

Agenda

City of Birmingham
Board of Zoning Appeals

Commission Room of the Municipal Building
151 Martin Street, Birmingham, Michigan
July 14, 2015
7:30 PM

1. Roll Call
2. Approval of the June, 2015 Minutes
3. Appeals:

	Address	Petitioner	Appeal	Type/Reason
1.	1193 FLOYD	KATZMAN	15-18	WITHDRAWN
2.	1124 BIRD	VISION	15-19	DIMENSIONAL
3.	375 S ETON	ETON OFFICE PROPERTIES LLC	15-20	DIMENSIONAL

4. Correspondence
5. General Business

Title VI

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

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

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

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

BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, JUNE 9, 2015
City Commission Room
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, June 9, 2015. Chairman Charles Lillie convened the meeting at 7:30 p.m.

Present: Chairman Charles Lillie; Board Members Kevin Hart, Thomas Hughes, Randolph Judd, Peter Lyon, John Miller; Alternate Board Member Rachel Loughrin

Absent: Board Member Jeffrey Jones; Alternate Board Member Cynthia Grove

Administration: Bruce Johnson, Building Official
Scott Lenhart, Building Dept.
Mario Mendoza, 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# 06-34-15

APPROVAL OF THE MINUTES OF THE BZA MEETING OF MAY 12, 2015

Motion by Mr. Judd

Seconded by Mr. Miller to approve the Minutes of the BZA meeting of May 12, 2015 as corrected.

Chairman Lillie:

Page 7 - Under *General Business*, strike fourth and fifth sentences and replace with: "A use variance involves a much tougher criteria than a dimensional variance."

Motion carried, 7-0.

VOICE VOTE

Yeas: Judd, Miller, Hart, Hughes, Lillie, Lyon, Loughrin

Nays: None

Absent: Jones

T# 06-35-15

**687 SOUTHFIELD RD.
(Appeal 15-12)**

The owners of the property known as 687 Southfield Rd. and 692 Frank request the following variances to allow for the construction of an addition between two existing houses connecting them into one.

A. Article 2, Section 2.08 of the Zoning Ordinance requires a minimum rear setback of 30 ft. With 5.17 ft. proposed a variance of 24.83 ft. is requested.

B. Article 2, Section 2.08 of the Zoning Ordinance requires a minimum combined front and rear setback of 55 ft. With 32.75 ft. proposed, a variance of 22.25 ft. is requested.

C. Article 4, Section 4.30 (C) (3) of the Zoning Ordinance does not permit porches or decks to project into the side open spaces. With 7.23 ft. proposed, a variance of 7.23 ft. is required.

Five letters have been received in support of the project.

Mr. Johnson advised the current home at 687 Southfield Rd. was renovated and added onto by the current owners in 2001. The existing house at 692 Frank was built in 1925 and pretty much exists as it was constructed. Both houses comply with requirements of the current Zoning Ordinance individually. However, the rear property line for 687 Southfield will change if the properties are combined, which is the reason for variance requests A and B. Variance C pertains to the proposed front porch added to the existing home on Frank.

Chairman Lillie received clarification that the applicants will leave all existing walls on the house at 692 Frank other than connecting the two houses and extending the porch.

Mr. Johnson noted the two existing platted lots will never go away; they just become one parcel. In response to Mr. Lyon, he advised if the address was on Frank, more of a variance would be required. Also, it would violate the Ordinance to turn this into a multi-family dwelling.

Mr. Peter Stulmeyer of Designhaus Architecture spoke to represent Dr. Jonathan and Kimberly Zaidan, the owners of both properties. They have the opportunity to get the recreational space of a finished basement into the Frank property and increase the upstairs living space relatively seamlessly. They propose to connect the house with additional garage space in a Cape Cod dormer format so that it will look like a cohesive home. There will be 5,800 sq. ft. of living space when everything is complete. No non-conformities are increased between the two parcels because as was mentioned, there are no non-conformities until the homes are connected. All of the adjacent neighbors are in support.

Mr. Judd received clarification that the Zaidan children are age 11 and 3. Mr. Miller asked about the need for the porch and Mr. Stulmeyer answered it is a counter balance and is less of a porch than the one that is there in terms of its proximity to the street. In answer to further questions from board members, Mr. Stulmeyer said the dimension from the porch on Frank to the north property line is 22 ft. If they had not connected the two houses the porch could exist in that format.

The chairman called for comments on this appeal.

Mr. Carson Blake, 743 W. Frank, thought the proposal is a wonderful project and a great addition to the neighborhood.

Mr. Steve Templeton, 682 Frank, said he is very happy with what his neighbors are going to do.

Ms. Ann Halla, 633 Southfield Rd. said she is delighted that the Zaidans want to undergo the project.

Mr. Mark Small, 656 Frank, was very happy with the plans and asked the board to support the requested variances.

Motion by Mr. Miller

Seconded by Mr. Lyon with respect to the petition for 687 Southfield Rd., Appeal 15-12, variances A, B, and C. He moved to approve based on the situation that they are in a dynamic, gentrifying community. As part of gentrification this combining of lots has been done before, although he is not sure with a corner lot and another lot that formed an L. That forms a very unique situation.

With that, it renders conformity burdensome just because of the geometry of the lots. Also, this is the classic situation that the board has seen before where there is a front address on a busy street. The front of the existing house that faces Southfield Rd. really faces the residential street, Frank, to the side and the house the way it sits already has non-conformities in terms of its current setbacks so

that the combining of these two lots is a situation that he doesn't think could be directly covered by our Zoning Ordinance in a literal sense.

He believes that by granting this variance it would do substantial justice to the petitioner as well as to the surrounding property owners. Again, in terms of our gentrifying community it is certainly a very unique problem to this property.

In terms of the problem being self-created, certainly the two lots are being purchased and the houses combined, but Mr. Miller thinks the problem is really caused by the geometry of the lots and the Southfield address, or even if it goes to the Frank address. So, he would move to approve and tie the motion to the plans as submitted.

Motion carried, 7-0.

ROLLCALL VOTE

Yeas: Miller, Lyon, Hart, Hughes, Judd, Lillie, Loughrin

Nays: None

Absent: Jones

T# 06-36-15

**1950 HOLLAND
(Appeal 15-13)**

The owners of the property known as 1950 Holland request the following variance to allow for the construction of a new house less than the minimum required distance between principal buildings standard:

A. Chapter 126, Article 4, Section 4.69 (C) of the Zoning Ordinance requires a minimum distance between principal buildings of 14 ft. for this lot. The applicant is proposing 13.05 ft. to the house to the west. Therefore, a variance of 0.95 ft. is requested.

Mr. Lenhart advised the applicant is proposing to demolish an existing home and construct a new home on a 40 ft. wide interior lot. The existing non-conforming house to the west was constructed in 1948 and only has a side yard setback of 4.05 ft. All other setbacks and distance requirements are conforming. If the house to the west was torn down and built to a conforming setback of 5 ft. it would not need a variance. In response to Mr. Lyon, Mr. Lenhart confirmed the house that is going up will be 24 ft. wide.

Mr. Rick Rowe, LRH Homes, said they are asking for a 0.95 ft. dimensional variance which was created because the house to the west, 1936 Holland, is in non-compliance

with the side yard setback, which causes a hardship to them. They have compromised by downsizing the width of their home to 24.4 ft. when a 26 ft. wide home is allowed on a 40 ft. lot. They have tried to minimize any hardship that would be caused if there is future development on the property to the west. The granting of the variance would not have an adverse effect on the adjoining properties to the west or east. Additionally, their proposed house would be very compatible to what is being done in the neighborhood.

Mr. Lyon noted that to make the driveway wider, they could ask for a variance on the east side rather than the west side. However, Ms. Loughrin observed this variance request decreases the amount of non-conformity and brings the home more into conformity.

The chairman called for comments from members of the audience.

Ms. Terry Elliott said she owns the property at 1936 Holland which is next door to the subject property. She wondered why the applicant has to come over to her side and not just split the difference. Chairman Lillie told her that her house is what is causing the problem. Right now it is existing non-conforming. Therefore, if she tears the house down she could not rebuild where it is currently. She would have to move it in .95 ft. so it would comply with the Ordinance. Then there would be 14 ft. between the two houses.

Mr. Jim Eatman, 1910 Holland, asked if the driveway has been narrowed so that the house could be wider. The chairman said the house is probably as narrow as it could be. The driveway is 9 ft. which is pretty much the standard size for a 40 ft. lot.

Motion by Mr. Miller

Seconded by Mr. Hart to approve the requested variance for 1950 Holland, Appeal 15-13. He believes that the burden here is caused by the house to the west which is close to the lot line. It is a house that was built in the '20s and it certainly is causing a hardship on the house in question. It renders conformity certainly burdensome because of the position of that house.

The variance will do substantial justice to the petitioner as well as to the surrounding properties, and in particular to the adjacent property. It won't cause a hardship on the house to the west. It is a unique circumstance because of the position of that existing house. Also, the problem was certainly not self-created. Again, the house to the west was built in the '20s and that is what causes the difficulty here. He would tie the motion to the plans as submitted.

Motion carried, 7-0.

ROLLCALL VOTE

Yeas: Miller, Lyon, Hart, Hughes, Judd, Lillie, Loughrin
Nays: None
Absent: Jones

T# 06-37-15

**1179 N. GLENHURST
(Appeal 15-14)**

The owners of the property known as 1179 N. Glenhurst request the following variance to allow for an addition to be constructed less than the minimum required distance between principal buildings standard:

A. Article 4, Section 4.69 (C) of the Zoning Ordinance requires a minimum distance between buildings of 30.52 ft. for this lot. The applicant is proposing 26.23 ft. to the house to the north. Therefore, a variance of 4.29 ft. is requested.

Mr. Lenhart explained that what is driving the variance is that this is an existing non-conforming house that was built in 1950. The applicant is proposing to add an addition to the attached garage and a second level addition to the home. The problem is that the house is centered on the lot. The addition on the second floor will stay within the existing plain of the house.

Mr. Pietro D'Aleo from D'Anna Associates Architects spoke on behalf of Mr. Timothy Cooper, the home owner. They are asking for the board's consideration of a variance based on the fact they are beautifying the exterior as well as undertaking an addition. In the 1950's when the house was built, the current Ordinance was not in effect. The encroachment as it stands is 4.09 ft.; the proposed encroachment will be 4.29 ft. In response to Chairman Lillie, he explained why it would not work according to the requirements of the owner to indent the second story so that the variance is not needed. Offsetting would create some structural concerns. It would be impractical to support the required structure.

Mr. Judd stated that Mr. D'Aleo is not saying why he needs the variance; he is telling the board why his client wants it. That is not what the Ordinance speaks to. Mr. Hart observed that the span of the length of the encroachment is about 30 ft. Structure to support 30 ft. above would be substantially large; likely a piece of metal. It would be easy to break up that span in any other room of the house, but not in the existing garage.

Mr. Tony Antimiglia with the development company spoke to explain the biggest issue is the existing garage. In order to set the addition back 4.29 ft. it would essentially be over the garage door, thus creating the issue of support. In order to carry the bearing wall at 30 ft. long, it would essentially be 2 ft. into the existing garage door which then would

eliminate a complete door. Mr. Lyon asked them to explain why the addition needs to come out and cannot stay in the existing plain of the garage door. Mr. D'Aleo answered that the addition has to accommodate the master bedroom. Mr. Lyon questioned their rationale as to why strict compliance with the Zoning Ordinance is not possible and would unreasonably prevent them from using the house for the permitted purpose. They need to establish that there is some practical difficulty why they have to move into the required setback. The master bedroom doesn't have to be so big. Part of their goal should be to minimize the variance that is needed. The massing of the gable roof on the north and then coming out to the front of the garage is not exactly minimizing it.

Mr. Antimiglia noted the south side of the house already has an existing gable. Architecturally it would not be pleasing to have a gable on one end and a hip roof on the other end. There has to be a balance.

Mr. Miller clarified the size of the desired bedroom suite is the driver for the increased size of the garage. The tall gable kind of exacerbates the situation. Mr. Antimiglia said the homeowner talked to the neighbors and showed them what he was going to do and there was no objection on their part.

At this time no one in the audience wanted to comment on the appeal.

Motion by Mr. Lyon

Seconded by Mr. Hughes in regard to 1179 N. Glenhurst, Appeal 15-14, to approve the variance (a case can be made; although he doesn't think it was made tonight) for Article 4, Section 469 (C) of the Zoning Ordinance to require a minimum distance between buildings of 30.52 ft. for a variance of 4.29 ft. to get to 26.23 ft.

He believes that strict compliance with the Ordinance would be unduly burdensome in that the appellant wants to put on a second floor in the same plain as the existing first floor garage. To set it back, as was talked about, would require substantial support underneath and would present a practical difficulty.

He believes that the variance does justice to the homeowner in allowing a second floor over an existing first floor. He also believes that it does substantial justice to the surrounding area in that they have tried to harmonize the addition and not make it look like they have added more onto the house. Therefore, he would move to approve and tie the motion to the plans as presented.

Motion carried, 6-1.

VOICE VOTE

Yeas: Lyon, Hughes, Hart, Lillie, Loughrin, Miller

Nays: Judd

Absent: Jones

T# 06-38-15

**1307 WEBSTER
Appeal 15-15**

The owners of the property known as 1307 Webster request the following variance to allow for the construction of a new house less than the minimum required distance between principal buildings standard:

A. Article 4, Section 4.69 (C) of the Zoning Ordinance requires a minimum distance between buildings of 14 ft. for this lot. The applicant is proposing 11.27 ft. to the house to the east. Therefore, a variance of 2.73 ft. is requested.

Mr. Lenhart pointed out the variance request has been amended to reflect a lesser variance. The applicant is proposing to demolish an existing home and construct a new home on a 40.04 ft. wide interior lot. What is driving this request is that all the houses east of this property have a right side driveway and all the existing homes to the west have a left side driveway, causing a dimension between principal buildings difficulty for this lot because it is the one right in the middle. On a 40 ft. wide lot a 26 ft. wide home can be built. The applicant has mitigated that down to 24.5 ft.

Mr. Dan Lynch, owner of DJL3, the company that owns 1307 Webster, spoke. He tried to minimize the amount of variance by working with Mr. Lenhart in an attempt to figure out which side to put the house on and how to design it less than 26 ft. wide. When they switched the driveway to the left they were able to just ask for a variance on the one side. Currently the house to the west is a little too close to the property line at 4.61 ft. They did keep the 14 ft. between the two existing structures. But if the house to the west were to get torn down in the future it would have to meet the 5 ft. setback, which would actually increase the distance between the house they would be building and the new structure. That is the most likely house to get torn down, because the one to the east has already been pretty significantly remodeled.

No one in the audience wished to discuss this appeal.

Motion by Mr. Lyon

Seconded by Mr. Miller in regard to Appeal 15-15, 1307 Webster, he would move to approve the variance as amended. A variance of 2.73 ft. proposes an 11.27 ft. distance to the house to the east. He believes that strict compliance would be unduly burdensome and that this is an unique situation. This is the proverbial 9-5, 9-5, 5-9 problem that the minimum distance between buildings sets up on each block down these narrow lot streets.

He believes the appellant has done some action to mitigate, being that the house is 24.5 ft. wide. He would note that there seems to be some stealth creep on these and 24.5 ft. is getting up to the wider houses the board has seen on the 40 ft. lots. The board used to be talking around 22.5 to 23.5 ft.; now they are at 24.5 ft. There seems to be a little creep over the years. He still supports the variance.

Mr. Lyon believes it does substantial justice to the homeowner and the surrounding neighborhood and these minimized variances at least maximize the distance between buildings with the 11 ft. instead of going all the way down to 10 ft. He would tie the motion to the plans as presented.

Motion carried, 7-0.

VOICE VOTE

Yeas: Lyon, Miller, Hart, Hughes, Judd, Lillie, Loughrin

Nays: None

Absent: Jones

T# 06-39-15

**536 PARK
Appeal 15-16**

The owners of the property known as 536 Park request the following variances to allow for the construction of a new detached garage; and an addition to the existing home less than required minimum front and side yard setbacks:

- A. Article 2, Section 2.08 of the Zoning Ordinance allows for 30% maximum lot coverage. The applicant is proposing 31.27%. Therefore, a variance of 1.27% is requested.
- B. Article 2, Section 2.08 of the Zoning Ordinance requires a minimum 5 ft. side yard setback for the north side open space. The applicant is proposing 3.80 ft. Therefore, a variance of 1.20 ft. is requested.
- C. Article 2, Section 2.08 of the Zoning Ordinance requires the front building setback be the average of homes within 200 ft. With 21.80 ft. front setback required and 16.80 ft. proposed, a variance of 5 ft. is requested.
- D. Article 4, Section 4.30 (C) (1) of the Zoning Ordinance allows for a porch and steps to project into a front open space for a maximum distance of 10 ft. The applicant is proposing 12.35 ft. Therefore, a variance of 2.35 ft. is requested.

Mr. Lenhart explained the applicant is proposing to demolish an existing, non-conforming 718.9 sq. ft. detached garage and carport, and construct a new 616 sq. ft. detached garage (75 bonus sq. ft. for interior staircase). The existing lot coverage is 35%. They are proposing to drop that down to 31.27%, a decrease of 3.73%. The variance request on the front and side lower level addition will not affect lot coverage in that the upper level of the home already occupies the space above. The existing enclosed front entry is to be removed and a new open porch will be constructed. The proposed front variance is for the step area of the proposed porch.

Chairman Lillie summarized that the existing structure is already non-conforming as to lot coverage. If the applicant receives the variance they will decrease the amount of the non-conformity by 3.73% by reducing the size of the garage.

Mr. Gregory Mason, Architect, spoke to represent his clients. He pointed out that the site has seven items of non-conformance. Their proposal is to correct three of the non-conformances and reduce one of them. The hardship for lot coverage is that the house was built in 1926 and is large for the lot size. Demolition of the existing carport and garage will reduce the non-conformity, going from 35% down to 31.27%. They shrank the garage size down as far as they could. Any smaller would not fit two cars. Variances B and C are to fill in a little corner of the house and stop a drainage problem. The foyer expansion is an infill below the second floor cantilevered construction and would match the existing front and side yard setbacks currently constructed with the second level. The final variance D is to raise the height of the porch to match the existing home's first finish floor elevation. The porch is proposed to be reconstructed in its current position with re-use of the existing foundations. The variance is to provide enough space for two stairs to go up to the porch.

They are correcting the offset problem with the garage by setting it back the required 3 ft. The height will be approximately the same as the current garage. Both have a 10/12 roof pitch. He hopes the board will recognize they are taking a number of non-conforming items and reducing them down with their improvements. They want to fix the house up and make it aesthetically pleasing so that it looks nice for the community.

Mr. Miller noted with regard to Variance A the size of their proposed garage is 28 ft. x 22 ft. with the inclusion of a staircase to the second floor. The board always looks to 20 ft. x 20 ft. for a minimum size garage. If their garage was 20 ft. x 23 ft., Variance A would not be needed. Mr. Mason answered they looked at trying to shrink the garage, but in order to accommodate the owners' vehicles plus lawn equipment they determined the proposed dimensions would be about minimum. They are shrinking it by roughly 4% trying to get a garage that would accommodate the vehicles.

Secondly, Mr. Miller noted with respect to Variance D that the two steps could go off to the side. Mr. Mason said they talked about that but the surrounding homes have approaches from the front up. Having a side step entranceway would really diminish

the approach into the home and it would not be as nice as a direct approach. Additionally, none of the neighbors object to what they are proposing.

No one from the public wanted to comment on this appeal.

Motion by Mr. Judd

Seconded by Mr. Hughes on Appeal 15-16, 536 Park, the petitioner's home is in an interesting area which is ripe with all kinds of non-conformities over the years and they seem to have piled up as he recalls. The petitioner seeks four variances. Three of them deal with Article 2, Section 2.08, a lot coverage issue, although he notes that the petitioner has decreased the amount of lot coverage by 3.73%. The second Variance B is the side yard setback in the north side open space. The third Variance C is a front building setback. Variance D deals with Article 4, Section 4.30 (C) (1) regarding porch and steps in the front open space.

In his presentation the architect for the petitioner notes that this particular house has seven non-conformities and this is an attempt to correct or ameliorate at least four of them. The one term that we always look for in dealing with a difficult piece of property is mitigation. In this case Mr. Judd thinks the architect has certainly shown yeoman's effort at mitigation.

He thinks that to require strict compliance with a house as quirky as this one would be unnecessarily burdensome under the circumstances. Further, he thinks that to grant the variances would represent substantial justice to both the property owner and the other adjoining property owners.

The plight of the owner is due to unique circumstances on this piece of property, which is quite obvious, looking at the laundry list of other problems with it. Of course we always come down to the mettlesome problem of whether or not this problem is self-created. However, he is sure it is. But, that is where mitigation comes in and he feels that the petitioner has argued quite well the need for the variances requested. While the board doesn't regulate aesthetics, Mr. Judd thinks that even the steps pass muster in this particular case. For those reasons he would move to approve and to tie the motion to the plans.

Mr. Miller commented on Variance D. The requirement of the steps is based on the nature of the property. There are unusual topography changes in this neighborhood. Therefore the need for steps is not just an aesthetic, but it is a requirement to deal with the topography.

Motion carried, 7-0.

VOICE VOTE

Yeas: Judd, Hughes, Hart, Lillie, Lyon, Loughrin, Miller

Nays: None
Absent: Jones

T# 06-40-15

**607 STANLEY
Appeal 15-17**

The owner of the property known as 607 Stanley requests the following variances to allow for the construction of a second-story addition to the existing home and an expansion of an existing front porch into a required side open space:

- A. Chapter 126, Article 2, Section 2.10 of the Zoning Ordinance requires a minimum of 5 ft. side yard setback for the north side open space and the total of both side yard setbacks equals 14 ft. for this property:
- The existing setback along the north property line is 1.44 ft; with 1.44 ft. proposed, a variance of 3.56 ft. is requested.
 - The existing combined total side yard setbacks is 13.31 ft.; with 13.31 ft. proposed, a variance of 0.60 ft. is requested.
- B. Chapter 126, Article 2, Section 2.10 of the Zoning Ordinance requires the combined front and rear setbacks total 55 ft. The existing combined front and rear setbacks equal 45.40 ft. With 45.40 ft. proposed, a variance of 9.60 ft. is requested.
- C. Chapter 126, Article 2, Section 2.10 of the Zoning Ordinance requires the maximum lot coverage for this lot not to exceed 30%. The existing lot coverage is 36.73%. With 37.04% proposed, a variance of 0.31% is requested.
- D. Chapter 126, Article 04, Section 4.30, (C) (2) of the Zoning Ordinance allows overhangs to project 0.83 ft. into the north required side yard setback for this property. Due to the existing home's non-conforming setback, the existing overhang projects 5 ft. plus into the required open space. With 4.89 ft. proposed, a variance of 4.06 ft. is requested.

The property is zoned R-3.

Four letters have been received in support of the proposed variances.

Mr. Johnson advised the existing one-story home was constructed in 1923 prior to the current subdivision plat, which occurred in 1925. The existing home does not comply with the current Zoning Ordinance in regards to north side yard setback, total side yard setbacks, combined front and rear setbacks, lot coverage, and the overhang projection into the north side open space. These are all legal non-conforming conditions. They were existing prior to the current Zoning Ordinance. An addition was added to the

original home in 1985. At that time a side yard setback and overhang projection variance was granted. There is a discrepancy between the current survey and the 1985 site plan and the north side yard setback is actually closer than was shown in the 1985 appeal. The lot is irregular shaped as it is narrower in the front as compared to the rear. Initially the plan was to have a stairway coming off the front of the porch but in discussions with the applicant it was moved to the side rather than having it project closer to the property line than the current porch already does. The majority of the overhang request is in the front of the lot where it is the narrowest. The proposed addition meets all Ordinance requirements as far as the height. The applicant has removed a lot of brick pavers in the rear to increase the open space. In response to the chairman's question, Mr. Johnson confirmed this is a platted, therefore buildable lot.

Mr. Judd asked where they would put the ladder to do repairs on the north side of the house. Mr. Johnson replied that the applicant is researching different methods that would allow the property to be maintained without crossing the property line.

Ms. Karen Asadourian, the homeowner, said she fell in love with the 1920's character of this house. However, it has some serious issues. For instance, there is only one bedroom and there are only two small closets in the whole house. Furthermore, the front door is not usable because there are no stairs to the ground level. Therefore, she thought a renovation was necessary. Inspection of the property revealed no concerns with the foundation being able to support the basement, first floor, and second story. There are several factors in this case that are really unique. The lot is about 4,200 sq. ft. and the Zoning Ordinance for R-3 is designed for a lot that is at least 4,500 sq. ft. and up to 6,000 sq. ft. In her neighborhood there are 433 lots. Of those 433, there are only 11 lots that are smaller than her lot. There is a two-story home on each of them. In addition to the lot being undersized, the shape of the lot is unique. There are not very many examples of lots in Birmingham that are "L" shaped. The situation is incredibly unique based on the under-sized lot, the shape of the lot, and the non-conforming house.

A literal interpretation of the Ordinance would deprive her of the rights commonly enjoyed by other properties in her neighborhood. All of the other houses on her block are two-story homes with two car garages, and several of the garages have two stories. She is really just asking for a modest renovation that stays within the existing footprint. Because she recognizes that her current structure is non-conforming in lot coverage, she has not asked for a two-car garage which she would love to have. The renovated house will be more harmonious with the street in that it will be two stories, which is in line with all the other houses. Therefore, she feels that granting the variances is within the spirit and intent of the Ordinance and does substantial justice to the neighborhood.

She and her architect have agreed that a craftsman style house is most appropriate for the neighborhood. Every effort has been made to respect the character of the house

and its history. She feels the plans are the perfect balance between maintaining history and improving on the property.

They have pulled the overhang back so that it no longer encroaches on the north side. A picket fence will be removed so she can access that side of the house. She intends to install a maintenance system so the property can be safely maintained by contractors without the use of ladders. She has also mitigated by removing some of the pavers in the backyard to improve the open space. By granting the variances, it will allow her to enjoy what others in the neighborhood are enjoying.

Mr. Lyon inquired if she considered removing the house and constructing a new one rather than going through all of the renovations. Ms. Asadourian answered that she might have but the foundation and basement are in good condition and the property has been well maintained.

Chairman Lillie invited comments on this appeal from members of the audience.

Ms. Jan Nearswick from Caldwell Banker Professionals said she represents Roger Castle who owns 587 Stanley. She produced a Power of Attorney for the purpose of objecting to these variances. She clarified that 587 Stanley was built in 1885. There isn't a reasonable amount of distance between the two homes. The property at 587 Stanley has been modified because of the hardship imposed by 607 Stanley. Mr. Castle's concern is that he doesn't want construction people on his property. There is no alternative but to have the building trades on his property, the fence to be erected on his property, and the extending overhang will still be there. He doesn't feel that is in anybody's best interest and it could potentially affect the value of his home as it is presently on the market.

The chairman noted that the petitioner has already testified that with the variance the overhang will not encroach on her client's property. Assuming they can construct this home without going on her client's property, Chairman Lillie asked if her client has an objection. Ms. Nearswick replied the builder who did the renovation on 587 Stanley has stated it is impossible to build a second story without ever stepping 18 in. off the property. It would be impossible to execute the plans without going onto the adjacent property.

Mr. Miller observed that in urban environments building to zero lot line is done all the time. Therefore, he was skeptical of the claim of impossibility.

Motion by Mr. Miller

Seconded by Mr. Judd to support the appeal at 607 Stanley, Appeal 15-17, that would include Variances A through D. Certainly this is a unique property and the problems here are created due to the unique circumstances of the property. He believes that strict compliance with the Ordinance is certainly burdensome to the

execution of the proposed improvements to this residence. The shape of the lot and more than that, the closeness to the adjacent lot is again a very unique circumstance.

Mr. Miller believes that what is being asked here would do substantial justice certainly to the petitioner and to the general area. The improvements that are requested here are very common within Birmingham, especially in this neighborhood and particularly on this street. Therefore, again, he motions to support this petition and tie the motion to the plans as submitted.

Mr. Lyon stated that it seems they are propagating a rather severe existing non-conformity by allowing a substantial renovation to occur so close to the property line. However, what turned him around is that these things are not unheard of.

Motion carried, 7-0.

VOICE VOTE

Yeas: Miller, Judd, Hart, Hughes, Lillie, Loughrin, Lyon

Nays: None

Absent: Jones

T# 06-41-15

CORRESPONDENCE (none)

T# 06-42-15

GENERAL BUSINESS

T# 06-43-15

No further business being evident, the board members passed a motion to adjourn.

Bruce R. Johnson, Building Official

Application Date: 6-12-15



Hearing Date: 7-14-15

Received By: BSM

Appeal # 15-19

Board of Zoning Appeals Application

Type of Variance: Interpretation _____ Dimensional Land use _____ Sign _____ Admin review _____

Property Information:

Street address: <u>1124 BIRD</u>	Sidwell Number:
Owners name: <u>NICK GERASIMIDIS</u>	Phone #: <u>(248) 808 1522</u>
Owners address: <u>1124 BIRD</u>	Email: <u>NIKKO_MI@yahoo.com</u>
City: State: <u>BIRMINGHAM MI</u>	Zip code: <u>46009</u>
Contact person:	Phone #:

Petitioner Information:

Petitioner name: <u>JAMES VERVICH</u>	Phone #: <u>(2) 515 6730</u>
Petitioner address: <u>559 MADISON</u>	Email: <u>JIM @ VERVICHWORKS.COM</u>
City: <u>BIRMINGHAM</u> State: <u>MI</u>	Zip Code: <u>46009</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.

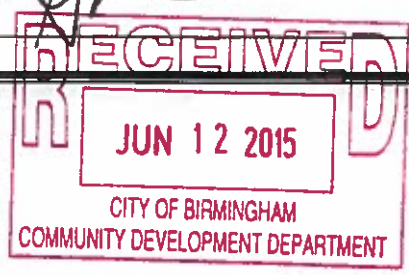
Variance chart example:	Required	Existing	Proposed	Amount of Variance
	25'	24'	24'	1'

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: _____

6/10/15



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 #202, Public Acts of 1969, Section 5(c), which amended Section 5 of Article #207 of the Public Acts of 1921.
- 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.

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.

6/5/15

To: Board of Zoning Appeals

Subject: Letter of Hardship

Petitioner: Vervisch Homes
559 Madison
Birmingham, MI 48009
248-515-6730

Address: 1124 Bird

Proposal:

To demolish existing home (950 square feet) and construct new 2140 square foot home and detached two-car garage.

Hardship Variance:

Space between homes required 14'
Proposed distance 11'1"
Variance application of 2.9'

The lot, which the proposed home is to be built on, is a corner lot. This 40' x 120' lot does not have the usual layout, with every house and driveway in uniformed sequence. Unfortunately, the adjacent property to the east is at 5.1' off the property line, and the current home sits 5' from the line itself. Having 10.1 feet between homes in their current state. To the West of the property is Cummins Ave (corner lot) where the setback has to be 10'.

We would like to build the attached home, which is within the cities lot coverage guidelines. Keeping the driveway in its current position, exiting to Cummins Ave. I would like to position the new home at 6.0' along the eastern property line, 1' further than its current position. Increasing the total distance between homes from 10.1' to a proposed distance of 11.1'. The west (Cummins) setback would remain 10.0', same as it is today.

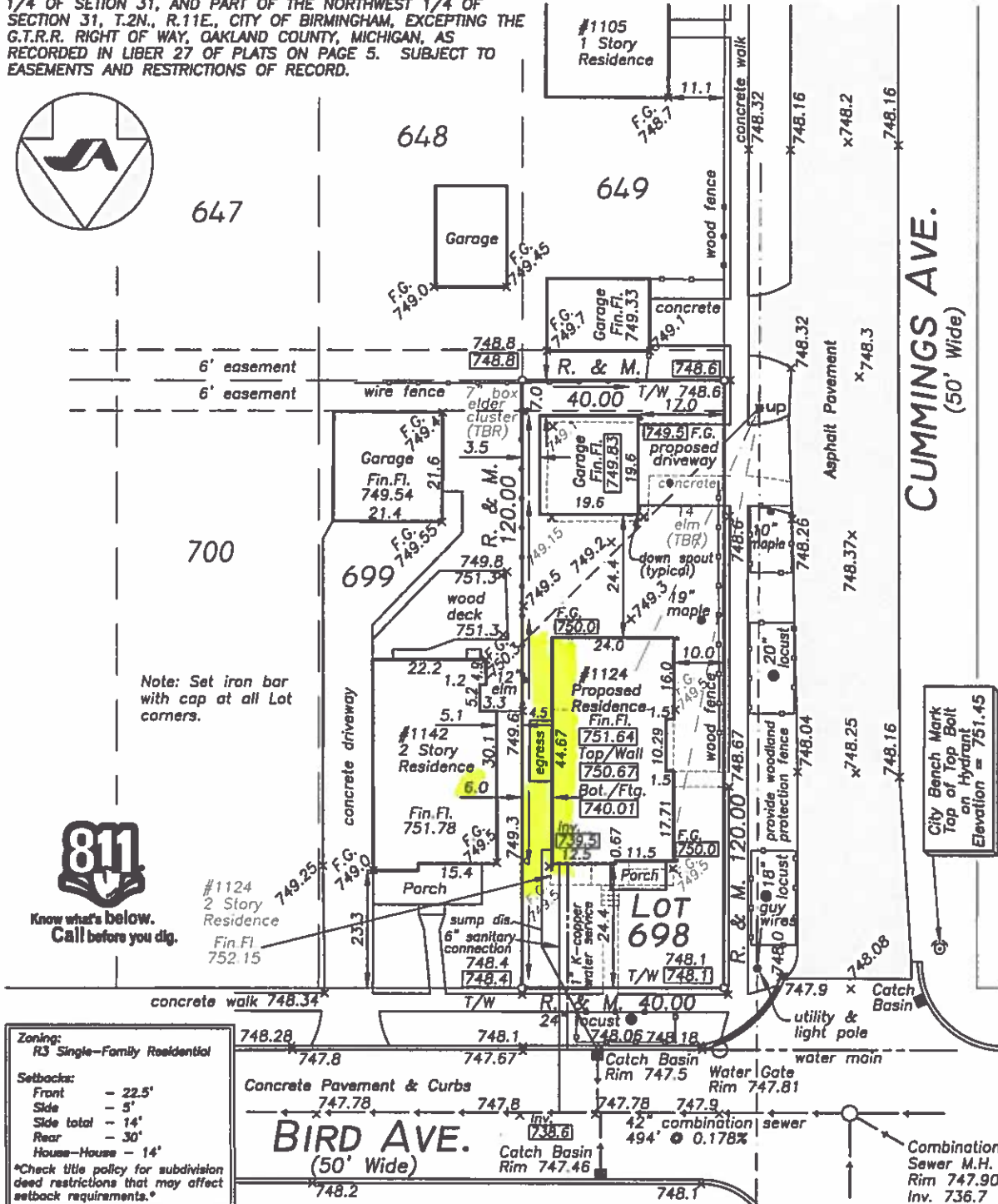
Thank you for your consideration,



James B. Vervisch

LEGAL DESCRIPTION

LOT 698 OF, "LEINBACH-HUMPHREY'S WOODWARD AVENUE SUB", OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 36, T.2N., R.10E., AND PART OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 31, AND PART OF THE NORTHWEST 1/4 OF SECTION 31, T.2N., R.11E., CITY OF BIRMINGHAM, EXCEPTING THE G.T.R.R. RIGHT OF WAY, OAKLAND COUNTY, MICHIGAN, AS RECORDED IN LIBER 27 OF PLATS ON PAGE 5. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.



Note: Set iron bar with cap at all Lot corners.



Know what's below. Call before you dig.

Zoning:
R3 Single-Family Residential

Setbacks:
Front - 22.5'
Side - 5'
Side total - 14'
Rear - 30'
House-House - 14'

Check title policy for subdivision deed restrictions that may affect setback requirements.

SETBACK INFORMATION ON HOUSES WITHIN 200' (ON BIRD AVE.)

ADDRESS	SETBACK
#1124	25.1
#1142	23.3
#1188	22.1
#1188	24.8
#1172	17.1
#1188	29.0
#1092	24.0
#1080	26.0
#1039	23.3
#1016	29.2
AVERAGE	24.4

Revised House & Garage Location 8/9/15

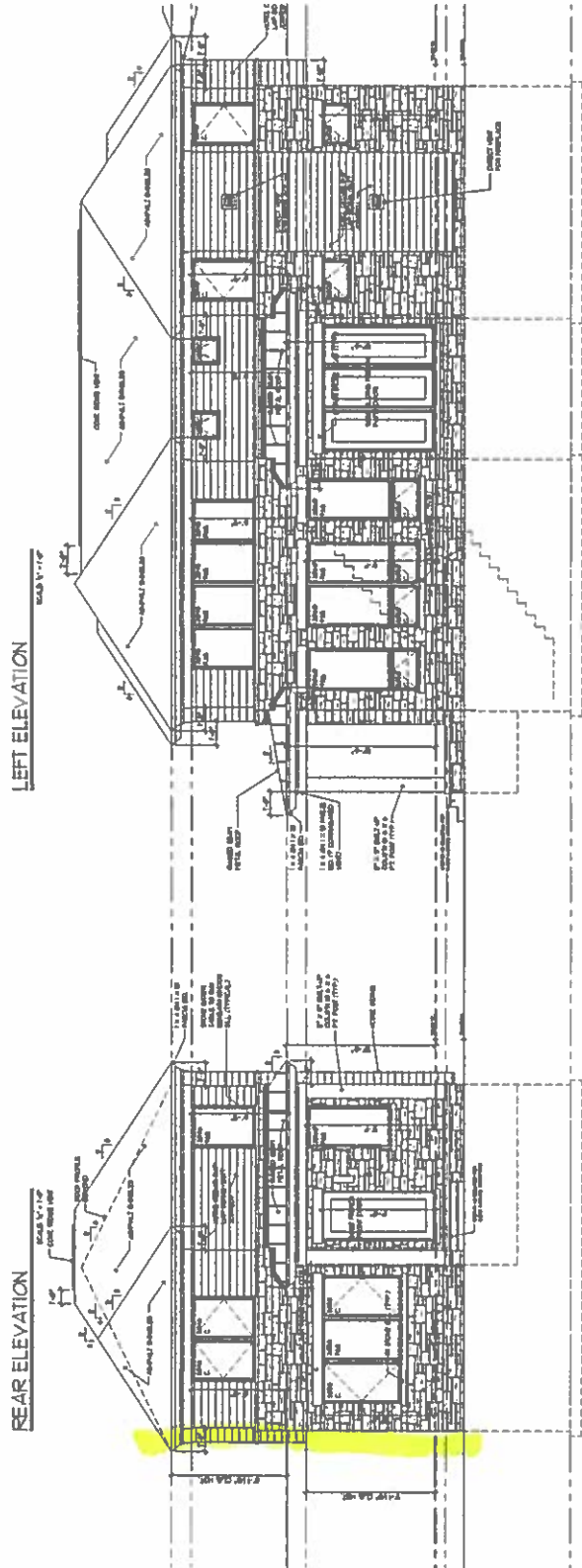
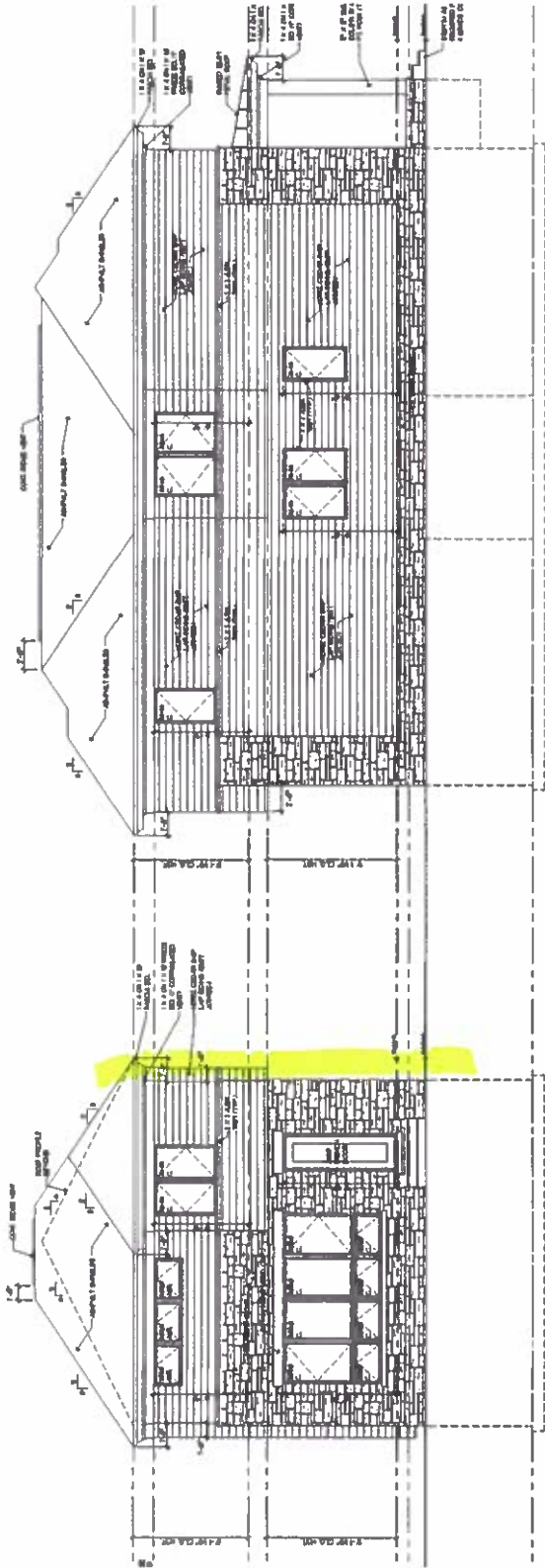
PLOT PLAN

prepared for: McFARLAN HOLDINGS LLC
559 MADISON
BIRMINGHAM, MI 48009
(248) 515-8730
(588) 828-0381 FAX

JEKABSON & ASSOCIATES, P.C.
Professional Land Surveyors
1320 Goldsmith, Plymouth, MI 48170
(734) 414-7200 (734) 414-7272 fax
by



PLAN	15-208
DATE	12 Jan 15
JOB NO.	15-01-004
SCALE	1" = 20'
DRAWN	JGE
CHECKED	LW
SHEET	1 OF 1



SEE ALL WINDOWS AND DOORS FOR THE
CORRESPONDING SCHEDULES TO THE ARCHITECTURAL
DRAWINGS AND TO THE CONTRACT.

TYPICAL WINDOW DIMENSIONS

1. WINDOW HEIGHT SHALL BE 7'-0" UNLESS OTHERWISE NOTED.

2. WINDOW WIDTH SHALL BE 3'-0" UNLESS OTHERWISE NOTED.

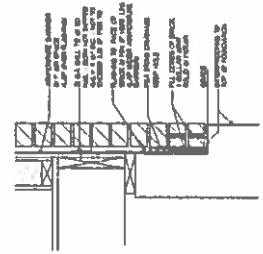
3. WINDOW SPACING SHALL BE 1'-0" UNLESS OTHERWISE NOTED.

4. WINDOW SILL SHALL BE 4" UNLESS OTHERWISE NOTED.

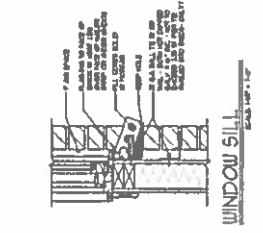
5. WINDOW CASE SHALL BE 4" UNLESS OTHERWISE NOTED.

THE ARCHITECT
ARCHITECTURAL FIRM

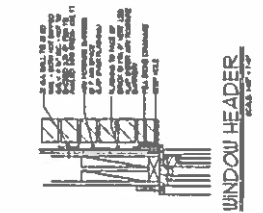
15-208
3 OF 5



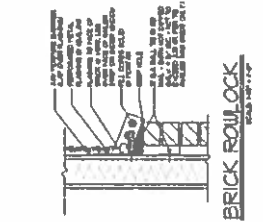
WALL DETAIL
SCALE 1/8" = 1'-0"



WINDOW SILL
SCALE 1/8" = 1'-0"



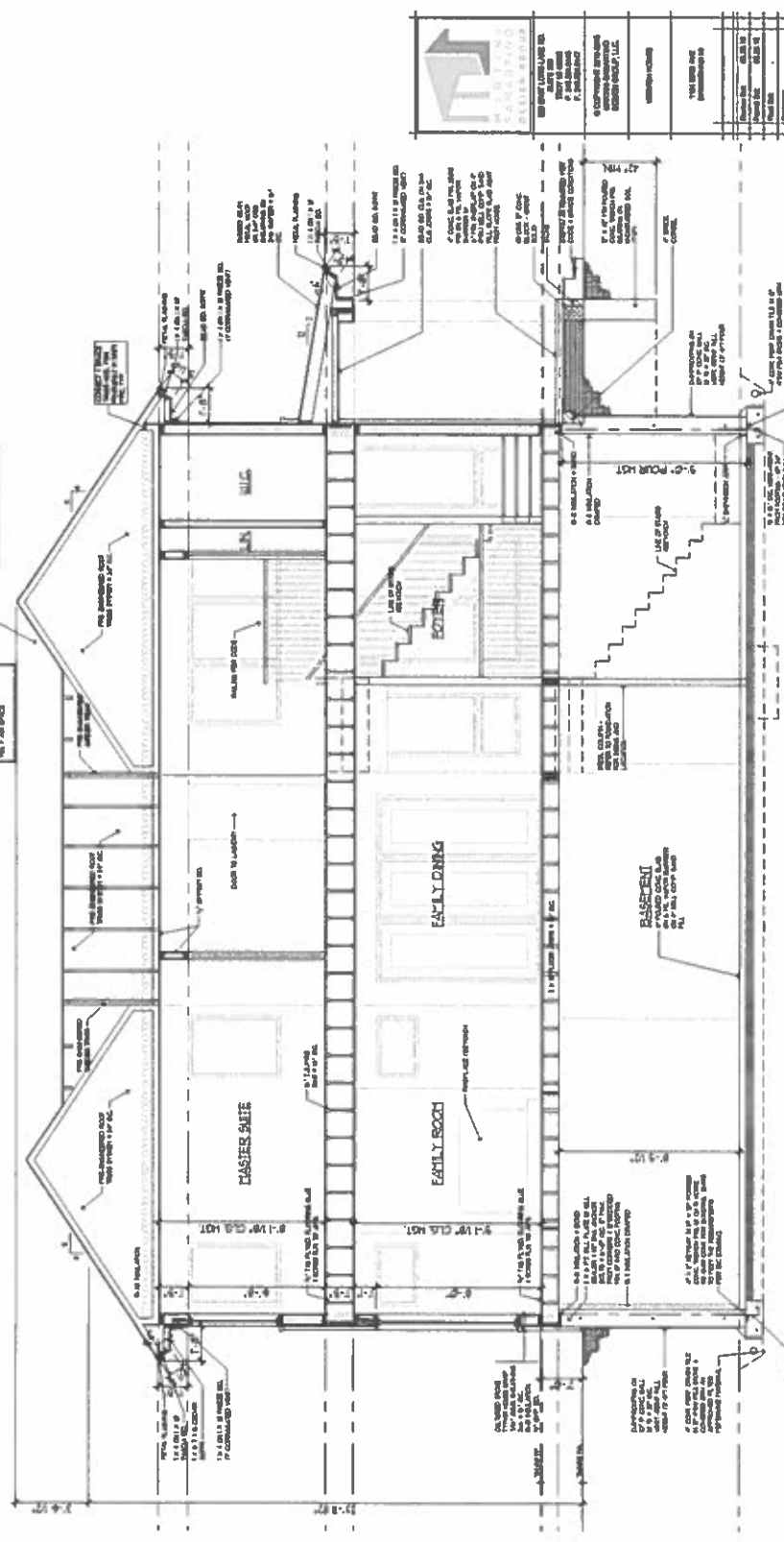
WINDOW HEADER
SCALE 1/8" = 1'-0"



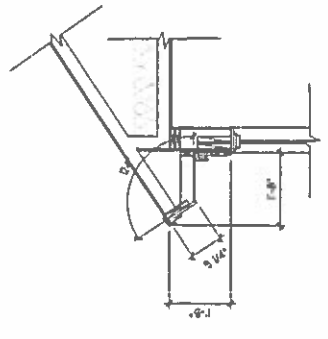
BRICK ROWLOCK
SCALE 1/8" = 1'-0"




RAKE TRUSS-FLASHING DETAIL
SCALE 1/8" = 1'-0"

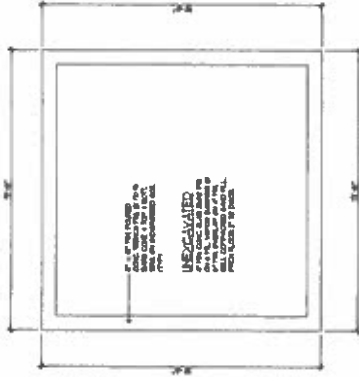
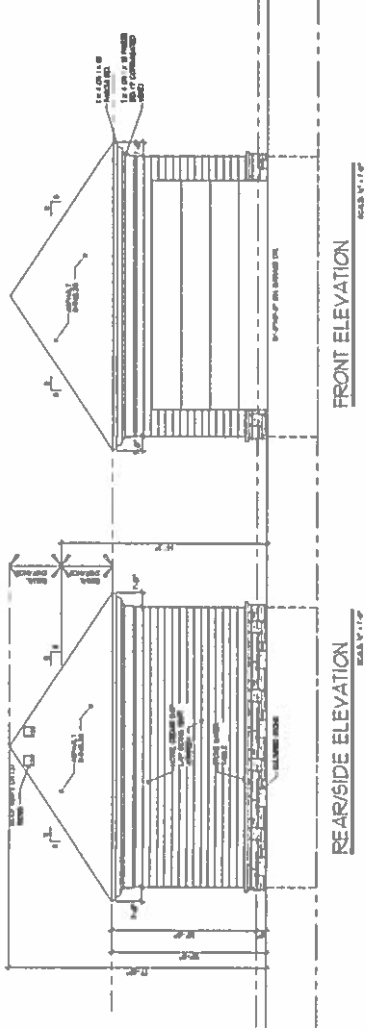



BUILDING SECTION A4
SCALE 1/8" = 1'-0"



EAVES DETAIL
SCALE 1/8" = 1'-0"

	
H. M. B. ENGINEERS ARCHITECTS 1000 LEXINGTON AVENUE, SUITE 1000 NEW YORK, N.Y. 10022 TEL: (212) 850-8000 FAX: (212) 850-8001 WWW: www.hmb.com	
PROJECT NO. 15-208	DRAWING NO. 4 OF 5



	
M.A. BARTING DESIGN GROUP	
1500 S. 1500 W. SUITE 100 TULSA, OK 74107 P. 918.438.1111 F. 918.438.1112	
1500 S. 1500 W. SUITE 100 TULSA, OK 74107 P. 918.438.1111 F. 918.438.1112	
PROJECT NO. 15-208	
DATE 10/15/15	
DRAWN BY J. BARTING	
CHECKED BY J. BARTING	
SCALE 1/4" = 1'-0"	
SHEET NO. 5 OF 5	

Application Date: 06-11-2015

Hearing Date: 06-14-2015



Received By: BM

Appeal # 15-20

Board of Zoning Appeals Application

Type of Variance: Interpretation _____ Dimensional X Land use _____ Sign _____ Admin review _____

Property Information:

Street address: 245, 325, 375, ETON STREET		Sidwell Number: 20-31-201-002 & 20-31-203-029	
Owners name: NORM LE PAGE / ETON OFFICE PROPERTIES LLC		Phone #: 248-647-7774	
Owners address: 245 ETON STREET		Email:	
City: State:	BIRMINGHAM, MI	Zip code:	48009
Contact person: JOHN KELLY		Phone #: 248-258-6663	

Petitioner Information:

Petitioner name: VICTOR SAROKI		Phone #: 248-258-5707	
Petitioner address: 430 N. OLD WOODWARD AVENUE 3RD FLOOR		Email:	
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.

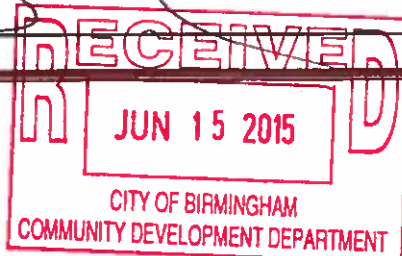
Location of all requested variances must be highlighted on plans and survey. All dimensions to be taken in feet to the first decimal point.

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: _____

Date: 6/9/15



CITY OF BIRMINGHAM
Date 06/16/2015 8:03 AM
R-1119107
Rec'd + 266008
Amount: \$560.00

119107

**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 15th day of the month preceding the next regular meeting. If the 15th 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 #202, Public Acts of 1969, Section 5(c), which amended Section 5 of Article #207 of the Public Acts of 1921.
- 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.

ARTICLE II - Results of an Appeal

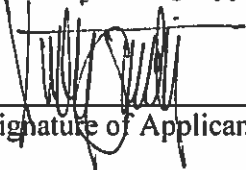
- A. The Board may reverse, affirm, vary or modify any order, requirement, decision or determination as in its opinion should be made, and to that end, shall have all the powers of the officer from whom the appeal has been taken.
- B. The decisions of the Board shall not become final until the expiration 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 Certificate of Survey must be submitted to the Community Development Department with the building permit application. A building permit must be obtained 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

**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, JANUARY 14, 2015**

Item	Page
SPECIAL LAND USE PERMIT ("SLUP") PRELIMINARY AND FINAL SITE PLAN REVIEW 1755 and 1775 E. Melton (postponed from November 19, 2014) Eton Academy Construction of a one-story addition to connect the school and former church building	2
<p style="padding-left: 40px;">Motion by Mr. DeWeese Seconded by Mr. Williams to recommend approval of the Preliminary and Final Site Plan Review and SLUP Amendment for 1755 and 1775 Melton, Eton Academy, to the City Commission.</p>	3
<p>Motion carried, 7-0.</p>	3
SPECIAL LAND USE PERMIT ("SLUP") FINAL SITE PLAN REVIEW 563 and 575 S. Eton Griffin Claw Brewery Request for approval of new construction of a whiskey distillery building and a new entrance to the existing restaurant	3
<p style="padding-left: 40px;">Motion by Mr. DeWeese Seconded by Mr. Koseck to recommend approval to the City Commission of the Final Site Plan and SLUP Amendment for 563 and 575 S. Eton, subject to the following condition: 1) The applicant complies with the comments/suggestions made by the various departments and addresses the width of the parking lot access in front of the brew house, subject to administrative approval.</p>	6
<p>Motion carried, 6-1.</p>	6
FINAL SITE PLAN REVIEW 245, 325 and 375 S. Eton District Lofts, Building B Construction of a new four-story, mixed-use building to include commercial space and residential loft units	6

1) The applicant complies with the comments/suggestions made by the various departments and addresses the width of the parking lot access in front of the brew house, subject to administrative approval.

There were no final comments from the public at 9:35 p.m.

Motion carried, 6-1.

VOICE VOTE

Yeas: DeWeese, Koseck, Clein, Lazar, Share, Whipple-Boyce

Nays: Williams

Absent: Boyle

01-07-15

FINAL SITE PLAN REVIEW

245, 325 and 375 S. Eton

District Lofts, Building B

Construction of a new four-story, mixed-use building to include commercial space and residential loft units

Ms. Ecker explained the subject site, 375 S. Eton, is part of a larger site including the existing Big Rock Chop House, Big Rock Chop House parking deck, the Reserve banquet facility, and the District Lofts - Villa Street Building (Building A), and has a total land area of 3.54 acres. It is located on the southeast corner of S. Eton and Maple Rd., and extends down to Villa St. to the south. A Special Land Use Permit ("SLUP") was granted for the Reserve on September 22, 2003 as it exceeds 6,000 sq. ft. in size, and has hours of operation past 11 p.m. The applicant was also required to prepare a Community Impact Study ("CIS") in accordance with section 7.27(E) of the Zoning Ordinance at the time that the entire site was originally approved (when Building A was to be constructed), and the CIS was accepted by the Planning Board on January 25, 2006. As the Big Rock Chop House is also listed in the City's inventory of historic properties, the entire site was also previously reviewed and approved by the Historic District and Design Review Committee ("HDDRC").

The applicant is proposing to construct the final phase of the entire development which was originally approved on August 6, 2006. This final phase includes the proposed construction of a four-story, mixed-use building containing 18 residential loft units, two live/work ground floor units and two commercial spaces on the first floor (Building B). Building B is not located in a Historic District. All of the underground parking will be under the footprint of the new loft building and accessed from the existing loft building. The units range in size from 924 sq. ft. to 2,800 sq. ft.

The applicant meets the majority of the bulk, height, area and placement requirements for the MX Zoning District. ***However, the applicant will be required to reduce the height of the building or obtain a variance from the Board of Zoning Appeals to allow the mechanical tower and other equipment to exceed 50 ft. in height.*** The applicant is proposing 58 ft. including the mechanical and four stories. They have advised that they wish to seek a variance from the BZA to allow the stair and elevator

tower to provide access to the rooftop, ***and to seek a variance to allow a rooftop deck with a pergola and an enclosed exercise room and a restroom if the Planning Board is supportive of this use.***

Design Review

The proposed building design matches the contemporary style of the existing District Lofts building next door, while using some traditional style materials to blend in with the historic Big Rock Restaurant and The Reserve to create a building design that is harmonious with both the Mixed-Use District on the east side of Eton and the Single-Family Residential District on the west side of Eton. Overall, the proposed design of Building A is compatible with the vision for the MX District contained in the Eton Road Corridor Plan. All of the materials match what is on the existing loft building.

Mr. Victor Saroki, the architect for this development, was present along with Mr. Scott LePage, the developer; and Mr. John Kelly, the general contractor. The new building is exactly the same as originally proposed, except for the roof terrace. The original building has been very successful and there is a waiting list to get in. This building has some nice retail spaces that front right on Eton. The materials and aesthetic details are meant to resemble updated warehouses. The project meets all parking requirements and an additional 34 underground spaces are proposed for the new building. They are happy to work with staff to identify street furniture along Eton and the appropriate spaces for lighting along both Eton and Villa.

They see the roof terrace as a nice element to introduce into this project. Serviceability for the mechanical equipment is a practical consideration for allowing the stairs and elevator to go to the roof. In the MX District the allowable building height is 45 ft. and only 5 ft. more is permitted for mechanical. All the other zoning districts in town permit 10 ft. for mechanical. So with only 5 ft. permitted, the only way to get to the roof is to climb up a ladder and through a hatch. In summary, the rooftop terrace is a small element that is practical for service and it is good for the residents. Mr. Saroki thinks that use of the roofs should be encouraged, but it cannot be done with only 5 ft. allowed above the building height.

Ms. Whipple-Boyce thought the rooftop area is somewhat like a fifth story. She suggested they could achieve what they want by taking half of an end unit and turning it into a terrace. Mr. Saroki replied if they are not successful at the BZA, the terrace won't happen.

Mr. Koseck likes the aesthetic of the building. He was surprised at the 5 ft. limit on rooftop screening, the same with stairs and an elevator. Mr. Saroki showed the circulation through the site and explained how people can go in and out comfortably.

Mr. DeWeese said he finds it very hard to support the uses, given the way the ordinance is written; but again, it is not clear why it is that way because the 5 ft. height allowance for screening is not practical.

In response to Chairman Clein, Mr. Saroki stated there is no intention to add an enclosure to allow for all season use. This is truly a sun deck.

The Chairman called for comments from members of the public at 9:55 p.m.

Mr. J. Colman, 521 Lewis, asked where all the cars will park. Ms. Ecker verified that the applicant complies with the parking requirement. Mr. Saroki said they have 397 spaces on-site, which is an excess of 60 spaces, not including street parking. Mr. Williams noted that people always want to park on the streets.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Share to approve the Final Site Plan and Design Review for 375 S. Eton subject to the following conditions:

- 1) Reduce the height of the building or obtain a variance from the BZA to allow the mechanical tower and other equipment to exceed 50 ft. in height;**
- 2) Remove all uses above 40 ft. in height (deck, exercise room and restroom) or obtain a variance from the BZA;**
- 3) Provide specification sheets for the proposed rooftop mechanical equipment and identify the proposed roofing material;**
- 4) Add one street tree along Villa and provide street lights every 40 ft. on S. Eton and every 80 ft. on Villa all along the north side, adjacent to Buildings A and B, with all locations to be administratively approved; and**
- 6) Add benches, trash receptacles and bike racks, with locations to be administratively approved.**

There were no comments from the audience on the motion at 10:03 p.m.

Motion carried, 7-0.

VOICE VOTE

Yeas: Whipple-Boyce, Share, Clein, DeWeese, Koseck, Lazar, Williams

Nays: None

Absent: Boyle

01-08-15

MEETING OPEN TO THE PUBLIC FOR ITEMS NOT ON THE AGENDA (no discussion)

01-09-15

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

a. Communications

- 2200 Holland, Mercedes-Benz was approved for their variance at the Board of Zoning Appeals;
- As yet no bistros have made their submittal for 2015. Applications will open up again in April.



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

380 North Old Woodward Avenue
Suite 300
Birmingham, Michigan 48009

Tel: (248) 642-0333
Fax: (248) 642-0856

Richard D. Rattner
rdr@wwrplaw.com

June 15, 2015

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

RE: *Letter of Hardship and Practical Difficulty to Support a Dimension Variance - Application for Dimension Variance at 245, 325, 375 Eton Street Sidwell No. 20-31-201-002 and 20-31-203-029*
Owner: Norm Le Page / Eton Office Properties, LLC

Dear Members of the Board of Zoning Appeals:

Please accept this letter as a letter of hardship and practical difficulty pursuant to Chapter 126 of the Birmingham City Code ("Zoning Ordinance") Section 8.01(F)(3)(a). This letter is attached to and made a part of the Board of Zoning Appeals Application Appeal referenced above.

Introduction and Background

The Eton Street Lofts, is an exciting new project in the Eton Corridor. However, in order to resolve a practical difficulty and hardship caused by strict compliance with the height requirement of the Zoning Ordinance as it relates to the design, safety and maintenance of this building, Applicant submits this Application for a height variance.

The Eton Street Lofts are in a Mixed Use ("MX"). Sections 4.19 HT-04(A)(1), (4), (6), and (7) provide as follows:

- 4.19(A)(1) Flat roofs shall be no more than 45 feet;
- 4.19(A)(4) Maximum overall height including mechanical and other equipment shall be no more than 50 feet;
- 4.19(A)(6) Any other use or occupancy above 40 feet shall be prohibited; and
- 4.19(A)(7) Maximum of four stories.

Applicant requests a height variance to allow a height of 60' 4", or a variance from the required 45 foot height of 15' 4". This is the minimum distance necessary to provide for safe and secure access to the roof for protection, repair, maintenance and safety of all roof top equipment,

as more particularly set forth in this letter.

Applicant requests this variance as a result of practical difficulties and unnecessary hardships in carrying out the strict letter of these sections of the zoning ordinances in the MX District. Such variances are reasonable and necessary to promote the spirit and intent of the zoning ordinance.

The central issue in this request is that this variance is required for the health, safety and welfare of residents and all citizens who come in contact with this building. The variance in height required for this type of building over the 45 foot maximum is required for proper and safe maintenance of all roof top utilities and structures. That is, large roof top utility units must be serviced, replaced and/or repaired on a regular basis. In order to service these large pieces of equipment, or to replace them, such equipment cannot possibly be maneuvered up a stairway to the roof, or pushed through an open trap door, but must be moved by elevator. Large roof top utility units are heavy machinery. An elevator to the roof must provide the extra 15' 4" above the roof level to allow the shaft that encloses the elevator. The size of the shaft is determined by applicable building codes and safety regulations and provide enough work space so that all persons working on the equipment and the elevator are safe.

In the event that any workman or other person on the roof is injured, a stairway will not allow emergency medical personnel to access the roof with a stretcher or any other life saving device that may be necessary if the only pathway to the roof is through a stairwell or trap door device. An elevator is a matter of safety, and is within the spirit and intent of the ordinance which, at its core, is to protect the health, safety and welfare of the community. Specifically, this variance will make this building a model of roof safety for Birmingham.

As necessary as the elevator and shaft is the proposed roof top protective enclosure. In order to protect the elevator shaft, the stairways and access to the roof and mechanical equipment, it is necessary to build an enclosure which is shown on the plans. That enclosure is intended to provide cover in inclement weather and to insure that the roof top access equipment, such as the elevator and stairways, are kept safe, dry and clean of ice and snow for winter months. Such an enclosure allows safe access to police, fire and other emergency personnel. The height variance requested is also to accommodate this enclosure.

Response to Sections 8.01(F)(3)(a)(i), (ii), (iii) and (iv)

Section 8.01§ (F)(3)(1) "Because of special conditions applicable to the property in question, the provisions of the zoning ordinance if strictly applied unreasonably prevent the property owner from using the property for a permitted purpose.

The request for this dimension variance is due to special conditions of this property that causes a practical difficulty in the Applicant being able to use the property for its intended purposes. This structure is being proposed in compliance with the MX District Zoning. But because of the systems required for this otherwise permitted structure, the Applicant must request this height variance in order to use the property for the permitted purpose. That is, the height variance is the minimum necessary to accommodate modern building and safety codes and standards. The MX district allows a 45' maximum height, however, in this unique case, that height does not provide for any safe access to the roof for either repair, replacement or emergency services that may be required to safely operate a building. Without such access, no elevator shaft can be installed, no large equipment which is common for this type of building can be serviced properly, and emergency personnel are hampered from being provided the proper health, safety and welfare benefits. It is reasonable and necessary that this unique building, which is in compliance with all other zoning ordinances, be granted a dimension variance to remedy this practical safety and maintenance problem required for its residents and those people using the building. The enclosure of the elevator shaft and also the stairways and access points, are to protect all those people using the roof from the dangers and hazards of inclement weather, and will also serve to keep the integrity of the equipment and the maintenance of the equipment in good order. This lends to the proper operation of a building in the Eton Corridor and allows the property owner to use the property for a permitted use which satisfies the spirit and intent of a building such as this in the MX district.

§8.01(F)(3)(a)(2) "Literal enforcement of the chapter will result in unnecessary hardship."

The literal enforcement of this chapter will create an unnecessary hardship by actually preventing the ongoing protection, maintenance and safe operation of the systems required for a building of this size. Emergency personnel cannot access the roof properly if there is no elevator, no elevator shaft and no enclosure to protect all of the access points as necessary. A simple stairway or trap door arrangement is not only a serious detriment to the condition and efficiency of the equipment, but creates a very dangerous roof top condition for workers at the site. The height for this type of building, therefore, is simply not adequate in order to provide for the necessary systems or structures that will make this building a safe and attractive asset to the City of Birmingham. The height provided by the ordinance creates an unnecessary hardship. Literal enforcement of the ordinance given the circumstances of this property is not in keeping

with the spirit of the ordinance.

§8.01(F)(3)(a)(iii) "The granting of a variance will not be contrary to the spirit and purpose of the zoning ordinance nor contrary to the public health, safety and welfare."

The granting of this dimension variance to allow for safe access to a roof and service of equipment is a benefit rather than a detriment to the health, safety and welfare of the community. It is not practical to expect a building of this quality and of this design to operate without first class mechanicals and safety in all areas of the building. This applies to the roof area as well. For the reasons mentioned above, the health, safety and welfare of the community requires that mechanical systems be kept in excellent condition, free from any unnecessary and avoidable dangerous conditions. Any person working in any area of our City deserves a safe environment in which to work. This variance will allow that condition to exist. The enclosure is of equal importance, and a necessary part of the integrity of the design of these rooftop systems. The enclosure is a necessity in inclement weather and will preserve the structure and the systems more effectively than if they were left to the elements. Further, without the enclosure, any other emergency activity on the roof will be seriously hampered and very dangerous in the event of rain, ice or snow for workmen who are required on the roof in that area during our winter months.

§8.01(F)(3)(a)(iv) "The granting of a variance will result in substantial justice to the property owner, the owners of the property in the area and the general public."

The granting of this height variance will result in substantial justice to the property owner and the owners of property in the area since it will insure that this building is safe, well maintained, and of the finest quality. This variance will assist in preserving the operations and design integrity of the Lofts for years to come. To protect and provide for the maintenance repair and replacement of equipment on a roof in a safe manner is a benefit to every member of this community. The variance as granted will allow an enclosure and an elevator shaft as shown on the design plans to complete the goal of compliance with the spirit and intent of the ordinance.

Conclusion

In conclusion, this structure and the variances requested are the minimum necessary to achieve the goals of the ordinance. The variances requested are also a natural outgrowth of one of the finest developments in the City of Birmingham. The variances requested are not to increase the use of a structure, but rather to provide for a use that is already created by the ordinance. Lastly, this variance resolves a practical difficulty for this unique property in a manner that preserves the property owner's right to use his property for a permitted purpose and

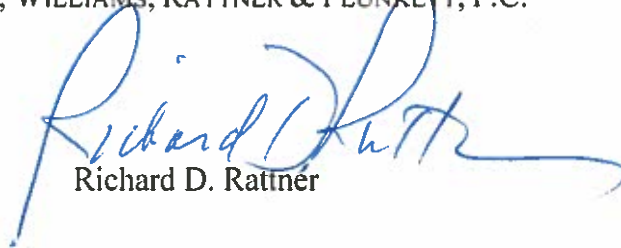
Board of Zoning Appeals
June 15, 2015
Page - 5 -

create a direct benefit to the health, safety and welfare of our community.

Respectfully, the applicant requests that this Board of Zoning Appeals grant a variance from the foregoing sections of the Birmingham Zoning Ordinance at Section 4.01 to allow a total height of 60' 4", or a variance from the ordinance of an increase in height of 15' 4". Thank you for your cooperation and attention to this matter. Should you have any questions or comments with regard to the above, please do not hesitate to contact the undersigned.

Very truly yours,

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



Richard D. Rattner

RDR/kp