 1921 (MCL 125.585, known as the Township Zoning Act), which was replaced by the substantially similar Article VI of the Michigan Zoning Enabling Act at MCL 125.3601, et seq.

Sinelli v Birmingham Bd of Zoning Appeals, 160 Mich App 649; 408 NW2d 412 (1987) (wherein the Birmingham zoning board of appeals actual interpretation of an ordinance was challenged and the court recognized a zoning board's power to interpret the statute).

In this case, Appellant sought approval of a site plan and a design plan from the Planning Board. The Planning Board conditionally approved the plan upon the condition that Appellant revise the plan to include screening required for a parking facility, as set forth in BZO Ch. 126, Art. 4, §4.54(C) ("Screening Ordinance").² Appellant appealed to the ZBA and, within its appeal, requested that the ZBA interpret the language of the Screening Ordinance. Appellant also argued, as further addressed in Appellant's Brief on Appeal, that the Planning Board's interpretation was incorrect and violated rules of construction and interpretation of ordinances.

Because the standard of review was incorrect, any decision from the ZBA was fundamentally flawed. The ZBA did not interpret the ordinance. The ZBA did not determine that Appellant's site and design plans violated the ordinance. The ZBA, instead, simply found no abuse of discretion in the Planning Board's decision. The ZBA's duties by ordinance and statute are to interpret ordinances and to make decisions "as in its opinion ought to be made in the situation." The ZBA failed completely in that regard.

ARGUMENT

I. APPELLEE'S COUNTER-STATEMENT OF FACTS MISSTATES CERTAIN FACTS OR DRAWS IMPROPER INFERENCES THEREFROM.

First, Appellee argues that the first sixty (60) pages of the transcript of the BZA meeting is "exclusively devoted to examining and determining the issue at hand." <u>Appellee Brief at p.3</u>. The

² Notably, under the Planning Board's interpretation, drive-through windows at pharmacies, fast food restaurants, banks, etc., would all qualify as "parking facilities." This defies the common and plain understanding of a parking facility.

problem is that while the ZBA did examine the issue, it never came to a determination as it is required to do so by law. This is the main issue raised in this appeal. The ZBA never interpreted the ordinance in question or determined that the ordinance in question applied to Appellant's site plan. To the contrary, the ZBA failed to do so, instead finding that the Planning Board did not abuse its discretion. To call the sixty (60) pages a determination of the issue at hand, when the ZBA failed to interpret the ordinance or apply it to the site plan, is a bridge too far.

Next, Appellee, citing the transcript of the ZBA hearing, states that ZBA "noted that historically the Planning Board has consistently interpreted Section 4.54 to apply to these type of properties." Appellee Brief at p.3. This stretches the testimony. The testimony speaks for itself, but there is no reference to "historical interpretation." At best, there is an off-hand statement by the Planning Board representative stating that the Planning Board goes by the definition of parking in applying Section 4.54, which is clear error as discussed in Appellant's Brief.³ The record reflects no historical interpretation of this ordinance.⁴

Appellee also states that Appellant "represented that they agree with having to put in the screen wall on the North side of the property adjacent to E. Brown St." Appellee's Brief at p. 5. This is simply not true. Appellant's representative during the ZBA meeting stated clearly that "screening is technically not required" on either Brown Street or Woodward, but that Appellant had "agreed to put in the Brown screening" because it "beautifies the property." 12-14-2021

³ If the City had wanted the screening ordinance to apply to all areas where there is parking, it would have used the specific words, 'parking' or 'parking area' as defined. Instead, the City specifically chose the phrase 'parking facility.' "When the Legislature uses different words, the words are generally intended to connote different meanings." *United States Fidelity & Guaranty Co v Mich Catastrophic Claims Ass'n*, 484 Mich 1, 14; 795 NW2d 101 (2002).

⁴ The Planning Board's continued application in this case does not qualify as historical interpretation.

Hearing TR at p. 32:5-15. To allege as some type of admission that Appellant agreed they had to put in that screen wall is simply disingenuous. Appellant voluntarily agreed to put it in there despite maintaining it is "technically not required."

Finally, Appellee states that the ZBA "recognizes there is no definition of 'parking facility' anywhere in the ordinances but identifies other definitions they should consider." Appellee's Brief at p. 5. Appellant agrees that the ZBA recognized there was no definition of 'parking facility.' Appellant agrees that the ZBA looked at other definitions and acknowledged it needed to come up with a definition of parking facility. 12-14-2021 Hearing TR at pp. 36-37. In fact, ZBA board member Ms. Rodenhouse actually defined the term facility. 12-14-2021 Hearing TR at pp. 38-40. The problem is that the ZBA then failed to reach a determination as to the term 'parking facility' as was its role and function. Instead, by majority, the ZBA simply deferred to the Planning Board's interpretation. Again, this was an abdication of the ZBA's role and purpose and statutorily and ordinance provided authority.

Appellee writes that this Court "must give deference to the [ZBA's] finding of fact, and should not interfere in the BZA's choice between two reasonably differing views." Appellee's Brief at p. 9. The problem for this Court is that the ZBA did not make findings of fact and it did not choose between two differing views. Instead, it applied the wrong standard and deferred to the Planning Board's findings and interpretation. That is the main thrust of this appeal. The ZBA failed to exercise the decision it is afforded by law by failing to interpret the ordinance.

II. APPELLEE CONFLATES THE STANDARD OF REVIEW TO BE UTILIZED BY THIS COURT AND THE STANDARD OF REVIEW BY WHICH THE ZBA WAS TO REVIEW THE PLANNING BOARD'S DECISION.

Appellee conflates the standard of review this Court is to use in reviewing the ZBA decision (judicial review) and the standard of review the ZBA was to use in interpreting the ordinance and reviewing the Planning Board's decision (administrative review).

The standard of review for this Court is clearly set forth by statute and clearly and consistently applied by case law. This Court reviews the ZBA decision to ensure it complies with the constitution and the laws of the state, that it is based on proper procedure, that it is supported by competent, material, and substantial evidence on the record, and that it represents the reasonable exercise of discretion granted by law to the ZBA. MCL 125.3606(1); *Janssen v Holland Charter Twp Bd of Appeals*, 252 Mich App 197, 201; 651 NW2d 464 (2002).

Macenas v Michiana, 433 Mich 380; 446 NW2d 102 (1989), which provides historical context and background, is of great assistance in understanding this Court's review of a zoning board of appeals decision both as it relates to factual determinations and as it relates to matters of law such as interpretation of an ordinance. The Supreme Court notes that while deference is due to a municipality's interpretation of its own ordinance, reviewing courts are not bound by such interpretation. See also NestIE Waters N Am v Osceola Circuit Court, unpublished per curiam opinion of the Court of Appeals, issued December 3, 2019 (Docket No. 341881) (describing succinctly the standards of review to questions of law in these cases).

To unfortunately beat a dead horse, however, the problem in this case is that the ZBA failed to interpret its own ordinance; it simply deemed that the Planning Board's interpretation was not arbitrary and capricious, even if the ZBA did not agree. This Court has power to review the ZBA's finding and not the Planning Board's finding. Thus, this Court is hamstrung by the ZBA's decision which failed to perform its duties proscribed by law.

III. APPELLEE FAILS TO SUPPORT THE ZBA'S DECISION TO EMPLOY AN ABUSE OF DISCRETION OR ARBITRARY AND CAPRICIOUS STANDARD WITH LEGAL AUTHORITY.

In Section II of its Brief on Appeal, Appellee fails to consider the clear language of the Michigan Zoning Enabling Act and of the City of Birmingham's Zoning Ordinance in arguing that the ZBA reviews a planning board's interpretation of an ordinance under an abuse of discretion or arbitrary and capricious standard. Ironically, while criticizing Appellant's lack of legal authority, Appellee fails to cite any statute, ordinance, or binding case law that would support the abuse of discretion or arbitrary and capricious standard.⁵

Appellee is wrong when it alleges Appellant failed to support its legal argument as to the ZBA's standard of review with legal authority. Appellant does provide legal authority for its position. Appellant cites the Zoning Ordinance which specifically states that the ZBA shall make its determination "as in its opinion ought to be made in the situation." BZO, Ch. 126, Art. 8, § 8.01(F)(1)(b). Appellant also cites the controlling MZEA statutory provision authorizing a zoning board of appeals such as the ZBA to interpret statutes. MCL 125.3604(5) and (6). Admittedly, despite significant efforts at researching case law regarding the issue, there appears to be no issues related to this issue. That is because nearly all cases involve an actual ZBA determination as to the interpretation of an ordinance. Why? Because that is what the ZBA is empowered to do.

Appellee's citation to "well established authorities" to support the arbitrary and capricious standard employed by the ZBA is mistaken. First, the "well established authorities" directly contradict the Zoning Ordinances. Appellee cites a section from a Zoning Board of Appeals

⁵ On page 8 of its Brief, Appellee apparently insinuates that the Michigan Constitution at Article VI, Section 28 dictates an arbitrary and capricious standard for administrative review. First, this applies to courts, not to the ZBA as discussed further *supra*. Second, the words "arbitrary and capricious" are not found anywhere in that section. See Mich Const 1963 Art 6, § 28.

Handbook published by the Michigan Municipal League in which the handbook states that the ZBA should not entertain additional information unless otherwise instructed by ordinance.⁶

This contradicts both the Zoning Ordinance and Michigan law. The Zoning Ordinance states that the ZBA has "all the powers of the officer from whom the appeal is taken." <u>BZO, Ch. 126, Art. 8, § 8.01(F)(1)(b)</u>. This has been interpreted as providing a zoning board of appeals the power to treat the appeal as a new decision and to allow additional information. See *Hughes v Almena Twp*, 284 Mich App 50, 66-68; 771 NW2d 453 (2009) ("ZBA not limited to the record of the administrative body whose decision is reviewing"). Thus, Appellee is wrong when Appellee "zoning ordinance does not "direct otherwise" and thus, de novo review is not mandated on the ZBA in this case. Both law and even Appellee's cited authority recognize that a function of the ZBA is to interpret ordinances; again, the ZBA failed entirely in this regard.

Appellee also cites a section of the Zoning Board of Appeals Toolkit issued by the Michigan Chapter of the American Planning Association. First, the section cited does not speak as to interpretation of an ordinance, which is what is at issue in this appeal. Second, the section states that the ZBA cannot consider new information and must simply decide if the decision by the lower administrative agency is defensive. This contradicts the clear language of the Birmingham Zoning Ordinance and *Hughes v Almena Twp*, supra. The language is not supported by any legal authority; Appellee provides no legal authority whatsoever, whether statute, or ordinance, or case law to support that argument, likely because it is not supported by any legal authority.

⁶ Notably, this same authority states notes that a zoning board of appeals exercises three main roles, one of which is "interpreting the ordinance." The Zoning Board of Appeals handbook even provides direction to board members on how to interpret ordinances. See <u>Exhibit B</u>.

Appellee also incorrectly likens the ZBA's determination of the Planning Board's decision to judicial review of an administrative agency. Appellee's Brief at pp. 16-17. This is wrong. The ZBA is not a judicial entity. It is an administrative agency of its own afforded "all of the same powers of the officer from whom the appeal is taken." Birmingham Zoning Ordinance (BZO), Ch. 126, Art. 8, § 8.01(F)(1)(b). In addition to being authorized to interpret zoning ordinances, it is also authorized to conduct administrative reviews.

There is a significant distinction between judicial review of an administrative appellate body's decision, such as is the case here, and the administrative appellate review. See *Hughes v Almena Twp* at 67-68 (citing *Holden v Ford Motor Co*, 439 Mich 257, 263; 484 NW2d 227 (1997)). Section B of *Hughes v Amena Twp* at 66-69, is instructive in this regard in that it addresses a situation very similar to this situation, with the exception that the zoning board of appeals in *Hughes v Amena Twp* actually performed its duties and responsibilities, considered evidence, and came to a determination on its own.

Appellee fails to provide any support for the abuse of discretion or arbitrary and capricious standard the ZBA used in interpreting the zoning ordinance in question and in reviewing the Planning Board's decision. Birmingham's zoning ordinance empowers the ZBA to make a decision "as *in its opinion* ought to be made in the situation." The plain and clear meaning of that language is that the ZBA is solely responsible for interpreting the ordinance as it determines the ordinance to be properly interpreted "in its own opinion." That is inconsistent with the abuse of discretion or arbitrary and capricious standard – unsupported by legal authority – that the ZBA chose to employ. The ZBA abdicated its duty and thus its determination was not based on proper procedure and did not represent the reasonable exercise of discretion it was afford by law. See MCL 125.3606. The decision therefore requires reversal and/or remand.

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IV. THE ZBA'S DECISION WAS NOT SUPPORTED BY COMPETENT, MATERIAL, AND SUBSTANTIAL EVIDENCE ON THE RECORD.

In Section III of Appellee's Brief, Appellee goes to great lengths to defend the ZBA's decision as being based on competent, material, and substantial evidence. The problem is that the ZBA did not make findings of fact nor did it interpret the ordinance in question as is its duty under law. In fact, as noted in the Minutes of December 14, 2021, the Vice-Chair of the ZBA stated that "while he may not think the Planning Board's interpretation of this areas as a 'parking facility' was the best interpretation available," that he did not find the interpretation an abuse of discretion. Attachment 1 – 12/14/21 ZBA Record (Minutes). The Vice-Chair also stated that "appellant did not provide a definition of 'facility,' and stated that it was not the board's job to make the argument for the appellant." Attachment 1 – 12/14/21 ZBA Record (Minutes). This statement is not entirely correct. While the ZBA's job was not to make an argument for Appellant, the ZBA's job as discussed *infra* is to interpret the ordinance and therefore give meaning to the term 'facility.' When it failed to do so, the ZBA violated procedure and failed to exercise its discretion as granted by law. See MCL 125.3606.

The very fact that the ZBA's decision must be based on competent, material, and substantial evidence on the record undercuts the ZBA's use of an "abuse of discretion" standard and implies that the ZBA was supposed to make an actual determination applying the evidence to the zoning ordinance in question and interpreting the zoning ordinance language. Again, to beat a dead horse, the ZBA failed in this regard and simply upheld the Planning Board's decision as not arbitrary or capricious and not an abuse of discretion.

Appellee argues that this Court is "precluded from considering the Appellant's interpretation of the Ordinance and proffered definition of 'parking facility.' This contradicts well-

established law in Michigan. For example, it is axiomatic that interpretation and construction of an ordinance is reviewed de novo. *Soupal v Shady View, Inc*, 469 Mich 458, 462; 672 NW2d 171 (2003). *Macenas v Michiana*, supra, is also informative and goes to great lengths to explain interpretation of ordinances.

In *Detroit Media Grp, LLC v Detroit Bd of Zoning Appeals*, unpublished per curiam opinion of the Court of Appeals, issued September 23, 2021 (Docket No. 352452), the Court of Appeals noted that the "circuit court had to interpret and analyze the ZBA's interpretation and application" of an ordinance. <u>Exhibit C</u>. The circuit court reversed the ZBA's interpretation and application of the ordinance. The lengthy opinion and discussion of facts and analysis as to how the circuit court runs directly opposite to Appellee's claim that this Court is "precluded" from considering a proper interpretation of the zoning ordinance in question. To the contrary, this Court is required to conduct an analysis to determine whether the ZBA properly interpreted the ordinance and properly applied the ordinance. Unfortunately, again, the ZBA failed to do either.

Also instructive and persuasive in this regard are *Epicurean Devs, LLC v Summit Twp*, unpublished per curiam opinion of the Court of Appeals, issued February 18, 2017 (Docket No. 329060, 334355) (again discussing at great length court review of interpretations of an ordinance), *Nixon v Webster Twp*, unpublished per curiam opinion of the Court of Appeals, issued September January 21, 2020 (Docket No. 343505) (going through an intensive de novo review of interpretation of an ordinance), and numerous other cases.

The ZBA failed to interpret the zoning ordinance in question. It improperly deferred to the Planning Board. This is reversible error. Further, the Planning Board's interpretation of the zoning ordinance in question is contrary to the plain and clear meaning of the words and was not supported by any evidence of long standing application in a similar matter. Thus, it was also error. Appellant \$\frac{901747677.DOCX}{2}\$

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respectfully requests reversal of the ZBA's decision upholding the Planning Board's determination, or in the contrary, remand.

Respectfully submitted:

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Dated: June 9, 2022

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

BMW KAR WASH LLC,

Appellant,

Case No. 2022-192582-AA Hon. Nanci J. Grant

-VS-

CITY OF BIRMINGHAM,

Appellee.

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APPELLEE'S BRIEF ON APPEAL

ORAL ARGUMENT NOT REQUESTED

Respectfully submitted,

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Dated: May 26, 2022

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STATEMENT OF BASIS OF JURISDICTION

The Appellee, City of Birmingham, accepts the jurisdictional summary stated in the Appellant's Brief as complete and correct.

COUNTER STATEMENT OF QUESTION INVOLVED

I. DID THE CITY OF BIRMINGHAM'S BOARD OF ZONING APPEALS DECISION COMPLY WITH THE CONSTITUTION AND LAWS OF THE STATE?

Appellant answers "no." Appellee answers "yes."

II. WAS THE CITY OF BIRMINGHAM'S BOARD OF ZONING APPEALS DECISION BASED ON PROPER PROCEDURE?

Appellant answers "no." Appellee answers "yes."

III.WAS THE CITY OF BIRMINGHAM'S BOARD OF ZONING APPEALS DECISION SUPPORTED BY COMPETENT, MATERIAL, AND SUBSTANTIAL EVIDENCE ON THE RECORD?

Appellant answers "no." Appellee answers "yes."

IV. DID THE CITY OF BIRMINGHAM'S BOARD OF ZONING APPEALS DECISION REPRESENT THE REASONABLE EXERCISE OF DISCRETION GRANTED BY LAW TO THE BOARD?

Appellant answers "n/a." Appellee "yes."

COUNTER STATEMENT OF FACTS

This is an appeal from an administrative decision of the City of Birmingham's Board of Zoning Appeals (BZA). On December 14, 2021, the BZA heard and decided an appeal of an administrative decision by the City of Birmingham's Planning Board.

The Appellant, BMW Kar Wash LLC (JAX), owns and operates a car wash located at 34745 Woodward Ave. in the City of Birmingham, Michigan. Beginning in July of 2019, JAX filed a request for a Final Site Plan and Design Review with the City's Planning Board to renovate the car wash facility in order to relocate the vehicle detailing area and to reconfigure vehicular access, circulation and parking at the location. Thereafter, JAX appeared before the Planning Board in August 2019 (adjourned), September 2019, October 2019, July 2020, September 2021 and October 2021. At all of the Site Plan and Design Review meetings of the Planning Board, JAX was informed by the Planning Board that they must screen the parking lot in accordance with Chapter 126, Article 4, § 4.54(C)(3) of the City of Birmingham's Zoning Ordinance which resulted in the multiple Planning Board meetings and multiple discussions and iterations of plans submitted by JAX to the Planning Board. Records of all of the Planning Board meetings and Minutes are included as Attachments 2-9 of the records transmitted on appeal by the Appellee to this Court.

Based on all of the Planning Board meeting records, it was clearly conveyed and established by the Planning Board that Section 4.54 of the City's Zoning Ordinance was interpreted by the City and Planning Board to require JAX build a masonry screen wall along any front or side of the property abutting a street. Each and every one of the Planning Board records, (Attachments 2-9 of the record transmitted on Appeal) directly reference, in section 3.0 of those documents, entitled Screening and Landscaping, the screen wall requirement of Section 4.54. Moreover, the Minutes of the Planning Board meetings from all six of the meetings establish that many

discussions were had concerning the placement of the required masonry screen wall and the continued refusal by JAX to show or include the masonry screen wall on the Woodward Ave. side of the property on the site plan. It is also interesting to note that at each of the Planning Board meetings JAX representatives would attempt to circumvent the screen wall requirement by various changes to the plans or other arguments that did not sway the Planning Board's concerns about complying with Section 4.54 and building a screen wall on the Woodward Ave. side of the property.

It is also important to note that JAX never mentioned or argued that they believed that the property did not constitute a "parking facility" under Section 4.54 of the Ordinance at any of the Planning Board meetings. But, rather raised it on appeal to the BZA. Thus, to say that "the Planning Board never explained its reasoning for determining that the area in question should be considered a parking facility" is a fallacy to this Court when, in fact, JAX never raised the issue or asked for the Planning Board to explain its reasoning. They simply continued to try to circumvent the valid and enforceable ordinance in question by claiming it would be inefficient or inconvenient to operations at the site.

Eventually, at the October 13, 2021 Planning Board meeting, the Planning Board voted to approve the Final Site Plan & Design Review for JAX at the 34745 Woodward Ave. location with several conditions. The first, and only relevant condition to this appeal, was condition 1 which required JAX to "submit revised plans with sufficient screening that meets Article 4, Section 4.54 of the Zoning Ordinance." See, Minutes of the October 13, 2021, from Attachment 9 of records transmitted on appeal, Page 3, Lines 1-5.

Thereafter, JAX decided to formulate an appeal to the City of Birmingham's Board of Zoning Appeals (BZA) requesting that the BZA overturn the administrative decision of the

Planning Board. The sole argument presented by JAX pertained to the required condition to provide sufficient screening under Section 4.54 of the Zoning Ordinance. The Appeal to the BZA by JAX was predicated on the notion that the property in question is not a "parking facility" and that the undefined term of "parking facility" contained in section 4.54 of the Zoning Ordinance did not apply to the JAX property in question. Although JAX never made this assertion to the Planning Board, the BZA more than performed its statutory duties in examining the issue on appeal.

The first 60 pages of the transcript of the BZA meeting, filed with this Court, is exclusively devoted to examining and determining the issue at hand. The record establishes a very extensive examination of Section 4.54 of the Zoning Ordinance and the application of that Ordinance to the JAX property.

The BZA first started its review by recognizing that Section 4.54 should be read in its entirety and any related definitions should be read when examining the appeal. In this regard, the BZA first turned to the defined purpose of the Screening Standards Section and noted that the purpose was to "require a barrier capable of containing noise, vehicular lights, visual disarray, debris and other factors detrimental to the health, safety and welfare of the community between an open parking station, outdoor storage, dumpsters and adjacent properties." 12-14-2021 TR, pg. 3, ln. 15. (Emphasis added.) Although the BZA initially recognized that the term "parking facility" is not defined anywhere in the zoning ordinance, 12-14-2021 TR, pg. 6, ln. 4., the BZA did examine other useful definitions in the zoning ordinance that would be applicable. Moreover, the BZA also noted that historically the Planning Board has consistently interpreted Section 4.54 to apply to these types of properties. 12-14-2021 TR, pg. 6, ln. 11. Specifically, they refer to Article 9 of the City Zoning Ordinance that defines a "parking area" as "an area used for the parking of motor

vehicles." 12-14-2021 TR, pg. 4, ln. 1-4. The BZA also recognized that there was a definition for "parking area total" which was "defined as the actual parking area and the area of the access drives." 12-14-2021 TR, pg. 4, ln. 3-5. In this regard, the BZA appropriately references several times during its meeting these definitions in its analysis of the interpretation of the zoning ordinance in question. 12-14-2021 TR, pg. 7, ln. 16.

The BZA then discusses and comments on the wall on the Woodward Ave. side of the building and the safety concerns surrounding the wall including wanting to prevent vehicles from exiting onto Woodward Ave. and crossing over a pedestrian sidewalk causing risks. 12-14-2021 TR, starting at pg. 8, ln. 14. The BZA even discusses the turning radius for the vehicles exiting the car wash and what the impact of a masonry screen wall on the Woodward Ave. side of the building would have on this turning radius from a safety perspective. 12-14-2021 TR, pg. 12, ln. 11. And 12-14-2021 TR, pg. 19, ln. 19. The BZA recognized that these safety concerns were repeatedly a significant factor in the Planning Board's determination that the screen wall was required. 12-14-2021 TR, pg. 14, ln. 11. 12-14-2021 TR, pg. 20, ln. 14.

The BZA also recognized the parking of cars exiting the car wash and where the cars are "parked" to be vacuumed, and who would be performing the vacuuming and for how long. 12-14-2021 TR, pg. 11, ln. 4.

The BZA established that the standard of review was abuse of discretion. 12-14-2021 TR, pg. 18, ln. 2. Moreover, the records reflects that the majority of BZA agreed that: "[W]e have to come up with an interpretation of parking facility. If there's an ambiguity, it's really hard for us to say that the planning board errored where there's multiple interpretation[s] of what a parking facility could be." 12-14-2021 TR, pg. 37, ln. 7-10.

The BZA very thoughtfully considered the standard of review and its role in reviewing the decision of the Planning Board and, in numerous instances, many BZA members opined that the Planning Board had justifiable reasons for its rational of requiring a screen wall at this property and that the decision of the Planning Board was not an abuse of discretion. 12-14-2021 TR, pg. 55, ln. 10. See also 12-14-2021 TR, pg. 56, ln. 11 and 12-14-2021 TR, pg. 59, ln. 4.

After the introduction of the matter to the BZA, and having established the applicable standard of review, a representative for JAX was permitted to make a presentation to the BZA, in addition to already having submitted a position statement setting forth its arguments for overturning the Planning Board decision. There are several pertinent observations this Court should consider that were placed on the record by JAX at the BZA hearing. First, it is interesting to note that JAX represented that they agree with having to put in the screen wall on the North side of the property adjacent to E. Brown St., yet they do not believe it is equally applicable to the Woodward Ave. side of the property. 12-14-2021 TR, pg. 32, ln. 8. Moreover, although JAX claims that the location design and use does not trigger the screening requirements found in Section 4.54 of the Zoning Ordinance, they nonetheless refer to the area where cars are pulled in for full service including vacuuming and wipe down of the interior as a new area "which is parking." 12-14-2021 TR, pg. 23, ln. 21.

After presentation and argument by JAX representatives, the BZA then engages in a secondary and more thorough and quite comprehensive analysis wherein the Board again recognizes there is no definition of "parking facility" anywhere in the ordinances but identifies other relevant definitions they should consider. 12-14-2021 TR, pg. 34, ln. 15. The BZA again reads the definition of "parking" from Chapter 9 and recognizes that "[i]ts an area used for the parking of motor vehicles." 12-14-2021 TR, pg. 34, ln. 18. The BZA also reviewed the definition

of "parking area total" which is "defined as the actual parking area and the area of the access drives." 12-14-2021 TR, pg. 34, ln. 20. In addition, the BZA considered the term "parking lot interior" as defined as "all areas within the perimeter of a parking lot" while also recognizing and examining the placement of the commas as relevant when continuing to read the definition as "including planting islands, curbed areas, corner lots, parking spaces, and all interior driveways and aisles except those with no parking spaces located on either side." 12-14-2021 TR, pg. 34, ln. 23. Lastly, the BZA then also fittingly "look[ed] to common dictionary definitions of terms." 12-14-2021 TR, pg. 35, ln. 6; 12-14-2021 TR, pg. 36, ln. 6. See also 12-14-2021 TR, pg. 58, ln. 16.

Ultimately, in a 4 to 3 vote to sustain the decision of the Planning Commission, the BZA found that there was no abuse of discretion by the Planning Commission in finding that Section 4.54 of the Zoning Ordinance required the Woodard Ave., side of the JAX property to have a screen wall. The record in this regard is extremely thoughtful and thorough with every member of the BZA weighing in with relevant questions and comments in its deliberative process.

ARGUMENT

I. THE CITY OF BIRMINGHAM'S BOARD OF ZONING APPEALS DECISION COMPLIED WITH THE CONSTITUTION AND LAWS OF THE STATE.

STANDARD OF REVIEW:

A zoning board of appeals, "shall hear and decide appeals from and review any administrative order, requirement, decision, or determination made by an administrative official or body charged with enforcement of a zoning ordinance..." MCL 125.3603. In an appeal of an administrative decision, "[t]he zoning board of appeals may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination and may issue or direct the issuance of a permit." MCL 125.3604 (6). Moreover, the Birmingham Zoning Ordinance, Section 8.01(F) states: "The Board of Zoning Appeals shall have the powers and duties set forth in MCL 125.581 et seq." (MCL 125.581 has been recodified in MCL 125.3101 et seq.)

An appeal of a quasi-judicial or an administrative decision is limited to the record made before the municipal body and nothing else. MCL 125.3606(1). New proofs will not be permitted on appeal; there is no chance to supplement the record unless the circuit court can be persuaded to remand the case back to the Zoning Board to do it. MCL 125.3606(2). In reviewing the record, the court does not review the evidence de novo, make credibility determinations, or weigh the evidence. Brainard v Secretary of Health & Human Servs, 889 F2d 679, 681 (6th Cir 1989). The standards also require that the decision be supported by competent, material, and substantial evidence on the record as a whole. Carleton Sportsman's Club v Exeter Twp, 217 Mich App 195; 550 NW2d 867 (1996). Substantial evidence is evidence that a reasonable person would accept as sufficient to support a conclusion. It is "more than a scintilla" but can be substantially less than a preponderance. Dowerk v Oxford Charter Twp, 233 Mich App 62, 72; 592 NW2d 724 (1998).

In other words, the role of the Court is limited to determining whether or not the decision

is supported by <u>any</u> competent, material or substantial evidence when reviewing the whole record. Puritan-Greenfield Association v Leo, 7 Mich App 659 (1967); Cryderman v Birmingham, supra; High v Cascade Hills Country Club, 173 Mich App 622 (1988); Rogers v Allen Park, 186 Mich App 33; (1990); Macenas v Michiana Village, 433 Mich 380 (1989); Szluha v Avon Twp, 128 Mich App 402 (1983); National Boatland, Inc. v Farmington Hills, 146 Mich App 380 (1985).

The standards for trial court appellate review are contained in Mich Const 1963 Art 6, §28, and MCL 125.3606(1) (specifically applicable to ZBA decisions). The administrative decision must:

- (1) comply with the Constitution and laws of the state;
- (2) be based on proper procedure;
- (3) be supported by competent, material, and substantial evidence on the record; and
- (4) represent the reasonable exercise of discretion granted by law to the board.

In appeals from a variance, site plan, special use, and other quasi-judicial and administrative decisions, the municipal decision is subjected to this very limited review.

The standards for circuit court review of quasi-judicial and administrative decisions include whether the decision is authorized by law. Authorized by law means that the decision must be "allowed, permitted, or empowered by law." *Northwestern Nat'l Cas Co v Commissioner of Ins*, 231 Mich App 483, 488; 586 NW2d 563 (1998). Authorized by law means the decision must comply with the Constitution, statutes, and case law; not exceed the authority of the board; be based on a proper procedure; and not be arbitrary and capricious. Mich Const 1963 Art 6, §28.

Courts have uniformly and repeatedly refused to sit as a super zoning board of appeals. Beatrice Block Club Association v Facen, 40 Mich App 372 (1972); Florka v City of Detroit, 369 Mich 568 (1963). As the review is on the record, it has been said that the decision of the Zoning Board of Appeals will not be overturned unless the Zoning Board of Appeals has acted arbitrarily or abused its discretion. Jangian v Dearborn, 336 Mich 261 (1953); Sinelli v Birmingham ZBA, 160 Mich App 649 (1987). The rule is that the Court should not substitute its judgment for that of the administrative body with respect to matters of discretion properly vested in the Zoning Board of Appeals. Barkey v Nick, 11 Mich App 381 (1968). In other words, the role of the Court is limited to determining whether or not the decision is supported by any competent, material or substantial evidence when reviewing the whole record. Puritan-Greenfield Association v Leo, 7 Mich App 659 (1967); Cryderman v Birmingham, supra; High v Cascade Hills Country Club, 173 Mich App 622 (1988); Rogers v Allen Park, 186 Mich App 33; (1990); Macenas v Michiana Village, 433 Mich 380 (1989); Szluha v Avon Twp, 128 Mich App 402 (1983); National Boatland, Inc. v Farmington Hills, 146 Mich App 380 (1985).

JAX has the burden to establish that the facts on the record required that the relief sought be granted as requested. Lafayette Market & Sales Company Insurance v City of Detroit, 43 Mich App 129 (1972).

In sum, the <u>limited</u> role of this Court is to review the record of the BZA to determine if the decision of the BZA is supported by that evidence. *Macenas v Michiana Village, supra*. **The Court must give deference to the BZA's findings of fact, and should not interfere in the BZA's choice between two reasonably differing views**. *Gordon v Bloomfield Hills*, 207 Mich App 232 (1994); *Davenport v Grosse Pointe Farms*, 210 Mich App 400 (1995). If the Court finds the record inadequate to make to the review required by law, or that additional evidence exists which is material and with good reason was not presented to the BZA, the Court should not reverse the decision and substitute its judgment, but instead should remand the matter to the BZA for further proceedings. MCL 125.3606(2).

ARGUMENT:

In this regard, Appellant asserts that "neither the Planning Board nor the ZBA's (sic) interpretation of the zoning ordinance complied with Michigan law..." This issue is raised in Argument II in Appellant's Brief on Appeal. In reviewing the trial court's decision, we must determine "whether the ... court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the [BZA's] factual findings." *Boyd v Civil Service Comm.*, 220 Mich App 226, 234; 559 NW 2d 342 (1996). This standard regarding the substantial evidence test is the same as the clearly erroneous standard. *Id.* A finding is clearly erroneous if the reviewing court, on the whole record, is left with the definite and firm conviction that a mistake has been made. *Id.* at 234-235, 559 NW 2d 342.

The instant case is a relatively rare type of zoning case in which the dispute also concerns a question of law: what does "parking facility" mean? Nevertheless, this case presents a useful illustration of the fact/law distinction which is often critical to a determination of the appropriate standard of review. One of Appellee's contentions is that the Planning Commission's decision to require a screen wall for this type of property based on Section 4.54 of the Zoning Ordinance, is, in part, based on a longstanding interpretation of the ordinance. JAX disputes this, claiming that its property is not a "parking facility" however, until now, the Appellee has not been called upon to define "parking facility." Whether Appellee's interpretation is indeed the long-established, common understanding of the community or has been newly minted to apply to Plaintiff's property is a question of fact. If Appellee's contention is supported by "competent, material, and substantial evidence on the record," a reviewing court should not find otherwise. However, how much weight, if any, is to be given to such a fact, once established, is a question of law concerning which the court's judgment is primary.

When the question of law is the construction of an ambiguous ordinance, the constraints of the rules of statutory construction are of foremost importance. The court is not free to substitute its judgment by imposing what it considers to be the wisest version of the ordinance, but is confined to an analysis of the text of the ordinance and, in the face of ambiguity, a determination of what the legislative body that enacted the ordinance intended by the language in question. The general principles of statutory construction apply to the interpretation of zoning ordinances. 8 McQuillin, Municipal Corporations (3d ed), § 25.71, p. 195.

Case law provides guidance on a specific question raised by the instant case: whether, and to what extent, a court should defer to a zoning board's construction of its own ordinance. In *Paye v Grosse Pointe*, 279 Mich 254; 271 NW 826 (1937), the City challenged a lower court's authority to overturn the Zoning Board's construction of its own ordinance, and called this Court's attention to the Zoning Act's provision that the decision of a board of appeals "shall be final so far as it involves discretion or the finding of facts." Rejecting the city's argument, the Court said: "We hardly supposed that anyone doubted that the construction of a statute or ordinance is a matter of law and not of fact. This is a well-recognized judicial function. It is the duty of courts to construe the language of the statute and while 'the construction given to a statute by those charged with the duty of executing it is always entitled to the most respectful consideration and ought not to be overruled without cogent reasons,' such construction is not binding upon the courts." *Id.*, at 259–260, 271 N.W. 826, quoting *Boyer–Campbell Co v Fry*, 271 Mich 282; 260 NW 165 (1935).

The Michigan Supreme Court addressed the question of the weight to be accorded an administrative interpretation in *Davis v River Rouge Bd. of Ed.*, 406 Mich 486, 490; 280 NW 2d 453 (1979). In that case, the Court was called upon to construe a provision of the Teacher Tenure Act, MCL 38.104(e). Stating that the construction placed upon a statute by the agency legislatively

chosen to administer it is entitled to "great weight," the Court nevertheless disagreed with the agency's interpretation, and imposed what appeared to the Court to be a construction more reasonably in accord with the Legislature's intent. *Id.* at 490, 280 NW2d 453.

Thus, the import of relevant case law is that a reviewing court is to give great weight and deference to a municipality's interpretation of its own ordinance. How much deference to accord in a particular case, however, is unanswered by this general principle. In cases of ambiguity in a municipal zoning ordinance, where a construction has been applied over an extended period by the officer or agency charged with its administration, that construction should be accorded great weight in determining the meaning of the ordinance. See *Sinelli v Birmingham Bd of Zoning Appeals*, 160 Mich App 649, 652; 408 NW 2d 412 (1987).

In this case, the City's Planning Board imposed the screening requirements on JAX starting with the first site plan review meeting in July 2019 and all six (6) subsequent Planning Board meetings until the final October 2021 meeting. Thus, it is relevant that over an almost two (2) year period and over seven (7) total Planning Board meetings, that the screening requirements of Section 4.54 of the Zoning Ordinance were "applied over an extended period by the...agency charged with its administration" specifically to JAX in this case. Moreover, the records of the Planning Commission hearings reflect that this interpretation has been applied over an extended period by the Planning Commission. For instance, a Planning Board member stated that the "Board is not empowered to approve plans that do not comply with the ordinance" when discussing the screening requirements of 4.54. See Minutes of the Planning Commission Meetings from Attachment 3 of the Sept 11, 2019, meeting, contained in the records transmitted on appeal by the Appellee to this Court. Moreover, multiple Planning Commission members concurred that there "was no flexibility in regards to the screening wall requirement[s]" See Minutes of the Planning

Commission Meetings from Attachment 9 of the October 13, 2021, meeting, contained in the records transmitted on appeal by the Appellee to this Court. In fact, the requirement of a screen wall and that the Planning Commission requires one was a common theme and thread among all of the Minutes of the Planning Commission pertaining to the screen wall requirements of the ordinance, evidencing a long standing application of Section 4.54 and screening requirements to this type of property by the Planning Board.

In conclusion, in part, because the Planning Board has applied to JAX, over an extended period of time, the screening requirements found in Section 4.54 that application and construction should be accorded great weight and its decision left undisturbed. This argument is further supported and continued regarding the ancillary issue on appeal concerning whether or not the decision of the BZA is "supported by competent, material and substantial evidence on the record" as further discussed below in Section III of this Brief on Appeal. Thus, the points made in this Section should be considered in conjunction with Section III of this Brief on Appeal below, when this Honorable Court is examining the issues.

II. THE CITY OF BIRMINGHAM'S BOARD OF ZONING APPEALS DECISION WAS BASED ON PROPER PROCEDURE.

STANDARD OF REVIEW:

Appellee incorporates by reference the standard of review as set forth in Section I of this Brief on Appeal as the standard of review herein.

ARGUMENT:

Appellant asserts, in Argument I of its Brief that the BZA did not apply a correct "standard of review" in deciding the administrative appeal of the Planning Board decision and thus was not based on proper procedure. The Appellant claims that neither the Michigan Zoning Enabling Act

nor the City of Birmingham Ordinances provide for a standard of review for the BZA in hearing and determining an appeal of an administrative decision of the Planning Commission. The Appellant asserts because the BZA is vested with the power to "reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination and may issue or direct the issuance of a permit" this is akin to a *de novo* review standard. However, the Appellant offers no legal support for this position and leaves this Court to discover on its own, the rational for this argument.

"An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority. *People v Kelly*, 231 Mich App 627, 640–641; 588 NW 2d 480 (1998). Because Appellant has not provided authority on this issue, the issue should be considered abandoned. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW 2d 834 (1999).

Although MCL 125.3604(6) vests the BZA with the authority to "reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination and may issue or direct the issuance of a permit," the BZA in this case correctly followed the authoritative treatises when it applied the correct arbitrary and capricious and abuse of discretion standard. There are two well established authorities that publish guidance for zoning boards to follow in this regard. The Michigan Municipal League, in its Zoning Board of Appeals Handbook states the following:

"Although the ZBA may reverse or affirm, wholly or partly, or may modify a prior decision, its powers are generally limited to determining whether or not the official body making the administrative decision acted properly. The ZBA must recognize that the zoning administrator or planning commission has already made a decision regarding the issue as part of its delegated duties. The role of the ZBA is to determine whether the decision was authorized or supported by the zoning ordinance. In addition, the ZBA should not treat the appeal as a new decision. Rather review of the decision should be limited to the information that was available to the body or person who made the decision initially. Allowing testimony or evidence in addition to that previously submitted is inappropriate, unless the zoning ordinance directs otherwise." (Emphasis added) Michigan Municipal League, Zoning Board of Appeals Handbook (2006) §21, p 8.

In this case, the zoning ordinance does not "direct otherwise" and thus, de novo review is not mandated on the BZA in this case. Moreover, in yet another treatise directly on point, the Michigan Chapter of the American Planning Association in its Zoning Board of Appeals Toolkit states the following:

"When an appeal of an administrative decision comes to the ZBA, the members should keep in mind that they are not issuing a new decision. Rather, the ZBA is simply required to decide whether the previous decision, (made by the body or individual whose decision is being appealed) based on ordinances standards is defensible. In doing so, the ZBA shall only review the facts as presented to the reviewing body and accordingly determine if the ordinance standards were applied correctly. ZBA members are evaluating the case on information originally presented to administration, not new information. If new information is discovered or presented, the appeal should be remanded back to the original body." APA, Michigan Zoning Board of Appeals Toolkit, (2009) § 5, Appeals of Administrative Decisions, p 46.

In this case, the BZA "directly reviewed" an appeal of an administrative decision. In applying an abuse of discretion or arbitrary and capricious standard to its review of the Planning Board's decision they did so properly under their authoritative treatises and followed the exact advice and guidance provided by those handbooks and toolkits. The BZA clearly stated their review of the Planning Board's decision based upon an "abuse of discretion or acted in an arbitrary or capricious manner" 12-14-2021 TR, pg. 18, ln. 10. This was reiterated multiple times by the BZA members in its review of the case and ultimate determination to uphold the Planning Board's application of the Section 4.54 screening requirements of the zoning ordinance. 12-14-2021 TR, pg. 55, ln. 16. 12-14-2021 TR, pg. 55, ln. 21. 12-14-2021 TR, pg. 56, ln. 11. 12-14-2021 TR, pg. 57, ln. 2. 12-14-2021 TR, pg. 59, ln. 6.

Moreover, the Michigan Constitution provides, by analogy, that when a court hears a "direct" appeal of an administrative determination, such as the BZA did in this case in reviewing the Planning Board decision, that review of the agency findings have to be "supported by

competent, material and substantial evidence on the whole record." Const.1963, Art. 6, § 28. Under Michigan's Constitution, a court's direct review must include, "as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record." Const. 1963, Art. 6, § 28. The constitutional standard corresponds with the standard proved by the Legislature under the Administrative Procedures Act:

- (1) Except when a statute or the constitution provides for a different scope of review, the court shall hold unlawful and set aside a decision or order of an agency if substantial rights of the petitioner have been prejudiced because the decision or order is any of the following:
 - (a) In violation of the constitution or a statute.
 - (b) In excess of the statutory authority or jurisdiction of the agency.
 - (c) Made upon unlawful procedure resulting in material prejudice to a party.
 - (d) Not supported by competent, material and substantial evidence on the whole record.
 - (e) Arbitrary, capricious or clearly an abuse or unwarranted exercise of discretion.
 - (f) Affected by other substantial and material error of law.
- (2) The court, as appropriate, may affirm, reverse or modify the decision or order or remand the case for further proceedings. MCL 24.306.

On "direct review," the circuit court must "determine whether the agency's decision was contrary to law, was supported by competent, material, and substantial evidence on the whole record, was arbitrary or capricious, was clearly an abuse of discretion, or was otherwise affected by a substantial and material error of law." *Polania v State Employees' Retirement Sys*, 299 Mich App 322, 328; 830 NW2d 773 (2013).

In this case, the BZA "directly reviewed" an appeal of an administrative decision. In applying an abuse of discretion or arbitrary and capricious standard to its review of the Planning Board's decision they did so properly under the Michigan Constitution and the Michigan Administrative Procedures Act and therefore its decision was, thus, based on proper procedure based on the same facts as argued above pertaining to this argument.

In conclusion, the BZA did apply a correct "standard of review" in deciding the administrative appeal of the Planning Board decision and, thus, its decision was based on proper procedure.

III. THE CITY OF BIRMINGHAM'S BOARD OF ZONING APPEALS DECISION WAS SUPPORTED BY COMPETENT, MATERIAL, AND SUBSTANTIAL EVIDENCE ON THE RECORD.

STANDARD OF REVIEW:

Appellee incorporates by reference the standard of review as set forth in Section I of this Brief on Appeal as the standard of review herein.

ARGUMENT:

Appellant argues that the BZA's decision was not supported by competent, material and substantial evidence on the record. In doing so, the Appellant plainly asserts that the term "parking facility," a term that is not defined in the Zoning Ordinance, does not apply to the property in question and, thus, is not subject to the screening requirements found in Section 4.54. Appellant asserts that the Planning Board and the subsequent administrative review by the BZA incorrectly interpreted "parking facility." However, as pointed out above, this Court's review is limited to a determination as to whether or not the decision of the BZA is supported by virtually any evidence. *Macenas v Michiana Village, supra*. The Court must give deference to the BZA's findings of fact, and should not interfere in the BZA's choice between two reasonably differing views. *Gordon v Bloomfield Hills, supra*. Thus, although a term may be capable of two different interpretations, the court should afford great deference to a zoning board's construction of its own ordinance. *Davis v River Rouge Bd. of Ed., supra*. Because this Court is not permitted to sit as a super zoning board and based on the extensive record which is supported by competent, material and substantial evidence, this Court's analysis of the question presented does not extend into the actual

interpretation of the ordinance or the term "parking facility" as the Appellant would desire this Court to do. However, assuming arguendo that this Court desires to examine the issue further, the Appellee will address this issue.

The issues presented in this appeal concern the interpretation of a municipal zoning ordinance. In addition to the great deference afforded to a zoning board's construction of its own ordinance and deference to those findings even between two competing views, the same rules of statutory interpretation apply to the interpretation of a municipal ordinance. *Bonner v Brighton*, 495 Mich 209, 221–222; 848 NW 2d 380 (2014). T In *Sau-Tuk Industries, Inc. v Allegan County*, 316 Mich App 122; 892 NW 2d 33 (2016) the Court explained how an ordinance is interpreted:

When interpreting a statute, our primary goal is to give effect to the intent of the Legislature. If the language of a statute is unambiguous, we presume the Legislature intended the meaning expressed in the statute. A statutory provision is ambiguous only if it conflicts irreconcilably with another provision or it is equally susceptible to more than one meaning.... When construing a statute, we must assign every word or phrase its plain and ordinary meaning unless the Legislature has provided specific definitions or has used technical terms that have acquired a peculiar and appropriate meaning in the law.

Similarly, the goal of construction and interpretation of an ordinance is to discern and give effect to the intent of the legislative body. The most reliable evidence of that intent is the language of the ordinance itself, which must be given its plain and ordinary meaning. When the words used in a statute or an ordinance are clear and unambiguous, they express the intent of the legislative body and must be enforced as written. [Sau-Tuk, 316 Mich App at 136-137; 892 NW 2d 33 (quotation marks and citations omitted).]

Again, based on the clear standard of review in this case, and the great deference afforded to a zoning board in the construction of its own ordinance and deference to those findings even between two competing views, the decision in this case is amply supported by competent, material and substantial evidence on the record.

When considering the correct interpretation, the statute must be read as a whole. Sun Valley

Foods Co. v Ward, 460 Mich 230, 237; 596 N.W.2d 119 (1999). Individual words and phrases, while important, should be read in the context of the entire legislative scheme. Herman v Berrien Co., 481 Mich 352, 366; 750 NW 2d 570 (2008). Thus, the BZA in examining the entire Section of 4.54, including its purpose and other related definitions, was appropriate. Section 4.54 first starts with a recitation of the purpose of the section which reads:

"A. <u>Purpose</u>: The purpose of this section is to require a barrier, capable of containing noise, vehicular lights, visual disarray, debris and other factors detrimental to the health, safety and welfare of the community, between an open *parking* station, *outdoor storage*, dumpsters and adjacent properties. Flexibility in the materials, size, height and placement of walls is permitted in order to allow architectural harmony and usable *open space* and to accomplish a unified design." (Emphasis added as these words or phrases are linked to their respective definitions in the zoning ordinance.)

The very stated purpose of the ordinance is to "require" a barrier. The BZA took note of the purpose of the ordinance and at least once mentioned that the purpose of requiring the wall was for the protection from "sound and distraction." Interestingly, when it says "open parking station" the ordinance highlights and links to the definition of "parking" found in Section 9.02 of the Zoning Ordinance which states: "Parking: An area used for the parking of motor vehicles." The BZA discussed this definition in reading the entire ordinance in making its determination.

In subsection (B) of 4.54 the ordinance describes a required screen wall as: "Screenwalls shall be so constructed that the lower 32 inches in height, as measured from the finished parking *lot* surface, ..." and links to the definition of "lot" found in 9.02 of the Zoning Ordinance which states: "Lot: A lot of record or parcel of land including, in addition to the land required to meet the regulations of this chapter, all of the land area shown in a request for a Certificate of Occupancy and use or Zoning Ordinance Compliance Permit, occupied or intended to be occupied by a principal and accessory building or use (see Lot of record)."

The BZA discussed the purpose of Section 4.54 and these related definitions when it

examined the issue. 12-14-2021 TR, pg. 3, ln. 15. The BZA then created a substantial record in reviewing the various related definitions to assist them in their review. Specifically, the BZA referred to Article 9 of the City Zoning Ordinance that defines a "parking area" as "an area used for the parking of motor vehicles." 12-14-2021 TR, pg. 4, ln. 1-4. The BZA also recognized that there was a definition for "parking area total" which was "defined as the actual parking area and the area of the access drives." 12-14-2021 TR, pg. 4, ln. 3-5. In this regard, the BZA appropriately references several times during its meeting these definitions in its analysis of the interpretation of the zoning ordinance in question. 12-14-2021 TR, pg. 7, ln. 16. A thorough reading of the transcript actually demonstrates that the BZA very aptly engaged in an administrative review of the Planning Board decision by engaging in the exact review that a court of law would engage in and did indeed very much follow the rules of statutory interpretation when doing so.

The BZA also examined what it meant to "park" a car and the time periods of how long a vehicle would be parked and where on the subject property the parking would occur. 12-14-2021 TR, pg. 11, ln. 4.

The BZA engaged in several in-depth discussions and examinations of 4.54(C)(3) which states "C. Screening Requirements: Screening shall be placed as follows: 3. Along the front or side of any parking facility that abuts a street, alley, passage or mixed passage." As noted, there is no corresponding definition of "parking facility" anywhere in the ordinance. However, as noted above, the BZA extensively examined other useful related terms and definitions that might help in its analysis. The BZA also discussed the purpose of the wall and intent of ordinance and legislative intent. 12-14-2021 TR, pg. 35, ln. 22. 12-14-2021 TR, pg. 38, ln.22. The BZA even considered the placement of commas in the language of the ordinance and opined that the placement is also relevant to its interpretation. 12-14-2021 TR, pg. 35, ln. 1. The BZA also referenced several

dictionary definitions, some supporting their conclusions and one not supporting their ultimate decision. 12-14-2021 TR, pg. 35, ln. 7. 12-14-2021 TR, pg. 36, ln. 9. 12-14-2021 TR, pg. 3, ln. 5. 12-14-2021 TR, pg. 58, ln. 23. 12-14-2021 TR, pg. 59, ln. 2 & ln. 9.

In addition, a basic search for a definition of "parking facility" garners hundreds of iterations of definitions:

"Parking Facility. - means the area set aside for the storage and parking of vehicles and includes parking stalls, loading spaces, aisles, entrances and exits to the area, and traffic islands where they are part of the parking facility.'

"Parking Facility means any property used for vehicle parking."

"Parking Facility. - means the area set aside for the storage and parking of vehicles and includes parking stalls, loading spaces, aisles, entrances and exits to the area, and traffic islands where they are part of the parking facility."

"Parking Facility means public or private property used, wholly or partly, for restricted or paid vehicle parking."

Law Insider, https://www.lawinsider.com/dictionary/parking-facility (accessed May 26, 2022).

As these diverse and various definitions demonstrate, the term "parking facility" has no readily apparent or commonly accepted definition. Thus, it is impossible to conclude that the BZA acted arbitrarily or abused its discretion when it determined the Planning Board's application of Section 4.54 and the term "parking facility" applied to the JAX property. The Appellant has not established that the facts on the record required that the relief sought be granted as requested. The Court must give deference to the BZA's findings of fact, and should not interfere in the BZA's choice between two reasonably differing views. *Gordon v Bloomfield Hills, supra*.

Based on a reading of the entire ordinance as a whole, the BZA correctly interpreted the term "parking facility" to apply to the JAX property. The stated purpose of the ordinance is to "require a barrier, capable of containing noise, vehicular lights, visual disarray, debris and other

factors detrimental to the health, safety and welfare of the community, between an open *parking* station, *outdoor storage*, dumpsters and adjacent properties." This part of the ordinance does not reference "parking facility" but rather "open parking station." Certainly, the record establishes that the property in question has multiple "area[s] used for the parking of motor vehicles" that would fall under the definition of "parking" contained in the ordinance and relied upon by the BZA. Thus, it is not an abuse of its discretion in applying this to the interpretation of "parking facility" when examining the ordinance in its entirety as the BZA did.

Moreover, the JAX property was found by the BZA to also be a "lot" defined as "A lot of record or parcel of land including, in addition to the land required to meet the regulations of this chapter, all of the land area shown in a request for a Certificate of Occupancy and use or Zoning Ordinance Compliance Permit, occupied or intended to be occupied by a principal and accessory building or use" under the Ordinance. The BZA determined this too was applicable to the JAX property and question presented. Therefore, it was logical and not an abuse of the BZA's discretion to consider that the entire "lot" was considered in analyzing the applicability of the required screen wall to this property.

The BZA also considered the definition of "parking area" as "an area used for the parking of motor vehicles" and agreed that it was relevant to the JAX proposal. Clearly, the record reflects that there are several "area[s] used for the parking of motor vehicles" at the property and thus again, a valid exercise and support of the conclusion that the entire ordinance, including the screen wall requirement, was applicable to the JAX property.

Lastly, in examining the Ordinance, the BZA considered the term "parking area total" which is "defined as the actual parking area and the area of the access drives." In this case, the access drives and actual parking area support the conclusion that the screening standards apply to

the interpretation by the BZA of the Ordinance.

Thus the majority of the BZA opined that the Planning Board had justifiable reasons for it's rational of requiring a screen wall at this property and that the decision of the Planning Board was not an abuse of its discretion. 12-14-2021 TR, pg. 55, ln. 10. See also 12-14-2021 TR, pg. 56, ln. 11 and 12-14-2021 TR, pg. 59, ln. 4.

Again, however, because the BZA created a very thorough record and comprehensively reviewed the decision of the Planning Board and the Ordinance in question, the decision of the BZA was supported by competent, material and substantial evidence on the record. Because of this very fact, and this Court's limited standard of review, this Court need not engage in any analysis of the interpretation of the term "parking facility" as put forth by Appellant. Because there is a substantial record and the great weight of that construction is placed upon that interpretation of the Ordinance by the agency legislatively chosen to administer it, this Court is left with only one possible conclusion, to uphold the decision of the BZA. In other words, this Court is essentially precluded from considering the Appellant's interpretation of the Ordinance and proffered definition of "parking facility" based on the great weight of the authority cited herein concerning the limited review by this Court and the record.

The BZA did not act arbitrarily or abuse its discretion. Quite the opposite is true. The BZA engaged in substantially the exact same type of analysis that an appellate court would engage in when reviewing and interpreting an ordinance. The decision was based on substantial evidence and was based on evidence that a reasonable person would accept as sufficient to support a conclusion. The decision of the BZA was based on substantially more than a scintilla of evidence and was much more than a preponderance. There was no clear error based on the fact that the decision was capable of reasonable interpretation. Whether the Appellant or this Court agree or

disagree with the decision and interpretation of the Ordinance and the term "parking facility" is ultimately not an issue based on the clear standards in this case.

IV. THE CITY OF BIRMINGHAM'S BOARD OF ZONING APPEALS DECISION REPRESENTED THE REASONABLE EXERCISE OF DISCRETION GRANTED BY LAW TO THE BOARD.

STANDARD OF REVIEW:

Appellee incorporates by reference the standard of review as set forth in Section I of this Brief on Appeal as the standard of review herein.

ARGUMENT:

It does not appear that the Appellant raised this issue on appeal or briefed this issue. Although this issue is somewhat addressed in other areas of Appellant's and Appellee's Briefs, Appellee will briefly address this issue. The BZA is vested with the statutory power to "hear and decide appeals from and review any administrative order, requirement, decision, or determination made by an administrative official or body charged with enforcement of a zoning ordinance..." MCL 125.3603. The "[t]he zoning board of appeals may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination and may issue or direct the issuance of a permit." MCL 125.3604(6). The Birmingham Zoning Ordinance, Section 8.01(F) states: "The Board of Zoning Appeals shall have the powers and duties set forth in MCL 125.581 et seq." (MCL 125.581 has been recodified in MCL 125.3101 et seq.)

The plain language of this cited authority establishes the BZA is vested with the authority and discretion to decide the appeal of an administrative decision of the Planning Board. Moreover, because the decision of the BZA was supported by competent, material, and substantial evidence on the record, the BZA did not abuse its discretion in rendering its decision.

RELIEF REQUESTED

Appellee respectfully requests that this Honorable Court issue an Opinion and Order affirming the decision of the BZA and dismiss the Appeal.

Respectfully submitted,

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Parking Facility:

2.01; 2.03; 2.05; 2.07; 2.09; 2.11; 2.13; 2.15; 2.17; 2.19; 2.21; 2.23; 2.25; 2.27; 2.29; 2.31; 2.33; 2.35; 2.37; 2.39; 2.41; 3.08; 4.20; 4.39; 4.45; 4.52; 4.54; 4.81; 5.06; 5.07; 5.08; 5.09; 5.13; 7.25; Appendix A

2.01 PP (Public Property) District Intent, Permitted Uses, and Special Uses PP

A. District Intent

1. A district intent is not available for this zoning district.

B. Permitted Uses

- 1. Institutional Permitted Uses
 - a. auditorium
 - b. cemetery
 - c. essential service
 - d. government office
 - e. government use
 - f. parking facility off-street
 - g. school private
 - h. school public
- 2. Recreational Permitted Use
 - a. park
 - b. swimming pool public
- 3. Other Permitted Uses
 - a. water tower
 - b. well
 - c. any use permitted in an adjacent district

C. Other Use Regulations

- 1. Accessory Permitted Uses
 - a. There are no accessory permitted uses permitted in this zoning district.
- 2. Uses Requiring a Special Land Use Permit
 - a. There are no special land uses permitted in this zoning district.
- * = Use Specific Standards in Section 5.01 Apply

2.03 R1A (Single-Family Residential) District Intent, Permitted Uses, and Special Uses RA

A. District Intent

1. A district intent is not available for this zoning district.

B. Permitted Uses

- 1. Residential Permitted Uses
 - a. adult foster care group home
 - b. dwelling one-family
 - c. single-family cluster*
- 2. Institutional Permitted Uses
 - a. government office
 - b. school public
- 3. Recreational Permitted Uses
 - a. park

- 1. Accessory Permitted Uses
 - a. family day care home*
 - b. garage private
 - c. greenhouse private
 - d. home occupation*

- e. parking facility private off-street
- f. parking public, off-street*
- g. renting of rooms*
- h. sign
- i. swimming pool private
- j. any use customarily incidental to the permitted principal use
- 2. Uses Requiring a Special Land Use Permit
 - a. assisted living
 - b. continued care retirement community
 - c. independent hospice facility
 - d. independent senior living
 - e. medical rehabilitation facility
 - f. parking (accessory) public, off-street
 - g. philanthropic use
 - h. public utility building
 - i. publicly owned building
 - j. religious institution
 - k. school private
 - I. skilled nursing facility
- * = Use Specific Standards in Section 5.02 Apply

(Ord. No. 2272, 10/08/2018)

Effective on: 12/23/2018

2.05 R1 (Single-Family Residential) District Intent, Permitted Uses, and Special Uses 🕅

A. District Intent

1. A district intent is not available for this zoning district.

B. Permitted Uses

- 1. Residential Permitted Uses
 - a. adult foster care group home
 - b. dwelling one-family
 - c. single-family cluster*
- 2. Institutional Permitted Uses
 - a. government office
 - b. school public
- 3. Recreational Permitted Uses
 - a. park

- 1. Accessory Permitted Uses
 - a. family day care home*
 - b. garage private
 - c. greenhouse private
 - d. home occupation*
 - e. parking facility private off-street
 - f. parking public, off-street*
 - g. renting of rooms*
 - h. sign
 - i. swimming pool private

- j. any use customarily incidental to the permitted principal use
- 2. Uses Requiring a Special Land Use Permit
 - a. assisted living
 - b. continued care retirement community
 - c. independent hospice facility
 - d. independent senior living
 - e. medical rehabilitation facility
 - f. parking (accessory) public, off-street
 - g. philanthropic use
 - h. public utility building
 - i. publicly owned building
 - j. religious institution
 - k. school private
 - I. skilled nursing facility
- * = Use Specific Standards in Section 5.02 Apply

(Ord. No. 2273, 10/08/2018)

Effective on: 12/23/2018

2.07 R2 (Single-Family Residential) District Intent, Permitted Uses, and Special Uses (R2)

A. District Intent

1. A district intent is not available for this zoning district.

B. Permitted Uses

- 1. Residential Permitted Uses
 - a. adult foster care group home
 - b. dwelling one-family
 - c. single-family cluster*
- 2. Institutional Permitted Uses
 - a. government office
 - b. school public
- 3. Recreational Permitted Uses
 - a. park

- 1. Accessory Permitted Uses
 - a. family day care home*
 - b. garage private
 - c. greenhouse private
 - d. home occupation*
 - e. parking facility private off-street
 - f. parking public, off-street*
 - g. renting of rooms*
 - h. sign
 - i. swimming pool private
 - j. any use customarily incidental to the permitted principal use
- 2. Uses Requiring a Special Land Use Permit
 - a. assisted living
 - b. continued care retirement community
 - c. independent hospice facility

- d. independent senior living
- e. medical rehabilitation facility
- f. parking (accessory) public, off-street
- g. philanthropic use
- h. public utility building
- i. publicly owned building
- j. religious institution
- k. school private
- I. skilled nursing facility
- * = Use Specific Standards in Section 5.02 Apply

(Ord. No. 2274, 10/08/2018)

Effective on: 12/23/2018

2.09 R3 (Single-Family Residential) District Intent, Permitted Uses, and Special Uses ®

A. District Intent

1. A district intent is not available for this zoning district.

B. Permitted Uses

- 1. Residential Permitted Uses
 - a. adult foster care group home
 - b. dwelling one-family
- 2. Institutional Permitted Uses
 - a. government office
 - b. school public
- 3. Recreational Permitted Uses
 - a. park

- 1. Accessory Permitted Uses
 - a. family day care home*
 - b. garage private
 - c. greenhouse private
 - d. home occupation*
 - e. parking facility private off-street
 - f. parking public, off-street*
 - g. renting of rooms*
 - h. sign
 - i. swimming pool private
 - j. any use customarily incidental to the permitted principal use
- 2. Uses Requiring a Special Land Use Permit
 - a. assisted living
 - b. continued care retirement community
 - c. independent hospice facility
 - d. independent senior living
 - e. medical rehabilitation facility
 - f. parking (accessory) public, off-street
 - g. philanthropic use
 - h. public utility building
 - i. publicly owned building

- j. religious institution
- k. school private
- I. skilled nursing facility
- * = Use Specific Standards in Section 5.02 Apply

(Ord. No. 2275, 10/08/2018)

Effective on: 12/23/2018

2.11 R4 (Two-Family Residential) District Intent, Permitted Uses, and Special Uses (M)

A. District Intent

1. A district intent is not available for this zoning district.

B. Permitted Uses

- 1. Residential Permitted Uses
 - a. adult foster care group home (R3)
 - b. dwelling one-family (R3)
 - c. dwelling two-family
- 2. Institutional Permitted Uses
 - a. government office (R3)
 - b. philanthropic use
 - c. school public (R3)
- 3. Recreational Permitted Uses
 - a. park (R3)

- 1. Accessory Permitted Uses
 - a. garage private
 - b. greenhouse private
 - c. home occupation*
 - d. parking facility private off-street
 - e. parking public, off-street*
 - f. renting of rooms*
 - g. sign
 - h. swimming pool private
 - i. any use customarily incidental to the permitted principal use
- 2. Uses Requiring a Special Land Use Permit
 - a. assisted living
 - b. continued care retirement community
 - c. independent hospice facility
 - d. independent senior living
 - e. parking (accessory) public, off-street
 - f. philanthropic use
 - g. public utility building
 - h. publicly owned building
 - i. religious institution
 - j. school private
 - k, skilled nursing facility
- * = Use Specific Standards in Section 5.03 Apply
- () = Subject to Regulations of the Specified District

(Ord. No. 2276, 10/08/2018)

Effective on: 12/23/2018

2.13 R5 (Multiple-Family Residential) District Intent, Permitted Uses, & Special Uses 185

A. District Intent

1. A district intent is not available for this zoning district.

B. Permitted Uses

- 1. Residential Permitted Uses
 - a. adult foster care group home (R4)
 - b. dwelling multiple-family
 - c. dwelling one-family (R4)
 - d. dwelling two-family (R4)
- 2. Institutional Permitted Uses
 - a. government office (R4)
 - b. philanthropic use (R4)
 - c. school public (R4)
- 3. Recreational Permitted Uses
 - a. park (R4)

C. Other Use Regulations

- 1. Accessory Permitted Uses
 - a. garage private
 - b. greenhouse private
 - c. home occupation*
 - d. parking facility private off-street
 - e. parking public, off-street*
 - f. renting of rooms*
 - g. sign
 - h. swimming pool private
 - i. any use customarily incidental to the permitted principal use
- 2. Uses Requiring a Special Land Use Permit
 - a. assisted living
 - b. continued care retirement community
 - c. independent hospice facility
 - d. independent senior living
 - e. parking (accessory) public, off-street
 - f. philanthropic use
 - g. public utility building
 - h. publicly owned building
 - i. religious institution
 - j. school private
 - k. skilled nursing facility
- * = Use Specific Standards in Section 5.03 Apply
- () = Subject to Regulations of the Specified District

(Ord. No. 2277, 10/08/2018)

Effective on: 12/23/2018

2.15 R6 (Multiple-Family Residential) District Intent, Permitted Uses, & Special Uses ®

A. District Intent

1. A district intent is not available for this zoning district.

B. Permitted Uses

- 1. Residential Permitted Uses
 - a, adult foster care group home (R5)
 - b. dwelling multiple-family (R5)
 - c. dwelling one-family (R5)
 - d. dwelling two-family (R5)
- 2. Institutional Permitted Uses
 - a. government office (R5)
 - b. philanthropic use (R5)
 - c. school public (R5)
- 3. Recreational Permitted Uses
 - a. park (R5)
 - b. swimming pool semiprivate (R5)

C. Other Use Regulations

- 1. Accessory Permitted Uses
 - a. garage private
 - b. greenhouse private
 - c. home occupation*
 - d. parking facility private off-street
 - e. parking public, off-street*
 - f. renting of rooms*
 - g. sign
 - h. swimming pool private
 - i. any use customarily incidental to the permitted principal use
- 2. Uses Requiring a Special Land Use Permit
 - a. assisted living
 - b. community center
 - c. continued care retirement community
 - d. independent hospice facility
 - e. independent senior living
 - f. philanthropic use
 - q. public utility building
 - h. publicly owned building
 - i. religious institution
 - j. school private
 - k. skilled nursing facility
 - I. social club
- * = Use Specific Standards in Section 5.04 Apply
- () = Subject to Regulations of the Specified District

(Ord. No. 2278, 10/08/2018)

Effective on: 12/23/2018

2.17 R7 (Multiple-Family Residential) District Intent, Permitted Uses, & Special Uses 💷

A. District Intent

1. A district intent is not available for this zoning district.

B. Permitted Uses

- 1. Residential Permitted Uses
 - a. adult foster care group home (R6)
 - b. dwelling multiple-family (R6)
 - c. dwelling multiple-family
 - d. dwelling one-family (R6)
 - e. dwelling two-family (R6)
- 2. Institutional Permitted Uses
 - a. government office (R6)
 - b. philanthropic use (R6)
 - c. school public (R6)
- 3. Recreational Permitted Uses
 - a. park (R6)
 - b. swimming pool semiprivate (R6)

C. Other Use Regulations

- 1. Accessory Permitted Uses
 - a. garage private
 - b. greenhouse private
 - c. home occupation*
 - d. parking facility private off-street
 - e. parking public, off-street*
 - f. renting of rooms*
 - g. sign
 - h. swimming pool private
 - i. any use customarily incidental to the permitted principal use
- 2. Uses Requiring a Special Land Use Permit
 - a. assisted living
 - b. community center
 - c. continued care retirement community
 - d. independent hospice facility
 - e. independent senior living
 - f. parking off-street
 - g. public utility building
 - h. publicly owned building
 - i. religious institution
 - j. school private
 - k. skilled nursing facility
 - I. social club
 - m. special-purpose housing*
- * = Use Specific Standards in Section 5.05 Apply
- () = Subject to Regulations of the Specified District

(Ord. No. 2279, 10/08/2018)

Effective on: 12/23/2018

2.19 R8 (Attached Single-Family Residential) District Intent, Permitted Uses, and Special Uses (B)

A. District Intent

1. A district intent is not available for this zoning district.

B. Permitted Uses

- 1. Residential Permitted Uses
 - a. adult foster care group home (R3)
 - b. dwelling one-family (R3)
 - c. dwelling single-family attached
- 2. Institutional Permitted Uses
 - a. government office (R3)
 - b. school public (R3)
- 3. Recreational Permitted Uses
 - a. park (R3)

C. Other Use Regulations

- 1. Accessory Permitted Uses
 - a. garage private
 - b. greenhouse private
 - c. home occupation*
 - d. parking facility private off-street
 - e. parking public, off-street*
 - f. renting of rooms*
 - g. sign
 - h. swimming pool private
 - i. any use customarily incidental to the permitted principal use
- 2. Uses Requiring a Special Land Use Permit
 - a. assisted living
 - b. church
 - c. continued care retirement community
 - d. independent hospice facility
 - e, independent senior living
 - f. skilled nursing facility
- * = Use Specific Standards in Section 5.03 Apply
- () = Subject to Regulations of the Specified District

2.21 O1 (Office) District Intent, Permitted Uses, and Special Uses (1)

A. District Intent

1. The O1 (Office) District is established to accommodate a mix of residential, office and public uses which are compatible with nearby residential uses.

B. Permitted Uses

- 1. Residential Permitted Uses
 - a. adult foster care group home
 - b. dwelling multiple-family
 - c. dwelling one-family (R5)
 - d. dwelling two-family
 - e. live/work unit
- 2. Institutional Permitted Uses
 - a. government office
 - b. philanthropic use
 - c. school public

- 3. Recreational Permitted Uses
 - a. park
 - b. swimming pool semiprivate
- 4. Commercial Permitted Uses
 - a. barber shop/beauty solon
 - b. hair replacement establishment
 - c. office
 - d. veterinary clinic*

- 1. Accessory Permitted Uses
 - a. kennel*
 - b. laboratory medical/dental*
 - c. loading facility off-street*
 - d. parking facility off-street*
 - e. pharmacy*
 - f. outdoor cafe*
- 2. Uses Requiring a Special Land Use Permit
 - a. assisted living
 - b. bistro (only permitted in the Triangle District)*
 - c. continued care retirement community
 - d. independent hospice facility
 - e. independent senior living
 - f. religious institution
 - g. skilled nursing facility
- * = Use Specific Standards in Section 5.06 Apply
- () = Subject to Regulations of the Specified District

(Ord. No. 2280, 10/08/2018)

Effective on: 12/23/2018

2.23 O2 (Office/Commercial) District Intent, Permitted Uses, and Special Uses @2

A. District Intent

1. The O2 (Office/Commercial) District is established to accommodate a mix of residential, office, public and small scale commercial uses which are compatible with nearby residential uses.

B. Permitted Uses

- 1. Residential Permitted Uses
 - a. adult foster care group home
 - b. dwelling multiple-family
 - c. dwelling one-family (R5)
 - d. dwelling two-family
 - e. live/work unit
- 2. Institutional Permitted Uses
 - a. government office
 - b. philanthropic use
 - c. school public
- 3. Recreational Permitted Uses
 - a. park
 - b. swimming pool semiprivate

- 4. Commercial Permitted Uses
 - a. art gallery
 - b. bakery
 - c. bank without drive-through facility
 - d. barber shop/beauty salon
 - e. boutique
 - f. clinic
 - g. clothing store
 - h. flower/gift shop
 - i. hair replacement establishment
 - j. interior design shop
 - k. jewelry store
 - I. leather and luggage goods shop
 - m. office
 - n. photography studio
 - o. specialty food store
 - p. specialty home furnishing shop
 - q. tailor
 - r. tobacconist
 - s. veterinary clinic*

- 1. Accessory Permitted Uses
 - a. kennel*
 - b. laboratory medical/dental*
 - c. loading facility off-street*
 - d. parking facility off-street*
 - e. pharmacy*
 - f. outdoor cafe*
 - g. outdoor display*
 - h. commercial or office uses which are customarily incidental to the permitted principal uses of the same lot
- 2. Uses Requiring a Special Land Use Permit
 - a. assisted living
 - b. bank with drive-through facility
 - c. bistro (only permitted in the Triangle District)*
 - d. continued care retirement community
 - e. display of broadcast media devices (only permitted in conjunction with a gasoline service station)
 - f. establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development (only permitted on those parcels within the Triangle District identified on Exhibit 1; Appendix C)
 - g. food or drink establishment*
 - h. independent hospice facility
 - i. independent senior living
 - j. skilled nursing facility
- * = Use Specific Standards in Section 5.07 Apply
- () = Subject to Regulations of the Specified District

2.25 P (Parking) District Intent, Permitted Uses, and Special Uses P

A. District Intent

1. A district intent is not available for this zoning district.

B. Permitted Uses

- 1. Residential Permitted Uses
 - a. adult foster care group home (R7)
 - b. dwelling multiple-family (R7)
 - c. dwelling one-family (R7)
 - d. dwelling two-family (R7)
 - e. live/work unit
- 2. Institutional Permitted Uses
 - a. government office (R7)
 - b. parking facility off-street*
 - c. philanthropic use (R7)
 - d. school public (R7)
- 3. Recreational Permitted Uses
 - a. Park (R7)
 - b. swimming pool semiprivate (R7)

- 1. Accessory Permitted Uses
 - a. garage community
 - b. garage private
 - c. greenhouse private
 - d. home occupation*
 - e. parking facility private off-street
 - f. parking public, off-street*
 - g. renting of rooms*
 - h. shelter building*
 - i. sign
 - j. swimming pool private
 - k, any use customarily incidental to the permitted principal use
- 2. Uses Requiring a Special Land Use Permit
 - a. assisted living
 - b. bistro (only permitted in the Triangle District)*
 - c. community center
 - d. continued care retirement community
 - e. independent hospice facility
 - f. independent senior living
 - g. parking off-street
 - h. publicly owned building
 - i. public utility building
 - j. recreational club
 - k. religious institution
 - I. school private
 - m. skilled nursing facility
 - n. social club
- * = Use Specific Standards in Section 5.08 Apply
- () = Subject to Regulations of the Specified District

(Ord. No. 2281, 10/08/2018)

Effective on: 12/23/2018

2.27 B1 (Neighborhood Business) District Intent, Permitted Uses, and Special Uses (8)

A. District Intent

1. The B1 (Neighborhood Business) District is established for the convenience of shopping for persons residing in adjacent residential areas to permit only such uses as are necessary to satisfy those limited basic shopping and/or service needs which by their very nature are not related to the shopping pattern of the general business district.

B. Permitted Uses

- 1. Institutional Permitted Uses
 - a. community center
 - b. government office
 - c. government use
 - d. religious institution
 - e. school private
 - f. school public
 - g. social club
- 2. Recreational Permitted Uses
 - a. recreational club
 - b. swimming pool semiprivate
- 3. Commercial Permitted Uses
 - a. bakery
 - b. barber shop/beauty salon
 - c. drugstore
 - d. dry cleaning
 - e. grocery store
 - f. hardware store
 - g. neighborhood convenience store
 - h. office
 - i. shoe store/shoe repair
 - j. tailor
- 4. Other Permitted Uses
 - a. utility substation

- 1. Accessory Permitted Uses
 - a. alcoholic beverage sales*
 - b. kennel*
 - c. laboratory medical/dental*
 - d. loading facility off-street*
 - e. outdoor cafe
 - f. outdoor display*
 - g. parking facility off-street*
 - h. sign
- 2. Uses Requiring a Special Land Use Permit
 - a. alcoholic beverage sales (off-premise consumption)
 - b. alcoholic beverage sales (on-premise consumption)
 - c, child care center
 - d. continued care retirement community

- e. independent hospice facility
- f. drive-in facility*
- g. gasoline full service station*
- h. skilled nursing facility
- * = Use Specific Standards in Section 5.09 Apply
- () = Subject to Regulations of the Specified District

(Ord. No. 2282, 10/08/2018)

Effective on: 12/23/2018

2.29 B2 (General Business) District Intent, Permitted Uses, and Special Uses 🗵

A. District Intent

1. A district intent is not available for this zoning district.

B. Permitted Uses

- 1. Residential Permitted Uses
 - a. dwelling multiple-family
 - b. dwelling one-family*
 - c. dwelling two-family*
 - d. live/work unit
- 2. Institutional Permitted Uses
 - a. community center
 - b. garage public
 - c. government office
 - d. government use
 - e. loading facility off-street
 - f. parking facility off-street
 - a. religious institution
 - h. school private
 - i. school public
 - j. social club
- 3. Recreational Permitted Uses
 - a. bowling alley
 - b. outdoor amusement*
 - c. recreational club
 - d. swimming pool public & semiprivate
- 4. Commercial Permitted Uses
 - a. bakery
 - b. bank
 - c. barber shop/beauty salon
 - d. catering
 - e. child care center
 - f. clothing store
 - g. delicatessen
 - h. department store
 - i. drugstore
 - j. dry cleaning
 - k. flower/gift shop
 - I. food or drink establishment*

- m. furniture
- n. greenhouse
- o. grocery store
- p. hardware store
- q. hotel
- r. jewelry store
- s. motel
- t. neighborhood convenience store
- u. office
- v. paint
- w. party store
- x. retail photocopying
- y. school-business
- z. shoe store/shoe repair
- aa. showroom of electricians/plumbers
- ab. tailor
- ac. theater*
- 5. Other Permitted Uses
 - a. utility substation

- 1. Accessory Permitted Uses
 - a. alcoholic beverage sales (off-premise consumption)*
 - b. kennel*
 - c. laboratory medical/dental*
 - d. loading facility off-street
 - e. outdoor cafe*
 - f. outdoor display*
 - g. outdoor storage*
 - h. parking facility off-street
 - i. retail fur sales cold storage facility
 - j. sign
- 2. Uses Requiring a Special Land Use Permit
 - a. alcoholic beverage sales (on-premise consumption)
 - b. assisted living
 - c. auto laundry
 - d. auto sales agency
 - e. bistro (only permitted in the Triangle District or Rail District)*
 - f. bus/train passenger station and waiting facility
 - g. continued care retirement community
 - h. display of broadcast media devices (only permitted in conjunction with a gasoline service station)
 - i. drive-in facility
 - j. establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development (only permitted on those parcels identified on Exhibit 1; Appendix C)
 - k, funeral home
 - I, gasoline full service station*
 - m. gasoline service station
 - n. independent hospice facility

- o. independent senior living
- p. skilled nursing facility
- q. trailer camp
- 3. Uses Requiring City Commission Approval
 - a. regulated uses*
- * = Use Specific Standards in Section 5.10 Apply
- () = Subject to Regulations of the Specified District

(Ord. No. 2253, 11/20/2017; Ord. No. 2283, 10/08/2018)

Effective on: 12/23/2018

2.31 B2B (General Business) District Intent, Permitted Uses, and Special Uses E

A. District Intent

1. A district intent is not available for this zoning district.

B. Permitted Uses

- 1. Residential Permitted Uses
 - a. Residential Permitted Uses
 - b. dwelling multiple-family
 - c. dwelling one-family*
 - d. dwelling two-family*
 - e. live/work unit
- 2. Institutional Permitted Uses
 - a. community center
 - b. garage public
 - c. government office
 - d. government use
 - e. loading facility off-street
 - f. parking facility off-street
 - g. religious institution
 - h. school private
 - i. school public
 - j. social club
- 3. Recreational Permitted Uses
 - a. bowling alley
 - b. outdoor amusement*
 - c. recreational club
 - d. swimming pool public & semiprivate
- 4. Commercial Permitted Uses
 - a. auto sales agency
 - b. bakery
 - c. bank
 - d. barber shop/beauty salon
 - e. catering
 - f. child care center
 - g. clothing store
 - h. delicatessen
 - i. drugstore
 - j. dry cleaning

- k. flower/gift shop
- I. food or drink establishment*
- m. furniture
- n. greenhouse
- o. grocery store
- p. hardware store
- q. hotel
- r. jewelry store
- s. motel
- t. neighborhood convenience store
- u. office
- v. paint
- w. party store
- x. retail photocopying
- y. school-business
- z. shoe store/shoe repair
- aa. showroom of electricians/plumbers
- ab. tailor
- ac. theater*
- 5. Other Permitted Uses
 - a. utility substation

- 1. Accessory Permitted Uses
 - a. alcoholic beverage sales (off-premise consumption)*
 - b. kennel*
 - c. laboratory medical/dental*
 - d. loading facility off-street
 - e. outdoor cafe*
 - f. outdoor display*
 - g. outdoor storage*
 - h. parking facility off-street
 - i. retail fur sales cold storage facility
 - j. sign
- 2. Uses Requiring a Special Land Use Permit
 - a. alcoholic beverage sales (on-premise consumption)
 - b. assisted living
 - c. auto laundry
 - d. bistro (only permitted in the Triangle District or Rail District)*
 - e. bus/train passenger station and waiting facility
 - f. continued care retirement community
 - g. display of broadcast media devices (only permitted in conjunction with a gasoline service station)
 - h. drive-in facility
 - i. establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development (only permitted on those parcels identified on Exhibit 1; Appendix C)
 - i, funeral home
 - k. gasoline full service station*
 - I. gasoline service station

- m. independent hospice facility
- n. independent senior living
- o. skilled nursing facility
- p. trailer camp
- 3. Uses Requiring City Commission Approval
 - a. regulated uses*
- * = Use Specific Standards in Section 5.10 Apply
- () = Subject to Regulations of the Specified District

(Ord. No. 2254, 11/20/2017; Ord. No. 2284, 10/08/2018)

Effective on: 12/23/2018

2.33 B2C (General Business) District Intent, Permitted Uses, and Special Uses 🖭

A. District Intent

1. A district intent is not available for this zoning district.

B. Permitted Uses

- 1. Residential Permitted Uses
 - a. dwelling multiple-family
 - b. dwelling one-family*
 - c. dwelling two-family*
 - d. live/work unit
- 2. Institutional Permitted Uses
 - a. community center
 - b. garage public
 - c. government office
 - d. government use
 - e. loading facility off-street
 - f. parking facility off-street
 - g. religious institution
 - h. school private
 - i. school public
 - j. social club
- 3. Recreational Permitted Uses
 - a. bowling alley
 - b. outdoor amusement*
 - c. recreational club
 - d. swimming pool public & semiprivate
- 4. Commercial Permitted Uses
 - a. auto sales agency
 - b. bakery
 - c. bank
 - d. barber shop/beauty salon
 - e. catering
 - f. child care center
 - g. clothing store
 - h. delicatessen
 - i. drugstore
 - j. dry cleaning

- k. flower/gift shop
- I, food or drink establishment*
- m. furniture
- n. greenhouse
- o. grocery store
- p. hardware store
- q. hotel
- r. jewelry store
- s. motel
- t. neighborhood convenience store
- u. office
- v. paint
- w. party store
- x. retail photocopying
- y. school-business
- z. shoe store/shoe repair
- aa. showroom of electricians/plumbers
- ab. tailor
- ac. theater*
- 5. Other Permitted Uses
 - a. utility substation

- 1. Accessory Permitted Uses
 - a. alcoholic beverage sales (off-premise consumption)*
 - b. kennel*
 - c. laboratory medical/dental*
 - d. loading facility off-street
 - e. outdoor cafe*
 - f. outdoor display*
 - g. outdoor storage*
 - h. parking facility off-street
 - i. sign
- 2. Uses Requiring a Special Land Use Permit
 - a. alcoholic beverage sales (on-premise consumption)
 - b. auto laundry
 - c. bus/train passenger station and waiting facility
 - d. drive-in facility
 - e, funeral home
 - f. gasoline full service station*
 - g. gasoline service station
 - h. trailer camp
- 3. Uses Requiring City Commission Approval
 - a. regulated uses*
- * = Use Specific Standards in Section 5.10 Apply

(Ord. No. 2285, 10/08/2018)

Effective on: 12/23/2018

2.35 B3 (Office-Residential) District Intent, Permitted Uses, and Special Uses 📵

A. District Intent

1. A district intent is not available for this zoning district.

B. Permitted Uses

- 1. Residential Permitted Uses
 - a. dwelling multiple-family
 - b. dwelling multiple-family combined with commercial uses in the same building complex
 - c. live/work unit
- 2. Institutional Permitted Uses
 - a. Bus/train passenger waiting facility
- 3. Commercial Permitted Uses
 - a. art gallery
 - b. auto show room
 - c. bank
 - d. barber shop/beauty salon
 - e. clothing store
 - f. coffee shop
 - g. delicatessen
 - h. department store
 - i. drugstore
 - j. dry cleaning*
 - k. flower/gift shop
 - I. health club/studio
 - m. hotel
 - n. jewelry store
 - o. laundry*
 - p. office
 - q. retail photocopying
 - r. restaurant*
 - s. school business
 - t. shoe store/shoe repair
- 4. Other Permitted Uses
 - a. utility substation

- 1. Accessory Permitted Uses
 - a. laboratory medical/dental*
 - b. loading facility off-street
 - c. outdoor cafe*
 - d. outdoor display*
 - e. outdoor storage*
 - f. parking facility off-street
 - g. parking structure
 - h. shelter building*
 - i. sign
 - j. swimming pool public
- 2. Uses Requiring a Special Land Use Permit
 - a. alcoholic beverage sales (on-premise consumption)

- b. assisted living
- c. continued care retirement community
- d. independent hospice facility
- e. independent senior living
- f. skilled nursing facility
- * = Use Specific Standards in Section 5.11 Apply

2.37 B4 (Business-Residential) District Intent, Permitted Uses, and Special Uses 🖽

A. District Intent

1. A district intent is not available for this zoning district.

B. Permitted Uses

- 1. Residential Permitted Uses
 - a. dwelling multiple-family
 - b. dwelling one-family*
 - c. dwelling two-family*
 - d. live/work unit
- 2. Institutional Permitted Uses
 - a. community center
 - b. garage public
 - c. government office
 - d. government use
 - e. loading facility off-street
 - f. parking facility off-street
 - g. religious institution
 - h. school private
 - i. school public
 - j. social club
- 3. Recreational Permitted Uses
 - a. bowling alley
 - b. outdoor amusement*
 - c. recreational club
 - d. swimming pool public & semiprivate
- 4. Commercial Permitted Uses
 - a. auto sales agency
 - b. bakery
 - c. bank
 - d. barber shop/beauty salon
 - e. catering
 - f. child care center
 - g. clothing store
 - h. delicatessen
 - i. department store
 - j. drugstore
 - k. dry cleaning
 - I. flower/gift shop
 - m. food or drink establishment*
 - n, furniture

- o. greenhouse
- p. grocery store
- q. hardware store
- r. hotel
- s. jewelry store
- t. motel
- u. neighborhood convenience store
- v. office
- w. paint
- x. party store
- y, retail photocopying
- z. school-business
- aa. shoe store/shoe repair
- ab. showroom of electricians/plumbers
- ac. tailor
- ad. theater*
- 5. Other Permitted Uses
 - a. utility substation

- 1. Accessory Permitted Uses
 - a. alcoholic beverage sales (off-premise consumption)*
 - b. laboratory medical/dental*
 - c. loading facility off-street
 - d. outdoor cafe*
 - e. outdoor display*
 - f. parking facility off-street
 - g. retail fur sales cold storage facility
 - h, sign
- 2. Uses Requiring a Special Land Use Permit
 - a. alcoholic beverage sales (on-premise consumption)
 - b. assisted living
 - c. continued care retirement community
 - d. establishments operated with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 5, Licenses for Theaters and Hotels
 - e. independent hospice facility
 - f. independent senior living
 - g. skilled nursing facility
- 3. Uses Requiring City Commission Approval
 - a. regulated uses*
- * = Use Specific Standards in Section 5.12 Apply

(Ord. No. 2269, 05/14/2018; Ord. No. 2286, 10/08/2018)

Effective on: 12/23/2018

2.39 MX (Mixed Use) District Intent, Permitted Uses, and Special Uses 🖽

A. District Intent

1. The MX (Mixed Use) District is established to:

- a. Encourage and direct <u>development</u> within the boundaries of the Eton Road Mixed Use District and implement the Eton Road Corridor Plan.
- b. Encourage residential and nonresidential uses that are compatible in scale with adjacent residential neighborhoods.
- c. Encourage the retention, improvement, and expansion of existing uses that help define the Eton Road Corridor.
- d. Allow mixed use developments including residential uses within the Eton Road Corridor.
- e. Minimize the adverse effects of nonresidential traffic on the adjacent residential neighborhood.

B. Permitted Uses

- 1. Residential Permitted Uses
 - a. family day care home*
 - b. group day care home*
 - c. live/work unit
 - d. residential use combined with permitted nonresidential use in the same building complex
- 2. Institutional Permitted Uses
 - a. bus/train passenger station
 - b. government office
 - c. government use
 - d. publicly owned building
- 3. Recreational Permitted Uses
 - a. indoor/outdoor recreational facility
 - b. park
 - c. swimming pool public, semipublic
- 4. Commercial Permitted Uses
 - a, animal medical hospital
 - b. art gallery
 - c. artisan use
 - d. auto rental agency*
 - e, automobile repair and conversion
 - f. bakery
 - g. barber shop/beauty salon
 - h. boutique
 - i. catering
 - j. child care center
 - k. clothing store
 - I. drugstore
 - m. dry cleaning
 - n. flower/gift shop
 - o. food or drink establishment*
 - p. furniture
 - q. greenhouse
 - r. grocery store
 - s, hardware store
 - t. health club/studio
 - u. interior design shop
 - v. jewelry store
 - w. kennel*
 - x. laboratory
 - y. leather and luggage goods shop

- z. neighborhood convenience store
- aa. office
- ab. pet grooming facility
- ac. photography studio
- ad. shoe store/shoe repair
- ae. specialty food store
- af. specialty home furnishing shop
- ag. tailor
- ah. tobacconist
- ai. veterinary clinic
- 5. Industrial Permitted Uses
 - a. light industrial uses
 - b. warehousing
- 6. Other Permitted Uses
 - a. gas regulatory station
 - b. telephone exchange building
 - c. utility substation

- 1. Accessory Permitted Uses
 - a. Alcoholic beverage sales*
 - b. Dwelling accessory*
 - c. Garage private
 - d. Greenhouse private
 - e. Home occupation
 - f. Loading facility off-street*
 - q. Outdoor cafe*
 - h. Outdoor sales or display of goods*
 - i. Parking facility off-street*
 - j. Parking Structure*
 - k. Renting of Rooms*
 - I. Sign
 - m. Swimming Pool private
- 2. Uses Requiring a Special Land Use Permit
 - a. alcoholic beverage sales (on-premise consumption)
 - b. bistros operating with a liquor license granted under the authority of Chapter 10, Alcoholic Liquors, Division 4 Bistro Licenses
 - c. church
 - d. college
 - e. dwelling first floor with frontage on Eton Road
 - f. establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development identified in Appendix C, Exhibit 1
 - g. outdoor storage*
 - h. parking structure (not accessory to principal use)
 - i. religious institution
 - j. school private
 - k. school public
 - I. residential use combined with a permitted nonresidential use with frontage on Eton Road
 - m. any permitted principal use with a total floor area greater than 6,000 sq. ft.

- 3. Uses Requiring City Commission Approval
 - a. assisted living
 - b. continued care retirement community
 - c. independent hospice facility
 - d. independent senior living
 - e. regulated uses*
 - f. skilled nursing facility
- * = Use Specific Standards in Section 5.13 Apply

(Ord. No. 2255, 11/20/2017; Ord. No. 2287, 10/08/2018; Ord. No. 2341, 10/28/2019)

Effective on: 11/17/2019

2.41 TZ1 (Transition Zone) District Intent, Permitted Uses, and Special Uses 🔟

A. District Intent

- 1. The TZ1 (Transition Zone) District is established to:
 - a. Provide for a reasonable and orderly transition from, and buffer between commercial uses and predominantly single family residential areas or for property which either has direct access to a major traffic road or is located between major traffic roads and predominantly single-family residential areas.
 - b. Develop a fully integrated, mixed-use, pedestrian-oriented environment between residential and commercial districts by providing for graduated uses from the less intense residential areas to the more intense commercial areas.
 - c. Plan for future growth of transitional uses which will protect and preserve the integrity and land values of residential areas.
 - d. Regulate <u>building height</u> and mass to achieve appropriate scale along streetscapes to ensure proper transition to nearby residential neighborhoods.
 - e. Regulate building and site design to ensure compatibility with adjacent residential neighborhoods.
 - f. Encourage right-of-way design that calms traffic and creates a distinction between less intense residential areas and more intense commercial areas.

B. Permitted Uses

- 1. Residential Permitted Uses
 - a. dwelling attached single family
 - b. dwelling multiple-family
 - c. dwelling one-family (R3)

- 1. Accessory Permitted Uses
 - a. family day care home
 - b. home occupation*
 - c. parking facility private off-street
 - d. parking off-street
- 2. Uses Requiring a Special Land Use Permit
 - a. assisted living
 - b. independent hospice facility
 - c. independent senior living
 - d. skilled nursing facility
- * = Use Specific Standards in Section 5.13 Apply

3.08 Height and Placement Requirements

The following tables delineate the height, bulk, and <u>setback</u> requirements pertaining to the districts regulated by the Triangle Overlay District.

A. SF3 District Development Standards:

SF3 Distri	ct Development Standards	
Minimum Lot Area Per Unit	• 1,280 square feet	Azached Single Family Bulking Plecement
Minimum Lot Width	• NA	3 stories trace
Minimum Front Yard Setback	5 feet for single-family attachedZero for live-work units	
Minimum Side Yard Set- back	 No side yard between units 10 feet from side street on corner lot 9 feet from single-family lot 	St.
Minimum Rear Yard Setback	10 feet for principal buildings	
Building Height	 2 stories minimum 3 stories maximum 35-foot maximum building height	

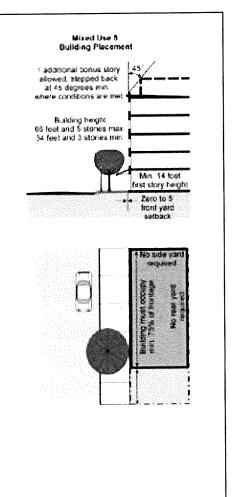
B. MU3 District Development Standards:

MU3 Distr	ict Development Standards
Minimum Lot Area	• NA
Minimum Lot Width	• NA
Front Yard and <u>Building</u> Frontage Requirements	 Zero minimum front yard setback 5-foot maximum front yard The building façade shall be built-to within 5 feet of the front lot line for a minimum of 75% of the street frontage length See Section 3.08(F)
Minimum Side Yard Setback	 A zero side setback with walls facing side lot line that do not contain windows 10 feet for walls that contain windows 20 feet adjacent to single-family residential zoning district

Minimum Rear Yard Setback	10 feet20 feet adjacent to single-family residential zoning district	Mixed Use 3 Building Pfacement 2 addisonal bonus stories allowed, stepped back at 45 degrees min. where conditions are met
Building Height	 24-foot and 2 stories minimum building height 42-foot and 3 stories maximum building height For sloped roofs, the eave line shall be no more than 34 feet and the roof peak shall be no more than 46 feet Additional 24 feet and/or 2 stories of building height allowed if requirements of Section 3.08(E) are met The first story shall be a minimum of 14 feet in height, floor to floor 	No side yard required / Anapara side yard req

C. <u>MU5 District Development Standards</u>:

Mis distr	ict Development Standards
Minimum Lot Area	• NA
Minimum Lot Width	• NA
Front Yard and Building Frontage Requirements	 Zero minimum front yard setback 5-foot maximum front yard The building façade shall be built-to within 5 feet of the front lot line for a minimum of 75% of the street frontage length See Section 3.08(F)
Minimum Side Yard Set- back	 A zero side setback with walls facing side lot line that do not contain windows 10 feet for walls that contain windows
Minimum Rear Yard Setback	• NA



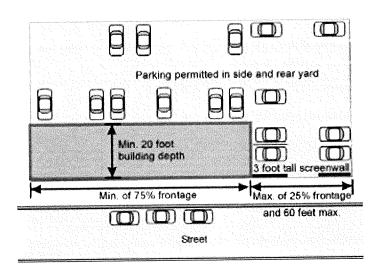
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D. <u>MU7 District Development Standards</u>:

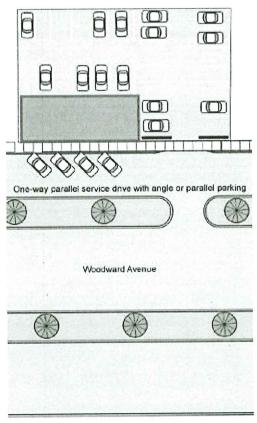
MU7 Distr	ict Development Standards	
Minimum Lot Area	• NA	
Minimum Lot Width	• NA	Mixed Use 7 Building Placement
Front Yard and Building Frontage Requirements	 Zero minimum front yard setback 5-foot maximum front yard The building façade shall be built-to within 5 feet of the front lot line for a minimum of 75% of the street frontage length See Section 3.08(F) 	2 additional bonus stones allowed, shepped back at 45 degrees min, where conditions are met. Building height 90 feet and 7 stones max. 34 feet and 3 stones min.
Minimum Side Yard Set- back	 A zero side setback with walls facing side lot line that do not contain windows 10 feet for walls that contain windows 	Min 14 foot first they height ————————————————————————————————————
Minimum Rear Yard Setback	• NA	No soc participated
Building Height	 34-foot and 3 stories minimum building height 90-foot and 7 stories maximum building height For sloped roofs, the eave line shall be no more than 82 feet and the roof peak shall be no more than 94 feet Additional 24 feet and/or 2 stories of building height allowed if requirements of Section 3.08(E) are met The first story shall be a minimum of 14 feet in height, floor to floor 	

E. <u>Additional Building Height</u>: Buildings or portions of buildings that are 100 feet or more from a single-<u>family</u> residential zoning district may have the additional building height (in number of stories and/or feet of height) noted in Section 3.08B, Section 3.08C, and Section 3.08D where 2 or more of the following are provided as part of the development. Additional stories shall be stepped back at a 45-degree angle from the top story allowed by right without the height bonus.

- 1. A multi-level parking structure that offers parking available to the public at the rate of one parking space available to the public for every 300 square feet of building floor area allowed in the additional stories. Where additional building height is proposed without additional stories, then the parking shall be based upon the building floor area in the top floor. The applicant may provide payment-in-lieu to the City for construction of parking in a public parking deck at an offsite location. Parking rates will be calculated as follows:
 - a. The rate of \$27,500 per space to match the current cost per above-ground structured parking space in 2018.
 - b. Starting July 1st, 2019, the rate of payment per parking space shall be increased by 3 percent each year.
- 2. Dedication of an improved public plaza with an area that is at least equal to 25% of the additional floor area of building area allowed in the additional stories. Where additional building height is proposed without additional stories, then public plaza space shall be based upon 25% of the building floor area on the top floor. The location and design of the plaza shall be approved by the Planning Board and shall be in accordance with the Triangle District Urban Design Plan.
- 3. A mixed use building that provides residential <u>dwelling units</u> above first-floor commercial where a mini- mum of 50% of the buildings floor area is residential.
- 4. Leadership in Energy and Environmental Design (LEED) building design, accredited based upon the rating system of the United States Green Building Council.
- 5. Transfer of development rights for additional floor area that zoning would permit on a site containing an historic building or resource designated under Section 127 of the Birmingham Code. The development rights shall be dedicated through recording a conservation easement on the designated historic resource, which shall be reviewed and approved by the Historic District Commission.
- F. MU3, MU5 and MU7 Front Yard Building Setback Exceptions: In the MU3, MU5 and MU7 Districts, 75% of the length of the ground level street-facing façade of the building must be built within 5 feet of the front lot line. The precise setback between 0 and 5 feet shall be consistent with the front building line along the block, or as determined by the Planning Board where a clear setback doesn't exist. The Planning Board many grant exceptions to allow a greater amount of the building to be setback when the front yard area, or forecourt, is used for one or more purposes listed below.
 - 1. Widening the sidewalk along the frontage of the building.
 - 2. Providing a public gathering area or plaza that offers seating, landscape enhancements, public information and displays, fountains, or other pedestrian amenities.
 - 3. Providing outdoor seating for the proposed use.
- G. Parking: Parking lots shall meet the following requirements:
 - 1. Parking lots (not located in the road right-of-way) are permitted only in side and rear yards as follows:
 - a. When parking is located in a side yard (behind the front building line) and has frontage on a public right-of-way, no more than 25% of the total site's frontage or 60 feet, whichever is less, shall be occupied by parking lot.
 - b. For a corner lot, the cumulative total of both frontages occupied by parking shall be no more than 25% or 60 feet, whichever is less, and the building shall be located at the corner of the lot adjacent to the intersection.
 - c. For a double frontage lot or a lot that has frontage on 3 streets, the cumulative total of all frontages occupied by parking shall be no more than 35% of the total site's frontage or 60 feet, whichever is less.



- 2. Where an off-street parking lot is visible from a street, it shall be screened by a 3 foot tall screenwall located between the parking lot and the sidewalk, meeting the requirements of Section 4.50. Where a parking lot is adjacent to a single-family residential district, a 6 foot tall brick screenwall meeting the requirements of Section 4.50 shall be provided between the parking lot and the residential use.
- 3. Along Woodward Avenue, a single row of parking shall be permitted along the entire front of the building, which may be located within the road right-of-way. The parking may be angled or parallel with a one-way circulation aisle only. There shall be a minimum 7-foot wide sidewalk between the parking and the building.



- 4. Parking structures shall only be permitted where there is usable building space for a portion of the ground level along the street frontage. 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. For a multi-level parking structure, the Planning Board may allow the parking structure above the first floor of the building to occupy the frontage; provided the façade of the parking structure is integrally designed with the architecture of the overall building, utilizes the same building materials and has wall openings that provide proportions, and rhythm that are compatible with building upper story fenestration.
- 5. Each use shall provide the parking required by the off street parking space requirements, except as provided for in this Section. Off street parking shall be provided for within 300 feet of the building being served.
- 6. On-street parking shall be allowed on all street frontages, where permitted by the Traffic and Safety Board. Onstreet parking located along a lot's frontage may be credited towards meeting the parking requirements for that use, provided the streetscape is improved to meet the requirements of Section 3.12.
- 7. Because the Triangle Overlay District is intended to encourage pedestrian/transit friendly design and compact mixeduse development that requires less reliance on automobiles, the parking required by Section 4.43 may be reduced or waived by the Planning Board as follows:
 - a. Providing shared parking whereby the Planning Board may reduce the total parking required by multiple uses by up to 50% under Section 4.42(G)(4).
 - b. By payment of a special assessment levied against the entire building site where the special assessment district has been created for purposes of constructing a municipal parking facility under Section 4.42(G)(5).
- 8. Driveway access to off-street parking lots shall be located to provide safe separation from street intersections. Driveways shall be aligned with driveways on the opposite side of the street or offset to avoid turning movement conflicts.

(Ord. No. 2300, 11/19/2018)

10/27/22, 9:25 AM

Effective on: 12/9/2018

4.20 LA-01

This Landscape Standards section applies to the following districts:

(B1) B2) B2B(B2C) B3 B4 (87) 01 02 P R4 R5 R6 R7 R8 771 773

The following landscape standards apply:

A. <u>Intent</u>: Landscaping is an essential part of the design and <u>development</u> of a site. Landscape plantings are a benefit to the environment, public health, air quality, safety, comfort, convenience and general welfare of the community. These standards will result in the reduction of storm water runoff, heat buildup and will filter and reduce glare from car headlights. They may reduce energy costs in <u>structures</u> and will improve the aesthetics of the community.

B. Applicability of Landscape Standards:

- 1. Sub-sections (D)(1) through (6) and section (E) apply to all property in the City of Birmingham.
- 2. In addition to sub-sections (D)(1) through (6) and section (E), all other sub-sections apply to properties in the City of Birmingham that are subject to site plan review pursuant to Section 7.24 of the Birmingham Zoning Ordinance, if:
 - a. The construction of one or more new buildings is proposed,
 - b. Improvements are proposed to an existing building which adds 50% or more additional square foot- age or involves the removal of at least one exterior wall, or
 - c. The property has an existing or proposed unenclosed parking facility with 20 or more parking spaces.

C. Exceptions:

- 1. Sub-sections (E) and (F) do not apply to any property in the Downtown Birmingham Overlay District.
- 2. If one or more of the following conditions apply, the Planning Board may approve alternative landscape plans that contain modifications from the required standards of this section, provided that the proposed alternative landscape plan meets the spirit and intent and substantially conforms to this section in terms of quality, effectiveness, durability, hardiness and performance:
 - a. The site involves space limitations or is an unusual shape;
 - b. Predominant development patterns in the surrounding neighborhood justify alternative compliance for in-fill projects and redevelopment in older established areas of the City; or
 - c. Topography, soil, vegetation, or other site conditions are such that full compliance with this section is impossible or impractical.

D. General Standards:

- 1. Live Plantings: All landscaping shall consist of approved natural materials or living plant materials.
- 2. Unpaved Portion of Site: All undeveloped and unpaved portions of a site shall be planted with grass, ground cover, shrubs or other suitable live plant material, which shall extend to any abutting street pavement edge.
- 3. Improvements in the Right-of-Way: Plantings in the right-of-way must be no more than 2 feet in height, with the exception of street trees. All improvements in the right-of-way require a Special Treatment License from the Engineering Department.
- 4. Prohibited Species: The following plants and tree materials are specifically prohibited due to their brittleness, susceptibility to disease and insects, excessive root structure, excessive litter, susceptibility to road salt damage or other undesirable traits. Any existing prohibited species may not be replaced. A representative list of prohibited species is provided below. The Staff Arborist maintains a complete list of all of the prohibited species.ibited Species

Prohibited Sp	pecies
Boxelder	Garlic Mustard
Soft Maple (Red Silver)	Japanese Barberry
Elm (except disease-resistant varieties)	Oriental Bittersweet
Poplar	Orchard Grass
Willow	Winged Wahoo
Horse Chestnut (nut bearing)	Euonymus
Tree of Heaven	English Ivy
Catalpa	Dame's Rocket

Prohibited	Species
Succulent fruit bearing trees	Common Privet
Periwinkle	Honeysuckle
Ribes (Gooseberry)	Purple Loosestrife
Cottonwood	Kentucky Bluegrass
Poison Ivy	Common Buckthorn
Mulberry Trees	Multiflora Rose
Ash	White Clover
Norway Maple	Siberian Elm
Quack Grass	

- 5. Certified Wildlife Areas: Nothing in this ordinance shall preclude the use and enjoyment of a wildlife area that is certified by a state or nationally recognized organization.
- 6. Maintenance: All landscaping areas shall be kept free from refuse and debris. All plant materials shall be maintained in a sound, weed-free, healthy and vigorous growing condition, and free of plant disease and insects. An irrigation system or a readily available water supply sufficient to maintain the landscaping shall be provided in all required landscape areas unless drought resistant native species are utilized.
- 7. Plant Material Size:
 - a. All plantings to be counted towards the minimum landscaping requirements must meet the following minimum size requirements at the time of planting:
 - 1. Evergreen Trees: 6 feet in height
 - 2. Deciduous Trees: 3 inches in caliper
 - 3. Evergreen & Deciduous Shrubs: 18 inches in height
 - b. All replacement plantings for dead or diseased plant materials must meet the same minimum size requirements as new plantings.
- 8. Native Species Credit: The use of species native to the region is encouraged. A reduction of 20% of the total number of trees or shrubs required will be granted if 80% or more of the trees and/or shrubs to be planted are native species. The Staff Arborist maintains a complete list of all native species.
- 9. Existing Vegetation:
 - a. Existing significant trees, tree stands and natural vegetation shall be integrated into the landscaping plan to the maximum extent possible.
 - b. Existing healthy trees and shrubs located within required <u>setbacks</u> and areas not required for development shall be preserved. Trees to be preserved shall be pruned to remove dead, diseased or irregular branching, but the crown form characteristic of the species shall be maintained.
 - c. Preserved trees shall be protected with sturdy, highly visible barriers around the tree or group of trees, at the critical root zone or dripline and a tree preservation plan shall be submitted and approved by the Planning Director. The critical root zone of the tree shall remain undisturbed by cutting, filling or storage of materials and equipment during the development process.
- 10. Existing Vegetation Credit: Any existing deciduous tree on site that is to be preserved and is over 6 inches in caliper at <u>DBH</u> may be counted as 3 new deciduous trees. Any existing evergreen tree on site that is to be preserved and is over 10 feet tall may be counted as 2 new evergreen trees.
- 11. Waiver for Innovative Landscaping: In order to further encourage innovative site designs that enhance the quality of the environment in Birmingham, the Planning Board may grant a waiver of any landscaping standards outlined in this ordinance where the Planning Board finds that the proposed plans display an innovative use of site design features, open space or landscaping which will enhance the use and value of neighboring properties.
- 12. Removal: Any required landscape element that dies, or is otherwise removed, must be replaced within 1 month, and no later than November 30, from the date of issuance of a Notice of Violation, if such notice is issued during the April 1 to September 30 period; if the violation is issued during the October 1 to March 31 period, the planting shall be completed no later than the ensuing May 31, or be subject to fines and penalties as a civil violation.
- 13. Time Period for Completion: All landscaping shall be planted within 3 months, and no later than November 30, from the date of issuance of a temporary Certificate of Occupancy, if such certificate is issued during the April 1 to September 30 period; if the certificate is issued during the October 1 to March 31 period, the planting shall be

completed no later than the ensuing May 31. A permanent Certificate of Occupancy shall only be issued after inspection and approval of such plantings.

E. Required Plantings: Required Planti

Required Plantings		
Land Use	Type and Number of Plantings	Based on Lot, Building or Number of Dwelling Units
Commercial	None	None
Mixed Use in MX District	1 Deciduous and 1 Evergreen Tree	Per 2 residential units
Multiple-Family in Residential	1 Deciduous and 1 Evergreen Tree	Per 2 dwelling units
Parking	See Subsection (F)	See Subsection (F)

- F. <u>Parking Lot Landscaping</u>: Parking lots greater than 7,500 square feet shall meet the following interior landscaping requirements:
 - 1. Within the parking lot there shall be interior landscaping areas that total not less than 5% of the total parking lot interior area.
 - 2. Each interior planting area shall be at least 150 square feet in size, and not less than 8 feet in any single dimension.
 - 3. There shall be at least one <u>canopy tree</u> for each 150 square feet or fraction thereof of interior planting area required.
 - 4. The interior planting areas shall be located in a manner that breaks up the expanse of paving throughout the parking lot interior.
- G. <u>Street Trees</u>: All site plans shall include in the right-of-way along all streets, at least 1 street tree for each 40 linear feet of frontage. The Staff Arborist may waive this requirement if there is not adequate green space in the right-of-way to support such trees. A list of tree species permitted in the right-of-way are set out in the Master Street Tree Plan maintained by the Staff Arborist.
- H. <u>Submittal Requirements</u>: A detailed landscape plan depicting the names, both common and botanical, location, spacing, and size of all plantings to be installed and the location and type of all materials proposed to be included in the landscape treatment areas shall be submitted for approval to the Planning Board at the time of Final Site Plan approval. All ornamental landscape features and landscape lighting must be included on the required landscape plan.

4.39 OS-10

This Open Space Standards section applies to the following district:



The following open space standards apply:

- A. <u>Commercial and Office Uses</u>: For <u>buildings</u> containing commercial or office uses totaling 10,000 square feet or more in floor area, open space shall be provided in an amount not less than 10% of the floor area of the <u>story</u> containing the most commercial or office floor area and must meet the following conditions:
 - 1. Provide public pedestrian use;
 - 2. Provide for access to a street;
 - 3. Where possible, provide a physical connection to parking facilities and pedestrian ways.
- B. <u>Accessible</u>: This outdoor open space may be covered by a roof or by the above provided that there is a height clearance of at least 14 feet and provided further, that this open space is accessible to the public at all times. This open space requirement is in addition to the setback requirement as outlined in each two-page layout in Article 2.

4.45 PK-01 General Parking Standards

This Parking Standards section applies to the following districts:

(B1) B2 B2B B2C B3 B4 11 01 02 P R1 R1A R2 R3 R4 R5 R6 R7 R8 77 74

The following parking standards apply:

- A. <u>Duty of Continuing Compliance</u>: The owner and occupants of real estate on which new <u>buildings</u> have been built after March 31, 1958, and the owner and occupants of real estate on which buildings, whether built be- fore or after March 31, 1958, are substantially altered or additions made thereto after March 31, 1958, shall have the duty to provide and maintain the off-street parking requirements of this Article. The building official may require a written designation of the required off-street parking area in recordable form. Upon any transfer of title to the real estate on which such building or buildings are located, the transferee or transferees and the occupants shall have the continuing duty to maintain the off-street parking requirements of this chap- ter. It shall be unlawful for the owner and occupants of any building subject to this chapter to discontinue
 - or change, or to cause the discontinuance or change, of the required off-street parking without establishing, prior to such discontinuance or change, alternative off-street parking which meets the requirements of and is in compliance with this Article.
- B. <u>Plans Required</u>: Plans must be submitted to the Planning Board or the <u>Historic District</u> Commission showing how the required parking spaces shall be arranged in the area supplied for that purpose, so as to indicate sufficient space for parking maneuvers, as well as adequate ingress and egress to the parking area.
- C. <u>Site Plan Approval</u>: Plans for all property utilized for the temporary storing of motor vehicles, except when the property so used is located in a district zoned single-family residential by this chapter and the area there- of accommodates 3 or fewer vehicles, shall be submitted to the Planning Board for non-historic site plan approval or the Historic District Commission for historic site plan approval, in accordance with the regulations as set forth in the Site Plan Review Section in Article 7.
- D. <u>Certificate of Occupancy and Use</u>: No certificate of occupancy and use will be issued upon completion of any building or the extension or addition thereto unless and until all <u>off-street parking space</u> requirements, shown on the plans, or made a part of the building permit, are in place and ready for use.

E. Off-Street Parking:

- 1. The off-street parking facilities required under this article shall be used solely by the occupants, employees, visitors, patrons, clientele for motor vehicles. The storage of merchandise, motor vehicles for sale, or the repair of vehicles is expressly prohibited.
- 2. Off-street parking facilities shall be provided in an amount not less than specified in this article, for the parking of self-propelled vehicles for the use of the occupants, employees, patrons and clientele of:
 - a. Buildings erected after March 31, 1958; and
 - b. Buildings erected prior to March 31, 1958, at such time that any addition or extension is made to such building.
- 3. Whenever the use of any <u>lot</u> or building is changed and under the provisions of the Zoning Ordinance, the new use is required to provide more parking space than was provided for the prior use, all required parking must be provided in an area which meets the requirements of Section 4.54 and the provisions of Chapter 110 of the Birmingham City Code.
- 4. Off-street parking spaces being provided as of March 31, 1958, for the parking of automobiles to serve an existing building or use shall not be reduced to an amount less than that hereinafter required for a similar new building or use.
- 5. Whenever by virtue of this article, parking facilities must be provided for a building which is used or is to be used for more than one of the types of uses referred to in this article, parking facilities must be provided for each and all of such uses.
- 6. Fences are required in connection with off-street parking facilities in accordance with the regulations of Section 4.54.
- F. <u>Additional Parking</u>: In any district, a residential building being used for nonresidential purposes, except places of public assembly, shall provide in addition to the off-street parking space or spaces for the <u>dwelling units</u> required under Section 4.45(A), Section 4.46, Section 4.50, and Section 4.51 off-street parking in the same amounts set forth in Table A for that portion of the floor area which is being utilized for nonresidential purposes.
- G. <u>Methods of Providing Parking Facilities</u>: The required off-street parking facilities for buildings used for other than residential purposes may be provided by any one of the following methods:

- 1. By providing the required off-street parking on the same lot as the building being served, or where practical, and with the permission of the City Commission, the area in the public right-of-way abutting the property in question may be included as a portion of the required parking area if such area is improved in accordance with plans which have been approved by the engineering department.
- 2. By providing the required off-street parking within 100 feet of the building being served, distances being measured along the most direct line of public pedestrian access.
- 3. By the collective provisions of the required off-street parking for 2 or more buildings or uses, provided that the total of such off-street parking areas shall not be less than the sum of the requirements of the various buildings or uses computed separately, and the location of such area meets the requirements of subsection (2) of this section, except as provided in Section 4.45(G)(4) below.
- 4. By the shared provisions of the required off-street parking for 2 or more buildings or uses, which has been approved by the Planning Board. Shared parking between uses is based on the fact that certain neighboring uses may operate at different times over a 24-hour period with their greatest demand for parking occurring during different times. By allowing uses to share a parking facility, the amount of impervious land in the city may be reduced.
 - a. The total number of combined spaces required for each use may be reduced by up to 50% upon the Planning Board making the determination that the peak parking demands of the uses being served occur at different times and the parking area meets the anticipated demands of all the uses. The Planning Board will make this determination based upon the following information, to be provided by the petitioner:
 - i. The peak hours of operation for each use.
 - ii. The average parking demand and the peak parking demand for each use, based on reliable data. Such data will include actual parking counts for these uses, or at similar uses or actual parking counts are not available, reliable traffic/parking demand models may be used.
 - iii. The impact of shared parking arrangement on adjacent uses.
 - iv. Written legal evidence in the form of deeds, leases or contracts that establish the shared parking facility.
 - b. Once a shared parking arrangement is approved by the Planning Board, such arrangement must be recorded on the land titles for all affected properties. If a shared parking arrangement is subsequently terminated, or if the uses change, Planning Board approval shall be automatically revoked and each use shall be required to comply with the requirements of this section.
 - c. The petitioner(s) shall be responsible for any costs incurred by the city in contracting with consultants to review the proposed site plan as deemed necessary by the Community Development Director.
- 5. By payment of a special assessment levied against the entire building site where the special assessment district has been created for purposes of constructing a municipal parking facility.
 - a. Required conditions. The following regulations shall apply to all lands in a parking assessment district unless otherwise provided:
 - i. The maximum allowable floor area ratio (FAR) in the parking assessment districts shall not exceed 100%, except that the maximum usable floor area may be increased up to 200% by providing 1 parking space for every 300 square feet over the maximum 100% FAR.
 - ii. Religious institutions in the parking assessment district are exempt from this maximum FAR provision.
 - iii. In the case of religious institutions and buildings occupied by nonprofit organizations providing services to the general public, by securing permission to use the parking facilities of other buildings within 500 feet of the religious institution or community center building when such other building is not normally open, in use, or in operation during the principal hours of use of such religious institution or community center building. Permission to use such other parking facilities shall be evidenced in writing for a period of not less than 1 year. In the case of nonprofit organizations, the parking to be shared must be in a parking or commercial district.
 - iv. In the case of the parking area needed to meet the requirements of the ordinance being in a separate ownership from the building: a permanent exclusive use easement for the required parking with adequate ingress and egress to a public street must be submitted to the city, and such easement must be recorded in the county register of deeds.

(Ord. No. 2291, 10/08/2018)

Effective on: 5/13/2020

4.52 PK-08

This Parking Standards section applies to the following district:



The following parking standards apply:

A. Off-Street Parking Facilities:

- 1. Off-street parking contained in the first story shall not be permitted within 10 feet of any building facade on a frontage line or between the building facade and the frontage line.
- 2. The placement of 2 abutting off-street parking facilities with continuous street frontages shall not be permitted.

Land Use	Number of Off-Street Parking Spaces Required
Commercial Uses	
athletic club, health club/studio	1 space for each 550 sq ft of floor area plus spaces as are required for restaurants, bars, assembly rooms and affiliated facilities
auto wash	spaces equal to 80% of the maximum units of actual or rated hourly productive capacity of the establishment
banquet facility	1 space for each 3 persons of capacity as determined by local, county or state fire, building or health codes
barber shop/beauty salon, tanning salon	2 spaces per service chair, booth or bed; or 1 space per 300 sq ft of floor area, whichever is greater
bowling alley	5 spaces per lane plus spaces as are required for restaurants, bars, assembly rooms and affiliated facilities
eating establishment - outdoor consumption	1 space for each 50 sq ft of floor area
eating establishment - indoor or combined indoor-outdoor consumption	1 space for each 75 sq ft of floor area plus such spaces as are required for assembly rooms and affiliated facilities, excluding all area utilized for outdoor dining
hospital, nursing home	1 space for each 4 patient beds
hotel, motel	1 space per rental unit plus 1 space per each 25 units plus spaces as are required for restaurants, bars, assembly room and affiliated facilities
laundromat and coin-operated dry cleaners	1 space for each 3 washing and/or dry cleaning machines
meeting room	1 space for each 3 person of capacity as determined by local, county or state fire, building or health codes
mortuary establishment	1 space for each 50 sq ft of assembly room, parlor and slumber room floor space
motor vehicle sales and service establishment	1 space for each 300 sq ft of floor area of sales room plus 1 space for each auto service stall, not to be used for new or used car storage
outdoor sales and/or display of merchandise (excluding motor vehicle sales, service and rental agencies)	1 space for each 300 sq ft of outdoor area
retail store	1 space for each 300 sq ft of floor area
taxicab service	1.5 spaces per taxicab
truck and car rental service	1 space for each 1,000 sq feet of outdoor area
other commercial use	1 space for each 550 sq ft of floor area
Mixed Uses	
Industrial, research, wholesale and warehousing establishment	1 space for each 500 sq ft of floor area
Office Uses	

^{*} Off-street parking shall be provided within 300' of the building being served. On-street parking shall be allowed on all street frontages, where permitted by the Traffic and Safety Board. On-street parking located along a lot's frontage may be credited towards meeting the parking requirements for the use, provided the streetscape is improved as required by the Planning Board.

Land Use	Number of Off-Street Parking Spaces Required
Commercial Uses	
oank, financial institution, commercial and professional office other than medical	1 space for each 300 sq ft of floor area
orofessional office of doctor, dentist, medical and dental clinic and similar use	1 space for each 150 square feet of floor area
Public Assembly Uses	
religious institution, school and other place of public assembly with fixed seats	1 space for each 6 seats
religious institution, school and other place of public assembly without fixed seats	1 space for each six person of capacity as determined by the Fire Marshal
theater	1 space for each 3 seats
Residential Uses in PP, R1A, R1, R2, R3, R4, R5, R6, R7, C)1, O2, P and B1
residential occupancy - 2 or less room unit	1.5 spaces per unit
residential occupancy - 3 or more room unit	2 spaces per unit
special purpose housing	0.5 spaces per unit
Residential Uses in R1, R2, R3, R4, R5, R6, R7, R8 O1, O2	, P, B2, B2B, B3, B4 and MX
assisted living*	0.25 spaces per bed plus 1 space per employee (on maximum shift)
skilled nursing facility*	0.25 spaces per bed plus 1 space per employee (on maximum shift)
continuing care retirement community*	0.25 spaces per bed plus 1 space per employee (on maximum shift)
independent hospice facility*	0.25 spaces per bed plus 1 space per employee (on maximum shift)
independent senior living*	0.50 spaces per unit
Residential Uses in R8	
residential occupancy	2 spaces per unit
Residential Uses in B2, B2B, B3 and MX	
residential occupancy - 2 or less room unit	1 spaces per unit
residential occupancy - 3 or more room unit	1.25 spaces per unit
Residential Uses in B4	
residential occupancy - 2 or less room unit	1.25 spaces per unit
residential occupancy - 3 or more room unit * Off-street parking shall be provided within 300' of the building being so	1.5 spaces per unit

^{*} Off-street parking shall be provided within 300' of the building being served. On-street parking shall be allowed on all street frontages, where permitted by the Traffic and Safety Board. On-street parking located along a lot's frontage may be credited towards meeting the parking requirements for the use, provided the streetscape is improved as required by the Planning Board.

(Ord. No. 2292, 10/08/2018)

Effective on: 12/23/2018

4.54 SC-01

This Screening Standards section applies to the following districts:

B1 B2 B2B B2C B3 B4 B3 01 02 P R1 R1A R2 R3 R4 R5 R6 R7 BB 77 72

The following screening standards apply:

- A. <u>Purpose</u>: The purpose of this section is to require a barrier, capable of containing noise, vehicular lights, visual disarray, debris and other factors detrimental to the health, safety and welfare of the community, be- tween an open <u>parking</u> station, <u>outdoor storage</u>, dumpsters and adjacent properties. Flexibility in the materials, size, height and placement of walls is permitted in order to allow architectural harmony and usable <u>open space</u> and to accomplish a unified design.
- B. <u>Screenwall Descriptions</u>: Screenwall as required by this section shall mean:
 - 1. When required along a street line, alley, passage or mixed passage, a masonry wall with an exterior face of brick, precast aggregate panels, sculptured block, stone, architecturally treated concrete or other materials acceptable to the Planning Board which are demonstrated to be durable, easily maintained, and provide a similar permanent visual barrier.
 - 2. When required, a screenwall of capped masonry.
 - 3. Screenwalls shall be so constructed that the lower 32 inches in height, as measured from the finished parking lot surface, or ground surface on the outside of the screenwall, whichever is higher, shall be solid. Openings above 32 inches may be permitted provided the intent of the Zoning Ordinance is maintained and further provided the openings are not larger than 64 square inches and do not exceed 33% of the surface of the screenwall.
 - 4. Where a screenwall is adjacent to a vehicular or pedestrian accessway, the screenwall shall be so de- signed and constructed as to not constitute a hazard to vehicular or pedestrian traffic.
 - 5. Screenwalls along a street shall be so designed as to not form a continuous barrier. Depending upon the length, location and ground contour, a break in the screenwall is required every 50 to 100 feet. Such break shall be a minimum of 10 feet long. A screening wall of a material permitted under Section 4.54(C)(1) shall be constructed for the full length of the required break and shall be located a minimum of 2 feet to either the front of or the rear of the principal screenwall. The Planning Board may, upon Site Plan Review, require the screenwall spanning the break to be attached to the principal screenwall. Landscaping is required in any area created on the street side of the screenwall by the required break and shall be subject to the requirements of Section 4.54(D)(1).
 - 6. When required along the front, side or rear of any <u>building</u>, a masonry screenwall shall match or complement the exterior of the building.
 - 7. When required along the side or rear lot line of any parking facility which immediately adjoins the rear lot line of property located in a residential zone, a masonry screenwall of 6 feet. When required along the side or rear lot line of any parking facility which adjoins an alley or passage adjoining the rear line of property located in a residential zone, a masonry screenwall of 3 feet.
 - 8. When required to screen a trash receptacle or ground-mounted mechanical or electrical equipment, a masonry screenwall with wood gates. The screenwall shall match the material of the principal building.
- C. Screening Requirements: Screening shall be placed as follows:
 - 1. Along the side or rear line of any parking facility which immediately adjoins the side line of property zoned to a residential district under the Zoning Ordinance, provided that the screenwall along the side of a parking facility located in the parking district shall not extend further than the front setback area of the abutting residential district.
 - 2. Along the side or rear lot line of any parking facility which immediately adjoins the rear line of property located in a residential district.
 - 3. Along the front or side of any parking facility that abuts a street, alley, passage or mixed passage.
 - a. When the property being utilized for the parking facility is zoned residential, the screenwall shall be placed along the setback line.
 - b. When the property being utilized for the parking facility is zoned parking, and abuts a residential district, the screenwall shall be placed along the setback line applicable to the abutting residential district.
 - c. When the property being utilized for the parking facility is zoned to a business or industrial district, and abuts a residential district, the screenwall shall be placed along the setback line applicable to the abutting residential zoning for that district.
 - d. When the property being utilized for a parking facility is zoned to a business or industrial district, and abuts business or industrial district, the screenwall shall be placed along the setback line; however, upon review of the

Site Plan, the Planning Board may approve an alternate location for the screenwall in order to maximize the screening effect of the parking facility, or may modify the screenwall requirement by approving an evergreen screen in its place.

- 4. Along the front, side or rear of any parking facility underneath a building which is visible to the general public in a manner which screens the parking from public view.
- 5. Adjacent to ground-mounted mechanical or electrical equipment which is visible to the public in a manner which obscures the receptacle and equipment from public view.
- 6. In the B2B district, along the side or rear lot line of any parking facility located on the side of the building in the B2B district and immediately adjoining the rear line or an alley adjoining the rear line of property located in a residential district.
- 7. In all multiple-family districts and all office and business districts, the screening of trash containers shall be required and shall be constructed of 6-foot masonry screenwall with a gate. All materials shall match or complement the exterior of the building.
- 8. Rooftop mechanical and other equipment shall be limited, positioned and screened to minimize views from adjacent properties and public rights-of-way.
 - a. To minimize the visual impact of such equipment from adjacent elevated views all rooftop mechanical equipment and associated screening must be removed if:
 - i. The equipment is inoperable and not serviceable; or
 - ii. The equipment is obsolete and not in service, or
 - iii. The equipment is not being utilized for its intended purpose.
 - b. To minimize the visual impact of such equipment from other points of observation, rooftop mechanical and other equipment shall be obscured by a screenwall composed of materials compatible with the building or by landscaping demonstrated to provide an effective permanent visual barrier.
 - c. Any screenwall barrier:
 - i. Shall, to the best extent possible, not extend above the top edge of an imaginary plane extending upward no more than 45 degrees from the eave line; and
 - ii. Shall not exceed 10 feet in height.
- 9. For buildings sharing a lot line with a building of the same or greater height, such rooftop screenwalls are not required to be set back from the main building wall along the common lot line.

D. Miscellaneous Screening Requirements:

- 1. When screening is placed along a front setback line, the resulting front yard shall be void of all parking and storage and shall be planted and otherwise landscaped and maintained by the owner.
- 2. Any driveway furnishing access to a parking facility shall be considered as part of the parking facility for the purposes of the Zoning Ordinance.
- 3. Where two parking facilities adjoin each other and the common boundary is either a side or rear line, no screening is required along the line common to both parking facilities.
- 4. All screenwalls shall be maintained in good order. Plant materials in vegetative screenwalls shall be maintained in a healthy condition. Dead or diseased plant materials shall be replaced with healthy materials of like size and kind.
- E. Review: The design, height and location of all screening shall be reviewed by the Planning Board.

4.81 SS-08

This Structure Standards section applies to the following district:



The following structure standards apply:

A. Building Size and Placement:

- 1. Front building facades at the first story shall be located at the frontage line.
- 2. In the event of adjacent preexisting setbacks, or the appropriate use of other design elements to define the streetwall, an adjustment may be allowed or required by the Planning Board.
- 3. Side setbacks are not required.
- 4. A minimum 10-foot rear setback shall be provided from the midpoint of the alley, except that the Planning Board may allow this setback to be reduced or eliminated. In the absence of an alley, the rear setback shall be equal to that of an adjacent, preexisting building.
- 5. All buildings shall have their principal pedestrian entrance on the frontage line.
- 6. In the absence of a building facade, a screenwall shall be built along the frontage line and aligned with the adjacent building facade. Screenwalls shall be no less than 32 inches in height and made of brick, stone, or other masonry material matching the principal building. Upon approval by the Planning Board, screenwalls may be a continuous, maintained evergreen hedge or decorative metal fencing except when a screenwall is required by Section 4.54(C)(1) to screen parking facilities. Screenwalls may have openings a maximum of 25 feet to allow vehicular and pedestrian access. Screenwalls that exceed 48 inches in height shall include architectural details that are compatible with the architecture of the principal building.
- 7. First-floor awnings may encroach upon the frontage line and public sidewalk, but must avoid street trees; pro- vide at least 8 feet of clearance above the sidewalk; and be set back a minimum of 2 feet from the road curb.
- 8. Upper-floor awnings shall be permitted only on vertically proportioned windows, provided that the awning is only the width of the window and encroaches upon the frontage line no more than 3 feet.
- 9. First floor space must be designed with a minimum clearance between the finished floor and the finished ceiling of 12 feet, to allow the space to be converted to/from residential and nonresidential uses.

B. Access:

- 1. All principal buildings shall have a frontage line on a public right-of-way, dedicated public open space, or permanently preserved open space.
- 2. The Planning Board may require shared access or connections between adjacent developments as a means to limit conflict points along public roads.
- 3. <u>Street</u> connections to adjacent <u>parcels</u> and the existing road network shall be provided where there is the possibility to create future street connections as determined by the Planning Board. Road stubs for future connections shall be improved to the parcel or lot line.
- 4. The proposed use shall be designed to minimize the impact of traffic generated by the use to the extent that is reasonably feasible, giving consideration to economic and site conditions. Consideration shall be given to the following as reviewed by the City Staff, City Engineer, and/or the City's consultants:
 - a. Relationship between the proposed development and existing and proposed streets;
 - b. Estimated traffic generated by the proposed use;
 - c. Location and access to off-street parking;
 - d. Provisions for vehicular traffic; and
 - e. Continuation of the planned street network for the corridor as identified in the Eton Road Corridor Plan.

5.06 O1 District

This Use Specific Standards section applies to the following district:



The following use specific standards apply:

- A. <u>Bistros</u>: Bistros are permitted with a valid Special Land Use Permit with the following conditions:
 - 1. No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats in the Downtown Overlay District, or 15 seats in the Triangle District and Rail District;
 - 2. Alcohol is served only to seated patrons, except those standing in a defined bar area;
 - 3. No dance area is provided;
 - 4. Only low key entertainment is permitted;
 - 5. Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
 - 6. A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
 - 7. All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
 - 8. Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, defined platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
 - 9. Enclosures facilitating year round dining outdoors are not permitted.
 - 10. Railings, planters or similar barriers defining outdoor dining platforms may not exceed 42" in height.
 - 11. Outdoor rooftop dining is permitted with the conditions that surrounding properties are not impacted in a negative manner and adequate street level dining is provided as determined by the Planning Board and City Commission. Rooftop dining seats will count towards the total number of permissible outdoor dining seats.
- B. <u>Kennel</u>: A kennel is permitted in conjunction with veterinary clinics when completely enclosed within a building (see Sections 18-86, 18-87, 18-88 of the Birmingham City Code)
- C. Laboratory: A laboratory is permitted when incidental to a medical or dental office located within the same building.
- D. Loading Facility: A loading facility is permitted provided such facilities are screened according to Section 4.54.
- E. Parking Facility Off-street: A parking facility is permitted provide such facilities are screened according to Section 4.54.
- F. Pharmacy: A pharmacy is permitted when incidental to a medical or dental office located within the same building.
- G. Rooftop Use Standards:
 - 1. Rooftop amenities such as pergolas, trellises and other similar items are permitted on a rooftop, provided:
 - i. They are set back at least 5 feet from the eave line.
 - ii. They are of sufficient weight or anchored to the building to resist anticipated wind loads.
 - iii. They do not have full enclosures.
 - iv. They do not include eisenglass or similar enclosure materials.
 - 2. Rooftop structures and amenities may not contain habitable space.
- H. <u>Veterinary Clinic</u>: A veterinary clinic is permitted when completely enclosed within a building.

(Ord. No. 2311, 09/17/2018; Ord. No. 2328, 08/05/2019)

Effective on: 9/15/2019

5.07 O2 District

This Use Specific Standards section applies to the following district:



The following use specific standards apply:

A. Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:

- 1. No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats in the Downtown Overlay District, or 15 seats in the Triangle District and Rail District;
- 2. Alcohol is served only to seated patrons, except those standing in a defined bar area;
- 3. No dance area is provided;
- 4. Only low key entertainment is permitted;
- 5. Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
- 6. A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1 foot and 8 feet in height;
- 7. All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
- 8. Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, defined platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
- 9. Enclosures facilitating year round dining outdoors are not permitted.
- 10. Railings, planters or similar barriers defining outdoor dining platforms may not exceed 42" in height.
- 11. Outdoor rooftop dining is permitted with the conditions that surrounding properties are not impacted in a negative manner and adequate street level dining is provided as determined by the Planning Board and City Commission. Rooftop dining seats will count towards the total number of permissible outdoor dining seats.
- B. Food or drink establishment: A food or drink establishment is permitted excluding drive-in facilities.
- C. <u>Kennel</u>: A kennel is permitted in conjunction with veterinary clinics when completely enclosed within a building (see Sections 18-86, 18-87, 18-88 of the Birmingham City Code).
- D. Laboratory: A laboratory is permitted when incidental to a medical or dental office located within the same building.
- E. Loading Facility: A loading facility is permitted provided such facilities are screened according to Section 4.54.
- F. Parking Facility Off-street: A parking facility is permitted provide such facilities are screened according to Section 4.54.
- G. Pharmacy: A pharmacy is permitted when incidental to a medical or dental office located within the same building
- H. Rooftop Use Standards:
 - 1. Rooftop amenities such as pergolas, trellises and other similar items are permitted on a rooftop, provided:
 - i. They are set back at least 5 feet from the eave line.
 - ii. They are of sufficient weight or anchored to the building to resist anticipated wind loads.
 - iii. They do not have full enclosures.
 - iv. They do not include eisenglass or similar enclosure materials.
 - 2. Rooftop structures and amenities may not contain habitable space.
- I. Veterinary Clinic: A veterinary clinic is permitted when completely enclosed within a building.

(Ord. No. 2312, 09/17/2018; Ord. No. 2329, 08/05/2019)

Effective on: 9/15/2019

5.08 P District

This Use Specific Standards section applies to the following district:



The following use specific standards apply:

- A. Bistros: Bistros are permitted with a valid Special Land Use Permit with the following conditions:
 - 1. No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats in the Downtown Overlay District, or 15 seats in the Triangle District and Rail District;
 - 2. Alcohol is served only to seated patrons, except those standing in a defined bar area;
 - 3. No dance area is provided;
 - 4. Only low key entertainment is permitted;
 - 5. Bistros must have tables located in the storefront space lining any street, or pedestrian passage;

- 6. A minimum of 70% glazing must be provided along <u>building facades</u> facing a street or pedestrian passage between 1 foot and 8 feet in height;
- 7. All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
- 8. Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, defined platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
- 9. Enclosures facilitating year round dining outdoors are not permitted.
- 10. Railings, planters or similar barriers defining outdoor dining platforms may not exceed 42" in height.
- 11. Outdoor rooftop dining is permitted with the conditions that surrounding properties are not impacted in a negative manner and adequate street level dining is provided as determined by the Planning Board and City Commission. Rooftop dining seats will count towards the total number of permissible outdoor dining seats.
- B. <u>Home Occupation</u>: A home occupation is subject to the following provisions:
 - 1. No one other than the resident(s) of the dwelling unit shall be employed in the conduct of the home occupation.
 - 2. The home occupation shall not require internal or external alterations or construction features on the dwelling unit, or external equipment or machinery not customary in residential areas.
 - 3. There shall be no exterior indication by sign or otherwise of the home occupation.
 - 4. There shall be no noise, vibration, odor or other nuisance as a result of the home occupation detectable beyond the confines of the dwelling unit, including the transmission through vertical or horizontal party walls.
 - 5. The home occupation shall not generate traffic in a greater volume or consisting of larger vehicle types than would normally be expected in a residential neighborhood.
 - 6. Any parking generated by the conduct of the home occupation shall be met off the street and shall not be met in a required front yard.
 - 7. The home occupation shall not include the direct sale of products off display shelves or racks.
 - 8. No <u>outdoor storage</u>, including equipment, parts or automobiles, associated with the home occupation shall be permitted.
 - 9. Home occupations may be conducted in a permitted accessory building.
 - 10. The home occupation shall not operate earlier than 8:00 a.m. nor later than 10:00 p.m.
 - 11. No more than 25% of the gross area of the building shall be used for such home occupation.
- C. <u>Parking Facility Private Off-street</u>: An off-street parking facility is permitted for the parking of self-propelled vehicles for periods not exceeding 24 hours at any 1 time with no commercial use, storage or service connected therewith.
- D. <u>Parking public, off-street</u>: Public off-street parking is permitted in connection with <u>parks</u>, stadiums, government <u>offices</u>, government uses, and public <u>schools</u>.
- E. Renting of Rooms: The renting of rooms is permitted to not more than 2 roomers or boarders per dwelling unit.
- F. Rooftop Use Standards:
 - 1. Rooftop amenities such as pergolas, trellises and other similar items are permitted on a rooftop, provided:
 - i. They are set back at least 5 feet from the eave line.
 - ii. They are of sufficient weight or anchored to the building to resist anticipated wind loads.
 - iii. They do not have full enclosures.
 - iv. They do not include eisenglass or similar enclosure materials.
 - 2. Rooftop structures and amenities may not contain habitable space.
- G. <u>Shelter Building</u>: A shelter building is permitted for attendant or attendants provided such building is no larger than 50 square feet in area and no higher than 8 feet.

(Ord. No. 2313, 09/17/2018; Ord. No. 2330, 08/05/2019)

Effective on: 9/15/2019

5.09 B1 District

This Use Specific Standards section applies to the following district:



The following use specific standards apply:

- A. <u>Alcoholic Beverage Sales</u>: Alcoholic beverage sales for consumption off the premises in conjunction with grocery stores and drugstores is permitted subject to special land use permit.
- B. <u>Drive-in Facility</u>: A drive-in facility is permitted provided it is accessory to the permitted <u>principal use</u>.
- C. <u>Gasoline Full Service Station</u>: A gasoline full service station is permitted provided any mechanized car wash systems shall be limited to 25 cars per hour.
- D. <u>Kennel</u>: A kennel is permitted in conjunction with veterinary clinics when completely enclosed within a <u>building</u> (see Sections 18-86, 18-87, 18-88 of the Birmingham City Code).
- E. <u>Laboratory</u>: A laboratory is permitted when incidental to a medical or dental <u>office</u> located within the same building.
- F. Loading Facility: A loading facility is permitted provided facilities are screened according to Section 4.54.
- G. Parking Facility: A parking facility is permitted provide such facilities are screened according to Section 4.54.
- H. Rooftop Use Standards:
 - 1. Rooftop amenities such as pergolas, trellises and other similar items are permitted on a rooftop, provided:
 - i. They are set back at least 5 feet from the eave line.
 - ii. They are of sufficient weight or anchored to the building to resist anticipated wind loads.
 - iii. They do not have full enclosures.
 - iv. They do not include eisenglass or similar enclosure materials.
 - 2. Rooftop structures and amenities may not contain habitable space.

(Ord. No. 2331, 08/05/2019)

Effective on: 9/15/2019

5.13 MX District

This Use Specific Standards section applies to the following district:



The following use specific standards apply:

- A. <u>Alcoholic Beverage Sales</u>: Alcoholic beverage sales for consumption off the premises in conjunction with grocery stores, drugstores, party stores and delicatessens is permitted.
- B. <u>Automobile Rental Establishment</u>: An automobile rental establishment is permitted provided all vehicles are stored in a public or private <u>parking garage</u>.
- C. <u>Bistros</u>: Bistros are permitted with a valid Special Land Use Permit with the following conditions:
 - 1. No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 15 seats
 - 2. Alcohol is served only to seated patrons, except those standing in a defined bar area;
 - 3. No dance area is provided;
 - 4. Only low key entertainment is permitted;
 - 5. Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
 - 6. A minimum of 70% glazing must be provided along <u>building facades</u> facing a street or pedestrian passage between 1 foot and 8 feet in height;
 - 7. All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
 - 8. Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, defined platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
 - 9. Enclosures facilitating year round dining outdoors are not permitted.
 - 10. Railings, planters or similar barriers defining outdoor dining platforms may not exceed 42" in height.
 - 11. Outdoor rooftop dining is permitted with the conditions that surrounding properties are not impacted in a negative manner and adequate street level dining is provided as determined by the Planning Board and City Commission. Rooftop dining seats will count towards the total number of permissible outdoor dining seats.

- D. <u>Dwelling Accessory</u>: Residential units located in accessory <u>structures</u> are permitted provided that the residential units meet the minimum unit requirements identified in each two-page layout in Article 2. Where there is a conflict between this provision and the requirements of Section 4.02, this section shall take precedent.
- E. <u>Family Day Care Home</u>: Family day care home shall be state licensed and meet the following family day care home provisions:
 - 1. All family day care homes must be licensed with the city. Application for a family day care home shall be made to the City Clerk on such forms as shall be provided. An application fee as established by the City Commission and set forth in Appendix C shall be payable upon submitting an application for a family day care home. See Chapter 26 of the Birmingham City Code for licensing procedures.
 - 2. Only the care provider and his/her immediate family shall reside in the home.
 - 3. The maximum number of children permitted in a family day care home shall not exceed that permitted by the state.
 - 4. All outdoor play areas shall be enclosed with a fence of no less than 4 feet nor more than 6 feet in height, capable of containing the children within the play area.
 - 5. Children not related to the care provider shall not be dropped off or picked up between the hours of 8:00p.m. and 7:00 a.m.
 - 6. There shall be no signs for the family day care home.
 - 7. No family day care home shall be located closer than 750 feet from another family day care home or foster care facility except as permitted as follows:
 - a. The Board of Zoning Appeals may approve the location of a family day care home within 750 feet of another family day care home or foster care facility if the Board of Zoning Appeals finds that the concentration of uses will not generate traffic, noise or other nuisances in a volume greater than would normally be expected in a residential neighborhood. The applicant is required to provide the following information to the Board of Zoning Appeals for all family day care homes within 750 feet of another family day care home or foster care facility:
 - b. Location of parking for parents/guardians and caregivers.
 - c. Hours of operation.
 - d. If the Board of Zoning Appeals gives approval to an additional family day care home within 750 feet of another family day care home or foster care facility, such approval is valid for 2 years from the date of approval.
 - e. Any family day care home licensed by the state at the time this section becomes effective and located within 750 feet of another state-licensed family day care home or foster care facility shall be permitted to continue in operation subject to its compliance with the other provisions of this section and the Zoning Ordinance.
 - 8. Family day care homes shall operate Monday through Saturday only.
- F. Food or Drink Establishment: A food or drink establishment is permitted excluding drive-in facilities.
- G. Kennel: A kennel is permitted when completely enclosed within a building.
- H. Loading Facility: A loading facility is permitted accessory to the principal use.
- I. Parking Facility: A parking facility is permitted accessory to the principal use.
- J. Parking Structure: A parking structure is permitted accessory to the principal use.
- K. <u>Regulated Uses</u>: Regulated uses are permitted if located more than 1,000 feet from any <u>lot</u> for which a certificate of occupancy has been issued for another <u>regulated use</u>, and shall be limited to a maximum floor area of 6,000 square feet. The City Commission shall hear and deny, approve or approve with conditions all requests for permission to carry on a regulated use where a regulated use is permitted, in accordance with Article 7.
- L. Rooftop Use Standards:
 - 1. Rooftop amenities such as pergolas, trellises and other similar items are permitted on a rooftop, provided:
 - i. They are set back at least 5 feet from the eave line.
 - ii. They are of sufficient weight or anchored to the building to resist anticipated wind loads.
 - iii. They do not have full enclosures.
 - iv. They do not include eisenglass or similar enclosure materials.
 - 2. Rooftop structures and amenities may not contain habitable space.
- M. Renting of Rooms: The renting of rooms is permitted to not more than 2 roomers or boarders per dwelling unit.

(Ord. No. 2317, 09/17/2018; Ord. No. 2335, 08/05/2019)

Effective on: 9/15/2019

7.25 Site Plan Review: Review

- 1. Site Plan Reviews by the Planning Board are required for all new construction of and additions to buildings for the following types of developments:
 - A. Single-family cluster developments.
 - B. Accessory buildings in all zoning districts except single-family.
 - C. Attached Single-Family Residential (R8).
 - D. Two-Family Residential (R4).
 - E. Multiple-Family Residential (R5, R6, R7).
 - F. Neighborhood Business (B1).
 - G. General Business (B2, B2B, B2C).
 - H. Office/Residential (B3).
 - I. Business/Residential (B4).
 - J. Office (O1).
 - K. Office/Business (O2).
 - L. Parking (P) and all off-street parking facilities in any zoning district except in a district zoned single-family residential when the area thereof accommodates three or less vehicles.
 - M. Mixed Use (MX).
- 2. For properties located within historic districts designated under Chapter 62 of the Birmingham City Code, Site Plan Reviews will also be conducted by the Historic District Commission.
- 3. Site Plan Reviews by the Planning Board are also required for all expansions and/or alterations of buildings as follows:
 - a. Where reconstruction of exterior walls of existing buildings exceeds 33.3% of the total exterior wall area; and / or
 - b. Any alteration to an existing building and/or site which significantly alters the vehicular and/or pedestrian circulation as determined by the City Planner.

	Historic District Commission	Design Review Board	Planning Board
New construction and/or additions	Required if located in an Historic District	Not required	Required
Expansion/Alteration	Required if located in an Historic District	Not required	Required
Exterior modification without expansion/alteration of site per 7.25 (3)	Required if located in an Historic District	Required	Not required

(Ord. No. 2320, 05/06/2019)

Effective on: 5/26/2019

APPENDIX A LAND USE MATRIX

Land Use Matrix

P = Permitted Use

A = Accessory Use

S = Special Land Use Permit Required

() = Shall Meet the Development Standards for the District

C = City Commission Approval Required

* = Use Specific Standards Apply

R = Regulated Use

Indicated																							
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regulated uses	-	-	-	-	-	-	-	_	-			-		<u> </u>	R*	R*	R*			C*	-	<u> </u>	
renting of rooms	-	A*	A*	A*	A*	A*	A*	A*	A*	A*		-	A*	-	<u> </u>	_	-	_	<u> </u>	A*	-	<u> </u>	-
restaurant	-	-	-	-	-	-	-	-	_	-		-		-	<u> </u>	_	-	Р	-	-	<u> </u>	<u> </u>	
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Indicated requires Special Land Use Permit PP R1A R1 R2 R3 R4 R5 R6 R7 R1 01 02 P B1 B2 B2B B2C B3 B4 B3 T2 T2 T2 T2 T3 T4 T5 T5 T5 T5 T5 T5 T5																							
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bus/train passenger station and waiting area	-	1	-	-	-		-	-	-	-	-	-	-	-	S	S	S	Р	-	Р	1	-	-
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garage, public	-	-	-	-	-	-	-	-	-	-	-	-	-	-	Р	Р	Р	-	Р	-	-		-
government office	Р	Р	Р	Р	Р	P (R3)	P (R4)	P (R5)	P (R6)	P (R3)	P (R5)	P (R5)	P (R7)	Р	Р	Р	Р	-	Р	Р	-		S
government use	Р	-	-	-	-	-	-	-	-	-	-	-	-	Р	Р	Р	Р	-	P	Р	-		S
loading facility - off- street	-	-	-	-	-	-	-	-	-	-	A*	A*	Α	A*	P/ A	P/ A	P/ A	А	P/ A	A*	-		-
medical rehabilitation facility	-	S	S	S	S	S	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-		-
parking (accessory) - public, off-street	-	S	S	S	S	S	S	-	=	-	-	-			-	-	-	-	-	-	-		-
parking facility - off- street	Р	-	-	-	-	-	-	S	S	-	A*	A*	P*	A*	P/ A	P/ A	P/ A	А	P/ A	A*	-		-
parking - off-street	-	-	-	-	-	-	-	-	-	-	-	-	S	-	-	-	-	-	-	-	A	⊢	A
parking facility - private off-street	-	Α	Α	Α	А	А	Α	А	Α	Α	-	-	Α	-	-	-	-	-	-	-	А		-
parking - public, off- street	-	A*	A*	A*	A*	A*	A*	A*	A*	A*	-	:-:	Α	-	-	-	-	-	-	-	-	L	-
parking structure	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	А	-	A/ S*	-		S
parking structure (not accessory to principal use)	-		-	-	-	-	-	-		-	-	-	-	-	-	-	-	-	-	-	-		-
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publicly owned building	-	S	S	S	S	S	S	S	S	-	-	-	S	-	-	-	-	-	-	Р	-	L	-
public utility building	-	S	S	S	S	S	S	S	S	-	-	-	S	-	-	-	-	-	-	-	-		-
religious institution	-	S	S	S	S	S	S	S	S	-	S	-	S	P	P	P	P	=	P	S	-	S	S
school - private	Р	S	S	S	S	S	S	S	S	-	-	-	S	P	Р	P	P	+-	P	S	-	+	S
school - public	Р	Р	Р	Р	Р	P (R3	P (R4)	P (R5)	P (R6)	P (R3)	P (R5)	P (R5)		_	Р	Р	Р	-	Р	S	-	L	S
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indoor/outdoor recreational facility	-	-	_	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	Р	-		-

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Indicated requires Special Land Use Permit PP RIA R1 R2 R3 R4 R5 R6 R7 R1 01 02 P B1 R2 R28 R20 R3 L3 L7 T2																							
	(PP)	(RIA)	(R1)	(R2)	(R3)	(R4)	R5	R6			01	02	P	(B1)				(B3)				@	囮
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recreational club	_	-	-	1	-	-	-	S	S	-	_	-	S	Р	Р	Р	Р	-	Р	-	-		-
stadium	_	-	-	-	-	•	-	-	-	-	-	P (R5)	-	-	-	-	-	-	-	-	-		-
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swimming pool - public	Р	-	-	-	-	-	-	-	-	-	-	-	-	Р	Р	Р	Р	Α	Р	Р	-		-
swimming pool - semiprivate	-	-	-	-	-	-	Р		P (R6)			P (R5)	P (R7)	Р	Р	Р	Р	-	Р	Р	-		-
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adult foster care group home	-	Р	Р	Р	Р	P (R3)	P (R4)	P (R5)	P (R6)	P (R3)	P (R5)	P (R5)	P (R7)	-	-	-	-	-	-	-	-		-
assisted living	-	S	S	S	S	S	S	S	S	S	S	S	S	-	S	S	-	S	S	S	S		S
continued care retirement community	_	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	-	S	S	S	-		-
dwelling - accessory	-	-	-	-	-	-	-	-	-	-	-	-	_	-	-	-	_	_	-	A*	-		
dwelling - first floor with frontage on Eton Road	-	_	-	-	-	-	-	-	_	-	-	-	-	-	-	_	-	_	-	Р			-
dwelling - multiple- family	-	-	-	-	-	-	Р	P (R5)	P (R6)	-	P (R5)	P (R5)	P (R7)	-	Р	Р	Р	Р	Р	-	Р		Р
dwelling - one- family	-	Р	Р	Р	Р	P (R3)	P (R4)	P (R5)	P (R6)	P (R3)	P (R5)	P (R5)	P (R7)	-	p*	Р*	P*	-	Р*	-	P (R3)		P (R3)
dwelling - single- family attached	-	-	-	-	-	-	-	-	-	Р	-	-	-	-	_	-	-	-	-	-	Р		P
dwelling - two- family	-	-	-	-	-	Р	P (R4)	P (R5)	P (R6)	-	P (R5)	P (R5)	P (R7)	-	P*	P*	P*	-	P*	-	-		-
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independent hospice facility	-	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	-	S	S	S	S		S
independent senior living	-	S	S	S	S	S	S	S	S	S	S	S	S	-	S	s	-	S	S	S	S		S
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residential with nonresidential if frontage on Eton Road	1	-	-	144	-	-	_	-	-		-	-	-	-	-	-	-	-	-	S	-		-
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skilled nursing facility	-	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	-	S	S	S	S		S

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(Ord. No. 2298, 10/08/2018)

Effective on: 12/23/2018

Birmingham Board Of Zoning Appeals Proceedings Tuesday, December 14, 2021 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, December 14, 2021. Chair Charles Lillie convened the meeting at 7:30 p.m.

2. Rollcall

Present: Chair Charles Lillie; Board Members Jason Canvasser, Richard Lilley, John Miller,

Erik Morganroth; Alternate Board Members Ron Reddy, Erin Rodenhouse

Absent: Board Members Kevin Hart, Francis Rodriguez

Administration:

Bruce Johnson, Building Official Leah Blizinski, City Planner Brooks Cowan, Senior Planner Laura Eichenhorn, City Transcriptionist

Mike Morad, Assistant Building Official Jeff Zielke, Assistant Building Official

Chair Lillie welcomed those present, reviewed the meeting's procedures, and assigned duties for running the evening's meeting to Vice-Chair Canvasser.

Vice-Chair Canvasser described 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-Chair Canvasser took rollcall of the petitioners. All petitioners were present.

T# 12-67-21

4) 34745 Woodward Appeal 21-55

SP Cowan presented the item, explaining that the owner of the property known as 34745 Woodward was requesting either the following appeal or the following variance to renovate the property and update the operations of a car wash use known as Jax Kar Wash (Jax):

A. Chapter 126, Article 4, Section 4.54(C)(3) of the Zoning Ordinance requires a 32 inch capped masonry screen wall to be placed along the front or side of any parking facility that abuts a street, alley, passage, or mixed passage. On October 13th, 2021, the Planning Board approved the applicant's site plan application with the condition that the applicant submit revised plans with sufficient screening that meets Article 4, Section 4.54 of the Zoning Ordinance. The applicant is requesting an appeal of the Planning Board's decision with the condition that the applicant satisfy all screening requirements of Article 4, Section 4.54.

OR

B. Chapter 126, Article 4, Section 4.54(C)(3) of the Zoning Ordinance requires a 32 inch capped masonry screen wall be placed along the front or side of any parking facility that abuts a street, alley, passage, or mixed passage. The applicant is proposing a site plan with a parking facility consisting of 47.75 feet of unscreened frontage along Woodward Avenue. Therefore, a dimensional variance of 47.75 feet is being requested.

In reply to Board inquiry, SP Cowan noted that 'parking facility' is not defined in the ordinance. He stated that 'parking' is defined as an area used for the parking of motor vehicles.

In reply to Ms. Rodenhouse, SP Cowan stated that screening is required for a 'parking facility', not just 'parking', per the ordinance in Chapter 126, Article 4, Section 4.54(C)(3).

BO Johnson stated that parking area total is defined as the actual parking area and the area of the access drives, and a parking lot interior is defined as all area within the perimeter of a parking lot which is including planting islands, curb areas, corner lots, parking spaces, and all interior driveways and aisles except those with no parking spaces located on either side.

Vice-Chair Canvasser noted that in cases of Building interpretations or rulings of other boards, the appellant must show that the official or board demonstrated an abuse of discretion, or that the official or board acted in an arbitrary or capricious manner. He noted that standard would apply to Appeal A, and would require four affirmative votes to pass.

Bradley Scobel, attorney, explained why the appellant was seeking either the appeal or the variance. He stated:

- The appellant does not believe that the area in question meets the definition of a 'parking facility' as defined in the ordinance, and that there the Planning Board's requirement of a screen wall on Woodward amounted to an abuse of discretion;
- The appellant is concerned that a screen wall on Woodward would be hit by drivers, would prevent egress of vehicles in an emergency, and would also prevent the operator from effectively plowing snow from the lot;
- Having to install a screen wall on Woodward would be so prohibitive to operations that the appellant would instead withdraw all planned updates;
- If the Board denies Variance A, granting Variance B would still be appropriate because it would increase the safety of the entire site;
- There have been no pedestrian-vehicle safety issues in in the history of Jax's operations resulting from cars turning left onto of Woodward and then left onto Brown to re-enter the Jax lot;
- There have been no pedestrian-vehicle safety issues there because it is not a commonly traversed area by pedestrians and because the vehicle attendants look out for any potential safety issues;
- The planned updates will increase the safety of the site overall;
- The area in question adjacent to Woodward would be more appropriately described as a service aisle or a drive lane, and does not amount to a parking facility as intended by the ordinance because there is no parking on either side;

- The Speedway fuel station across the street has similar conditions in terms vehicles parking for three to four minutes to use an amenity and leaving and does not have a screen wall;
- The current conditions at the Jax site do amount to a parking facility along Woodward, but under the proposed plan the conditions would not; and,
- A drawing was submitted to the City indicating that wall that the appellant is requesting a variance from, and was provided to the Board members, but was not included in the evening's agenda packet.

BO Johnson advised the Board that if Speedway were to be opened today any of the parking areas would likely be subject to the ordinance's screen wall requirements.

In reply to Vice-Chair Canvasser, Mr. Scobel confirmed that in the absence of a definition of terms in the ordinance it would be appropriate to use the dictionary definition of the terms. He stated that he did not find a dictionary definition of 'parking facility' which is used in the ordinance. He stated he did look up a definition of an aisle or lane.

Ms. Rodenhouse explained that since this requires an interpretation of a zoning ordinance it would be most appropriate to conduct a de novo review, looking at the language of the ordinance itself without giving any deference to the Planning Board. Interpretation of an ordinance follows the same procedure as interpreting a statute. The BZA's role is to ascertain the intent of the legislative body, per case law. The first step is to give the words in question their plain meaning. The ordinance does not state precisely what a parking facility is, but does state that screening would only be required for a parking facility. The definition of a 'facility' as provided by Random House-Webster's Unabridged Dictionary, 2nd ed., is 'something designed, built, installed to serve a specific function, affording a convenience or service'. She noted that in this case that convenience or service would be parking, and the area in question would have to have been designed, built and installed to provide parking. She stated that the area in question was designed, built, and installed for vacuuming, not for parking.

Ms. Rodenhouse concluded that there was no ambiguity for the review process to be followed in this instance. She stated that ambiguity only exists if a statute creates irreconcilable conflict with another provision, or is equally susceptible to more than one meaning. She said neither of those two cases apply in this instance since the area in question is not a facility for parking.

Vice-Chair Canvasser replied that the BZA is a Zoning Board, not a Court of Appeals. He stated the Board would be reviewing for an abuse of discretion, not a de novo review of the ordinance.

Ms. Rodenhouse noted that a misinterpretation of the statute on the part of the Planning Board would be an error of law, and an error of law is necessarily an abuse of discretion. She contended that construing any place where one parks as a 'parking facility' would be an error of law, which consequently would be an abuse of discretion.

In reply to Mr. Lillie, Jason Milen, owner and operator of Jax, explained that currently when snow is plowed from the lot it gets pushed into the right of way by Woodward.

Mr. Lillie asked if the Shell fuel station at 33588 Woodward had screen walls for its parking since the business had done updates a few years prior.

Vice-Chair Canvasser said he thought he recalled some amount of wall on 33588 Woodward's lot, but could not recall exactly where it was located.

Motion by Ms. Rodenhouse

Seconded by Mr. Miller with regard to Appeal 21-55, A. Chapter 126, Article 4, Section 4.54(C)(3) of the Zoning Ordinance requires a 32 inch capped masonry screen wall to be placed along the front or side of any parking facility that abuts a street, alley, passage, or mixed passage. On October 13th, 2021, the Planning Board approved the applicant's site plan application with the condition that the applicant submit revised plans with sufficient screening that meets Article 4, Section 4.54 of the Zoning Ordinance. The applicant is requesting an appeal of the Planning Board's decision with the condition that the applicant satisfy all screening requirements of Article 4, Section 4.54.

Ms. Rodenhouse moved that the Planning Board erred as a matter of law in their interpretation. She reiterated her previous comments explaining how the Planning Board erred as a matter of law and therefore demonstrated an abuse of discretion. She added that not finding this area to be a 'parking facility' harmonizes with the rest of the ordinance since in Article 10, Section 26.397 building permits are required for a 'parking facility', meaning it is a built structure, and in Article 9, Section 110.137(C) it is indicated that a 'parking facility' is something which could require an attendant.

Mr. Lilley concurred with Ms. Rodenhouse.

Mr. Reddy stated that since there is no ordinance definition of a 'parking facility' he concurred with Ms. Rodenhouse's explanation.

Mr. Lillie said one of the questions was how long one must park in order to define an area as a parking area.

Vice-Chair Canvasser said he would not support motion. He said Ms. Rodenhouse's motion was well-articulated and well-reasoned. He said he hoped that the Commission would consider defining and reviewing the use of 'parking facility' in the ordinance as a result of this discussion. He noted that the area in question would be having drivers park their vehicles to use the vacuums. He said that while he may not think the Planning Board's interpretation of this area as a 'parking facility' was the best interpretation available, he felt that the Planning Board had a justifiable basis in doing interpreting it as such. Consequently, he said he believed the BZA could not say that the Planning Board unequivocally demonstrated an abuse of discretion, or that the Planning Board acted in an arbitrary or capricious manner.

Mr. Morganroth concurred with Vice-Chair Canvasser. He added that the vehicles are parked in the area in question and that the drivers exit their vehicles. He said he did

not see an error that rises to the level of the BZA having to repeal the Planning Board's findings. He said that while a court of law might be able to do so, he did not find an abuse of discretion or arbitrary or capricious actions in the Planning Board's decision.

In reply to Mr. Reddy, Vice-Chair Canvasser restated that the appellant must show that the official or board demonstrated an abuse of discretion, or that the official or board acted in an arbitrary or capricious manner.

Ms. Rodenhouse said she wanted it absolutely clear on the record that an abuse of discretion happens when an error of the law is made. An error of law is to improperly apply the rules of statutory construction. In this case, the plain definition of 'facility' tells the BZA what the ordinance means. As per the previously-given definition of 'facility', this area was not designed to serve the specific function of parking. Therefore the Planning Board committed an abuse of discretion by reading something into the word 'facility' that is not part of the definition. She said she wanted that reiterated for purposes that go beyond the evening's hearing.

Vice-Chair Canvasser noted that the appellant did not provide a definition of 'facility', and stated that it was not the Board's job to make the argument for the appellant.

Mr. Morganroth said the definition of 'parking' as provided in the Oxford English Dictionary is 'bringing a vehicle one is driving to a halt to leave it temporarily, typically in a parking lot or by the side of the road'. He said that the definition leaves the Planning Board's conclusion ambiguous enough that the BZA cannot find that the Planning Board demonstrated an abuse of discretion or acted in an arbitrary or capricious manner.

Mr. Lillie noted that the area in question is being designed for vehicles to be turned off and exited.

Motion failed, 3-4.

ROLL CALL VOTE

Yeas: Rodenhouse, Miller, Lilley

Nays: Morganroth, Reddy, Canvasser, Lillie

Planning Board Minutes July 24, 2019

G. Final Site Plan & Design Review

1. 34745 Woodward, Jax Kar Wash — Request for Final Site Plan and Design Review to add a covered detailing area and reconfigure access and circulation for the site.

City Planner Dupuis presented the item.

Brian Lawson, architect for the project, and Greg Roselli, site manager for Jax Kar Wash, walked the Planning Board through the plans.

Mr. Lawson noted that an accessible parking space was inappropriately represented as being being next to the detailing station, and confirmed the space would actually be located elsewhere on the site.

Mr. Roselli explained that the vacuuming will be moved to the north part of the site. The aim of this change is to reduce the site's traffic burden on Brown Street and to allow vehicles to be processed more expediently. Mr. Roselli estimated that customers seek exterior-only services at the site between sixty and seventy percent of the time. He confirmed that the vast majority of customers would be getting a car wash without detailing and exiting onto Woodward subsequently. If customers purchase detailing, attendants will be driving vehicles to the vacuums and vacuuming the vehicles as part of that service. Customers will not be driving their vehicles to the vacuums or accessing the vacuums on their own.

Mr. Koseck asked about efforts towards visual improvement of the site as part of these updates. Mr. Koseck said he was concerned the site will be less aesthetically pleasing than it currently is if the proposed changes are instituted. Acknowledging the aesthetic limitations of the type of work and the site, Mr. Koseck noted that the City even has requirements for gas station exteriors and this project should be given similar consideration.

Mr. Lawson replied that the site may install the requisite screen wall at the corner of Woodward and Brown, and that a landscape element could also be considered for that corner.

Mr. Williams suggested potentially planting trees at the corner of Woodward and Brown, which he stated the Board had also recommended as an option for the site during a previous review.

Mr. Jeffares observed that vegetation could be used for the screen wall, which would have the additional benefit of providing visual improvement of the site.

Planning Director Ecker confirmed that would be an acceptable option as long as the vegetation is evergreen.

Chairman Clein said he liked the tree proposed on the south side of the site and liked the removal of the parking along Brown. He emphasized that he wants to support Jax, understood the challenges of the site, and would like to see the business do well. Chairman Clein also stated:

- The attended vacuums will likely encroach on the pedestrian space along Woodward and that vehicles currently routinely drive over the public sidewalk as part of Jax operations.
- That if this were a new project, he would not vote to approve the plans.
- He loved the idea of using vegetation for a screen wall, but said it would not work as the plans are currently laid out.
- If the Board were to approve using vegetation for a screen wall that would have to be included clearly as part of the plans.

Mr. Williams said he was in favor of making the screen wall on the north side of the site out of vegetation. He said landscaping should also be added to the Woodward side of the site, stating that if the entirety of the business' Woodward frontage cannot be landscaped then at least the corner of Woodward and Brown should be. He emphasized that any efforts towards adding vegetation to the site would be an improvement.

Chairman Clein asked if all six detailing stations were necessary.

Mr. Lawson confirmed he had been told they were due to detailing volume.

Ms. Whipple-Boyce noted that four detailing stations could be nested along the north side of the building which would allow for a landscape screen wall. She stated that the landscaping outside of 525 E. Brown was beautifully done, and recommended the project aim to recreate something similar on its own corner. Ms. Whipple-Boyce explained that the visual effect of the proposed plans would be hard to endorse, and that making an adjustment to four detailing stations and adding more landscaping could resolve the issue.

Mr. Williams concurred with Ms. Whipple-Boyce. He said the Board seemed to agree that no more cement or brick walls should be added to the site.

Planning Director Ecker also noted the Board's emphasis on adding vegetation to the site's Woodward and Brown corner.

Mr. Lawson expressed enthusiasm for the idea. He asked if it would be possible for the evergreen landscaping to take the place of street trees.

Planning Director Ecker said the evergreen landscaping could not replace street trees, but could be done in addition.

Chairman Clein invited comment from the public.

Sam Volk, 736 Brookside, said he was an engineer and that the north side of the site seemed to have substantial issues. He said the proposed configuration of the vacuum stations would only allow vehicles to move in threes, which would increase the congestion of the site instead of decreasing it. He said vacuuming the vehicles at four stations along the building allows vehicles to leave individually once they were complete, instead of having to wait.

Ms. Whipple-Boyce stated that two different members of the Board had noted that issue.

Mr. Volk reiterated his concerns.

The Board concurred on giving the project a few weeks to consider or integrate the Board's comments, including the following:

- Defining the site will help the business, and will make the space more attractive.
- The Board must receive a floor plan for the site, a plan that lays out the vegetation screen wall, and a plan delineating the pedestrian traffic flow around the site.
- The traffic flow into and out of the vacuum stations should be reviewed in light of the concerns and feedback provided.
- Jax Kar Wash employees often use benches across Brown during their breaks, and it might be a good improvement if Jax also provided benches for its employees to use.

Motion by Mr. Boyle

Seconded by Mr. Jeffares to postpone the item regarding Jax Kar Wash until the Planning Board's next regular meeting on August 14, 2019.

Motion carried, 7-0.

VOICE VOTE

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

Planning Board Minutes August 14, 2019

Motion by Mr. Williams

Seconded by Mr. Jeffares to postpone the Final Site Plan and Design Review for 34745 Woodward, Jax Kar Wash to September 11, 2019 and to suspend the Rules of Procedure to hear said review during a Planning Board study session.

Motion carried, 7-0.

VOICE VOTE

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

Planning Board Minutes September 11, 2019

E. Old Business

1. Final Site Plan & Design Review - 34745 Woodward, Jax Kar Wash — Request for Final Site Plan and Design Review to add a covered detailing area and reconfigure access and circulation for the site (Postponed from August 14, 2019).

Planning Director Ecker presented the item.

Motion by Mr. Williams

Seconded by Mr. Share to receive and file the memorandum from City Engineer O'Meara dated September 9, 2019.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Chairman Clein noted the plans submitted neither complied with ordinance nor sufficiently integrated the Board's August 14, 2019 feedback. He invited the applicant to comment briefly while stating he would vote against plan approval this evening due to the ordinance issues.

Jason Mylan, co-owner of Jax, said the submitted plans are the closest Jax can get to complying with the ordinance. He said there was not enough width on the Brown Street side of the lot to provide both a screening wall and an exit lane for vehicles. He said the plans represented a more functional, more aesthetically pleasing design to the lot. He also said he was open to providing whatever trees the City recommends for the lot.

Chairman Clein replied that the Board is not empowered to approve plans that do not comply with the ordinance. He said that if a business function does not meet ordinance it is either incumbent on the business to modify that function or to apply for a variance from the Board of Zoning Appeals.

In reply to a question from Chairman Clein, Mr. Mylan stated he had not spoken with MDOT about driving vehicles contraflow on Woodward Avenue in MDOT's right-of-way.

Noting that there was little to be gained from further discussion of these plans this evening, Chairman Clein recommended ending the discussion with advice to the applicant to comply with ordinance.

Mr. Koseck said he was concerned with the increase in on-site activity that these plans would represent. He said he did not anticipate that a screening wall could sufficiently obscure the increased activity, and that it may be appropriate for the applicant to consider expanding the footprint of the building in order to conduct more of the activity within the building and out of view of the street. He said that Mr. Mylan may be trying to do **too** much on the site.

In reply to Ms. Whipple-Boyce, Mr. Mylan said the attendants would never be in the driver's seat of the cars.

Ms. Whipple-Boyce said she was under the impression that attendants would be driving the cars on the lot.

Chairman Clein agreed with Ms. Whipple-Boyce, recalling the Board had been told attendants would primarily be driving the cars on the lot at the August 14, 2019 meeting. He noted other Board members looked to be recalling the same thing. He then emphasized his concerns about the applicant's proposal that the general public drive contraflow on Woodward Avenue in MDOT's right-of-way, and said the plans would not garner his vote until that was changed.

Mr. Mylan noted that the business currently drives vehicles contraflow on Woodward Avenue.

Chairman Clein said he was aware, noting that the proposed plans seek to have the general public driving contraflow on Woodward, as opposed to Jax employees. He then invited public comment.

In reply to Andrew Haigh, Planning Director Ecker indicated where the current curb cuts are allowing vehicles to enter and exit the lot.

Chairman Clein invited any further comments from the Board.

Mr. Williams stated that Jax is an important business in Birmingham, and so the matter should be postponed instead of denied. He recommended postponing the matter until the next regularly scheduled Board meeting that would include site plan reviews.

Motion by Mr. Williams

Seconded by Mr. Koseck to postpone consideration of 34745 Woodward, Jax Kar Wash to October 23, 2019.

Mr. Jeffares asked if that date would give the applicant enough time to get approval from MDOT for the Woodward right-of-way matter.

Chairman Clein replied that it was a month and a half, and that if it needed to be postponed further then that could be done. He explained it was best to postpone to a date certain to avoid having to re-notice the item while ensuring that the public knows when the item will next be discussed.

Mr. Share said he would support the motion if the Planning Department, Engineering Department, and applicant all agree to meet in order to discuss potential solutions to the issues raised at both this meeting and the August **14** ±1, 2019 meeting.

Planning Director Ecker confirmed both departments would be available to meet with the applicant.

In reply to Mr. Mylan, Mr. Williams stated he would like to see compliance with the ordinance. He also said Mr. Mylan should contact MDOT to discuss the contraflow issue raised.

Chairman Clein said Mr. Mylan should meet with City Staff and make a concerted effort towards integrating their feedback.

Motion carried, 7-0.

VOICE VOTE

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

Planning Board Minutes October 23, 2019

E. Old Business

1. 34745 Woodward, Jax Kar Wash – Request for Final Site Plan and Design Review to add a covered detailing area and reconfigure access and circulation for the site (Postponed from September 11, 2019).

Planning Director Ecker presented the item.

Mr. Jeffares said he was very familiar with the site both as a patron and because it is next to his workplace. He said that rather than reducing the queuing on Brown Street, the proposed plans would likely increase queuing on Brown because up to seven fewer vehicles could fit in Jax's lot while in line for the carwash.

Greg Roselli, site manager for Jax Kar Wash, explained that the issue with vacuuming cars in the rear of the lot is a time constraint. He said that once there are eight cars in the vacuum lanes, the line backs up to the curb by the booth which prevents other cars from being able to pass by. He said the plans would change the speed with which cars could be cleared from that area which would reduce the queuing on Brown.

Mr. Jeffares said he had never seen the area in the rear of the building congested, while conceding that Mr. Roselli was likely more aware of the site logistics than Mr. Jeffares.

Mr. Roselli said there would be more visible backups with winter's arrival.

Planning Director Ecker confirmed that:

- The Planning Department is still not in receipt of the signage calculations for all the additional proposed elements on the site.
- No floor plan for the site had been submitted.
- Both signage calculations and a floor plan are required for the Board to complete a final site plan and design review.

Mr. Roselli confirmed that the vacuuming of the cars would be done by Jax Kar Wash staff.

There was no public comment, and Chairman Clein returned the discussion to the Board.

Ms. Whipple-Boyce expressed dismay that the submitted site plans neither complied with the City's ordinances nor integrated the Board's previous feedback regarding the application. She said the Board gave specific feedback on a number of issues, none of which the applicant chose to resolve in the number of months since the previous meeting.

Chairman Clein noted that plans as submitted do not meet condition four from Article 7, section 7.27 of the Zoning Ordinance. In addition, Chairman Clein concurred with Ms. Whipple-Boyce's statement that the plans neither meet City ordinance nor previous Board recommendations regarding the application. He said that as a result of these issues he would not be prepared to move the plans forward.

Mr. Share concurred with both Ms. Whipple-Boyce and Chairman Clein.

Motion by Mr. Share

Seconded by Mr. Williams to deny the Final Site Plan and Design Review for 34745 Woodward – Jax Kar Wash – for the following reasons:

- 1. The proposed plan does not meet the requirements of the zoning ordinance in a number of ways as noted in both Planning Director Ecker's report and during previous meetings;
- 2. The proposed plan does not meet the condition four of Article 7, section 7.27 of the Zoning Ordinance being that the plans propose hazardous traffic circumstances; and,
- 3. At present, the applicant has not demonstrated an entitlement to utilize the counterflow into the Woodward Avenue right of way.

Motion carried, 7-0.

ROLL CALL VOTE

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

Planning Board Minutes July 8, 2020

2. **34745 Woodward (JAX Car Wash)** – Request for Revised Final Site Plan & Design Review for site plan and design changes to Jax Car Wash.

Motion by Mr. Williams

Seconded by Mr. Share to formally accept for filing a letter from Fleis and Vandenbrink dated July 8, 2020 from Julie Kroll to Planning Director Ecker; a letter from Tim Currier, City Attorney, dated July 8, 2020; and a memorandum containing engineering comments dated July 8, 2020 from Assistant City Engineer Fletcher.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

Planning Director Ecker reviewed the item. She explained that:

- MDOT would be willing to allow contraflow traffic in their right-of-way if the City indemnifies them for the practice.
- City Attorney Currier, in contrast, would like a letter from MDOT stating that they accept and approve of contraflow traffic in their right-of-way and that the City has no liability for the use.
- MDOT is the fee owner between the sidewalk and the curb on the east side.
- MDOT was likely not noticed as an adjacent property owner for the current review since there is no address associated with that property, and the Planning Department notices addresses within 300 feet of an application.

Chairman Clein stated that just because Jax has encouraged contraflow traffic for years does not mean that it is a wise or safe practice for the City to endorse. He continued that adding six detail stations to the front would likely increase the amount of contraflow traffic.

Mr. Share said:

- He had serious concerns about the accuracy of the memo submitted by Bradley Scobel, attorney for the project.
- The memo addressed a right-of-way that goes over a private property owner's property.
- In the classic situation, if a property owner owns property on a section line road, the state, by statute, has taken 32 feet on each side of the center line, or section line, for roadway purposes.
- The above is a different situation from the one that seems to exist in these plans, where the MDOT right-of-way does not permit MDOT to go over Jax's property; rather, MDOT is the property owner.
- The City would need City Attorney Currier to review the issue and comment since it bears on some of Mr. Scobel's points.
- If MDOT owns Woodward and part or all of the area that the contraflow is proposed to go into, then it would be in all parties' best interests to have a formal legal easement that delineates each party's rights.

• It would not be appropriate for the Board to approve site plans where one party proposes to build on another party's property without any formal indication that the latter has granted the former approval for that work.

Jason Milen, owner, Bryan Lawson, architect, Mr. Scobel, attorney, and Greg Roselli, general manager of the Birmingham Jax location were all present on behalf of the applicant.

Mr. Milen stated:

- The plans would double the existing on-site stacking available before vehicles go through the wash.
- In an effort to make the process safer, customers would exclusively drive their own vehicles at the Birmingham location. All interior vacuuming would be done by Jax employees.
- Any proposed landscaping could be modified to the City's satisfaction.
- His team only became aware of the content of the memos from the City Attorney, F&V, and City Engineering during the same day as the present meeting, and said they would be happy to address all issues raised.
- 65% of customers at the Birmingham location receive exterior-only services and those numbers would increase with the location's ability to process a larger number of exterior washes. Any customers that receive exterior-only services would not need to drive contraflow.
- His team has looked at every possible option for compliance with City ordinance. If vehicles turned out of the wash tunnel sooner then the site would not have as many spaces to do the vacuuming and interior cleaning. The conflicts with ordinance arise not from financial concerns, but from efforts to improve traffic flow, to improve safety, and to improve efficiency.
- Perhaps the safety of the sidewalk near the contraflow could be improved by painting that part of a sidewalk a different color, or by installing a different color brick, to better alert pedestrians.
- MDOT has never raised an issue with Jax over contraflow traffic in the right-of-way.

Mr. Jeffares said that even though removing one vacuum station would cause the site to lose one interior detailing space, it would be worthwhile to do so to allow the vehicles to turn sooner. He said this would eliminate the contraflow issue and make traffic on and around the site significantly safer.

Mr. Milen said that removing one interior detailing space would cause a loss of efficiency that could cause backups elsewhere on the site given current demand. Turning left out of the spot on the north side, before the sidewalk, would prevent them from being able to align the vehicles on the north side of the property. It would also require three-point turns which would likely be more dangerous than the wide-clearance turn that would otherwise occur.

In reply to Mr. Share, Mr. Lawson confirmed that the east property line as shown on the plans is correct.

Mr. Scobel stated that the portion of Jax's property that is encumbered by the right-of-way is not under the jurisdiction of MDOT. He said that while MDOT can prevent building on that right-of-way it could not control how it is used. He agreed with Mr. Share's supposition that if MDOT is

the fee owner of the property in question that it would change Mr. Scobel's analysis. He reiterated the fact that the Jax team only received City Attorney Currier's memo earlier on July 8, 2020, and said he was not yet sure on what legal research City Attorney Currier based his opinion. Jax would need permission from MDOT to landscape in the right-of-way. There would be an absence of governmental liability through the Governmental Liability Act regarding contraflow traffic in the right-of-way. In addition, if Jax has the ability to use the right-of-way for contraflow traffic in a way that MDOT cannot regulate, then MDOT can also not be held liable for contraflow traffic in the right-of-way.

In reply to Mr. Boyle, Planning Director Ecker confirmed that vegetation screening is not required, and masonry screening would be an option along Brown.

Mr. Boyle said masonry screening would be a preferable option.

Mr. Milen stated that the vacuum tubes could be run underground instead of going over the building.

In reply to Chairman Clein, Mr. Milen said that it is more efficient to vacuum after a wash, instead of before.

Chairman Clein explained that Jax's presentation largely asked the Board to put the efficiency of the business before the interests of the public in terms of both safety and adherence to ordinances. Chairman Clein said that the concerns raised by Board members were rooted in their obligation to protect the public interest.

Mr. Jeffares concurred with Chairman Clein.

Mr. Milen said that doing the vacuuming second is an effort to decrease pedestrian activity onsite, which would increase safety. He also reiterated that the team would be more than willing to do something to the sidewalk to signify that vehicles were exiting from the Jax site at that location.

Chairman Clein shared his surprise that no one on the Jax team could fully answer the questions about ownership and property rights in regards to the east side. He said that if the Board reviews the plans again in the future he would need the applicants to return with a survey and clarification of that information.

In reply to Mr. Koseck, Mr. Milen confirmed that any landscaping on the site would be maintained to the highest standards.

Mr. Williams said he would want to see a more detailed survey, more legal clarification regarding ownership, a more detailed response from City Attorney Currier in reply to the project's legal position, and more clarity regarding MDOT's legal position before any action could be taken on this item. He said the Board should not recommend that the City Commission provide indemnification vis-a-vis the contraflow traffic since he was relatively confident they would not be willing to do that. He stated that he agreed with Mr. Boyle that masonry screening would be more appropriate. He said that while the proposal still needed work, he thought it would help get traffic off Brown which would increase safety and traffic efficiency.

Mr. Share concurred with Mr. Williams regarding the further information required.

Mr. Koseck said he was reluctantly concerned that the plans were not the best they could be, and said the Jax team should look for more creative solutions that could increase safety and adherence to ordinance. He said:

- He was unsure why the main entrance would be 35 feet wide if it was one-way, and why the one-way exit would be 23.9 feet wide.
- The brown canopy is not ideal in terms of site aesthetics.
- The escape lane may not be necessary.
- He would want to see effort to increase the safety of pedestrians using the sidewalk along the Woodward edge of the property.

Chairman Clein said that the added queuing off Brown would be a positive improvement, and noted that the applicant added additional screening where it was requested by the Board. Chairman Clein continued that he still had some fundamental concerns about the plans. He said there were too many vacuums proposed for the site, and that the traffic flow proposed for the site overall seemed unlikely to work well. He said that while he appreciated the challenges of the site he was concerned about how the plan implementation would negatively impact both vehicular and pedestrian safety. He said he was supportive of the aims of the applicant and said he wished they could find another way to achieve their goals while increasing safety and adhering to ordinance.

Ms. Whipple-Boyce stated that she went back through previous minutes regarding the site and said she believed that this was the Board's fifth time discussing Jax. She said that if a sixth review were scheduled for the end of August she would like some way of knowing that the applicant would return with the necessary and acceptable changes to the plan. She said the Board has asked for essentially the same changes at each one of their five reviews of this item and that there has been relatively little progress made towards those changes on the part of the applicant.

Mr. Milen replied that they looked into the MDOT issue and increased screening. He said he believed it was four reviews, and that if the Board compared the current plans to the original plans they would see a significant difference.

Mr. Jeffares said that while the proposed plans improve the safety and efficiency of the site there were probably options that would make the site even safer. He agreed with Mr. Koseck that the brown vinyl tent is unsightly and said the Board often does not approve tents that are significantly more attractive than that. Mr. Jeffares said that while a car wash is not the optimal activation of the street that the City seeks in its planning, it is activation just the same and helps keep the City looking lively. He said he would be in favor of giving the applicant one more chance to return with plans that sufficiently address the Board's concerns. He said he saw that there had been a number of small improvements, but said he would need to see significant changes to the plans to consider approval come August. He said that five vacuum stations would be one of the changes the applicant should seriously consider.

Motion by Mr. Share

Seconded by Mr. Williams to postpone the Final Site Plan and Design Review for 34745 Woodward – Jax Kar Wash – until the regular Planning Board meeting of August 26, 2020.

Ms. Whipple-Boyce said she would not support the motion because she did not believe a sixth review of the project would yield the necessary changes anymore than the previous five reviews had. She stated that the Board had been very clear about the requisite changes from the start, and that only small steps had been taken in that direction by the Jax team.

Motion carried, 6-1.

ROLL CALL VOTE

Yeas: Share, Williams, Koseck, Boyle, Clein, Jeffares

Nays: Whipple-Boyce

Planning Board Minutes August 26, 2020

E. Unfinished Business – Revised Final Site Plan & Design Review

1. 34745 Woodward (JAX Kar Wash) – Request for Revised Final Site Plan & Design Review for site plan and design changes to Jax Car Wash (Postponed from July 8, 2020, Request to postpone to September 23, 2020).

Planning Director Ecker stated the September 23, 2020 agenda was already at capacity. She said the next meeting with availability would be October 28, 2020.

She explained the applicant requested the postponement because they only received a letter from MDOT regarding the right-of-way issue a week prior to the present meeting, and they wanted to ensure that the City Attorney and City staff would have sufficient time to review and respond to the MDOT letter.

Motion by Mr. Williams

Seconded by Mr. Jeffares to postpone the Final Site Plan and Design Review for 34745 Woodward (JAX Kar Wash) to October 28, 2020.

Motion carried, 7-0.

ROLL CALL VOTE

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

Planning Board Minutes October 28, 2020

E. Unfinished Business

1. 34745 Woodward (JAX Car Wash) – Request for Revised Final Site Plan & Design Review for site plan and design changes to Jax Car Wash (Request to postpone to future meeting).

Chairman Clein recommended this item be postponed without a date certain. He said doing so would allow the applicant sufficient time to finish updating and submitting their documentation to the City.

Motion by Mr. Share

Seconded by Mr. Boyle to postpone the Revised Final Site Plan & Design Review for 34745 Woodward (JAX Car Wash) without date.

In reply to Mr. Williams, Chairman Clein explained that postponing without a date certain would allow the applicant to resubmit without a fee whenever their documentation is ready.

Mr. Koseck commented that the Board has been waiting on this application for several months, which he said makes it seem like its postponement is less a matter of some missing details and more a matter of whether the applicant is reconsidering larger aspects of the application.

Motion carried, 7-0.

ROLL CALL VOTE

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

Planning Board Minutes June 23, 2021

2. 34745 Woodward Avenue – Jax Car Wash, Request for Final Site Plan & Design Review for circulation and layout changes to the existing car wash site. (Request by applicant to postpone to July 28, 2021)

After brief discussion, the Board agreed it would be most appropriate to postpone this item without a date certain given the number of previous postponements requested by the applicant.

Mr. Koseck noted that the site could still use improvements, and said he did not want the postponement to be seen as an endorsement of the site's current conditions.

Motion by Mr. Share

Seconded by Mr. Koseck to postpone the Final Site Plan and Design review for 34745 Woodward Avenue – Jax Car Wash indefinitely.

Motion carried, 7-0.

ROLL CALL VOTE

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

City Of Birmingham Regular Meeting Of The Planning Board Wednesday, September 9, 2021

City Commission Room 151 Martin Street, Birmingham, Michigan

F. Final Site Plan & Design Review

1. 34745 Woodward Avenue – Jax Kar Wash, Request for Final Site Plan & Design Review for circulation and layout changes to the existing car wash site.

ACM Ecker presented the item.

Jason Milen, owner, and Bradley Scobel, attorney, were present on behalf of Jax Kar Wash.

Mr. Milen stated that the plans presented by ACM Ecker were not the final ones submitted by the applicant. Messrs. Milen and Scobel reviewed the differences between the plans presented by ACM Ecker and the final submitted plans.

Mr. Milen said the changes were being proposed in order to the increase efficiency, aesthetic appeal, and safety of the site.

Mr. Koseck said that in order to gain his vote the plans would have to increase their attention to aesthetic improvements to the site.

Chair Clein noted that the new plans would need to be made available to the Board, City departments, the City's traffic consultant, and the public for review before the Board could vote on the proposed changes. He said the City would expedite the review of the final plans so as not to further delay the applicant.

ACM Ecker said that CP Dupuis determined that the City had indeed received a hardcopy of the final plans but had not considered them as part of this review. She apologized for the error.

Motion by Mr. Williams

Seconded by Mr. Share to postpone consideration of the final site plan and design review for 34745 Woodward Avenue (Jax Kar Wash) to September 23, 2021.

Mr. Koseck recommended the applicant make improvements to the aesthetics of the building's site with particular focus on the building's awning. He also asked why the signage plans did not comply with the ordinance.

Mr. Jeffares concurred with Mr. Koseck regarding the building's awning.

Mr. Milen said he would change the signage proposal to comply with the ordinance. He also said he had plans for improvements to the awning that he would include in his next submittal.

Motion carried, 6-1.

ROLL CALL VOTE

Yeas: Williams, Whipple-Boyce, Share, Ramin, Jeffares, Clein

Nays: Koseck

City Of Birmingham Regular Meeting Of The Planning Board Wednesday, September 23, 2021

City Commission Room 151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on September 23, 2021. Vice-Chair Williams convened the meeting at 7:30 p.m.

A. Roll Call

Present: Vice-Chair Bryan Williams; Board Members Robin Boyle Stuart Jeffares, Daniel

Share, Janelle Whipple-Boyce; Alternate Board Member Jason Emerine

Absent: Chair Scott Clein; Board Member Bert Koseck; Alternate Board Member Nasseem

Ramin; Student Representatives Daniel Murphy, Jane Wineman

Administration: Jana Ecker, Assistant City Manager ("ACM")

Nick Dupuis, Planning Director ("PD") Brooks Cowan, Senior Planner ("SP") Laura Eichenhorn, City Transcriptionist

F&V: Julie Kroll

09-140-21

B. Approval Of The Minutes Of The Regular Planning Board Meeting of September 9, 2021

Mr. Share said on page three that 'street lines' should be changed to 'street lights'.

Motion by Mr. Share

Seconded by Ms. Whipple-Boyce to approve the minutes of the Regular Planning Board Meeting of September 9, 2021 as amended.

Motion carried, 4-0.

VOICE VOTE

Yeas: Share, Williams, Whipple-Boyce, Jeffares

Nays: None

Abstain: Boyle, Emerine

09-141-21

C. Chair's Comments

Vice-Chair Williams welcomed everyone to the meeting and reviewed the meeting's procedures.

09-142-21

D. Review Of The Agenda

09-143-21

E. Unfinished Business

1. 34745 Woodward – Jax Kar Wash – Request for Final Site Plan and Design Review for circulation, layout and minor building changes to the existing site.

PD Dupuis presented the item.

Jason Milen, owner, Brian Lawson, architect, and Bradley Scobel, attorney, spoke on behalf of the application.

Mr. Milen said he would be willing to introduce screening tall enough to screen the vacuums, and asked whether the directional signage over the auto attendants could not be counted towards overall signage. He said the directional signage was important to instruct customers on which lane to use.

In reply to Mr. Scobel, ACM Ecker reiterated the City's position that a lack of screening wall along Woodward would be hazardous to pedestrians.

Ms. Whipple-Boyce concurred with ACM Ecker. She stated that the plans as presented remained far from what she would like to see happening on the site. She added that the southern portion of the screening wall should be required in order to screen the adjacent four parking spots.

Vice-Chair Williams noted the four parking spots are used for detailing, and that adding the southern portion of the screening wall would block access to those spots from the car wash.

Mr. Emerine also expressed concern that adding the southern portion of the screening wall would prevent fire truck access on the southern end.

In reply to Ms. Whipple-Boyce, Mr. Lawson confirmed that 'masonry wall by others' on the plans should have just said 'masonry wall'.

In reply to Ms. Whipple-Boyce, Mr. Milen said there would be signage directing vehicles to the right or left depending on whether they are purchasing full service or just exterior cleaning. He stated that most Jax locations already do this without issue.

Ms. Kroll stated that a higher screening wall to screen the vacuums might block sight distance to the south for pedestrians.

Mr. Emerine concurred and recommended that the height of the screening wall not be increased.

Vice-Chair Williams opined that the queueing on-site would be improved by not having vacuuming at the initial queueing station.

Ms. Kroll stated she was not identifying a queueing issue, only that the amount of queueing onsite was being reduced by three vehicles.

Mr. Milen said there would actually be room for three more vehicles on-site than currently, and that the stacking time would be reduced by half.

Mr. Lawson stated that the height of the vacuum stanchions can be lowered.

Mr. Share said he wanted to see a clearly marked sidewalk delineation.

Mr. Jeffares suggested that the escape lane could be minimized or eliminated as long as public safety was all right with the suggestion.

Mr. Milen concurred with Mr. Jeffares.

Mr. Emerine said he liked having the escape lane in case it is needed. He also said he would pull the screening wall in the MDOT right-of-way at the far northeast corner back onto private property.

After discussion, Vice-Chair Williams recommended the applicant consider expanding the size of the door opening by moving the door opening a bit further west and a potential alternative form of screening, including landscaping options, for the north side.

Mr. Emerine said the primary goal should be to eliminate the potential for pedestrian-vehicle conflict at the site.

ACM Ecker clarified that the screening wall would have to be a 'permanent visual barrier'.

Vice-Chair Williams summarized that the Board will want to see paint samples and the material of the brick for the screening wall for the north side of the property, confirmation of the height of the stanchions, and updated signage proposals that meet the City's signage requirements.

Motion by Mr. Share

Seconded by Mr. Emerine to postpone the Final Site Plan & Design Review for 34745 Woodward – Jax Kar Wash to October 13, 2021.

Motion carried, 5-0.

ROLL CALL VOTE

Yeas: Share, Emerine, Williams, Jeffares, Boyle

Nays: Whipple-Boyce

09-144-21

City Of Birmingham Regular Meeting Of The Planning Board Wednesday, October 13, 2021

City Commission Room 151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on October 13, 2021. Chair Clein convened the meeting at 7:30 p.m.

A. Roll Call

Present: Chair Scott Clein (left at 8:52 p.m.); Board Members Robin Boyle, Stuart Jeffares,

Bert Koseck, Daniel Share, Janelle Whipple-Boyce, Bryan Williams; Alternate Board

Member Nasseem Ramin; Student Representative Daniel Murphy

Absent: Alternate Board Member Jason Emerine; Student Representative Jane Wineman

Administration:

Nick Dupuis, Planning Director (PD)

Jana Ecker, Assistant City Manager (ACM) Laura Eichenhorn, City Transcriptionist

Melissa Fairbairn, Assistant to the City Manager

Master Planning Team:

Matt Lambert, DPZ

10-151-21

B. Approval Of The Minutes Of The Regular Planning Board Meeting of September 23, 2021

Mr. Share noted that on page four the second motion was in regards to the Special Land Use Permit. He said that should be corrected, and recommended that conditions one through four from the Final Site Plan and Design Review motion be re-listed for the Special Land Use Permit Motion.

Motion by Mr. Share

Seconded by Mr. Williams to approve the minutes of the Regular Planning Board Meeting of September 23, 2021 as amended.

Motion carried, 5-0.

VOICE VOTE

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

Nays: None

Abstain: Clein, Koseck

C. Chair's Comments

Chair Clein welcomed everyone to the meeting and reviewed the meeting's procedures.

10-153-21

D. Review Of The Agenda

10-154-21

E. Unfinished Business

1. 34745 Woodward – Jax Kar Wash – Request for Final Site Plan and Design Review for circulation, layout and minor building changes to the existing site.

PD Dupuis presented the item.

Jason Milen, owner, and Bradley Scobel, attorney, spoke on behalf of the application.

Mr. Scobel stated that the north side of the site should be considered a drive lane, which would not necessitate a screening wall. He said having a wall there would make the site inefficient and would make it too difficult to clear the site of snow.

Mr. Milen said he would be willing to change the colors of the stanchions if requested.

In reply to Mr. Koseck, Mr. Milen said he would also clean up the conduits once the awning is removed and would clean up the conduits on the north elevation. He said he would also be removing a conduit on the north side.

Messrs. Koseck and Jeffares said choosing a subtler color for the stanchions would be appropriate.

Noting that there are three Jax signs visible on the north elevation, Mr. Jeffares opined that the on-site signage would be more appropriately calculated based on Woodward being the frontage. Consequently, he said extra signage afforded by using Brown as the frontage was probably not necessary.

Ms. Whipple-Boyce concurred.

Mr. Share noted the applicant's contention that the extra signage afforded by using Brown would be used for directional signage only that would not be visible from Brown or Woodward. He said he was comfortable using Brown to calculate the signage for that reason. He noted the applicant would also be getting rid of the pylon sign which he counted as positive.

Chair Clein concurred.

Chair Clein said the mechanical equipment need not be screened but that it should be painted to blend in with the building. He said the applicant should also should show Auto Turn on the site plans and be required to receive an administrative approval for it.

Ms. Whipple-Boyce said 'Kar Wash' could be removed from both sides of the frontage without impact the success of the business. She said it would be more aesthetically pleasing.

Messrs. Share, Williams, Jeffares, Koseck, Ms. Whipple-Boyce and Chair Clein said there was no flexibility in regards to screening wall requirement on the north side of the building at the east property line along Woodward. A number of Board members also noted that the screening wall would also increase pedestrian safety.

Chair Clein said he would not vote to approve the project without the screening wall. While he noted the applicant would be legally within their rights to pursue a variance, the Chair emphatically stated it would be counter to the successful interaction of pedestrians and vehicles and to the preservation of health, safety and welfare on-site.

Mr. Boyle noted this project would be unlikely to move forward without a screening wall along Woodward at the east side of the property north of the building and recommended the Board and the applicant reach a compromise.

Mr. Koseck reiterated his strong support for a 32-inch masonry screening wall on the north side of the building along the east property line of the site along Woodward. He said he could think of no legitimate reason to not have a screening wall there.

Mr. Boyle recalled the applicant claimed that vehicles would have problems making a necessary turn if the screening wall was there. He stated that requiring a masonry wall on the north side of the building along Woodward would require the applicants to change their building.

Mr. Koseck said that if that was the case then a change to the building was necessary.

Mr. Share suggested the Board require a 32-inch masonry screening wall, or some other permanent visual barrier that meets the requirements of the ordinance and would be approved by the Planning Board.

Chair Clein concurred. He said the screening wall should be required and the applicant should be allowed to make minor modifications to the materials that could be approved by the Board at the end of a future meeting should the applicant take that route.

PD Dupuis noted that masonry or evergreens are the two most commonly used options for a screening wall.

Mr. Milen said he was unable to do a screening wall on the north side of the site and would abandon the project if required to install one.

Motion by Mr. Share

Seconded by Mr. Williams to approve the Final Site Plan & Design Review for 34745 Woodward – Jax Kar Wash – with the following conditions: 1. The applicant must submit revised plans with sufficient screening that meets Article 4, Section 4.54 of the Zoning Ordinance; 2. The Board designates Brown Street as the frontage for the purposes of signage; 3. That the applicant change the stanchions to a neutral color subject to administrative approval; 4. The applicant must comply with the requests of all City Departments including the City's traffic engineer; and, 5. That there not be a curb cut at the required break in the screening wall on the north side.

Mr. Jeffares said he was worried about an unapproved drive lane on the north side of the site along Brown St. He suggested that it be specified that the break in the wall on the north side of the site not be used for routine operation.

Mr. Share said the minutes should reflect the Board's understanding that it is a break in the wall and not a drive lane.

Mr. Jeffares noted there was a curb cut.

ACM Ecker noted the break in the wall should be for pedestrians and should also be screened with a two-foot offset wall so vehicles cannot get through.

PD Dupuis noted Mr. Milen had said he was willing to remove the curb cut.

Messrs. Share and Williams agreed to add the fifth condition in response to the discussion.

Motion carried, 4-3.

ROLL CALL VOTE

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

10-155-21

F. Rezoning Applications

None.

10-156-21

G. Community Impact Studies

None.

10-157-21



MEMORANDUM

Planning Division

DATE: October 13th, 2021

TO: Planning Board Members

FROM: Nicholas Dupuis, Planning Director

SUBJECT: 34745 Woodward – Jax Kar Wash – Final Site Plan & Design

Review (UPDATES IN BLUE)

The applicant has submitted a Final Site Plan and Design Review application to make minor site and building design changes to 34745 Woodward – Jax Kar Wash. The roughly 0.59 acre site is currently home to the aforementioned Jax Kar Wash and associated parking and service equipment. The applicant is proposing to update their site to include the relocation of detailing spaces to the north side of the building and a redesign of the vehicular circulation pattern and parking, new automated attendants, and changes to the existing building and signage.

The Planning Board reviewed the first iteration of the Final Site Plan and Design Review for Jax Kar Wash in July 2019. Over several months, the Planning Board continually postponed consideration of the proposal citing concerns including (but not limited to) circulation in the MDOT right-of-way, parking lot screening, landscaping/beautification, and safety.

The applicant most recently appeared in front of the Planning Board for Final Site Plan and Design Review on September 9th, 2021 during which the board moved to postpone the discussion to September 23rd, 2021 to allow the applicant to revise the site plans to address the concerns of the board.

On September 23rd, the Planning Board moved to again postpone consideration of the Final Site Plan application citing concerns with the lack of proposed screening along the Woodward frontage, the overhead garage door location/size, and a request for a material board.

1.0 Land Use and Zoning

- 1. <u>Existing Land Use</u> One-story commercial building and associated parking.
- 2. Zoning B2 (General Business) and D4 (Downtown Overlay)

3. <u>Summary of Adjacent Land Use and Zoning</u> –

	North	South	East	West	
Existing Land Use	Commercial/ Office	Mixed-Use	Commercial	Commercial/ Office	
Existing Zoning District	B4 (Business- Residential)	B3 (Office- Residential)	O2 (Office- Commercial)	B2 (General Business)	
Overlay Zoning District	D4	D4	MU5	D3	

2.0 Setback and Height Requirements

Please see the attached zoning compliance summary sheet for details on setback and height requirements. There are currently no issues with bulk, height or placement with the Final Site Plan and Design Review application submitted.

3.0 Screening and Landscaping

- 1. <u>Dumpster Screening</u> There are no changes proposed to the dumpster or screening on site. The existing dumpster is located in the southwest corner at the rear of the property and is screened with wood fencing.
- 2. <u>Parking Lot Screening</u> Article 4, Section 4.54 (C)(3)(d) of the Zoning Ordinance requires a 32 in. capped masonry screen wall placed along the setback line along the front and/or side of a parking facility that abuts a street. Additionally, Section 4.54 (B) states that:

"Screen walls along a street shall be so designed as to not form a continuous barrier. Depending upon the length, location and ground contour, a break in the screen wall is required every 50 to 100 ft. Such breaks shall be a minimum of 10 ft. long. A screening wall of a material permitted under Section 4.54(B)(1) shall be constructed for the full length of the required break and shall be located a minimum of 2 ft. to either the front of or the rear of the principal screen wall."

At this time, the applicant is proposing roughly 90 ft. of 32 in. high masonry screen wall with brick veneer spanning a portion of Brown St. and the northeast corner along Woodward. The screen wall contains a break at roughly 55 ft. which has been supplemented by two planters. This break is also related to a new proposed curb cut that is describes as an escape lane onto Brown St. There are several concerns related to parking lot screening on site:

First, the required break does not appear to meet the requirements of Section 4.54 (B), as the proposed break does not contain a screen wall with a permitted material, nor do the proposed planters sit 2 ft. to either the front or the rear of the principal screen wall. The permitted materials for screen wall breaks are a masonry wall with an exterior face of brick, precast aggregate panels, sculptured block, stone, architecturally treated concrete or other materials acceptable to the Planning Board, which are demonstrated to be durable, easily maintained, and provide a similar permanent visual barrier. The Planning Board may wish to discuss whether the proposed planters are a screening material that is acceptable or not.

Second, it appears as though there are areas of the parking lot area that are left without any proposed screening. These areas include a small portion of western side of the north property line along Brown St., a large section on the east property line along Woodward north of the building, and a small area along the east property line south of the building. Article 4, Section 4.54 (D)(2) states that any driveway furnishing access to a parking facility shall be considered as part of the parking facility for the purposes of the Zoning Ordinance.

Finally, the portion of the proposed screen wall at the northwest corner of the property appears to be constructed outside of the private property line onto what would be MDOT property. If the applicant were to continue the screen wall south, the expansion would also be located on MDOT property.

The applicant has pulled the screen wall at the northeast corner back to be completely within private property.

Due to the issues noted above, the applicant must submit revised plans with sufficient screening that meets Article 4, Section 4.54 of the Zoning Ordinance or obtain a variance from the Board of Zoning Appeals.

3. <u>Mechanical Equipment Screening</u> – There are no changes proposed to the existing rooftop units on site, nor are any new rooftop or traditional ground mounted mechanical units being proposed.

However, the applicant is proposing 8 vacuum stanchions for detailing located on either side of the 4 stations on the north side of the building. Article 4, Section 4.54 (B)(8) requires all ground-mounted mechanical equipment to be screened with a masonry screen wall with wood gates. The screen wall is required to obscure the receptacle and equipment from public view. The vacuum stanchions

are 40 in. in height. The proposed 32 in. parking lot screen wall does not sufficiently obscure the vacuum stanchions from public view and thus, the applicant must provide additional screening for the mechanical equipment on the north side of the building, or obtain a variance from the Board of Zoning Appeals. Section 4.54 (A) states that flexibility in the materials, size, height and placement of walls is permitted in order to allow architectural harmony and usable open space and to accomplish a unified design. The Planning Board may wish to consider arborvitae to supplement the screening along the northern property line to enhance visual interest, reduce impervious area, and further dampen noise.

The applicant has submitted revised plans with a reduced vacuum stanchion height of 36 in. from the 40 in. previously proposed. On September 23rd, 2021, the Planning Board discussed the height of the stanchions and expressed that they were comfortable with the level of screening so long as the stanchion height was reduced from 40 in. Additionally, comments were made regarding screen wall height and maintaining the 32 in. to provide for safe vision clearances. The Planning Board should confirm that the proposed 32 in. capped masonry screen wall proposed adequately screens the 8 vacuum stanchion mechanical units at the north side of the property.

- 4. <u>Landscaping</u> Article 4, Section 4.20(C)(1) of the Zoning Ordinance exempts any property in the Downtown Overlay District from the standards outlined in Section 4.20(F) Parking Lot Landscaping. However, based on a number of concerns from the Planning Board over the course of this project, the applicant has proposed two landscaped areas within the site, and one landscaped area in the MDOT right-of-way at the corner of Brown and Woodward.
 - Landscape Area 1 (Southern portion of property near automated attendants): Circular, aboveground landscaping bed contained by 18 in. tall dark charcoal retaining wall. Plantings include 3 Paperbark Maple trees and 180 All Gold Japanese Forest Grass plants for groundcover.
 - Landscape Area 2 (Northwest side of property at car wash entrance):
 Oblong landscape bed containing 9 Dwarf Mugo Pine and 164 All Gold
 Japanese Forest Grass plants for groundcover, which will be contained
 by 102 ft. of black steel edging with roughly 2.5 ft. of cobblestone border
 around the entire bed.
 - Landscape Area 3 (Corner of Brown and Woodward): Curved landscaping bed containing 22 Gro-Low Sumac, 61 ft. of black steel edging, and roughly 2.5 ft. of cobblestone border around the entire bed.

At this time, all of the plantings proposed are permitted and not contained in the prohibited species list contained in Article 4, Section 4.20 of the Zoning Ordinance.

5. <u>Streetscape</u> – The applicant is not proposing to add any benches, pedestrian scaled streetlights, trash receptacles or bike racks along Brown or Woodward. The existing streetscape along Brown contains two large light poles, and no additional pedestrian features. The Planning Board may wish to require the applicant to install pedestrian scale street lighting, benches, trash receptacles, or bike racks to meet the Downtown streetscape requirements.

The applicant is however proposing to install 5 new street trees and associated 4 ft. x 4 ft. tree grates to match the City of Birmingham standards. The 5 new trees are proposed as 3 in. caliper Gingko trees. Article 4, Section 4.20(G) requires at least one street tree for each 40 ft. of linear frontage. The applicant has roughly 185 linear ft. of frontage along Brown Street, and roughly 105 linear ft. of frontage along Woodward Avenue. Thus, the applicant is required to provide 5 street trees along Brown and 3 street trees along Woodward for a total of 8 street trees. The applicant has provided the 5 required street trees along Brown, and has received a waiver from the Staff Arborist for the 3 street trees on Woodward, meeting the requirements.

Finally, the applicant has also shown a pedestrian path along the sidewalks on Brown St. and Woodward that maintains a 5 ft. clear path in response to Planning Board concerns regarding a safe and unobstructed sidewalk. In areas where new street trees are proposed, the 5 ft. clear path includes a portion of the ADA tree grates. At this time, the site plans submitted do not appear to indicate any additional striping or considerations within the conflict zones at the 3 proposed vehicle ingress/egress areas on the site. The Planning Board may wish to require a clear delineation between the pedestrian sidewalk and the paved area in the right-of-way, as well as some protective elements for pedestrians.

4.0 Parking, Loading and Circulation

Parking – The proposed development and its commercial use is located in the Downtown Parking Assessment District; thus, no parking is required on site for the commercial use. The existing site contains 17 off-street parking spaces total in the front and rear of the building. The proposed site redesign rearranges the parking with 6 traditional parking spaces (including one barrier-free space) to be located in the rear, and 4 parking/detailing spaces in front for a total of 10 off-street parking spaces. The applicant has stated in the application that all of the

traditional parking spaces will be greater than or equal to the 180 sq. ft. standard.

- 2. <u>Loading</u> There are no changes to the loading requirements.
- 3. <u>Vehicular Circulation and Access</u> The existing main point of entry for vehicles seeking service is on Brown St. at the west end of the property. There exists an entrance/exit to a parking facility at the east end of the property at Woodward, and one large exit on Woodward. The applicant is proposing to remove the eastern entry/exit on Brown and relocate it roughly 45 ft. west to be utilized as an exit only from the detailing stations in front of the building. Access to the detail stations is proposed via a "U-turn" on private property from an overhead garage door on the north side of the building near the exit of the car wash facility.

In response to the Fleis & Vandenbrink letter dated September 23rd, 2021, which stated some concerns about the vehicle types shown making the turn out of the proposed overhead garage door, the applicant has submitted revised plans showing larger pickup trucks making the turn out of the garage door. In addition, the applicant has also increased the size of the proposed overhead garage door from 14 ft. to 16 ft. wide to increase the turning radius for vehicles exiting the car wash for the detailing stations.

4. <u>Pedestrian Circulation and Access</u> – The applicant is proposing a new entrance to the existing lobby located at the front of the building on the Woodward facing facade. No other changes are proposed.

5.0 Lighting

The applicant is not proposing any changes to the lighting on the site at this time.

6.0 Departmental Reports

- 1. <u>Engineering Division</u> Please see attached Engineering Division Comments.
- Department of Public Services The Department of Public has noted that a
 waiver for the 3 required street trees on Woodward was granted, and that the 5
 proposed Ginkgo trees along Brown St. are required to be male clone Ginkgo
 trees.
- 3. <u>Fire Department</u> The Fire Department has provided comments stating that the traffic on Brown St. must be controlled, and that the road must not be blocked and/or impassable for emergency vehicles.

- 4. <u>Police Department</u> The Police Department has expressed concerns regarding the sharp left turn out of the car wash into the vacuum area and the possibility of cars creeping into the sidewalk out of the turn. Additionally, they are concerned about the possibility of backups at the detail stations, which they believe could cause cars to block the sidewalk or try to reverse into the MDOT right-of-way to find a way to exit out of the line.
- 5. <u>Building Division</u> Please see attached Building Division comments.

7.0 Design Review

As noted above, the applicant is making minor changes to the building on site, while focusing the majority of proposed changes on the site circulation. The proposed changes to the building include a new entry door to the existing lobby located along the Woodward frontage, the removal of an existing awning structure at the car wash entrance, a new overhead garage door, and new signage. Site design changes include a new attendant booth, 3 new service canopies/auto attendants, and 4 new vehicle detail stations.

<u>Lobby Entrance & Overhead Garage Door</u>: The proposed lobby entrance will replace an existing large window on the Woodward facade. The door will be a Kawneer 250T Insulpour single clear glass and aluminum metal door with Trifab 451T framing system and sidelight. The doorframe is proposed to match the building color theme. An interior floor plan was also submitted detailing the pedestrian travel path within the building and the customer access to the lobby/cashier services. The overhead garage door measures 14 ft. by 10 ft. and is proposed as metal with "Quartersawn Oak" brown paint.

The applicant has increased the width of the proposed overhead garage door to 16 ft. to increase the turning radius for vehicles.

<u>Detail Stations and Auto Attendants</u>: The applicant is proposing to add a total of 8 new 40 in. tall vacuum stanchions and 3 roughly 11 ft. auto-attendant service canopies within the site. The auto attendant stations consist of a canopy, gate arm, and service kiosk, while the vacuum stanchions consist of a hose and associated equiptment. The color scheme is proposed to match the Jax Kar Wash Brand with Honor Blue and Daisy yellow.

The applicant has reduced the size of the 8 vacuum stanchions from 40 in. to 36 in.

<u>Signage</u>: The site currently contains 1 wall sign, 1 roof sign, and 1 pole sign for a total of 3 existing signs. The proposed signage design plan details 1 new wall sign, 2 new name letter signs, the removal of the existing pole sign, and no changes to the roof sign, for a total of 4 signs on the building. There are additional signs located on the proposed auto-attendant machines that shall also be considered in the combined sign area. The following table outlines the details of the proposed signage:

Content	Sign Type	Location	Area (sq. ft.)	Illumination
"Kar Wash"	Name Letter	East Façade	32.9	Reverse Halo Lit
"Jax"	Wall	East Façade	27.5	Reverse Halo Lit
"Kar Wash"	Name Letter	North Façade	24.3	Reverse Halo Lit
"Jax Kar Wash"	Roof	Roof	63	None
"Any Form of	Name Letter	Auto Attendant	4.6	None
Payment"				
"Fastlane/No	Name Letter	Auto Attendant	4.6	None
Cash"				
"Unlimited Club	Name Letter	Auto Attendant	4.9	None
Only"				
Jax Logo (3)	Wall	Auto Attendant	1.35	None
TOTAL	-	-	163.2	-

The Sign Ordinance requires that combined sign area be calculated based on the principal building frontage, which is defined as the width of the building on the side where the primary entrance to the business is located, which may or may not front a street. The Planning Board may designate an alternate horizontal building width as the principal building frontage for signage purposes. The primary entrances are along the Woodward frontage (pedestrian) and along the rear of the building (vehicular). The applicant has requested and has designed signage using the Brown St. horizontal building width as their frontage, in which the applicant is permitted a combined sign area of 1.5 square feet per each linear foot of principal building frontage (135 linear feet). The applicant is proposing 163.2 square feet of building signage where 202.5 square feet would be permitted if the Brown St. frontage were designated. The Planning Board should discuss whether the Brown St. frontage should be designated as the principal building frontage for signage purposes or not.

Furthermore, although the applicant has submitted content and area details of the main building signage, the plans do not contain other pertinent details such as projection from the building face, side profiles and materials. It is also apparent that there are other signs proposed across the site on the auto-attendant stations, as well as the vacuum stanchions. A sign is defined as any object, device, logo, display or structure, or part thereof, which is intended to advertise, identify, display, or direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means. The applicant must submit a consistent and detailed sign plan including all building signs and accessory signage to complete the Design Review.

The applicant has submitted additional sheets detailing the lighting, projection, and design of the signs that meet the requirements of the Sign Ordinance.

8.0 Required Attachments

	Submitted	Not Submitted	Not Required
Existing Conditions Plan			\boxtimes
Detailed and Scaled Site Plan	\boxtimes		
Certified Land Survey	\boxtimes		
Interior Floor Plans	\boxtimes		
Landscape Plan	\boxtimes		
Photometric Plan			\boxtimes
Colored Elevations	\boxtimes		
Material Specification Sheets	×		
Material Samples	×		
Site & Aerial Photographs	\boxtimes		

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.
- (2) The location, size and height of the building, walls and fences shall be such that there will be no interference with adequate light, air and access to adjacent lands and buildings.
- (3) The location, size and height of the building, walls and fences shall be such that they will not hinder the reasonable development of adjoining property nor diminish the value thereof.
- (4) The site plan, and its relation to streets, driveways and sidewalks, shall be such as to not interfere with or be hazardous to vehicular and pedestrian traffic.
- (5) The proposed development will be compatible with other uses and buildings in the neighborhood and will not be contrary to the spirit and purpose of this chapter.
- (6) The location, shape and size of required landscaped open space is such as to provide adequate open space for the benefit of the inhabitants of the building and the surrounding neighborhood.

10.0 Recommendation

Based on a review of the site plan submitted, the Planning Division recommends that the Planning Board **POSTPONE** Final Site Plan and Design Review application for 34745 Woodward – Jax Kar Wash – pending receipt of the following:

- 1. The applicant must submit revised plans with sufficient screening that meets Article 4, Section 4.54 of the Zoning Ordinance or obtain a variance from the Board of Zoning Appeals;
- 2. The applicant must comply with the requests of all City Departments.

11.0 Sample Motion Language

Motion to **APPROVE** the Final Site Plan & Design Review for 34745 Woodward – Jax Kar Wash – with the following conditions:

- 1. The applicant must submit revised plans with sufficient screening that meets Article 4, Section 4.54 of the Zoning Ordinance or obtain a variance from the Board of Zoning Appeals;
- 2. The applicant must comply with the requests of all City Departments.

OR

Motion to **POSTPONE** the Final Site Plan & Design Review for 34745 Woodward – Jax Kar Wash – pending receipt of the following:

- 1. The applicant must submit revised plans with sufficient screening that meets Article 4, Section 4.54 of the Zoning Ordinance or obtain a variance from the Board of Zoning Appeals;
- 2. The applicant must comply with the requests of all City Departments.

OR

Motion	to DENY	the Final	Site Plan	ı & Design	Review for	or 34745	Woodward	Jax	Kar
Wash -	for the fo	ollowing re	easons:						

1.	
2.	
3.	

Zoning Compliance Summary Sheet Final Site Plan Review 34745 Woodward – Jax Kar Wash

Existing Site: 1-Story Commercial Building – Jax Kar Wash

Zoning: B-2 (General Business) & D-4 (Downtown Overlay)

Land Use: Commercial

Existing Land Use and Zoning of Adjacent Properties:

	North	South	East	West	
Existing Land Use	Commercial/ Office	Mixed Use	Commercial	Commercial/ Office	
Existing Zoning District	B-4, Business - Residential	B-3, Office - Residential	O-2, Office/ Commercial	B-2, General Business	
Overlay Zoning District	D-4	D-4	MU-5	D-3	

Land Area: Existing: 0.59 ac.

Proposed: 0.59 ac. (no changes proposed)

Dwelling Units: Existing: 0

Proposed: 0

Minimum Lot Area/Unit: Required: 1,000 sq. ft. (single story hotel or motel)

500 sq. ft. (two/three story hotel or motel)

1,280 sq. ft. (multiple family)

Proposed: 0 sq. ft. (no units proposed)

Min. Floor Area /Unit: Required: 300 sq. ft. (single story hotel or motel)

600 sq. ft. (efficiency and one bedroom)

800 sq. ft. (two or more bedroom)

Proposed: 0 sq. ft. (**no units proposed**)

Max. Total Floor Area: Required: 100%

Proposed: 26% (no changes proposed)

Min. Open Space: Required: N/A

Proposed: N/A

Max. Lot Coverage: Required: N/A

Proposed: N/A

Front Setback: Required: 0 ft.

Proposed: 0 ft. (no changes proposed)

Side Setbacks Required: Not Required

Proposed: ≈ 25 ft. & 5 ft. (no changes proposed)

Rear Setback: Required: Equal to adjacent, preexisting building

Proposed: \approx 37 ft. (no changes proposed)

Min. Front+Rear Setback Required: N/A

Proposed: N/A

Max. Bldg. Height: Permitted: 80 ft., four or five stories

Proposed: ≈ 16 ft. (no changes proposed)

Min. Eave Height: Required: 20 ft.

Proposed: ≈ 14 ft. (no changes proposed)

Floor-Ceiling Height: Required: N/A

Proposed: N/A

Front Entry: Required: N/A

Proposed: N/A

Absence of Bldg. Façade: Required: N/A

Proposed: N/A

Opening Width: Required: N/A

Proposed: N/A

Parking: Required: N/A (Parking Assessment District)

Proposed: 6 traditional spaces (incld. 1 barrier–free)

4 detailing spaces

Min. Parking Space Size: Required: 180 sq. ft.

Proposed: $8 \ge 180 \text{ sq. ft.}$

Parking in Frontage: Required: N/A

Proposed: N/A

Loading Area: Required: 0

Proposed: 0

Screening:

Parking: Required: Required along the front & side

Proposed: 32" brick screen wall along most of Brown Street,

none on Woodward (The applicant must submit plans showing parking lot screening along the front and side of the parking facility, or obtain a variance from the Board of Zoning Appeals)

Loading: Required: N/A

Proposed: N/A

Rooftop Mechanical: Required: Fully screened from public view

Proposed: No changes proposed

<u>Elect. Transformer</u>: Required: Fully screened from public view

Proposed: N/A (no transformers existing or proposed)

<u>Dumpster</u>: Required: Masonry screenwall with wood gates

Proposed: Wood fence screening (**no changes proposed**)