

# BOARD OF ZONING APPEALS AGENDA

City of Birmingham  
Commission Room of the Municipal Building  
151 Martin Street, Birmingham, Michigan  
December 8, 2015  
7:30 PM

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1. ROLL CALL
2. APPROVAL OF THE MINUTES OF NOVEMBER
3. APPEALS

	Address	Petitioner	Appeal	Type/Reason
1.	1139 EMMONS	MOGASSABI	15-31	INTERPRETATION
2.	1172 E LINCOLN	GROZDE	15-32	DIMENSIONAL
3.	1078 PURITAN	JARJOSA	15-33	DIMENSIONAL

4. CORRESPONDENCE
5. GENERAL BUSINESS
6. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA
7. ADJOURNMENT

## Title VI

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

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

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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 10, 2015**

City Commission Room  
151 Martin Street, Birmingham, Michigan

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Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, November 10, 2015. Chairman Charles Lillie convened the meeting at 7:30 p.m.

**Present:** Chairman Charles Lillie; Board Members Kevin Hart, Jeffrey Jones, Randolph Judd, John Miller, Erik Morganroth

**Absent:** Board Member Peter Lyon; Alternate Board Member Cynthia Grove

**Administration:** Bruce Johnson, Building Official  
Scott Lenhart, Asst. Building Official  
Carole Salutes, Recording Secretary

The chairman welcomed everyone and explained the BZA procedure to the audience. Additionally, he noted that the members of the Zoning Board are appointed by the City Commission and are volunteers. They 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. There are no land use variances called for this evening. Also, appeals are heard by the board as far as interpretations or rulings. Four affirmative votes are required to reverse an interpretation or ruling. There are no interpretations on this evening's agenda.

**T# 11-68-15**

**APPROVAL OF THE MINUTES OF THE BZA MEETING OF OCTOBER 13, 2015**

Mr. Miller:

Page 4 - Last paragraph above "Motion carried," strike "a grocery store that" and replace it with "zoning that allows a grocery store, however. . . ."

Mr. Jones:

Page 6 - State the motion as it was voted upon, replacing "determined" with "considered."

**Motion by Mr. Jones**

**Seconded by Mr. Miller to approve the Minutes of the BZA meeting of October 13, 2015 as corrected and amended.**

**Motion carried, 6-0.**

VOICE VOTE

Yeas: Jones, Miller, Hart, Judd, Lillie, Morganroth

Nays: None

Absent: Lyon

**T# 11-69-15**

**1240 LAKE PARK  
(Appeal 15-30)**

The owners of the property known as 1240 Lake Park request the following variance to allow for the construction of a house addition less than the required minimum distance between principal residential buildings:

A. Chapter 126, Article 4, Section 4.69 (C) of the Zoning Ordinance requires a minimum distance between buildings of 26.25 ft. for this lot. The applicant is proposing 19.30 ft. Therefore, a variance of 6.95 ft. is requested.

Mr. Lenhart explained the applicant proposes to build an addition onto an existing, non-conforming house. The non-conformance is due to the distance between buildings being short. All other proposed setbacks and distance requirements for this lot are conforming.

Chairman Lillie received confirmation that 19.30 ft. is existing. Mr. Lenhart advised that the applicant wants to tear down part of the house and extend it out further, another 14.75 ft. beyond the current house; but the extension will stay in the existing plane of the house. The lot to the south is narrower so it doesn't need such a wide side yard setback. If they ever want to do some work, a 20.5 ft. setback would be needed. The applicant's lot is wider and therefore needs more distance between structures.

Further responding to Chairman Lillie, Mr. Lenhart explained that if the requested variance were granted and the house to the south wanted to extend to the rear, they would not need a variance because their house jogs over 5 ft.

Mr. Hart received clarification that the adjacent home to the south is also existing, non-conforming.

It was discussed that if the owner of the house to the south chooses to align an addition with the front portion of the home, a variance for the building separation of 1.22 ft. would

be required, regardless of the granting of the petitioner's variance for the addition, since the 19.30 ft. separation exists at the original home. Therefore, the granting of the requested variance would not be injurious to the neighbor.

Mr. Michael J. Gordon, Moiseev/Gordon Associates, Inc., spoke to represent the homeowner, Mr. Steve Glucksman; and Mr. Jim Charles, the builder, both of whom were present. Mr. Gordon indicated they are trying to be sensitive to the neighbors to the south so that the addition will have minimal impact. It makes sense to remove the previous addition from 20 years ago and upgrade it.

There were no comments from the audience on this appeal at 7:45 p.m.

**Motion by Mr. Miller**

**Seconded by Mr. Hart with regard to 1240 Lake Park, appeal 15-30, to approve. The problem, he believes, is not self-created. The location of the existing house and the adjacent house to the south is a pre-existing condition. Both homes are outside of the zoning envelope, which is certainly a very unique circumstance of the property.**

**Mr. Miller thinks that strict compliance would render expanding this house burdensome and he certainly believes a variance would do substantial justice to the petitioner and the adjacent property, and would cause no injury again to that adjacent property or any future property owners that might want to expand that house.**

**So again, Mr. Miller would motion to approve and tie that to the drawings as submitted.**

**Motion carried, 6-0.**

**ROLLCALL VOTE**

Yeas: , Miller, Hart, Jones, Judd, Lillie, Morganroth

Nays: None

Absent: Lyon

**T# 11-70-15**

**CORRESPONDENCE (none)**

**T# 11-71-15**

**GENERAL BUSINESS**

A. Discussion on adding a section to the agenda for public comments

Mr. Jones expressed the desire to comply with the Charter and the wishes of the City Commission.

Mr. Johnson noted that other City boards seem to say at the end of their agenda "Open to the public for matters not on the agenda." All were in favor of that wording.

**T# 11-72-15**

## **ADJOURNMENT**

No further business being evident, the board members passed a motion to adjourn at 7:53 p.m.

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Bruce R. Johnson, Building Official

# **CASE DESCRIPTION**

## **1139 Emmons (15-31)**

**Hearing date: December 8, 2015**

The owners of the property known as 1139 Emmons request the following appeal from the Building Officials interpretation of the Zoning Ordinance:

- A. **Chapter 126, Article 8, Section 8.01 (D)** of the Zoning Ordinance allows for an appeal of a decision of the Building Official. The Building Official has determined that an eave is not required by the Zoning Ordinance to be continuous under a dormer on the west elevation of a new home built at 1155 Emmons.

**Staff Notes:** The applicant is appealing the Building Officials interpretation that the Zoning Ordinance does not require a continuous roof eave line under a dormer projecting from the roof. Specifics pertaining to the interpretation can be found in the Building Officials letter requesting a legal opinion, and the opinion received, both dated October 15, 2015. They are located in the appeal documents as Exhibit 7 and Exhibit 6 respectively. For informational purposes I have attached a copy of the violation notice mentioned in the appeal documents.

This property is zoned R-3.



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Bruce R. Johnson  
Building Official

Application Date: 10-30-15



Hearing Date: 12-8-15

Received By: \_\_\_\_\_

Appeal # \_\_\_\_\_

### Board of Zoning Appeals Application

Type of Variance: Interpretation ☒ Dimensional \_\_\_\_\_ Land use \_\_\_\_\_ Sign \_\_\_\_\_ Admin review \_\_\_\_\_

#### Property Information:

Street address:	1155 Emmons Avenue	Sidwall Number:	08-20-31-351-006
Owners name:	Fareed Morjaradi	Phone #:	
Owners address:	1155 Emmons Avenue	Email:	
City: State:	Birmingham, Michigan	Zip code:	48009
Contact person:		Phone #:	

#### Petitioner Information:

Petitioner name:	Khalil and Mary Mogassabi	Phone #:	248-646-0116
Petitioner address:	1139 Emmons Avenue	Email:	kmpg@att.net
City:	Birmingham	State:	Michigan
		Zip Code:	48009

#### Required Attachments:

- Original Certified Survey    Original BZA application    Letter of hardship or practical difficulty  
10 folded copies of the site plan and building plans (existing and proposed floor plans and elevations)  
Set of plans and survey mounted on foam board  
If appealing a board decision, a written transcript from the meeting is required along with 10 copies of minutes from any previous Planning, HDC or DRB board.

#### General Information:

Prior to submitting for a Board of Zoning Appeals review, you must schedule an appointment with the Building Official or a City Planner for a preliminary discussion on your submittal. The deadline is the 15th of the previous month.

The BZA review fee is \$310.00 for single family residential, \$510.00 for all others; and \$50.00 for the public notice sign.

Location of all requested variances must be highlighted on plans and survey. All dimensions to be taken in feet to the first decimal point.

Variance chart example:

Required	Existing	Proposed	Amount of Variance
26'	24'	24'	1'

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.

Attorney for Petitioner: \_\_\_\_\_

Mark S. Demorest

Dated: 10/30/15

Signature of Owner: \_\_\_\_\_

Date: 10/29/2015





# DEMOREST LAW FIRM



PRIMERUS.com  
MEMBER FIRM

PHONE : 248.723.5500  
FAX : 248.723.5588  
WEB : www.demolaw.com

October 30, 2015

**VIA HAND DELIVERY**

Zoning Board of Appeals  
City of Birmingham  
151 Martin Street  
Birmingham, Michigan 48012

**Re: Board of Zoning Appeals Application  
In re: 1155 Emmons Avenue, Birmingham, MI  
Sidwell No. 08-20-31-351-006**

Dear Board Members:

Enclosed you will find my clients' Board of Appeals Application for review and consideration, regarding the erroneous granting of a Certificate of Occupancy. Also enclosed is our firm's check for the necessary filing fee.

Please advise me as to when the Hearing Date will be set in this matter. If you have any questions, please feel free to contact me at the phone number referenced above.

Sincerely,

**DEMOREST LAW FIRM, PLLC**

Mark S. Demorest  
mark@demolaw.com

MSD/1

Enclosures



November 23, 2015



City Clerk  
City of Birmingham  
151 Martin  
Birmingham, MI 48009

To The Birmingham Board of Zoning Appeals:

I reside at 1040 Chapin and am uneasy about the appeal being made by the owners of 1139 Emmons. The nature of the hearing scheduled for December 8 is unclear however I would still like to express two concerns.

First, when I purchased my home 32 years ago the backyard never flooded. Since the new homes have been constructed my backyard floods most of the time. I am extremely concerned that my basement may flood as well.

Second, the owners of 1139 Emmons (or their representatives) may not have experience with sitting on a Zoning Board. They appear not to have respect for the judgement of our Board of Zoning Appeals who have knowledgeable and responsibly cared for our city over the years.

I am convinced that my interests will be equally represented during this meeting.

Respectfully,

A handwritten signature in black ink that reads "Gretchen Maricak".

Gretchen Maricak Architect  
1040 Chapin  
Birmingham, MI 48009



Bruce Johnson &lt;bjohnson@bhamgov.org&gt;

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**BZA Appeal Hearing Date: Dec 8, 2015. Building Official Interpretation:  
Continuous eave below 3rd story windows**

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Chris Hewitt &lt;chewitt4693@comcast.net&gt;

Sat, Nov 28, 2015 at 5:57 PM

To: lpierce@bhamgov.org

Cc: Bjohnson@bhamgov.org

Dear Members of the Board of Zoning Appeals

I understand that the owners of 1139 Emmons have brought an appeal against the city's decision not to take enforcement action to require builders to interrupt three story walls by extending an eave under the third story window at the attic level. I am in support of this appeal.

Birmingham is a unique, attractive and very special environment characterized by a range of traditional two story homes. The intent of the Birmingham Zoning Ordinance is, I believe, to maintain this character.

For these reasons I request that you grant this appeal.

Respectfully,

Christopher Hewitt  
1166 Bird Ave.,  
Birmingham MI 48009

28 November 2015

Board of Zoning Appeals  
c/o City Clerk  
City of Birmingham  
151 Martin St., PO Box 3001  
Birmingham, MI 48012

**Re: BZA Appeal of Building Official Interpretation - Hearing date: December 8, 2015**

Dear Members of the Board of Zoning Appeals:

I am in support of the appeal brought by the owners of 1139 Emmons. I believe that the Building Official's interpretation of the Zoning Ordinance requiring a continuous eave below the third story window on three story tall dormer walls is in line with the spirit and intent of the Birmingham Zoning Ordinance to maintain the traditional two-story character of Birmingham neighborhoods.

For these reasons, I request that you grant this appeal.

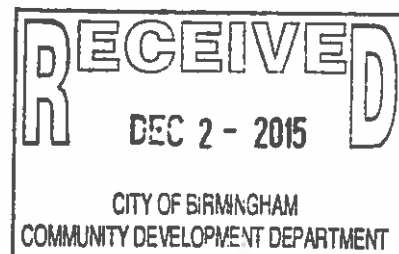
Respectfully,

(Signature)

(Name)

(Address)

David Gonzalez  
1171 EMMONS AVE



28 November 2015

Board of Zoning Appeals  
c/o City Clerk  
City of Birmingham  
151 Martin St., PO Box 3001  
Birmingham, MI 48012

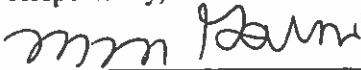
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For these reasons, I request that you grant this appeal.

Respectfully,



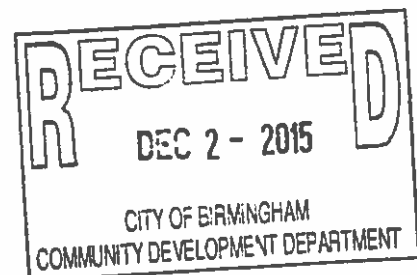
(Signature)

Mark Michael Garin

(Name)

1116 Emmons Ave, Birmingham MI 48011

(Address)



28 November 2015

Board of Zoning Appeals  
c/o City Clerk  
City of Birmingham  
151 Martin St., PO Box 3001  
Birmingham, MI 48012


**Re: BZA Appeal of Building Official Interpretation - Hearing date: December 8, 2015**

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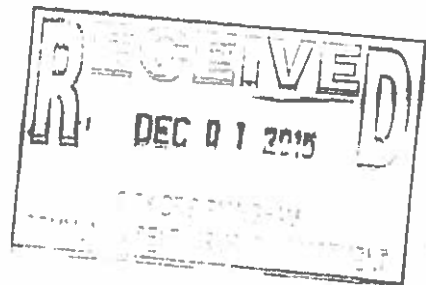
For these reasons, I request that you grant this appeal.

Respectfully,

  
(Signature)

FRANCIS P. GRANT  
(Name)

1193 Emmons Bham, MI  
(Address)



**SUBJECT: BZA Appeal -Building Official Interpretation - Hearing date: Dec. 8, 2015**

Dear Members of the Board of Zoning Appeals:

I am in support of the appeal brought by the owners of 1139 Emmons. I believe that the Building Official's interpretation of the Zoning Ordinance requiring a continuous eave below the third story window on three story tall dormer walls is in line with the spirit and intent of the Birmingham Zoning Ordinance to maintain the traditional two-story character of Birmingham neighborhoods.

For these reasons, I request that you grant this appeal.


Respectfully,

ALEX BEIRED

(Name)

1144 EMMONS AVE

(Address)

A handwritten signature in black ink, appearing to read 'Alex Beired', written over a horizontal line.



**ATTACHMENT TO BOARD OF ZONING APPEALS APPLICATION  
RE ERRONEOUS ISSUANCE OF CERTIFICATE OF OCCUPANCY  
FOR 1155 EMMONS AVENUE, BIRMINGHAM, MI 48009**

**Introduction**

Khalil Mogassabi and Mary Muller Mogassabi (the "Mogassabis"), who reside at 1139 Emmons Avenue, Birmingham, MI 48009, hereby appeal from the Building Official's erroneous issuance of a full certificate of occupancy for the adjacent property, 1155 Emmons Avenue.

The certificate of occupancy was improperly issued by the Building Official on or about October 16, 2015. The house at 1155 Emmons Avenue does not comply with the applicable requirements of the Birmingham Zoning Ordinance, and the certificate of occupancy should not have been issued.

The neighboring house at 1155 Emmons Avenue, has a wall dormer that does not comply with the Zoning Ordinance. Furthermore, the structure as constructed violates the 24-foot maximum eave height limit contained in the Zoning Ordinance. (See photographs attached as **Exhibit 1**, and diagram attached as **Exhibit 2**).

The Mogassabis are aggrieved parties and may appeal from the decision of the Building Official to issue the certificate of occupancy, under Section 8.01(D) of the Zoning Ordinance. See also, MCL 125.3603(1).

Section 1.08 of the Zoning Ordinance grants the Building Official authority to grant certificates of occupancy and use consistent with the requirements of the Zoning Ordinance, but cannot grant a certificate for a structure that does not meet all the ordinance requirements. Section 1.05(A) of the Zoning Ordinance states:

Except as otherwise provided in this Zoning Ordinance, no structure or land shall be used or occupied ..., except in conformity with the regulations specified in this Zoning Ordinance for the zoning district in which the structure .... is located.

The certificate of occupancy for 1155 Emmons Avenue should be revoked until the structure is in compliance with all requirements of the Zoning Ordinance and is consistent with the previous interpretations by the Building Official.

The members of the Zoning Board of Appeals are welcome to visit the Mogassabi's property to see the situation for themselves.

### The Zoning Ordinance's Definition of "Dormer" Does Not Permit a Wall Dormer

The definition of "dormer" was added to the Zoning Ordinance in 2005. As discussed below, this definition precludes construction of a wall dormer, which merely continues the main wall without interruption, and does not have its own walls. (See attached **Exhibit 3**.)

Section 9.02 defines "dormer" as follows:

**Dormer-** A subunit of a main structure interrupting a roof slope of the main roof structure **with its own walls** and roof, and characterized by the roof shape of the dormer including but not limited to: flat, deck, hipped, shed, gabled, inset, arched, segmental and eyebrow style roofs.

(**Exhibit 4**, emphasis added)

When interpreting the Zoning Ordinance, "[e]ach word of a statute is presumed to be for a purpose." *Levy v Martin*, 463 Mich 478, 493-494; 620 NW2d 292 (2001).<sup>1</sup> Effect must be given to "every word, phrase, and clause in a statute" so as to "avoid any interpretation that would render any part of the statute surplusage or nugatory." *State Farm Fire and Casualty Co v Old Republic Insurance Co*, 466 Mich 142, 146; 644 NW2d 715 (2002).

Applying these principles, the Zoning Ordinance does not permit a wall dormer. A wall dormer does not have its own walls. Rather, as can be seen from **Exhibit 5**, a wall dormer is merely a continuation of the main first and second floor walls. A wall dormer also cannot be described as a "subunit," because its wall is not physically distinct from the main structure.

This interpretation does not prohibit all dormers. To the contrary, the definition of dormer is satisfied by a dormer that is set back from the main wall of the building, and thus has its own walls. This interpretation is consistent with all the language of the Zoning Ordinance's definition of dormer, and does not ignore any of the words or phrases.<sup>2</sup>

The City Attorney, Timothy Currier, issued an opinion letter dated October 15, 2015 (**Exhibit 6**). The Mogassabis believe that the conclusion reached by the City Attorney is erroneous, because his opinion letter focused on the wrong issue. Mr.

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<sup>1</sup> The rules governing statutory interpretation apply to a municipal ordinance. *Gora v City of Ferndale*, 456 Mich 704, 711; 576 NW2d 141 (1998).

<sup>2</sup> The second part of the definition of dormer merely describes the shape of the roof of the dormer. There are various roofs that can be used atop a dormer.

Currier focused on whether the Zoning Ordinance has language that "requires a continuous eave under the dormer." There is a more fundamental issue that needs to be resolved first. The issue is whether a wall dormer is permitted at all. As discussed above, the language of the Zoning Ordinance does not permit a wall dormer.

The memo from the Building Official (Exhibit 7) and the city attorney's opinion letter (Exhibit 6) reference a drawing showing examples of certain types of dormers. That drawing is not part of the Zoning Ordinance. Even if the drawing were part of the ordinance (which it is not), the drawing cannot be used to modify the express written requirements of the Zoning Ordinance.<sup>3</sup> As provided in Section 1.06(D) of the Zoning Ordinance, the text of the Zoning Ordinance controls. It states:

Text Supersedes Graphics: If there are found to be differences between the meaning or implication of any drawing, table, or figure, the text of this Zoning Ordinance shall apply.

For all of these reasons, a Certificate of Occupancy should not have been issued for 1155 Emmons Avenue due to the non-complying wall dormer.

#### **The City Completely Reversed Its Position on this Issue**

Until the issuance of a certificate of occupancy for 1155 Emmons Avenue, the City has required that a building have a continuation of the second-floor eave at the base of the dormer, in order to create the appearance of a separate dormer, rather than mere continuation of the first and second floor wall. The use of this architectural feature creates an appearance that the portion above the eave actually originates from the roof, rather than a three-story tall wall that encloses an additional floor, even though the dormer does not have all of its own walls.

When the house on the other side of the Mogassabis' house was being constructed at 1125 Emmons Avenue, the City required the builder of that house to alter the structure to continue the second-floor eave across the base of the dormer wall. The builder of that house started work in approximately June 2014 and completed construction around May 2015. The house was substantially complete, when the City required the contractor to add an eave under the third story dormer window. This required the contractor to relocate and raise the location of the window. Before and after photographs of 1125 Emmons Avenue are attached as Exhibits 8 and 9, respectively.

The Mogassabis brought this issue to the City's attention with regard to the dormer eave on the house at issue in this appeal (1155 Emmons Avenue) on multiple occasions, beginning about five months ago. This occurred while construction was at an early stage and the issue could have been easily remedied then.

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<sup>3</sup> The drawing is not referred to in, nor incorporated into, the Zoning Ordinance.

As recently as September 25, 2015, the City informed the Mogassabis that it would require the installation of an eave at the base of the dormer. In a letter to the Mogassabis, Bruce Johnson, the City's Building Official, stated:

At my direction, the Building Department since approximately February 2014, has been encouraging (requiring) the main building eaves be continuous under dormers like the one projecting from the roof on the new home next to yours. ... I will contact [the builder] next week to advise him that the eave must be installed.

(Exhibit 10).

The City issued a violation to the contractor for 1155 Emmons Avenue in September 2015, stating that the Zoning Ordinance required the contractor to install an eave beneath the dormer, in order to separate the dormer from the first and second floor vertical wall. The contractor then objected, and the City reversed its position and issued a full certificate of occupancy.

#### **The House Also Violates the 24-Foot Height Restriction**

"Eave" is defined in Section 9.02 of the Zoning Ordinance as follows: "The lower edge of a sloping roof that projects past the face of the wall below; or the point of intersection of the roof and exterior wall on a flat roof building."

Under Sections 2.10 and Section 9.02 of the Zoning Ordinance, the maximum height of an eave is 24 feet. The house at 1155 Emmons Avenue violates this requirement because the eave on the portion of the wall where the dormer is located is actually 27 feet high. (Exhibit 2).

The Zoning Ordinance limits eaves to a 24 foot maximum height. The 24 foot eave height applies to the entire building. The Zoning Ordinance text does not limit its application to the main portion of the home. But even if it did, the wall dormer on 1155 Emmons Avenue would be subject to the 24 foot limit, because it is not a dormer as defined in the Zoning Ordinance. Rather, its exterior wall is merely an extension of the main building wall enclosing the floors below.

The Zoning Ordinance does not expressly exclude the dormer roof eave from the 24 foot maximum eave height restriction either. But even if wall dormers were permitted, the wall dormer roof eave would still be subject to the 24 foot maximum height unless an eave were to be incorporated below the dormer window to create an appearance that it is a subunit of the main structure and originating from the roof. The intent is to maintain the appearance of a two-story structure. The wall dormer at

1155 Emmons Avenue would not be allowed because its roof eave is 27 feet in height and it does not incorporate an eave below the dormer window.

Dormers that fall within the Zoning Ordinance definition of "dormer" (that is, a subunit with own walls and roof) are not in conflict to the 24' maximum eave height requirement because they originate from the roof. This allows the second story eave to naturally connect below the dormer.

Unlike allowed dormers that originate from the roof, the wall dormer at 1155 Emmons Avenue creates a three story tall wall. Not only does it fall outside the definition of dormer by not having its own walls, it creates an appearance that a portion of the main building body is three stories rather than a subunit of a two story structure.

The one element that prevents the appearance of three stories on wall dormers is the incorporation of a faux eave below the dormer window that connects to the second story eave. This creates a continuous building eave and the appearance of a dormer originating from the roof.

While wall dormers like the one constructed at 1155 Emmons Avenue still do not fall within the Zoning Ordinance text definition of allowable dormer types, the application of an eave below the dormer window has been consistently interpreted by the Building Official to be in compliance with the spirit and intent of the Zoning Ordinance. This Building Official interpretation has enabled builders to continue to use the exterior wall to build a 'dormer' with sufficient height to accommodate the stairwell to the habitable space while also complying with the Zoning Ordinance. This practice has occurred routinely for a long period of time, and has been consistently and uniformly applied over and over again, until now. Without this interpretation, all wall dormers now designed and built to accommodate the stairwell to the habitable space above the second story would not be allowed under the current Zoning Ordinance text.

### **CONCLUSION**

The erroneously-issued certificate of occupancy for 1155 Emmons Avenue should be revoked. As discussed in detail above, the wall dormer (as constructed) is not permitted by the Zoning Ordinance, is contrary to the maximum eave height of 24 feet, and is inconsistent with all prior interpretations and enforcement by the City. The newly-adopted position of the City is also contrary to the intent of the Zoning Ordinance to maintain the appearance and character of a traditional neighborhood. Accepting this position will set a precedent that will affect all Birmingham neighborhoods.



# City of Birmingham

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## Property and Land Search Results



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**Search Criteria:**    [\[ Click here to refine search \]](#)

Search for records where **Street Name** begins with "Emmons" AND **Street Number From** is greater than or equal to "1155" AND **Street Number To** is less than or equal to "1155".

Search Results From 1 - 1 of 1

Page 1 of 1

<u>Parcel Number</u>	<u>Owner Name</u>	<u>Property Address</u> ↑
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08-20-31-351-006	MORJARADI, FAREED	1155 EMMONS AVE
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1

Records Per Page: ☒ 10   ☐ 15   ☐ 25   ☐ 35   ☐ 45   ☐ 50



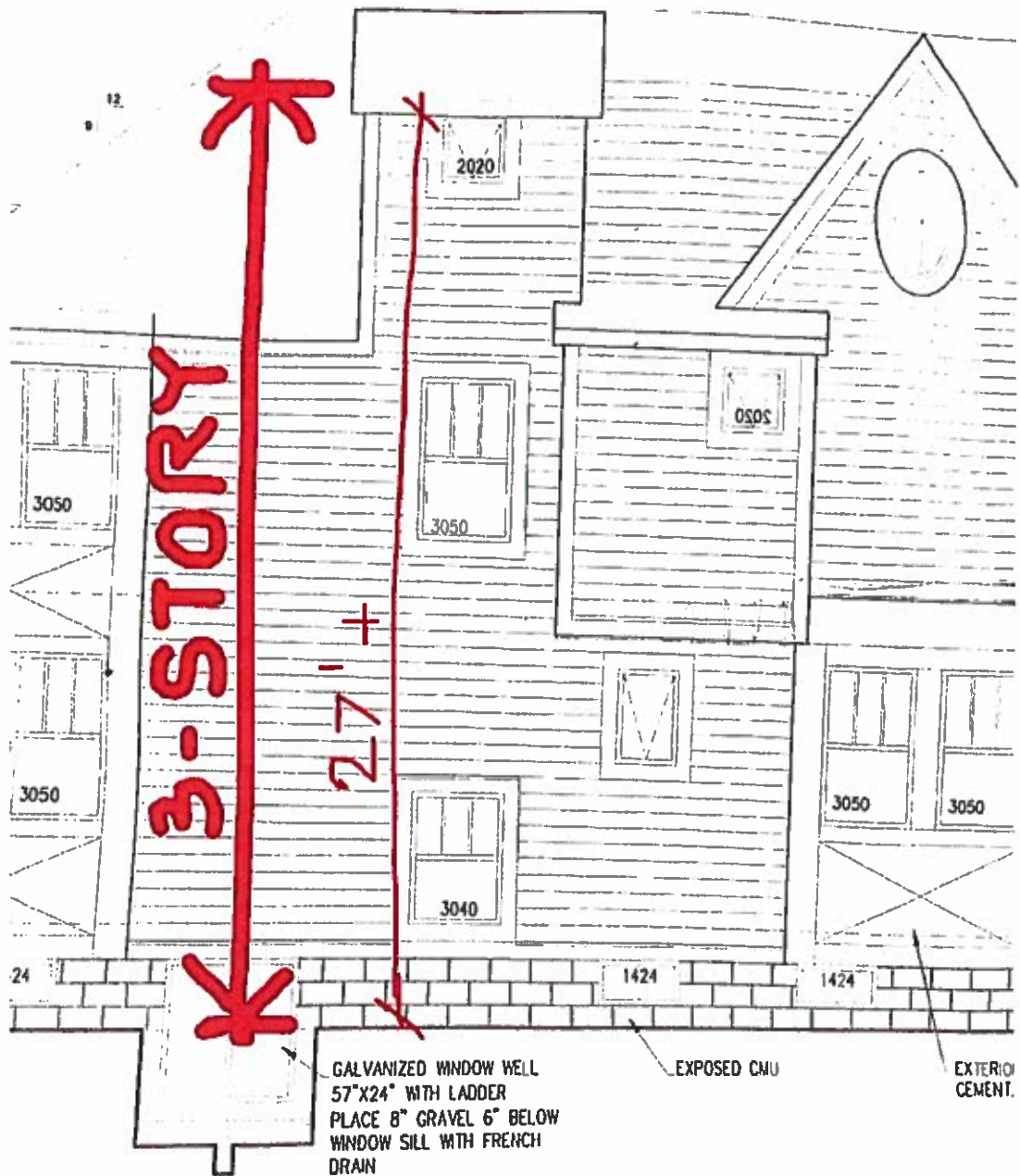
# EXHIBIT 1



# **EXHIBIT 2**

# NORTH ELEVATION

SCALE 1/4"=1.00'



# **EXHIBIT 3**

# MEMORANDUM

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**Date:** July 20, 2005  
**To:** Thomas M. Markus, City Manager  
**From:** Kristin Keery, Planning Consultant  
**Approved:** Thomas M. Markus, City Manager  
**Subject:** Article 9, section 9.02 of Chapter 126, Zoning, of the  
Birmingham City Code—Definition of Dormer

---

## Background

At the September 27, 2004 meeting, the City Commission adopted ordinance amendments to increase the building heights in the DB 2016 downtown overlay district. The adopted amendments increased the allowable building heights in the D-2, D-3, and D-4 zone districts. The amendments also included the addition of section 126-Article 3, Section 3.04(B)(9), which states "The maximum width of all dormers per street elevation on buildings may not exceed 33% of the width of the roof plane on the street elevation on which they are located." As a result, the City Commission briefly discussed dormers and requested that the Planning Board add a definition of dormer to the definition section of the Zoning Ordinance.

On April 13, 2005, the Planning Board discussed adding a definition for dormer as requested by the City Commission. A public hearing was set for May 11, 2005 for the proposed definition prepared by the Planning Division.

On June 13, 2005, the City Commission set a public hearing for July 11, 2005 to consider an ordinance amendment to Article 9, section 9.02 of Chapter 126, Zoning, of the Birmingham City Code to create a definition for dormer.

On July 11, 2005, the City Commission voted to defer action on the public hearing to allow the Planning Division an opportunity to clarify the language of the dormer definition and provide sketches of dormer roof types for reference in the July 25<sup>th</sup> 2005 report.

5B1



A copy of the proposed ordinance amendment is attached for your review along with minutes from the relevant City Commission and Planning Board meetings.

**Purpose and Intent**

Currently, there is not a definition for dormer window in the definition section of the Zoning Ordinance. Adding a definition will eliminate any potential confusion regarding the application of section 135-Article 3, section 3.04(B)(9). The intent of the subsection regarding dormers is intended to prevent the construction of a single large dormer across the width of an elevation that essentially acts to add bonus floor area at the expense of appropriate architectural design.

**Legal Opinion**

The City Attorney has reviewed the proposed definition for dormer and has no concerns.

**Suggested Action:**

To amend Article 9, section 9.02 of Chapter 126, Zoning, of the Birmingham City Code to create a definition for Dormer

RETURN TO THE AGENDA

CITY OF BIRMINGHAM

ORDINANCE NO. \_\_\_\_\_

THE CITY OF BIRMINGHAM ORDAINS:

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE  
OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 9, SECTION 9.02, DEFINITIONS, TO ADD A DEFINITION  
FOR DORMER.

Dormer -- A subunit of a main structure interrupting a roof slope of the  
main roof structure with its own walls and roof, and characterized by  
the roof shape of the dormer including but not limited to: flat, deck,  
hipped, shed, gabled, inset, arched, segmental, and eyebrow style  
roofs.

ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, 2005 to become effective upon  
publication.

\_\_\_\_\_  
Racheline J. Hoff, Mayor

\_\_\_\_\_  
Nancy M. Weiss, City Clerk

# **EXHIBIT 4**



**Dormer:** A subunit of a main structure interrupting a roof slope of the main roof structure with its own walls and roof, and characterized by the roof shape of the dormer including but not limited to: flat, deck, hipped, shed, gabled, inset, arched, segmental, and eyebrow style roofs.

**Drainage:** The removal of surface water or ground water from land by means that include, but are not limited to, drains, grading and runoff controls.

**Drive-in:** A commercial establishment developed to serve patrons while in the motor vehicle in addition to within a building or structure.

**Drugstore:** A commercial establishment that employs a registered pharmacist full time for the purpose of dispensing prescriptions and ethical drugs.

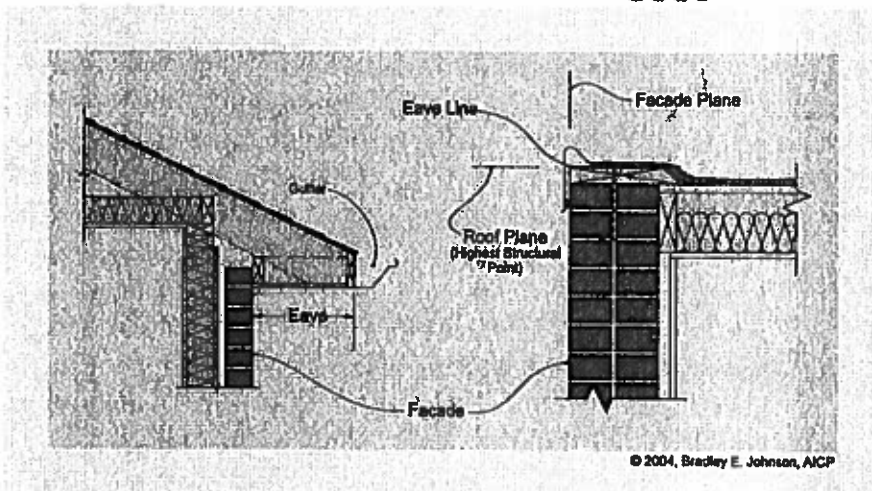
**Dwelling, Multiple-family:** A building containing 3 or more dwelling units (see Dwelling unit).

**Dwelling, Single-family:** A detached building containing 1 dwelling unit (see Dwelling unit).

**Dwelling, Two-family:** A building containing 2 dwelling units (see Dwelling unit).

**Dwelling Unit:** A building or portion thereof that provides independent living space for a family and has a sanitary connection. Dwelling unit does not include such a living space in an accessory structure used solely by the family living in the primary structure on the same lot, except that such living space shall not be used as any person's primary living area (see Family).

**Eave or Eave Line:** The lower edge of a sloping roof that projects past the face of the wall below; or the point of intersection of the roof and exterior wall on a flat roof building.



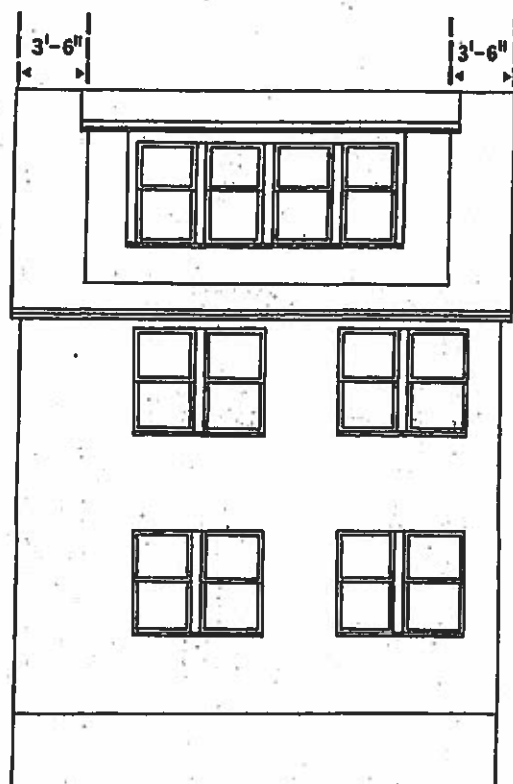
**Electronic Video Game:** Any machine containing no automatic payoff device which may, on the insertion of a coin or slug, operate or be operated or used as a game, contest or amusement, and which consists solely of electronic play appearing on a video screen, and which is so constructed that it may not be converted into an automatic payoff device for the return or discharge of money, tokens, coins, checks or merchandise, or which provides no such payoff by any means whatsoever.

**Essential Services:** The erection, construction, alteration, or maintenance by public utilities or municipal departments or commissions of underground, surface or overhead gas, electrical, steam, or water transmission or distribution systems, collection, communication, supply or disposal systems, including mains, drains, sewers, pipes, conduits, wires, fire alarm boxes, police call boxes, traffic signals, hydrants, towers, poles, gas regulator stations, and other similar equipment, and accessories connected therewith, reasonably necessary for the furnishing of adequate service by such public utilities or municipal departments or City Commission for the public health, safety or general welfare, but not including commercial buildings or activities.

**Evergreen Tree:** A tree with foliage that persists and remains green year-round.

**Facade:** The vertical exterior surface of a building that is set parallel to a setback line.

# **EXHIBIT 5**



**Figure 1:** Shed-roof dormers should be setback no less than 3 ft. 6 in. from the gable end walls and 1 ft. 6 in. from the main walls underneath the eaves.



**Figure 2:** Setting the front wall of a dormer flush with the main wall underneath is not recommended. See Fig. 6 for the preferred 1 ft. 6 in. setback.



**Figure 3:** The front wall of a dormer should not extend beyond the main wall of the building.



**Figure 4:** Removing the eave between the dormer's front wall and the main wall underneath is not recommended.

#### Guidelines for Roof Dormers

# **EXHIBIT 6**

**Beier Howlett**  
ATTORNEYS AND COUNSELORS

TIMOTHY J. CURRIER  
tcurrier@bhllaw.us.com  
Telephone (248) 645-9400  
Fax (248) 645-9344

October 15, 2015

Mr. Bruce Johnson, Building Official  
*City of Birmingham*  
151 Martin Street, P.O. Box 3001  
Birmingham, MI 48012-3001

**Re: October 15, 2015 Request for Legal Opinion**

Dear Mr. Johnson:

I reviewed your October 15, 2015 request for legal opinion, a copy of which is attached hereto. In addition, I reviewed the Birmingham Zoning Ordinance with respect to single family homes, habitable attics, dormers, and eaves.

The Zoning Ordinance with respect to single family homes limits these structures to two stories with a habitable attic which is limited in size to one-third of the floor area of the story below.

Single family residences with habitable attics are permitted to use dormers. Dormers cannot be used to increase the floor area of a habitable attic.


Dormers may be built on top of the second story wall. I have found no provision in our ordinance that prohibits this construction practice. I have not found any section of the Zoning Ordinance that requires a continuous eave under the dormer. The lack of an eave can create the appearance of a three story tall wall, but it is not a three story building. It is a two story home with a habitable attic which is permissible under the Birmingham Zoning Ordinances.

Finally, I have found no Zoning Ordinance requirement that the eave line be continuous under the dormer. Therefore, the Building Department can request the builders to install such an eave line, but they cannot require it.

I hope the foregoing is of assistance to you, but should you have any further questions, please do not hesitate to contact me.

Very truly yours,

**BEIER HOWLETT, P.C.**

  
Timothy J. Currier  
Birmingham City Attorney

TJC/jc




# **EXHIBIT 7**



## MEMORANDUM

Building Department

**DATE:** October 15, 2015  
**TO:** Tim Currier, City Attorney  
**FROM:** Bruce R. Johnson, Building Official   
**SUBJECT:** Request for Legal Opinion

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Building Department staff began receiving complaints towards the end of 2013 that some homes recently constructed appear to be 3-stories tall, in violation of the Zoning Ordinance. The ordinance limits single-family homes to 2-stories. However, it allows a portion of the attic to be habitable. A habitable attic is limited in size to 1/3 of the floor (story) below. Staff, upon investigation, discovered that the complaints stemmed from homes with dormers projecting from second story roofs that enclose habitable attics. These dormers were constructed with the wall of the dormer stacked on top of the second story wall. The main roof eave was not continuous under the dormer. In other words, the eave stopped at one side of the dormer and started again at the other side. This design creates the appearance of a 3-story tall wall on the elevation as wide as the dormer. Staff determined that the design was clearly not in agreement with the intent of the ordinance. To address the 3-story condition, I directed plan review staff in February 2014 to begin requiring that eaves be continuous under dormers projecting from second story roofs.

Recently, we received a complaint from a resident next door to house under construction that is nearly completed. The complaint pertained to eave height of a third story dormer. Upon investigation, it was determined that the house has a dormer projecting from the second story constructed without the required eave underneath. Accordingly, we issued a violation notice to the builder requiring the eave to be installed. The builder replied stating he has reviewed the ordinance and it is his belief that the eave is not required. Up until this point, it has been our understanding that the eave is required. However, further review into this complaint and the ordinance raises some doubt.

The complaint pertained to the eave height of a third story dormer that projected from the roof of a two-story house. As discussed above, the front wall of the dormer projecting from the main roof sits on top of the second story exterior wall and interrupts the eave of the roof. This design creates a continuous flat section of wall from the first story up to the top of the dormer. While this section of wall can be called three stories tall, the question whether it actually creates a violation requires a closer look at the ordinance.

The ordinance limits single-family homes to 2-stories in height, but also allows habitable attics limiting them in size to one third of the floor area below. Habitable attics are often partially enclosed by dormers that project from the roof of the home. A definition of a dormer was added to the ordinance in 2005. It reads as follows:

**Dormer:** A subunit of a main structure interrupting a roof slope of the main roof structure with its own walls and roof, and characterized by the roof shape of the dormer including but not limited to: flat, deck, hipped, shed, gabled, inset, arched, segmental, and eyebrow style roofs.

During the amendment process to add the definition of dormer, the City Commission asked for sketches of dormer types for reference. Please see the attached report for reference that went the Commission including the sheet showing the dormer examples. The examples include four types of dormers that project from the main roof out flush with the exterior wall. This is very similar to the design in question.

Upon further review of the ordinance, including the definition of "dormer", it appears that an eave is not required to be continuous under a dormer. The lack of an eave may create an image of a 3-story home, but per the text of the ordinance, it is a 2-story home with a habitable attic. Further, it appears that we can encourage builders to install an eave under a dormer, but we cannot require it. Please review and comment.

# MEMORANDUM

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**Date:** July 20, 2005  
**To:** Thomas M. Markus, City Manager  
**From:** Kristin Keery, Planning Consultant  
**Approved:** Thomas M. Markus, City Manager  
**Subject:** Article 9, section 9.02 of Chapter 126, Zoning, of the  
Birmingham City Code—Definition of Dormer

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## Background

At the September 27, 2004 meeting, the City Commission adopted ordinance amendments to increase the building heights in the DB 2016 downtown overlay district. The adopted amendments increased the allowable building heights in the D-2, D-3, and D-4 zone districts. The amendments also included the addition of section 126-Article 3, Section 3.04(B)(9), which states "The maximum width of all dormers per street elevation on buildings may not exceed 33% of the width of the roof plane on the street elevation on which they are located." As a result, the City Commission briefly discussed dormers and requested that the Planning Board add a definition of dormer to the definition section of the Zoning Ordinance.

On April 13, 2005, the Planning Board discussed adding a definition for dormer as requested by the City Commission. A public hearing was set for May 11, 2005 for the proposed definition prepared by the Planning Division.

On June 13, 2005, the City Commission set a public hearing for July 11, 2005 to consider an ordinance amendment to Article 9, section 9.02 of Chapter 126, Zoning, of the Birmingham City Code to create a definition for dormer.

On July 11, 2005, the City Commission voted to defer action on the public hearing to allow the Planning Division an opportunity to clarify the language of the dormer definition and provide sketches of dormer roof types for reference in the July 25<sup>th</sup> 2005 report.

5B1

A copy of the proposed ordinance amendment is attached for your review along with minutes from the relevant City Commission and Planning Board meetings.

**Purpose and Intent**

Currently, there is not a definition for dormer window in the definition section of the Zoning Ordinance. Adding a definition will eliminate any potential confusion regarding the application of section 135-Article 3, section 3.04(B)(9). The intent of the subsection regarding dormers is intended to prevent the construction of a single large dormer across the width of an elevation that essentially acts to add bonus floor area at the expense of appropriate architectural design.

**Legal Opinion**

The City Attorney has reviewed the proposed definition for dormer and has no concerns.

**Suggested Action:**

To amend Article 9, section 9.02 of Chapter 126, Zoning, of the Birmingham City Code to create a definition for Dormer

RETURN TO THE AGENDA

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the roof shape of the dormer including but not limited to: flat, deck,  
hipped, shed, gabled, inset, arched, segmental, and eyebrow style  
roofs.**

ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, 2005 to become effective upon  
publication.

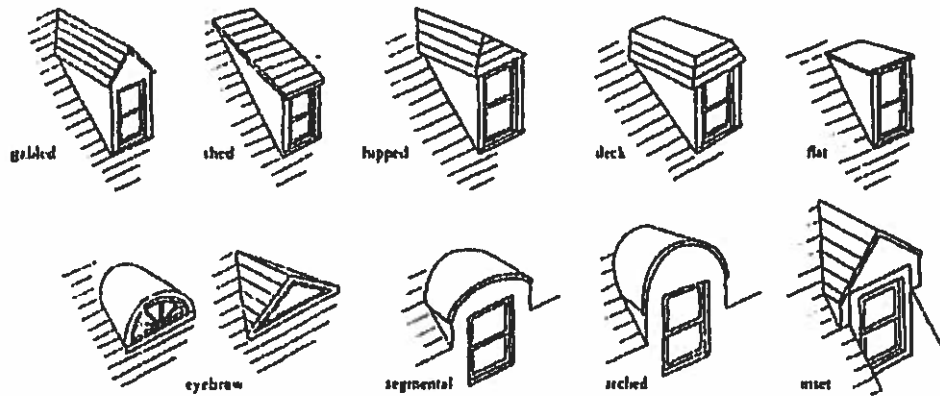
\_\_\_\_\_  
Racheline J. Hoff, Mayor

\_\_\_\_\_  
Nancy M. Weiss, City Clerk

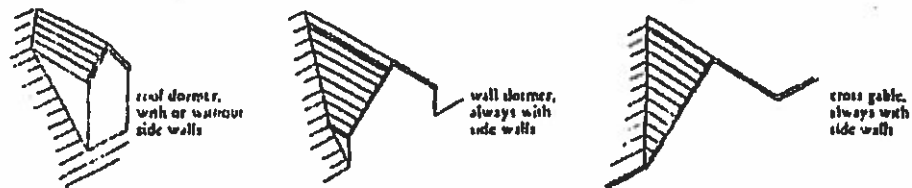
# A Field Guide to American Houses

By Virginia & Lee McAlester

## Structure: The Anatomy of American Houses



### DORMERS & GABLES DISTINGUISHED



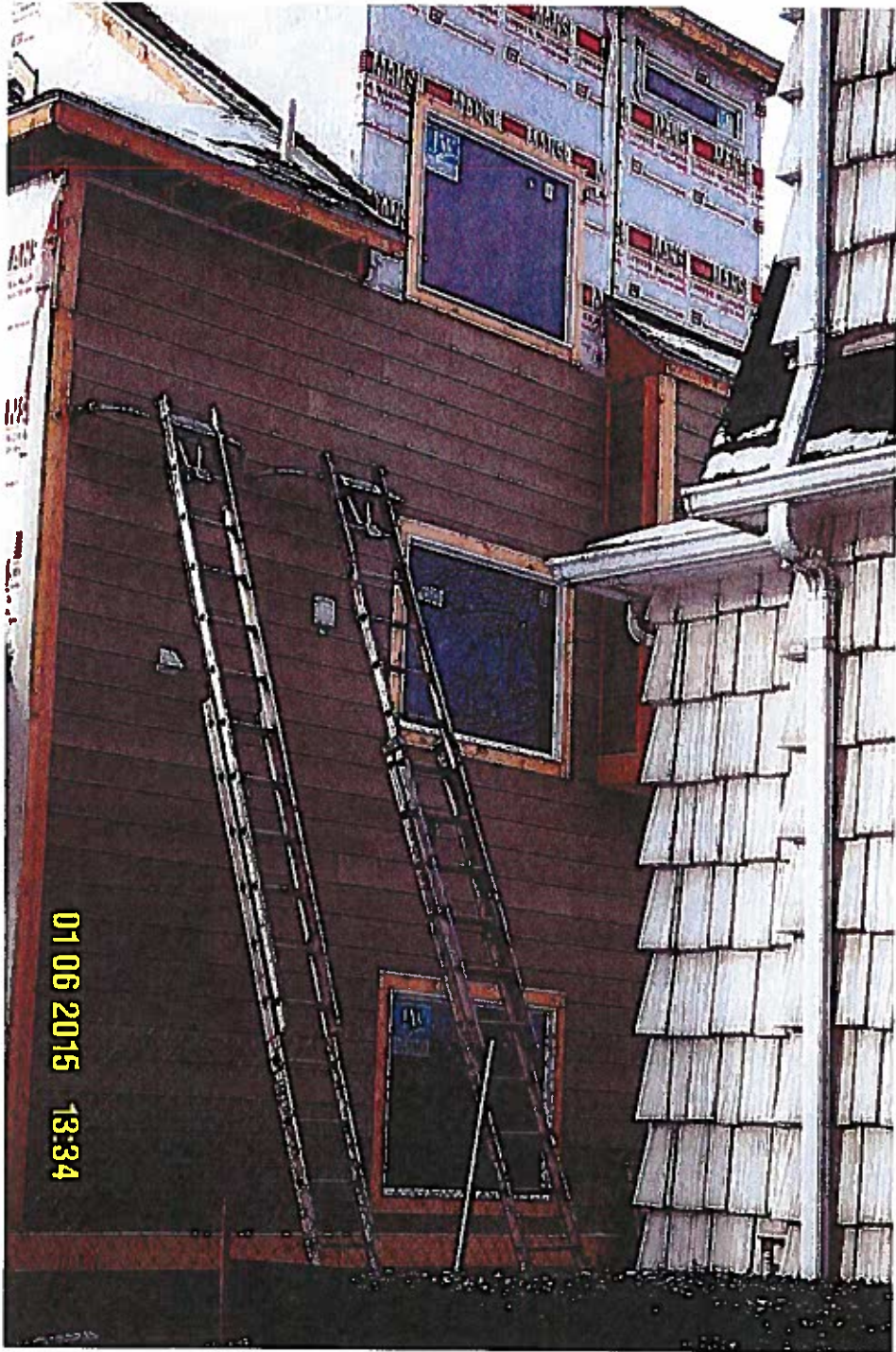
### DORMERS

# **EXHIBIT 8**



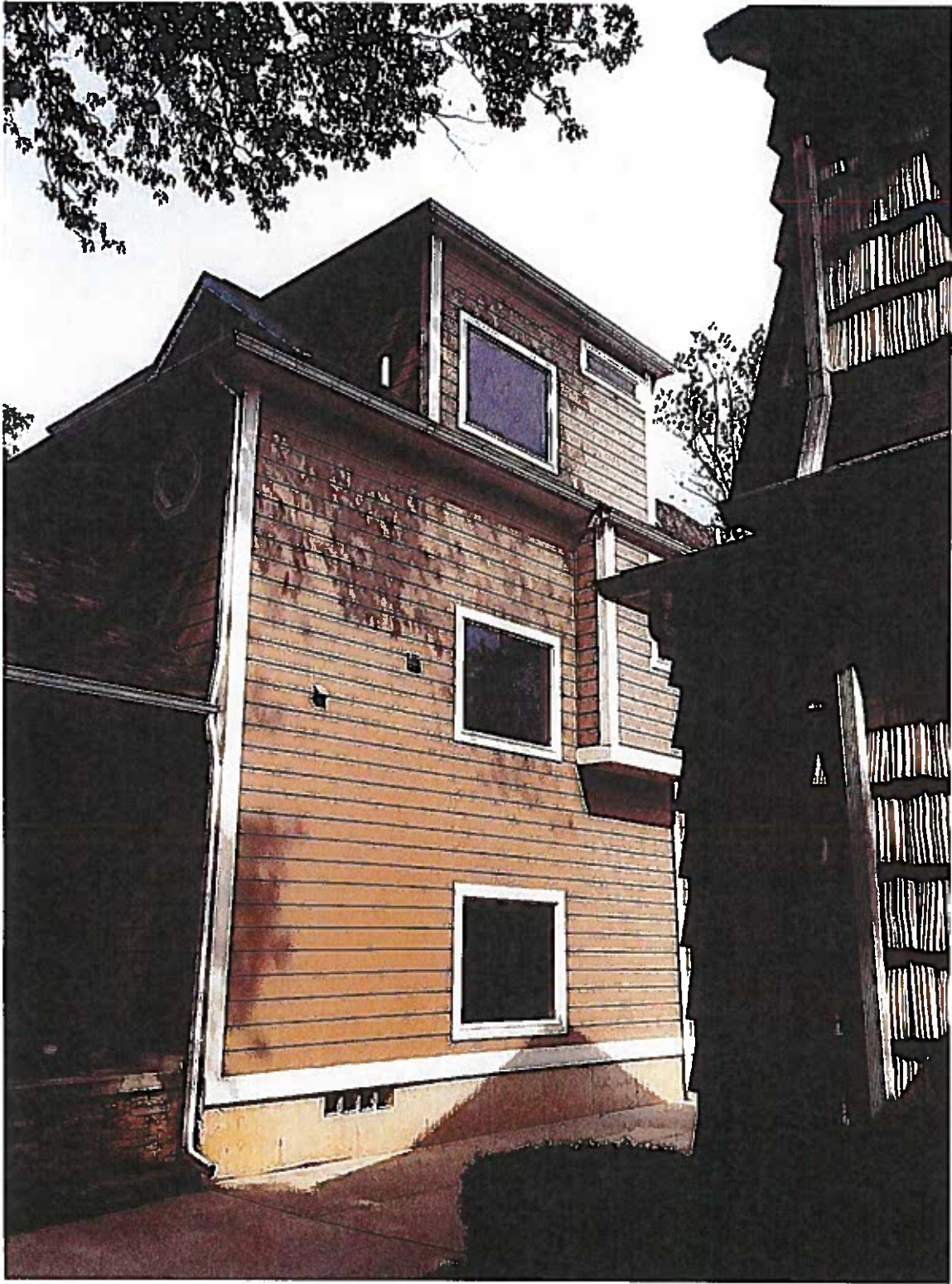




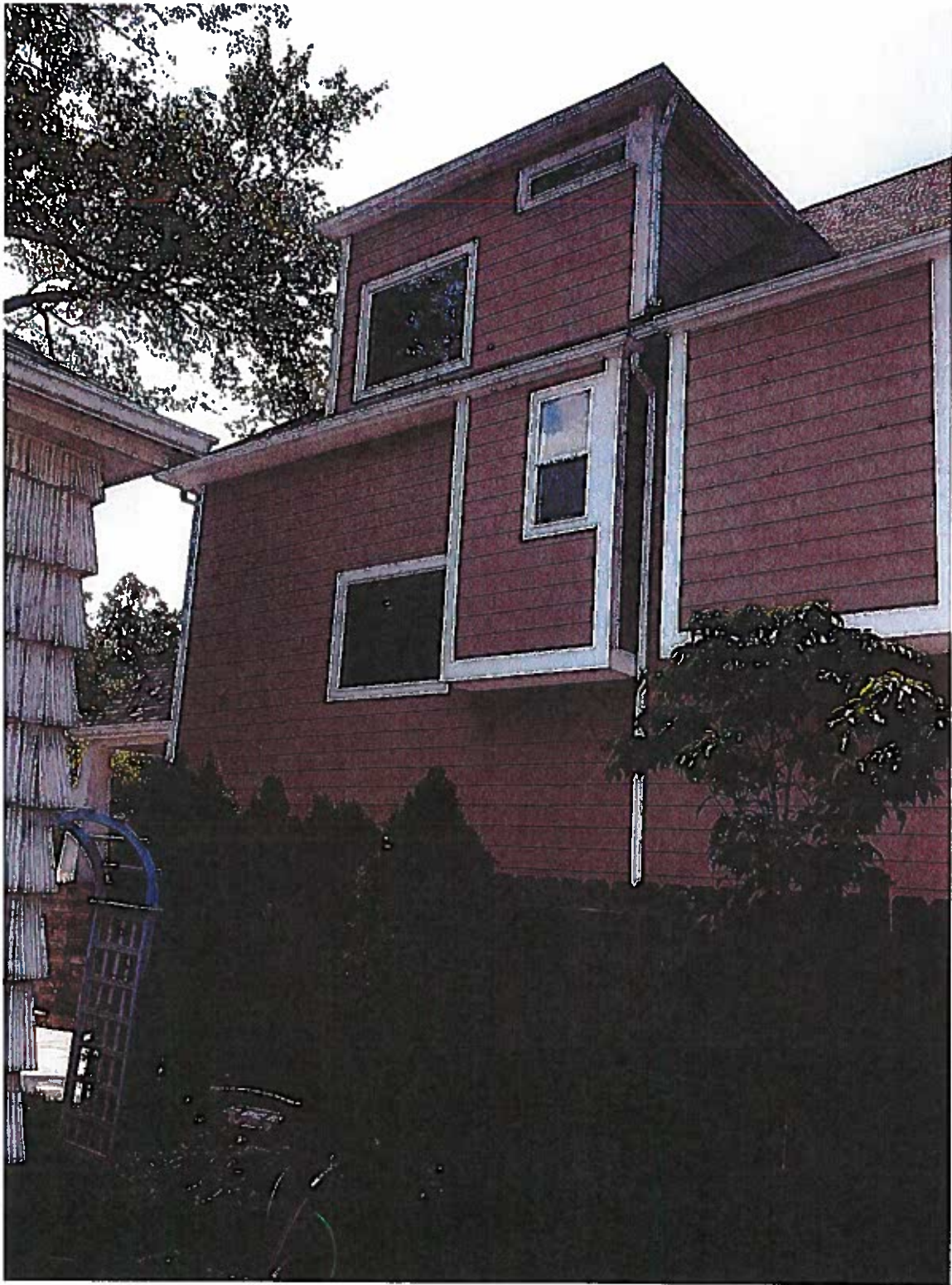


# EXHIBIT 9









# **EXHIBIT 10**



September 25, 2015

Khalil and Mary Mogassabi  
1139 Emmons Ave  
Birmingham, MI 48009

Re: Dormer Concern at 1155 Emmons

Dear Khalil and Mary:

I am writing this in response to your letter to Scott Lenhart dated September 13, 2015, regarding the dormer on the new house under construction to the east of your property. In that letter you expressed concern that the eave on the dormer exceeds the maximum allowable height for homes in a single family zoned district, and that the home is 3-stories in height exceeding the maximum 2-stories allowed. Your letter is well written. It is clear that you spent a good deal of time researching the Zoning Ordinance. You will find in my response below that our interpretations of the provisions in the Zoning Ordinance are not in agreement. However, I think you will appreciate my understanding of a key point you made regarding consistent enforcement.

The Zoning Ordinance for the City regulates several design standards for use, height, bulk and area for structures in each zoned district. It is the Building Officials responsibility to administer the provisions of the zoning ordinance. While that sounds pretty simple, it is one of the most difficult aspects of enforcement activities. Much more difficult and time consuming than the building codes themselves. There is much more left to interpretation of intent of the text in a Zoning Ordinance than the building code. This is true because the codes are the same in each community throughout the State, but zoning ordinances vary dramatically between them. Further, definitions of the same words and phrases vary between zoning ordinances and codes. Because of that both disciplines are reviewed separately in effort to limit misinterpretation of the separate documents.

The home being construction at 1155 Emmons per the Zoning Ordinance text, is a 2-story home with a habitable attic. At the same time, per the provisions of the building code it is considered 3-stories. The home is in compliance with both. While a portion of the third story (code) is contained behind a dormer that interrupts the slope of the roof, per the ordinance the dormer is enclosing a portion of the space within a habitable attic.

*Community Development, Building Division – 151 Martin Street – Birmingham, MI 48009  
(248) 530-1850 – Fax (248) 530-1290 – [www.bhamgov.org](http://www.bhamgov.org)*

The Zoning Ordinance does limit the maximum height of eaves on buildings in single family zoned districts to 24 feet. This maximum is for the eaves along the main portion of the home and not applicable to the several dormer roof types listed in the ordinance's definition of a dormer. This is not spelled out specifically in the ordinance, but is clearly the intent. If it was not, then the eave height on dormers on most 2-story homes would be too high.

While I disagree with your opinion that the eaves on the dormer are too high and that dormer is enclosing a third story per the ordinance, I do agree with your statements that Building Department enforcement activities must be consistent. This is the main point in your letter that stood out to me. At my direction, the Building Department since approximately February 2014, has been encouraging (requiring) that the main building eaves be continuous under dormers like one projecting from the roof on the new home next to yours. I made this decision with the intent of the ordinance in mind to lessen the appearance of 3-stories walls. While it is not yet specifically called out in the text of the Zoning Ordinance, I do believe there is intent to limit the mass of dormers on single family homes. Staff has been diligent in calling this out during plan review, but for various reasons not all were caught in the early stages.

During the plan review process of the new home at 1155 Emmons, the builder was not informed that an eave was required under the dormer projecting from the habitable attic on the elevation facing your property. I will contact him early next week to advise him that the eave must be installed.

Thank you for pointing this out and bringing it to my attention. I will keep you informed of the enforcement process. Please do not hesitate contacting me if have any questions.

Sincerely,

Bruce R. Johnson  
Building Official  
City of Birmingham



CITY OF BIRMINGHAM, MICHIGAN  
DEPARTMENT OF BUILDING INSPECTION

**VIOLATION NOTICE**

Notice Issued To Fareed Morjaradi Address of job: 1155 Emmons  
Address 1155 Emmons Notice 9/28/2015  
Birmingham, MI 48009 Date \_\_\_\_\_  
Inspection 9/18/2015  
Date \_\_\_\_\_

The following listed items were noted at the above Job  
address, and do not comply with the Birmingham City Code:

1 of 1

Second story overhang / Eave is required to be continuous under the dormer projecting from the roof on the west  
elevation.

	CM	CM
	RM	RM
	PS	PS
	JB	JB
	TRMN	OWNR
	<input type="checkbox"/>	<input type="checkbox"/>

You are further notified that you are required to correct conditions listed, and all such work shall be complete within 30 days  
from the date of this notice. Action will be taken against you for violation of the City Code if you fail, neglect or refuse to comply with this notice  
within the time limits herein set forth.

Call 248.321-9239 when above corrections have been made.

Mike Morad

DEPARTMENT OF BUILDING INSPECTION

# **CASE DESCRIPTION**

## **1172 E. Lincoln (15-32)**

**Hearing date: December 8, 2015**

The owners of the property known as 1172 E. Lincoln request the following variances to allow for the construction of a house addition less than the required minimum side yard setback and less than the required minimum distance between principal residential buildings:

- A. **Chapter 126, Article 2, Section 2.10** of the Zoning Ordinance requires a minimum side yard setback of 5.00' for this lot. The applicant is proposing 4.86'. Therefore, a variance of 0.14' is requested.
- B. **Chapter 126, Article 4, Section 4.69 (C)** of the Zoning Ordinance requires a minimum distance between buildings of 14.00' for this lot. The applicant is proposing 9.67'. Therefore, a variance of 4.33' is requested.

**Staff Notes:** The applicant is proposing to build an addition to an existing non-conforming house that was built in 1987. Nonconformance is due to the existing side yard and existing distance between buildings being short. All other proposed setbacks and distance requirements for this lot are conforming.

This property is zoned R-3.

*Scott Lenhart*

---

Scott Lenhart  
Assistant Building Official

Application Date: \_\_\_\_\_



Hearing Date: \_\_\_\_\_

Received By: \_\_\_\_\_

Appeal # \_\_\_\_\_

### Board of Zoning Appeals Application

Type of Variance: Interpretation \_\_\_\_\_ Dimensional \_\_\_\_\_ Land use \_\_\_\_\_ Sign \_\_\_\_\_ Admin review \_\_\_\_\_

#### Property Information:

Street address: <u>1172 E Lincoln</u>	Sidwell Number: _____
Owners name: <u>Mark Grozde</u>	Phone #: <u>248 930 3745</u>
Owners address: <u>1172 E Lincoln</u>	Email: <u>MRGROZDE@YAHOO.COM</u>
City: State: <u>Birmingham MI</u>	Zip code: <u>48009</u>
Contact person: <u>same</u>	Phone #: _____

#### Petitioner Information:

Petitioner name: <u>Mark Grozde</u>	Phone #: <u>248 930 3745</u>
Petitioner address: <u>1172 E Lincoln</u>	Email: <u>MRGROZDE@YAHOO.COM</u>
City: <u>Birmingham</u> State: <u>MI</u>	Zip Code: <u>48009</u>

#### Required Attachments:

- Original Certified Survey ☐ Original BZA application ☐ Letter of hardship or practical difficulty
- ☐ 10 folded copies of the site plan and building plans (existing and proposed floor plans and elevations)
  - ☐ Set of plans and survey mounted on foam board
  - ☐ If appealing a board decision, a written transcript from the meeting is required along with 10 copies of minutes from any previous Planning, HDC or DRB board.

#### General Information:

Prior to submitting for a Board of Zoning Appeals review, you must schedule an appointment with the Building Official or a City Planner for a preliminary discussion on your submittal. The deadline is the 15th of the previous month.

The BZA review fee is \$310.00 for single family residential; \$510.00 for all others; and \$50.00 for the public notice sign.

Location of all requested variances must be highlighted on plans and survey. All dimensions to be taken in feet to the first decimal point.

Variance chart example:	Required	Existing	Proposed	Amount of Variance
	25'	24'	24'	1'

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: 11-15-15

Mark Grozde

1172 E Lincoln St  
Birmingham, MI 48009  
248-930-3745

November 12, 2015

RE: Variance of side yard set back (0.14 feet) and dimension between principle structures (4.33 feet) of the property to the east of 1172 E Lincoln

Dear Birmingham Board of Zoning Appeals Member,

Please find attached the submission of zoning appeal for the proposed modification of my home.

- The home was built in 1987 which was approved for construction as it stands.
- I purchased the home in 2001 with the space above the attached garage unfinished which was intended as a master bedroom.
- My plan is to finish the space and stay within the existing boundaries.
- The east side yard set back which was established in 1987 for 1172 E. Lincoln and was apart of the original construction. There will be no change to this dimension.
- The distance between principle structures of 9.67 feet was also established in 1987 for the property at 1172 E. Lincoln. There will be no change to this dimension.
- The distance to the front of the house from the street was also established in 1987 and was apart of the original construction. There will be no change to this distance and is in compliance to the average of the surrounding homes.

Sincerely yours,

Mark Grozde

Application Date: 11-16-15



Hearing Date: 12-10-15

Received By: BM

Appeal # 15-33

### Board of Zoning Appeals Application

Type of Variance: Interpretation \_\_\_\_\_ Dimensional ☒ Land use \_\_\_\_\_ Sign \_\_\_\_\_ Admin review \_\_\_\_\_

#### Property Information:

Street address: 1078 Puritan	Sidwell Number:
Owners name: Jason and Shelby Jarjosa	Phone #: 248-736-8200
Owners address: 1078 Puritan	Email: jjarjosa@bloomfieldcapital.com
City: State: Birmingham, MI	Zip code: 48009
Contact person: Jason Jarjosa	Phone #: 248-736-8200

#### Petitioner Information:

Petitioner name: Jason Jarjosa	Phone #: 248-736-8200	
Petitioner address: 1078 Puritan	Email: jjarjosa@bloomfieldcapital.com	
City: Birmingham	State: MI	Zip Code: 48009

#### Required Attachments:

- Original Certified Survey ☒ Original BZA application ☒ Letter of hardship or practical difficulty
- ☒ 10 folded copies of the site plan and building plans (existing and proposed floor plans and elevations)
- ☒ Set of plans and survey mounted on foam board
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Prior to submitting for a Board of Zoning Appeals review, you must schedule an appointment with the Building Official or a City Planner for a preliminary discussion on your submittal. The deadline is the 15th of the previous month.

The BZA review fee is \$310.00 for single family residential; \$510.00 for all others; and \$50.00 for the public notice sign.

Location of all requested variances must be highlighted on plans and survey. All dimensions to be taken in feet to the first decimal point.

Variance chart example:	Required	Existing	Proposed	Amount of Variance
	25'	24'	24'	1'

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

Signature of Owner: [Signature]

Date: 11-15-15

CITY OF BIRMINGHAM  
Date 11/16/2015 2:28:04 PM  
Ref 00123521  
Receipt 288011  
Amount \$360.00

123521

# **CASE DESCRIPTION**

## **1078 Puritan (15-33)**

**Hearing date: December 8, 2015**

The owners of the property known as 1078 Puritan request the following variance to allow for the construction of a garage addition less than the required minimum setback distance from the front façade of the principal residential building:

- A. **Chapter 126, Article 4, Section 4.70** of the Zoning Ordinance requires a minimum setback distance of 5.00' from the front façade that is furthest setback from the front property line. The applicant is proposing 0.23' past the front facade. Therefore, a variance of 5.23' is requested.

**Staff Notes:** The applicant is proposing to build a garage addition to an existing non-conforming attached garage. Nonconformance is due to the existing garage is 0.23' in front of the front façade furthest setback from the front property line. All other proposed setbacks and distance requirements for this lot are conforming.

This property is zoned R-1.

*Scott Lenhart*

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Scott Lenhart  
Assistant Building Official

Application Date: 11-16-15



Hearing Date: 12-10-15

Received By: BM

Appeal # 15-33

### Board of Zoning Appeals Application

Type of Variance: Interpretation \_\_\_\_\_ Dimensional ☒ Land use \_\_\_\_\_ Sign \_\_\_\_\_ Admin review \_\_\_\_\_

#### Property Information:

Street address: 1078 Puritan	Sidwell Number:
Owners name: Jason and Shelby Jarjosa	Phone #: 248-736-8200
Owners address: 1078 Puritan	Email: jjarjosa@bloomfieldcapital.com
City: State: Birmingham, MI	Zip code: 48009
Contact person: Jason Jarjosa	Phone #: 248-736-8200

#### Petitioner Information:

Petitioner name: Jason Jarjosa	Phone #: 248-736-8200
Petitioner address: 1078 Puritan	Email: jjarjosa@bloomfieldcapital.com
City: Birmingham	State: MI
Zip Code: 48009	

#### Required Attachments:

- Original Certified Survey ☒ Original BZA application ☒ Letter of hardship or practical difficulty
- ☒ 10 folded copies of the site plan and building plans (existing and proposed floor plans and elevations)
- ☒ Set of plans and survey mounted on foam board
- ☐ If appealing a board decision, a written transcript from the meeting is required along with 10 copies of minutes from any previous Planning, HDC or DRB board.

#### General Information:

Prior to submitting for a Board of Zoning Appeals review, you must schedule an appointment with the Building Official or a City Planner for a preliminary discussion on your submittal. The deadline is the 15th of the previous month.

The BZA review fee is \$310.00 for single family residential; \$510.00 for all others; and \$50.00 for the public notice sign.

Location of all requested variances must be highlighted on plans and survey. All dimensions to be taken in feet to the first decimal point.

Variance chart example:	Required	Existing	Proposed	Amount of Variance
	25'	24'	24'	1'

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

Signature of Owner: [Signature]

Date: 11-15-15

CITY OF BIRMINGHAM  
Date 11/16/2015 2:28:04 PM  
Ref 00123521  
Receipt 288011  
Amount \$360.00

123521

Jason and Shelby Jarjosa  
1078 Puritan Birmingham, MI 48009

November 15, 2015

City of Birmingham  
Board of Zoning Appeals  
151 Martin St.  
Birmingham, MI 48009

Dear Members of the Board of Zoning Appeals:

We acquired the house located at 1078 Puritan in October, 2013 and moved in during 2014. Though the house was originally marketed as having a 3-car garage, it currently only accommodates one car plus some storage due to its unique configuration, designed in 1953 when the house was built.

In October 2015 we filed for permits to expand/renovate the garage plus a couple other elements of the exterior of our house – windows, porch, siding, etc. We were informed that because we were adding 2.0' feet to the side of the existing garage, we would need a variance due to the ordinance cited below that was enacted after the construction of the house and garage:

*(4.70; SS-02) A private, attached, single-family residential garage shall not occupy more than 50% of a linear building width of a principal residential building that faces a street, and must be setback a minimum of 5 Feet from the portion of the front façade on the first floor of a principal residential building that is furthest setback from the front property line, excluding those items listed in Section 4.30(C): Projections Into Required Open Space*

The compliance with the width requirements of this ordinance is spelled out on A1 under the new plan (attached). The existing garage is not setback 5' from the portion of the front façade of the house furthest setback from the front property line, which is the front door. The Variance being asked for applies to the 2' wide addition to the garage that is not 5' behind the front façade furthest from the front setback of the house (not including the porch). With the exiting conditions of the garage façade we only need a variance for the front 5'2 ¾" of said addition, for a total of 10.5 square feet. Please refer to the attached plans.

Kind Regards,



Jason Jarjosa

Homeowner - 1078 Puritan, Birmingham, MI 48009