

# Agenda

City of Birmingham  
Board of Zoning Appeals

Commission Room of the Municipal Building  
151 Martin Street, Birmingham, Michigan  
May 12, 2015  
7:30 PM

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

	Address	Petitioner	Appeal	Type/Reason
1.	250 N OLD WOODWARD AVE	CH BIRMINGHAM	15-10	SIGN
2.	390 S ADAMS	ROSS	15-11	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, APRIL 14, 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, April 14, 2015. Chairman Charles Lillie convened the meeting at 7:30 p.m.

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

**Absent:** Board Member Randolph Judd; Alternate Board Member Cynthia Grove

**Administration:** Matthew Baka, Sr. Planner  
Bruce Johnson, Building Official  
Scott Lenhart, Building Dept.  
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 is one land use variance 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# 04-21-15**

**APPROVAL OF THE MINUTES OF THE BZA MEETING OF MARCH 10, 2015**

**Motion by Mr. Jones**

**Seconded by Mr. Lyon to approve the Minutes of the BZA meeting of March 10, 2015 as presented.**

**Motion carried, 7-0.**

**VOICE VOTE**

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

**Nays:** None

Absent: Judd

**T# 04-22-15**

**645 S. ETON  
(Appeal 15-06)**

The owners of the property known as 645 S. Eton request the following variance to allow for the use of the property as a sales agency in the MX District:

- A. Chapter 126, Article 2, Section 2.39, Commercial Permitted Uses of the Zoning Ordinance does not permit the operation of an auto sales agency in the Mixed Use ("MX") District. Therefore, a use variance to permit an auto sales agency in the MX District is requested.

This property is zoned MX.

Six letters have been received in support of the requested variance.

Mr. Baka reported the applicant is requesting a variance to operate a small scale auto sales agency with indoor vehicle storage in the vacant storefront that was formerly Watch Hill Antiques. The proposed site does provide the required off-street parking to comply with the Zoning Ordinance. In this zone district outdoor storage is only permitted with City Commission approval of a Special Land Use Permit. In response to inquiries from board members, Mr. Baka confirmed there is not a definition in the Zoning Ordinance for auto sales agency or for automobile dealership.

Dennis G. Cowan, Attorney from Plunkett Cooney, spoke on behalf of the petitioners, Syed and Erica Ahmed, who were present. The Ahmeds made an effort to reach out to neighbors to see if there were any concerns that could be addressed prior to this meeting. They propose to operate their business, Platinum Motor Cars, which sells high-end, previously enjoyed automobiles, at the site. All vehicles for sale will be displayed inside the building. There will be no outside storage or display. The vehicles will have some minor prep on-site, but no repair, conversion or maintenance will occur on the property. Finally, there will be no delivery of vehicles by semi-trailer.

Mr. Cowan went on to describe how the Ahmed's proposed use complies with the four determinations that need to be made by the BZA in order to grant a variance. The petitioners' proposed use is consistent with the goals and objectives of the District and is not a radical departure from other uses in the District. Currently there are existing and planned automotive related uses in the Eton Road Corridor. The adjacent Auto Europe has been at the location for a number of years. Recently the BZA approved a glazing variance that will allow a Mercedes-Benz dealership to utilize a nearby warehouse in the Corridor for high-end automobile storage.

Since their proposal keeps with the spirit of the Zoning Ordinance, Mr. Cowan requested approval of the petitioner's use variance. The petitioners have a signed lease for the property that is contingent upon their receiving a variance.

In response to Mr. Lyon who questioned how this is not "spot zoning," Mr. Cowan said the comparison of the automotive sales agency with the other automotive uses would take it out of the "spot zoning" category. There has been inability to lease this space for at least the last two years. The intensity of the adjacent uses dissuades other users. The chairman noted that because a property cannot be rented is not grounds for a use variance.

Mr. Cowen noted that uses allowed in the MX District that are automotive related, a rental agency and automotive repair, are far more intense than this sales agency would ever be. Therefore, consideration should be given to allowing that use also. Mr. Hart thought the requested variance is very consistent with the intent of the MX District.

Mr. Hughes received confirmation that the petitioners have operated their business in Troy under the name of Platinum Motors for five years.

The chairman called for discussion from the audience at 8:15 p.m.

Mr. Scott LePage, 575 S. Eton, Griffin Claw Brewing Co., thought this business will be an asset to the District.

Ms. Molly Woodeck Folt, who lives across the street on the corner of Eton and Bowers, said she is firmly in support of the Ahmed's use at this location.

Mr. Eric Frizee, General Manager of Tamaroff Automotive Group in Southfield, MI, knows the Ahmeds and spoke in support of having their business in his neighborhood. Their luxury, high end, retail automotive sales business will fill a void in the community. They base their business on integrity, honesty, and building long-lasting relationships with customers.

Mr. Thomas Shick, one of the owners of Auto Europe, spoke in support of the petitioners moving in next door.

Discussion considered how the business would operate if the vehicles are all inside in a showroom. Mr. Ahmed noted in response to Mr. Hughes that in his business most people do their shopping on line. Generally they don't test drive his cars. They average around twenty to thirty retail sales/month from the store and there are roughly six employees on a daily basis.

**Motion by Mr. Miller**

**Seconded by Mr. Hart to support Appeal 15-06 for 645 S. Eton. He believes that the hardship is due to the unique venue that was really not anticipated by the**

**Ordinance in convergence with the vagueness or over generalization of the wording of the Ordinance itself. He certainly believes that this use would not not only alter the central character of the area, but really enhance it. It seems like it is a very reasonable use for this location, and for those reasons he would move to support this appeal per the drawings as submitted.**

Mr. Lyon thought the appellant has made a very good case that the MX District does allow the board some discretion, much more so than other districts. He thinks this is a very compatible use that really the Ordinance did not anticipate. In some respects this is an automobile art gallery as opposed to auto sales in Troy Motor Mall. There won't be traffic and everybody coming out on a Saturday to cut a deal and take test drives. For those arguments Mr. Lyon said he will support the motion.

Mr. Jones said he is likely to support the motion for a number of reasons. The board finds itself getting into discussions relating to the business at hand when what they are considering is the use of the real property in the City. He wondered why the petitioners need this space if everything is done virtually by internet. Relating to the real estate, he appreciates the arguments, but there are far too many other economic reasons as to why things cannot be rented.

Chairman Lillie agreed. He doesn't think that a hardship has been shown just because the property hasn't rented. He appreciates that all the neighbors are in support, but that is not a factor in the board's decision.

Ms. Loughrin did not see how this operation is any different than selling anything out of a store. This business could be called an auto boutique rather than auto sales.

**Motion failed, 4-3.**

ROLLCALL VOTE

Yeas: Miller, Hart, Lyon, Loughrin

Nays: Lillie, Hughes, Jones

Absent: Judd

**T# 04-23-15**

**482 PARK  
(Appeal 15-08)**

The owners of the property known as 482 Park request the following variances to allow for the construction of a new home and detached garage:

- A Article 4, Section 4.69 of the Zoning Ordinance requires the distance between principal residential buildings be 14.00 ft. (south side) for this lot. The applicant is proposing 11.90 ft; therefore, a variance of 2.10 ft. is requested.

- B. Article 4, Section 4.69 of the Zoning Ordinance requires the distance between principal residential buildings to be 14.00 ft. (north side) for this lot. The applicant is proposing 11.70 ft.; therefore, a variance of 2.30 ft. is requested.

This property is zoned R-2.

Mr. Johnson explained the existing structure is a non-conforming duplex that was constructed in 1915 on a parcel consisting of two 40 ft. wide platted lots (Lots 78 and 79). The applicant is proposing to demolish the duplex and build two new single-family homes. Once the duplex is demolished the property will be reverted back into two individual platted lots. The proposed home on Lot 79 is being constructed first and meets all Zoning Ordinance requirements. The proposed house on Lot 78 will also meet all Ordinance requirements except for the distance between principal residential structures. The existing home to the south of Lot 78 was constructed 2.90 ft. from the shared property line in 1925. That leaves Lot 78 with a 20.80 ft. building envelope width because of the distance between residential structures requirement. The Zoning Ordinance allows a 26.00 ft. wide home on a 40.00 ft. lot.

Chairman Lillie summarized it is the house to the south that is causing the major problem. Mr. Miller noticed the house to the north flipped their driveway to the north instead of to the south, and that pinched the subject property also.

Mr. J.R. Ruthig said he was commissioned by the property owner, Park St. Development, to design the homes for the two lots on Park. The unique situation is that in dealing with 40.00 ft. lot properties, when the cadence of driveways is interrupted to the minimum setback side, it wrecks havoc on following the intent of the Ordinance which is to allow the homeowner to enjoy a 26 ft. wide home. In this case the properties are surrounded by minimum setbacks on both sides. Their practical difficulty is in designing the home in order to meet the Ordinance. They have tried to formulate their variance request as minimal as necessary to make this a viable option. The main bodies of the homes are designed to be about 24.00 ft. wide and in doing that they were able to achieve 13.80 ft. between the structures. The actual 2.30 ft. dimensional request they are asking for is for basically only a fraction of the side of the home. They feel their proposal follows the intent of the Ordinance and how the street was supposed to be done in context with the existing neighborhood.

At 8:45 p.m. there were no comments from members of the audience.

**Motion by Mr. Lyon**

**Seconded by Mr. Jones in regard to Appeal 15-08, 482 Park, the appellant asks for two variances for distance between residential buildings. Mr. Lyon would move to grant the variances as advertised. He believes that strict compliance would be unduly burdensome due to the unique characteristics of this property, in that there is an existing, non-conforming building to the south.**

In addition it was pointed out by members of the board that the driveway cadence was interrupted by the property to the north, thereby putting this property in a bit of a predicament.

Mr. Lyon believes this is the least variance necessary to use the property for its intended purpose. This is a 24.00 ft. wide house on a 40.00 ft. lot. They could have made it 26.00 ft. wide. So, the appellant has done some mitigating of the variance. They have also taken into consideration that when the house to the south, if and when it is removed, will be conforming with a 5.00 ft. setback.

He believes this does substantial justice to both the appellant and the surrounding neighborhood, and he would tie the motion to the plans as presented.

**Motion carried, 7-0.**

ROLLCALL VOTE

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

Nays: None

Absent: Judd

**T# 04-24-15**

**2483 W. Maple Rd.  
(Appeal 15-06)**

The owners of the property known as 2483 W. Maple Rd. request the following variance to allow for the construction of a new financial institution:

- A. Article 4, Section 4.83 WN-01 A (1) of the Zoning Ordinance requires the front facade and any facade facing a street, plaza, park, or parking area to provide no less than 70% of the storefront/ground floor facade as clear glass panels and doorways. The applicant is required to meet this standard on all facades of the proposed building.
- On the north (front) facade the applicant is proposing to provide 39% glass (increased from original proposal of 31%). Therefore, a variance of 31% is requested.
  - On the east (left) facade the applicant is proposing to provide 26% glass (increased from original proposal of 15%).. Therefore, a variance of 44% is requested.
  - On the south (rear) facade the applicant is proposing to provide 4% glass. Therefore, a variance if 66% is requested.

- On the west (right) facade the applicant is proposing to provide 17% glass (increased from original proposal of 9%). Therefore, a variance of 53% is requested.

This property is zoned B-1.

Mr. Baka advised this is the current location of Cranbrook Auto Care. The Planning Board is currently studying the window standards of section 4.83 of the Zoning Ordinance to consider amending the glazing requirements to be consistent with the glazing requirements of the Downtown Overlay District. The Planning Board has recognized this specific part of the Ordinance as it is applied to these buildings has unintended consequences such as creating a glass box. If implemented, this change would significantly reduce the amount of required glazing in Commercial Zones outside of the Downtown.

Chairman Lillie noticed that the applicant has increased the amount of glazing from what they originally proposed. Mr. Baka agreed they have showed a good faith effort to meet the Ordinance in specific areas. They are trying to keep some of the residential character of the building by not going too large, in keeping with the style of the neighborhood. Chairman Lillie added that part of the problem with the Glazing Ordinance is it doesn't take the use of the property into consideration.

Mr. Vince Pangle, Strategic Property Services, was present on behalf of Sam and Mary Karana and DFCU Financial. He showed a plan that gave clarification of the constraints of the property. A corner piece of the property is owned by the City of Birmingham and is presently under a lease agreement with the City. The property owners have entered into a new license agreement which is up for approval by the City Commission upon acceptance of the Final Site Plan and the Special Land Use Permit ("SLUP") approvals. In addition the Karanas have entered into a long-term lease agreement with DFCU Financial. The proposal has received a recommendation from the Planning Board for a SLUP which will provide drive-through access to the premises, and also for Preliminary Site Plan Approval. The glazing component has been increased from what was previously recommended for approval.

The four corners of the W. Maple Rd./Cranbrook intersection are zoned commercial. The subject property is surrounded exclusively by residential. Therefore they have developed a residential type facility. All mechanical is housed inside the building. The practical difficulty is that all of the sensitive and mechanical areas inside the building are required to have 70% glazing.

If the variance is granted, it will increase the property values in the neighborhood and enhance the corner of Maple Rd./Cranbrook. All of the neighbors are unanimously in support of the project.



Mr. Jones thought the applicant has done a good job given the circumstances and the uniqueness of this property.

At 9:02 p.m. here were no comments from the audience.

**Motion by Mr. Jones**

**Seconded by Mr. Miller relating to Appeal 15-09, 2483 W. Maple Rd., he would move to support and grant the variances as requested relating to and advertised with Article 4, Section 4.83, and typically the glazing issues as they relate to here. The petitioner has made a very good case of showing the uniqueness of the property and the coordination of the Glazing Ordinance as we have done in depth, the motivation behind it, and the desires to have additional glazing that primarily relates to a walk around Downtown building situation.**

**Here, given the uniqueness of the property and the City owned effectively licensing agreements, he knows of no other property that talks about licensing and leasing and property owned by the City wrapping around it completely within the residential area.**

**As to the uniqueness of the circumstances, Mr. Jones thinks the petitioner has in fact mitigated as much of the variances as needed and has in fact shown willingness to work with the City to accommodate and diminish the requested variances.**

**He believes it would do substantial justice to the area. He appreciates and understands that times change and he will lose his gas station, but that is life for him. Further, he thinks this is not a self-created issue and he would tie the variances to the plans as presented.**

**Motion carried, 7-0.**

**ROLLCALL VOTE**

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

Nays: None

Absent: Judd

**T# 04-25-15**

**CORRESPONDENCE (none)**

**T# 04-26-15**

**GENERAL BUSINESS (none)**

**T# 04-27-15**

## **ADJOURNMENT**

No further business being evident, the board members passed a motion to adjourn at 9:07 p.m.

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Bruce R. Johnson, 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:**

<b>Street address:</b>	250 N. Old Woodward	<b>Sidwell Number:</b>	19-25-453-011
<b>Owners name:</b>	The Palladium of Birmingham, LLC	<b>Phone #:</b>	(248) 593-6203
<b>Owners address:</b>	4036 Telegraph Road, Suite 201	<b>Email:</b>	jonna@afjonna.com
<b>City: State:</b>	Bloomfield Hills, MI	<b>Zip code:</b>	48302
<b>Contact person:</b>	Jordan Jonna	<b>Phone #:</b>	(248) 593-6203

#### **Petitioner Information:**

<b>Petitioner name:</b>	CH Birmingham, LLC	<b>Phone #:</b>	(248) 842-5817
<b>Petitioner address:</b>	303 Gray Woods Lane	<b>Email:</b>	pag@emagine-entertainment.com
<b>City:</b>	Lake Angelus	<b>State:</b>	MI
		<b>Zip Code:</b>	48326

#### **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 16th 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 25'	Existing 24'	Proposed 24'	Amount of Variance 1'
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By signing this application I agree to conform to all applicable laws of the City of Birmingham. All information submitted on this application is accurate to the best of my knowledge. Changes to the plans are not allowed without approval from the Building Official or City Planner.

The Palladium of Birmingham, LLC

Signature of Owner: \_\_\_\_\_ Date: \_\_\_\_\_  
By: \_\_\_\_\_ Its: \_\_\_\_\_

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.

**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 15<sup>th</sup> day of the month preceding the next regular meeting. If the 15<sup>th</sup> 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.


- 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.

CH Birmingham, LLC

  
\_\_\_\_\_  
Signature of Applicant

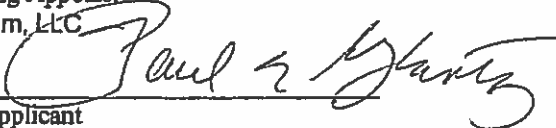
By: ~~Paul A. Glantz, Authorized Agent~~  
JORDAN JONAS -

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

  
Signature of Applicant

By: Paul A. Glantz, Authorized Agent

# Howard & Howard

law for business®

Ann Arbor

Chicago

Detroit

Las Vegas

Peoria

Direct dial: 248.723.0472

J. Patrick Howe

email:jph@H2law.com

April 15, 2015

**VIA HAND DELIVERY**

**Mr. Bruce R. Johnson, B.C.O.**  
**Building Official**  
**City of Birmingham**  
151 Martin Street  
P.O. Box 3001  
Birmingham, Michigan 48009



**Re: BOARD OF ZONING APPEALS APPLICATION**

**Applicant:** CH Birmingham, LLC d/b/a *Emagine Palladium & Ironwood Grille*

**Owner:** The Palladium of Birmingham, LLC

**Address:** 250 N. Old Woodward Avenue, Birmingham, Michigan 48009

Dear Mr. Johnson:

This firm represents CH Birmingham, LLC d/b/a *Emagine Palladium & Ironwood Grill*, which desires to open a movie theater, restaurant and bar on the first and fourth floors of 250 N. Old Woodward, in a portion of the space that was formerly occupied by the Palladium Theater. *Emagine Palladium & Ironwood Grill* are two DBAs of CH Birmingham, LLC, a Michigan limited liability company, and the business will be operated under one lease, one sales tax license, and one liquor license. The *Emagine Palladium* will include approximately 550 to 600 seats in five redesigned auditoriums located on the fourth floor. The *Ironwood Grill* will be a full service restaurant located adjacent to the auditoriums on the fourth floor, and will be open to movie patrons and the general public for lunch and dinner. The first floor operations will include a stationed concierge to answer questions and direct guests to the fourth floor, and an entry to a dedicated elevator bank to shuttle guests from the first floor lobby to the fourth floor theaters and restaurant. This lobby and dedicated elevator bank will only be used by guests of *Emagine Palladium & Ironwood Grill*, and will not provide access to any other commercial tenants in the building.

CH Birmingham, LLC has applied to the City for approval of a Special Land Use Permit and Site Plan approval to operate a movie theater, restaurant and bar serving alcoholic liquors. The Planning Board **unanimously recommended approval** of CH Birmingham, LLC's Special Land Use Permit application and Site Plan at its March 25, 2015 meeting, and a copy of the approved Minutes from that meeting are enclosed hereto as **Exhibit A**. One part of the Special Land Use Application and



Mr. Bruce R. Johnson, B.C.O.  
Building Official  
City of Birmingham  
Page 2

Site Plan approval, was the recommendation of approval of the sign package. Planning Director Jana Ecker has taken the position however, that because “the primary square footage” for the CH Birmingham, LLC’s business will be on the fourth floor (as opposed to the first floor), CH Birmingham, LLC must obtain a variance from the Board of Zoning Appeals for all exterior entry signage (see paragraph 3 on page 2 of Exhibit A). The Planning Board adopted this position, and made a “variance from the Board of Zoning Appeals for all exterior entry signage”, a condition of its recommendation of approval of the Special Land Use Application and Site Plan approval (see Approval Condition No. 4 on page 3 of Exhibit A).

The purpose of this Board of Zoning Appeals Application is to seek relief from Section 1.10(B)(4)(d) of the City of Birmingham Sign Ordinance, and the identical requirement found in Section 3.04(F)(4)(d) of the City of Birmingham Zoning Ordinance, which states:

***Each business whose principal square footage is on the first story, may have one sign per entry.***

The sign package proposed by CH Birmingham, LLC is enclosed herewith, and includes one (1) sign on the existing marquee, which is located above the entrance to *Emagine Palladium & Ironwood Grill*. This marquee is located between the 1<sup>st</sup> and 2<sup>nd</sup> floors of the building, where a typical sign band would be located on the building. CH Birmingham, LLC has exclusive rights to place its signage on the marquee under its lease agreement, and no other tenant of the building may use the marquee for signage. The marquee was previously used by the previous theater operator for its signage in a more intense manner than CH Birmingham, LLC is proposing to use it. The previous theater operator had an art deco metal sign that stated “Palladium Theater”, and changeable channel letter boards that were used to show the movies playing on a given day. CH Birmingham, LLC is simply proposing to state the name *Emagine Palladium & Ironwood Grill* on the marquee, with lettering that is fully compliant with the City of Birmingham Sign Ordinance.

The Planning Board approved the marquee as an alternative design for the placement of signage at the March 25, 2015 meeting (see finding No. 5 on page 3 of Exhibit A). The sole issue before the Board of Zoning Appeals therefore, is whether a variance from the strict application of Section 1.10(B)(4)(d) of the City of Birmingham Sign Ordinance, and Section 3.04(F)(4)(d) of the City of Birmingham Zoning Ordinance is justified, given CH Birmingham, LLC’s operations on the 1<sup>st</sup> floor and 4<sup>th</sup> floor of the building. Article 8.01(3)(c) of the City of Birmingham Zoning Ordinance sets forth the standards that the Board of Zoning Appeals must follow in determining whether a Sign Variance is justified. This Section states:

Any person who feels aggrieved by a decision of the City Planner or Design Review Board may have the sign reviewed by the Board of Zoning Appeals. A variance may be granted by the Board of Zoning appeals only in cases involving practical difficulties when the evidence in the official record of the appeal supports all of the following affirmative findings:

- i. The alleged practical difficulties are peculiar to the property of the person requesting the variance by reasons of the physical and/or dimensional constraints of the building and/or site, and result from conditions which do not exist generally throughout the City;
- ii. That the granting of the requested variance would not be materially detrimental to the property owners in the immediate vicinity;
- iii. That the granting of the variance would not be contrary to the general objectives of this Chapter and is in keeping with the spirit and intent of this ordinance; and
- iv. That granting the variance will result in substantial justice being done, considering the public benefits intended to be secured by this Chapter, the individual hardships that will be suffered by a failure of the Board of Zoning Appeals to grant a variance, and the rights of others whose property would be affected by the allowance of the variance.
- v. In granting a variance, the Board of Zoning Appeals may attach such conditions as it may deem reasonably necessary to promote the spirit and intent of the Zoning Ordinance and the conditions specified in the sign ordinance, Chapter 86, Article 02, Section 2.06.

CH Birmingham, LLC submits that there is sufficient evidence in this case to allow the Board of Zoning Appeals to make each of the findings necessary to grant the sign variance requested herein. In support of each of the required findings, CH Birmingham, LLC states as follows:

- i. The alleged practical difficulties are peculiar to the property of the person requesting the variance by reasons of the physical and/or dimensional constraints of the building and/or site, and result from conditions which do not exist generally throughout the City:

**RESPONSE:** The practical difficulty in this case results from the unique layout of the theater portion of this mixed use building, which to our knowledge, does not exist in any other buildings in the City. It is unique for a business in the City to be located on the first floor and fourth floor of a building, and to be connected by a dedicated elevator bank that is not accessible by other commercial tenants of the building. It is also unique for a large marquee to be attached to a building that was created exclusively for use by a movie theater located above the first floor. That is the situation that we have in this case. We have a business that is leasing an elevator bank, and premises on the first floor and fourth floor of a building. The only commercial tenant that has access to these areas is CH Birmingham, LLC and its guests under its lease agreement. There is no other commercial tenant on the first floor of the building, or in other areas of the building, that will use the entry below the marquee to access its business. Furthermore, there is no other commercial tenant in the building that would find it appropriate to use the marquee for its signage. The marquee has been used for signage promoting the theater business above the first floor for many years, and it is clear that the building design and layout call for the business connected to the entrance below the marquee to use the marquee for its signage.

- ii. **That the granting of the requested variance would not be materially detrimental to the property owners in the immediate vicinity:**

**RESPONSE:** The granting of the requested variance to allow CH Birmingham, LLC to place its proposed signage on the existing marquee would not be detrimental to the property owners in the immediate vicinity because: (i) the marquee previously included the signage for the previous theater operator, Palladium Theater, and (ii) CH Birmingham, LLC's proposed sign package is less intense than the previous operator's signage, in that it is not using changeable channel letter boards to show the movies playing on a given day.

- iii. **That the granting of the variance would not be contrary to the general objectives of this Chapter and is in keeping with the spirit and intent of this ordinance:**

**RESPONSE:** The granting of the variance would not be contrary to the general objectives of the ordinance, and is in keeping with the spirit of the ordinance because: (i) the proposed signage would be located on the marquee in the same area where it would be located if it were placed directly on the sign band area of the building, (ii) the proposed signage complies with all dimensional requirements of the City's Sign Ordinance, (iii) CH Birmingham, LLC is the only business that uses the entry below the marquee, and there is no other commercial tenant in the

building that will use the entry below the marquee, (iv) there is no other tenant in the building that would find it appropriate to use the marquee for its signage, and (v) the former theater operator's "principal square footage" was above the first floor in the same manner that CH Birmingham, LLC's principal square footage is, and CH Birmingham, LLC is merely requesting approval for continued use of the marquee for its signage.

- iv. **That granting the variance will result in substantial justice being done, considering the public benefits intended to be secured by this Chapter, the individual hardships that will be suffered by a failure of the Board of Zoning Appeals to grant a variance, and the rights of others whose property would be affected by the allowance of the variance:**

If the Board of Zoning Appeals does not grant the sign variance requested herein, CH Birmingham, LLC will not be able to locate any exterior signage on the building, which will be an extreme hardship to CH Birmingham, LLC. No other property owners will be affected by the allowance of the variance, as CH Birmingham, LLC is simply requesting for the continued use of the marquee for signage in a manner that is less intense than the use by the previous theater operator.

- v. **In granting a variance, the Board of Zoning Appeals may attach such conditions as it may deem reasonably necessary to promote the spirit and intent of the Zoning Ordinance and the conditions specified in the sign ordinance, Chapter 86, Article 02, Section 2.06.**

CH Birmingham, LLC respectfully requests that no approval conditions are necessary for the following reasons: (i) the Planning Board approved the proposed signage subject to the granting of a variance by the Board of Zoning Appeals, (ii) the proposed signage would be located on the marquee in the same area where it would be located if it were attached directly to the sign band area of the building, and (iii) the proposed signage complies with all dimensional requirements of the City's Sign Ordinance.

Representatives of CH Birmingham, LLC will be in attendance at the hearing on this matter to provide additional testimony related to these findings. A completed application executed by CH Birmingham, LLC and the property owner is enclosed, along with: (i) a \$510.00 check for the application fee, (ii) \$50.00 check for the sign posting fee, and (iii) 10 folded copies of the floor plans, elevation drawing, and signage. We appreciate your processing and consideration of our application, and look forward to appearing before the Board of Zoning Appeals on May 12, 2015.

**Mr. Bruce R. Johnson, B.C.O.**  
**Building Official**  
**City of Birmingham**  
Page 6

Should you have any questions or concerns regarding this application, or need additional information in preparation for the BZA Hearing, please do not hesitate to contact me.

Very truly yours,

HOWARD & HOWARD ATTORNEYS PLLC

  
J. Patrick Howe

Enclosures

cc: CH Birmingham, LLC (via email with enclosures)

4823-9019-5235, v. 1

**EXHIBIT A**

**CITY OF BIRMINGHAM  
PLANNING BOARD ACTION ITEMS  
OF WEDNESDAY, MARCH 25, 2015**

Item	Page
<b>SPECIAL LAND USE PERMIT ("SLUP")</b> <b>FINAL SITE PLAN REVIEW</b> <b>250 N. Old Woodward Ave.</b> <b>Emagine Palladium Theatre, and Ironwood Grill (postponed from March 11, 2015)</b> <b>Application to allow a movie theatre, restaurant and bar serving alcoholic liquors in a portion of the former Palladium Theatre space</b>	2
<p style="margin-left: 40px;"><b>Motion by Mr. DeWeese</b></p> <p><b>Seconded by Mr. Williams that the Planning Board recommends approval of the applicant's request for a Final Site Plan and a SLUP approval to permit Emagine Palladium Theatre and Ironwood Grill to operate at 250 N. Old Woodward Ave. with the following conditions:</b></p> <ol style="list-style-type: none"> <li><b>1. Execute a contract with the City outlining the details of the proposed theatre and restaurant operations upon approval of the SLUP in accordance with the presentation made this evening;</b></li> <li><b>2. Meet all City Department requests, subject to administrative approval;</b></li> <li><b>3. Provide material specifications for the background sign panel on the marquis, and clarify all sign colors;</b></li> <li><b>4. Obtain a variance from the Board of Zoning Appeals for all exterior entry signage;</b></li> <li><b>5. Planning Board finds that the marquis is an architectural feature of the building, and is approved as an alternate design in lieu of a sign band; and</b></li> <li><b>6. LED lighting on the Ironwood Grill signs must be mounted so that it is not visible through the open cut area.</b></li> </ol>	3
<p><b>Motion carried, 6-0.</b></p>	4
<b>SPECIAL LAND USE PERMIT ("SLUP")</b> <b>FINAL SITE PLAN REVIEW</b> <b>33877 Woodward Ave.</b> <b>Sav-on Drugs Drive-Through</b>	4
<p style="margin-left: 40px;"><b>Motion by Ms. Whipple-Boyce</b></p> <p><b>Seconded by Mr. Share to postpone SLUP and Final Site Plan Review for 33877 Woodward Ave. to April 22.</b></p>	5
<p><b>Motion carried, 7-0.</b></p> <b>FINAL SITE PLAN REVIEW</b>	6

Item	Page
<b>1964 Southfield Rd. Market Square Application for Final Site Plan and Design Review to allow an addition to the market and improvements in the public space to the north of the property</b>	<b>6</b>
<b>Motion by Mr. Williams Seconded by Ms. Whipple-Boyce to postpone the Final Site Plan Review for 1964 Southfield Rd., Market Square, to April 8, 2015.</b>	<b>8</b>
<b>Motion carried, 5-2.</b>	<b>8</b>



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**CITY OF BIRMINGHAM  
REGULAR MEETING OF THE PLANNING BOARD  
WEDNESDAY, MARCH 25, 2015  
City Commission Room  
151 Martin Street, Birmingham, Michigan**

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Minutes of the regular meeting of the City of Birmingham Planning Board held on March 25, 2015. Chairman Scott Clein convened the meeting at 7:30 p.m.

**Present:** Chairman Scott Clein; Board Members Carroll DeWeese, Bert Koseck, Janelle Whipple-Boyce (arrived at 7:50 p.m.), Bryan Williams; Alternate Board Members Stuart Jeffares, Daniel Share

**Absent:** Board Members Robin Boyle, Gillian Lazar; Student Representatives Scott Casperson, Andrea Laverty

**Administration:** Matthew Baka, Sr. Planner  
Jana Ecker, Planning Director  
Carole Salutes, Recording Secretary

**03-54-15**

**APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING HELD  
MARCH 11, 2015**

Mr. Share:  
Page 5 - Change "Paul Glance" to "Paul Glantz."

Mr. DeWeese  
Page 3 - Add a comma between Lazar and Clein.

**Motion by Mr. DeWeese**

**Seconded by Mr. Share to approve the Minutes of the regular Planning Board meeting on March 11, 2015 as amended.**

**Motion carried, 5-0.**

**VOICE VOTE**

Yeas: DeWeese, Share, Clein, Jeffares, Koseck

Nays: None

Abstain: Williams

Absent: Boyle, Lazar, Whipple-Boyce

**03-55-15**

**CHAIRPERSON'S COMMENTS (none)**

03-56-15

**APPROVAL OF THE AGENDA** (no changes)

03-57-15

**SPECIAL LAND USE PERMIT ("SLUP")**

**FINAL SITE PLAN REVIEW**

**250 N. Old Woodward Ave.**

**Emagine Palladium Theatre, and Ironwood Grill** (postponed from March 11, 2015)

**Application to allow a movie theatre, restaurant and bar serving alcoholic liquors in a portion of the former Palladium Theatre space**

Ms. Ecker recalled that on March 11, 2015 the applicant appeared before the Planning Board. The Planning Board postponed the matter and requested additional information on the proposed membership theatre concept, an updated and ordinance compliant sign package with all required details, and design and material details on the proposed exterior changes on the fourth floor of the south elevation where open air dining is proposed. At this time the applicant has provided a detailed elevation of the fourth floor of the south elevation where open air dining is proposed. The applicant has removed all previously proposed spandrel glass and replaced it with metal panels, which are permitted.

*Design Review*

The applicant is proposing several design changes to the existing building. The changes proposed are to the design of the marquis itself, signage changes, and the removal of decorative metal elements and fixed windows at the new fourth floor. The applicant is proposing to remove the art deco metal design element from the top of the marquis as well as the changeable channel letter boards that were previously used to list movies being shown in the former Palladium Theatre. In addition, 40 ft. of the fourth floor fixed curtain wall windows are proposed to be replaced with a retractable Nanawall folding window system to provide an open air dining experience in the portion of the Ironwood Grill overlooking Hamilton St. above the existing marquis.

Ms. Ecker advised that an updated sign package has been received. However, Article 3 of the Zoning Ordinance provides that only one sign is permitted per entry for each business whose primary square footage is on the first story. ***As the primary square footage for both the Emagine Theatre and the Ironwood Grill is on the fourth story, the applicant will be required to obtain a variance from the Board of Zoning Appeals for all exterior entry signage.*** Further, the Planning Board must determine if a sign band is architecturally feasible above the theatre entry doors between the first and second floors. As the marquis is located in the area generally reserved for a sign band, the Planning Board may wish to approve it as an alternative design for the placement of signage.

In response to the chairman, Ms. Ecker advised there is currently nothing in the ordinance that prohibits a membership based theatre.

Mr. Paul Glantz, CEO of Emagine Entertainment, Inc., talked about their plans. They have now resolved to take a slightly different tact with respect to their membership concept. The approach now will be that customers can purchase a seat license that will allow preferential

booking rights on Friday, Saturday, Sunday and certain holidays. Other than that, the venue will be open to the public. They do not intend to impose a two-drink maximum restriction. Also, they plan to use low light surveillance cameras to monitor behavior.

Mr. Jason Gekiere, Tower Construction, Construction Manager for the project, explained that a small glass partition that sticks up provides an added level of protection within the curtain wall system. Mr. Michael Southen with Signature Associates, Consultant to Emagine Theatre, described the detail on the partition.

With respect to limiting the number of drinks that can be served to patrons, Mr. DeWeese thought the City could write the agreement to say if they start having problems the SLUP would come back up for review. Mr. Williams stated he is in favor of the project. A little elitism will ease the traffic flow in that neighborhood. Mr. Koseck encouraged the petitioner to take another look at the sign. He thought it could be better. Mr. DeWeese had the concern that the City Attorney should look at the membership concept before it goes to the City Commission.

At 8 p.m. no one from the audience wished to discuss this matter.

**Motion by Mr. DeWeese**

**Seconded by Mr. Williams that the Planning Board recommends approval of the applicant's request for a Final Site Plan and a SLUP approval to permit Emagine Palladium Theatre and Ironwood Grill to operate at 250 N. Old Woodward Ave. with the following conditions:**

- 1. Execute a contract with the City outlining the details of the proposed theatre and restaurant operations upon approval of the SLUP in accordance with the presentation made this evening;**
- 2. Meet all City Department requests, subject to administrative approval;**
- 3. Provide material specifications for the background sign panel on the marquis, and clarify all sign colors;**
- 4. Obtain a variance from the Board of Zoning Appeals for all exterior entry signage;**
- 5. Planning Board finds that the marquis is an architectural feature of the building, and is approved as an alternate design in lieu of a sign band; and**
- 6. LED lighting on the Ironwood Grill signs must be mounted so that it is not visible through the open cut area.**

No comments were heard from members of the public at 8:03 p.m.

**Motion carried, 6-0.**

**ROLLCALL VOTE**

Yeas: DeWeese, Williams, Clein, Jeffares, Koseck, Share

Nays: None

Abstain: Whipple-Boyce

Absent: Boyle, Lazar

**03-58-15**

**SPECIAL LAND USE PERMIT ("SLUP")  
FINAL SITE PLAN REVIEW  
33877 Woodward Ave.  
Sav-on Drugs Drive-Through**

Mr. Baka advised the subject site is located on the southwest corner of Woodward Ave. and Ruffner in the B-2B Zoning District as well as P (Parking) and R3. The applicant received Final Site Plan approval on December 12, 2007 to construct a new 11,651 sq. ft. one-story building on the site and expand the current parking lot west onto one R-3 parcel at 1305 Ruffner.

The applicant is now requesting approval to add a drive-through pharmacy pick-up window along the south elevation of the building. The applicant is required to obtain City Commission approval of the SLUP after it has been reviewed by the Planning Board.

The applicant is proposing to reduce the on-site parking by four spaces for a total of 36 spaces. The proposed changes to the parking area leave the applicant three spaces short of the requirement. ***Accordingly, the applicant will be required to provide three additional parking spaces or obtain a variance from the Board of Zoning Appeals.***

*Design Review*

Drive-through window

The window is proposed to be located approximately 37.5 ft. from the front of the building on the south elevation. The window is proposed to be clear security glass in a bronze frame to match the existing windows. An awning that will match the existing awnings around the building is proposed to be mounted above the new drive-through window.

Front windows

Currently, the windows along the front elevation are blocked by the backs of shelving units. This violates the window standards of section 4.83 A (4) of the Zoning Ordinance. The applicant is proposing to apply perforated window graphics that depict historic photos of Birmingham. However, any graphics applied to the window of a commercial business are considered window signage and are limited to 18 sq. ft. per street frontage, or 36 sq. ft. in this case. Based on the plans as submitted, the graphics would occupy 72 sq. ft. per window or 504 sq. ft. total, which would violate the Birmingham Sign Ordinance. **If the applicant is determined to maintain the current location of the shelving units they can request approval from the Planning Board to create display windows per section 4.83 A (3) of the Zoning Ordinance, otherwise the shelves must be removed.**

Mr. Kevin Hart, Architect for Mr. Bill Neuman, the owner of Sav-On Drugs, spoke about the window coverings being proposed. They are looking at historical black and white pictures of Birmingham from the '20s and '30s. The idea is to soften the light pouring out of the windows. They propose to use perforated vinyl panels that hang down in front and are mounted on the inside aluminum frame of the storefront glazing. All of the products they are using on the building will match the existing.

Board members noted that the vinyl will be within 3 ft. of the windows which would violate the ordinance and therefore is not a solution. Mr. Koseck wondered if there is something that could be done that would allow people to look inside the store and allow those inside to look outside

as well. Mr. Hart said that in order to move shelves they would have to reduce the product selection. Mr. Share observed that the applicant has a choice of either moving the shelves away from the windows or leaving them the way they are and abandoning the idea of a drive-through.

Chairman Clein expressed his concern about the use of a drive-through in this location as part of a SLUP; and using the alley as the main entry to the drive-through. The applicant will have to talk to MDOT to obtain approval for the shift in traffic movements onto Woodward Ave. as opposed to off of it.

Mr. Williams explained that a reversal of traffic does not affect any Sav-On customers. The traffic volume in a pharmacy drive-through is minimal. Mr. DeWeese thought it would be a lot better if the traffic flow was reversed. Mr. Hart said the drive-through would serve the community very well and it will reduce the need for additional parking.

Ms. Whipple-Boyce was convinced that the drive-through would have very low usage. She is not opposed to it, given the board now has the opportunity to clean up the window situation. The only way she would approve the drive-through would be if the shelving was removed from the windows. Mr. DeWeese wanted to see the option before approving a SLUP.

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

**Motion by Ms. Whipple-Boyce**

**Seconded by Mr. Share to postpone SLUP and Final Site Plan Review for 33877 Woodward Ave. to April 22.**

Chairman Clein wanted to see an engineered plan for work within the State highway (Woodward), when the applicant returns.

There were no public comments at 9:01 p.m.

**Motion carried, 7-0.**

**VOICE VOTE**

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

Nays: None

Absent: Boyle, Lazar

**03-59-15**

**FINAL SITE PLAN REVIEW**

**1964 Southfield Rd.**

**Market Square**

**Application for Final Site Plan and Design Review to allow an addition to the market and improvements in the public space to the north of the property**

Ms. Ecker explained the subject site is located at the northwest corner of Fourteen Mile and Southfield Rd. The existing store is 10,280 sq. ft. in size. At this time the applicant is proposing to construct a 2,935 sq. ft. addition to the north of the existing building. The proposed addition

will increase the size of the entire building to 13,215 sq. ft. Along with construction of the proposed addition, Market Square is also seeking to remodel the interior of the store.

Signage changes are also proposed, and the applicant will be required to obtain approval for all new signage. Parking for the existing building is provided in the R-O-W along both Fourteen Mile Rd. and Southfield Rd., as well as across the alley to the west on adjacent property. The applicant is now proposing to lease land to the north from the City to construct six new parking spaces and an open air pavilion for displaying merchandise, with an outdoor seating area open to the public. The City property is approximately 7,500 sq. ft. in area, and the applicant is proposing to lease a total of 3,825 sq. ft. of that.

On July 9, 2014, the Planning Board granted Preliminary Site Plan approval for the building addition with several conditions.

#### *Design Review*

The proposed addition to the north will be constructed of the same brick with a stone cap to match the existing building, and aluminum downspouts and gutters will be used that match the existing building. One new triple bay of windows will be added to the east elevation, with an awning that will match the existing awnings on that elevation.

The pavilion is proposed to be used to display seasonal merchandise for sale at Market Square. The pavilion itself will be constructed with six wood and steel support posts and roof joists, with a copper roof. A decorative cupola with a window is proposed for the center of the peaked roof. Stainless steel mesh panels are proposed to enclose the area under the roof of the pavilion to allow the pavilion to be secured when Market Square is closed. The east side of the pavilion will be open during business hours, and a retractable door will come down after business hours. The plaza area outside of the new pavilion will be paved. The applicant is proposing two square umbrellas and four tables with 16 chairs for the outdoor dining area. The central feature of the plaza space will be a fountain with a 7 ft. diameter brick and stone base to match the Market Square building.

#### *Building Signage*

The plans as submitted indicate that the proposed building will have 134.2 ft. of principal building frontage permitting 134.2 sq. ft. of signage. The applicant is proposing to keep two existing signs on each of the east and south elevations, and to add additional name letter signage on the east elevation for a total of 97.06 sq. ft. of signage. All new signs are proposed to be mounted at a height of 12 in. above finish grade. No lighting is proposed for the new signage.

Mr. Koseck was interested in making sure the City property gets used in a beneficial way for the applicant as well as for the public. He wanted to see an exit from the store out into the park. Mr. Williams thought the applicant should address the need for the six parking places because they render the remainder of the City property useless.

Mr. Victor Saroki, Architect, was present with Ms. Yvonne Yaldoo, Project Architect from his office, along with Messrs. Laith and John Karmo, sons of the business owners. The proposed building addition will be used for liquor sales, prepared foods, and service foods. This arrangement will open up all of the windows and provide a nice view into the store. The six parking spaces in back will be for employees and will replace the six spaces taken out for the addition. The open air pavilion in the park area will be used for seasonal displays and there will

be a point of sale there. With regard to a second exit, the owners feel it is very hard to control in a retail situation. They think everything should come in and out of the front door.

Mr. Koseck said there should be some thought given to how the City property that is not being leased might get used. Also he felt there should be some type of connection between the indoor and outdoor space without walking to the front of the market. Ms. Whipple-Boyce was surprised by the Yews around the whole perimeter of the project. They cut off access to the park rather than allowing people to flow into the park. Also she would love to see the store open up to the park. Mr. Saroki responded that the shrubs provide a little bit of containment and softening. They could move the pavilion a little closer to the building. Mr. Williams suggested an exit-only door that would get people directly to the park. Other board members thought that was a good idea.

Mr. Share said he could envision a swing set and picnic tables in the City-owned section of the park.

There were no comments from members of the public at 10:12 p.m.

The majority of the board wanted a direct connect from the market to the park. Ms. Ecker thought maybe if the applicant changes the design and layout there might be a way to make it all flow better. Mr. DeWeese observed that it is better to under-build than to over-build; keeping scale in check is important.

Mr. Saroki said he suspects they could work through a connection to the park. He did not think the pavilion should be located too far from the market because of the intention to sell merchandise.

**Motion by Mr. Williams**

**Seconded by Ms. Whipple-Boyce to postpone the Final Site Plan Review for 1964 Southfield Rd., Market Square, to April 8, 2015.**

No one from the audience commented on the motion at 10:25 p.m.

**Motion carried, 5-2.**

**ROLLCALL VOTE**

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

Nays: DeWeese, Jeffares

Absent: Boyle, Lazar

It was agreed that for next time Mr. Saroki will submit plans that focus on the park and the pavilion and not worry any more about the building exterior. Also he will bring in a sample of the metal mesh material that will be used on the pavilion.

**03-60-15**

**STUDY SESSION**

**Action List 2015-2016**

Consensus was to move Item 4, Triangle District Implementation, down; and to move Item 6, S. Woodward Ave. Gateway Plan, and Item 5, Medical Marijuana up. Add a new category, General Fixes for Ordinances and Site Plan Reviews.

Mr. Williams suggested discussing Item 1, Zoning Transition Overlay and Item 6, S. Woodward Ave. Gateway Plan, at the joint Planning Board/City Commission meeting in June.

It was agreed that the board would try to take on one of the easy items at every study session.

### **03-61-15**

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

### **03-62-15**

#### **MISCELLANEOUS BUSINESS AND COMMUNICATIONS**

- a. Communications (none)
- b. Administrative Approvals
  - 34602 and 34574 Woodward Ave., Hazel St. Vacation -
    - Two traffic signs were removed at the drive approach to Woodward Ave.;
    - The striped crosswalk was replaced with a revised sidewalk layout per City Engineering and MDOT requirements;
    - The four spaces shown at the west end of the vacated Hazel St. were striped with only three spaces.
  - 2200 Holland St, Mercedes Benz of Bloomfield Hills - Installation of a ground mounted A/C condenser and installation of new glass in existing windows.
  - Ms. Ecker noted an L-shaped building that is located at the SE corner of Purdy and Brown. They want to add an addition that fills in the corner. The consensus was that the applicant should bring the plans before the board.
- c. Draft Agenda for the Regular Planning Board Meeting on April 8, 2015 (not discussed)
- d. Other Business (none)

### **03-63-15**

#### **PLANNING DIVISION ACTION ITEMS**

- a. Staff report on previous requests (none)
- b. Additional items from tonight's meeting (none)

### **03-64-15**



## **ADJOURNMENT**

No further business being evident, the chairman adjourned the meeting at 10:45 p.m.

Jana Ecker  
Planning Director

APPROVED

Application Date: 4-15-15



Hearing Date: 5-12-15

Received By: BM

Appeal # 15-11

**Board of Zoning Appeals Application**

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

**Property Information:**

Street address: <u>390 S. ADAMS</u>	Sidwell Number: <u>08-19-36-229-027</u>
Owners name: <u>ALI CHEAIB</u>	Phone #: <u>248-705-6465</u>
Owners address: <u>390 ADAMS</u>	Email: <u>RYAN.COUNTY@GMAIL.COM</u>
City: State: <u>MI BIRMINGHAM</u>	Zip code: <u>38009</u>
Contact person: <u>RYAN ROSS</u>	Phone #: <u>248-705-6465</u>

**Petitioner Information:**

Petitioner name: <u>RYAN ROSS</u>	Phone #: <u>248-705-6465</u>
Petitioner address: <u>200 ELM ST</u>	Email: <u>RYAN.COUNTY@GMAIL.COM</u>
City: _____ State: _____	Zip Code: <u>38009</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: Ali Cheaib Date: 4/15/15

CITY OF BIRMINGHAM  
Date 04/15/2015 4:51:48 PM  
Ref 00117315  
Rec'd 117315  
Amount \$50.00

Has BZA. BM. 117315

## VARIANCE REQUEST

To allow the construction of open covered porches in a required side yard

**Allowed:** 0.0'

**Existing House** (to be demolished): 22.0' from property line

**Proposed Porches:** 22.0' from property line (requires 8.0' variance)

It is our desire to demolish the existing house and build a new one to serve as our home. This lot is a corner lot with setback requirements on both Adams Road and Chestnut Street required to meet the average front setbacks of neighboring homes within 200 feet. By definition in the zoning ordinance, Chestnut Street frontage is considered a side yard (only because the rear yard must be opposite the front yard and the west side of our property is the only place the rear yard can be accommodated if it is to meet the 30' rear yard setback requirements) and the consequence is that no porches are allowed on Chestnut Street, the side yard. We believe there are unique circumstances associated with our property and a case for practical difficulty that warrant the granting of the variance. The formal argument is written below with drawings and colored graphic booklet as supporting documents.

## ARGUMENT FOR PRACTICAL DIFFICULTY

### **Special or Unique Conditions**

- Being a corner lot is addressed in the zoning ordinance and in that respect is not unique. What makes our condition special or unique is that Chestnut is the more logical definition of the front yard. Adams Road will not be perceived as the front yard. **Adams is not a neighborhood street** but instead a busy 3-lane primary artery road with significant car and truck traffic throughout the day and night (a total of over 15,000 vehicles per day), average speeds exceed the limit, and has no street side parking for guests.
- **Chestnut is a neighborhood street**, both in character and use, with little traffic (primarily from those that live there), and has street side parking. It makes no sense for our guests to park on Chestnut and then walk out toward Adams to access our front door.
- There are a total of 10 total corner lots along this section of Adams Road. Of those, 7 front on the interior streets, not Adams Road.
- **When this lot was originally platted, Adams Road was a narrower road with substantially less traffic.** Its layout and relationship to Adams made sense.
- We believe our property has these unique conditions, not anticipated by the zoning ordinance, and **would not set precedence** for a typical Birmingham corner lot.
- The subject lot has been for sale for a number of years. Potential buyers became disinterested because of the Adams road frontage and the challenges limiting the use of the property to meet today's expectations for living standards.

### **Literal Interpretation / Minimum Necessary**

- **It would be unnecessarily burdensome** to make us conform to the literal requirements of the ordinance this circumstance. The variances requested we believe are the minimal necessary to be useful and functional.

### **Not Self Created**

- The conditions of **the negative characteristics of Adams are beyond our control.**
- Although the existing house will be removed, the south face of the **existing house in existing-non-conforming....The new house is placed significantly further back** from Chestnut and the proposed porches encroach no further than the existing house that has been there for many decades. In fact, the proposed **porches, being open, will have a lesser visual encroachment than the existing house.**
- **When this lot was originally platted, Adams Road was a narrower road with substantially less traffic.** Its layout and relationship to Adams made sense.

### **Harmony with the Zoning Ordinance**

- **Front porches are encouraged at house fronts** in our zoning ordinance and all other single-family homes along Chestnut either have or would be allowed to have porches facing Chestnut.
- **Treating Chestnut as a side yard would in fact allow for some negative elements** such as a 6 foot high fence and considerable driveway area... These would not be in harmony with the surrounding neighborhood.

### **No Adverse Affects**

- **The proposed porches/steps do not adversely affect** adjacent properties, the neighborhood in general, or the health, safety, and welfare of the community. In fact, it will contribute to the general enhancement and value of the general area with a significant investment and quality of architecture. We would argue that **not granting the variances would have adverse affects.**
- Allowing Chestnut to function as our front yard would have no adverse effect on the City of Birmingham, building codes, post office access, or police and fire department issues.

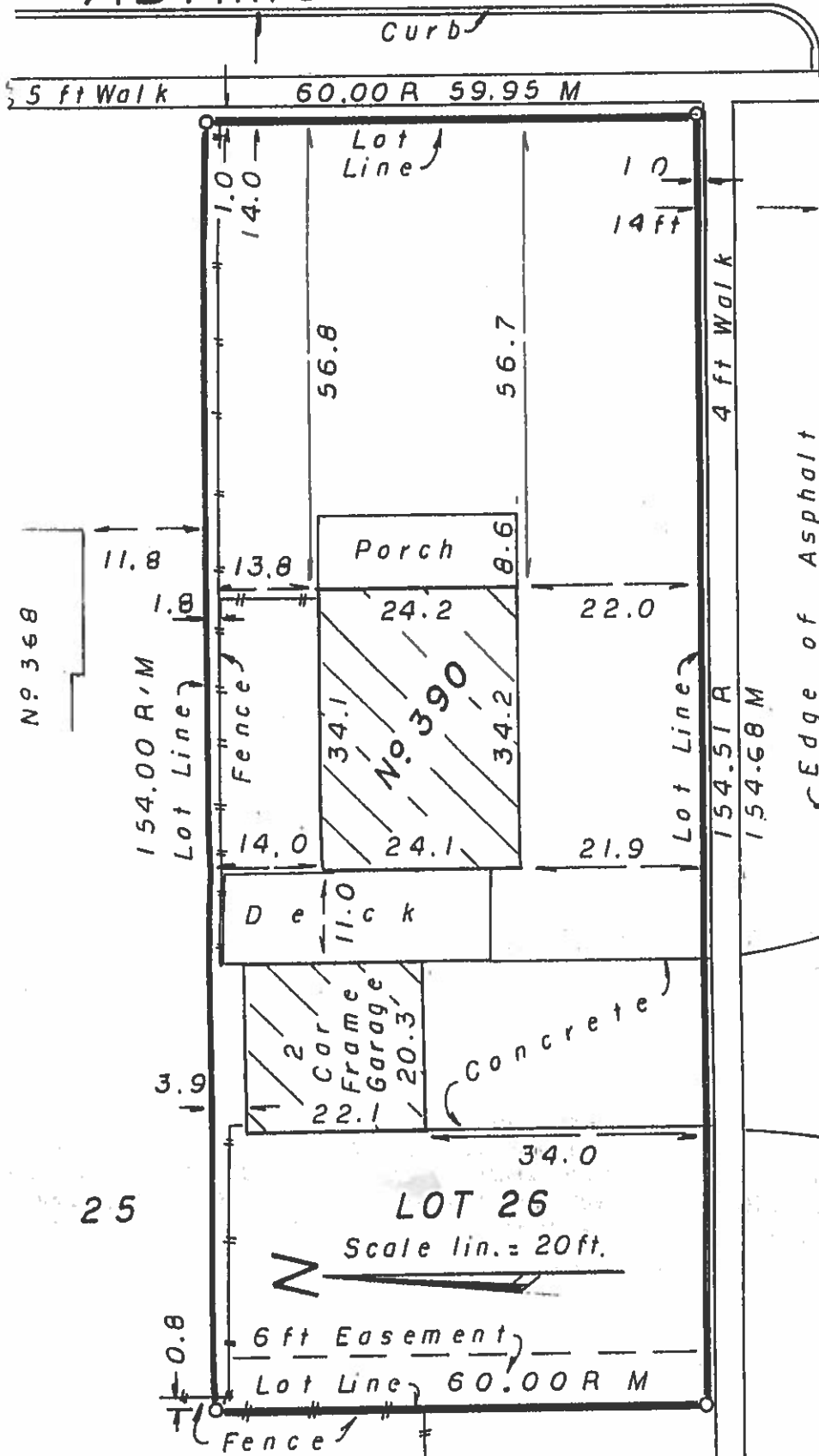
### **Spirit of the Ordinance / Health, Safety, Welfare / Substantial Justice**

- The whole intent of allowing porches at the front of house was to **encourage the softening of severe building elevations, to create architectural character, and engage with the sidewalk.** Not allowing these variances would result in a 74 foot long brutal elevation.
- The front of a house should have a relationship to it surrounding context and interior layout. As designed, the house as viewed by others would be as expected and meet the spirit and intent of the zoning ordinance.
- We believe the spirit of the zoning ordinance is to promote good architecture, harmony, appropriate building forms, open space, and relationships between buildings. The proposed design is respectful of these goals and maintains the general principals of planning relative to zoning ordinance requirements. It has **no adverse affect on the health, safety, and welfare of the community.** To grant these variances would do us substantial justice.

Thank you for your consideration.

# CERTIFICATE OF SURVEY

## ADAMS RD. 66' WD.



No. 390  
1½ Story  
Frame Single  
Residence with  
Composition  
Shingle Roof

CHESTNUT ST. 50' WD.

LEGAL DESCRIPTION: Lot 26, SNOW SUBDIVISION No. 1, of part of the NE¼ of Sec. 36, T2N-R10E, Village (now City) of Birmingham, Oakland County, Michigan.  
Plat recorded in LIBER 38, PAGE 7, Oakland County Records.  
SUBJECT to easements and restrictions of record.

NOTE: The symbol 'o' indicates iron stake set.

Setbacks to Adams Rd.

No. 312 Adams	51.4 ft.	} 49.83
336 Adams	50.7	
368 Adams	47.4	
Subject House		
Chestnut St 50' Wd.		
412 Adams	49.0	
436 Adams	50.5	
108 Hazel St	27.2 (to free standing garage)	
	43.7 (to residence)	

Setback to Chestnut St.

991 Chestnut	35.6 ft.	} 34.45
1007 Chestnut	35.4	
1035 Chestnut	34.0	
1043 Chestnut	32.8	
Subject House		

I HEREBY CERTIFY that I have surveyed and mapped the property herein described; and that said survey was performed with a relative error of closure of no greater than 1 in 5000 and that all the requirements of P.A. 132, 1970 have been complied with.

Lombardo Development 248-756-0342

**GUARANTY SURVEY CO.**  
REGISTERED LAND SURVEYORS  
1660 ROCHESTER ROAD  
TROY, MI 48063  
ESTABLISHED 1939

PETER G. PITCHFORD  
TOM NORTHRUP

(248) 528-1717  
FAX (248) 528-1746

ORDER No 190751

DATE Sept. 10, 2014

BY:

**PROPOSED NEW RESIDENCE**

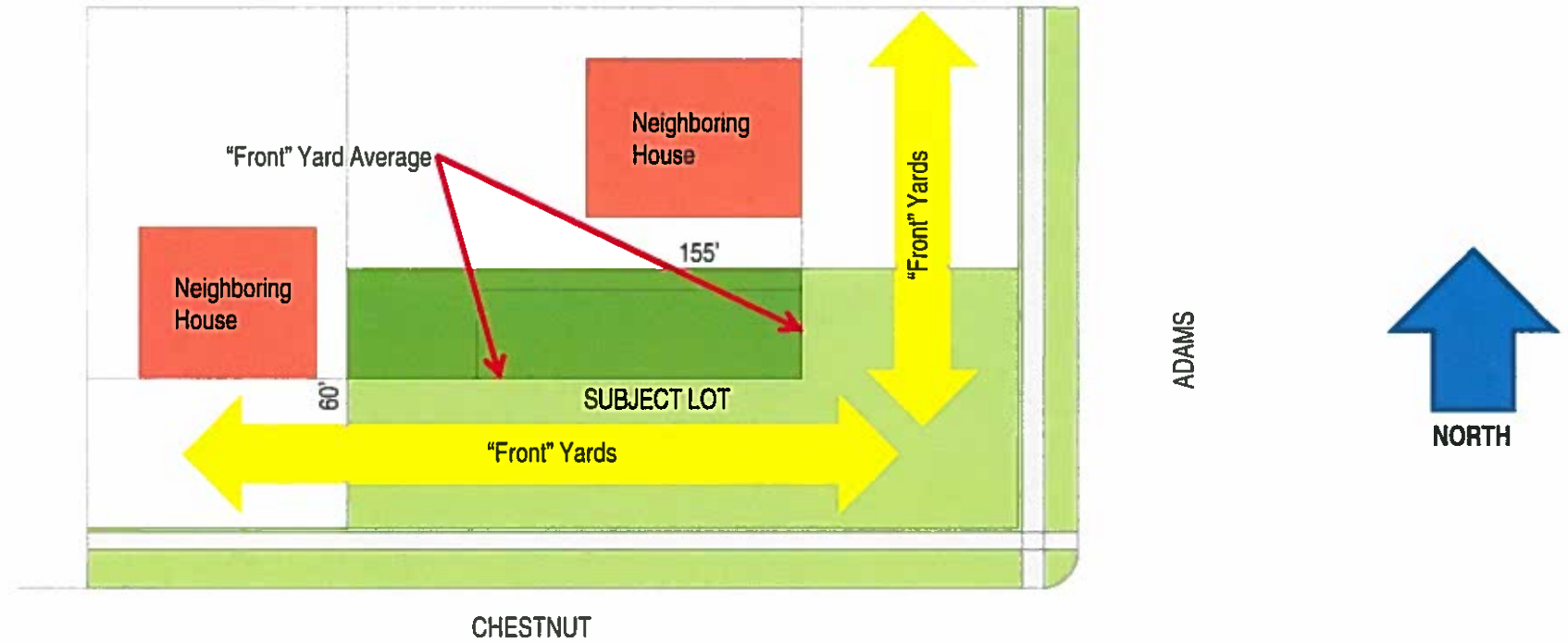
**CHESTNUT STREET, BIRMINGHAM, MICHIGAN**

# **VARIANCE REQUEST**

**TO ALLOW PORCHES/STEPS TO ENCROACH INTO A SIDE YARD**  
**(because it's really our "front" yard!)**

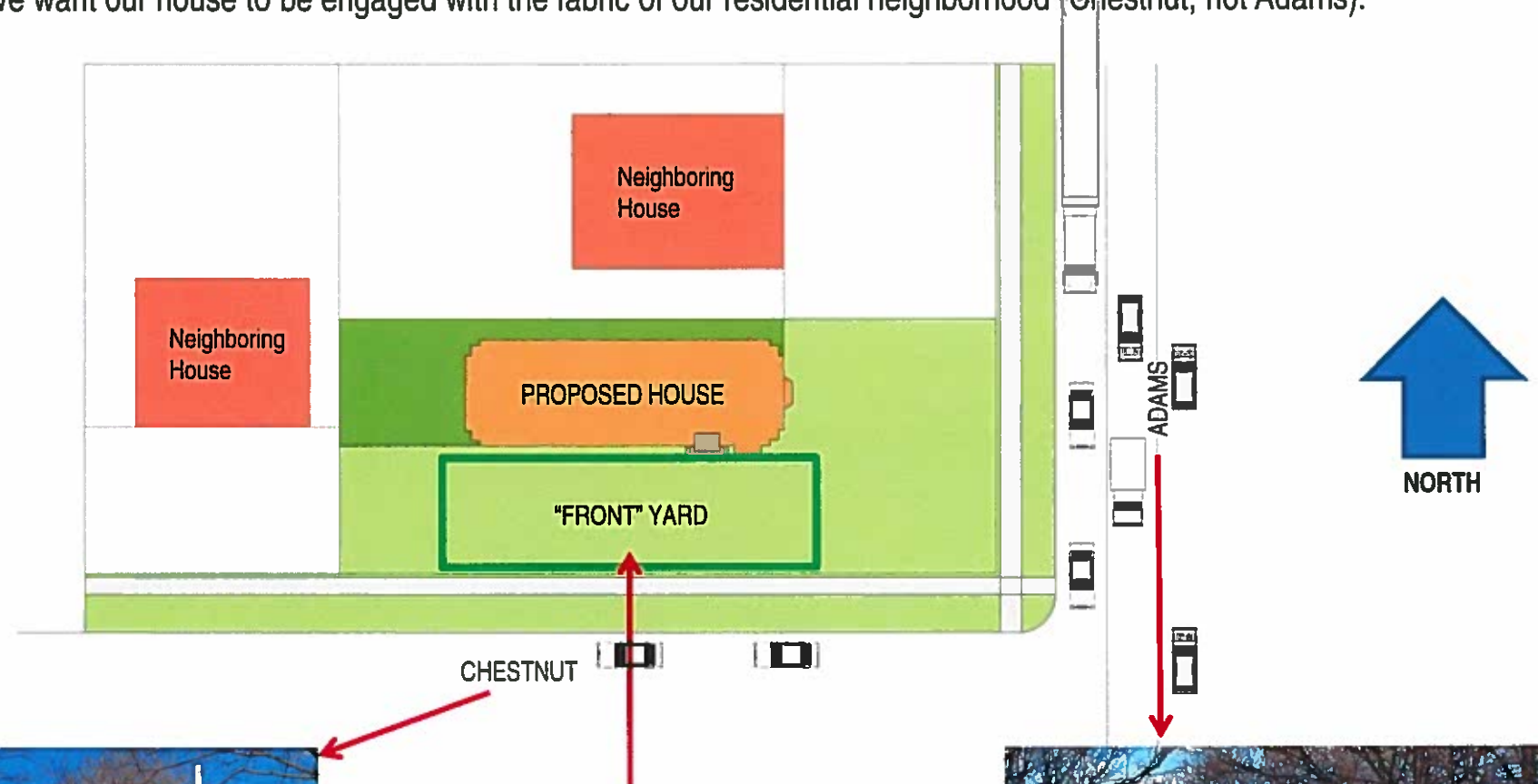


- Corner Lot....Because of this being a corner lot and it's relationship to adjoining properties, the zoning ordinance requires us to meet the average front yard setbacks on both Adams and Chestnut.





- It is our desire to have the “front” of our house expressed on Chestnut, not Adams.
- Adams is not a “neighborhood” street but instead a major busy 3-lane artery street with significant car and truck traffic, is noisy, and has no street side parking.
- We want our house to be engaged with the fabric of our residential neighborhood (Chestnut, not Adams).



This will be perceived as the “front” yard!

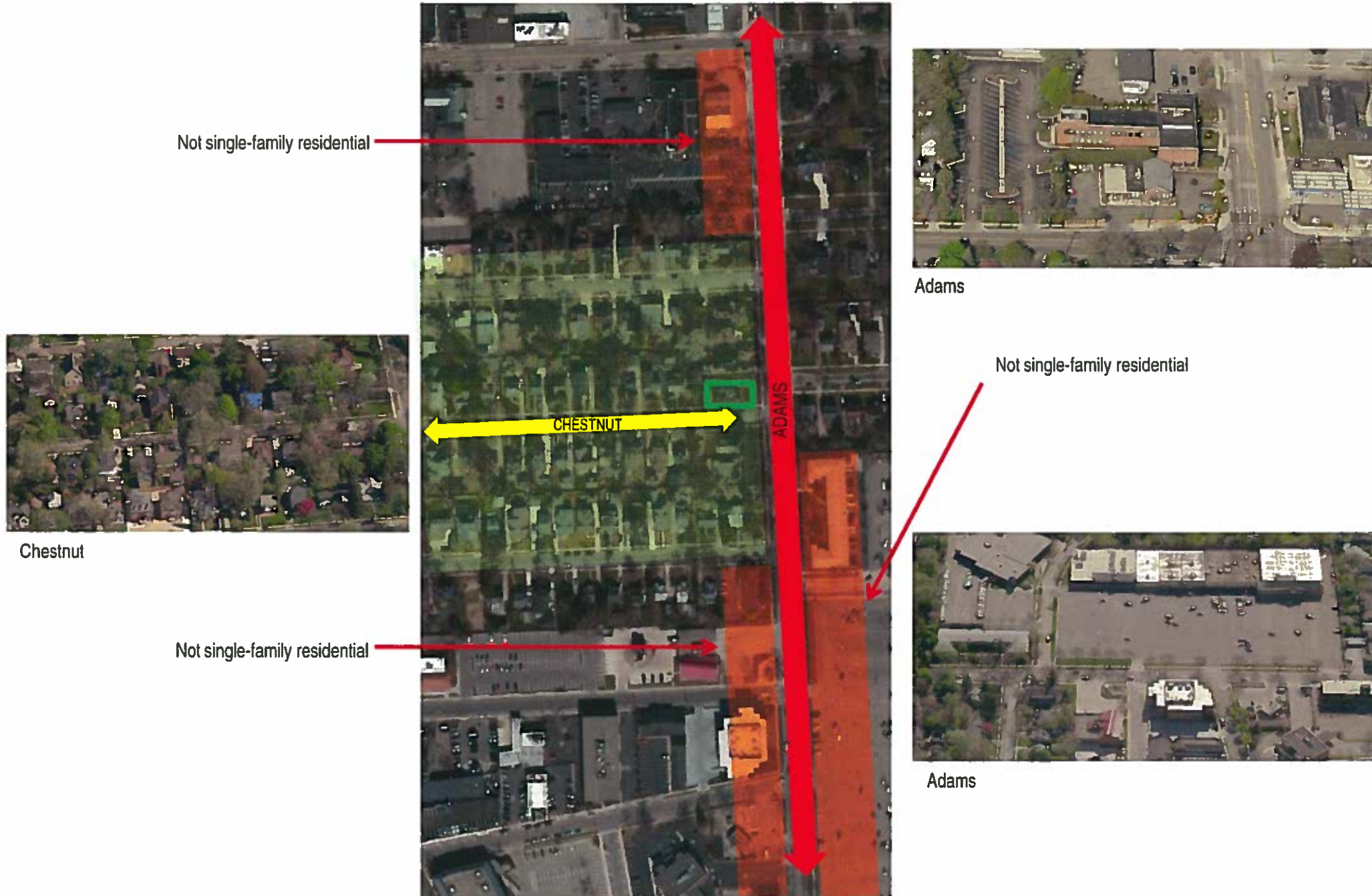
Chestnut....Serine, is part of a residential neighborhood, street side parking

Adams....Heavy traffic, 3 lanes wide, noisy, no parking

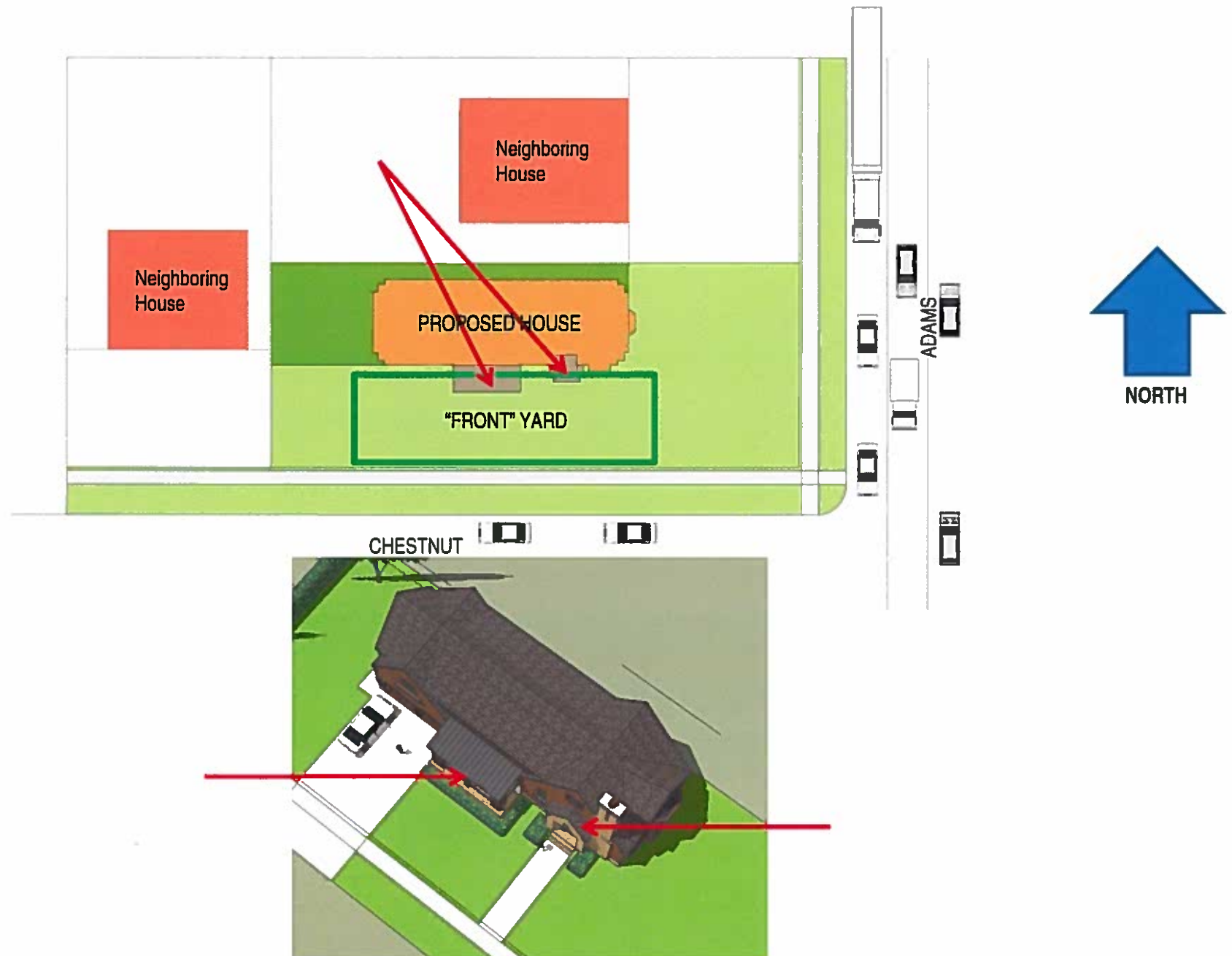




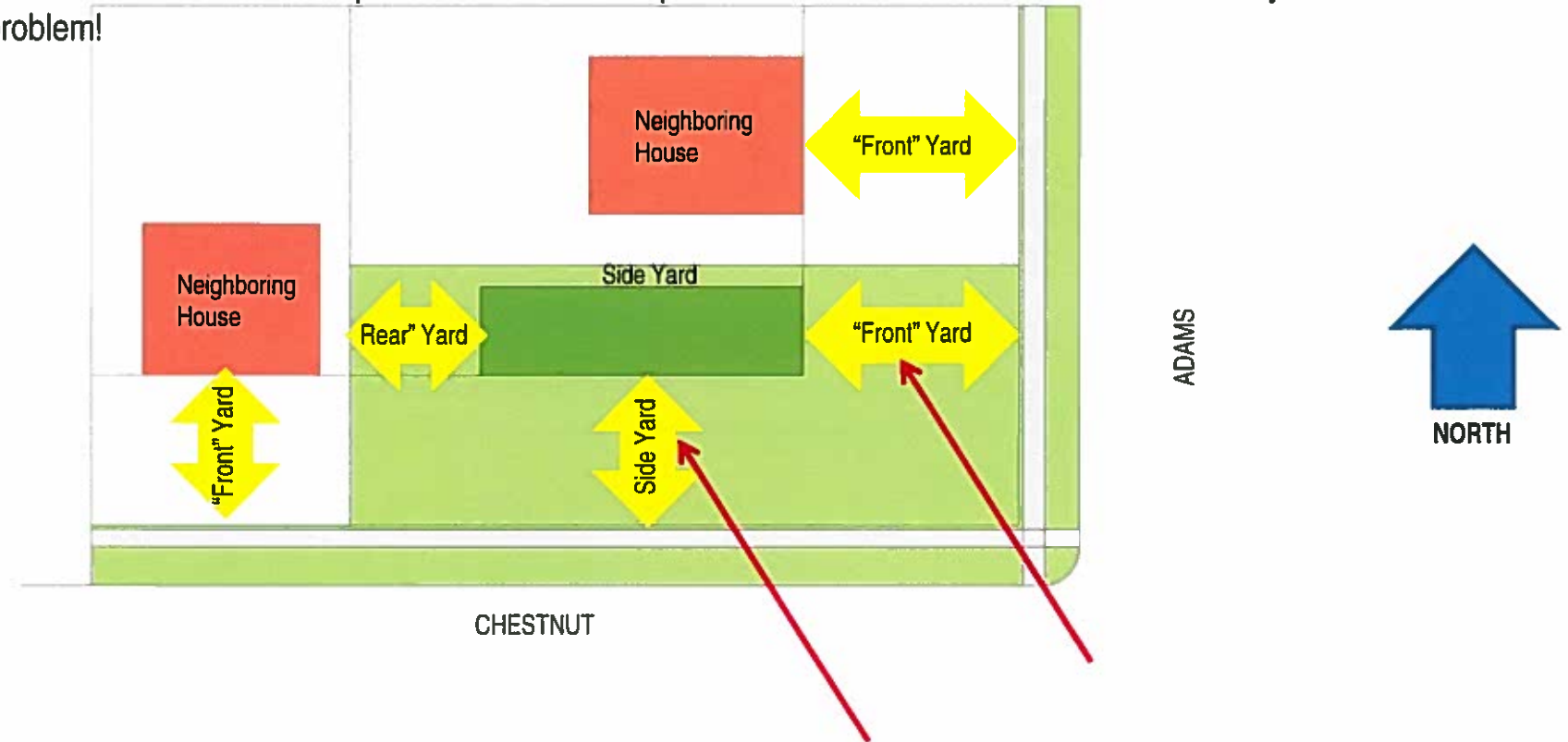
- Existing conditions and land use....Our neighborhood has little exposure or visibility on Adams.
- Much of Adams is commercial type land uses, not single family residential.



- So far, no problems, but.....
- We would like to have a small entry porch and a porch accessed from our family room in what we think of as our “front” yard.

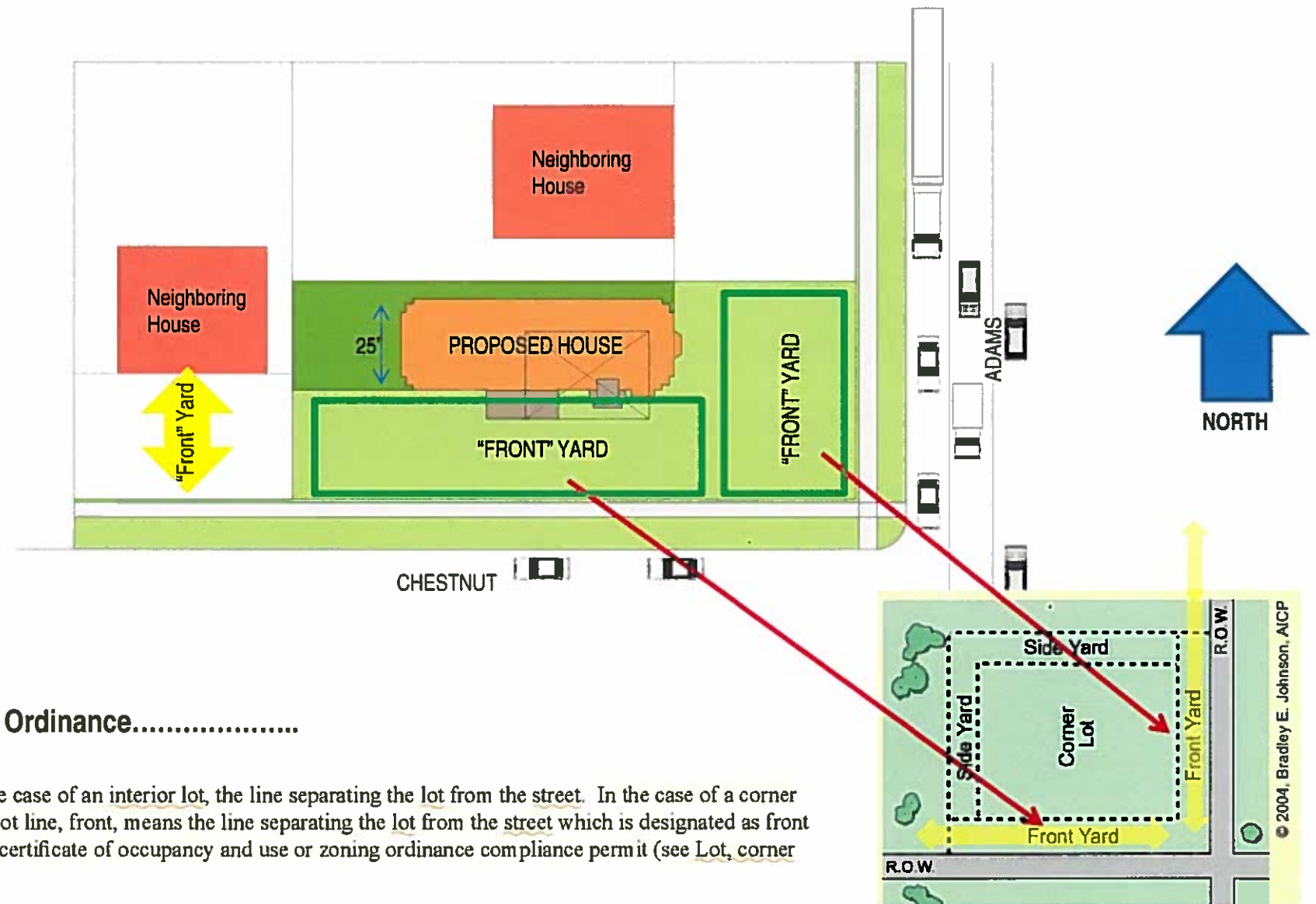


- **So the problem is....**
- The Building Official states that the “front yard must be opposite the rear yard and in this case the rear yard could only be on the west to comply with it’s 30’ minimum setback requirement....therefore the “front” yard must be on Adams”.....and therefore Chestnut is considered a side yard....Makes sense for most Birmingham lots but not ours.
- The rule....Porches and steps that exceed 3’ in depth are not allowed in what he calls the “side yard”....That’s our problem!

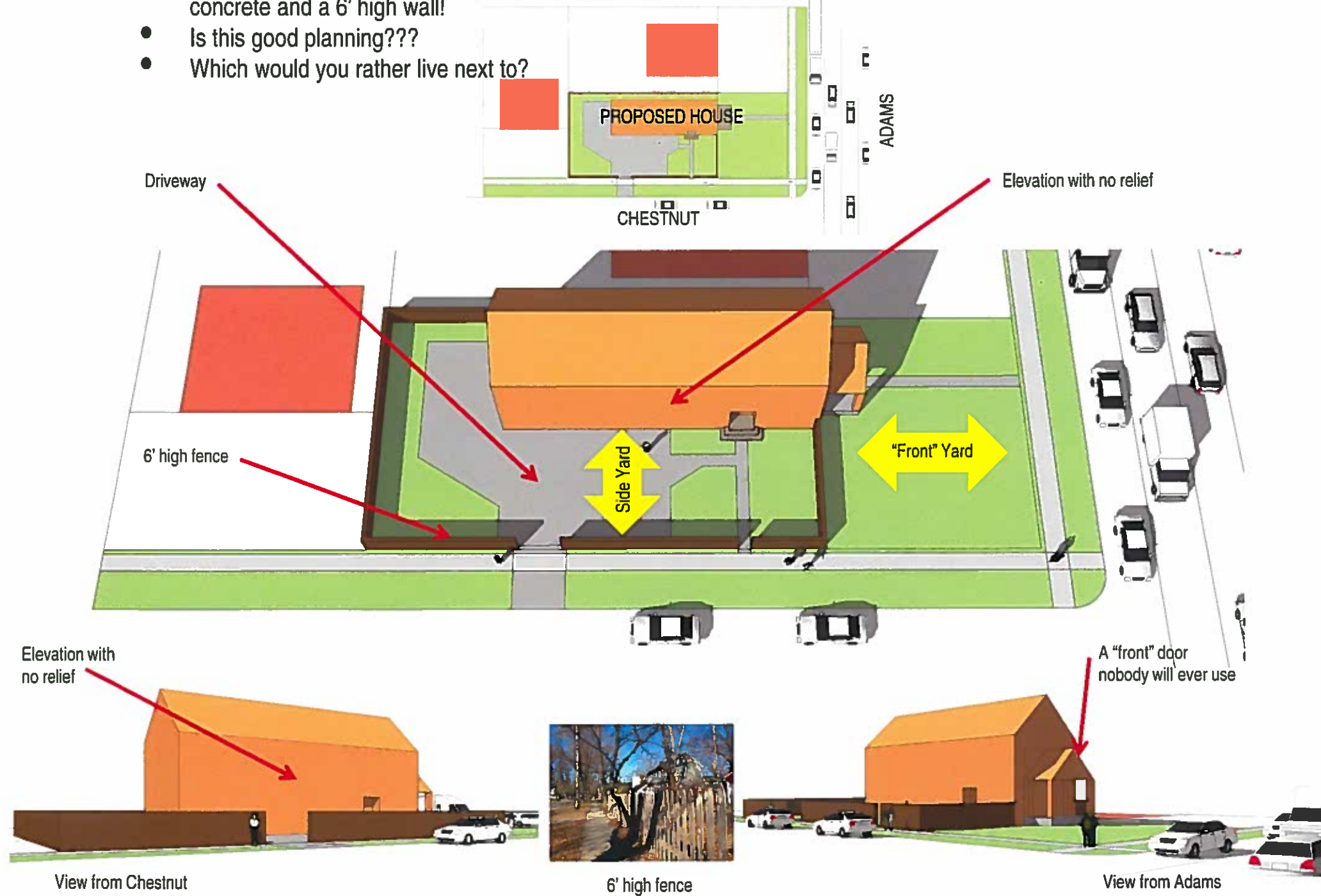




- Not trying to challenge the Building Official but there are some confusing things in the ordinance as it relates to this....Take a look at the diagram and definition (bottom of page) directly extracted from the zoning ordinance.....



- We don't intend to do this but....If we treat Chestnut as a side yard, we can't have a porch but we could have lot's of concrete and a 6' high wall!
- Is this good planning???
- Which would you rather live next to?

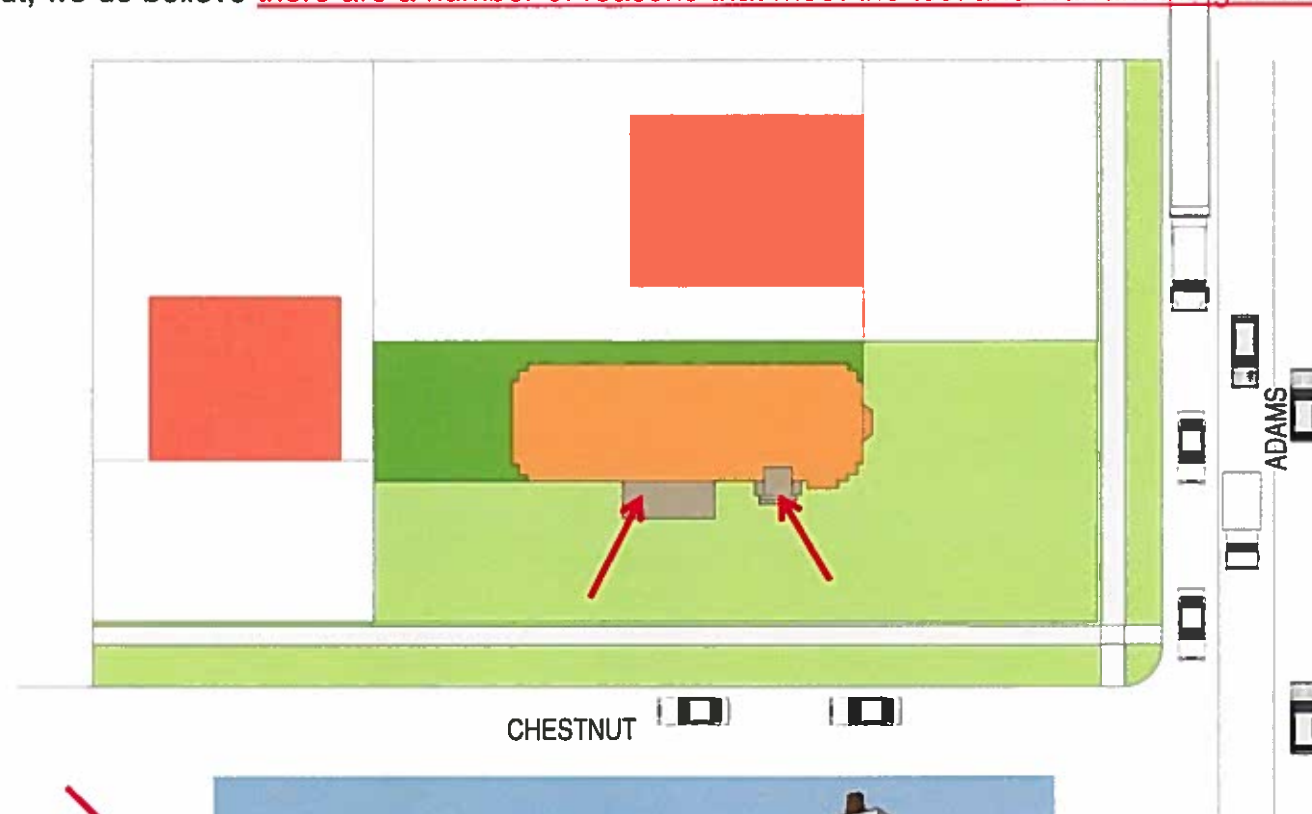


- Where would you want your front porch?
- Logically, if it is to be used, it makes sense to place it on the quiet part of our property and be engaged with the neighborhood, not facing the nuisance of Adams, and where our guests could park and have access to our main sidewalk.

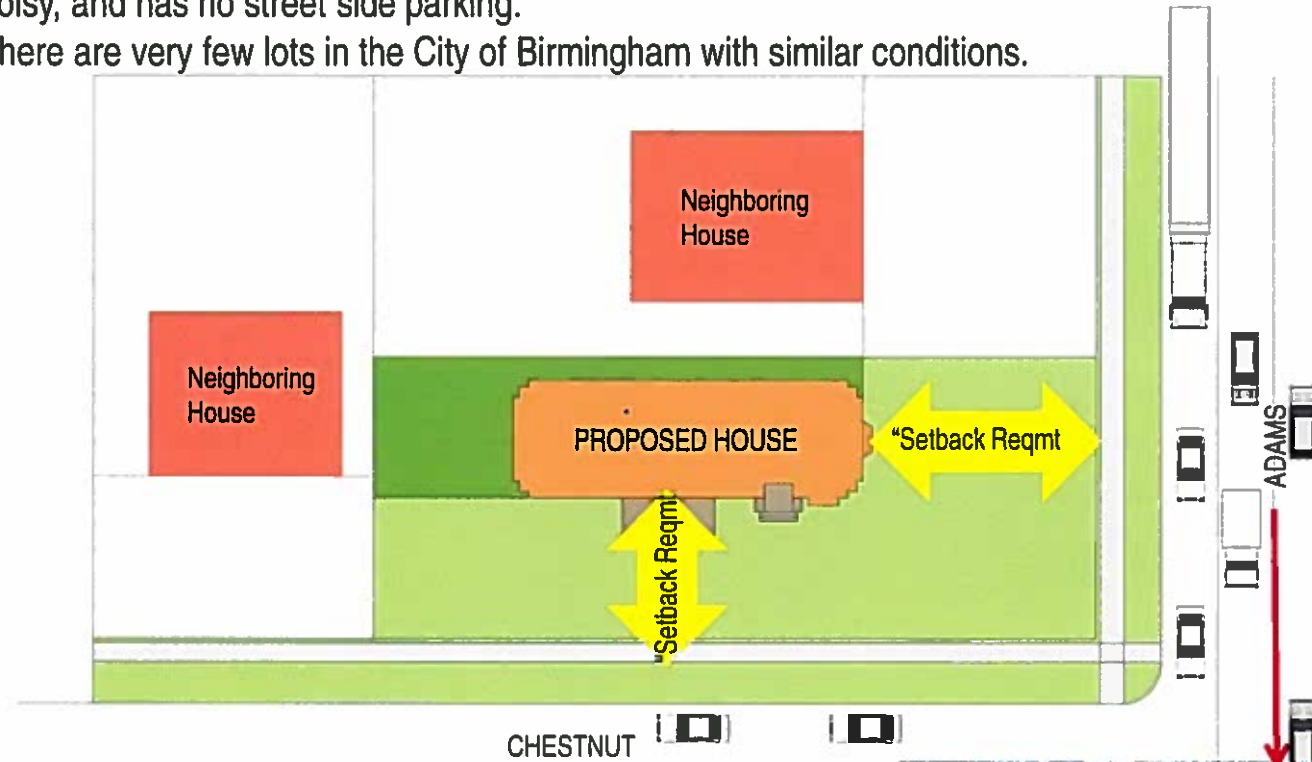




- So how do we make a **case for a variance based on the rules of PRACTICAL DIFFICULTY?**
- We do not intend to challenge the opinion and interpretation of the Building Official, just believe we have some unusual circumstances here.
- But, we do believe there are a number of reasons that meet the test and warrant the granting of a variance.



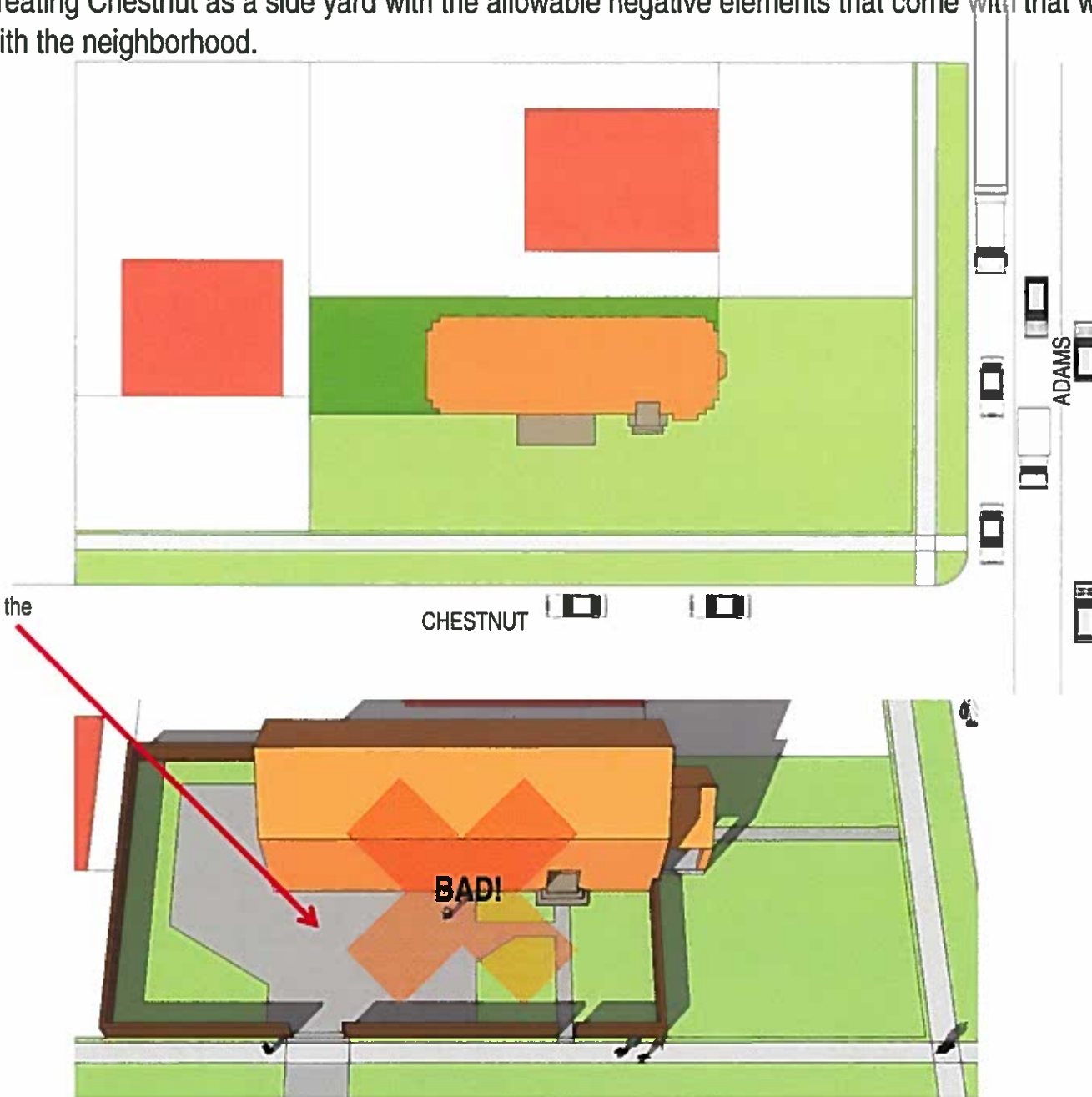
- **UNIQUE CIRCUMSTANCES**
- Our lot is not the typical corner lot anticipated in the zoning ordinance with Adams as a **primary artery street**.
- Adams will not be perceived as our front yard....It is not a residential street, is heavily traveled by cars and trucks, is noisy, and has no street side parking.
- There are very few lots in the City of Birmingham with similar conditions.



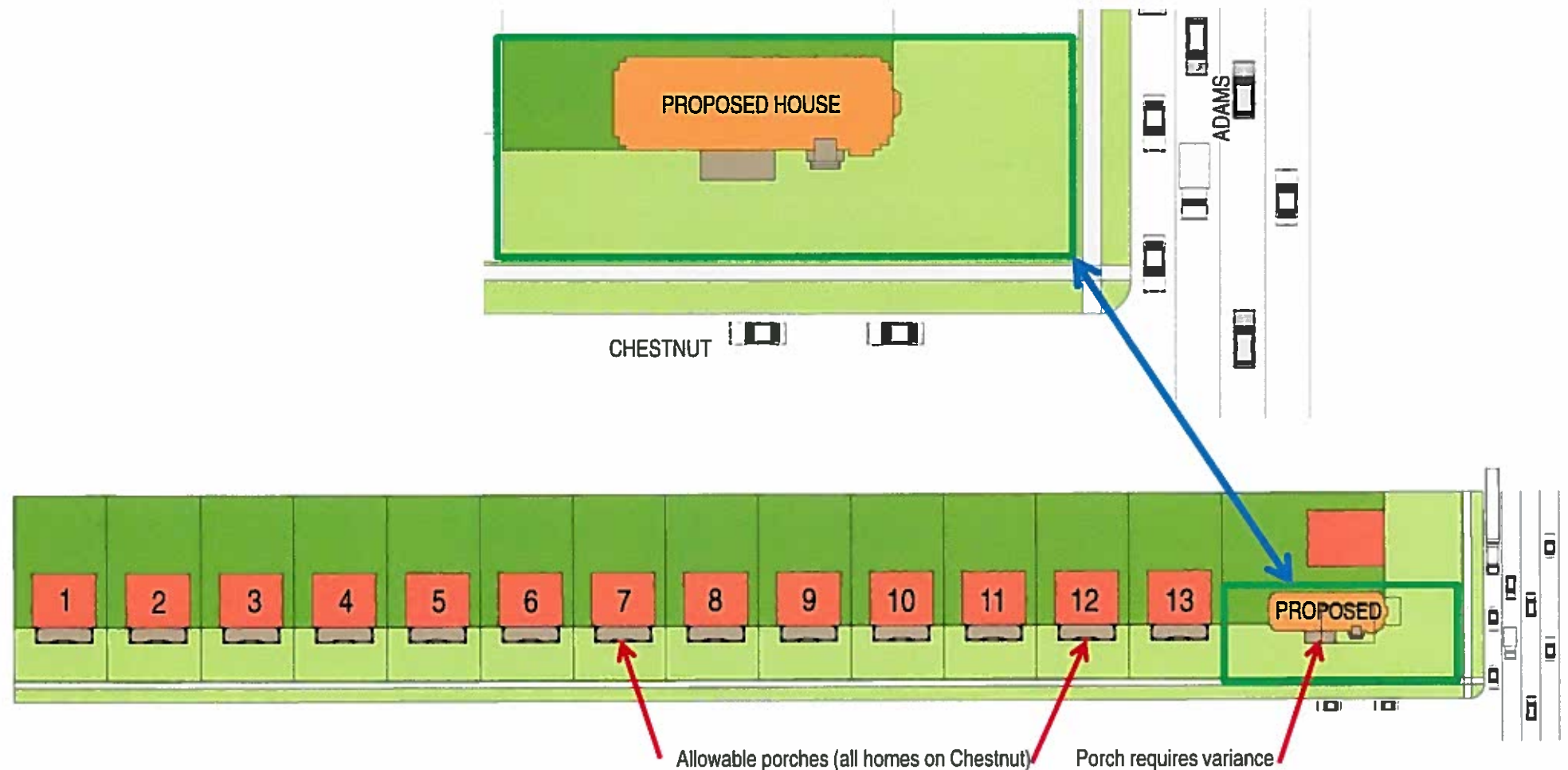


- **REASONABLE**
- The proposed porch and steps are where you would expect them to be....This is reasonable for us and our neighbors, and just makes good sense.
- Treating Chestnut as a side yard with the allowable negative elements that come with that would in effect disengage us with the neighborhood.

This is all allowable by the ordinance



- **JUSTICE**
- Why can't we have a front porch at the "front" of our house like all our neighboring homes to the west?
- Why can't we have a front porch where you would expect to have the front porch?
- With the allowable width of our house at 25' (23' on the interior), forcing the main entrance would make for an impractical interior house layout.





- **SPirit AND INTENT**
- What was the intent of the ordinance allowing porches at the front of a house within the setback?
- Porches add relief to the building form, add architectural character, provide shade, and engage with the neighborhood.
- Without the porch elements, our house will be a brutal form....skinny at 25' wide, 74' long (of uninterrupted 2-story wall!)



Not good!  
Previous zoning ordinance allowed these types of homes....This is what we are trying to avoid and this is why we changed the ordinance to allow porches in the open space.

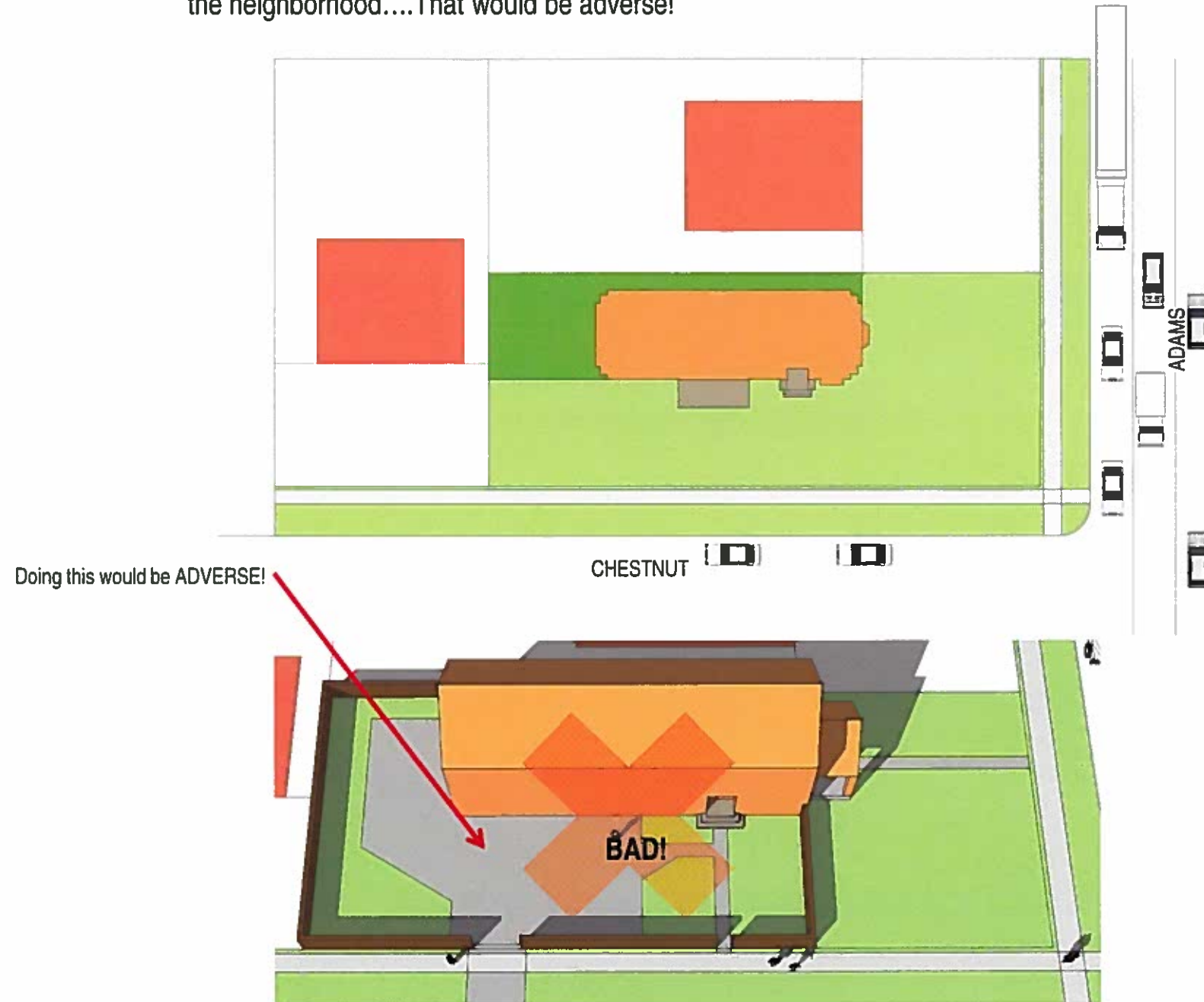
Typical porches...Create an architectural feature, "breaks" the severe mass of the building form, creates "people" spaces that engage with the neighborhood



Birmingham Historic Museum....  
Can you imagine it without its front porch? Not good!

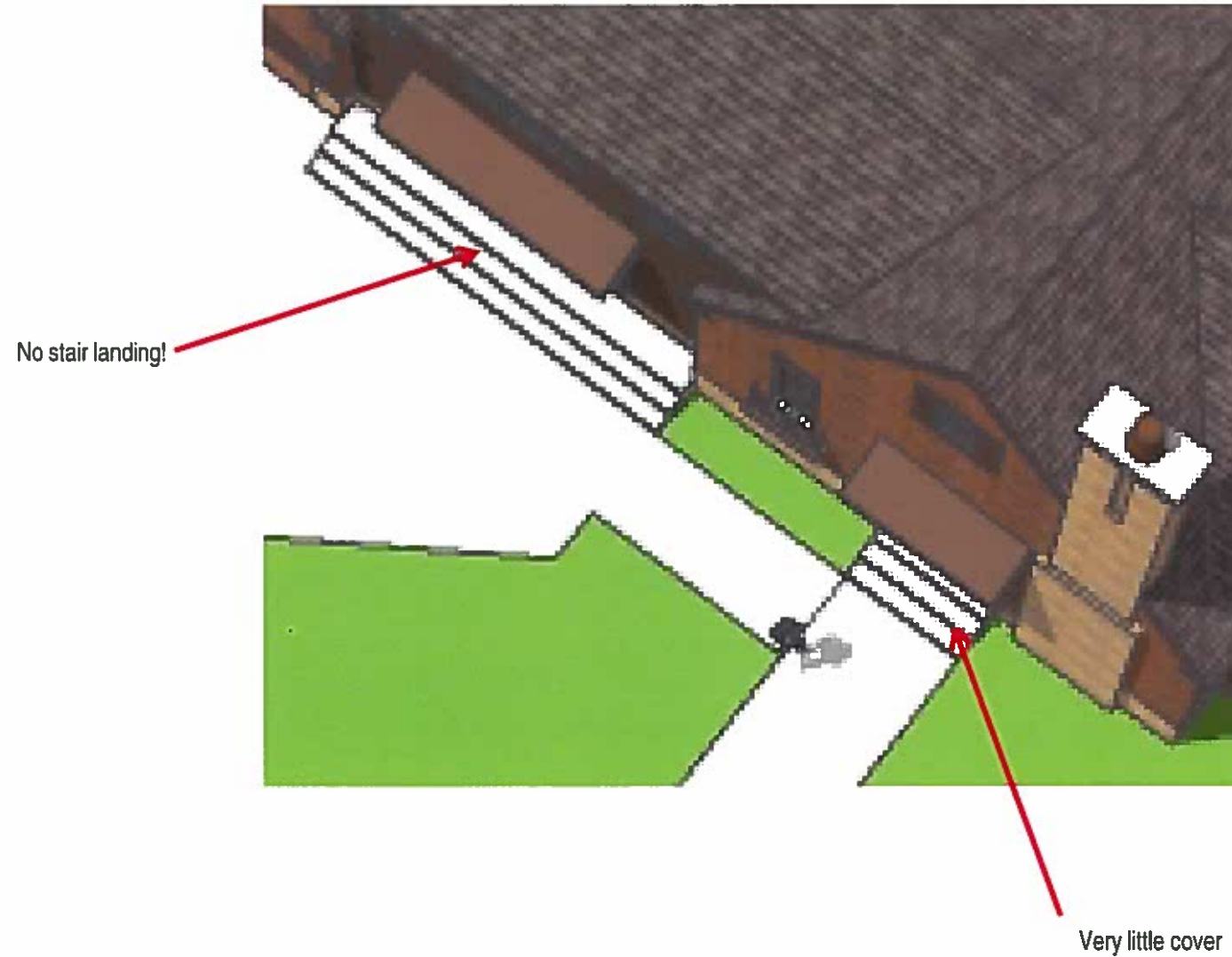


- **NO ADVERSE AFFECTS**
- The proposed porch will have no adverse affects on immediate neighbors or the neighborhood as a whole.
- With strict enforcement and not allowing porches, the end result will be a lesser quality design which negatively impacts the neighborhood....That would be adverse!

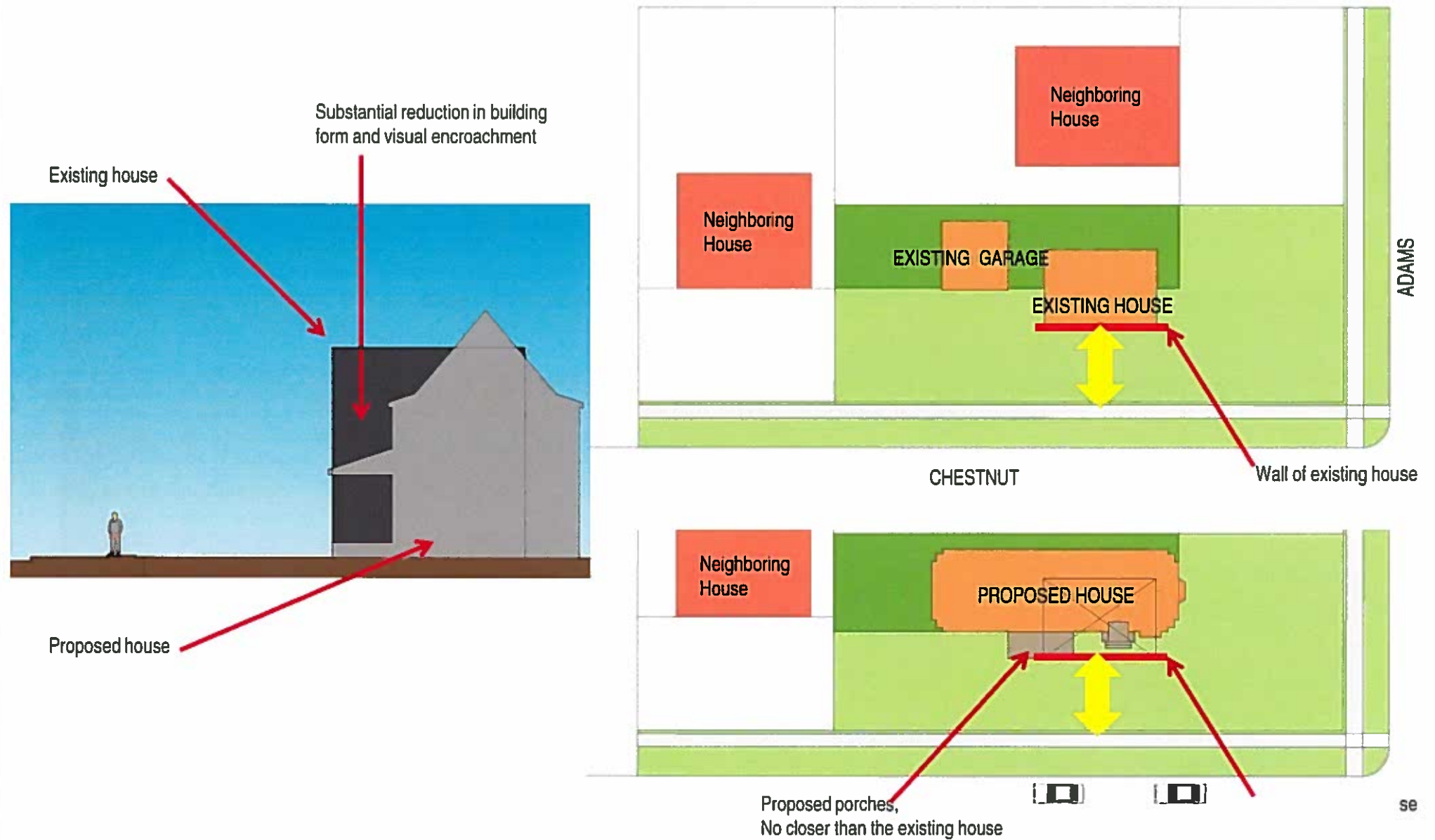




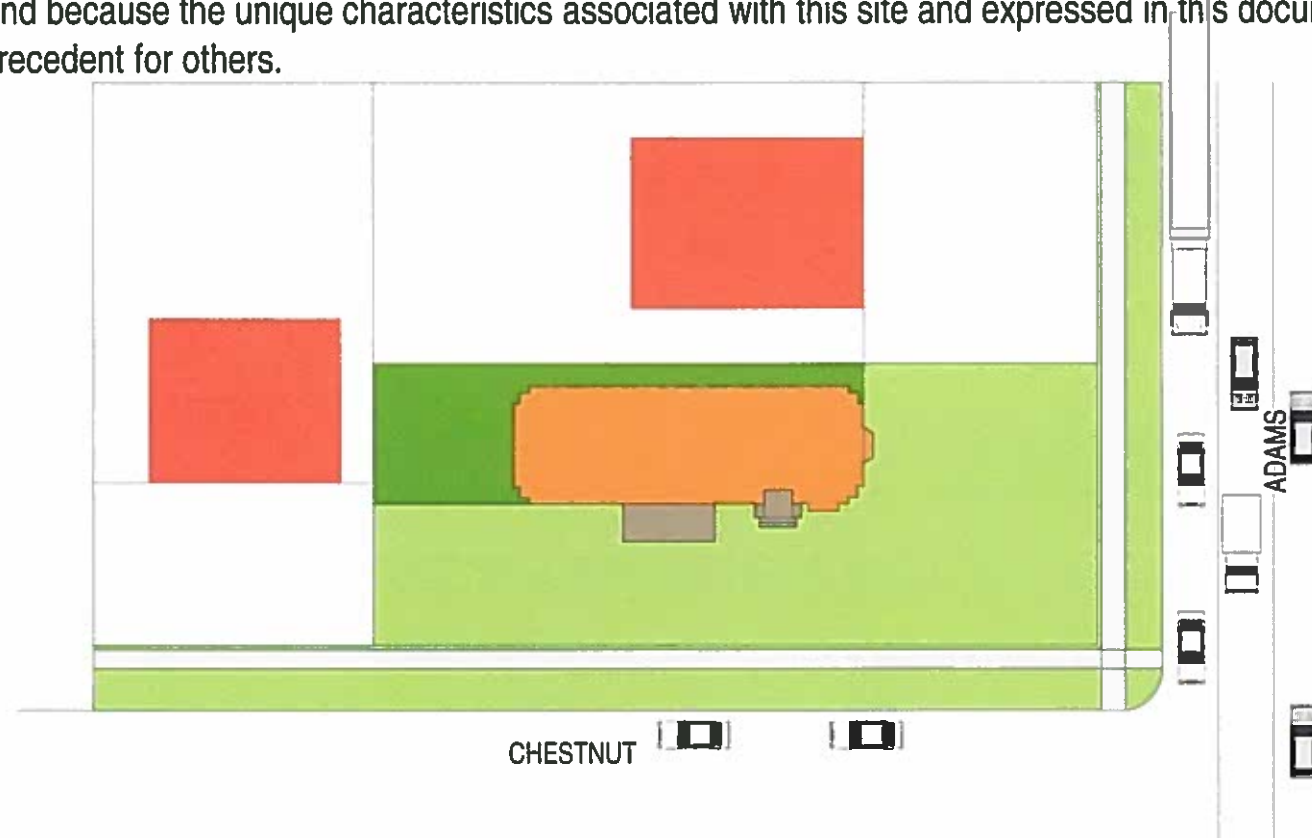
- **HEALTH, SAFETY, WELFARE**
- At a maximum allowable of 3 feet projection, the steps will have very little roof coverage for protection from rain, ice, and snow.
- The stair landing area will also be very small and possibly not building code compliant.



- **EXISTING NON-CONFORMANCE, EXISTING PREVIOUS CONDITION....**
- The proposed porches will not encroach any further than the existing house that has been there for decades!
- In fact, the porches, because they are smaller, open on 3 sides, and only 1-story in height, will be a lesser visual mass than the existing house.



- And just one more thing..... Why be **UNDULY BURDENSOM**?
- Why force the literal interpretation of the ordinance on us?
- Who benefits from that?
- And because the unique characteristics associated with this site and expressed in this document, does not establish precedent for others.

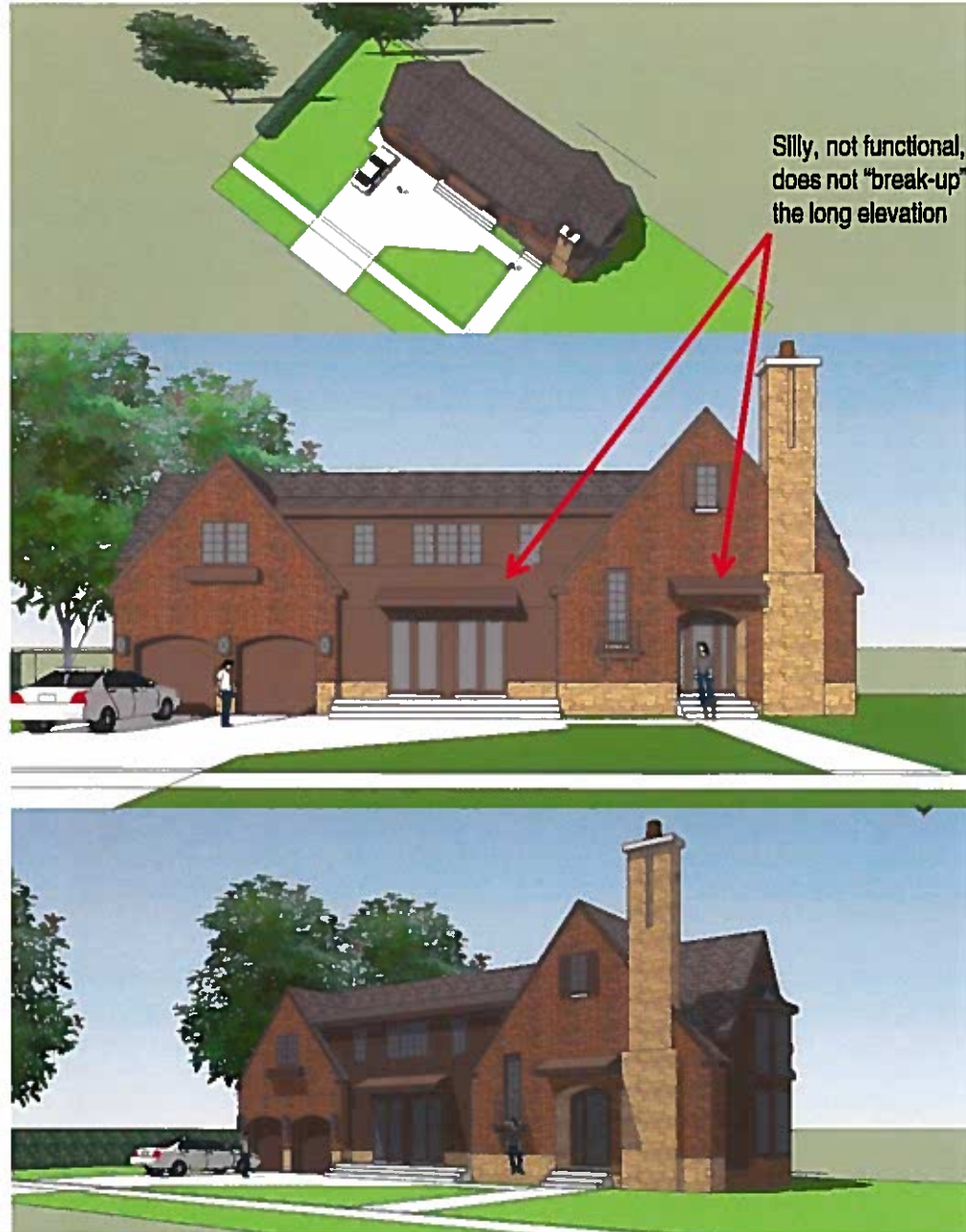




## Just trying to be logical here.....and have a beautiful and functional home!

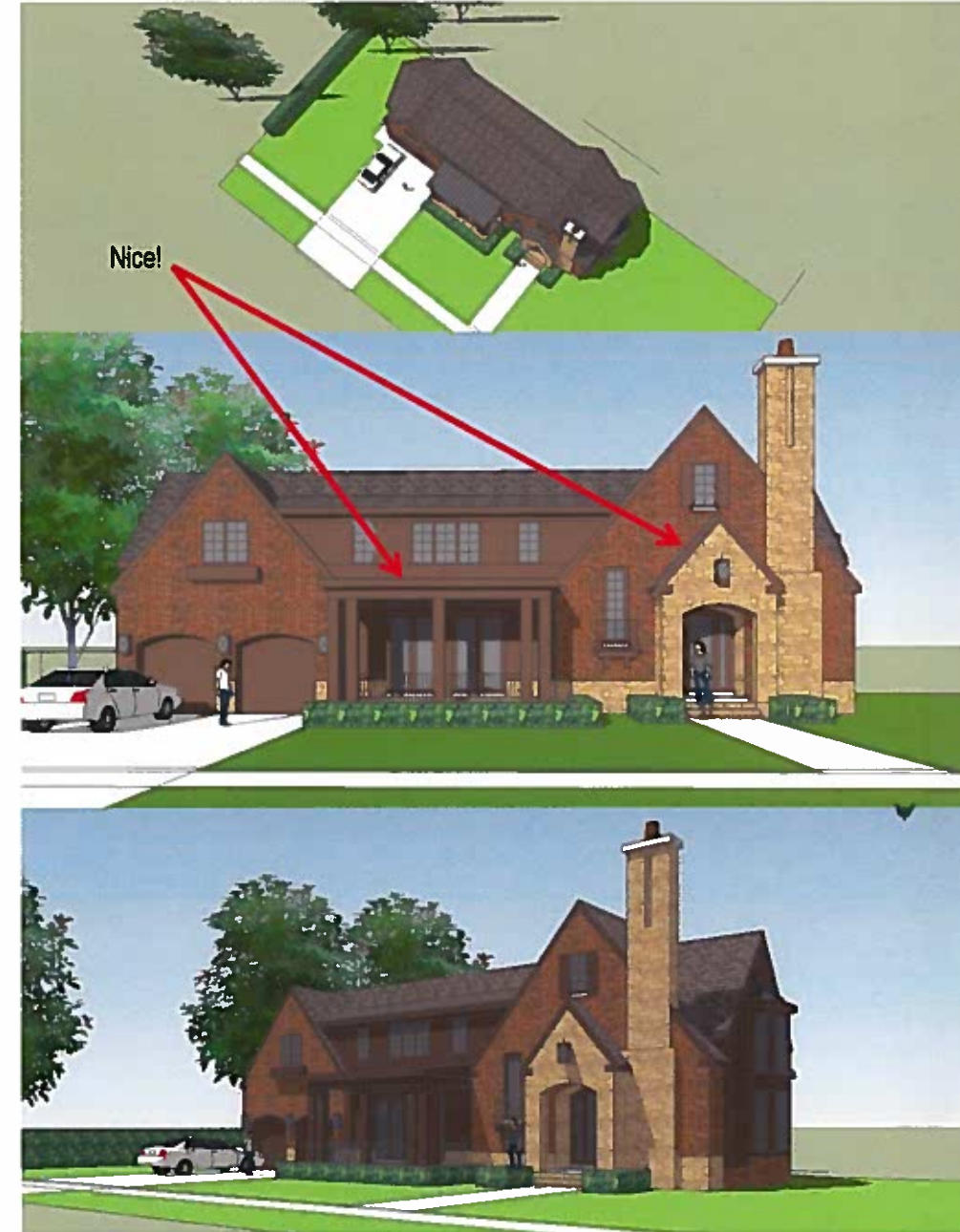
### ALLOWABLE

Conformance with the ordinance does not allow for a front porch at the front of the house and makes for a brutal primary building elevation.



### DESIRED (MEETS THE STANDARDS FOR ZONING VARIANCE)

A front porch at the front of the house. We believe its good for us as well as our neighbors and the City of Birmingham.







In conclusion.....

What we are asking for really makes good sense for us as well as our neighborhood and the City of Birmingham.

**THANK YOU FOR YOUR CONSIDERATION!**